

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COMMUNITY ROOM OF THE SHERMAN POLICE DEPARTMENT HEADQUARTERS
2600 W. TRAVIS STREET
SHERMAN, TEXAS
MONDAY, FEBRUARY 17, 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 COUNCIL MEMBER CLAY BARNETT**
- A.3. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 3, 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

Public Hearing

D.1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6809

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land being a Replat of Lots A, A-2 and C of Taylor Plaza and Lot 1 of the Altona's Replat of Lot B, Taylor Plaza, City Of Sherman, Grayson County, Texas, Located at 719-725 East Taylor Street and 2000-2030 North Loy Lake Road, Heretofore M-1 (Light Manufacturing) District and C-2 (General Commercial) District; Rezoning And Placing The Tract In The C-2 (General Commercial) District Zoning Classification, Altona, Inc (Owner), Barkat Ali (Representative) and Underwood Drafting & Surveying (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

D.2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6810

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, And Granting A Specific Use Permit To Allow a Secondhand Store or Rummage Shop in a C-2 (General Commercial) District, Located At 4800 Texoma Parkway, Suite B401B, Consisting of 42.8134 acres being in the John Hendrix Survey, Abstract No. 503, the W.F. Patterson Survey, Abstract No. 969, the Daniel Shelp Survey, Abstract No. 1097 and the T.J. Shannon Survey, Abstract No. 1136, Lots 1 and 3, Block 1, Midway Mall, City Of Sherman, Grayson County, Texas Scott Cresswell (Owner), Kerry Smith (Representative) and Old Republic (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

D.3. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6811

Repealing Ordinance No. 6410 and Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land, Consisting Of 288.278 Acres In The Sherrod Dunmore Survey, Abstract No. 329, City Of Sherman, Grayson County, Texas, Located In The 300-1000 Block East Fm 1417 (Vietnam Veterans Parkway), Heretofore Zoned PD (Planned Development) District And R-6 (Single Family Residential) District, C-1 (Retail Business) District And C-2 (General Commercial) District; Rezoning And Placing The Tract In The Bel Air Village PD (Planned Development) District Classification; Modifying Certain Development Standards Applicable To The Bel Air Village PD (Planned Development) District Classification And Adding A 9.9645-Acre Tract Of Land To The Bel Air Village PD (Planned Development) District; Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

D.4. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6812

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land Consisting Of 0.674 acres being part of Lots 1, 3, 5 and 7, Block 26 of the Original Town Plat, City Of Sherman, Grayson County, Texas, Located in the 500 Block East Lamar Street, Heretofore Zoned M-1 (Light Manufacturing) District; Rezoning And Placing The Tract In The C-2 (General Commercial) District Zoning Classification, JE Holdings, LLC (Owner), Kent Hughlett (Representative) and Underwood Drafting & Surveying (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

D.5. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6813

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land Consisting Of 11.067 acres in the John Jennings Survey, Abstract No. 647, City Of Sherman, Grayson County, Texas, Located in the 4600 Block North Travis Street, Heretofore Zoned R-6 (Single Family Residential) District; Rezoning And Placing The Tract In The R-4 (Single Family Residential) District Zoning Classification, Rafeeq Ali Dareidiya, Roshan Building Company, LLC (Owner) and Helvey-Wagner Surveying, Inc. (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Close Public Hearing and Consider Adoption of Ordinances

E.1. CLOSE PUBLIC HEARING

Consider Adoption of Ordinances 6809, 6810, 6811, 6812 & 6813.

Resolutions

F.1. RESOLUTION NO. 7481

Authorizing Execution of a Standard Form of Agreement Between The City of Sherman and Hidell and Associates Architects, Inc. for Professional Services Relating to the Renovation of Fire Station No. 3.

F.2. RESOLUTION NO. 7482

Authorizing the City Manager or His Designee to Execute Reservation of Property of 0.513 Acres being Part of East Street in Sherman, Texas

Change Orders

G.1. CHANGE ORDER NO. 1

Approving the Greater Texoma Utility Authority's Intention to Execute Proposed Change Order #1 with Red River Construction

Other Business

H.1. OTHER BUSINESS

Consider and act on petition from BM Dorchester, LLC related to 215.288 acres of land located in the Antonio Hernandez Survey, Abstract No. 488, Grayson County, Texas, a portion of which is located within the City of Sherman's Extraterritorial Jurisdiction ("ETJ").

H.2. OTHER BUSINESS

Consider and Act on Authorizing the Mayor to Execute a Partnership Agreement between the Texoma Workforce Development Board and Chief Elected Officials for the Texoma Workforce Development Area.

H.3. * OTHER BUSINESS

Consider Excusing the Absence of Council Member Daron Holland

H.4. * OTHER BUSINESS

Receive 2024 Racial Profiling Report

Consider Board/Commission Appointments

I.1. BOARDS/COMMISSION APPOINTMENT

Library Board (2)

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:

K.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.

K.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.

K.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.

K.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

K.5. TEX. GOV'T CODE § 551.076

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

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

K.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.

K.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

M.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 (317 S. Travis) of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Friday, February 14, 2025 at 4:59p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 14th day of February 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.

Mayor

Shawn C.
Teamann

Deputy Mayor

Juston Dobbs

Council Members

Henry Marroquin, Council-At-Large, PL #1
Juston Dobbs, Council-At-Large, PL #2
Clay Barnett, Council – District #1

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

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

STATE OF TEXAS §
 February 3, 2025
COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Community Room of the Sherman Police Headquarters, 2600 W. Travis Street, on February 3, 2025.

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

MEMBERS ABSENT: COUNCIL MEMBER HOLLAND.

CALL TO ORDER

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

CALL TO ORDER

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of January 21, 2025. Council Member Howeth moved to approve the Minutes, as presented; Second by Council Member Barnett; All present voted AYE.
MOTION CARRIED.

APPROVE MINUTES

CITIZEN'S COMMENTS

There were no citizen's comments.

CITIZEN'S COMMENTS

CONSENT AGENDA

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

CONSENT AGENDA

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

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

**RES 7470
DOWNTOWN
DEVELOPMENT/
REDEVELOPMENT
GRANT PROGRAM**

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.

Nate Strauch, Community and Support Services Manager, said this was the program that they discussed at the last Council Meeting. It increases the cap on the Downtown Development/Redevelopment Grant Program from \$50,000 a year, for two years,

to \$300,000 in one year. There are other changes including grease traps and making them fully refundable. Another change that was made after it was presented to Council, was to add residential projects to restaurants and retail projects. The Council and staff agreed they wanted more people to live downtown.

Mayor Teamann asked if there was a timeline in the resolution, outlining when a recipient could come back and ask for grant money. Mr. Strauch said they wanted to be flexible in order to help if a recipient needed the cash, and therefore, it was intentionally left vague.

Council Member Marroquin verified that a recipient did not have to spend \$300,000 to participate. If they spent a lesser amount, they would get the corresponding amount back, up to the cap. There would also not be any artificial benchmarks to reach that cap.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Resolution No. 7470, as presented. Second by Deputy Mayor Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

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

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.

RES 7471
TXDOT BRIDGE
REPLACEMENT
(OB GRONER ROAD
BRIDGE)

Clint Philpott, Assistant City Manager, said this is an agreement between the Texas Department of Transportation and the City of Sherman for a bridge replacement in the Wilsonwood Addition. It was determined that the bridge on OB Groner Road was in need of repair.

The repair qualifies for Federal funding, and under the agreement, the Federal Government will pay 90% of the cost, TxDOT will pay the other 10%, and there will be no charge to the City of Sherman. The repair will be designed and constructed by TxDOT.

Mr. Philpott said the bridge on South Travis, over Post Oak Creek was the same type of project, and the City only had to pay 10% of the cost.

Mayor Teamann asked about the timeline for the project. Mr. Philpott said typically the design takes about 12 months, then it will need to be bid and construction started. He said completion would probably be 1.5 years away.

ACTION TAKEN.

Motion by Deputy Mayor Dobbs to approve Resolution No. 7471, as presented. Second by Council Member Barnett.

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

VOTING NAY: None.

MOTION CARRIED.

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

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.

**RES 7472
CROSSROADS
OFFSITE
MITIGATION
POND**

Wayne Lee, Director of Engineering, said this agreement is for the design of the large mitigation pond, located in the Crossroads Development. The pond will be moved for future development and the construction of a road from FM 1417 to Crossroads Drive, to be known as Aspen Drive.

The plan is to fill in the pond, and to do that there must be wetlands mitigation, which will be done at a reservoir near the Hickory Hill Development, near Friendship Road and Lamberth Road. This new location will create the mitigated wetland area.

Plans should be completed this Spring, with construction starting in the Summer. Mayor Teamann confirmed that the new wetland area will be part of the open space for the Hickory Hill Planned Development, and a future park.

ACTION TAKEN.

Motion by Council Member Stephenson to approve Resolution No. 7472, as presented. Second by Council Member Howeth.

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

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 7473 -- AUTHORIZING THE PURCHASE OF FURNITURE FOR THE REMODELED CITY HALL FROM BUSINESS ESSENTIALS

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.

CONSENT AGENDA.

**RES 7473
FURNITURE FOR
REMODELED CITY
HALL**

RESOLUTION NO. 7474 -- AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MEAD & HUNT, INC. FOR THE BLALOCK PARK INTERCEPTOR IMPROVEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A

**RES 7474
BLALOCK PARK
WASTEWATER
INTERCEPTOR
IMPROVEMENT**

PROFESSIONAL SERVICES AGREEMENT WITH MEAD & HUNT, INC. FOR THE BLALOCK PARK INTERCEPTOR IMPROVEMENT. CONSENT AGENDA.

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

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. CONSENT AGENDA.

RES 7475
FLANARY ROAD &
PROGRESS DR
EXPANSION DESIGN

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

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. CONSENT AGENDA.

RES 7476
KIDD-KEY WATER
FOUNTAIN PROJECT

RESOLUTION NO. 7477 -- AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MEAD & HUNT, INC. FOR THE WWTP RELIFT PUMP STATION AND FILTER

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. CONSENT AGENDA.

RES 7477
WWTP RELIFT
PUMP STATION &
FILTER

RESOLUTION NO. 7478 -- AUTHORIZING EXECUTION OF AN EASEMENT TO ONCOR ELECTRIC DELIVERY COMPANY, LLC FOR THE INSTALLATION OF OVERHEAD AND/OR UNDERGROUND ELECTRIC SUPPLY

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. CONSENT AGENDA.

RES 7478
ONCOR EASEMENT

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)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW

RES 7479
VEHICLE PURCHASE

2024 TAHOE RST 4X4 FROM SAM PACK'S FIVE STAR CHEVROLET FOR THE EQUIPMENT SERVICES DEPARTMENT THROUGH BUYBOARD.
CONSENT AGENDA.

RESOLUTION NO. 7480 -- AUTHORIZING SUBMISSION AND ACCEPTANCE OF A GRANT APPLICATION TO THE GOVERNOR'S OFFICE FOR A CRIMINAL JUSTICE ASSISTANCE GRANT PROGRAM

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.
CONSENT AGENDA.

RES 7480
CRIMINAL JUSTICE
ASSISTANCE GRANT

REQUEST TO ADVERTISE
SALES OF APPROXIMATELY 1.65 ACRES OF LAND LOCATED IN THE 900 BLOCK OF SOUTH TRAVIS STREET

The City Council approved the request to advertise for the sale of approximately 1.65 acres of land, located in the 900 block of South Travis Street.

REQ TO ADVERTISE
OLD SOUTHGATE
APARTMENTS
(915 S. TRAVIS ST)

On November 15, 2023, the City closed on the property at 915 South Travis Street, known as the Southgate Apartments. After the closing, the City began demolishing the substandard structures on the site.

The staff is proposing to sell the property by sealed bids, with a minimum "reserve" attached to the sale.
CONSENT AGENDA.

OTHER BUSINESS
RECEIVE UPDATE ON THE RESIDENTIAL RENTAL INSPECTION PROGRAM

Caleb Green, Inspector, presented an update on the Residential Rental Inspection Program, that was initiated in February of 2024. Currently there are 53 properties signed up for the program and since the program's inception, they have inspected 31 properties, with reinspections amounting to approximately 80. Approximately 650 violations have been corrected in 2024.

RESIDENTIAL
RENTAL
INSPECTION
PROGRAM

The most common problem is a lack of smoke detectors. Mr. Green discussed some of the violations that they have dealt with. He added that four citations have been issued to managers by the Police Department, for lack of compliance, on behalf of the Rental Program.

He explained that single-family rentals were not included in the program, and discussed tenant rights in those cases, directing them to the Texas Attorney General's Office. He said they do try to help the renters as much as possible, even in these cases.

Deputy Mayor Dobbs confirmed that the staff did recommend last year that single-family rental residences should be included in the program. Mr. Green felt it would be hard to inspect all single-family rental properties, but said he would like to help those renters that reach out with specific problems.

Mr. Green said the ordinance has adopted the Property Maintenance Code, so if the City decided to expand the program to include single-family rental residences, it could easily be done.

Mayor Teamann asked about the penalty for single-family rental compliance. Mr. Green said it would be up to the judge to assess the fine. Under the current program it is \$750.

Council Member Stevenson confirmed that, if the rental is on a single-family lot and is five units or more, it is considered multi-family and is inspected by the City. He preferred a systematic approach.

Council Members discussed the possibility of enforcing the Property Maintenance Code against single-family residential rentals too, especially on a complaint basis. They also discussed the possibility of the renter joining the program instead of the property owner and other incentives to encourage participation.

Ryan Pittman, City Attorney, said the ordinance dictates that the staff will enforce the Property Maintenance Code just on multi-family, therefore if the Council would like to expand the reach of this enforcement, it will require amending the ordinance.

Tina Bullock, 921 W. Freeman

Ms. Bullock lives in a single-family residence that is infested with mice. She has had trouble with the landlord, and he said all pest problems are the renter's responsibility.

She had a pest company come to the home and they said it would be impossible to rid the house of mice because it has foundation problems. She informed her landlord and her lease is now being terminated. She has been told she must be out by March 31. She said the Residential Rental Program would have been very helpful to her situation.

RECEIVE UPDATE FROM HIDELL AND ASSOCIATES ARCHITECTS, INC. FOR ONGOING CONSTRUCTION PROJECTS

Aaron Babcock, Architect, Hidell & Associates Consultants, presented an update on several ongoing construction projects. He said Central Fire Station #1 had its grand opening on January 31, 2025. Byrne Construction completed the project.

**ONGOING
CONSTRUCTION
PROJECTS**

Mr. Babcock said they saved about \$900,000 at the start of the project by reviewing design options, and from savings from the contractor. This savings was used as the contingency, and some was used for upgrades that they originally thought would not be possible. It is expected that the overall savings on the project will be approximately \$65,000.

Another project is the new City Hall, which Mr. Babcock said should be occupied in May 2025. The contractor is on schedule and should be done by the end of March or early April 2025. Furniture installation and move-in is scheduled for April 2025, with the grand re-opening in May 2025.

Mr. Babcock said they have realized about \$90,000 savings on the project so far. However, there were some additional items added to the scope of the work, and some additional structural issues were found on the project. He felt at the end of the project, the contingency would be around \$100,000 to \$150,000 over the initial budget.

Other projects include the Municipal Building Parking Lot; the Senior Center Restroom, Parking, and Kitchen Updates; and an on-going development of a Comprehensive Facility Master Plan.

Council Member Howeth asked them to consider better lighting in the Municipal Building Parking Lot and the Senior Citizens Center Parking Lot.

RECEIVE UPDATE ON ONGOING PROJECTS IN SHERMAN

Mr. Strauch presented a drone update on the City's ongoing projects. Drone footage highlighted the following projects:

**ONGOING PROJECT
UPDATES**

Fire Station 1	Sherman Heights
Fairview Park	Stone Creek
Baltic/St. Charles Apartment Bldgs	Westmoore Addition
St. Vincent's Hospital Property	Hidden Meadows
Heritage Ranch	Travis Heights
Hickory Creek	Bel Air
Cadia	Luella Crossing
"Lake Hefton"	Water Treatment Plant
Pebblebrook	GlobalWafers
Sherman High School	11 Mile Pipeline
Football Stadium	Texas Instruments

APPOINT CITY COUNCIL WORKING GROUPS

Zach Flores, Assistant City Manager, explained that there are several issues that the staff would like some Council direction on, prior to bringing them to the full Council for action.

**CITY COUNCIL
WORKING GROUPS**

The three areas where the staff would like Council direction are Facilities, Public Safety, and Zoning. Recommendations were made from Council interest and expertise.

The following Council Members were appointed to the committees:
Facilities - Pam Howeth and Clay Barnett
Public Safety - Daron Holland and Henry Marroquin
Zoning - Juston Dobbs and Josh Stevenson

**DISCUSS AND CONSIDER APPROVAL
OF THE BUDGET CALENDAR FOR FISCAL YEAR (FY) 2025-2026**

Mr. Flores presented the proposed dates for the Annual Budget Calendar. The Capital Improvement Program Work Session is proposed for May 22, 2025, and the Budget Workshop is proposed

BUDGET CALENDAR

for June 12 and 13, 2025. Locations of the meetings will be at the Police Headquarters Community Room and the newly remodeled City Hall.

Council Members said the proposed dates would be fine for the Budget Calendar.

APPROVE INVESTMENT REPORT FOR QUARTER ENDED DECEMBER 31, 2024

INVESTMENT REPORT

The City Council approved the City's Investment Report for the quarter ended December 31, 2024. 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 the City's 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.

CONSENT AGENDA.

COUNCIL COMMENTS

COUNCIL COMMENTS

- Thanks for the project updates and he looks forward to moving forward. (Clay Barnett)
- Said the Residential Rental Inspection Program was great and was pleased with its progress. (Henry Marroquin)
- Expressed excitement about the recent grand reopening of Central Fire Station No. 1, and said they liked the facility design. (Pam Howeth, Shawn Teamann)
- Said he was excited to see how close Fairview Park was to being completed with the new equipment. (Shawn Teamann)
- Thanked the Human Resources Department for the recent event honoring the longevity of employees. Recognized Linda Ashby, City Clerk, as the current longest serving employee with 43 years. (Pam Howeth, Shawn Teamann)

- Explained that Council Member Holland had been in a vehicle accident recently and had missed some Council Meetings. (Shawn Teamann)

ANNOUNCEMENTS

Mayor Teamann announced the following:

- The Parks and Recreation Department will sponsor the Annual Daddy/Daughter Dance on February 7 and 8, 2025.
- Coffee With the Mayor will be held on February 7, 2025, at 8:00 a.m., in the Municipal Ballroom.
- The Sherman Showdown Food Truck Competition will be held in the Downtown, on May 3, 2025.

ANNOUNCEMENTS

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

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

EXECUTIVE SESSION

TEX. GOV'T CODE § 551.071 --

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

A) Sweetwater Springs

TEX. GOV'T CODE § 551.072 --

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

TEX. GOV'T CODE § 551.073 --

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

TEX. GOV'T CODE § 551.074 --

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

A) City Manager's Position

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) Shepherd Place

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 6:13 p.m.

On Motion duly made and carried, the Executive Session recessed
at 6:47 p.m. and reconvened in Open Meeting.

OPEN MEETING

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

OPEN MEETING

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at
6:49 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.

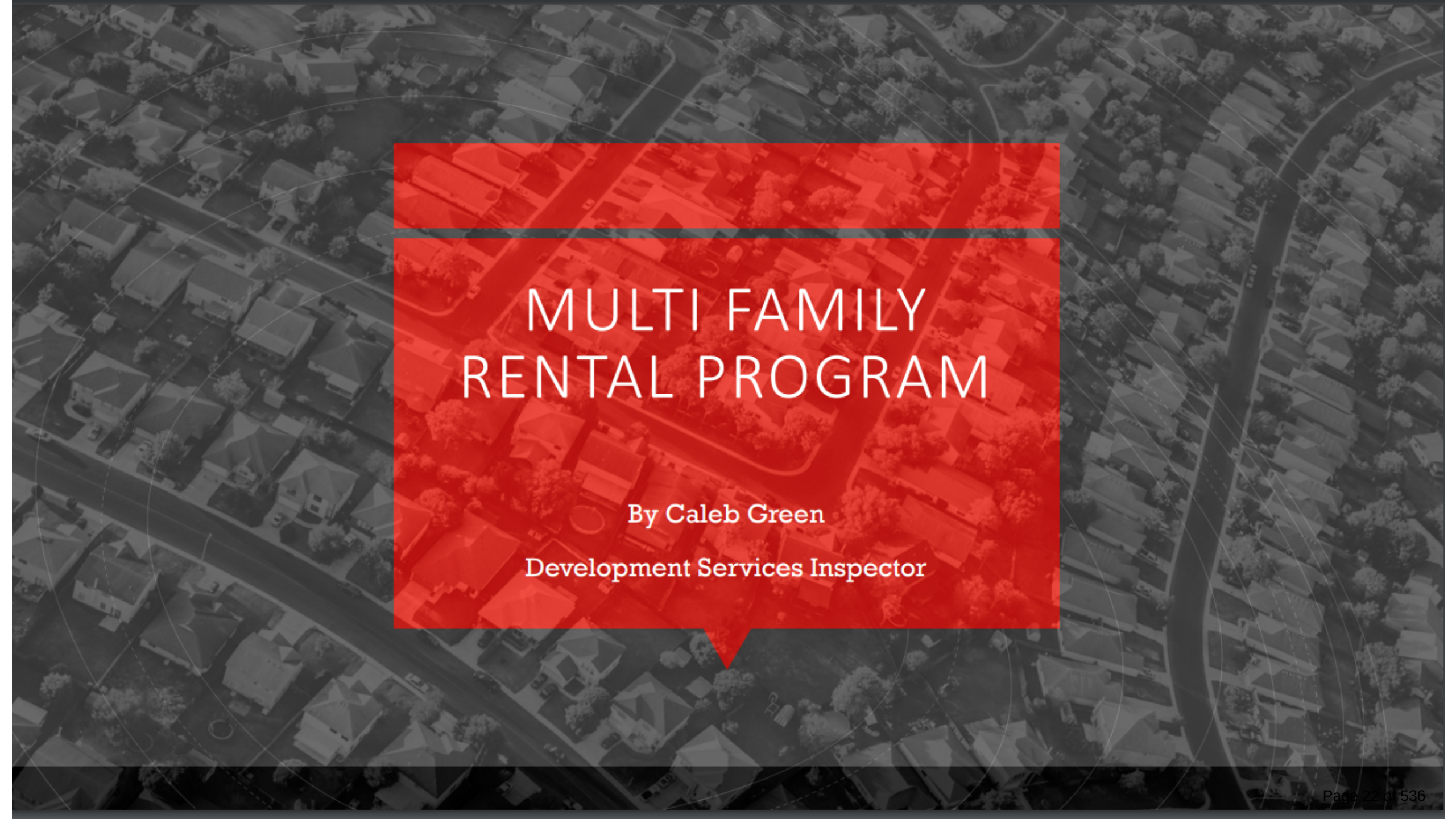
- \$50-100K IS NOT ENOUGH
 - INCREASE CAP TO...?
- TIRZ IS DRAINED
 - BACK TO THE GF
- WHAT CONSTITUTES A SINGLE PROJECT?
 - "BUILDING" DEFINED
- THE GREASE TRAP TRAP
 - MOVE FROM 50% MATCH TO 100% MATCH FOR RESTAURANTS

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

An aerial photograph of a residential neighborhood with numerous houses and trees. A large red rectangular overlay is centered on the image, containing white text. The text is arranged in three lines: the title, the author's name, and the author's title.

MULTI FAMILY RENTAL PROGRAM

By Caleb Green

Development Services Inspector

Program Overview

One

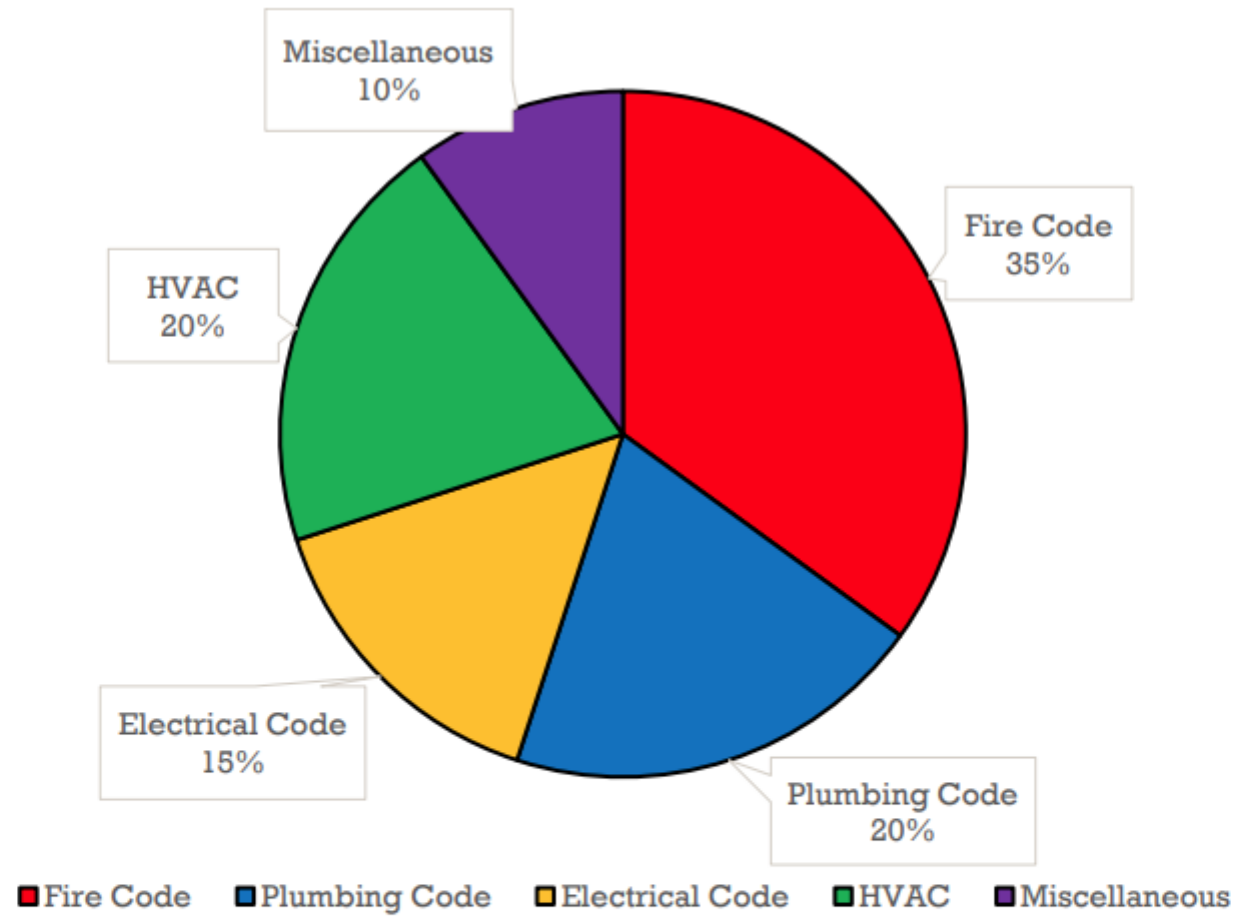
- Currently 53 properties are a part of the program and growing.

Two

- Since February 2024, 31 properties have been inspected/reinspected

Three

- Approximately 650 violations have been corrected in 2024



Violation Chart





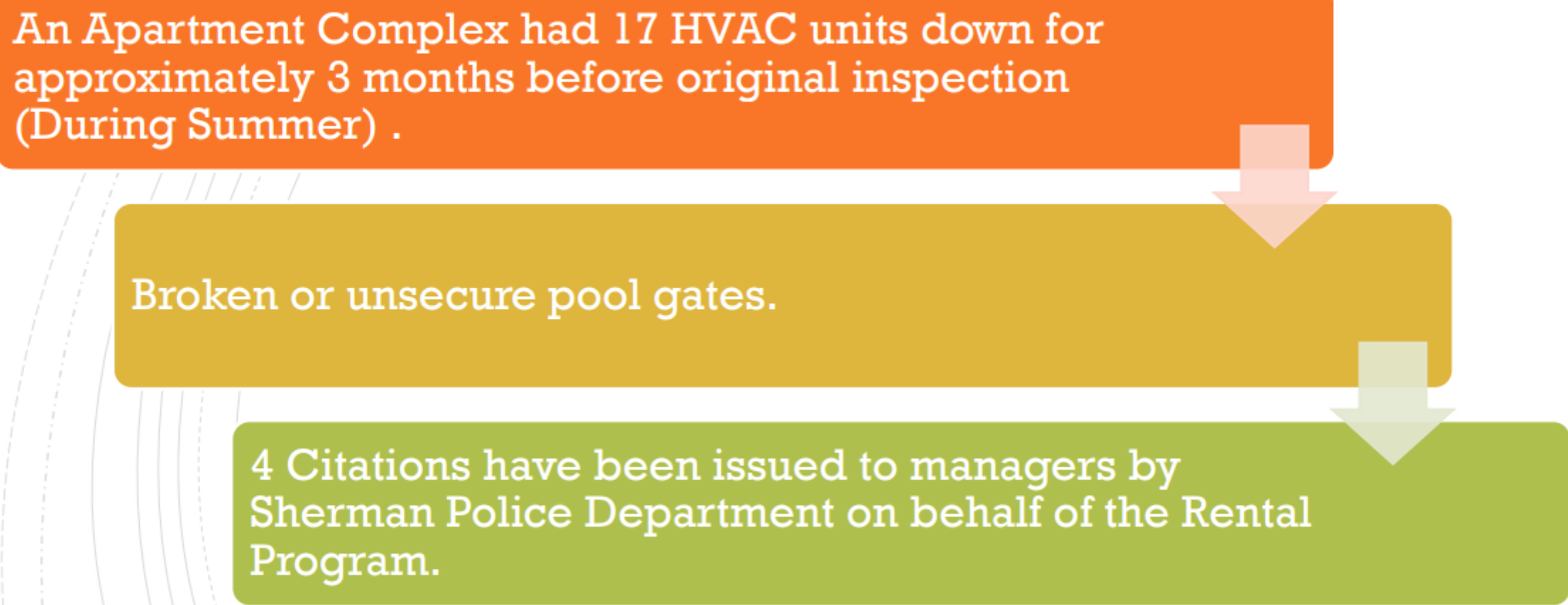


May 21, 2024 at 11:19 AM



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

RESIDENTIAL RENTAL PROPERTY READINESS GUIDE

FAQ

Q. How much is the annual rental registration fee?

A. The annual residential rental property license fee is \$10.00 per unit, updated annually.

Q. When are registration fees due?

A. Annual registration fees are due no later than January 1st of each year.

Q. How do I submit fees for licenses and administrative fees?

A. They must be submitted to the administrator.

Q. How many units are inspected?

A. A comparative sample up to 100% of the interiors may be inspected.

Q. Does the Property Manager or the Inspector pick the units?

A. Units will be chosen by the Inspector.

Q. Does someone from the Property Management need to accompany the Inspector?

A. Yes, the Inspector needs to be accompanied by a property management representative when conducting the interior inspections.

Q. Is Property Management required to perform their own interior & exterior inspections?

A. Yes, Property Management is required to inspect the interior with every new tenant and maintain documentation provided by the City.

EXTERIORS

1. Surfaces shall be free from holes, breaks, and loose or rotting materials, weatherproof, and properly surface-coated (painted) to prevent deterioration.
2. Every window, skylight, and door frame must be in sound condition, good repair, and weather tight.
3. Stairwells, patios and balconies must be structurally sound, in good repair, and be well-lit in required locations.
4. All roof surfaces must be free of disrepair or missing shingles.
5. Gutters and downspouts must be maintained in good repair and free of obstructions.
6. Building and unit numbers must be clearly visible from street/ parking lot and visible within corridors.
7. All exterior property areas and premises must be free of any accumulation of rubbish or garbage.
8. Swimming pools and hot tubs must be free of debris, in good repair, and clean of stagnant water. Swimming pool gates must close and latch automatically.
9. All sidewalks, walkways, stairs, and parking lot surfaces must be maintained and free from hazardous conditions.

INTERIORS

1. Interiors should be maintained in good repair, be structurally sound and sanitary.
2. Windows must open and close easily and remain open independently.
3. Doors and windows must be equipped with working locks.
4. Working smoke detectors must be installed on each level and in every bedroom.
5. Water heaters must have a T & P valve properly installed and plumbed, no exposed wiring, and plumbed to a drip pan in second floor units.
6. All plumbing must be properly connected, with working fixtures and free of leaks and defects.
7. All electrical outlets, switches, and fixtures must be properly wired and have a cover plate or other protective means installed.
8. Clear pathways must be maintained to every exterior window and door to provide means of ingress/egress in the event of an emergency.
9. Every structure must be free from any accumulation of rubbish or garbage and rodent or insect infestations.

HAVE QUESTIONS?

Please reach out to the Development Services Department at (903) 892-7197 or email rentalprogram@cityofsherman.com

This document is provided as a guide for informational purposes only. For more information about these requirements, please refer to the Sherman Code of Ordinances Article 3.11, Residential Rental Property License and Standards.

REQUIRED PERMITS & INSPECTIONS

Permit Type	Permit Must Be Pulled By	How to Schedule an Inspection
Fences	Licensed Contractor or Maintenance Person	MYGOV*
Windows (if changing size)	Licensed Contractor or Maintenance Person	MYGOV
Roofs	Licensed Contractor	MYGOV
Storage building(s) (required site plan approval)	Property Owner or Manager	MYGOV
Inner wall or major electrical work	Licensed Master Electrician	MYGOV
Water heaters, inner wall plumbing or any dealing with gas	Licensed Master Plumber	MYGOV
Mechanical for heating and air	Licensed Master Technician	MYGOV
Backflow devices	Licensed Contractor or Maintenance Person	MYGOV

*MYGOV is an online tool used by the City to process applications, fees, and permits. You can sign up for MYGOV at the following hyperlink:
https://web.mygov.us/oac/collaborators/registration?city_id=114

REPAIRS

All repairs, alterations and installations must be done in a manner consistent with work done by a skilled craftsman.

A maintenance person is not allowed to work on the following:

- Any dealing with gas service.
- Any new construction or additions.

COMMON VIOLATIONS



Unsafe Handrail



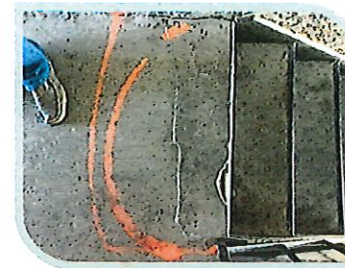
Junked Vehicles



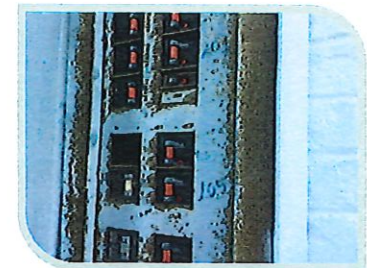
Missing or Damaged Smoke Alarm



Trash on Premises



Tripping Hazard



Electrical Hazard



Damaged Interior Surfaces



No Screen/Broken Windows



Missing Cap on Clean Out



Damaged Interior Walls



Fire Extinguisher Violation



Improper Water Heater Installation

Landlord/Tenant Checklist

Before you move in, be sure to carefully complete this checklist.

Tenant Name(s): _____ Move-In Date: _____ Inspection Date: _____

Address & Apt. No.: _____ Unit/Apt No.: _____ City/State/ZIP: _____

Key & Abbreviations:

NP: Needs Painting

NC: Needs Cleaning

NA: Not Applicable

NR: Needs Repair

RP: Needs Replacing

Other: _____

LIVING ROOM		BATHROOM #1		BEDROOM #2	
Floor		Floor		Floor	
Walls		Walls/Tile		Walls	
Ceiling		Ceiling		Ceiling	
Doors		Doors		Doors	
Windows		Sink		Windows	
Screens		Tub/Shower		Screens	
Closet		Caulking		Closet	
Electrical		Fan		Electrical	
KITCHEN		Toilet		GARAGE	
Sink		Window		Floor	
Floor		Plumbing		Walls	
Walls		Electrical		Ceiling	
Ceiling		BEDROOM #1		Electrical	
Doors		Floor		BACK PORCH	
Windows		Walls		Electrical	
Screens		Ceiling		Structure	
Pantry		Doors		MECHANICAL	
Electrical		Windows		Thermostat	
Plumbing		Screens		Furnace	
Dishwasher		Closet		A/C	
Stove/Oven		Electrical			
Refrigerator		BATHROOM #2		PLUMBING	
DINING ROOM		Floor		Electrical	
Floor		Walls/Tile			
Walls		Ceiling		COMMENTS:	
Ceiling		Doors			
Doors		Sink			
Windows		Tub/Shower			
Screens		Caulking			
Electrical		Counters			
ENTRANCE/HALL		Fan			
Floor		Bowl/Seat			
Walls		Window			
Ceiling		Plumbing			
Doors		Electrical			
Windows		FRONT PORCH			
Screens		Electrical			
Closet		Structure			
Electrical					

Move-In

Date: _____ Tenant Signature(s): _____ / _____

Date: _____ Landlord/Manager Signature: _____

Landlord and Tenant acknowledge that video and/or photos (digital or otherwise) have been taken off the premises.
The original copies/files are in the possession of the Landlord /Tenant.

Lista de verificación para inquilinos y propietarios

Antes de mudarte, asegúrate de completar cuidadosamente esta lista de verificación.

Nombre(s) del inquilino: _____ Fecha de mudanza: _____ Fecha de inspección: _____

Dirección y N.º de apartamento: _____ N.º de unidad/apartamento: _____
Ciudad/estado/código postal: _____

Clave y abreviaturas:

NP: Necesita pintura

NC: Necesita limpieza

NA: No aplicable

NR: Necesita reparación

RP: Necesita ser reemplazado

Otro:

SALA DE ESTAR		BAÑO #1		DORMITORIO #2	
Piso		Piso		Piso	
Muros		Paredes/Azulejos		Muros	
Techo		Techo		Techo	
Puertas		Puertas		Puertas	
Ventanas		Lavamanos		Ventanas	
Pantallas		Bañera/Ducha		Pantallas	
Armario		Calafateo		Armario	
Eléctrico		Ventilador		Eléctrico	
COCINA		Baño		COCHERA	
Lavamanos		Ventana		Piso	
Piso		Plomería		Muros	
Muros		Eléctrico		Techo	
Techo		DORMITORIO #1		Eléctrico	
Puertas		Piso		PORCHE TRASERO	
Ventanas		Muros		Eléctrico	
Pantallas		Techo		Estructura	
Despensa		Puertas		MECÁNICO	
Eléctrico		Ventanas		Termostato	
Plomería		Pantallas		Horno	
Lava Platos		Armario		C.A	
Estufa/Horno		Eléctrico			
Refrigerador		BAÑO #2		PLOMERÍA	
COMEDOR		Piso			
Piso		Paredes/Azulejos		Eléctrico	
Muros		Techo			
Techo		Puertas		COMENTARIOS:	
Puertas		Lavamanos			
Ventanas		Bañera/Ducha			
Pantallas		Calafateo			
Eléctrico		Encimera			
ENTRADA/VESTÍBULO		Ventilador			
Piso		Taza/Agiento			
Muros		Ventana			
Techo		Plomería			
Puertas		Eléctrico			
Ventanas		PORCHE DELANTERO			
Pantallas		Eléctrico			
Armario		Estructura			
Eléctrico					



SHERMAN FACILITY PROJECTS

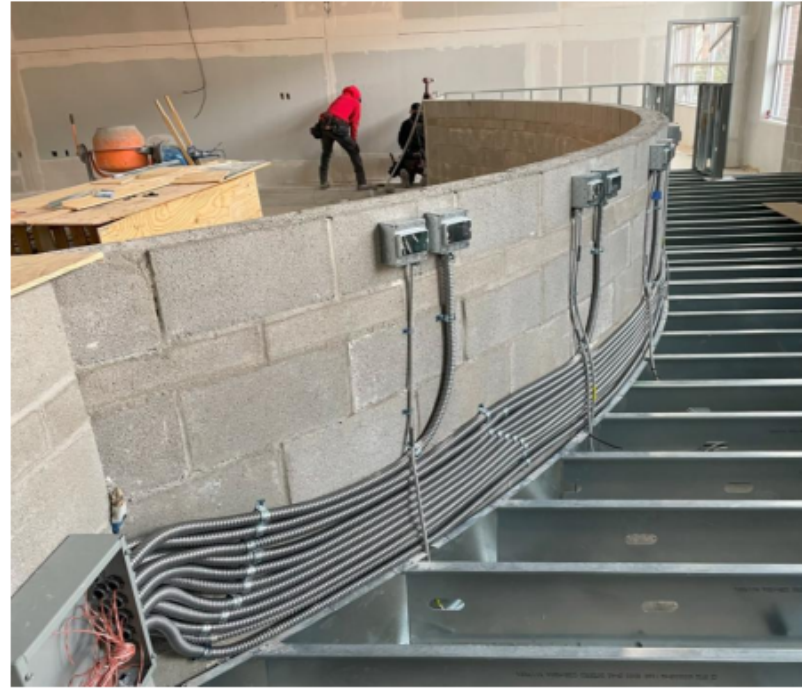
COUNCIL UPDATE

2.3.2024



Central Fire Station
Completed January 2025
Currently closing out project

Potential Savings \$600K to \$700K



Construction Ongoing
Construction Completion March /April 2025
Furniture Installation / Move-in April 2025
Grand Re-opening May 2025



Municipal Building Parking Lot Senior Center Restroom and Kitchen updates

On-going development of a comprehensive Facility Masterplan



City Council Regular Meeting

Agenda Item No. C.1.

Meeting Date: 2/17/2025

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:

G. 2. *** *OTHER BUSINESS***

Consider Excusing the Absence of Council Member Daron Holland

G. 3. *** *OTHER BUSINESS***

Receive 2024 Racial Profiling Report

Background:

Origination:

Financial Consideration:

Staff Recommendation:

Alternatives:

Attachments:

None



City Council Regular Meeting

Agenda Item No. D.1.

Meeting Date: 2/17/2025

Prepared By: Rob Rae, Developmental Services Director

Approved By: Zachary Flores, Assistant City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6809

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land being a Replat of Lots A, A-2 and C of Taylor Plaza and Lot 1 of the Altona's Replat of Lot B, Taylor Plaza, City Of Sherman, Grayson County, Texas, Located at 719-725 East Taylor Street and 2000-2030 North Loy Lake Road, Heretofore M-1 (Light Manufacturing) District and C-2 (General Commercial) District; Rezoning And Placing The Tract In The C-2 (General Commercial) District Zoning Classification, Altona, Inc (Owner), Barkat Ali (Representative) and Underwood Drafting & Surveying (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Issue:

Consideration of a Zone Change for 719-725 East Taylor Street and 2000-2030 North Loy Lake Road from an M-1 (Light Manufacturing) District and C-2 (General Commercial) District to C-2 (General Commercial) District.

Background:

The property is located at 719-725 East Taylor Street and 2000-2030 North Loy Lake Road near the corner of East Taylor Street and North Loy Lake Road. The owner is requesting a Zone Change from an M-1 (Light Manufacturing) District and C-2 (General Commercial) District to C-2 (General Commercial) District.

Origination:

Altona, Inc (Owner), Barkat Ali (Representative) and Underwood Drafting & Surveying (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 22, 2025 regular meeting, the Planning and Zoning Commission voted 6/0 to recommend to City Council that the Zone Change be approved. The proposed use is compatible with the City of Sherman Comprehensive Plan. Staff has no objection to the approval of this item.

Alternatives:

The City Council could deny the request.

Attachments:

1. Ordinance No. 6809
2. Exhibit A - Surveys highlighted
3. Location Map
4. Zoning Map
5. Future Landuse Map
6. Property Notification Signs
7. Elevation

ORDINANCE NO. 6809

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 A REPLAT OF LOTS A, A-2 AND C OF TAYLOR PLAZA AND LOT 1 OF THE ALTONA'S REPLAT OF LOT B, TAYLOR PLAZA, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 719-725 EAST TAYLOR STREET AND 2000-2030 NORTH LOY LAKE ROAD, HERETOFORE M-1 (LIGHT MANUFACTURING) DISTRICT AND C-2 (GENERAL COMMERCIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-2 (GENERAL COMMERCIAL) DISTRICT ZONING CLASSIFICATION, ALTONA, INC (OWNER), BARKAT ALI (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

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

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

WHEREAS, the City Council finds that it is in the public interest to rezone the property as described in this Ordinance.

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

SECTION 1. That, from and after the effective date of this Ordinance, the property described in **Exhibit A – Survey and Legal Description**, attached hereto, located at 719-725 East Taylor Street and 2000-2030 North Loy Lake Road all streets, roads and alleyways contiguous and/or adjacent thereto, shall be rezoned and placed in the C-2 (General Commercial) District, and that Sherman's Zoning Ordinance/Code of Ordinances, Chapter 14, is hereby amended so as to hereafter include such property.

SECTION 2. That this Ordinance shall be entered upon the Official Zoning Map as provided in Sherman's Zoning Ordinance/Code of Ordinances, Chapter 14, Section 14.01.002.

SECTION 3. That no person shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed or amended by the City Council in the manner provided for by law.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this Ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 17th day of February 2025.

ADOPTED on this the 17th day of February 2025.

EFFECTIVE DATE on this the 17th day of February 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

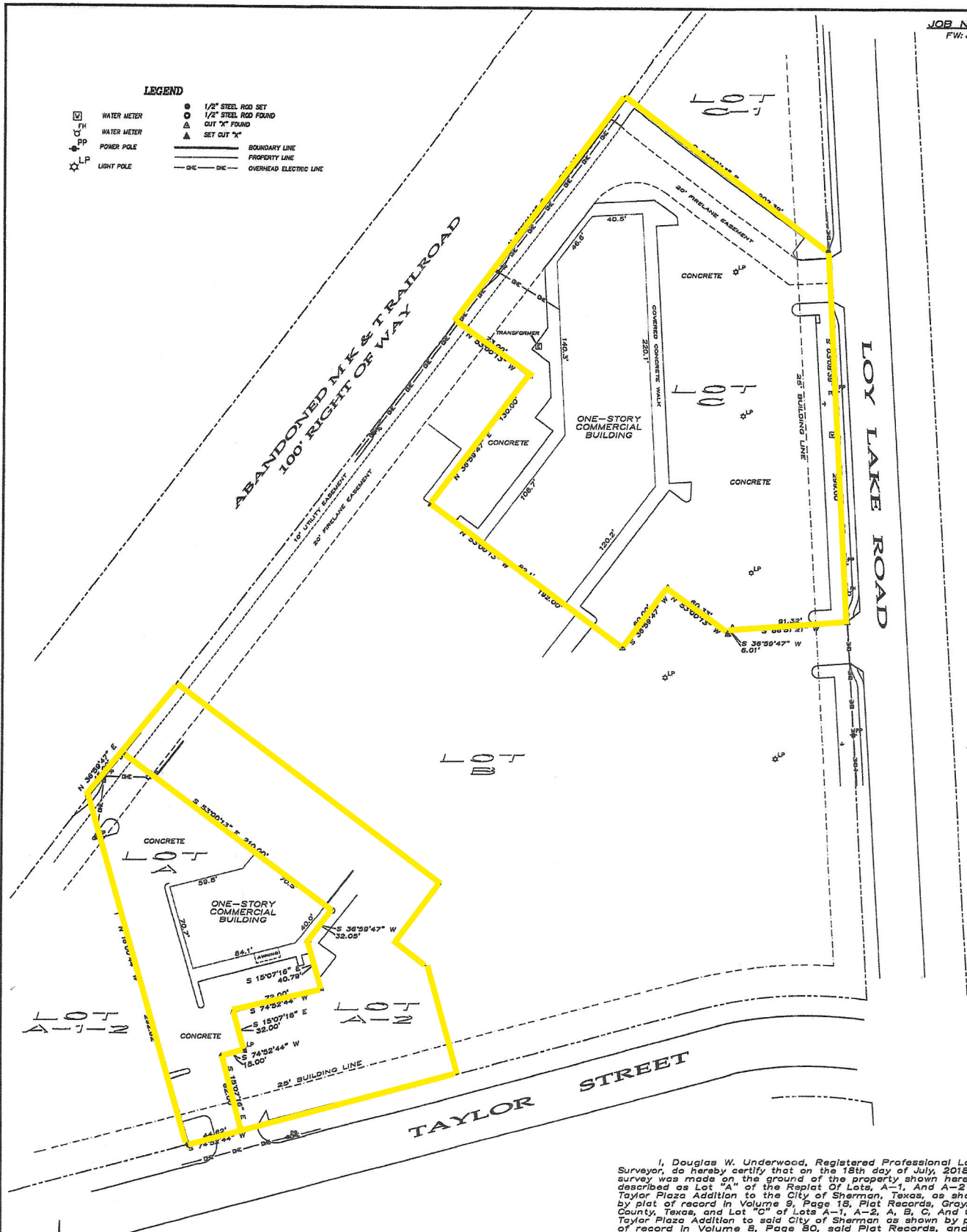
BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN PITTMAN, CITY ATTORNEY

LEGEND

- WATER METER
- WATER METER
- POWER POLE
- LIGHT POLE
- 1/2" STEEL ROD SET
- 1/2" STEEL ROD FOUND
- OUT 1" FOUND
- SET OUT 1"
- BOUNDARY LINE
- PROPERTY LINE
- OVERHEAD ELECTRIC LINE



SCALE
1" = 50'

BASIS OF BEARINGS ~
OBSERVATION
TEXAS COORDINATE SYSTEM
NORTH CENTRAL ZONE
NAD 83

This survey contains information that is proprietary to the Surveyor and is not to be used for any other purpose without the written consent of the Surveyor. The Surveyor is not responsible for any errors or omissions in this survey. The Surveyor is not responsible for any damages or injuries resulting from the use of this survey.

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UNDERWOOD
DRAFTING & SURVEYING

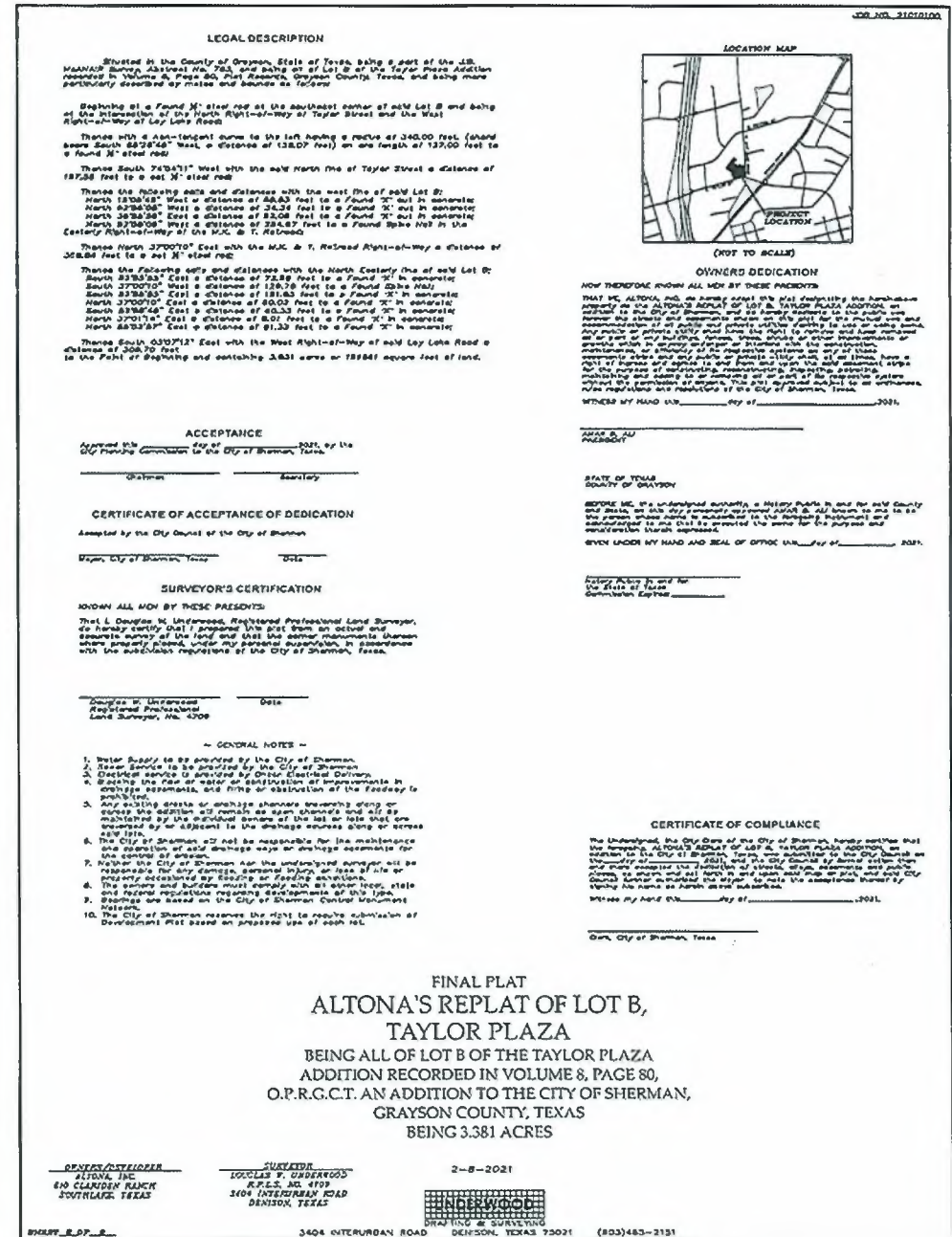
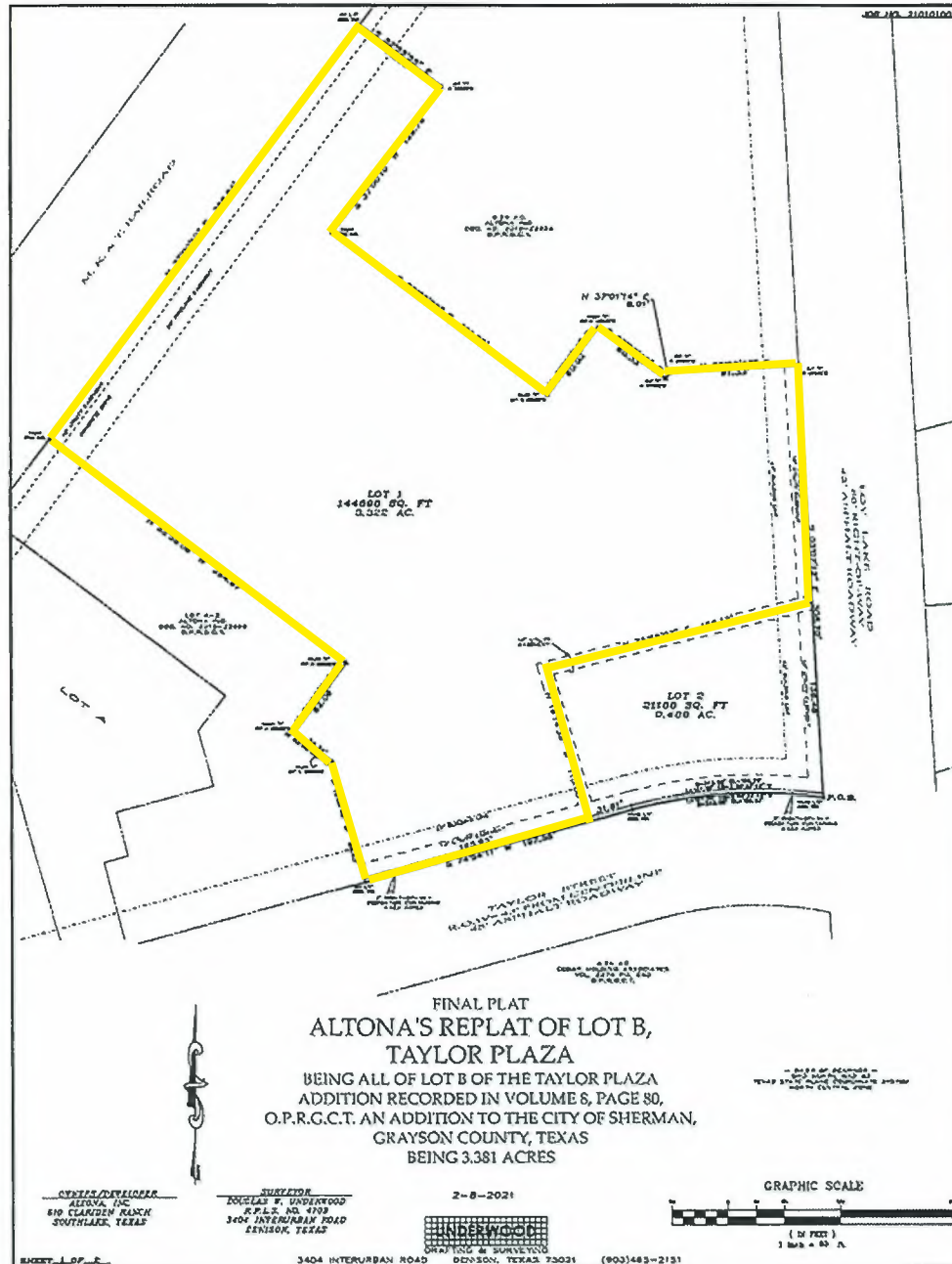
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

I, Douglas W. Underwood, Registered Professional Land Surveyor, do hereby certify that on the 18th day of July, 2018, a survey was made on the ground of the property shown hereon, described as Lot "A" of the Replat Of Lots, A-1, And A-2 Of Taylor Plaza Addition to the City of Sherman, Texas, as shown by plat of record in Volume 9, Page 18, Plat Records, Grayson County, Texas, and Lot "C" of Lots A-1, A-2, A, B, C, And C-1 Taylor Plaza Addition to said City of Sherman as shown by plat of record in Volume 8, Page 80, said Plat Records, and is correct, and that there are no conflicts, overlapping of improvements, easements or rights of way, except as shown on the plat herewith, and that the plat herewith is a correct representation of the property legally described hereinabove;

Lot "A" is locally known as 715 E. Taylor Street, and Lot "C" is locally known as 2000 Loy Lake Road, Sherman, Texas.



Douglas W. Underwood
Registered Professional
Land Surveyor No. 4709



diagrame H:\PLANNING\Public Notification KT.aprx



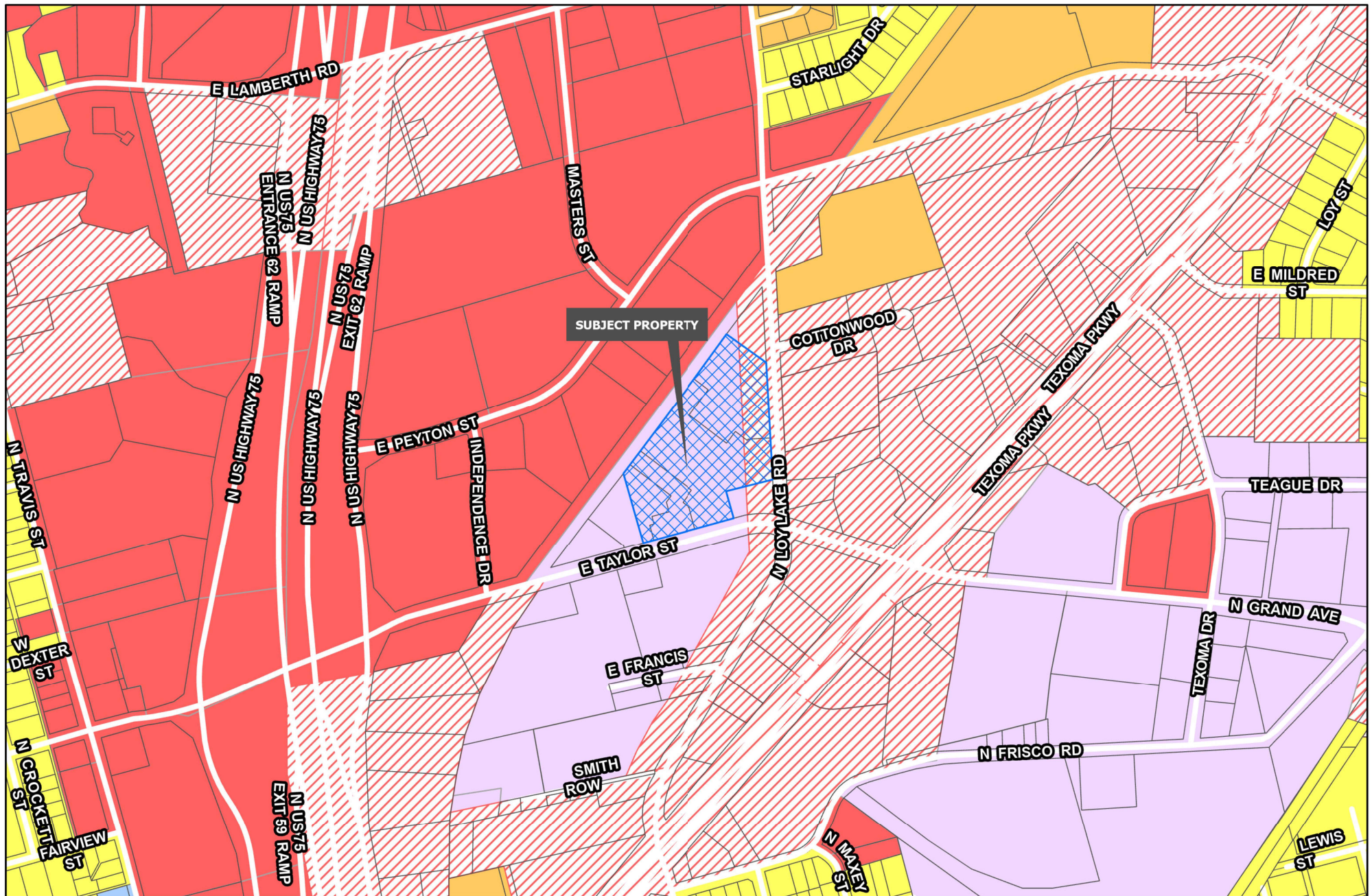
City of Sherman, Texas
Development Services Department

CITY OF SHERMAN
LOCATION MAP
719-725 E TAYLOR ST
& 2000-2030 N LOY LAKE RD



Date: 12/27/2024 3:57 PM

Page 48 of 536

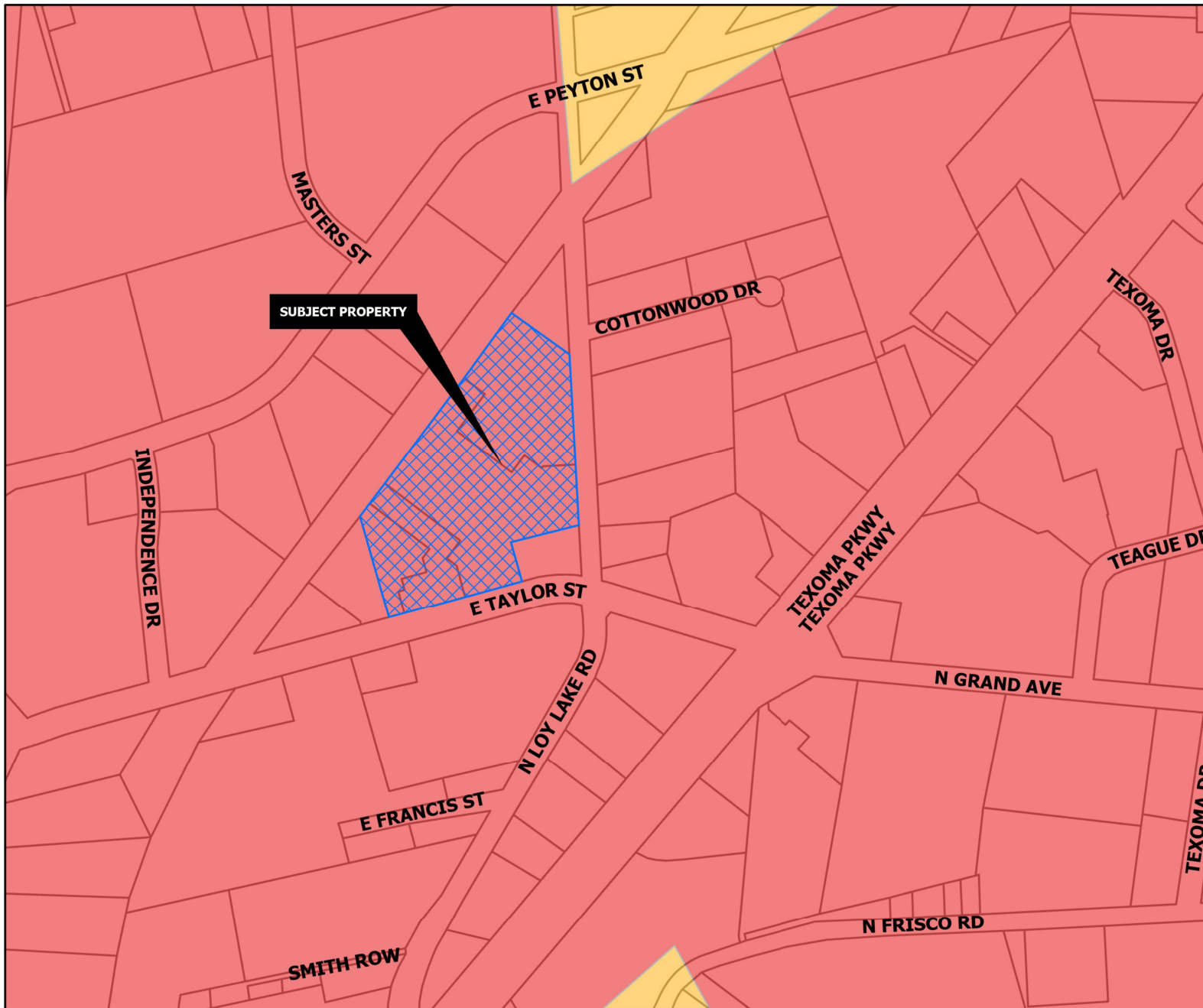


Development Services
Department

R-A Residential Agricultural	MF-15 Multi-Family Residential	M-1.5 Medium Manufacturing
R-E Estate Residential	MF-30 Multi-Family Residential	M-2 Heavy Manufacturing
R-12 Single Family Residential	MH Manufactured Housing	PD Planned Development
R-6 Single Family Residential	C-N Neighborhood Commercial	Road Names All
R-5 Single Family Residential	C-O Office	Planning & Zoning
R-4 Patio Home Residential	C-1 Retail Business	
R-2F Duplex Residential	C-2 General Commercial	
R-TH Townhome Residential	M-1 Light Manufacturing	

CITY OF SHERMAN
ZONING MAP
719-725 E TAYLOR ST
& 2000-2030 N LOY LAKE RD





REGIONAL COMMERCIAL

Intent & Character

The Regional Commercial category is intended to promote large-scale commercial development along US-75, while promoting community character through design. US-75 serves as the major gateway to and through the community; therefore, aesthetics and design should be promoted in this corridor. This category should allow large-scale commercial uses that serve the region and the community alike. A mix of uses and inter-connectivity between parcels should be encouraged.

Appropriate Land Use Types

- Retail and Restaurants
- Multi-Family Living
- Office Complex
- Medical
- Mixed Use
- Indoor Entertainment

Compatible Zoning Districts

- Retail Business
- General Commercial
- Office
- Multi-Family Residential (MF-15 and MF-30)
- Planned Development (for larger tracts)

Considerations

- Site design considerations should be given to parking, landscaping, and building articulation.
- Where possible, parking should be screened from view or well-landscaped with native, drought-tolerant plants.
- All buildings facades fronting a public street or within significant public view should have aesthetically-pleasing horizontal and vertical articulation.
- Signage should be multi-tenant, where possible, and should match the character of the primary structure.
- High density residential should be included in mixed use developments.
- High density residential is appropriate behind commercial areas, with inter-connectivity.
- If high density is stand alone, the surrounding uses and connectivity should be considered to avoid an "island."



Development Services
Department

Agriculture/Rural	Core Neighborhood	Technology Hub
Airport	Downtown	Planning & Zoning
City Parkland	Regional Commercial	
Community Commercial	Suburban Neighborhood	

CITY OF SHERMAN
FUTURE LAND USE MAP
719-725 E TAYLOR ST
& 2000-2030 N LOY LAKE RD





Sherman
CLASSIC TOWN. BROAD HORIZON.

**NOTICE OF
PROPOSED ZONING
CHANGE**

PROJECT #: 24-006122

Planning & Zoning Map: 	FOR MORE INFORMATION CONTACT: DEVELOPMENT SERVICES 903-892-7229
---	--



Sherman
CLASSIC TOWN, BROAD HORIZON

**NOTICE OF
PROPOSED ZONING
CHANGE**

PROJECT #: 24-006122

Planning & Zoning Map:



FOR MORE INFORMATION
CONTACT:

DEVELOPMENT SERVICES
903-892-7229





City Council Regular Meeting

Agenda Item No. D.2.

Meeting Date: 2/17/2025

Prepared By: Rob Rae, Developmental Services Director

Approved By: Zachary Flores, Assistant City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6810

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, And Granting A Specific Use Permit To Allow a Secondhand Store or Rummage Shop in a C-2 (General Commercial) District, Located At 4800 Texoma Parkway, Suite B401B, Consisting of 42.8134 acres being in the John Hendrix Survey, Abstract No. 503, the W.F. Patterson Survey, Abstract No. 969, the Daniel Shelp Survey, Abstract No. 1097 and the T.J. Shannon Survey, Abstract No. 1136, Lots 1 and 3, Block 1, Midway Mall, City Of Sherman, Grayson County, Texas Scott Cresswell (Owner), Kerry Smith (Representative) and Old Republic (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

Issue:

Consideration of a Specific Use Permit at 4800 Texoma Parkway, Suite B401B to allow a secondhand store or rummage shop in a C-2 (General Commercial) District.

Background:

The property is located at 4800 Texoma Parkway, Suite B401B near the intersection of Fallon Drive and Texoma Parkway. The owner is requesting approval of a Site Plan and Specific Use Permit to allow a secondhand store or rummage shop.

Origination:

Scott Cresswell (Owner), Kerry Smith (Representative) and Old Republic (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 22, 2025 regular meeting, the Planning and Zoning Commission voted 6/0 to recommend to City Council that the Specific Use Permit be approved. The proposed use is compatible with the City of Sherman Comprehensive Plan. Staff has no objection to the approval of this item.

Alternatives:

The City Council could deny the request.

Attachments:

1. Ordinance No. 6810
2. Exhibit A - Survey
3. Exhibit B - Site Plan
4. Location Map
5. Zoning Map
6. Future Landuse Map
7. Property Notification Signs
8. Narrative
9. Elevations

ORDINANCE NO. 6810

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 SECONDHAND STORE OR RUMMAGE SHOP IN A C-2 (GENERAL COMMERCIAL) DISTRICT, LOCATED AT 4800 TEXOMA PARKWAY, SUITE B401B, CONSISTING OF 42.8134 ACRES BEING IN THE JOHN HENDRIX SURVEY, ABSTRACT NO. 503, THE W.F. PATTERSON SURVEY, ABSTRACT NO. 969, THE DANIEL SHELP SURVEY, ABSTRACT NO. 1097 AND THE T.J. SHANNON SURVEY, ABSTRACT NO. 1136, LOTS 1 AND 3, BLOCK 1, MIDWAY MALL, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS SCOTT CRESSWELL (OWNER), KERRY SMITH (REPRESENTATIVE) AND OLD REPUBLIC (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; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

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

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

WHEREAS, the City Council finds that it is in the public interest to grant this Specific Use Permit, subject to certain conditions.

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

SECTION 1. That, from and after the effective date of this Ordinance, the property in **Exhibit A – Survey**, attached hereto, and generally located at 4800 Texoma Parkway, Suite B401B, City of Sherman, Grayson County, Texas is granted a Specific Use Permit to allow a secondhand store or rummage shop, subject to the conditions described in this Ordinance.

SECTION 2. That this Specific Use Permit is granted on the following conditions:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's Zoning Ordinance/Code of Ordinance Chapter 14.
2. Fire access, lanes and codes shall be coordinated with the Fire Marshal. (*Code of Ordinances Chapter 3.02(c)*)
3. Sign Permits shall be permitted separately from the building permit and must adhere to the City's Zoning Ordinance/Code of Ordinance Chapter 14. (*Article 14.07*)
4. The property must be properly maintained in a state of good repair and neat appearance.
5. There shall be no outdoor sales or storage.
6. The use of the property must comply with all Federal and State Laws and Regulations and with all the Ordinances, Rules and Regulations of the City of Sherman.
7. The granting of the Specific Use Permit has no effect on the uses permitted as of right and does not waive the regulations of the underlying zoning district.
8. Notwithstanding anything to the contrary herein, the Specific Use Permit granted in this Ordinance shall automatically expire, terminate and be rescinded in the event that a person or entity other than Kerry Smith is the lessee of the Property.
9. A Specific Use Permit is an amendment to the district regulations of the Zoning Ordinance that permits the establishment of a specific use within a zoning district in which such specific use may be established unless such use of land or structure is discontinued or abandoned for a period of thirty (30) consecutive days in which event such Specific Use Permit shall be void and such use may not thereafter be resumed unless a new Specific Use Permit is granted in accordance with this section. (*Chapter 14, Sec. 14.06.009(a)(1)(C)*)
10. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
11. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Additional Conditions:

12. The property shall be developed and used in accordance with all City Ordinances and the Site Plan shown in **Exhibit B**.
13. Notwithstanding anything to the contrary herein, the Specific Use Permit granted in this Ordinance shall automatically expire, terminate and be rescinded in the event that a person or entity other than Kerry Smith is the lessee of the Property.

SECTION 3. That this Ordinance shall be entered upon the official zoning map as provided in Sherman's Zoning Ordinance/Code of Ordinances, Chapter 14, Section 14.01.002.

SECTION 4. That after holding a properly noticed public hearing, the City Council may amend, change, or rescind the Specific Use Permit if any of the conditions set forth in Zoning Ordinance/Code of Ordinances Chapter 14, Section 14.06.009(1)(g), apply or exist.

SECTION 5. That the Specific Use Permit shall be effective from and after the effective date of this Ordinance. Upon termination of the Specific Use Permit, the property shall cease to be used as provided herein unless another Specific Use Permit or appropriate zoning has been obtained.

SECTION 6. That it shall be unlawful for any person to make use of the property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 7. That the Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 9. That it is hereby officially found and determined that the meetings at which this Ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 10. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

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INTRODUCED on this the 17th day of February 2025.

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EFFECTIVE DATE on this the 17th 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

(1) FROM FIELD INSPECTION MADE ON THE DATE OF THIS SURVEY, THE UNDERSIGNED FOUND NO EVIDENCE OF CEMETERY OR BURIAL PLOTS ON THIS SITE.

- (2) NO OBSERVABLE EVIDENCE OF EARLY MORNING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WITHIN RECENT MONTHS.
- (3) NO CHANGES IN STREET RIGHT OF WAY LINES EITHER COMPLETED OR PROPOSED, AVAILABLE FROM THE COMMISSIONS JURISDICTION AND NO UNDESIRABLE EVIDENCE OF ATTEMPT OF SORDIDAN CONSTRUCTION OF REPAIR.
- (4) NO OBSERVABLE EVIDENCE OF SITE USE AS A SOLID WASTE GUMP, TUMP OR SANITARY LANDFILL.
- (5) ALL BUILDINGS TO BE SET BACK A MINIMUM 20' FROM ALL STREET RIGHT OF WAY LINES PER PLAT YOUNG 6, PAGE 4.

(1) CONCRETE PAVEMENT PROTRUSION ALONG SOUTH PROPERTY LINE OF TRACT 5.

- (2) BUILDING PROTRUSION ALONG WESTERLY PORTION OF TRACT
ONTO 25 FOOT UTILITY EASEMENT.

- (1) Shannon Mail Association: 21.87 acres in Lot 3 and Part of Lots 1 & 2 in Block 1 of Midway Mail Addition, PDS 187415
- (2) Shannon Mail Association: 10.87 acres in Lot 5 and Part of Lot 2 in Block 1 of Midway Mail Addition, PDS 187415
- (3) Shannon Mail Association: 1.46 acres in Block 2 of Midway Mail Addition, PDS 187421
- (4) Shannon Mail Association: 1.78 acres in Block 4 of Midway Mail Addition, PDS 187425
- (5) Shannon Mail Association: 4.45 acres in Block 6 of Midway Mail Addition, PDS 187435
- (6) Shannon Mail Association: 1.05 acres in Block 5 of Midway Mail Addition, PDS 187437

TRACE 1

HUMAN PAR126	= 2470
SAVING PAR126	= 31
ELINA PAR126	= 2450

- | TRACT 2 | |
|---------------------|------------|
| Normal, Paving | = 0 |
| Normal, Paving | = 0 |
| TOTAL PAVING | = 0 |
-
- | TRACT 3 | |
|---------------------|------------|
| Normal, Paving | = 0 |
| Normal, Paving | = 0 |
| TOTAL PAVING | = 0 |
-
- | TRACT 4 | |
|---------------------|-------------|
| Normal, Paving | = 40 |
| Normal, Paving | = 4 |
| TOTAL PAVING | = 44 |
-
- | TRACT 5 | |
|----------------|------|
| Normal, Paving | = 47 |
| Normal, Paving | = 0 |

ICF 2
 normal patients = 91.5
 normal controls = 7.1
 12% patients = 106
 composite facts
 normal patients = 1,430
 composite patients = 85

- SPR. 1990 = 1.00

EXHIBIT OF RECORDS FROM
PLAY OF MONROE MALL
ADDITION RECORDED IN
VOLUME # AT PAGE # OF
THE MAP RECORDS OF
GRAYSON COUNTY, TEXAS

THE PROPERTY DESCRIBED
AS TROTS 1, 2, 3 & 4 &
HEREIN CONTAINS 3.150
ACRES OR 2,819,382
SQUARE FEET OF LAND,
MORE OR LESS.

PROPERTY IS ZONED COMMERCIAL, RETAIL AND CENTRAL BUSINESS DISTRICT.

CONTACT SCOTT SHADSEN (DIRECTOR OF DEVELOPMENT SERVICES) PLANNING AND

- 20000 EQUIPMENT**
P.O. BOX 1708
MIDWATER TREAT PLANT
PHONES: 903-282-7113
FAX: 903-282-7274
- According to the General
Sewer Ordinance Plan of
this provided by the City
of Sherman, Texas, the
property herein is Zoned
for General Commercial
(C-2 District) and
accordingly the following
regulations apply to this
site:

- (1) *Floor area.* The total floor area of any building or buildings on a lot in C-2 District shall not exceed the number of square feet for the lot.

- (2) *Height regulations.* No building shall exceed 33 feet or 2 stories in height.

- (1) Minimum Requirements for lot area, width and setbacks:
- (i) Lot Area = 5,000 SF
- (ii) Lot width = 30'
- (iii) Setback Front = 10'
- (iv) Setback Rear = 10'
- (v) Setback Side = 6'

- (4) Where the side panel of any in the C-2 District are abutting a residential district, the side panel without shall not be less than 15 feet.

- (5) Rear panel. When the rear panels of beds in the C-2 habitat are installed, Residents or C-1 Astronauts must be present and the rear panel surface should be less than 12 feet

The property herein was prepared with the benefit of Consultant for Title Insurance issued by Old Republic National Title Insurance Company, of No. 12966, effective date of May 4, 2009 and issued date of May 14, 2009, the following matters of record are listed as exceptions to TIs coverage as outlined on Schedule B thereof:

- (d) *Caenorhynchus viridanus*, yellowish from an overcast by diet supplied by Nabona M. on June 8 of the first outbreak at Illinois County, Texas. (See above.)

- (a) Easement in favor of Texas Power & Light Company, recorded in Volume 889, Page 175 of the Deed Records of Grimes County, Texas, and easement in favor of Texas Power and Light Company and the General Telephone Company of the Southwest, recorded in Volume 1833, Page 288 of the Deed Property Records of Grimes County, Texas. (See above, above the fourth line of block 2).

- (2) *Agreement*, a 1989 document created by and in part between, *Coastal Ocean Resources and Related Endowment Agreement by and between States of Texas and California*, 1989, 138 F.3d 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804,

- (c) Consent to Easement and Indemnity granted to the City of Sherman, dated November 1, 1987, recorded in Volume 1246, Page 231 of the Real Property Records of Grayson County, Texas. (As shown in survey along East side of new line of Texas Road.)

- (c) Deed of Dedication from Drayman Mill Association, L.P., an Indiana limited partnership, for public use, dated December 12, 1997, recorded in Volume 2029, Page 19 of the Real Property Records of Grayson County, Texas. [This is dedication evidencing for Zaiton Reed right of way along the North portion of Block 5 (Tract 2) as shown, and does not affect subject property.]

[illegible]

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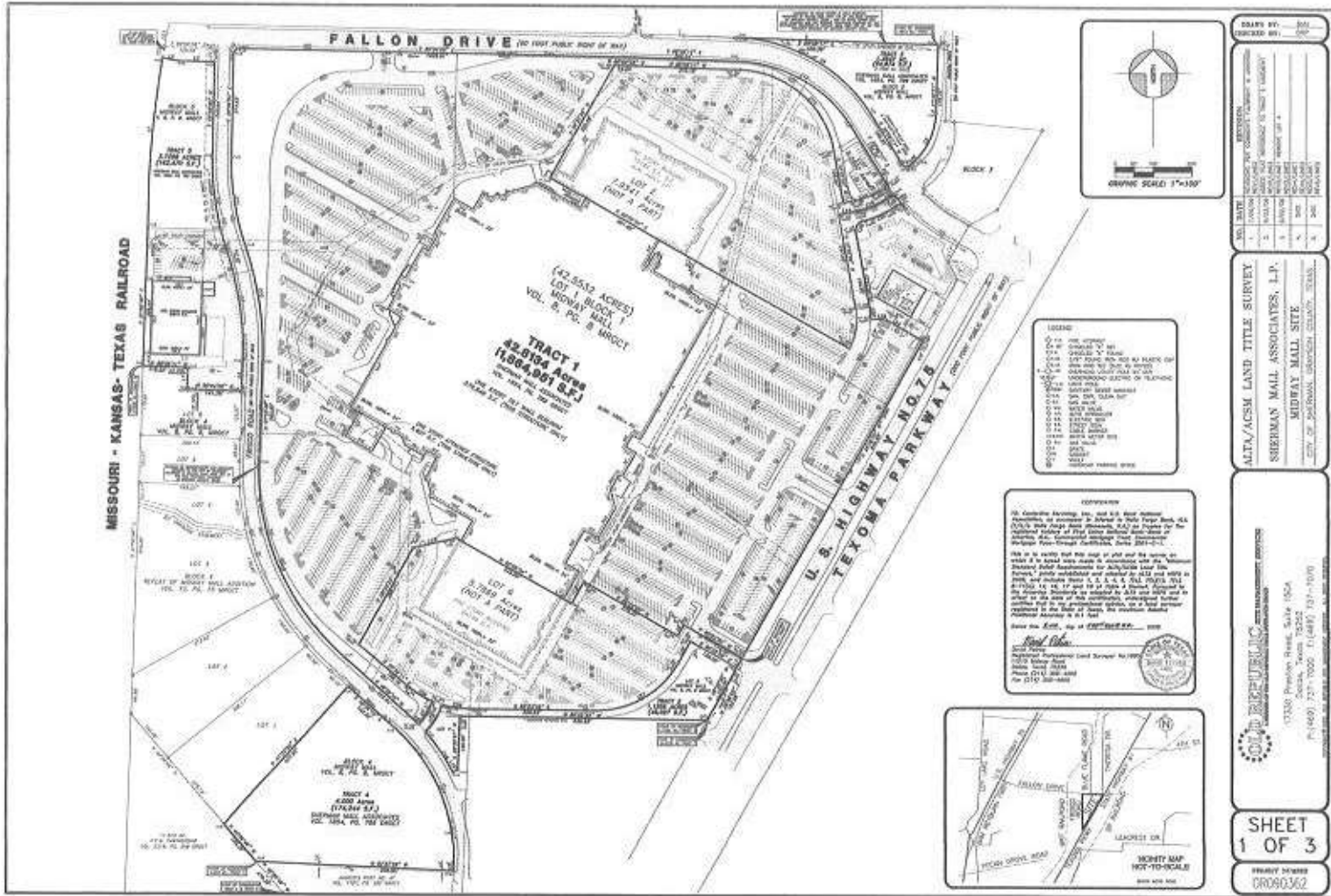
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SHERMAN MALL, A
MIDWAY MALL

OLD REPUBLIC REAL ESTATE MANAGEMENT SERVICES
MEMBER OF THE OLD REPUBLIC FINANCIAL GROUP

12120 Preston Road, Suite 150A
Dallas, Texas 75224
P: (469) 737-7200 F: (469) 737-7202

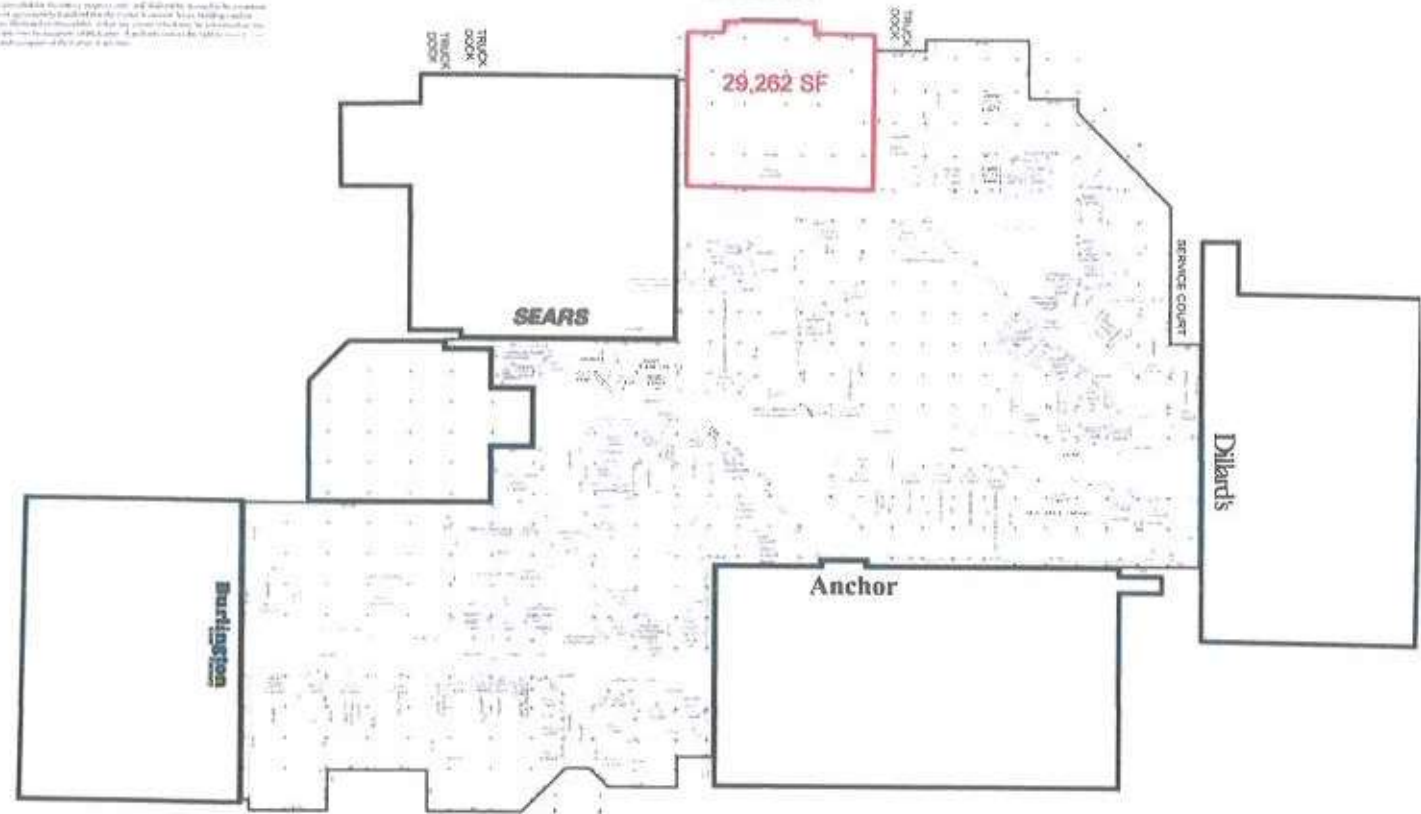
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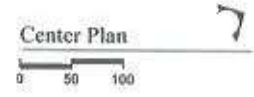


These drawings are prepared for the purpose of illustrating the general location and approximate dimensions of the proposed improvements. They are not intended to be used for any other purpose, and no warranty is made by the engineer as to the accuracy of the information shown. The engineer assumes no responsibility for the accuracy of the information shown.

EXHIBIT A



10000
 (H) NAME - Under Construction
 (H) NAME - NER Unit



PROJECT DATA

SEARS	72,878
ANCHOR	10,462
ANCHOR	85,519
DILLARD'S	72,800
BURLINGTON FACTORY	52,150
TOTAL DEPARTMENT STORE GLA	324,718
TOTAL MALL SHOP'S GLA	274,018
TOTAL GLA	598,737

Midway Mall
 4800 N. Texoma Parkway
 Sherman, TX 75090
 CORP # 1854

diagnone H:\PLANNING\Public Notification KT.aprx

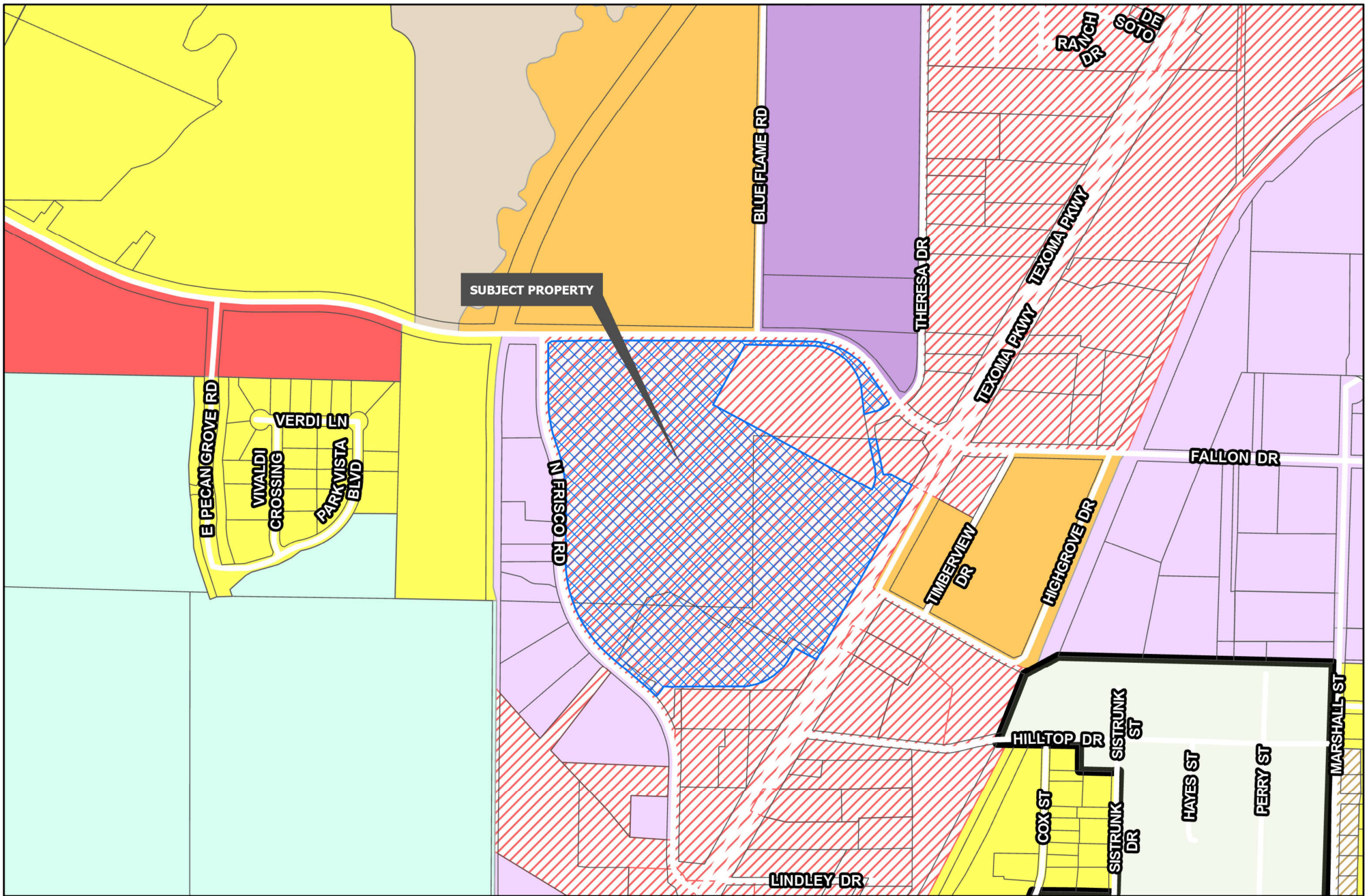


City of Sherman, Texas
Development Services Department

CITY OF SHERMAN
LOCATION MAP
4800 TEXOMA PKWY



Date: 5/6/2023 9:55 AM



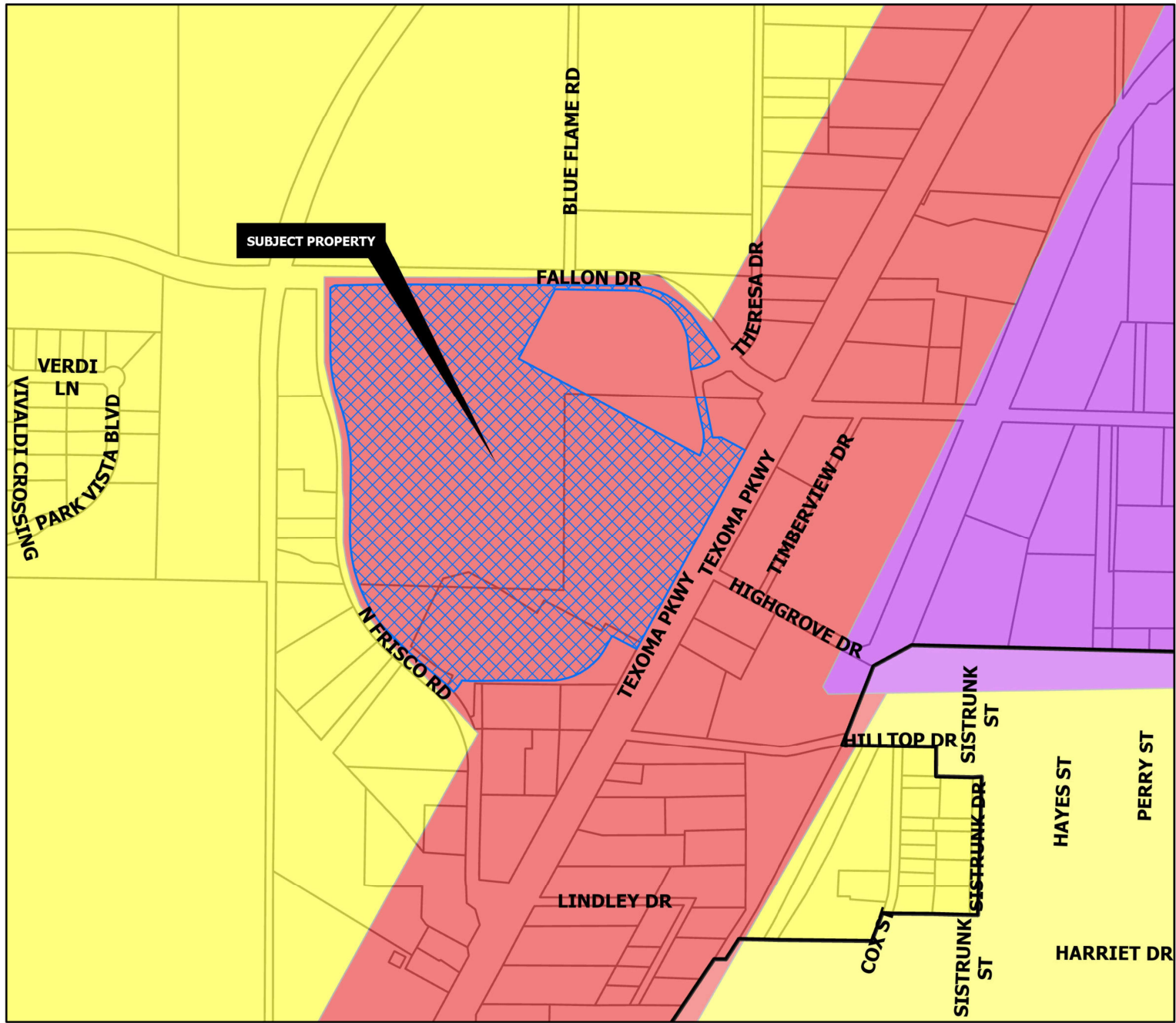
Sherman
CLASSIC TOWN. BROAD HORIZON.

Development Services
Department

R-A Residential Agricultural	MF-15 Multi-Family Residential	M-1.5 Medium Manufacturing
R-E Estate Residential	MF-30 Multi-Family Residential	M-2 Heavy Manufacturing
R-12 Single Family Residential	MH Manufactured Housing	PD Planned Development
R-6 Single Family Residential	C-N Neighborhood Commercial	Road Names All
R-5 Single Family Residential	C-O Office	Planning & Zoning
R-4 Patio Home Residential	C-1 Retail Business	
R-2F Duplex Residential	C-2 General Commercial	
R-TH Townhome Residential	M-1 Light Manufacturing	

CITY OF SHERMAN
ZONING MAP
4800 TEXOMA PKWY





REGIONAL COMMERCIAL

Intent & Character

The Regional Commercial category is intended to promote large-scale commercial development along US-75, while promoting community character through design. US-75 serves as the major gateway to and through the community; therefore, aesthetics and design should be promoted in this corridor. This category should allow large-scale commercial uses that serve the region and the community alike. A mix of uses and inter-connectivity between parcels should be encouraged.

Appropriate Land Use Types

- Retail and Restaurants
- Multi-Family Living
- Office Complex
- Medical
- Mixed Use
- Indoor Entertainment

Compatible Zoning Districts

- Retail Business
- General Commercial
- Office
- Multi-Family Residential (MF-15 and MF-30)
- Planned Development (for larger tracts)

Considerations

- Site design considerations should be given to parking, landscaping, and building articulation.
- Where possible, parking should be screened from view or well-landscaped with native, drought-tolerant plants.
- All buildings facades fronting a public street or within significant public view should have aesthetically-pleasing horizontal and vertical articulation.
- Signage should be multi-tenant, where possible, and should match the character of the primary structure.
- High density residential should be included in mixed use developments.
- High density residential is appropriate behind commercial areas, with inter-connectivity.
- If high density is stand alone, the surrounding uses and connectivity should be considered to avoid an "island."



Development Services
Department

	Agriculture/Rural		Core Neighborhood		Technology Hub
	Airport		Downtown		Planning & Zoning
	City Parkland		Regional Commercial		
	Community Commercial		Suburban Neighborhood		

CITY OF SHERMAN
FUTURE LAND USE MAP
4800 TEXOMA PKWY







Sherman
CLASSIC TOWN | BROAD HORIZON

**NOTICE OF
SPECIFIC USE
PERMIT REQUEST**

PROJECT #: 24-006129

Planning & Zoning Map:  FOR MORE INFORMATION
CONTACT:

DEVELOPMENT SERVICES
903-892-7229

01/08/2025 AT 11:54 A.M.

Project Narrative

The planned use for the Expo Hall in Midway Mall is for an antique & collectibles type store / market. It will only be open two days per month. There is a large variety of handmade soaps, candles, crocheted items, antiques, furniture, clocks, collectibles, albums, comics, gaming collectibles, unique handmade items, tables made of tree, 3D printed items, posters, vintage concert t-shirts, cowboy boots & hats, vintage signs, toys, glassware, dolls, Christmas decor, cameras, fans, fishing gear, vintage sporting items, Nascar, coins, steins, etc. If permitted cottage law canned jelly, jam, honey, pickles, salsa, etc. Spices, popcorn (prepackaged), Crackin' & soup mixes & prepackaged candy, chip drinks etc. If allowed a TABC permitted wine vendor.





City Council Regular Meeting

Agenda Item No. D.3.

Meeting Date: 2/17/2025

Prepared By: Rob Rae, Developmental Services Director

Approved By: Zachary Flores, Assistant City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6811

Repealing Ordinance No. 6410 and Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land, Consisting Of 288.278 Acres In The Sherrod Dunmore Survey, Abstract No. 329, City Of Sherman, Grayson County, Texas, Located In The 300-1000 Block East Fm 1417 (Vietnam Veterans Parkway), Heretofore Zoned PD (Planned Development) District And R-6 (Single Family Residential) District, C-1 (Retail Business) District And C-2 (General Commercial) District; Rezoning And Placing The Tract In The Bel Air Village PD (Planned Development) District Classification; Modifying Certain Development Standards Applicable To The Bel Air Village PD (Planned Development) District Classification And Adding A 9.9645-Acre Tract Of Land To The Bel Air Village PD (Planned Development) District; Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Issue:

Consideration of a Zone Change and Amendment for 288.278 acres of land located in the 300-1000 Block East FM 1417 (Vietnam Veterans Parkway) from an R-6 (Single Family Residential) District, C-1 (Retail Business) District and C-2 (General Commercial) District to the Bel Air Village PD (Planned Development) District and repeal Ordinance No. 6410.

Background:

The property is located in the 300-1000 Block East FM 1417 (Vietnam Veterans Parkway) between South Highway 75 and Luella Road. There are two primary items for this request:

1. Zone Change from an R-6 (Single Family Residential) District, C-1 (Retail Business) District and C-2 (General Commercial) District to the Bel Air Village PD (Planned Development) District. This is to include the additional 10 acres of property that the City of Sherman sold to the developer.
2. An amendment to certain Development Standards and Exhibits. The primary text amendment is to allow for detached townhomes as an alternative development type within the Village Residential District. Exhibit B, Page 5.

The following has been approved for this location:

- 11/14/2023 - Site Plan for Bel Air Beach Club (Subject to the Staff Review Letter)
- 12/13/2022 - Final plat approval of Bel-Air Village West
- 10/18/2022 - Preliminary Plat approval of Bel-Air Village West Infrastructure.
- 8/16/2022 - Final Plat of Bel-Air Village Phase 2 (Single Family).
- 6/21/2022 - Preliminary Plat of Bel-Air Village Phase 2 (Single Family).
- 4/19/2022 - Final Plat approval for Bel Air Village Multifamily Phase 1.
- 3/22/2022 - Preliminary Plat approval for Bel Air Village Multifamily Phase 1.

- 3/22/2022 - Site plan approval for Bel Air Village Single Family Phase 2 and Phase 3.
- 8/17/2021 - Amend a Planned Development and site plan approval under Ordinance No. 2280, Section 6.12, for Bel Air Village (Ordinance No. 6319).
- 8/18/2020 - Amending Planned Development and site plan approval under Ordinance No. 2280, Section 6.11, for Bel Air Village formerly known as Terra Perpetua Village (Ord No. 6232).
- 7/16/2019 - Planned Development and site plan approval for Terra Perpetua Village (was zoned M-1)

Origination:

City of Sherman

Financial Consideration:

None

Staff Recommendation:

At the December 17, 2024 regular meeting, the Planning and Zoning Commission voted 7/0 to recommend to City Council that the Zone Change be approved. At the January 22, 2025 regular meeting, the Planning and Zoning Commission voted 6/0 to recommend to City Council that the Planned Development Amendment be approved. The proposed use is compatible with the City of Sherman Comprehensive Plan. Staff recommends that Council approve this item.

Alternatives:

The City Council could deny the request.

Attachments:

1. Ordinance No. 6811
2. Exhibit A - Survey - combined
3. Exhibit B - Development Standards
4. Exhibit C - Development Districts Map
5. Location Map
6. Zoning Map
7. Future Landuse Map
8. Property Notification Sign
9. Narrative
10. Ordinance 6410

ORDINANCE NO. 6811

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING ORDINANCE NO. 6410 AND AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, , TO REZONE A TRACT OF LAND, CONSISTING OF 288.278 ACRES IN THE SHERROD DUNMORE SURVEY, ABSTRACT NO. 329, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 300-1000 BLOCK EAST FM 1417 (VIETNAM VETERANS PARKWAY), HERETOFORE ZONED PD (PLANNED DEVELOPMENT) DISTRICT AND R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT, C-1 (RETAIL BUSINESS) DISTRICT AND C-2 (GENERAL COMMERCIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE BEL AIR VILLAGE PD (PLANNED DEVELOPMENT) DISTRICT CLASSIFICATION; MODIFYING CERTAIN DEVELOPMENT STANDARDS APPLICABLE TO THE BEL AIR VILLAGE PD (PLANNED DEVELOPMENT) DISTRICT CLASSIFICATION AND ADDING A 9.9645-ACRE TRACT OF LAND TO THE BEL AIR VILLAGE PD (PLANNED DEVELOPMENT) DISTRICT; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

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

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

WHEREAS, the City Council finds that it is in the public interest to rezone the property as described in this Ordinance.

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

SECTION 1. That Ordinance No. 6410 is hereby repealed in its entirety and replaced by this Ordinance. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance, at which time Ordinance No. 6410 shall be repealed. Such repeal shall not abate any pending prosecution or lawsuit or prevent any prosecution or lawsuit from

being commenced for any violation of Ordinance No. 6410 occurring before the effective date of this Ordinance.

SECTION 2. That, from and after the effective date of this Ordinance, the property described in **Exhibit A – Survey and Legal Description**, attached hereto, located in the 300-1000 Block East FM 1417 (Vietnam Veterans Parkway), and all streets, roads and alleyways contiguous and/or adjacent thereto, shall be rezoned and placed into the PD (Planned Development) District known as the Bel Air Village Planned Development, and that Sherman’s Zoning Ordinance/Code of Ordinances, Chapter 14, is hereby amended so as to hereafter include such property.

The development plans, standards and uses of the Property shall conform to and comply with the standards, rules and regulations for development and use of land within the Planned Development District zoning classification. The Property shall be developed in compliance with the additional requirements as set forth and/or depicted herein and in the following exhibits, each of which are attached hereto and incorporated herein by reference for all purposes:

- Exhibit B – Development Standards, and
- Exhibit C – Zoning Exhibit.

The Property shall be developed in compliance with the standards set forth herein, in Exhibit B and Exhibit C and all other ordinances, rules and regulations of Sherman, as they currently exist, may be amended or in the future arising. To the extent that any of the exhibits attached hereto are in conflict with the provisions of this Ordinance or one another, the provisions of this Ordinance, then the provisions of Exhibit B and Exhibit C shall prevail in that order.

SECTION 3. That this Ordinance shall be entered upon the Official Zoning Map as provided in Sherman’s Zoning Ordinance/Code of Ordinances, Chapter 14, Section 14.01.002.

SECTION 4. That no person shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed or amended by the City Council in the manner provided for by law.

SECTION 5. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 6. That the Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate

any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 8. That it is hereby officially found and determined that the meetings at which this Ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 9. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 17th day of February 2025.

ADOPTED on this the 17th day of February 2025.

EFFECTIVE DATE on this the 17th day of February 2025.

CITY OF SHERMAN, TEXAS

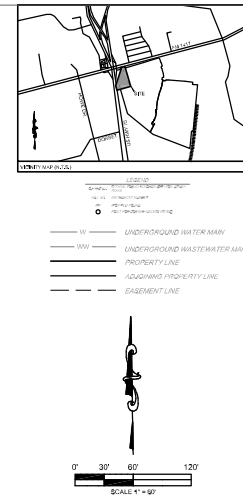
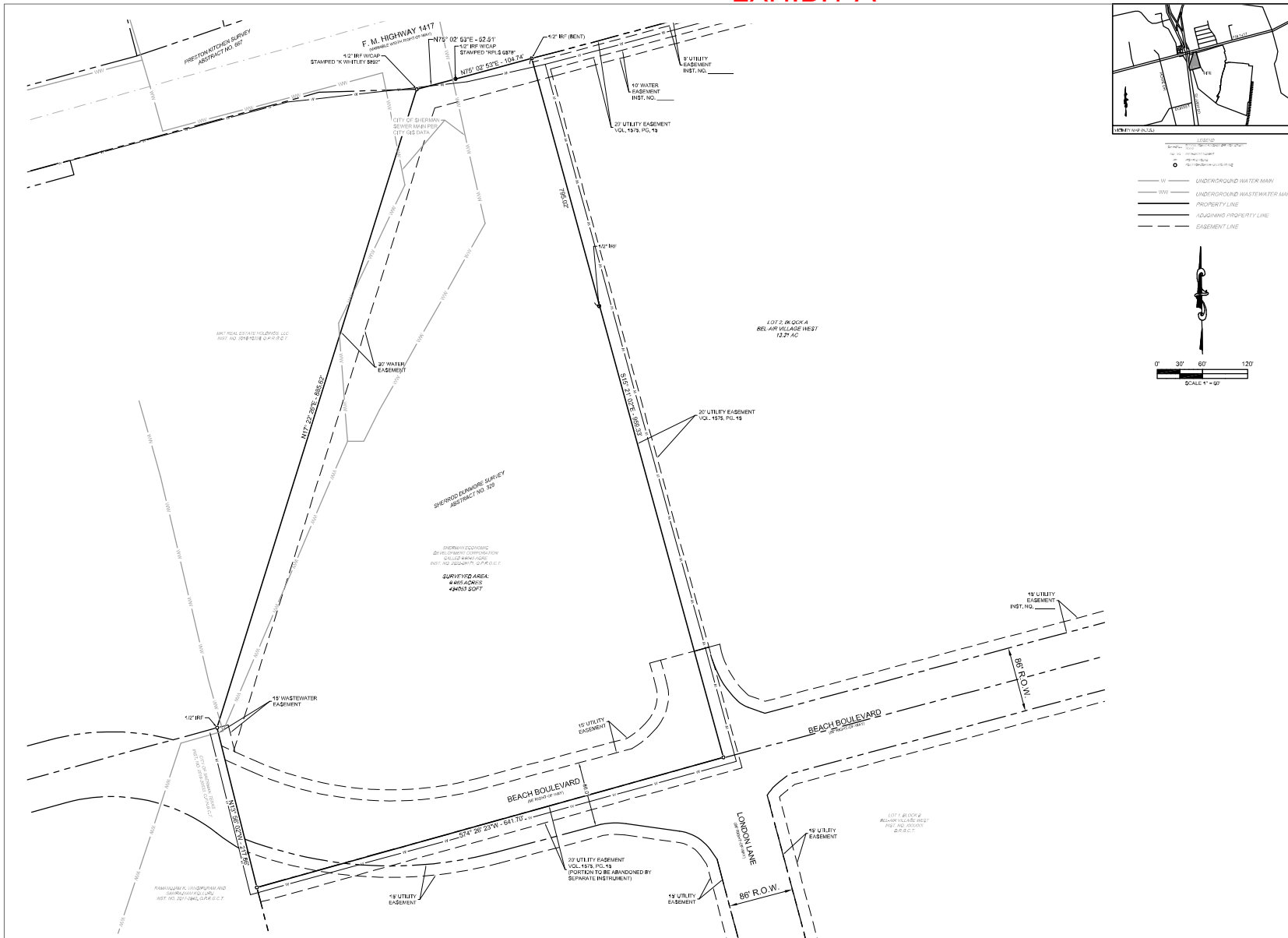
BY: _____
SHAWN TEAMANN, MAYOR

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



METES AND BOUNDS DESCRIPTION

BEING 9.965 ACRES OF LAND SITUATED IN THE SHERROD DUNMORE SURVEY, ABSTRACT NUMBER 329, GRAYSON COUNTY, TEXAS, BEING ALL OF A TRACT OF LAND CALLED 9.965 ACRES IN DEED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION, RECORDED IN INSTRUMENT NUMBER 2023-28171, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS (O.P.R.G.C.T.1) AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 12-INCH IRON ROD WITH CAP STAMPED "RPLS 6578" IN THE SOUTHEAST RIGHT-OF-WAY OF FARM TO MARKET ROAD 1417 (VARIABLE WIDTH RIGHT-OF-WAY, AT THE NORTHWEST CORNER OF A 0.84 ACRE TRACT OF LAND DESCRIBED IN DEED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION, RECORDED IN INSTRUMENT NUMBER 2018-0595, O.P.R.G.C.T.1;

THENCE NORTH 75 DEGREES 02 MINUTES 53 SECONDS EAST, ALONG THE COMMON LINE OF SAID 9.965 ACRE TRACT, A DISTANCE OF 194.74 FEET TO A FOUND 12-INCH IRON ROD AT THE NORTH CORNER OF SAID 9.965 ACRE TRACT AND A TRACT OF LAND DESCRIBED AS BEL AIR VILLAGE WEST, NO RECORD DOCUMENT FOUND;

THENCE SOUTH 19 DEGREES 21 MINUTES 02 SECONDS EAST, ALONG THE COMMON LINE OF SAID 9.965 ACRE TRACT AND SAID BEL AIR WEST VILLAGE, PASSING AT A DISTANCE OF 755.02 FEET TO A FOUND 12-INCH IRON ROD AT THE SOUTHEAST CORNER OF SAID 0.84 ACRE TRACT, AND CONTINUING A TOTAL DISTANCE OF 999.33 FEET TO A POINT FOR CORNER IN SAID COMMON LINE OF 9.965 ACRE TRACT AND SAID BEL AIR WEST VILLAGE;

THENCE SOUTH 74 DEGREES 26 MINUTES 23 SECONDS WEST, CONTINUING ALONG SAID COMMON LINE OF 9.965 ACRE TRACT AND SAID BEL AIR WEST TRACT, A DISTANCE OF 641.70 FEET TO A POINT FOR CORNER IN THE EAST LINE OF A TRACT OF LAND DESCRIBED IN DEED TO RAHARAJAN K. VANGIPURAM AND SARRAJAYAN KOLLURU, RECORDED IN INSTRUMENT NUMBER 2017-2942, O.P.R.G.C.T.1;

THENCE NORTH 13 DEGREES 56 MINUTES 02 SECONDS WEST, ALONG THE SOUTHWESTERLY LINE OF SAID 9.965 ACRE TRACT, A DISTANCE OF 217.86 FEET TO A FOUND 12-INCH IRON ROD AT THE COMMON CORNER OF SAID 9.965 ACRE TRACT AND A TRACT OF LAND DESCRIBED IN DEED TO THE CITY OF SHERMAN, TEXAS, RECORDED IN INSTRUMENT NUMBER 2018-20633, O.P.R.G.C.T.1 AND A TRACT OF LAND DESCRIBED IN DEED TO MKT REAL ESTATE HOLDINGS, LLC, RECORDED IN INSTRUMENT NUMBER 2018-10228, O.P.R.G.C.T.1;

THENCE NORTH 17 DEGREES 22 MINUTES 26 SECONDS EAST, ALONG THE COMMON LINE OF SAID 9.965 ACRE TRACT AND SAID MKT REAL ESTATE HOLDINGS, LLC TRACT, A DISTANCE OF 885.92 FEET TO A FOUND 12-INCH IRON ROD WITH CAP IN SAID SOUTHEAST RIGHT-OF-WAY OF FARM TO MARKET ROAD 1417;

THENCE NORTH 75 DEGREES 02 MINUTES 53 SECONDS EAST, ALONG SAID COMMON LINE OF 9.965 ACRE TRACT AND FARM TO MARKET ROAD 1417, A DISTANCE OF 32.51 FEET TO THE POINT OF BEGINNING AND CONTAINING 9.965 ACRES OR 434093 SQUARE FEET OF LAND, MORE OR LESS.

SURVEYOR'S CERTIFICATE

THIS DOCUMENT WAS PREPARED UNDER 22 TEXAS ADMINISTRATIVE CODE § 138.95, IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.



Trevor Joshua Cheraire
REGISTERED PROFESSIONAL
LAND SURVEYOR
STATE OF TEXAS NO. 6560
trevor@onealurveying.com



O'NEAL SURVEYING COMPANY, LLC
DEVELOPMENT SUPPORT SERVICES
205 WINDCO STE. 100 WYLLIE, TX 75098
(936) 708-2891
www.onealsurveying.com
TREVOR: 708-2891
info@onealsurveying.com

REVISIONS: 2024/11/04-EASEMENTS ALONG ADJOINER TRACT

SURVEYOR'S NOTES

1. FIELD WORK COMPLETED 10/30/2024
2. SURVEY COMPLETED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE OR TITLE POLICY.
3. EASEMENT RESEARCH LIMITED TO ONLY THOSE EASEMENTS PROVIDED TO SURVEYOR. THERE MAY BE EASEMENTS OR OTHER MATTERS NOT SHOWN.

BEARING BASIS

ALL BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM OF 1983(2011), NORTH CENTRAL ZONE(400)

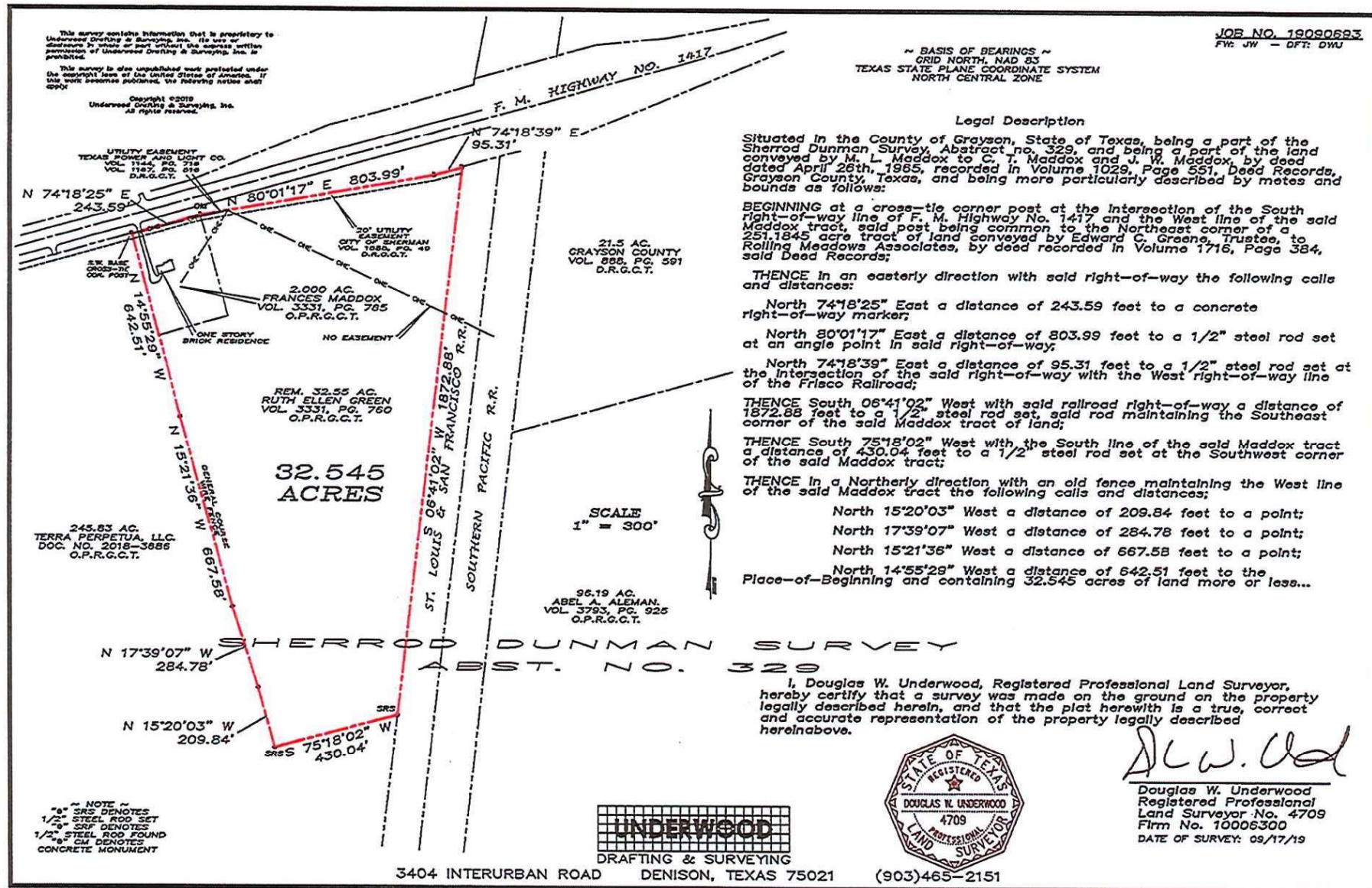


2501 OLIVIA BLVD. SUITE 100
DALLAS, TEXAS 75016
PHONE: (469) 889-0636
WWW.KFM-LLC.COM
TAXP #: F 208291

POLITICAL BOUNDARY SURVEY
9.965 ACRES OUT OF THE
SHERROD DUNMORE SURVEY
ABSTRACT NUMBER 329
GRAYSON COUNTY, TEXAS

PROJECT: 24058.00
DRAWN BY: TJC
CHECKED BY: DCO
SCALE: 1" = 60'

DATE: November 4, 2024
SHEET NO.: 01 OF 01





BEL AIR VILLAGE

PLANNED DEVELOPMENT

CITY OF SHERMAN, TEXAS

DESIGN TEAM

ION DESIGN GROUP, LLC

7075 Twin Hills Avenue, Suite 350, Dallas, TX 75231

GFF ARCHITECTS

808 Fairmount St SUITE 300, Dallas, TX 75201

KFM ENGINEERING & DESIGN

3501 Olympus Blvd., Suite 100, Dallas, TX 75019

REVISED SEPTEMBER 7, 2021

ADMINISTRATIVE AMENDMENTS APPROVED NOVEMBER 30, 2021

REVISED DECEMBER 5, 2024

REVISED DECEMBER 11, 2024

BEL AIR VILLAGE PLANNED DEVELOPMENT

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EXHIBIT B**I. Components of Bel Air Village Planned Development****A. Introduction**

Bel Air Village is a mixed-use community encompassing approximately 288.3 acres east of Highway 75 and immediately south of FM 1417. The Village offers a mix of commercial, residential, and recreational opportunities complemented by almost 15 percent of the land area set aside as parks, open space, trails, buffers, or other village amenities. The use and development regulations set forth in the Development Plan provide for and encourage development that contains a compatible mix of RESIDENTIAL and VILLAGE URBAN CENTER uses in proximity to one another.

Note: Words shown in all CAPITAL LETTERS are defined in VI. Definitions.

B. Village Development Objectives

The Bel Air Village addresses the physical relationship between development and adjacent properties, public streets, neighborhoods, and the natural environment through the following set of development objectives:

- Ensuring buildings relate appropriately to surrounding developments and streets to create cohesive visual identity and attractive street scenes;
- Offering a variety of housing types responsive to current and future residents' desire for a mix of product types based on their demographic and income needs;
- Siting land uses, streets, and pedestrian circulation in a cohesive and complementary layout supportive of the mix of uses and oriented towards the pedestrian realm to enhance and activate streetscapes;
- Applying residential and non-residential architectural FAÇADE elements and finishes;
- Ensuring creation of high quality street and sidewalk environments that are supportive of pedestrian mobility and appropriate to roadway context;
- Creating an enhanced pedestrian realm by the inclusion of wide sidewalks, vegetative avenues and a trail system interconnecting the respective development areas of the village; and,
- Preserving the natural resources of the site to the greatest extent practicable recognizing the value of the floodplain and stream channels as amenities to the development.

C. Key Village Elements

The following enumerates the key elements of the Bel Air Planned Development:

I. Components

A summary of key components covered in the Planned Development, acreages, and overall objectives.

II. Use and Building Envelope Standards

The USE and BUILDING ENVELOPE STANDARDS section establishes basic parameters for permitted and prohibited uses, building siting, lot widths, height, stories, and overall densities.

III. Architectural Standards

The ARCHITECTURAL STANDARDS section governs the VILLAGE URBAN CENTER and VILLAGE RESIDENTIAL DISTRICTS architectural elements and FAÇADE materials, windows, roofs, service areas and other standards.

IV. Lighting, Parking and Signage Standards

The LIGHTING, PARKING and SIGNAGE STANDARDS section establishes the standards for public/private space lighting, provision of adequate parking, and compatible signage.

V. Landscaping and Park/Open Space and Other Recreation Standards

The LANDSCAPING and PARK/OPEN SPACE and OTHER RECREATION STANDARDS section addresses required landscaping and other recreation amenities.

VI. Definitions

The DEFINITIONS section defines terms used within the Bel Air Village Planned Development.

VII. Appendices

The Appendices contain: Appendix A – CONCEPTUAL PLAN MAP; Appendix B – DEVELOPMENT DISTRICT MAP; and Appendix C – STREET CROSS SECTIONS.

D. Conceptual Plan and Development Districts Maps

The Bel Air Village Planned Development includes the CONCEPTUAL PLAN MAP depicting the respective land uses and the DEVELOPMENT DISTRICTS MAP identifying the two regulating districts.

1. Conceptual Plan Map

- The CONCEPTUAL PLAN MAP is a depiction of large land use categories that include residential, commercial, open space and major rights-of-way to be developed within the Bel Air Village Planned Development. (See Appendix A – CONCEPTUAL PLAN MAP)
- The allocation of land uses and proposed road network may be modified as specific development plans come forward at DETAILED SITE PLAN.
- The table below summarizes generalized land use acreages depicted on the CONCEPTUAL PLAN MAP:

Summary Table of Bel Air Village Acreages and Uses

	Acres	%	Units
RESIDENTIAL			
Single-Family Detached, Single-Family Attached & Beachside Villas	172.9	60.0	1,700
Mid-Rise Residential & Lagoon Area (MF)	35.3	12.2	3,000
COMMERCIAL			
Village Center	22.4	7.8	N/A
OPEN SPACE			
Parks, Open Space, Buffers & Flood Plain Areas	42.3	14.7	N/A
MAJOR RIGHTS-OF-WAY			
Collector Streets (does not include local residential streets)	15.4	5.3	N/A
Total Acres	288.3	100.0%	
<i>Note: Above acreages, units count and percentages are approximate and will be finalized at Site Plan Approval</i>			

2. Development Districts Map

The DEVELOPMENT DISTRICTS MAP consists of two districts, the VILLAGE URBAN CENTER DISTRICT and the VILLAGE RESIDENTIAL DISTRICT. (See Appendix B – DEVELOPMENT DISTRICTS MAP).

- VILLAGE URBAN CENTER DISTRICT – land designated for development of COMMERCIAL and MID-RISE RESIDENTIAL uses.
- VILLAGE RESIDENTIAL DISTRICT – land designated for development of a mix of DETACHED and ATTACHED SINGLE-FAMILY RESIDENTIAL uses.

II. Use and Building Envelope Standards

A. Village Urban Center District

1. Permitted and Prohibited Uses

- a. Permitted uses
 - (1) VILLAGE URBAN CENTER uses including BUSINESS SERVICE, OFFICE, PERSONAL SERVICE, RETAIL SERVICE, RETAIL SPECIALTY, RETAIL TRADE, STUDIO USES, restaurants, coffee shops, except where requiring a SPECIFIC USE PERMIT or prohibited by this Ordinance or the City of Sherman's Zoning Ordinance.
 - (2) COMMERCIAL INDOOR AMUSEMENT
 - (3) HOTEL, FULL-SERVICE or LIMITED-SERVICE
 - (4) MID-RISE RESIDENTIAL
 - (5) SENIOR/ASSISTED LIVING FACILITY
 - (6) SCHOOL, PRIMARY OR SECONDARY
 - (7) SKILLED NURSING HOME FACILITY
 - (8) RECREATIONAL LAGOON
- b. Permitted ACCESSORY USES
 - (1) AFFILIATED RESIDENTIAL USES
 - (2) AMENITY CENTER
 - (3) Home Occupations
 - (4) PARK/OPEN SPACE
 - (5) Special events
 - (6) STRUCTURED PARKING
- c. Uses permitted upon review and approval of a SPECIFIC USE PERMIT
 - (1) Alcoholic beverage sales and for any qualified restaurants serving alcoholic beverages on site
 - (2) CIVIC BUILDING
 - (3) Telephonic, radio, television or microwave, communication antennas and tower
- d. Prohibited uses
 - (1) Check cashing businesses, payday advance/loan businesses, car or motor vehicle title loan businesses, or credit access businesses as defined by applicable provisions of Texas Finance Code.
 - (2) Gas wells
 - (3) Industrial, manufacturing, and warehousing uses
 - (4) Outside storage, unscreened
 - (5) Sexually oriented business
 - (6) Tattoo parlors
 - (7) Vape businesses
 - (8) Vehicle-related sales or repair

2. Building Lot Dimensional Standards

a. Dimensional Table

	Min. Lot Width (ft)	Min. Lot Depth (ft)	Min. Front Yard Setback (ft)	Min. Rear Yard Setback (ft)	Min. Side Yard Setback (ft)	Maximum Units /Ac.	Max. Stories	Max. Building Height (ft)	Max. Lot Coverage (%)
Village Urban Center	N/A	N/A	0	0	0	85	5	75'	80

b. Additional Dimensional Standards

- (1) Permitted lot coverage for uses not listed in the Dimensional Table shall be determined upon approval of a SPECIFIC USE PERMIT or DETAILED SITE PLAN.
- (2) Architectural embellishments not intended for human occupancy that are integral to the architectural style of the buildings, including spires, belfries, towers, cupolas, domes, and roof forms whose area in plain view is no greater than twenty-five percent (25%) of the first floor footprint may exceed the height limits by up to twenty (20) feet.
- (3) Mechanical equipment, including mechanical/elevator equipment enclosures, ventilation equipment, chimneys, exhaust stacks and flues, fire sprinkler tanks, and other similar constructions may extend up to twelve (12) feet above the actual building height, provided that:
 - (a) The equipment is set back from all exterior walls a distance at least equal to the vertical dimension that such item(s) extend(s) above the actual building height; or
 - (b) The exterior wall and roof surfaces of such items that are set back less than the vertical dimension above the actual building shall be constructed as architecturally integral parts of the building FAÇADE(S).

B. Village Residential District

1. Permitted and Prohibited Uses

a. Permitted uses

- (1) SINGLE-FAMILY DETACHED RESIDENTIAL (SFD)
- (2) SINGLE-FAMILY ATTACHED RESIDENTIAL (SFA)

b. Permitted ACCESSORY USES

- (1) ACCESSORY BUILDING or STRUCTURE
- (2) AFFILIATED RESIDENTIAL USES
- (3) AMENITY CENTER
- (4) Home Occupations
- (5) PARK/OPEN SPACE

c. Uses permitted upon review and approval of a SPECIFIC USE PERMIT

- (1) CIVIC BUILDING
- (2) SCHOOL, PRIMARY OR SECONDARY
- (3) SENIOR/ASSISTED LIVING FACILITY and/or SKILLED NURSING HOME FACILITY and any STRUCTURED PARKING
- (4) Special events

d. Prohibited uses

Any use that is not expressly set forth as a permitted use in this Subsection "VILLAGE RESIDENTIAL DISTRICT" or not considered incidental to the primary permitted use.

2. Building Lot Dimensional Standards

a. Dimensional Table

Description	Single-Family Residential Detached	Townhome [Zero Lot Line] Detached	Townhome Attached
Building Type	Detached	Detached	Attached
Minimum Lot Area	4,000 square feet	2,100 square feet	1,200 square feet
Maximum Density	12 units per acre	20 units per acre	24 units per acre
Minimum Lot Width (at Front Yard Setback)	40 feet	25 feet	20 feet
Minimum Lot Depth	90 feet	84 feet	50 feet
Minimum Front Yard Setback (Alley-Loaded)	10 feet	N/A	0 feet
Minimum Front Yard Setback (Front-Loaded)	10 feet (Building) 20 feet (Garage Door)	20 feet (Garage Door)	N/A
Minimum Side Yard Setback (Interior)	5 feet	0 feet (side abutting another unit); 3 feet (side not abutting another unit)	0 feet (side abutting another unit); 5 feet (side not abutting another unit)
Minimum Side Yard Setback (Corner Lot)	10 feet	10 feet	10 feet
Minimum Rear Yard Setback	10 feet	5 feet	18 feet (Building) 20 feet (Garage door)
Maximum Building Height	2.5 story, 40 feet	2.5 story, 40 feet	3 story, 50 feet

b. Additional Dimensional Standards

- (1) Zero lot line development shall have a three (3) foot maintenance and overhang easement within the lot that abuts the 0-foot side of adjacent lot for maintenance.
- (2) TOWNHOME ATTACHED RESIDENTIAL shall be alley-loaded with overall building length not to exceed two hundred (200) feet and a required building separation of not less than ten (10) feet between buildings.

III. Architectural Standards

A. Architectural Standards – Village Urban Center District

1. Building FAÇADE Materials

- a. Permitted primary building materials (which must cover not less than 85% of the area of the FAÇADE) shall be:
 - (1) MASONRY/STONE
 - (2) STUCCO/PLASTER
 - (3) Hardie-Plank™ equivalent or better siding
 - (4) Other primary building materials shall be required to obtain a SPECIAL EXCEPTION as a part of DETAILED SITE PLAN approval
- b. Accent building materials (no greater than 15% of the area of the FAÇADE) may be:
 - (1) Pre-cast masonry (for trim and cornice elements only)
 - (2) Gypsum reinforced fiber concrete (for trim elements only)
 - (3) Metal (for beams, lintels, trim elements and ornamentation only)
 - (4) Split-faced CMU block (only for piers, foundation walls and chimneys)
 - (5) EIFS

2. Building AWNINGS and CANOPIES

- a. Materials, Illumination and Location
 - (1) AWNINGS and CANOPIES shall be architectural and constructed with fully opaque materials that complement the building to which they are attached; provided, however, no shiny or reflective materials are permitted.
 - (2) AWNINGS and CANOPIES shall not be internally illuminated in a manner that illuminates the AWNINGS or CANOPY material; provided, however, downward lighting limited to lighting the building FAÇADE, sidewalk areas, and seating areas, is permitted to be installed beneath AWNINGS and CANOPIES.

3. Building Roofs

- a. Permitted Roof Materials
 - (1) Architectural asphalt shingles
 - (2) Tile, clay or concrete (faux clay)
 - (3) Slate (equivalent synthetic or better)
 - (4) Metal (standing seam, equivalent or better)
 - (5) Roofing material for flat roofs shall be monolithic Thermoplastic Polydefin (TPO) membrane or equivalent determined by BUILDING OFFICIAL
- b. Flat Roofs – roof material interior to the PARAPET shall not be visible from any adjacent ground-level areas.

4. Building Mechanical, Underground Utilities, and Solid Waste Facilities

- a. Mechanical Equipment
 - (1) Ground level transformers, HVAC equipment, lift stations, utility meters, and other machinery shall be located at the rear of the lot where practical
 - (2) Roof mounted equipment shall be screened from view from the PUBLIC SPACE where practical.
- b. All electrical, phone, cable and other similar types of facilities shall be underground except for service boxes which shall be approved at the time of DETAILED SITE PLAN.

c. Solid Waste Collection and Disposal

- (1) Location of solid waste facilities shall be approved at time of DETAILED SITE PLAN.
- (2) Solid waste facilities including trash compactors shall be screened by a MASONRY wall of a height that is at least one (1) foot above the height of the solid waste facility or trash compactor. Such screening wall shall be built with the same materials as used for the principal building, or an otherwise CITY approved material
- (3) Access to Solid waste facilities shall be provided by a metal gate or door equal in height of the wall and shall remain closed at all times when not being accessed for purpose of disposing solid waste into, or collecting for off-site disposal from, the facility.

B. Architectural Standards – Village Residential District**1. Architectural Diversity**

- a. Floor plans and front FAÇADES of the same PRIMARY BUILDING MATERIAL color for SINGLE-FAMILY DETACHED RESIDENTIAL shall be separated from one another by no fewer than two (2) lots for same floor plans and no fewer than three (3) lots for the same front FAÇADE.
- b. No combination of the same masonry color, mortar color, and sand color shall be repeated for SINGLE FAMILY DETACHED RESIDENTIAL buildings located on adjacent lots.
- c. The following list of architectural elements shall be incorporated into FAÇADES of SINGLE-FAMILY DETACHED RESIDENTIAL buildings with a choice of at least two (2) different elements and be included in the DETAILED SITE PLAN:
 - (1) BALCONY (limited to rear balconies directly overlooking PARK/OPEN space)
 - (2) Front Porch (4:12 or greater roof pitch)
 - (3) Chimney
 - (4) Patio courtyard
 - (5) MASONRY, stone, or cast stone accents
 - (6) Double entry doors
 - (7) Covered entry
 - (8) DORMERS
 - (9) Cedar shutters
 - (10) Natural stone (30% front FAÇADE)
 - (11) 10:12 or greater roof pitch (pitch may be reduced for Front Porch – see above)
 - (12) Gables with architecture feature
 - (13) Arch top windows
 - (14) Circle top windows
 - (15) Stained wood columns

2. Building FAÇADES

FAÇADE treatments are those portions of a building's STREET FRONTAGE FAÇADE elevation extending from the ground to the roof that consists of a single layer or architectural expression.

- a. RESIDENTIAL buildings shall have a finished floor elevation of not less than 0.8 feet above the top of the front curb elevation.
- b. Wall openings shall not span vertically more than one story.

3. Building FAÇADE Materials

- a. Permitted primary building materials (which must cover not less than 85% of each area of the area of the FAÇADE) shall be:
 - (1) MASONRY/STONE
 - (2) STUCCO/PLASTER
 - (3) Hardie-Plank™ equivalent or better siding
 - (4) Other primary building materials shall be required to obtain a SPECIAL EXCEPTION as a part of SITE PLAN approval
- b. Accent building materials (which may cover no more than 15% of the area of the FAÇADE) may be:
 - (1) Pre-cast masonry (limited trim and cornice elements only)
 - (2) Gypsum reinforced fiber concrete (limited to trim elements only)
 - (3) Metal (limited to roofing, beams, lintels, trim elements and ornamentation only)
 - (4) Split-faced CMU block (but used only for piers, foundation walls and chimneys)
 - (5) EIFS
- c. Calculation of the percentage of the area of permitted building materials on a FAÇADE shall not include:
 - (1) The area occupied by windows and doors (including garage doors); and
 - (2) Other architectural features above the roofline, or areas not in plane with first-floor wall.

4. Building Windows

Windows shall conform to the following:

- a. Window Materials
 - (1) Specialty windows such as stained, opalescent, or glass block shall be permitted in limited amounts but in no case greater than fifteen (15) percent of the total window area of the FAÇADE.
 - (2) Solar screens are permitted only on FAÇADES not visible from the PUBLIC SPACE.
- b. Window Configurations
 - (1) The horizontal dimension of the window opening shall not exceed the vertical dimension except as provided below in subparagraphs 4. B. (2) and 4. B. (3).
 - (2) A maximum of five (5) windows may be mulled horizontally together to form a compound window which may be wider than it is tall if each grouping is separated by a mullion, column, pier or wall section that is not less than three (3) inches wide.
 - (3) An individual window may be wider than it is tall – if not mulled together as described herein subparagraph 4. B. (2) – but shall not exceed five (5) feet in width and four (4) feet in height. No combination of width and height dimensions for an individual window shall result in width exceeding height by more than three (3) feet.
- c. Alterations to these standards may be granted as part of a DETAILED SITE PLAN.

5. Building Roofs and PARAPETS

- a. Permitted Roof Materials
 - (1) 30-year dimensional shingles.
 - (2) Tile, clay or concrete (faux clay).
 - (3) Slate (equivalent synthetic or better).
 - (4) Metal on porches and accent roofs.
 - (5) Roofing material for flat roofs shall be monolithic Thermoplastic Polydefin (TPO) membrane or equivalent determined by BUILDING OFFICIAL.

- (6) Roofing materials shall have a minimum 30-year rated warranty.
- b. Authorized Roof Configurations
 - (1) Pitched Roofs

Hip and gable roofs shall be symmetrically pitched 8:12 or greater – with the exception of front porch roofs, which can be pitched 4:12 or greater.
 - (2) Flat Roofs

Roof material interior to the PARAPET shall not be visible from any adjacent ground-level areas.
- c. Roofs, Dormers and Chimneys
 - (1) DORMERS shall be finished with permitted primary building materials; chimney chases above the roof structure shall be finished with MASONRY/STONE only.
 - (2) Fireplace flues shall be enclosed and finished to be complimentary of the building's exterior.

Finished construction that provides for an exposed pre-fabricated metal flue piping (other than gas appliance vent stacks required by applicable construction codes) is permissible, only if (i) finished to be complimentary of the building's exterior, (ii) vented through the roof structure (not a wall), (iii) designed, built, and located according to applicable construction codes, (iv) designed, built, and located to the rear of the building with limited visible appearance from the front of the building. Should said requirements not be satisfied in full, exposed pre-fabricated metal flue piping (other than gas appliance vent stacks required by applicable construction codes) is prohibited.

6. Underground Utilities

- a. All electrical, phone, cable and other similar types of facilities shall be underground except for service boxes which shall be approved at the time of DETAILED SITE PLAN.

IV. Lighting, Parking and Signage Standards

A. Lighting

1. STREET Lights

- a. STREET LIGHTS shall be install in accordance with the following:
 - (1) MAJOR STREETS – spaced a maximum of one hundred and fifty feet (150) feet including one (1) at each intersection.
 - (2) MINOR STREETS – spaced a maximum of one hundred feet (100) feet including one (1) at each intersection.
 - (3) LOCAL STREETS – lighting shall be at each intersection.
- b. STREET LIGHTS shall not cast a perceptively unnatural spectrum of light (such as low-pressure sodium) or project light skyward (dark sky friendly lighting).

2. VILLAGE URBAN CENTER Lighting

- a. An exterior Lighting Plan shall be approved as part of the DETAILED SITE PLAN for the VILLAGE URBAN CENTER.
- b. Lighting Standards
 - (1) Site lighting shall be of a design, height, and location to illuminate only the lot on which the light fixture is located unless illumination across lot lines is by a lighting fixture is authorized by the approved lighting plan included in the approved DETAILED SITE PLAN.
 - (2) Lighting elements shall not cast a clearly/perceptively unnatural spectrum of light (such as low pressure sodium). Lighting elements shall be limited to incandescent, metal halide, or halogen type fixtures.
 - (3) No flashing, traveling, animated, or intermittent lighting shall be visible from the exterior of any building whether such lighting is of temporary or long-term duration.

B. Parking

1. Parking Standards

- a. SINGLE-FAMILY RESIDENTIAL
 - (1) SINGLE-FAMILY RESIDENTIAL DETACHED and ATTACHED shall provide a minimum of two (2) garage parking spaces that shall remain usable for parking of two (2) passenger vehicles.
 - (2) Additional visitor parking (on or off street) shall be provided for SINGLE-FAMILY RESIDENTIAL uses at a rate of one (1) space per four (4) dwellings located within five hundred (500) feet for any SINGLE-FAMILY RESIDENTIAL lot providing parking for less than four (4) vehicles.
- b. MID-RISE RESIDENTIAL
 - (1) A minimum of 1.5 parking spaces shall be provided for each MID-RISE RESIDENTIAL unit.
 - (2) Additional onsite visitor parking shall be provided for MID-RISE RESIDENTIAL at a rate of one (1) space per six (6) units.
- c. VILLAGE URBAN CENTER
 - (1) For uses other than MID-RISE RESIDENTIAL, a Parking Plan prepared by a Texas professional engineer shall be submitted to the CITY that sets forth how the uses in the VILLAGE URBAN CENTER will accommodate parking demand. The Parking Plan shall be based on the parking standards set forth herein, or in the absence of a standard for a proposed use, shall be established as part of the approved DETAILED SITE PLAN.
 - (2) Required parking ratios for VILLAGE URBAN CENTER uses shall be:
 - (a) Office – 1 space per 300 square foot

- (b) Retail – 1 space per 250 square foot
- (c) Restaurant – 1 space per 150 square foot

2. On-Street Parking

- a. On-street parallel parking shall be eight (8) feet in depth and twenty-two (22) feet length.
- b. On-street parking may be counted towards meeting off-street parking requirements if authorized by the approved DETAILED SITE PLAN.

C. Signage

1. Signage Plan

- a. A Comprehensive Sign Plan shall be submitted to the CITY as part of the DETAILED SITE PLAN.
- b. Only individual lettering on a VILLAGE URBAN CENTER signage may be internally lit.
- c. Lettering on AWNINGS and CANOPIES shall be limited to six (6) inches tall located only on vertically hanging fabric at curbside.

2. Prohibited or Limited Signs

- a. Billboards, off-premises, pole signs, marquees, animated, flashing or intermittent signs, and roof and painted building FAÇADE signs are prohibited.
- b. Portable or wheeled signs and advertising devices located outside any building shall be prohibited.

V. Landscaping and Park/Open Space Standards

A. Landscaping

1. Landscaping – Trees

a. STREET TREES

- (1) MAJOR STREETS shall have STREET TREES planted along the PARKWAY with a spacing of no greater than one hundred (100) feet on center measured per BLOCK face or on a project by project basis, whichever is the smaller lineal dimension.
- (2) MINOR and LOCAL STREETS shall have STREET TREES planted along the PARKWAY with a spacing of no greater than seventy-five (75) feet on center measured per BLOCK face or on a project by project basis, whichever is the smaller lineal dimension.
- (3) For on-street parking spaces where bump-outs are utilized for parallel parking, one (1) STREET TREE shall be planted in each bump-out.
- (4) STREET TREES shall be at least three (3) caliper inches in diameter measured twelve (12) inches above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting.

b. VILLAGE URBAN CENTER TREES

- (1) Where the primary structure is located within twenty (20) feet of the front property line, the VILLAGE URBAN CENTER use shall be only responsible for planting STREET TREES in accordance with standards for STREET TREES on MAJOR STREETS.
- (2) Where the primary structure is located greater than twenty (20) feet from the front property line, the following tree planting shall be required:
 - (a) One tree at least three (3) caliper inches in diameter measured twelve (12) inches above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting for each fifty (50) feet of linear STREET FRONTAGE, which trees shall be planted within fifteen (15) feet of the front property line.
 - (b) Trees may be planted in groups with appropriate spacing for species.
 - (c) The trees required by this Subparagraph b. shall be in addition to the required STREET TREES.

c. SINGLE-FAMILY RESIDENTIAL TREES

- (1) General
 - (a) Required FRONT YARD TREES shall be in addition to the required STREET TREES
 - (b) Required FRONT YARD TREES shall be at least three (3) inches in diameter measured twelve (12) inches above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting.
- (2) Required FRONT YARD TREES
 - (a) Lots having building setbacks of ten (10) feet or less no FRONT YARD TREES shall be required.
 - (b) Lots having building setbacks of greater than ten (10) feet one (1) FRONT YARD TREES shall be required.

2. Landscaping – Yards

a. VILLAGE URBAN CENTER Yards

- (1) Required Landscaping shall be approved as a part of DETAILED SITE PLAN approval.

b. SINGLE-FAMILY RESIDENTIAL LOTS Yards

- (1) For lots widths of forty (40) feet or greater, no fewer than four (4) five (5) gallon shrubs and twelve (12) one (1) gallon shrubs shall be planted.
- (2) For lots widths twenty-five (25) feet and less than forty (40) feet, no fewer than three (3) five (5) gallon shrubs and eight (8) one (1) gallon shrubs shall be planted.
- (3) For lots widths less than twenty-five (25) feet, no fewer than two (2) five (5) gallon shrubs and six (6) one (1) gallon shrubs shall be planted.
- (4) SINGLE-FAMILY RESIDENTIAL lots shall have full sod installed within any portion of the front yard and side yard abutting a STREET not covered by walkways, driveways, trees, shrubbery, ground cover or planting beds, or other approved landscape materials.
- (5) Decorative rocks shall be permitted in limited amounts and within areas between structures where plant material is difficult to maintain.

3. Landscaping – Parking Lots

- a. Five (5) linear feet of landscaped evergreen screening and/or masonry wall at a height of three (3) feet shall be planted between the STREET right-of-way and the parking area in all parking areas within a parking lot abutting a STREET.
- b. The following interior landscaping shall be planted in off-street, surface parking that contains twenty (20) or more parking spaces:
 - (1) Twenty (20) square feet of landscaping for each parking space shall be installed within the paved boundaries of the parking area.
 - (2) Landscaped islands shall be located at the ends of all parking rows and one (1) landscaped island for each twenty (20) parking spaces in a parking row shall be located on the interior of each parking row. The location the landscape islands within parking areas shall be approved as part of the DETAILED SITE PLAN
 - (3) No fewer than one (1) tree, three-inch (3) caliper inch minimum as measured twelve (12) inches above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting shall be planted in each parking lot landscaped island.
 - (4) Landscaped islands shall be not less than six (6) feet wide, not less than ninety percent (90%) of the abutting parking space in length, and planted with approved ground cover.
 - (5) Landscaped areas shall be protected by a raised six (6) inch concrete curb with pavement placed no closer than three (3) feet from the trunk of a tree if no CITY-approved root barrier has been installed.

4. Landscaping – Fences/Walls

- a. Fences/Walls – General
 - (1) Metal fencing shall be ornamental metal, tubular steel or similar material with a consistent design and finished in black.
 - (2) MASONRY walls shall be constructed with MASONRY materials compatible with adjacent buildings.
 - (3) Wood fencing adjacent to STREETS shall be board-on-board with capping, pre-stained cedar, with steel posts.
 - (4) Fences and walls exceeding eight (8) feet in height are prohibited except to screen service areas of VILLAGE URBAN CENTER.
 - (5) Fence and wall materials and location shall be approved as part of the DETAILED SITE PLAN.
- b. Fencing/Walls – MAJOR STREETS
 - (1) WOOD fencing along MAJOR and MINOR STREETS is prohibited.
 - (2) MASONRY walls exceeding two (2) feet in height shall be designed with footings approved by a structural engineer or other appropriately licensed professional.
- c. Fences/Walls – RESIDENTIAL

- (1) No fence or wall shall be permitted within front yards except on corner lots, wherein approved ornamental metal fences, not exceeding five (5) feet in height, may be installed within the front yard not serving as the main entry point to the dwelling (i.e. the side yard along the STREET).
- (2) On RESIDENTIAL lots abutting or facing a PARK/OPEN SPACE, only ornamental metal fencing shall be used on the side of the lot facing the PARK/OPEN SPACE unless another material approved as part of the DETAILED SITE PLAN.
- (3) Fences and walls consisting of materials or placed in locations not otherwise authorized by this Subparagraph may be approved as part of the approved DETAILED SITE PLAN.

5. Landscaping – Irrigation

Permanent automatic irrigation systems shall be designed, installed, and operated for all required landscaping.

6. Landscaping – Completion

- a. No certificate of occupancy for any building on any lot may be issued until all required irrigation systems, trees and other plant materials have been installed and/or planted on the lot.
- b. Due to on-going drought conditions, the CITY may authorize delaying planting of new landscape materials, in which case, a certificate of occupancy may be issued.
- c. In the event of such authorized delay, all landscape materials shall be planted not later than the date provided in the authorization. Failure to install all landscaping by the date set forth in the delay authorization shall be a violation of this Ordinance.

B. Park/Open Space

1. PARK/OPEN SPACE

- a. VILLAGE URBAN CENTER
 - (1) VILLAGE URBAN CENTER uses, other than MID-RISE RESIDENTIAL, shall not be required to set aside a percentage of lot area for PARK/OPEN SPACE.
 - (2) MID-RISE RESIDENTIAL shall allocate not less than ten percent (10%) of the lot area to PARK/OPEN SPACE.
 - (a) Landscaped parking areas, walkways, yards and entries shall be considered PARK/OPEN SPACE.
 - (b) Areas designated as PARK/OPEN SPACE shall be shown on the approved DETAILED SITE PLAN.
- b. VILLAGE RESIDENTIAL
 - (1) Areas designated as PARK/OPEN SPACE shall be shown on all approved DETAILED SITE PLANS.
 - (2) PARK/OPEN SPACE shall be maintained by either a property or homeowners association or by the CITY if designated public PARK/OPEN SPACE.

2. PEDESTRIAN PATHWAYS

- c. PEDESTRIAN PATHWAYS shall be a minimum of six (6) feet in width on MAJOR and MINOR STREETS and five (5) feet on LOCAL STREETS.
- d. PEDESTRIAN PATHWAYS shall be installed at all required locations on a lot prior to issuance of a certificate of occupancy of the first building constructed on the lot or, if the issuance of a certificate of occupancy is required, the commencement of the provision of utilities to any building on the lot.

VI. Definitions

A. Purpose

The words and phrases as used in this ORDINANCE shall have the following meanings unless the context of such use clearly indicates otherwise. Words and phrases not defined within the Definitions, but which are defined in the City of Sherman's Zoning Ordinance shall have the meaning provided such words and phrases in the Zoning Ordinance. Wherever a word or phrases is printed in CAPITAL LETTERS, it is being used as defined herein.

B. Terms Defined

ACCESSORY BUILDING OR STRUCTURE (RESIDENTIAL DISTRICT) – A subordinate building or structure, detached and used for a purpose customarily incidental to the main structure such as a private garage for automobile storage, tool house, lathe or greenhouse as a hobby (no business), home workshop, children's playhouse, storage house, garden shelter or swimming pool, but not involving the conduct of a business.

ACCESSORY USE (see USE).

AFFILIATED RESIDENTIAL USES (see USE).

ALLEY – A public space or drive which affords secondary means of access to abutting property.

AMENITY CENTER – An OPEN SPACE area developed as a recreational center for the use by VILLAGE residents and their guests that may include pools, hot tubs, meeting rooms, workout spaces, bathrooms, playgrounds and similar uses.

AWNING – A cantilevered, projected or suspended cover over the sidewalk portion of the PUBLIC SPACE. This also includes roof-like coverings, usually of canvas or metal and often adjustable, placed over the sidewalk, windows, or doors to provide protection from sun and rain.

BALCONY – An exterior platform attached to the building FAÇADE extending outward from an interior room located above a GROUND STORY.

BLOCK – An area enclosed by streets and occupied by or intended for buildings; or if said word is used as a term of measurement, it shall mean the full length along the street between the intersection of two streets.

BUILDING HEIGHT – For VILLAGE URBAN CENTER uses, BUILDING HEIGHT is measured in STORIES; for SINGLE-FAMILY RESIDENTIAL uses, BUILDING HEIGHT is measured from the existing grade to the midpoint of a gabled roof line or the top of the PARAPET or mansard roof.

BUILDING OFFICIAL – The official appointed to enforce the ZONING ORDINANCE.

CANOPY – An architectural projection of canvas or similar material that provides weather protection over an area and is supported by the building to which it is attached and at the outer end by not less than two posts.

CITY – City of Sherman, Texas.

CIVIC BUILDING – Publicly- or privately-owned buildings that are open to the public for non-COMMERCIAL purposes.

COMMERCIAL INDOOR AMUSEMENT (see USE).

COMMERCIAL USE (see USE).

CONCEPTUAL PLAN – Proposed land uses as shown on the CONCEPTUAL PLAN.

DETAILED SITE PLAN – A site plan approved by the City of Sherman.

DEVELOPMENT DISTRICTS

VILLAGE URBAN CENTER – Land designated on the DEVELOPMENT DISTRICT MAP as VILLAGE URBAN CENTER intended for more flexible development standards allowing for VILLAGE URBAN CENTER uses ranging from single lot projects such as big-box stores and hotels to larger-scale shopping centers and business centers as well as MID-

RISE RESIDENTIAL uses.

VILLAGE RESIDENTIAL DISTRICT – Land designated on the DEVELOPMENT DISTRICT MAP as RESIDENTIAL intended for a mix of DETACHED and ATTACHED RESIDENTIAL.

DORMER – Small, roofed ancillary structures with windows providing light and air to habitable space within the roof.

EXTERIOR INSULATION AND FINISH SYSTEM or “EIFS” - a no-load bearing, exterior wall cladding system that consists of an insulation board attached either adhesively or mechanically, or both, to the substrate; an integrally reinforced base coat; and a textured protective finish coat.

FAÇADE – Exterior building face.

FENESTRATION – Openings in the building wall allowing light and views between interior and exterior measured as glass area.

FRONT SETBACK LINE – The line at which the building FAÇADE shall be located adjacent to or behind.

FRONT YARD TREE (see TREE, FRONT YARD).

HEIGHT (see BUILDING HEIGHT)

HOTEL, FULL SERVICE – An establishment offering temporary lodging facilities consisting of regular rooms or suites suitable for short-term stays with one or more restaurants and lounges, food and beverage catering, conference meeting rooms, recreational amenities, and STRUCTURED PARKING.

HOTEL, LIMITED SERVICE – An establishment offering temporary lodging facilities consisting of regular rooms or suites suitable for short-term stays that may offer a business center, pool/whirlpool, workout room, a meeting room and a lobby marketplace for snacks and beverages; the establishment may offer restaurant services geared to primarily hotel guests.

LOT, CORNER – A lot that is bounded by intersecting STREETS.

LOT COVERAGE – The percentage of the total area of a lot occupied by the base (first story or floor) of buildings located on the lot or the area determined as the maximum cross-sectional area of the building; eaves, drives, uncovered patios/porches, sidewalk, and similar improvements are excluded from LOT COVERAGE computations.

LOT LINE – The lines bounding a lot.

LOT WIDTH – The width of the lot as measured at the FRONT SETBACK LINE.

MAJOR STREET (see STREET, MAJOR).

MASONRY/STONE – Defined as construction material three (3) inches or thicker composed of natural stone, kiln fired clay brick, decorative concrete block or other masonry material approved by the CITY’S BUILDING OFFICIAL.

MINOR STREET (see STREET, MINOR).

OFFICE BUILDING – A building used to house OFFICE USES.

PARAPET – A low wall projecting from the edge of a platform, terrace, or roof.

PARAPET HEIGHT – Where used to limit building height, PARAPET HEIGHT is the distance measured at the top of the parapet, including any coping.

PARK (see OPEN SPACE).

PARK/OPEN SPACE – Land and water designed for active and/or passive recreational enjoyment, but also including small vegetative spaces, flood plains, AMENITY CENTERS, development entries, PEDESTRIAN PATHWAYS; areas located within a SINGLE-FAMILY RESIDENTIAL LOT or within a public right-of-way shall not be considered PARK/OPEN SPACE.

PARKWAY – An area located immediately between the street curb and sidewalk in which STREET TREES and street lights and other such infrastructure are placed.

PEDESTRIAN PATHWAY – A paved walkway/sidewalk that provides pedestrian access throughout a community to VILLAGE URBAN CENTER and RESIDENTIAL uses; PEDESTRIAN PATHWAYS are not considered appropriate for bicycle use.

PLANNING AND ZONING COMMISSION – The Planning and Zoning Commission of the City of Sherman, Texas.

PUBLIC SPACE – The public domain commonly referred to as the public STREETS, ALLEYS and rights-of-way but can include travel lanes, PARKWAYS, PEDESTRIAN PATHWAY, and PARK/OPEN SPACE.

REAR LOT LINES – Lot lines located at the rear of the property and often abutting ALLEYS.

RETAIL (see USE).

RESIDENTIAL (see USE)

SCHOOL, PRIMARY OR SECONDARY – A school operated by an independent school district, religious entity or private corporation providing a kindergarten, elementary and/or secondary curriculum.

SCHOOL, COLLEGE OR UNIVERSITY – An academic institution of higher learning, accredited or recognized by the State and offering a program or series of programs of academic study.

SENIOR/ASSISTED LIVING FACILITY – A residential living facility for older adults that may include independent living arrangements designed exclusively for seniors, generally those 55 years or older, to live independently within an apartment-style facility or freestanding home; it may also include, as an ACCESSORY USE, living facilities that offer a larger range of services for residents as their level of care expands, as long as the resident does not need skilled 24-hour nursing care.

SKILLED NURSING HOME FACILITY – State-licensed long-term care residential living facility offering 24-hour medical care provided by registered nurses, licensed practical nurses and/or certified nurse assistants for residents who are totally dependent on nursing care or short-term rehabilitation between hospital and home.

STORY – That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

STORY, GROUND – The first level of a building at or above grade.

STREET – A public thoroughfare used for vehicular traffic usually within dedicated right-of-way; this definition does not include ALLEYS, CITY fire lanes, driveways, or access aisles or easements.

STREET LIGHT – A luminaire installed on both sides of a STREET within the public right-of-way.

STREET, MAJOR – A STREET having four or more travel lanes with rights-of-way greater than seventy (70) feet.

STREET, MINOR – A STREET having three or less travel lanes with rights-of-way exceeding sixty (60) feet but not exceeding seventy (70) feet.

STREET, LOCAL – A STREET having two travel lanes with rights-of-way sixty (60) feet or less.

STREET FRONTAGE – That portion of the lot or building that is coincident with the FRONT SETBACK LINE.

STREET TREE (see TREE, STREET).

STUCCO/PLASTER – Stucco/Plaster material shall only be considered as meeting the masonry requirement when applied using a 3-step process over diamond metal lath mesh to a 7/8-inch thickness or by other processes producing comparable cement stucco finish with equal or greater strength, durability, and fire resistive specifications.

TREE, STREET – A tree planted in the PARKWAY.

TREE, FRONT YARD – A tree planted in a front yard area.

USES

ACCESSORY USE – A use of land or building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use; within a RESIDENTIAL DISTRICT this may include a pool, children's play equipment, gazebo, picnic table, etc.

AFFILIATED RESIDENTIAL USE – A use intended for the residents and their guests of a RESIDENTIAL use that includes a leasing office, fitness center, game room, laundry, pool, amenity center and other residential-related services and uses.

BUSINESS SERVICE USE – Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, including but not limited to advertising and mailing; building maintenance; employment service; management and consulting services; equipment rental and leasing (does not include outside storage or heavy construction equipment); commercial research; development and testing; photo finishing; and supplies services.

CIVIC USE – Community uses including the following: meeting halls; libraries; schools (kindergarten through college); police and fire stations; post offices (retail operations only, no primary distribution facilities); places of worship; museums; cultural, visual and performing art centers; transit centers; government functions open to the public; and, other similar uses.

COMMERCIAL INDOOR AMUSEMENT USE – Commercial establishments wholly contained within a building that provide amusement, entertainment or games of skill for a fee or admission charge including, but not limited to, billiards, bowling, video or game arcades, movie theaters, and skating rinks.

COMMERCIAL USE – Includes BUSINESS SERVICES, OFFICES, PERSONAL SERVICES, RETAIL SERVICES, RETAIL SPECIALTY USES, RETAIL TRADE USES, STUDIO USES, and RECREATIONAL LAGOON.

PERSONAL SERVICE USE – Establishments primarily engaged in providing services involving the care of a person or his or her apparel, including laundry, cleaning and garment services, garment pressing, coin operated laundries, beauty shops, barber shops, shoe repair, reducing salons and health clubs, clothing rental, doctors, dentists, chiropractors, veterinarians, etc.

OFFICE USE – Includes, but are not limited to lawyers, engineers, architects, landscape architects, accountants, insurance agencies, economic consultants, general business offices, or other similar professions.

RECREATIONAL LAGOON – A large, artificially-created recreational water body for swimming and other water-related activities (can be a COMMERCIAL or CIVIC use).

RESIDENTIAL USE – A range of housing uses that encompass SINGLE-FAMILY and MID-RISE uses, and SENIOR/ASSISTED and/or SKILLED NURSING HOME FACILITIES.

RESIDENTIAL, SINGLE-FAMILY ATTACHED – A SINGLE-FAMILY RESIDENTIAL use constructed in a group of two (2) or more attached units separated by property lines in which each unit extends from foundation to roof.

RESIDENTIAL, SINGLE-FAMILY DETACHED – A free-standing, SINGLE-FAMILY RESIDENTIAL use occupying a single lot not sharing any walls in common with adjacent SINGLE-FAMILY RESIDENTIAL use.

RESIDENTIAL, MID-RISE – A multi-storied residential building containing multiple separate housing units above one another for residential purposes within one building or complex, commonly referred to as “apartments;” this definition does not include a HOTEL or any short-term stay facility (stays of less than six months) but may include ground-floor commercial.

RESIDENTIAL, SINGLE-FAMILY – A residential dwelling occupied by persons living as a single household unit; this definition includes DETACHED and ATTACHED residential uses but does not include MID-RISE RESIDENTIAL.

RETAIL SERVICE USE – Establishments providing services, as opposed to products, to the general public, including restaurants, LIMITED and FULL SERVICE HOTELS, finance, real estate and insurance, travel agencies, health and educational services, and galleries.

RETAIL SPECIALTY USE – Include, but are not limited to the sale of gifts, antiques, flowers, books, jewelry, wearing apparel or craft shops making articles exclusively for sale at retail on the premises. Establishments selling used goods or merchandise and retail store sales consisting primarily of specialty and novelty items as defined by City of Sherman Resolution No. 77-028 are specifically excluded.

RETAIL TRADE USE – Establishments engaged in selling new goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. Establishments primarily engaged in the selling of used goods or merchandise are specifically excluded.

STUDIO USE – Includes, but is not limited to dance, art, music, photography, radio or television and specifically excluding any type of sexually oriented business.

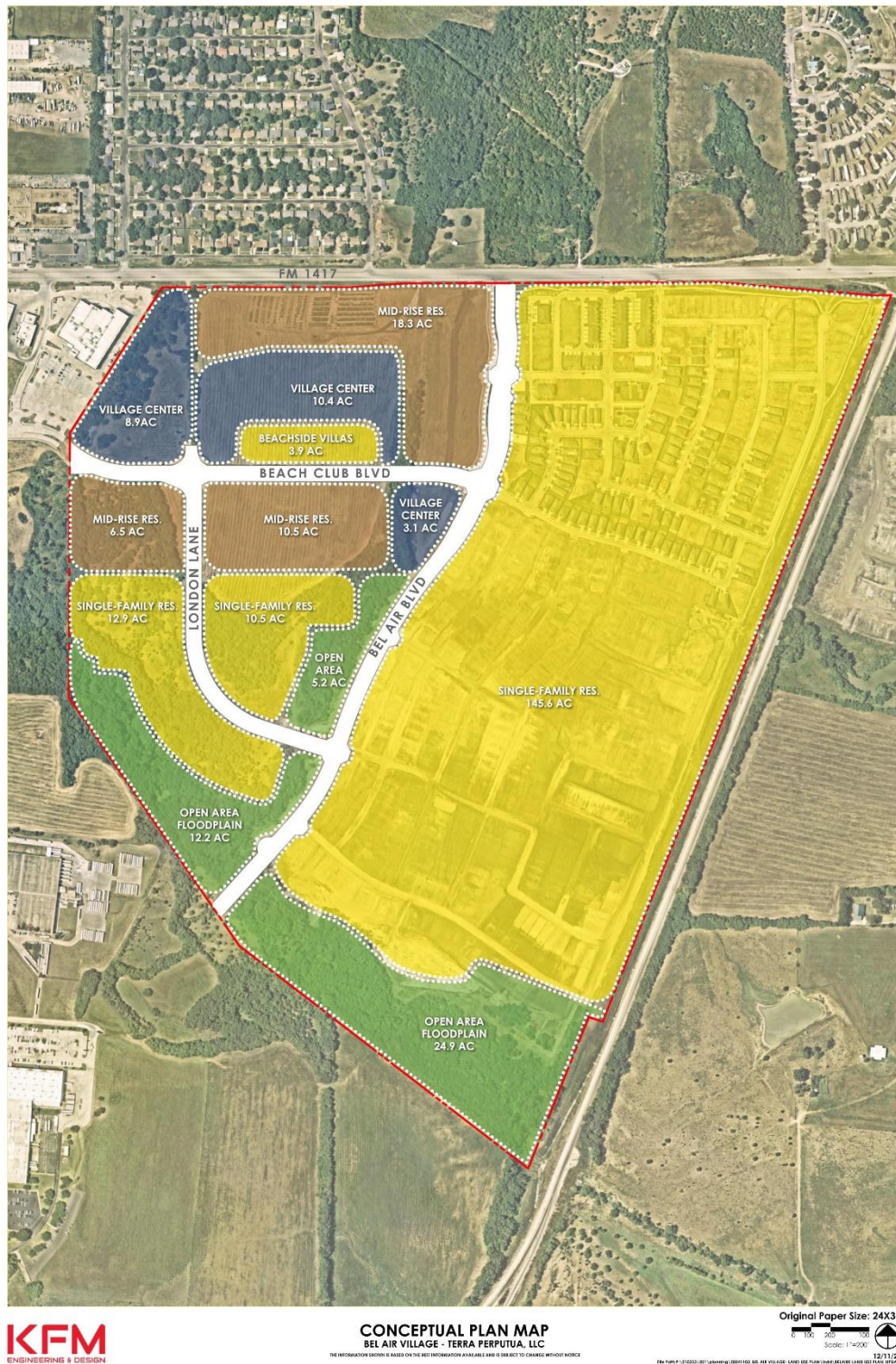
VILLAGE URBAN CENTER USE – Any use that is defined herein as a MID-RISE RESIDENTIAL, BUSINESS SERVICE, OFFICE, PERSONAL SERVICE, RETAIL SERVICE, RETAIL SPECIALTY, RETAIL TRADE, and STUDIO uses but specifically excluding any uses prohibited by this ORDINANCE.

VILLAGE URBAN CENTER USE (see USE).

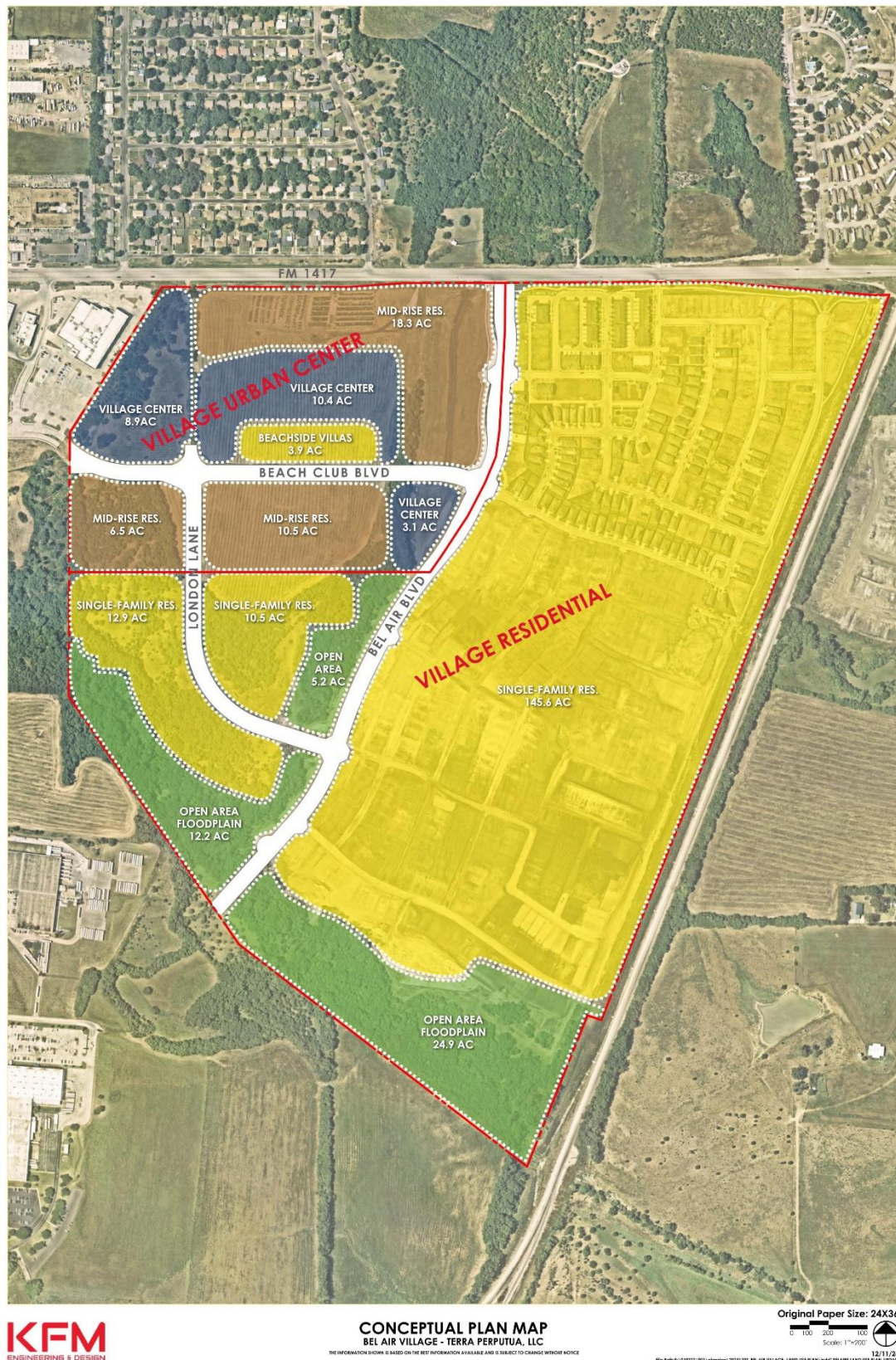
ZONING ORDINANCE – The Zoning Ordinance of the City of Sherman, as amended from time to time, including any future codifications.

VII. Appendices

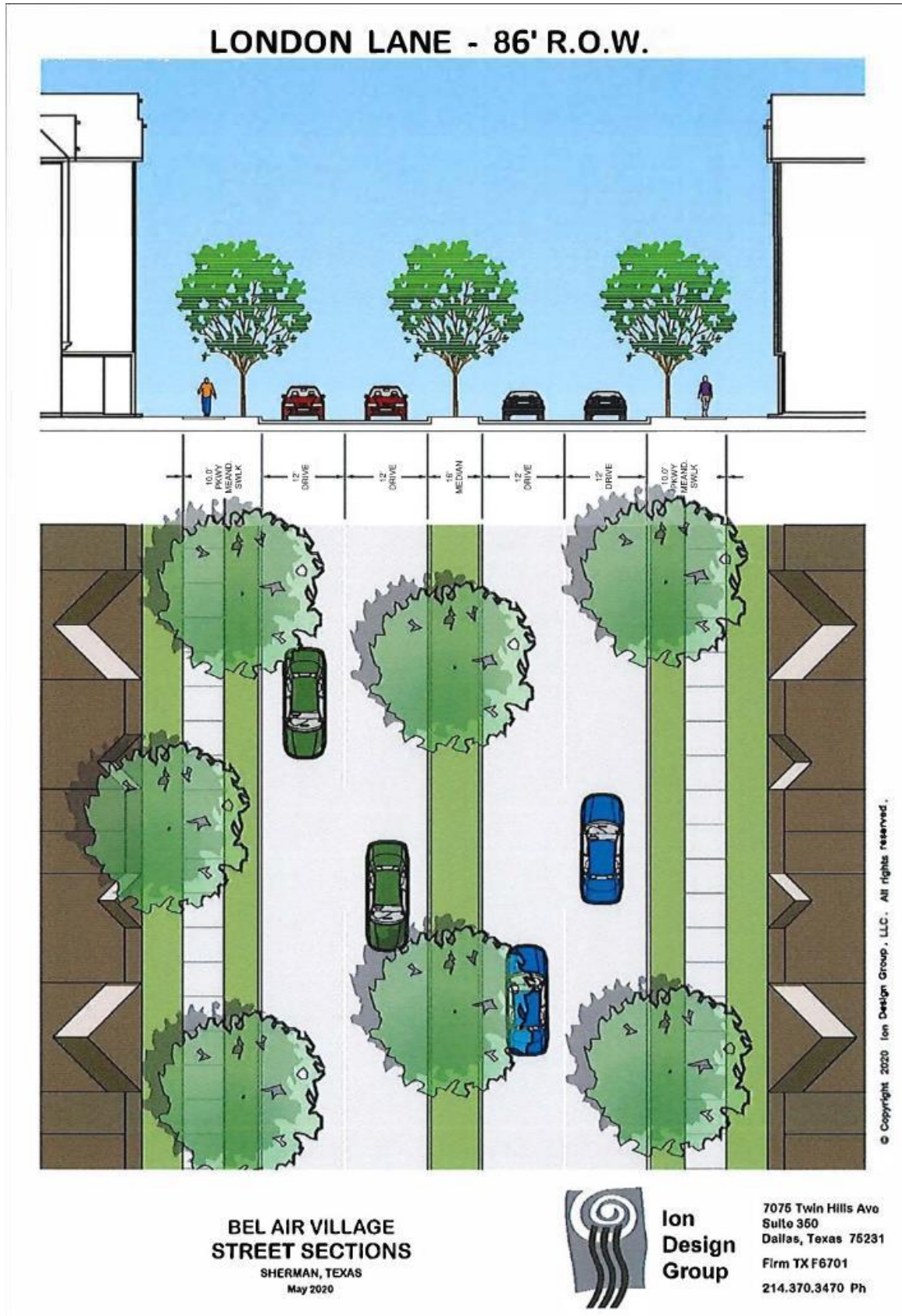
A. Appendix – Conceptual Plan Map



B. Appendix – Development Districts Map

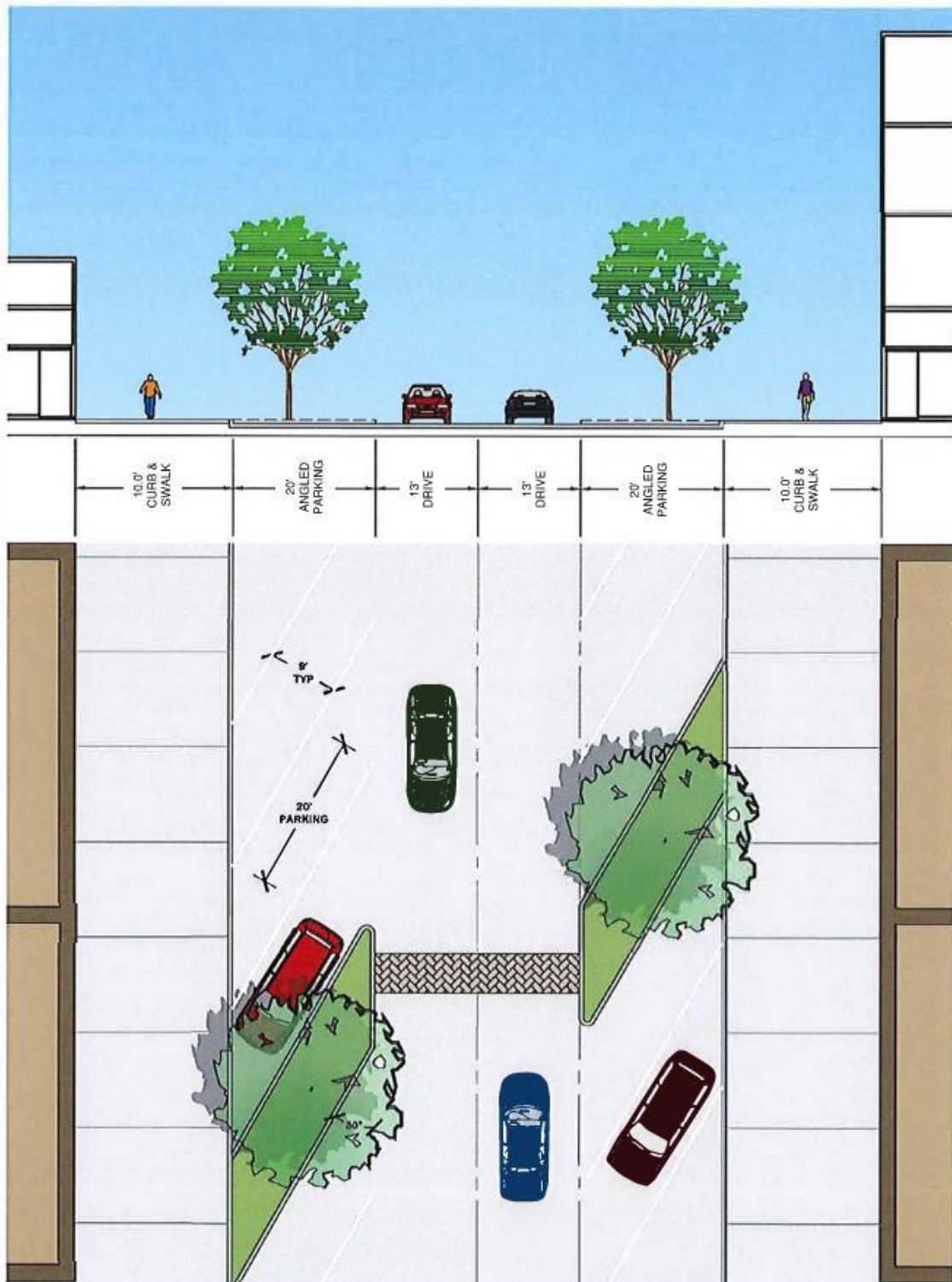


C. Appendix – Street Cross Sections



NOTE: Building setbacks from ROW line vary, see **Building Lot Dimensional Standards Table** for minimum setbacks.

BEACH CLUB BOULEVARD - 86' R.O.W.



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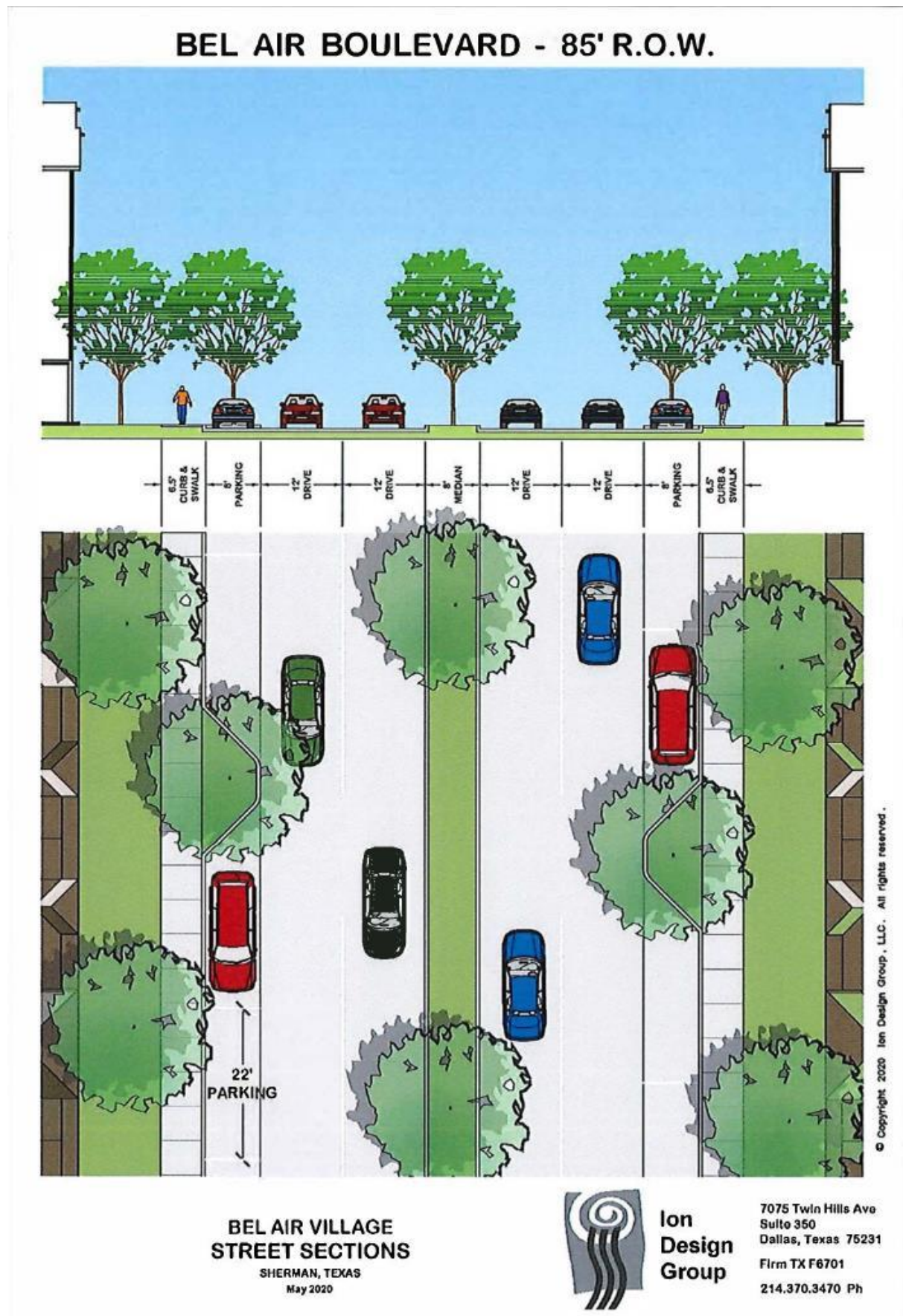
**BEL AIR VILLAGE
STREET SECTIONS**
SHERMAN, TEXAS
May 2020



**Ion
Design
Group**

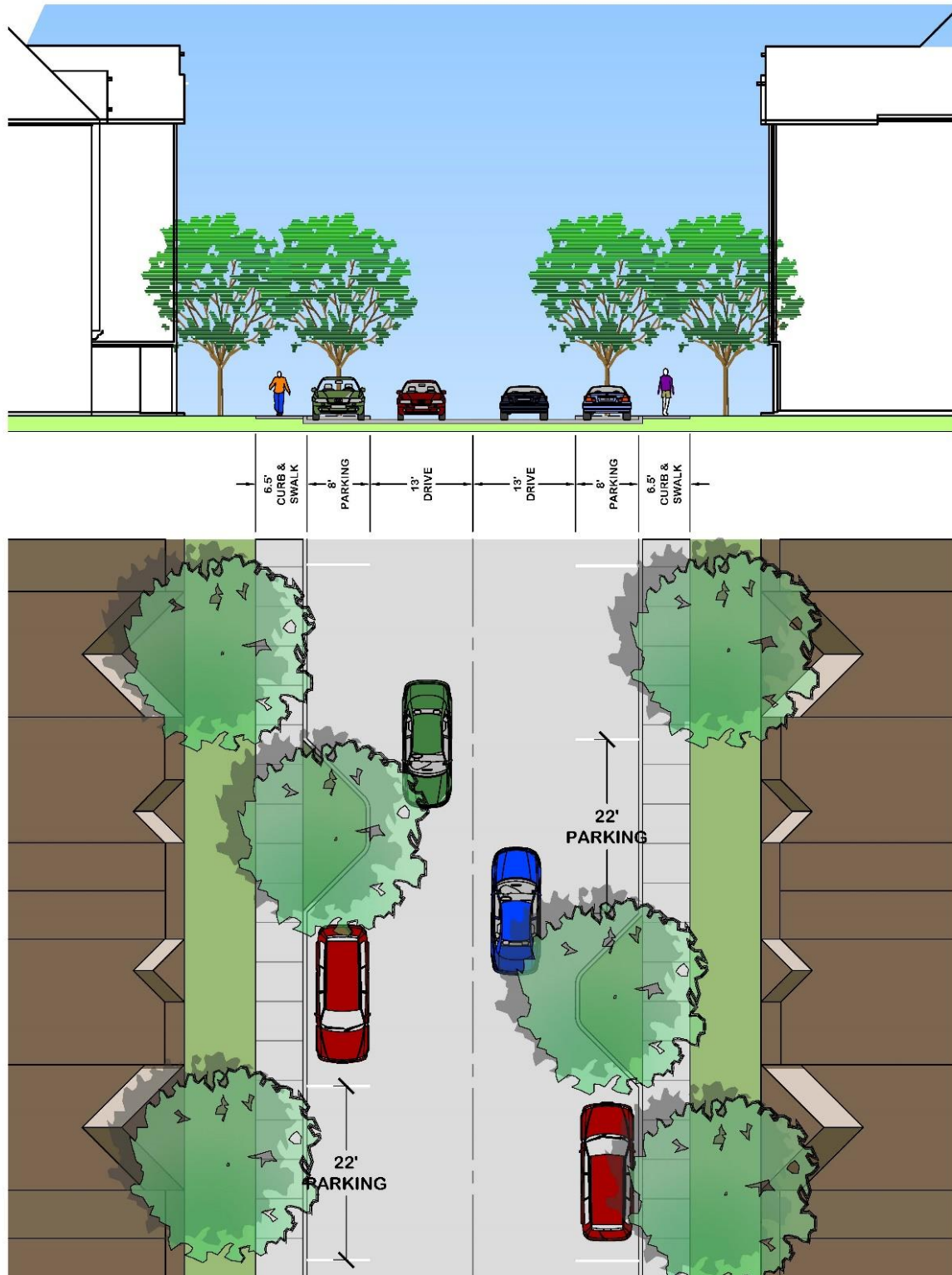
7075 Twin Hills Ave
Suite 350
Dallas, Texas 75231
Firm TX F6701
214.370.3470 Ph

NOTE: Building setbacks from ROW line vary, see **Building Lot Dimensional Standards Table** for minimum setbacks.



NOTE: Building setbacks from ROW line vary, see **Building Lot Dimensional Standards Table** for minimum setbacks.

VILLAGE RESIDENTIAL - 55' R.O.W.



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**BEL AIR VILLAGE
STREET SECTIONS**
SHERMAN, TEXAS
May 2020

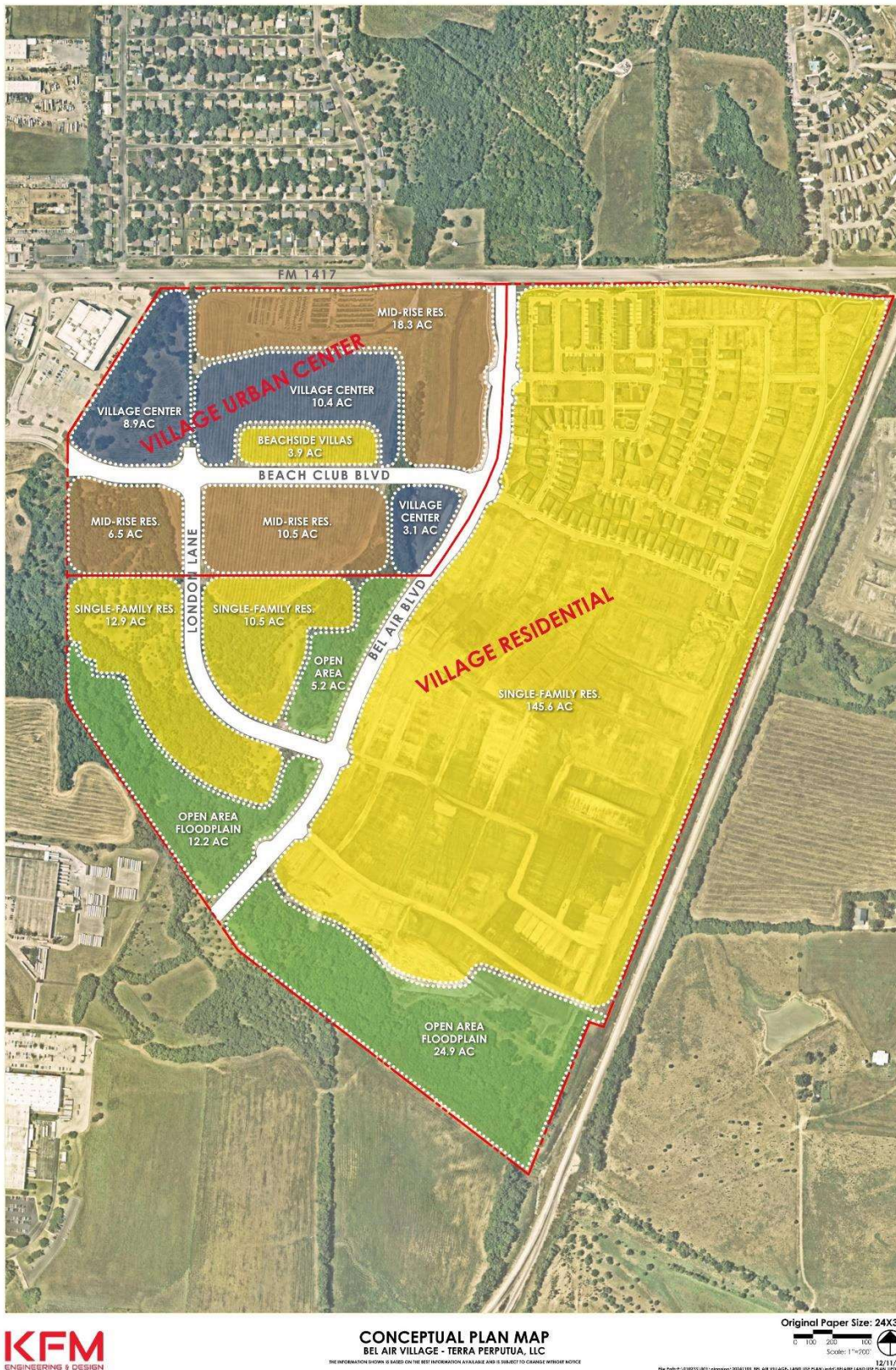


**Ion
Design
Group**

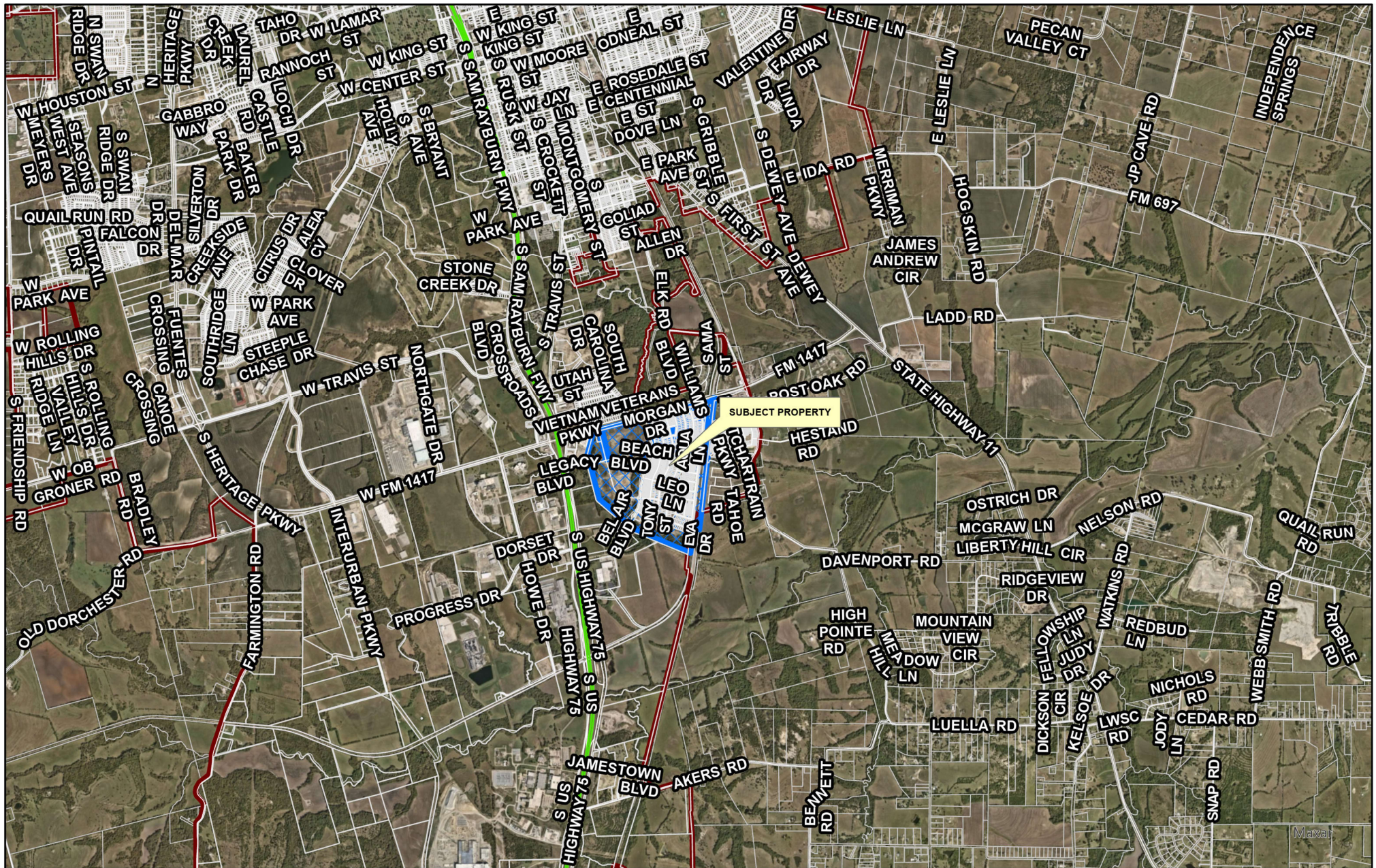
7075 Twin Hills Ave
Suite 350
Dallas, Texas 75231
Firm TX F6701
214.370.3470 Ph

NOTE: Building setbacks from ROW line vary, see **Building Lot Dimensional Standards Table** for minimum setbacks.

B. Appendix – Development Districts Map



diagrame H:\PLANNING\Public Notification KT.aprx

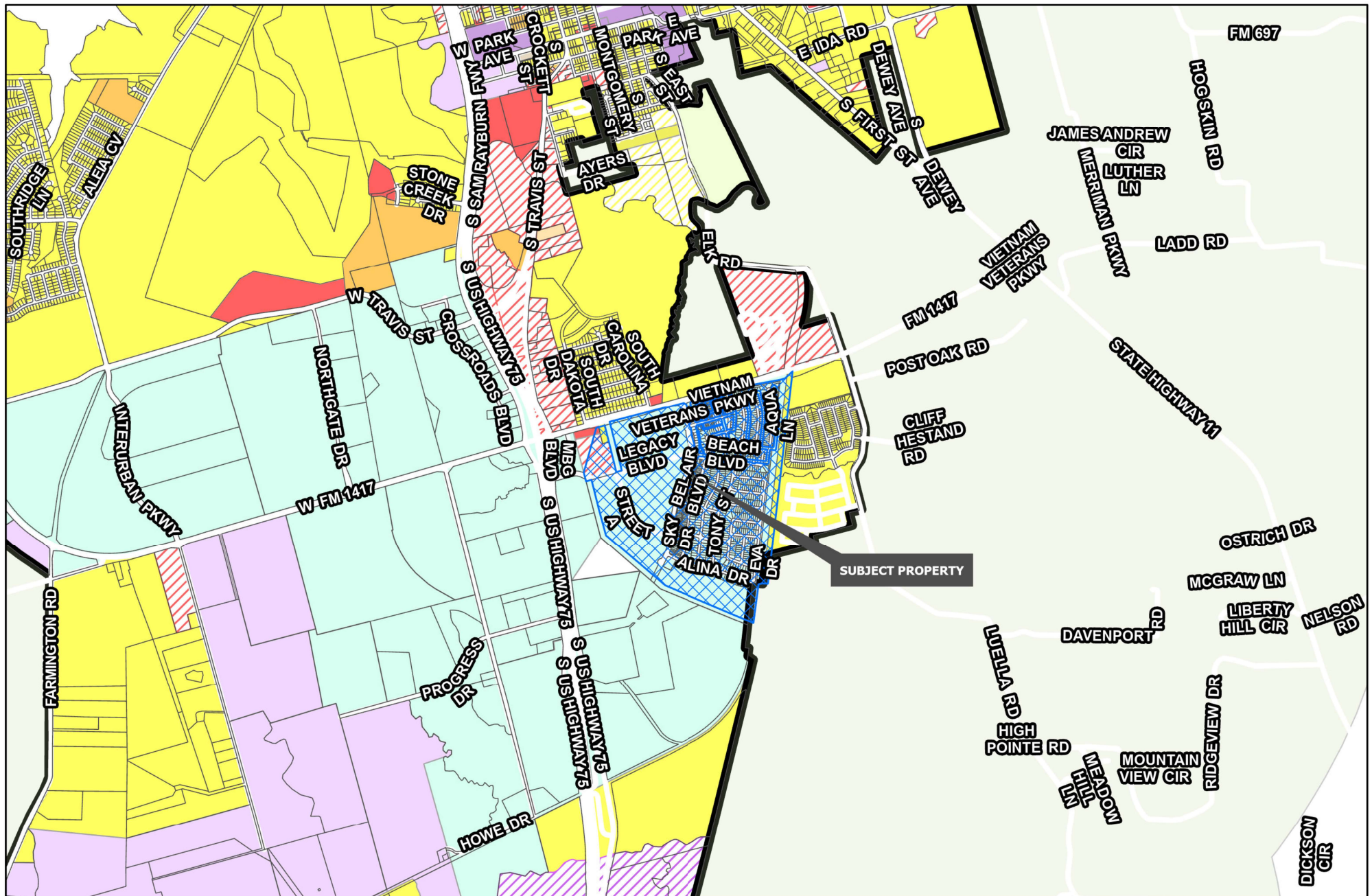


City of Sherman, Texas
Development Services Department

CITY OF SHERMAN
LOCATION MAP
300-1000 BLK E FM 1417
(VIETNAM VETERANS PKWY)



Date: 12/31/2024 8:21 AM



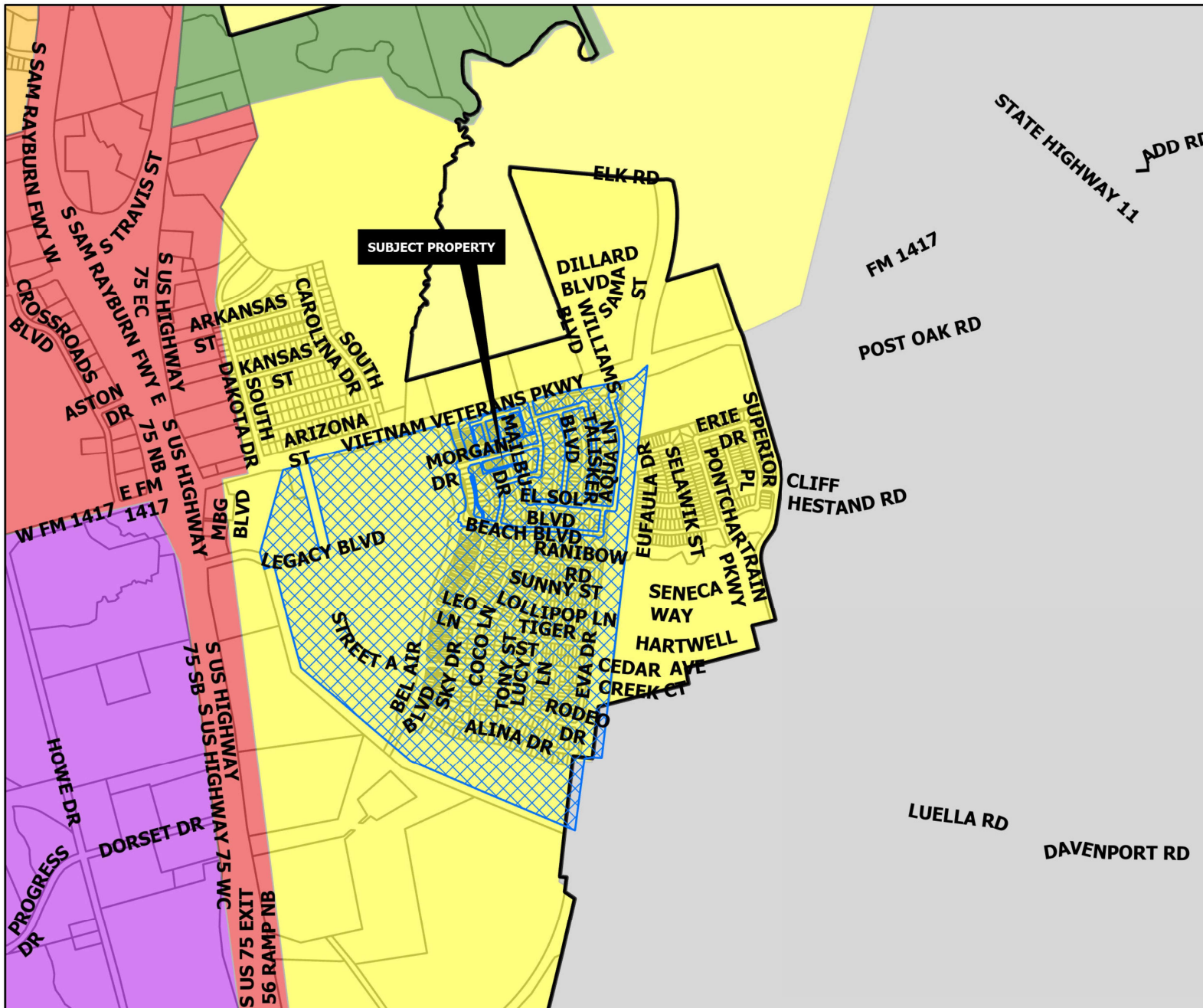
Sherman
CLASSIC TOWN. BROAD HORIZON.

Development Services
Department

R-A Residential Agricultural	MF-15 Multi-Family Residential	M-1.5 Medium Manufacturing
R-E Estate Residential	MF-30 Multi-Family Residential	M-2 Heavy Manufacturing
R-12 Single Family Residential	MH Manufactured Housing	PD Planned Development
R-6 Single Family Residential	C-N Neighborhood Commercial	Road Names All
R-5 Single Family Residential	C-O Office	Planning & Zoning
R-4 Patio Home Residential	C-1 Retail Business	
R-2F Duplex Residential	C-2 General Commercial	
R-TH Townhome Residential	M-1 Light Manufacturing	

CITY OF SHERMAN
ZONING MAP
300-1000 BLK E FM 1417
(VIETNAM VETERANS PKWY)





SUBURBAN NEIGHBORHOOD

Intent & Character

The Suburban Neighborhood category is intended to allow primarily single-family detached in a "complete neighborhood" setting. New subdivisions should include a mix of housing products and lot sizes. Areas of supporting local commercial should be integrated into the neighborhoods, primarily along major streets near the entrance of neighborhoods. Community amenities such as parks, trails, open spaces, and civic uses should also be included in the creation of new subdivisions. This category gives flexibility for the creation of master-planned neighborhoods that are compatible with the surrounding area.

Appropriate Land Use Types

- Single-family detached (primary land use type)
- Single-family attached (duplexes and townhomes)
- Local/neighborhood commercial and office
- Parks and open space
- Schools and civic uses

Compatible Zoning Districts

- Estate Residential
- Single-Family Residential (R-12, R-6, R-5, and R-4)
- Multi-Family Residential (MF-15 and MF-30)
- Manufactured Housing
- Neighborhood Commercial
- Planned Development

Considerations

- Street connections to existing and future developments.
- Smaller lots and denser development can serve as a transition from the local commercial areas.



Development Services
Department

Agriculture/Rural	Core Neighborhood	Technology Hub
Airport	Downtown	Planning & Zoning
City Parkland	Regional Commercial	
Community Commercial	Suburban Neighborhood	

CITY OF SHERMAN
FUTURE LAND USE MAP
300-1000 BLK E FM 1417
(VIETNAM VETERANS PKWY)



9:38

5G+ 

Today

9:19 AM

...

X





November 25, 2024

City of Sherman
Rob Rae
220 W Mulberry
Sherman, TX 75090

RE: Bel Air Beach Club – Planned Development Submittal: Project Narrative

Mr. Rae,

Bel Air Village is a mixed-use community encompassing approximately 288.3 acres east of Highway 75 and immediately south of FM 1417. The Village offers a mix of commercial, residential, and recreational opportunities. The development will also include land set aside for parks, open space, trails, buffers, or other village amenities. The use and development regulations set forth in the Development Plan provide for and encourage development that contains a compatible mix of residential and village urban center uses in proximity to one another. The addition of approximately 10 acres of land adjacent to the development to the west will allow for additional commercial and mixed-use development adjacent to the spring.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shaw' with a stylized flourish underneath.

Kevin Shaw, P.E.
PROJECT ENGINEER
KFM Engineering & Design
TBPE #: F-20821

ORDINANCE NO. 6410

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING ORDINANCE NOS. 6232 AND 6319, AND AMENDING SECTION 6.12, ORDINANCE NO. 2280, SO AS TO AMEND A PLANNED DEVELOPMENT FOR BEL AIR VILLAGE (ORD. NO. 6319) FORMERLY KNOWN AS TERRA PERPETUA VILLAGE (ORD. NO. 6232) IN THE 300-1000 BLOCKS OF EAST F.M. 1417 (VIETNAM VETERANS PARKWAY), BEING 278.313 ACRES IN THE SHERROD DUNMAN SURVEY, ABSTRACT NO. 329 (TERRA PERPETUA, LLC, OWNERS; AND KIMLEY-HORN & ASSOCIATES, SURVEYOR/CIVIL ENGINEER); PROVIDING THAT THIS PLANNED DEVELOPMENT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; DESCRIBING THE TRACT TO BE REZONED; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

WHEREAS, the City Council finds that it is in the public interest to grant this Planned Development, subject to certain conditions;

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

SECTION 1. Ordinance Nos. 6232 and 6319 are hereby repealed in their entirety and replaced by this Ordinance. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance, at which time Ordinance Nos. 6232 and 6319 shall be repealed. Such repeal shall not abate any pending prosecution or lawsuit or prevent any prosecution or lawsuit from being commenced for any violation of Ordinance Nos. 6232 or 6319 occurring before the effective date of this Ordinance.

SECTION 2. Section 6.12 of Ordinance No. 2280 is hereby amended as follows: The zoning designation of the Property described in Exhibit A, attached hereto, and all streets, roads and alleyways contiguous and/or adjacent thereto is hereby rezoned as Planned Development. The

development plans, standards and uses for the Property shall conform to and comply with the standards, rules and regulations for development and use of land within the Planned Development zoning classification, the additional conditions as set forth and/or depicted in Exhibit B – Development Standards, which is attached hereto and incorporated herein by reference for all purposes.

The Property shall be developed in compliance with the standards set forth herein, in Exhibit B, and all other ordinances, rules and regulations of Sherman, as they currently exist, may be amended or in the future arising. To the extent that any of the exhibits attached hereto are in conflict with the provisions of this Ordinance or one another, the provisions of this Ordinance, then the provisions of Exhibit B shall prevail in that order.

SECTION 3. That this rezoning is granted on the following conditions:

Zoning:

1. All aspects of the Planned Development Ordinance must be followed. (*Chapter 14, Exhibit A, Section 6.2*)
2. A detailed site plan shall be submitted for approval within two (2) years from the approval of the Conceptual Plan for a minimum of 20 percent of the project area. If a Detailed Site Plan is not submitted within two (2) years or no progress toward completion of the project is made in a five-year period, then the previous approval of the Concept Plan and the Development Plan shall expire. Upon expiration, the land within the boundaries of the PD shall automatically revert to the zoning district in place prior to approval of the PD district. The City Council may elect to extend approval periods of a PD with justification as to why the plans should remain in place.

SECTION 4. That this Ordinance shall be entered upon the official zoning map as provided in Section 2, Ordinance No. 2280.

SECTION 5. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 6. That the General Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 8. That it is hereby officially found and determined that the meeting at which this ordinance was introduced and passed was open to the public and that public notice of the time, place and purpose of said meeting was given all as required by law.

SECTION 9. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 7th day of September, 2021.

ADOPTED on this the 7th day of September, 2021.

EFFECTIVE DATE on this the 7th day of September, 2021.

CITY OF SHERMAN, TEXAS

BY:



DAVID PLYLER, MAYOR

ATTEST:

BY:



LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

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

BY:



RYAN D. PITTMAN, CITY ATTORNEY

**EXHIBIT A
FIELD NOTES**

SITUATED in the County of Grayson, State of Texas, being a part of the Sherrod Dunman Survey, Abstract No. 329, and being the same tract of land described as 246.134 acres conveyed by Edward C. Greene, Trustee to Rolling Meadows Associates by deed dated September 28, 1984, recorded in Volume 1716, Page 384, Deed Records, Grayson County, Texas, and a tract of land conveyed to C. T. Maddox and J. W. Maddox, by deed dated April 26th, 1965, recorded in Volume 1029, Page 551 Deed Records Grayson County, Texas being more particularly described by metes and bounds as follows:

BEGINNING at a point for the most Northerly Northwest corner of the said 246.134 acre tract in the South right-of-way line of F. M. Highway No. 1417 from which a ½" steel rod found bears North 15° 22' 34" West a distance of 0.36 feet, said point also being the Northeast corner of the same tract of land described as 0.84 acres conveyed by Richard J. Self and Brieta Self to Eric Popp and Kelly Popp by deed dated March 20, 2010, recorded in Volume 4809, Page 60, Official Public Records, Grayson County, Texas;

THENCE North 75° 03' 39" East with said right-of-way line a distance of 799.69 feet to a concrete monument at an angle point;

THENCE North 71° 14' 48" East continuing with said right-of-way line a distance of 300.67 feet to an angle point at the Southwest base of a concrete monument;

THENCE North 75° 03' 39" East continuing with said right-of-way line a distance of 814.42 feet to the beginning of a curve to the left having a radius of 11,519.16 feet;

THENCE in an Easterly direction continuing with said right-of-way line along said curve, (chord bears North 74° 41' 09" East, 150.78 feet) an arc distance of 150.79 feet to the end of said curve;

THENCE North 74° 18' 39" East continuing with said right-of-way line a distance of 391.99 feet to a point for the most Northerly Northeast corner of the said 246.134 acre tract at the Southwest base of a cross-tie corner post, said point also being the original Northwest corner of the same tract of land described as 32.55 acres conveyed by Frances Maddox to Ruth Ellen Green by deed dated October 8, 2002, recorded in Volume 3331, Page 760, said Official Public Records, also being the Northwest corner of the same tract of land described as 2.00 acres severed from said 32.55 acre tract as conveyed by said Ruth Ellen Green to said Frances Maddox by deed dated October 8, 2002, recorded in Volume 3331, Page 765, said Official Public Records;

THENCE North 74° 18' 25" East a distance of 243.59 feet to a concrete right-of-way marker; Thence North 80° 01' 17" East a distance of 803.99 feet to a ½" steel rod set at an angle point in said right-of-way;

THENCE North 74° 18' 39" East a distance of 95.31 feet to a ½" steel rod set at the intersection of the said right-of-way with the West right-of-way line of the Frisco Railroad;

THENCE South 06° 41' 02" West with said West right-of-way line a distance of 4,025.86 feet to an "L" corner;

THENCE North 83° 18' 58" West a distance of 75.00 feet to an "L" corner;

THENCE South 06° 41' 02" West continuing with said West right-of-way line a distance of 843.85 feet to a ½" steel rod set marking the Southeast corner of the said 246.134 acre tract and the Northeast corner of the same tract of land described as 82.032 acres conveyed by Sherman Development Partnership No. 1 to Sam H. Berry by deed dated October 1, 1993, recorded in Volume 2298, Page 258, Real Property Records, Grayson County, Texas, also being the original Easterly Northeast corner of the same tract of land described as 240.9284 acres conveyed by International Business Machines Corporation to Fisher Controls Company, Inc. by deed dated June 30, 1976, recoded in Volume 1349, Page 493, said Deed Records;

THENCE North 67° 19' 54" West with the Southwesterly line of the said 246.134 acre tract, passing the Northwest corner of the said 82.032 acre tract and continuing for a total distance of 1879.15 feet to a ½" steel rod found at an angle point;

THENCE North 49° 31' 48" West continuing with said Southwesterly line, passing the Northeast corner of Block 1, Lot 1, Blalock Industrial Park, an addition to the City of Sherman as shown by plat of record in Volume 8, Page 92, Plat Records, Grayson County, Texas, also being the Southeast corner of the same tract of land described as 25.264 acres conveyed by said Sherman Development Partnership No. 1 to Liberty Trust Company, Ltd. by deed dated February 7, 2017, recorded in Volume 5948, Page 836, said Official Public Records, and continuing for a total distance of 1553.66 feet to a ½" steel rod found at an angle point;

THENCE North 14° 46' 12" West now with the West line of the said 246.134 acre tract and East line of the said 25.264 acre tract, passing the Northeast corner of the said 25.264 acre tract and the Southeast corner of the same tract of land described as 12.166 acres conveyed by Anthony Aleman to Ramanujam K. Vangipuram and Samrajyam Kolluru by deed dated February 10, 2017, recorded in Volume 5948, Page 638, said Official Public Records, and continuing for a total distance of 1146.71 feet to a ½" steel rod found maintaining the most Westerly Northwest corner of the said 246.134 acre tract and the Southwest corner of the same tract of land described as 13.41 acres conveyed by Garcha Corporation to Sherman Economic Development Corporation by deed dated August 25, 2015, recorded in Volume 5680, Page 685, said official Public Records;

THENCE North 74° 28' 45" East a distance of 642.18 feet to a 1/2" steel rod found maintaining an inside "L" corner to the said 246.134 acre tract and the Southeast corner of the said 13.41 acre tract;

THENCE North 15° 22' 34" West with the Northerly West line of the said 246.134 acre tract a distance of 959.39 feet to the **POINT-OF-BEGINNING AND CONTAINING 278.313 ACRES OF LAND MORE OR LESS.....**

EXHIBIT B

BEL AIR VILLAGE
PLANNED DEVELOPMENT

CITY OF SHERMAN, TEXAS

DESIGN TEAM

ION DESIGN GROUP, LLC

7075 Twin Hills Avenue, Suite 350, Dallas, TX 75231

GFF ARCHITECTS

808 Fairmount St SUITE 300, Dallas, TX 75201

REVISED SEPTEMBER 7, 2021

BEL AIR VILLAGE PLANNED DEVELOPMENT

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I. Components of Bel Air Village Planned Development

A. Introduction

Bel Air Village is a mixed-use community encompassing approximately 278.3 acres east of Highway 75 and immediately south of FM 1417. The Village offers a mix of commercial, residential, and recreational opportunities complemented by almost 14 percent of the land area set aside as parks, open space, trails, buffers, or other village amenities. The use and development regulations set forth in the Development Plan provide for and encourage development that contains a compatible mix of RESIDENTIAL and VILLAGE URBAN CENTER uses in proximity to one another.

Note: Words shown in all CAPITAL LETTERS are defined in VI. Definitions.

B. Village Development Objectives

The Bel Air Village addresses the physical relationship between development and adjacent properties, public streets, neighborhoods, and the natural environment through the following set of development objectives:

- Ensuring buildings relate appropriately to surrounding developments and streets to create cohesive visual identity and attractive street scenes;
- Offering a variety of housing types responsive to current and future residents' desire for a mix of product types based on their demographic and income needs;
- Siting land uses, streets, and pedestrian circulation in a cohesive and complementary layout supportive of the mix of uses and oriented towards the pedestrian realm to enhance and activate streetscapes;
- Applying residential and non-residential architectural FAÇADE elements and finishes;
- Ensuring creation of high quality street and sidewalk environments that are supportive of pedestrian mobility and appropriate to roadway context;
- Creating an enhanced pedestrian realm by the inclusion of wide sidewalks, vegetative avenues and a trail system interconnecting the respective development areas of the village; and,
- Preserving the natural resources of the site to the greatest extent practicable recognizing the value of the floodplain and stream channels as amenities to the development.

C. Key Village Elements

The following enumerates the key elements of the Bel Air Planned Development:

I. Components

A summary of key components covered in the Planned Development, acreages, and overall objectives.

II. Use and Building Envelope Standards

The USE and BUILDING ENVELOPE STANDARDS section establishes basic parameters for permitted and prohibited uses, building siting, lot widths, height, stories, and overall densities.

III. Architectural Standards

The ARCHITECTURAL STANDARDS section governs the VILLAGE URBAN CENTER and VILLAGE RESIDENTIAL DISTRICTS architectural elements and FAÇADE materials, windows, roofs, service areas and other standards.

IV. Lighting, Parking and Signage Standards

The LIGHTING, PARKING and SIGNAGE STANDARDS section establishes the standards for public/private space lighting, provision of adequate parking, and compatible signage.

V. Landscaping and Park/Open Space and Other Recreation Standards

The LANDSCAPING and PARK/OPEN SPACE and OTHER RECREATION STANDARDS section addresses required landscaping and other recreation amenities.

VI. Definitions

The DEFINITIONS section defines terms used within the Bel Air Village Planned Development.

VII. Appendices

The Appendices contain: Appendix A – CONCEPTUAL PLAN MAP; Appendix B – DEVELOPMENT DISTRICT MAP; and Appendix C – STREET CROSS SECTIONS.

D. Conceptual Plan and Development Districts Maps

The Bel Air Village Planned Development includes the CONCEPTUAL PLAN MAP depicting the respective land uses and the DEVELOPMENT DISTRICTS MAP identifying the two regulating districts.

1. Conceptual Plan Map

- a. The CONCEPTUAL PLAN MAP is a depiction of large land use categories that include residential, commercial, open space and major rights-of-way to be developed within the Bel Air Village Planned Development. (See Appendix A – CONCEPTUAL PLAN MAP)
- b. The allocation of land uses and proposed road network may be modified as specific development plans come forward at DETAILED SITE PLAN.
- c. The table below summarizes generalized land use acreages depicted on the CONCEPTUAL PLAN MAP:

Summary Table of Bel Air Village Acreages and Uses

	Acres	%	Units
RESIDENTIAL			
Single-Family Detached & Attached Residential	167.3	60.1	1,900
Mid-Rise Residential & Lagoon Area	51.2	18.4	3,000
COMMERCIAL			
Village Center	4.5	1.6	N/A
OPEN SPACE			
Parks, Open Space, Buffers & Flood Plain Areas	38.6	13.9	N/A
MAJOR RIGHTS-OF-WAY			
Collector Streets (does not include local residential streets)	16.7	6.0	N/A
Total Acres	278.3	100.0%	
<i>Note: Above acreages, units count and percentages are approximate and will be finalized at Site Plan Approval</i>			

2. Development Districts Map

The DEVELOPMENT DISTRICTS MAP consists of two districts, the VILLAGE URBAN CENTER DISTRICT and the VILLAGE RESIDENTIAL DISTRICT. (See Appendix B – DEVELOPMENT DISTRICTS MAP).

- a. VILLAGE URBAN CENTER DISTRICT – land designated for development of COMMERCIAL and MID-RISE RESIDENTIAL uses.
- b. VILLAGE RESIDENTIAL DISTRICT – land designated for development of a mix of DETACHED and ATTACHED SINGLE-FAMILY RESIDENTIAL uses.

II. Use and Building Envelope Standards

A. Village Urban Center District

1. Permitted and Prohibited Uses

- a. Permitted uses
 - (1) VILLAGE URBAN CENTER uses including BUSINESS SERVICE, OFFICE, PERSONAL SERVICE, RETAIL SERVICE, RETAIL SPECIALTY, RETAIL TRADE, STUDIO USES, restaurants, coffee shops, except where requiring a SPECIFIC USE PERMIT or prohibited by this Ordinance or the City of Sherman's Zoning Ordinance.
 - (2) COMMERCIAL INDOOR AMUSEMENT
 - (3) HOTEL, FULL-SERVICE or LIMITED-SERVICE
 - (4) MID-RISE RESIDENTIAL
 - (5) SENIOR/ASSISTED LIVING FACILITY
 - (6) SCHOOL, PRIMARY OR SECONDARY
 - (7) SKILLED NURSING HOME FACILITY
 - (8) RECREATIONAL LAGOON
- b. Permitted ACCESSORY USES
 - (1) AFFILIATED RESIDENTIAL USES
 - (2) AMENITY CENTER
 - (3) Home Occupations
 - (4) PARK/OPEN SPACE
 - (5) Special events
 - (6) STRUCTURED PARKING
- c. Uses permitted upon review and approval of a SPECIFIC USE PERMIT
 - (1) Alcoholic beverage sales and for any qualified restaurants serving alcoholic beverages on site
 - (2) CIVIC BUILDING
 - (3) Telephonic, radio, television or microwave, communication antennas and tower
- d. Prohibited uses
 - (1) Check cashing businesses, payday advance/loan businesses, car or motor vehicle title loan businesses, or credit access businesses as defined by applicable provisions of Texas Finance Code.
 - (2) Gas wells
 - (3) Industrial, manufacturing, and warehousing uses
 - (4) Outside storage, unscreened
 - (5) Sexually oriented business
 - (6) Tattoo parlors
 - (7) Vape businesses
 - (8) Vehicle-related sales or repair

2. Building Lot Dimensional Standards

a. Dimensional Table

	Min. Lot Width (ft)	Min. Lot Depth (ft)	Min. Front Yard Setback (ft)	Min. Rear Yard Setback (ft)	Min. Side Yard Setback (ft)	Maximum Units /Ac.	Max. Stories	Max. Building Height (ft)	Max. Lot Coverage (%)
Village Urban Center	N/A	N/A	0	0	0	85	5	75'	80

b. Additional Dimensional Standards

- (1) Permitted lot coverage for uses not listed in the Dimensional Table shall be determined upon approval of a SPECIFIC USE PERMIT or DETAILED SITE PLAN.
- (2) Architectural embellishments not intended for human occupancy that are integral to the architectural style of the buildings, including spires, belfries, towers, cupolas, domes, and roof forms whose area in plain view is no greater than twenty-five percent (25%) of the first floor footprint may exceed the height limits by up to twenty (20) feet.
- (3) Mechanical equipment, including mechanical/elevator equipment enclosures, ventilation equipment, chimneys, exhaust stacks and flues, fire sprinkler tanks, and other similar constructions may extend up to twelve (12) feet above the actual building height, provided that:
 - (a) The equipment is set back from all exterior walls a distance at least equal to the vertical dimension that such item(s) extend(s) above the actual building height; or
 - (b) The exterior wall and roof surfaces of such items that are set back less than the vertical dimension above the actual building shall be constructed as architecturally integral parts of the building FAÇADE(S).

B. Village Residential District

1. Permitted and Prohibited Uses

a. Permitted uses

- (1) SINGLE-FAMILY DETACHED RESIDENTIAL (SFD)
- (2) SINGLE-FAMILY ATTACHED RESIDENTIAL (SFA)

b. Permitted ACCESSORY USES

- (1) ACCESSORY BUILDING or STRUCTURE
- (2) AFFILIATED RESIDENTIAL USES
- (3) AMENITY CENTER
- (4) Home Occupations
- (5) PARK/OPEN SPACE

c. Uses permitted upon review and approval of a SPECIFIC USE PERMIT

- (1) CIVIC BUILDING
- (2) SCHOOL, PRIMARY OR SECONDARY
- (3) SENIOR/ASSISTED LIVING FACILITY and/or SKILLED NURSING HOME FACILITY and any STRUCTURED PARKING
- (4) Special events

d. Prohibited uses

Any use that is not expressly set forth as a permitted use in this Subsection "VILLAGE RESIDENTIAL DISTRICT" or not considered incidental to the primary permitted use.

2. Building Lot Dimensional Standards

a. Dimensional Table

Description	Single-Family Residential Detached	Single-Family Residential Attached
Building Type	Detached	Attached
Minimum Lot Area	4000 square feet	1200 square feet
Maximum Density	12 units per acre	24 units per acre
Minimum Lot Width	40 feet	20 feet
Minimum Lot Depth	90 feet	50 feet
Front Yard Setback (Alley-Loaded)	10 feet	6 feet
Front Yard Setback (Front-Loaded)	10 feet (building); 20 feet (garage door)	N/A
Side Yard Setback		
Interior Lot	5 feet	0 feet (side abutting another unit); 5 feet (side not abutting another unit)
Interior Lot (Zero Lot Line)	1 foot one side, 9 feet other side	N/A
Corner Lot	10 feet	10 feet
Minimum Rear Yard Setback	10 feet	5 feet
Maximum Building Height	2.5 story, 40 feet	3 story, 50 feet

b. Additional Dimensional Standards

- (1) Zero lot line development shall have a five (5) foot maintenance easement within the lot that abuts the 1-foot side of adjacent lot for maintenance.
- (2) SINGLE-FAMILY ATTACHED RESIDENTIAL shall be alley-loaded with overall building length not to exceed two hundred (200) feet and a required building separation of not less than ten (10) feet between buildings.

III. Architectural Standards

A. Architectural Standards – Village Urban Center District

1. Building FAÇADE Materials

- a. Permitted primary building materials (which must cover not less than 85% of the area of the FAÇADE) shall be:
 - (1) MASONRY/STONE
 - (2) STUCCO/PLASTER
 - (3) Hardie-Plank™ equivalent or better siding
 - (4) Other primary building materials shall be required to obtain a SPECIAL EXCEPTION as a part of DETAILED SITE PLAN approval
- b. Accent building materials (no greater than 15% of the area of the FAÇADE) may be:
 - (1) Pre-cast masonry (for trim and cornice elements only)
 - (2) Gypsum reinforced fiber concrete (for trim elements only)
 - (3) Metal (for beams, lintels, trim elements and ornamentation only)
 - (4) Split-faced CMU block (only for piers, foundation walls and chimneys)
 - (5) EIFS

2. Building AWNINGS and CANOPIES

- a. Materials, Illumination and Location
 - (1) AWNINGS and CANOPIES shall be architectural and constructed with fully opaque materials that complement the building to which they are attached; provided, however, no shiny or reflective materials are permitted.
 - (2) AWNINGS and CANOPIES shall not be internally illuminated in a manner that illuminates the AWNINGS or CANOPY material; provided, however, downward lighting limited to lighting the building FAÇADE, sidewalk areas, and seating areas, is permitted to be installed beneath AWNINGS and CANOPIES.

3. Building Roofs

- a. Permitted Roof Materials
 - (1) Architectural asphalt shingles
 - (2) Tile, clay or concrete (faux clay)
 - (3) Slate (equivalent synthetic or better)
 - (4) Metal (standing seam, equivalent or better)
 - (5) Roofing material for flat roofs shall be monolithic Thermoplastic Polydefin (TPO) membrane or equivalent determined by BUILDING OFFICIAL
- b. Flat Roofs – roof material interior to the PARAPET shall not be visible from any adjacent ground-level areas.

4. Building Mechanical, Underground Utilities, and Solid Waste Facilities

- a. Mechanical Equipment
 - (1) Ground level transformers, HVAC equipment, lift stations, utility meters, and other machinery shall be located at the rear of the lot where practical
 - (2) Roof mounted equipment shall be screened from view from the PUBLIC SPACE where practical.
- b. All electrical, phone, cable and other similar types of facilities shall be underground except for service boxes which shall be approved at the time of DETAILED SITE PLAN.

c. Solid Waste Collection and Disposal

- (1) Location of solid waste facilities shall be approved at time of DETAILED SITE PLAN.
- (2) Solid waste facilities including trash compactors shall be screened by a MASONRY wall of a height that is at least one (1) foot above the height of the solid waste facility or trash compactor. Such screening wall shall be built with the same materials as used for the principal building, or an otherwise CITY approved material
- (3) Access to Solid waste facilities shall be provided by a metal gate or door equal in height of the wall and shall remain closed at all times when not being accessed for purpose of disposing solid waste into, or collecting for off-site disposal from, the facility.

B. Architectural Standards – Village Residential District

1. Architectural Diversity

- a. Floor plans and front FAÇADES of the same PRIMARY BUILDING MATERIAL color for SINGLE-FAMILY DETACHED RESIDENTIAL shall be separated from one another by no fewer than three (3) lots for same floor plans and no fewer than four (4) lots for the same front FAÇADE.
- b. No combination of the same masonry color, mortar color, and sand color shall be repeated for SINGLE FAMILY DETACHED RESIDENTIAL buildings located on adjacent lots.
- c. The following list of architectural elements shall be incorporated into FAÇADES of SINGLE-FAMILY DETACHED RESIDENTIAL buildings with a choice of at least two (2) different elements occurring no more often than every fourth (4th) lot and be included in the DETAILED SITE PLAN:
 - (1) BALCONY
 - (2) Front Porch (may occur more often than every 4th lot)
 - (3) Chimney
 - (4) Patio courtyard
 - (5) MASONRY, stone, or cast stone accents
 - (6) Double entry doors
 - (7) Covered entry
 - (8) DORMERS
 - (9) Cedar shutters
 - (10) Natural stone (30% front FAÇADE)
 - (11) 10:12 or great roof pitch (may occur more often than every 4th lot)
 - (12) Gables with architecture feature
 - (13) Arch top windows
 - (14) Circle top windows
 - (15) Stained wood columns

2. Building FAÇADES

FAÇADE treatments are those portions of a building's STREET FRONTAGE FAÇADE elevation extending from the ground to the roof that consists of a single layer or architectural expression.

- a. RESIDENTIAL buildings shall have a finished floor elevation of not less than one (1) foot above the top of the front curb elevation.
- b. Wall openings shall not span vertically more than one story.

3. Building FAÇADE Materials

- a. Permitted primary building materials (which must cover not less than 85% of each area of the area of the FAÇADE) shall be:
 - (1) MASONRY/STONE
 - (2) STUCCO/PLASTER
 - (3) Hardie-Plank™ equivalent or better siding
 - (4) Other primary building materials shall be required to obtain a SPECIAL EXCEPTION as a part of SITE PLAN approval
- b. Accent building materials (which may cover no more than 15% of the area of the FAÇADE) may be:
 - (1) Pre-cast masonry (limited trim and cornice elements only)
 - (2) Gypsum reinforced fiber concrete (limited to trim elements only)
 - (3) Metal (limited to roofing, beams, lintels, trim elements and ornamentation only)
 - (4) Split-faced CMU block (but used only for piers, foundation walls and chimneys)
 - (5) EIFS
- c. Calculation of the percentage of the area of permitted building materials on a FAÇADE shall not include:
 - (1) The area occupied by windows and doors (including garage doors); and
 - (2) Other architectural features above the roofline, or areas not in plane with first-floor wall.

4. Building Windows

Windows shall conform to the following:

- a. Window Materials
 - (1) Specialty windows such as stained, opalescent, or glass block shall be permitted in limited amounts but in no case greater than fifteen (15) percent of the total window area of the FAÇADE.
 - (2) Solar screens are permitted only on FAÇADES not visible from the PUBLIC SPACE.
- b. Window Configurations
 - (1) The horizontal dimension of the window opening shall not exceed the vertical dimension except as provided in subparagraph b. (2), below.
 - (2) A maximum of five (5) windows may be mulled horizontally together to form a compound window which may be wider than it is tall if each grouping is separated by a mullion, column, pier or wall section that is not less than seven (7) inches wide.
- c. Alterations to these standards may be granted as part of a DETAILED SITE PLAN.

5. Building Roofs and PARAPETS

- a. Permitted Roof Materials
 - (1) 30-year dimensional shingles.
 - (2) Tile, clay or concrete (faux clay).
 - (3) Slate (equivalent synthetic or better).
 - (4) Metal on porches and accent roofs.
 - (5) Roofing material for flat roofs shall be monolithic Thermoplastic Polydefin (TPO) membrane or equivalent determined by BUILDING OFFICIAL.
 - (6) Roofing materials shall have a minimum 30-year rated warranty.
- b. Authorized Roof Configurations
 - (1) Pitched Roofs

Hip and gable roofs shall be symmetrically pitched 8:12 or greater.

(2) Flat Roofs

Roof material interior to the PARAPET shall not be visible from any adjacent ground-level areas.

c. Roofs, Dormers and Chimneys

(1) DORMERS and chimney chases above the roof structure shall be finished with a permitted PRIMARY BUILDING MATERIAL

(2) Fireplace flues shall be enclosed and finished to be complimentary of the building's exterior. Finished construction that provides for an exposed pre-fabricated metal flue piping (other than gas appliance vent stacks required by applicable construction codes) is prohibited

6. Underground Utilities

- a. All electrical, phone, cable and other similar types of facilities shall be underground except for service boxes which shall be approved at the time of DETAILED SITE PLAN.

IV. Lighting, Parking and Signage Standards

A. Lighting

1. STREET Lights

- a. STREET LIGHTS shall be install in accordance with the following:
 - (1) MAJOR STREETS – spaced a maximum of one hundred and fifty feet (150) feet including one (1) at each intersection.
 - (2) MINOR STREETS – spaced a maximum of one hundred feet (100) feet including one (1) at each intersection.
 - (3) LOCAL STREETS – lighting shall be at each intersection.
- b. STREET LIGHTS shall not cast a perceptively unnatural spectrum of light (such as low-pressure sodium) or project light skyward (dark sky friendly lighting).

2. VILLAGE URBAN CENTER Lighting

- a. An exterior Lighting Plan shall be approved as part of the DETAILED SITE PLAN for the VILLAGE URBAN CENTER.
- b. Lighting Standards
 - (1) Site lighting shall be of a design, height, and location to illuminate only the lot on which the light fixture is located unless illumination across lot lines is by a lighting fixture is authorized by the approved lighting plan included in the approved DETAILED SITE PLAN.
 - (2) Lighting elements shall not cast a clearly/perceptively unnatural spectrum of light (such as low pressure sodium). Lighting elements shall be limited to incandescent, metal halide, or halogen type fixtures.
 - (3) No flashing, traveling, animated, or intermittent lighting shall be visible from the exterior of any building whether such lighting is of temporary or long-term duration.

B. Parking

1. Parking Standards

- a. SINGLE-FAMILY RESIDENTIAL
 - (1) SINGLE-FAMILY RESIDENTIAL DETACHED and ATTACHED shall provide a minimum of two (2) garage parking spaces that shall remain usable for parking of two (2) passenger vehicles.
 - (2) Additional visitor parking (on or off street) shall be provided for SINGLE-FAMILY RESIDENTIAL uses at a rate of one (1) space per four (4) dwellings located within five hundred (500) feet for any SINGLE-FAMILY RESIDENTIAL lot providing parking for less than four (4) vehicles.
- b. MID-RISE RESIDENTIAL
 - (1) A minimum of 1.5 parking spaces shall be provided for each MID-RISE RESIDENTIAL unit.
 - (2) Additional onsite visitor parking shall be provided for MID-RISE RESIDENTIAL at a rate of one (1) space per six (6) units.
- c. VILLAGE URBAN CENTER
 - (1) For uses other than MID-RISE RESIDENTIAL, a Parking Plan prepared by a Texas professional engineer shall be submitted to the CITY that sets forth how the uses in the VILLAGE URBAN CENTER will accommodate parking demand. The Parking Plan shall be based on the parking standards set forth herein, or in the absence of a standard for a proposed use, shall be established as part of the approved DETAILED SITE PLAN.
 - (2) Required parking ratios for VILLAGE URBAN CENTER uses shall be:
 - (a) Office – 1 space per 300 square foot

- (b) Retail – 1 space per 250 square foot
- (c) Restaurant – 1 space per 150 square foot

2. On-Street Parking

- a. On-street parallel parking shall be eight (8) feet in depth and twenty-two (22) feet length.
- b. On-street parking may be counted towards meeting off-street parking requirements if authorized by the approved DETAILED SITE PLAN.

C. Signage

1. Signage Plan

- a. A Comprehensive Sign Plan shall be submitted to the CITY as part of the DETAILED SITE PLAN.
- b. Only individual lettering on a VILLAGE URBAN CENTER signage may be internally lit.
- c. Lettering on AWNINGS and CANOPIES shall be limited to six (6) inches tall located only on vertically hanging fabric at curbside.

2. Prohibited or Limited Signs

- a. Billboards, off-premises, pole signs, marquees, animated, flashing or intermittent signs, and roof and painted building FAÇADE signs are prohibited.
- b. Portable or wheeled signs and advertising devices located outside any building shall be prohibited.

V. Landscaping and Park/Open Space Standards

A. Landscaping

1. Landscaping – Trees

a. STREET TREES

- (1) MAJOR STREETS shall have STREET TREES planted along the PARKWAY with a spacing of no greater than one hundred (100) feet on center measured per BLOCK face or on a project by project basis, whichever is the smaller lineal dimension.
- (2) MINOR and LOCAL STREETS shall have STREET TREES planted along the PARKWAY with a spacing of no greater than seventy-five (75) feet on center measured per BLOCK face or on a project by project basis, whichever is the smaller lineal dimension.
- (3) For on-street parking spaces where bump-outs are utilized for parallel parking, one (1) STREET TREE shall be planted in each bump-out.
- (4) STREET TREES shall be at least three (3) caliper inches in diameter measured four (4) feet above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting.

b. VILLAGE URBAN CENTER TREES

- (1) Where the primary structure is located within twenty (20) feet of the front property line, the VILLAGE URBAN CENTER use shall be only responsible for planting STREET TREES in accordance with standards for STREET TREES on MAJOR STREETS.
- (2) Where the primary structure is located greater than twenty (20) feet from the front property line, the following tree planting shall be required:
 - (a) One tree at least three (3) caliper inches in diameter measured four (4) feet above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting for each fifty (50) feet of linear STREET FRONTAGE, which trees shall be planted within fifteen (15) feet of the front property line.
 - (b) Trees may be planted in groups with appropriate spacing for species.
 - (c) The trees required by this Subparagraph b. shall be in addition to the required STREET TREES.

c. SINGLE-FAMILY RESIDENTIAL TREES

(1) General

- (a) Required FRONT YARD TREES shall be in addition to the required STREET TREES
- (b) Required FRONT YARD TREES shall be at least three (3) inches in diameter measured four (4) feet above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting.

(2) Required FRONT YARD TREES

- (a) Lots having building setbacks of ten (10) feet or less no FRONT YARD TREES shall be required.
- (b) Lots having building setbacks of greater than ten (10) feet one (1) FRONT YARD TREES shall be required.

2. Landscaping – Yards

a. VILLAGE URBAN CENTER Yards

- (1) Required Landscaping shall be approved as a part of DETAILED SITE PLAN approval.

b. SINGLE-FAMILY RESIDENTIAL LOTS Yards

- (1) For lots widths of forty (40) feet or greater, no fewer than four (4) five (5) gallon shrubs and twelve (12) one (1) gallon shrubs shall be planted.

- (2) For lots widths twenty-five (25) feet and less than forty (40) feet, no fewer than three (3) five (5) gallon shrubs and eight (8) one (1) gallon shrubs shall be planted.
- (3) For lots widths less than twenty-five (25) feet, no fewer than two (2) five (5) gallon shrubs and six (6) one (1) gallon shrubs shall be planted.
- (4) SINGLE-FAMILY RESIDENTIAL lots shall have full sod installed within any portion of the front yard and side yard abutting a STREET not covered by walkways, driveways, trees, shrubbery, ground cover or planting beds, or other approved landscape materials.
- (5) Decorative rocks shall be permitted in limited amounts and within areas between structures where plant material is difficult to maintain.

3. Landscaping – Parking Lots

- a. Five (5) linear feet of landscaped evergreen screening and/or masonry wall at a height of three (3) feet shall be planted between the STREET right-of-way and the parking area in all parking areas within a parking lot abutting a STREET.
- b. The following interior landscaping shall be planted in off-street, surface parking that contains twenty (20) or more parking spaces:
 - (1) Twenty (20) square feet of landscaping for each parking space shall be installed within the paved boundaries of the parking area.
 - (2) Landscaped islands shall be located at the ends of all parking rows and one (1) landscaped island for each twenty (20) parking spaces in a parking row shall be located on the interior of each parking row. The location the landscape islands within parking areas shall be approved as part of the DETAILED SITE PLAN
 - (3) No fewer than one (1) tree, three-inch (3) caliper inch minimum as measured four (4) feet above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting shall be planted in each parking lot landscaped island.
 - (4) Landscaped islands shall be not less than six (6) feet wide, not less than ninety percent (90%) of the abutting parking space in length, and planted with approved ground cover.
 - (5) Landscaped areas shall be protected by a raised six (6) inch concrete curb with pavement placed no closer than three (3) feet from the trunk of a tree if no CITY-approved root barrier has been installed.

4. Landscaping – Fences/Walls

- a. Fences/Walls – General
 - (1) Metal fencing shall be ornamental metal, tubular steel or similar material with a consistent design and finished in black.
 - (2) MASONRY walls shall be constructed with MASONRY materials compatible with adjacent buildings.
 - (3) Wood fencing adjacent to STREETS shall be board-on-board with capping, pre-stained cedar, with steel posts.
 - (4) Fences and walls exceeding eight (8) feet in height are prohibited except to screen service areas of VILLAGE URBAN CENTER.
 - (5) Fence and wall materials and location shall be approved as part of the DETAILED SITE PLAN.
- b. Fencing/Walls – MAJOR STREETS
 - (1) WOOD fencing along MAJOR and MINOR STREETS is prohibited.
 - (2) MASONRY walls exceeding two (2) feet in height shall be designed with footings approved by a structural engineer or other appropriately licensed professional.
- c. Fences/Walls – RESIDENTIAL
 - (1) No fence or wall shall be permitted within front yards except on corner lots, wherein approved ornamental metal fences, not exceeding five (5) feet in height, may be installed within the front yard not serving as the main entry point to the dwelling (i.e. the side yard along the STREET).

- (2) On RESIDENTIAL lots abutting or facing a PARK/OPEN SPACE, only ornamental metal fencing shall be used on the side of the lot facing the PARK/OPEN SPACE unless another material approved as part of the DETAILED SITE PLAN.
- (3) Fences and walls consisting of materials or placed in locations not otherwise authorized by this Subparagraph may be approved as part of the approved DETAILED SITE PLAN.

5. Landscaping – Irrigation

Permanent automatic irrigation systems shall be designed, installed, and operated for all required landscaping.

6. Landscaping – Completion

- a. No certificate of occupancy for any building on any lot may be issued until all required irrigation systems, trees and other plant materials have been installed and/or planted on the lot.
- b. Due to on-going drought conditions, the CITY may authorize delaying planting of new landscape materials, in which case, a certificate of occupancy may be issued.
- c. In the event of such authorized delay, all landscape materials shall be planted not later than the date provided in the authorization. Failure to install all landscaping by the date set forth in the delay authorization shall be a violation of this Ordinance.

B. Park/Open Space

1. PARK/OPEN SPACE

- a. VILLAGE URBAN CENTER
 - (1) VILLAGE URBAN CENTER uses, other than MID-RISE RESIDENTIAL, shall not be required to set aside a percentage of lot area for PARK/OPEN SPACE.
 - (2) MID-RISE RESIDENTIAL shall allocate not less than ten percent (10%) of the lot area to PARK/OPEN SPACE.
 - (a) Landscaped parking areas, walkways, yards and entries shall be considered PARK/OPEN SPACE.
 - (b) Areas designated as PARK/OPEN SPACE shall be shown on the approved DETAILED SITE PLAN.
- b. VILLAGE RESIDENTIAL
 - (1) Areas designated as PARK/OPEN SPACE shall be shown on all approved DETAILED SITE PLANS.
 - (2) PARK/OPEN SPACE shall be maintained by either a property or homeowners association or by the CITY if designated public PARK/OPEN SPACE.

2. PEDESTRIAN PATHWAYS

- c. PEDESTRIAN PATHWAYS shall be a minimum of six (6) feet in width on MAJOR and MINOR STREETS and five (5) feet on LOCAL STREETS.
- d. PEDESTRIAN PATHWAYS shall be installed at all required locations on a lot prior to issuance of a certificate of occupancy of the first building constructed on the lot or, if the issuance of a certificate of occupancy is required, the commencement of the provision of utilities to any building on the lot.

VI. Definitions

A. Purpose

The words and phrases as used in this ORDINANCE shall have the following meanings unless the context of such use clearly indicates otherwise. Words and phrases not defined within the Definitions, but which are defined in the City of Sherman's Zoning Ordinance shall have the meaning provided such words and phrases in the Zoning Ordinance. Wherever a word or phrases is printed in CAPITAL LETTERS, it is being used as defined herein.

B. Terms Defined

ACCESSORY BUILDING OR STRUCTURE (RESIDENTIAL DISTRICT) – A subordinate building or structure, detached and used for a purpose customarily incidental to the main structure such as a private garage for automobile storage, tool house, lathe or greenhouse as a hobby (no business), home workshop, children's playhouse, storage house, garden shelter or swimming pool, but not involving the conduct of a business.

ACCESSORY USE (see USE).

AFFILIATED RESIDENTIAL USES (see USE).

ALLEY – A public space or drive which affords secondary means of access to abutting property.

AMENITY CENTER – An OPEN SPACE area developed as a recreational center for the use by VILLAGE residents and their guests that may include pools, hot tubs, meeting rooms, workout spaces, bathrooms, playgrounds and similar uses.

AWNING – A cantilevered, projected or suspended cover over the sidewalk portion of the PUBLIC SPACE. This also includes roof-like coverings, usually of canvas or metal and often adjustable, placed over the sidewalk, windows, or doors to provide protection from sun and rain.

BALCONY – An exterior platform attached to the building FAÇADE extending outward from an interior room located above a GROUND STORY.

BLOCK – An area enclosed by streets and occupied by or intended for buildings; or if said word is used as a term of measurement, it shall mean the full length along the street between the intersection of two streets.

BUILDING HEIGHT – For VILLAGE URBAN CENTER uses, BUILDING HEIGHT is measured in STORIES; for SINGLE-FAMILY RESIDENTIAL uses, BUILDING HEIGHT is measured from the existing grade to the midpoint of a gabled roof line or the top of the PARAPET or mansard roof.

BUILDING OFFICIAL – The official appointed to enforce the ZONING ORDINANCE.

CANOPY – An architectural projection of canvas or similar material that provides weather protection over an area and is supported by the building to which it is attached and at the outer end by not less than two posts.

CITY – City of Sherman, Texas.

CIVIC BUILDING – Publicly- or privately-owned buildings that are open to the public for non-COMMERCIAL purposes.

COMMERCIAL INDOOR AMUSEMENT (see USE).

COMMERCIAL USE (see USE).

CONCEPTUAL PLAN – Proposed land uses as shown on the CONCEPTUAL PLAN.

DETAILED SITE PLAN – A site plan approved by the City of Sherman.

DEVELOPMENT DISTRICTS

VILLAGE URBAN CENTER – Land designated on the DEVELOPMENT DISTRICT MAP as VILLAGE URBAN CENTER intended for more flexible development standards allowing for VILLAGE URBAN CENTER uses ranging from single lot projects such as big-box stores and hotels to larger-scale shopping centers and business centers as well as MID-

RISE RESIDENTIAL uses.

VILLAGE RESIDENTIAL DISTRICT – Land designated on the DEVELOPMENT DISTRICT MAP as RESIDENTIAL Intended for a mix of DETACHED and ATTACHED RESIDENTIAL.

DORMER – Small, roofed ancillary structures with windows providing light and air to habitable space within the roof.

EXTERIOR INSULATION AND FINISH SYSTEM or “EIFS” - a no-load bearing, exterior wall cladding system that consists of an insulation board attached either adhesively or mechanically, or both, to the substrate; an integrally reinforced base coat; and a textured protective finish coat.

FAÇADE – Exterior building face.

FENESTRATION – Openings in the building wall allowing light and views between interior and exterior measured as glass area.

FRONT SETBACK LINE – The line at which the building FAÇADE shall be located adjacent to or behind.

FRONT YARD TREE (see TREE, FRONT YARD).

HEIGHT (see BUILDING HEIGHT)

HOTEL, FULL SERVICE – An establishment offering temporary lodging facilities consisting of regular rooms or suites suitable for short-term stays with one or more restaurants and lounges, food and beverage catering, conference meeting rooms, recreational amenities, and STRUCTURED PARKING.

HOTEL, LIMITED SERVICE – An establishment offering temporary lodging facilities consisting of regular rooms or suites suitable for short-term stays that may offer a business center, pool/whirlpool, workout room, a meeting room and a lobby marketplace for snacks and beverages; the establishment may offer restaurant services geared to primarily hotel guests.

LOT, CORNER – A lot that is bounded by intersecting STREETS.

LOT COVERAGE – The percentage of the total area of a lot occupied by the base (first story or floor) of buildings located on the lot or the area determined as the maximum cross-sectional area of the building; eaves, drives, uncovered patios/porches, sidewalk, and similar improvements are excluded from LOT COVERAGE computations.

LOT LINE – The lines bounding a lot.

LOT WIDTH – The width of the lot as measured at the FRONT SETBACK LINE.

MAJOR STREET (see STREET, MAJOR).

MASONRY/STONE – Defined as construction material three (3) inches or thicker composed of natural stone, kiln fired clay brick, decorative concrete block or other masonry material approved by the CITY’S BUILDING OFFICIAL.

MINOR STREET (see STREET, MINOR).

OFFICE BUILDING – A building used to house OFFICE USES.

PARAPET – A low wall projecting from the edge of a platform, terrace, or roof.

PARAPET HEIGHT – Where used to limit building height, PARAPET HEIGHT is the distance measured at the top of the parapet, including any coping.

PARK (see OPEN SPACE).

PARK/OPEN SPACE – Land and water designed for active and/or passive recreational enjoyment, but also including small vegetative spaces, flood plains, AMENITY CENTERS, development entries, PEDESTRIAN PATHWAYS; areas located within a SINGLE-FAMILY RESIDENTIAL LOT or within a public right-of-way shall not be considered PARK/OPEN SPACE.

PARKWAY – An area located immediately between the street curb and sidewalk in which STREET TREES and street lights and other such infrastructure are placed.

PEDESTRIAN PATHWAY – A paved walkway/sidewalk that provides pedestrian access throughout a community to VILLAGE URBAN CENTER and RESIDENTIAL uses; PEDESTRIAN PATHWAYS are not considered appropriate for bicycle use.

PLANNING AND ZONING COMMISSION – The Planning and Zoning Commission of the City of Sherman, Texas.

PUBLIC SPACE – The public domain commonly referred to as the public STREETS, ALLEYS and rights-of-way but can include travel lanes, PARKWAYS, PEDESTRIAN PATHWAY, and PARK/OPEN SPACE.

REAR LOT LINES – Lot lines located at the rear of the property and often abutting ALLEYS.

RETAIL (see USE).

RESIDENTIAL (see USE)

SCHOOL, PRIMARY OR SECONDARY – A school operated by an independent school district, religious entity or private corporation providing a kindergarten, elementary and/or secondary curriculum.

SCHOOL, COLLEGE OR UNIVERSITY – An academic institution of higher learning, accredited or recognized by the State and offering a program or series of programs of academic study.

SENIOR/ASSISTED LIVING FACILITY – A residential living facility for older adults that may include independent living arrangements designed exclusively for seniors, generally those 55 years or older, to live independently within an apartment-style facility or freestanding home; it may also include, as an ACCESSORY USE, living facilities that offer a larger range of services for residents as their level of care expands, as long as the resident does not need skilled 24-hour nursing care.

SKILLED NURSING HOME FACILITY – State-licensed long-term care residential living facility offering 24-hour medical care provided by registered nurses, licensed practical nurses and/or certified nurse assistants for residents who are totally dependent on nursing care or short-term rehabilitation between hospital and home.

STORY – That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

STORY, GROUND – The first level of a building at or above grade.

STREET – A public thoroughfare used for vehicular traffic usually within dedicated right-of-way; this definition does not include ALLEYS, CITY fire lanes, driveways, or access aisles or easements.

STREET LIGHT – A luminaire installed on both sides of a STREET within the public right-of-way.

STREET, MAJOR – A STREET having four or more travel lanes with rights-of-way greater than seventy (70) feet.

STREET, MINOR – A STREET having three or less travel lanes with rights-of-way exceeding sixty (60) feet but not exceeding seventy (70) feet.

STREET, LOCAL – A STREET having two travel lanes with rights-of-way sixty (60) feet or less.

STREET FRONTAGE – That portion of the lot or building that is coincident with the FRONT SETBACK LINE.

STREET TREE (see TREE, STREET).

STUCCO/PLASTER – Stucco/Plaster material shall only be considered as meeting the masonry requirement when applied using a 3-step process over diamond metal lath mesh to a 7/8-inch thickness or by other processes producing comparable cement stucco finish with equal or greater strength, durability, and fire resistive specifications.

TREE, STREET – A tree planted in the PARKWAY.

TREE, FRONT YARD – A tree planted in a front yard area.

USES

ACCESSORY USE – A use of land or building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use; within a RESIDENTIAL DISTRICT this may include a pool, children's play equipment, gazebo, picnic table, etc.

AFFILIATED RESIDENTIAL USE – A use intended for the residents and their guests of a RESIDENTIAL use that includes a leasing office, fitness center, game room, laundry, pool, amenity center and other residential-related services and uses.

BUSINESS SERVICE USE – Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, including but not limited to advertising and mailing; building maintenance; employment service; management and consulting services; equipment rental and leasing (does not include outside storage or heavy construction equipment); commercial research; development and testing; photo finishing; and supplies services.

CIVIC USE – Community uses including the following: meeting halls; libraries; schools (kindergarten through college); police and fire stations; post offices (retail operations only, no primary distribution facilities); places of worship; museums; cultural, visual and performing art centers; transit centers; government functions open to the public; and, other similar uses.

COMMERCIAL INDOOR AMUSEMENT USE – Commercial establishments wholly contained within a building that provide amusement, entertainment or games of skill for a fee or admission charge including, but not limited to, billiards, bowling, video or game arcades, movie theaters, and skating rinks.

COMMERCIAL USE – Includes BUSINESS SERVICES, OFFICES, PERSONAL SERVICES, RETAIL SERVICES, RETAIL SPECIALTY USES, RETAIL TRADE USES, STUDIO USES, and RECREATIONAL LAGOON.

PERSONAL SERVICE USE – Establishments primarily engaged in providing services involving the care of a person or his or her apparel, including laundry, cleaning and garment services, garment pressing, coin operated laundries, beauty shops, barber shops, shoe repair, reducing salons and health clubs, clothing rental, doctors, dentists, chiropractors, veterinarians, etc.

OFFICE USE – Includes, but are not limited to lawyers, engineers, architects, landscape architects, accountants, insurance agencies, economic consultants, general business offices, or other similar professions.

RECREATIONAL LAGOON – A large, artificially-created recreational water body for swimming and other water-related activities (can be a COMMERCIAL or CIVIC use).

RESIDENTIAL USE – A range of housing uses that encompass SINGLE-FAMILY and MID-RISE uses, and SENIOR/ASSISTED and/or SKILLED NURSING HOME FACILITIES.

RESIDENTIAL, SINGLE-FAMILY ATTACHED – A SINGLE-FAMILY RESIDENTIAL use constructed in a group of two (2) or more attached units separated by property lines in which each unit extends from foundation to roof.

RESIDENTIAL, SINGLE-FAMILY DETACHED – A free-standing, SINGLE-FAMILY RESIDENTIAL use occupying a single lot not sharing any walls in common with adjacent SINGLE-FAMILY RESIDENTIAL use.

RESIDENTIAL, MID-RISE – A multi-storied residential building containing multiple separate housing units above one another for residential purposes within one building or complex, commonly referred to as “apartments;” this definition does not include a HOTEL or any short-term stay facility (stays of less than six months) but may include ground-floor commercial.

RESIDENTIAL, SINGLE-FAMILY – A residential dwelling occupied by persons living as a single household unit; this definition includes DETACHED and ATTACHED residential uses but does not include MID-RISE RESIDENTIAL.

RETAIL SERVICE USE – Establishments providing services, as opposed to products, to the general public, including restaurants, LIMITED and FULL SERVICE HOTELS, finance, real estate and insurance, travel agencies, health and educational services, and galleries.

RETAIL SPECIALTY USE – Include, but are not limited to the sale of gifts, antiques, flowers, books, jewelry, wearing apparel or craft shops making articles exclusively for sale at retail on the premises. Establishments selling used goods or merchandise and retail store sales consisting primarily of specialty and novelty items as defined by City of Sherman Resolution No. 77-028 are specifically excluded.

RETAIL TRADE USE – Establishments engaged in selling new goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. Establishments primarily engaged in the selling of used goods or merchandise are specifically excluded.

STUDIO USE – Includes, but is not limited to dance, art, music, photography, radio or television and specifically excluding any type of sexually oriented business.

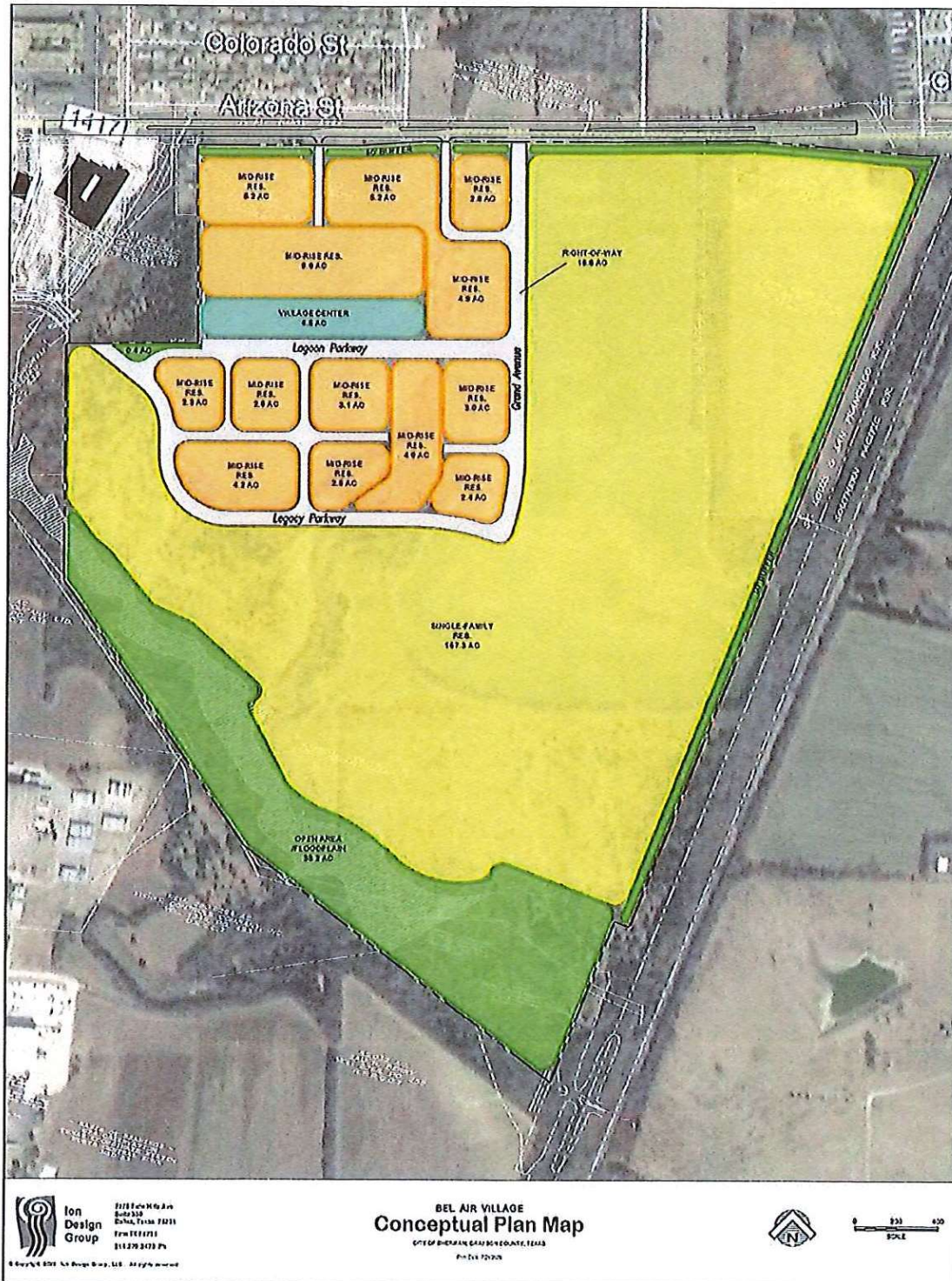
VILLAGE URBAN CENTER USE – Any use that is defined herein as a MID-RISE RESIDENTIAL, BUSINESS SERVICE, OFFICE, PERSONAL SERVICE, RETAIL SERVICE, RETAIL SPECIALTY, RETAIL TRADE, and STUDIO uses but specifically excluding any uses prohibited by this ORDINANCE.

VILLAGE URBAN CENTER USE (see USE).

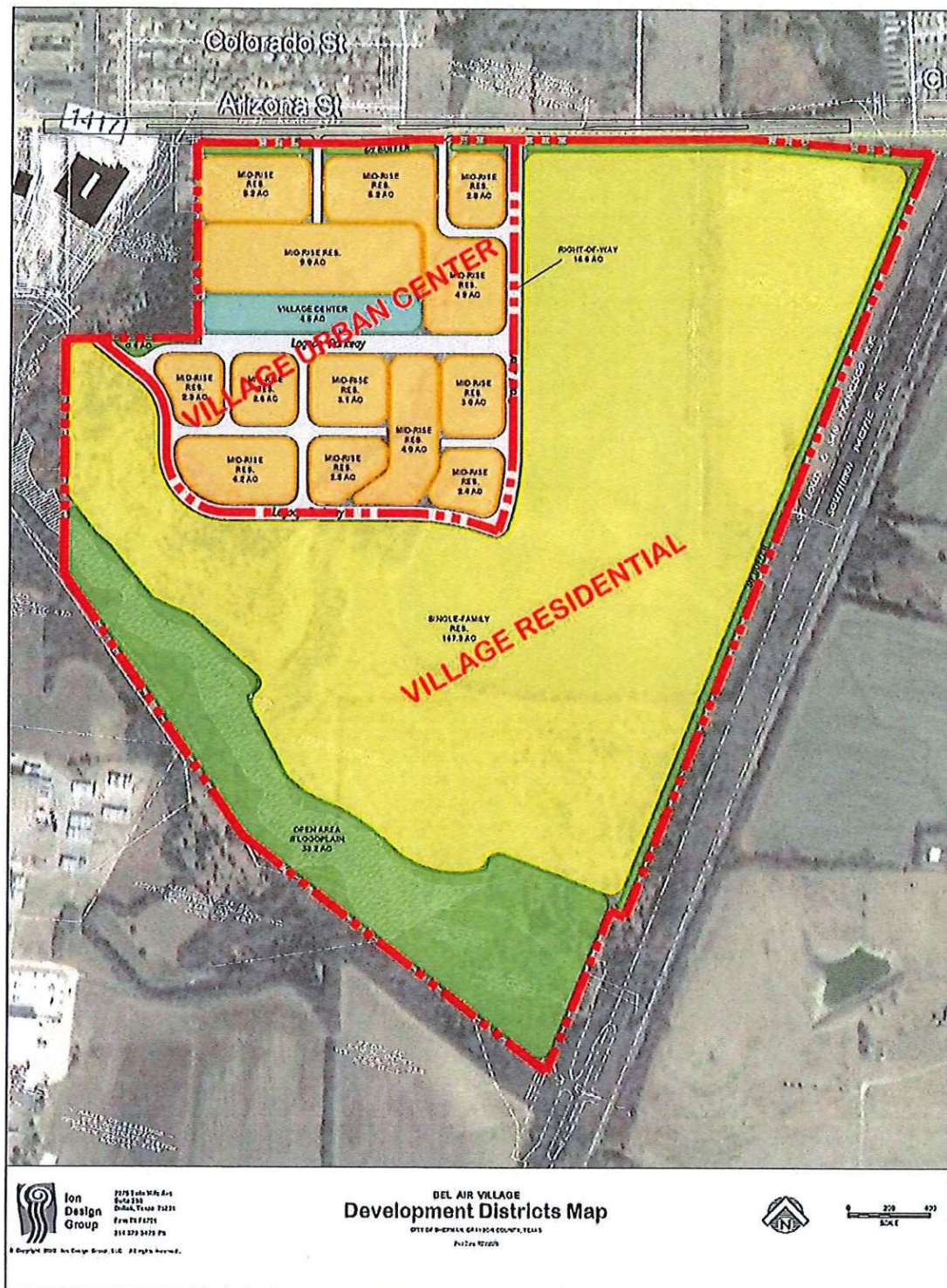
ZONING ORDINANCE – The Zoning Ordinance of the City of Sherman, as amended from time to time, including any future codifications.

VII. Appendices

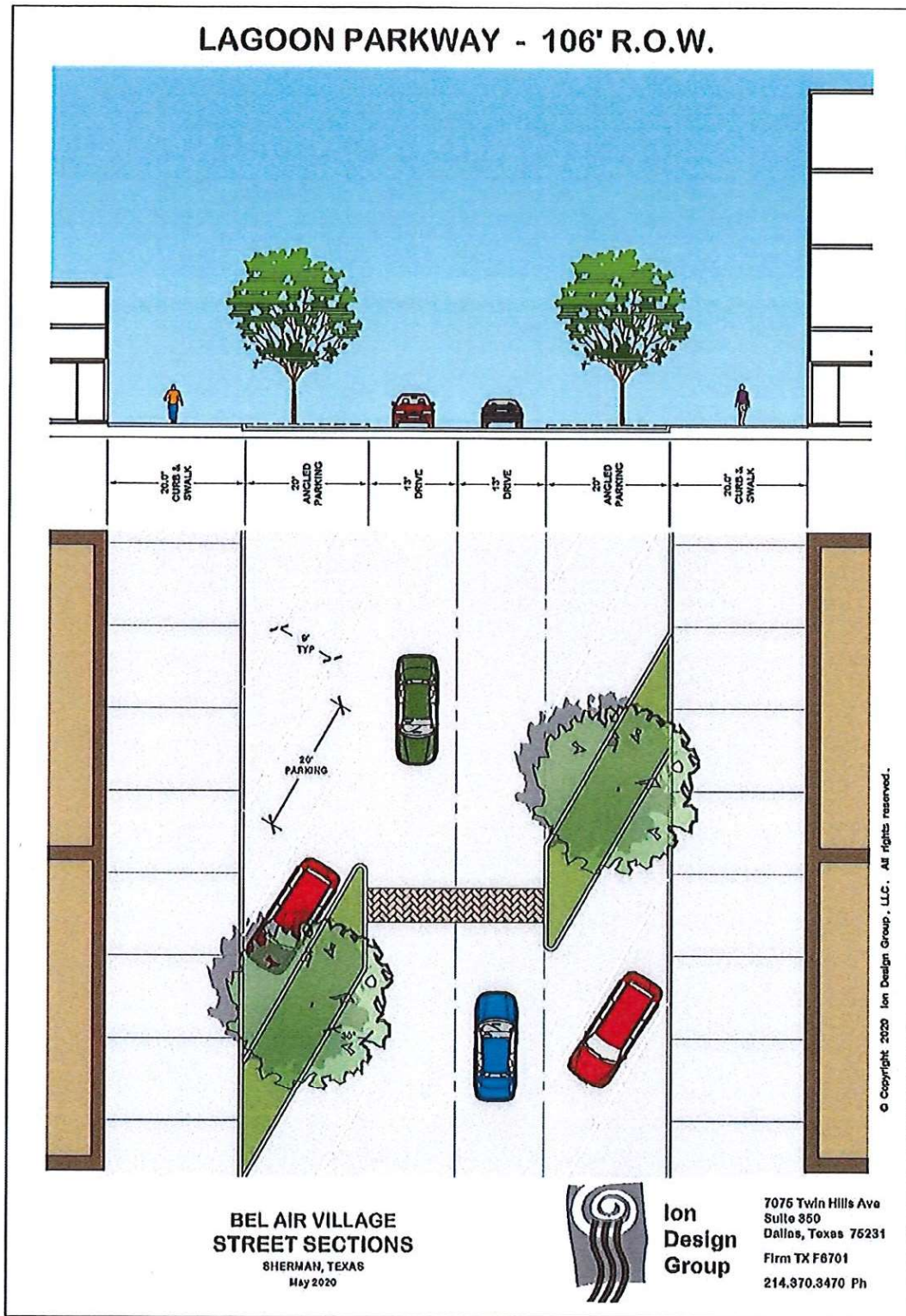
A. Appendix – Conceptual Plan Map

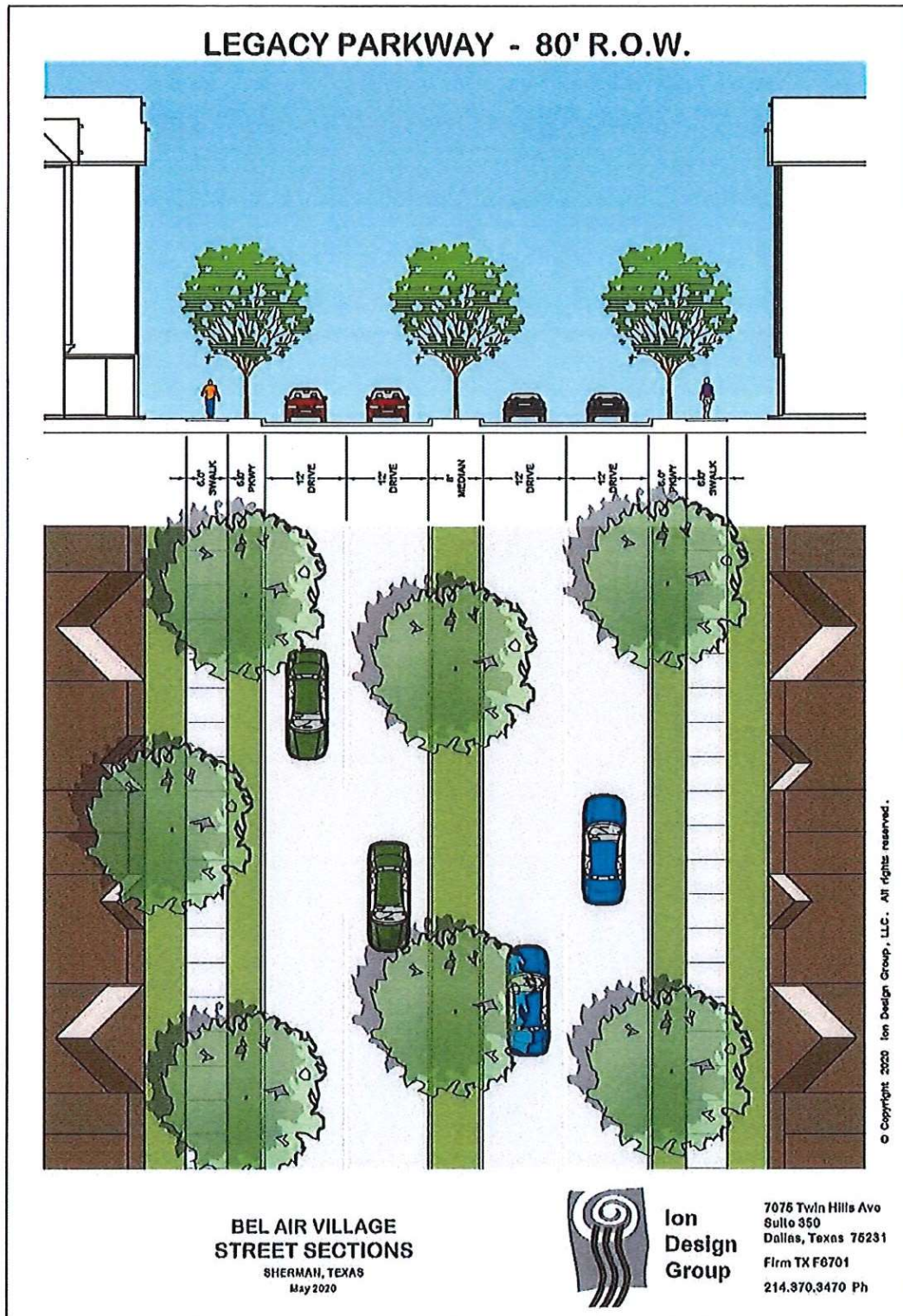


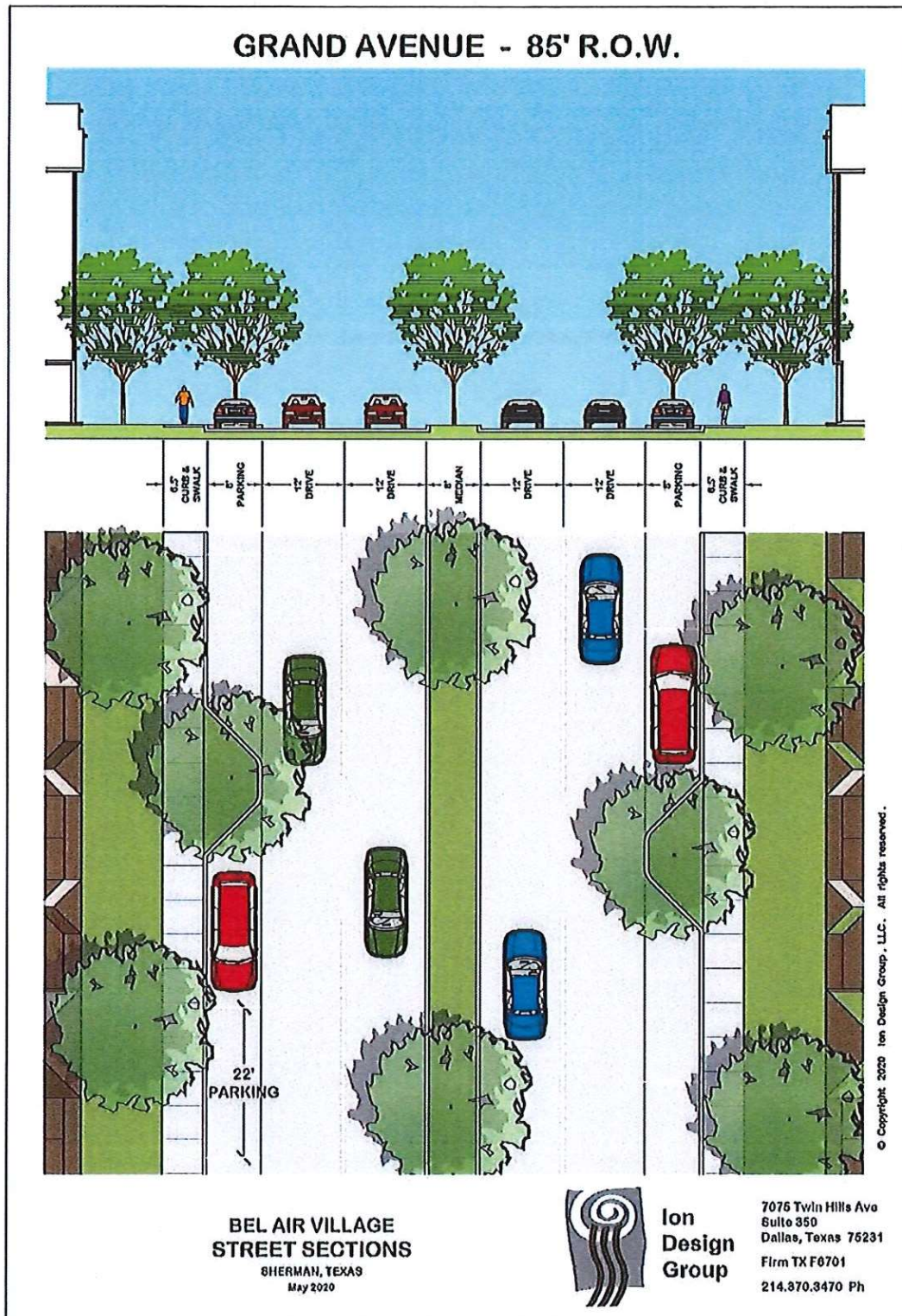
B. Appendix – Development Districts Map

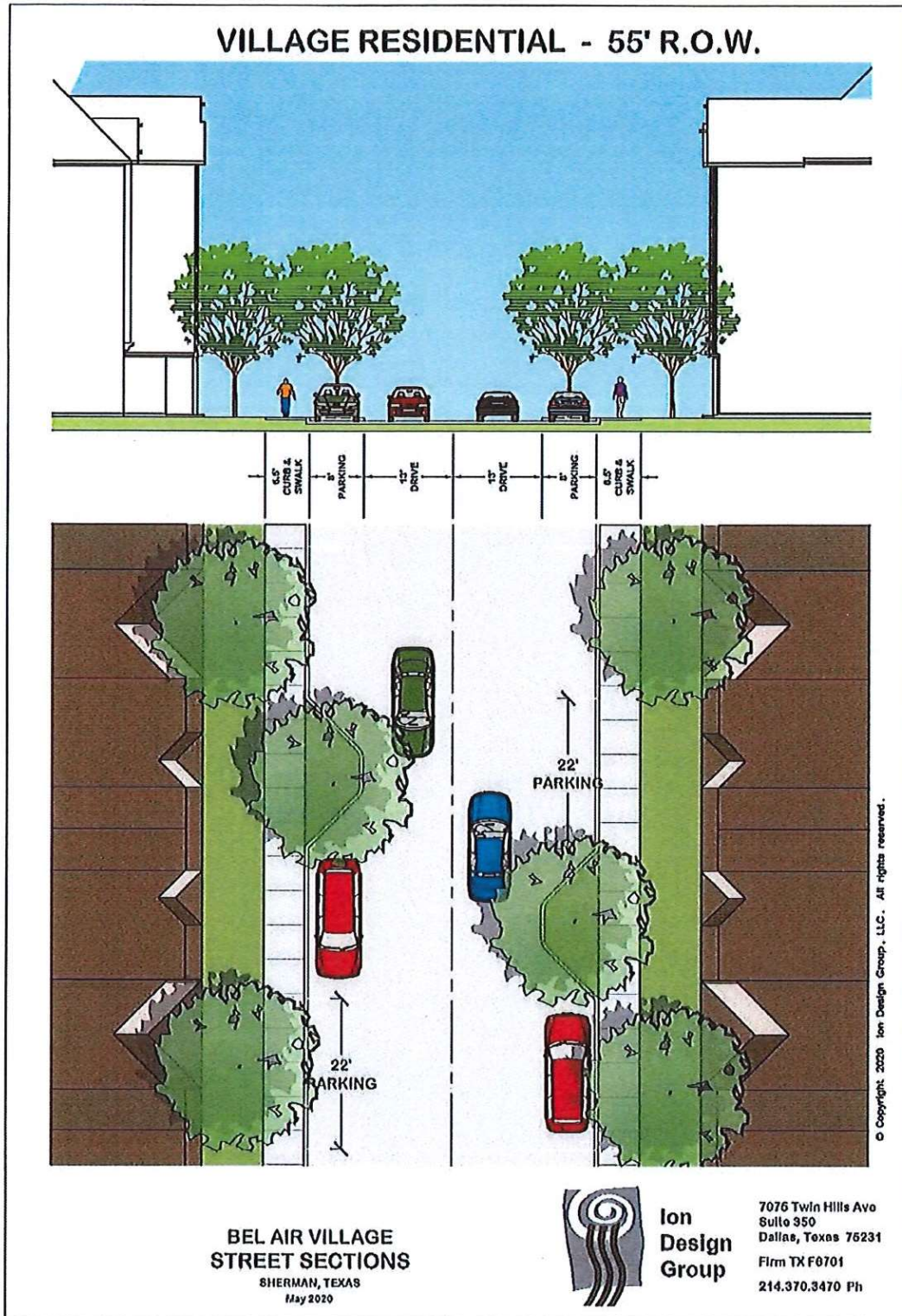


C. Appendix – Street Cross Sections











300-1000 Blks. E. FM 1417 (Vietnam Veterans Pkwy)

300-1000 Blks. E. FM 1417 (Vietnam Veterans Pkwy)



City of Sherman, Texas
Developmental Services Department



1 in = 1,000 ft

**300-1000 Blocks East FM 1417 (Heritage Parkway)
(Vietnam Veterans Parkway)**

Jul 27, 2021 at 3:30 PM



STAFF REVIEW LETTER

August 9, 2021

Terra Perpetua LLC
Ronny Guerrero
2800 N. Dallas Pkwy., Ste. 324
Plano, TX 75093

Kimley-Horn & Associates
Michel Carlisle
260 E. Davis St., Ste. 100
McKinney, TX 75069

Dear Applicants,

The request to Amend a Planned Development under Ordinance No. 2280, Section 6.12, for Bel Air Village (Ordinance No. 6319) located in the 300-1000 blocks of East FM 1417 (Vietnam Veterans Parkway) has been scheduled to be heard by the Planning and Zoning Commission on Tuesday, August 17, 2021 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the Planned Development Ordinance must be followed. (*Chapter 14, Exhibit A, Section 6.2*)
2. A detailed site plan shall be submitted for approval within two (2) years from the approval of the Conceptual Plan for a minimum of 20 percent of the project area. If a Detailed Site Plan is not submitted within two (2) years or no progress toward completion of the project is made in a five-year period, then the previous approval of the Concept Plan and the Development Plan shall expire. Upon expiration, the land within the boundaries of the PD shall automatically revert to the zoning district in place prior to approval of the PD district. The City Council may elect to extend approval periods of a PD with justification as to why the plans should remain in place.

It is the policy of this Board not to consider a request unless the applicant or its representative attends the meeting at which the request is considered. You are hereby notified to present your case on the date and time stated above.

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

Respectfully,



Rob Rae
Acting Secretary, Planning and Zoning Commission and Board of Adjustments

CC: Robby Heflon, City Manager
Clint Philpott, Asst. City Manager
Wayne Lee, P.E., Director of Engineering
Tom Pruitt, Utility Engineer
The Law Firm of Abernathy, Roeder, Boyd, & Hullett, P.C., City Attorney

Billy Hartsfield, Fire Marshal
Amber Doan, Engineering Coordinator
Christopher Armstrong, Asst. City Engineer



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

Agenda Item No. 15.

Meeting Date: 08/17/2021

Prepared by: Patsy Reeves, Development Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman

David Downtain, Vice Chairman

Shawn Davis, Commissioner

Leigh Ann Sims, Commissioner

Paul Manley, Commissioner

Glenn Whitaker, Commissioner

Bryan Blagg, Commissioner

Requested Action/Proposed Use:

300-1000 BLOCKS EAST FM 1417 (VIETNAM VETERANS PARKWAY)

The request of Terra Perpetua LLC (Owners) and Kimley-Horn & Associates (Surveyor/Civil Engineer) concerning the property located in the 300-1000 Blocks East FM 1417 (Vietnam Veterans Parkway), being 278.313 acres in the Sherrod Dunman Survey Abstract No. 329, as follows:

Planning and Zoning Commission

Amend a Planned Development and site plan approval under Ordinance No. 2280, Section 6.12, for Bel Air Village (Ordinance No. 6319).

Background:

The property is located in the 300-1000 blocks East FM 1417 (Vietnam Veterans Parkway) between U.S. Highway 75 and State Highway 11 (Dewey Avenue). A portion of the property (245.83 acres) was approved for a Planned Development for Terra Perpetua Village by Ordinance 6232, August 5, 2019. The owner purchased an additional 32.545 acres east of the development which was zoned an R-1 (One-Family Residential) District. The owner amended the planned development to include that acreage for a total of 278.313 acres and renamed it to Bel Air Village. The Planned Development Ordinance (No. 6186) was approved March 18, 2019.

The developer has requested to amend the Planned Development Ordinance to change the front yard setback (garage door) from 25 feet to 20 feet for Single-Family Residential Detached.

Adjacent Zoning:

R-1 (One-Family Residential) District

C-2 (General Commercial) District

Blalock Industrial Park

Origination:

Terra Perpetua LLC (Owners)

Kimley-Horn & Associates (Surveyor/Civil Engineer)

Master Plan Designation:

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

Number of notices mailed:

25

Objections Received:

0

Development Review Meeting:

Yes

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Ordinance 6232

Ordinance 6319

Amended Planned Development

Staff Review Letter

ORDINANCE NO. 6319

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 6.11, ORDINANCE NO. 2280, SO AS TO AMEND A PLANNED DEVELOPMENT FOR BEL AIR VILLAGE FORMERLY KNOWN AS TERRA PERPETUA VILLAGE (ORDINANCE NO. 6232) IN THE 300-1000 BLOCKS OF EAST F.M. 1417 (VIETNAM VETERANS PARKWAY), TO INCLUDE 32.545 ACRES FOR A TOTAL OF 278.313 ACRES IN THE SHERROD DUNMAN SURVEY, ABSTRACT NO. 329 (TERRA PERPETUA, LLC, OWNERS; BRYAN KLEIN, ION DESIGN GROUP, REPRESENTATIVE; BUSH ARCHITECTS, LLC, ARCHITECT; AND UNDERWOOD DRAFTING AND SURVEYING, INC., SURVEYOR); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS PLANNED DEVELOPMENT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

WHEREAS, the City Council finds that it is in the public interest to grant this Planned Development, subject to certain conditions;

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

SECTION 1. That, from and after the passage of this ordinance, Terra Perpetua, LLC (Owners), Bryan Klein, ION Design Group (Representative), Bush Architects, LLC (Architect) and Underwood Drafting and Surveying, Inc. (Surveyor) concerning the property located in the 300-1000 blocks of East F.M. 1417 (Vietnam Veterans Parkway) and that Section 6.11, Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the County of Grayson, State of Texas, being a part of the Sherrod Dunman Survey, Abstract No. 329, and being the same tract of land described as 246.134 acres conveyed by Edward C. Greene, Trustee to Rolling Meadows Associates by deed dated September 28, 1984, recorded in Volume 1716, Page 384, Deed Records, Grayson County, Texas, and a tract of land conveyed to C. T.

Maddox and J. W. Maddox, by deed dated April 26th, 1965, recorded in Volume 1029, Page 551 Deed Records Grayson County, Texas being more particularly described by metes and bounds as follows:

BEGINNING at a point for the most Northerly Northwest corner of the said 246.134 acre tract in the South right-of-way line of F. M. Highway No. 1417 from which a ½" steel rod found bears North 15° 22' 34" West a distance of 0.36 feet, said point also being the Northeast corner of the same tract of land described as 0.84 acres conveyed by Richard J. Self and Brieta Self to Eric Popp and Kelly Popp by deed dated March 20, 2010, recorded in Volume 4809, Page 60, Official Public Records, Grayson County, Texas;

THENCE North 75° 03' 39" East with said right-of-way line a distance of 799.69 feet to a concrete monument at an angle point;

THENCE North 71° 14' 48" East continuing with said right-of-way line a distance of 300.67 feet to an angle point at the Southwest base of a concrete monument;

THENCE North 75° 03' 39" East continuing with said right-of-way line a distance of 814.42 feet to the beginning of a curve to the left having a radius of 11,519.16 feet;

THENCE in an Easterly direction continuing with said right-of-way line along said curve, (chord bears North 74° 41' 09" East, 150.78 feet) an arc distance of 150.79 feet to the end of said curve;

THENCE North 74° 18' 39" East continuing with said right-of-way line a distance of 391.99 feet to a point for the most Northerly Northeast corner of the said 246.134 acre tract at the Southwest base of a cross-tie corner post, said point also being the original Northwest corner of the same tract of land described as 32.55 acres conveyed by Frances Maddox to Ruth Ellen Green by deed dated October 8, 2002, recorded in Volume 3331, Page 760, said Official Public Records, also being the Northwest corner of the same tract of land described as 2.00 acres severed from said 32.55 acre tract as conveyed by said Ruth Ellen Green to said Frances Maddox by deed dated October 8, 2002, recorded in Volume 3331, Page 765, said Official Public Records;

THENCE North 74° 18' 25" East a distance of 243.59 feet to a concrete right-of-way marker; Thence North 80° 01' 17" East a distance of 803.99 feet to a ½" steel rod set at an angle point in said right-of-way;

THENCE North 74° 18' 39" East a distance of 95.31 feet to a ½" steel rod set at the intersection of the said right-of-way with the West right-of-way line of the Frisco Railroad;

THENCE South 06° 41' 02" West with said West right-of-way line a distance of 4,025.86 feet to an "L" corner;

THENCE North 83° 18' 58" West a distance of 75.00 feet to an "L" corner;

THENCE South 06° 41' 02" West continuing with said West right-of-way line a distance of 843.85 feet to a ½" steel rod set marking the Southeast corner of the said 246.134 acre tract and the Northeast corner of the same tract of land described as 82.032 acres conveyed by Sherman Development Partnership No. 1 to Sam H. Berry by deed dated October 1, 1993, recorded in Volume 2298, Page 258, Real Property Records, Grayson County, Texas, also being the original Easterly Northeast corner of the same tract of land described as 240.9284 acres conveyed by International Business Machines Corporation to Fisher Controls Company, Inc. by deed dated June 30, 1976, recoded in Volume 1349, Page 493, said Deed Records;

THENCE North 67° 19' 54" West with the Southwesterly line of the said 246.134 acre tract, passing the Northwest corner of the said 82.032 acre tract and continuing for a total distance of 1879.15 feet to a ½" steel rod found at an angle point;

THENCE North 49° 31' 48" West continuing with said Southwesterly line, passing the Northeast corner of Block 1, Lot 1, Blalock Industrial Park, an addition to the City of Sherman as shown by plat of record in Volume 8, Page 92, Plat Records, Grayson County, Texas, also being the Southeast corner of the same tract of land described as 25.264 acres conveyed by said Sherman Development Partnership No. 1 to Liberty Trust Company, Ltd. by deed dated February 7, 2017, recorded in Volume 5948, Page 836, said Official Public Records, and continuing for a total distance of 1553.66 feet to a ½" steel rod found at an angle point;

THENCE North 14° 46' 12" West now with the West line of the said 246.134 acre tract and East line of the said 25.264 acre tract, passing the Northeast corner of the said 25.264 acre tract and the Southeast corner of the same tract of land described as 12.166 acres conveyed by Anthony Aleman to Ramanujam K. Vangipuram and Samrajyam Kolluru by deed dated February 10, 2017, recorded in Volume 5948, Page 638, said Official Public Records, and continuing for a total distance of 1146.71 feet to a ½" steel rod found maintaining the most Westerly Northwest corner of the said 246.134 acre tract and the Southwest corner of the same tract of land described as 13.41 acres conveyed by Garcha Corporation to Sherman Economic Development Corporation by deed dated August 25, 2015, recorded in Volume 5680, Page 685, said official Public Records;

THENCE North 74° 28' 45" East a distance of 642.18 feet to a 1/2" steel rod found maintaining an inside "L" corner to the said 246.134 acre tract and the Southeast corner of the said 13.41 acre tract;

THENCE North 15° 22' 34" West with the Northerly West line of the said 246.134 acre tract a distance of 959.39 feet to the **POINT-OF-BEGINNING AND CONTAINING 278.313 ACRES OF LAND MORE OR LESS.....**

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

Zoning

1. All aspects of the Planned Development Ordinance must be followed.
2. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903-892-7267).
3. A detailed site plan shall be submitted for approval within two (2) years from the approval of the Conceptual Plan for a minimum of 20 percent of the project area. If a Detailed Site Plan is not submitted within two (2) years or no progress toward completion of the project is made in a five-year period, then the previous approval of the Concept Plan and the Development Plan shall expire. Upon expiration, the land within the boundaries of the PD shall automatically revert to the zoning district in place prior to approval of the PD district. The City Council may elect to extend approval periods of a PD with justification as to why the plans should remain in place.
4. Platting of the property is required.
5. Street names will need to be approved by the Building and Zoning Department before the plat is filed at the Grayson County Courthouse.

Engineering:

6. Driveways and sidewalks must conform to City of Sherman and TxDOT standards and a permit is required from City of Sherman Engineering Department.
7. Privately owned and maintained detention in accordance with City criteria is required. Engineering plans shall be provided to the City of Sherman Engineering Department for review and approval.
8. Platting of the property is required.
9. Water and sewer shall be extended to serve the development. Sewer capacity shall be verified for proposed use.
10. Development Agreement required for public infrastructures.
11. Traffic Impact Analysis required.

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

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

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

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

INTRODUCED on this the 8th day of September, 2020.

ADOPTED on this the 8th day of September, 2020.

EFFECTIVE DATE on this the 8th day of September, 2020.

CITY OF SHERMAN, TEXAS

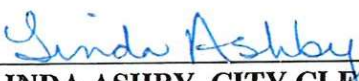
BY:



DAVID RLYLER, MAYOR

ATTEST:

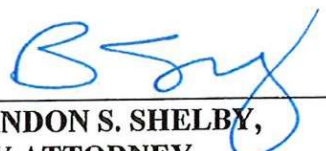
BY:



LINDA ASHBY, CITY CLERK

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AND CONTENT:**

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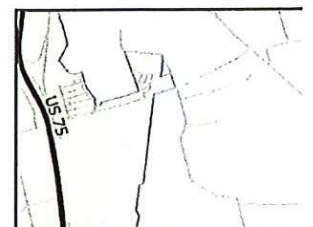
**BRANDON S. SHELBY,
CITY ATTORNEY**



-  Bel Air Village Expansion
-  Bel Air Village

CITY OF SHERMAN

Bel Air Village Expansion



300-1000 Blocks East FM 1417 (Vietnam Veterans Parkway)



ORDINANCE NO. 6232

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 6.11, ORDINANCE NO. 2280, SO AS TO GRANT A PLANNED DEVELOPMENT FOR TERRA PERPETUA VILLAGE IN THE 300-1000 BLOCKS OF EAST F.M. 1417 (VIETNAM VETERANS PARKWAY), BEING 245.83 ACRES IN THE SHERROD DUNMAN SURVEY, ABSTRACT NO. 329 (TERRA PERPETUA, LLC, OWNERS; BRYAN KLEIN, ION DESIGN GROUP, REPRESENTATIVE; BUSH ARCHITECTS, LLC, ARCHITECT; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYOR); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS PLANNED DEVELOPMENT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

WHEREAS, the City Council finds that it is in the public interest to grant this Planned Development, subject to certain conditions;

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

SECTION 1. That, from and after the passage of this ordinance, Terra Perpetua, LLC (Owners), Bryan Klein, ION Design Group (Representative), Bush Architects, LLC (Architect) and Underwood Drafting and Surveying (Surveyor) concerning the property located in the 300-1000 blocks of East F.M. 1417 (Vietnam Veterans Parkway) and that Section 6.11, Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the County of Grayson, State of Texas, being a part of the Sherrod Dunman Survey, Abstract No. 329, and being the same tract of land described as 246.134 acres conveyed by Edward C. Greene, Trustee to Rolling Meadows Associates by deed dated September 28, 1984, recorded in Volume 1716, Page 384, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point for the most Northerly Northwest corner of the said 246.134 acre tract in the South right-of-way line of F. M. Highway No. 1417 from which a 1/2" steel rod found bears North 15°22'34" West a distance of 0.36 feet, said point also being the Northeast corner of the same tract of land described as 0.84 acres conveyed by Richard J. Self and Brieta Self to Eric Popp and Kelly Popp by deed dated March 20, 2010, recorded in Volume 4809, Page 60, Official Public Records, Grayson County, Texas;

THENCE North 75°03'39" East with said right-of-way line a distance of 799.69 feet to a concrete monument at an angle point;

THENCE North 71°14'48" East continuing with said right-of-way line a distance of 300.67 feet to an angle point at the Southwest base of a concrete monument;

THENCE North 75°03'39" East continuing with said right-of-way line a distance of 814.42 feet to the beginning of a curve to the left having a radius of 11,519.16 feet;

THENCE in an Easterly direction continuing with said right-of-way line along said curve, (chord bears North 74°41'09" East, 150.78 feet) an arc distance of 150.79 feet to the end of said curve;

THENCE North 74°18'39" East continuing with said right-of-way line a distance of 391.99 feet to a point for the most Northerly Northeast corner of the said 246.134 acre tract at the Southwest base of a cross-tie corner post, said point also being the original Northwest corner of the same tract of land described as 32.55 acres conveyed by Frances Maddox to Ruth Ellen Green by deed dated October 8, 2002, recorded in Volume 3331, Page 760, said Official Public Records, also being the Northwest corner of the same tract of land described as 2.00 acres severed from said 32.55 acre tract as conveyed by said Ruth Ellen Green to said Frances Maddox by deed dated October 8, 2002, recorded in Volume 3331, Page 765, said Official Public Records;

THENCE in a Southerly direction with the general course of a fence along the Northerly East line of the said 246.134 acre tract and West line of the said Green and Maddox tracts the following calls and distances:

South 14°55'29" East a distance of 642.51 feet;

South 15°21'36" East a distance of 667.58 feet;

South 17°39'07" East a distance of 284.78 feet;

South 15°20'03" East a distance of 209.84 feet to a 1/2" steel rod set marking the Southwest corner of the said Maddox tract and an inside "L" corner to the said 246.134 acre tract;

THENCE North 75°18'02" East with a fence a distance of 430.04 feet to a 1/2" steel rod set marking the most Easterly Northeast corner of the said 246.134 acre tract and the Southeast corner of the said Maddox tract in the West right-of-way line of the St. Louis & San Francisco Railroad;

THENCE South 06°41'02" West with said West right-of-way line a distance of 2152.98 feet to an "L" corner;

THENCE North 83°18'58" West a distance of 75.00 feet to an "L" corner;

THENCE South 06°41'02" West continuing with said West right-of-way line a distance of 843.85 feet to a 1/2" steel rod set marking the Southeast corner of the said 246.134 acre tract and the Northeast corner of the same tract of land described as 82.032 acres conveyed by Sherman Development Partnership No. 1 to Sam H. Berry by deed dated October 1, 1993, recorded in Volume 2298, Page 258, Real Property Records, Grayson County, Texas, also being the original Easterly Northeast corner of the same tract of land described as 240.9284 acres conveyed by International Business Machines Corporation to Fisher Controls Company, Inc. by deed dated June 30, 1976, recoded in Volume 1349, Page 493, said Deed Records;

THENCE North 67°19'54" West with the Southwesterly line of the said 246.134 acre tract, passing the Northwest corner of the said 82.032 acre tract and continuing for a total distance of 1879.15 feet to a 1/2" steel rod found at an angle point;

THENCE North 49°31'48" West continuing with said Southwesterly line, passing the Northeast corner of Block 1, Lot 1, Blalock Industrial Park, an addition to the City of Sherman as shown by plat of record in Volume 8, Page 92, Plat Records, Grayson County, Texas, also being the Southeast corner of the same tract of land described as 25.264 acres conveyed by said Sherman Development Partnership No. 1 to Liberty Trust Company, Ltd. by deed dated February 7, 2017, recorded in Volume 5948, Page 836, said Official Public Records, and continuing for a total distance of 1553.66 feet to a 1/2" steel rod found at an angle point;

THENCE North 14°46'12" West now with the West line of the said 246.134 acre tract and East line of the said 25.264 acre tract, passing the Northeast corner of the said 25.264 acre tract and the Southeast corner of the same tract of land described as 12.166 acres conveyed by Anthony Aleman to Ramanujam K. Vangipuram and Samrajyam Kolluru by deed dated February 10, 2017, recorded in Volume 5948, Page 638, said Official Public Records, and continuing for a total distance of 1146.71 feet to a 1/2" steel rod found maintaining the most Westerly Northwest corner of the said 246.134 acre tract and the Southwest corner of the same tract of land described as 13.41 acres conveyed by Garcha Corporation to Sherman Economic Development Corporation by deed dated August 25, 2015, recorded in Volume 5680, Page 685, said official Public Records;

THENCE North 74°28'45" East a distance of 642.18 feet to a 1/2" steel rod found maintaining an inside "L" corner to the said 246.134 acre tract and the Southeast corner of the said 13.41 acre tract;

THENCE North 15°22'34" West with the Northerly West line of the said 246.134 acre tract a distance of 959.39 feet to the **POINT-OF-BEGINNING** and **containing 245.83 acres of land more or less.....**

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

Zoning:

1. All aspects of the Planned Development Ordinance must be followed.
2. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903-892-7267).
3. A detailed site plan shall be submitted for approval within two (2) years from the approval of the Conceptual Plan for a minimum of 20 percent of the project area. If a Detailed Site Plan is not submitted within two (2) years or no progress toward completion of the project is made in a five-year period, then the previous approval of the Concept Plan and the Development Plan shall expire. Upon expiration, the land within the boundaries of the PD shall automatically revert to the zoning district in place prior to approval of the PD district. The City Council may elect to extend approval periods of a PD with justification as to why the plans should remain in place.

Engineering:

4. Platting of the property is required.
5. Street names must be approved by Building & Zoning Department.
6. Water and sewer shall be extended to serve the development. Sewer capacity shall be verified for proposed use.
7. Privately owned and maintained detention in accordance with City criteria will be required upon development.
8. All requirements of the Floodplain Ordinance should be followed.
9. Final site plans, utility, drainage and grading plan shall be provided and approved by the City Engineering Department.
10. New drive approaches and sidewalks must conform to City of Sherman and TxDOT standards and a permit is required from City of Sherman Engineering Department.
11. Development Agreement required for all Public Infrastructures.

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

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

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

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

INTRODUCED on this the 5th day of August, 2019.

ADOPTED on this the 5th day of August, 2019

EFFECTIVE DATE on this the 5th day of August, 2019.

CITY OF SHERMAN, TEXAS

BY:



DAVID PLYLER, MAYOR

ATTEST:

BY:



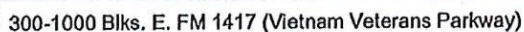
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY:

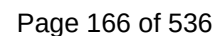


**BRANDON S. SHELBY,
CITY ATTORNEY**



NOT TO SCALE

Page 165 of 536



300-1000 East FM 1417
(Vietnam Veterans Parkway)



JOB NO. 19080693
 PLOT NO. - DFT: DW

~ BASIS OF BEARINGS ~
 GRID NORTH, NAD 83
 TEXAS STATE PLANE COORDINATE SYSTEM
 NORTH CENTRAL ZONE

Legal Description

Situated in the County of Grayson, State of Texas, being a part of the Sherrard Dunman Survey, Abstract No. 329, and being a part of the land conveyed by M. L. Maddox to C. T. Maddox and J. W. Maddox, by deed dated April 28th, 1985, recorded in Volume 1029, Page 551, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a cross-tie corner post at the intersection of the South right-of-way line of F. M. Highway No. 1417 and the West line of the said 1872.88' tract, said post being common to the Northeast corner of a 251.5 AC. GRAYSON COUNTY VOL. 329, P. 591, Rolling Meadows Association, by deed recorded in Volume 1716, Page 384, said Deed Records;

THENCE in an easterly direction with said right-of-way the following calls and distances:

North 74°18'25" East a distance of 243.59 feet to a concrete right-of-way marker;

North 80°01'17" East a distance of 803.99 feet to a 1/2" steel rod set at an angle point in said right-of-way;

North 74°18'39" East a distance of 95.31 feet to a 1/2" steel rod set at the intersection of the said right-of-way with the West right-of-way line of the Frisco Railroad;

THENCE South 06°41'02" West with said railroad right-of-way a distance of 1872.88 feet to a 1/2" steel rod set, said rod maintaining the Southeast corner of the said Maddox tract of land;

THENCE South 75°18'02" West with the South line of the said Maddox tract a distance of 430.04 feet to a 1/2" steel rod set at the Southwest corner of the said Maddox tract;

THENCE in a Northerly direction with an old fence maintaining the West line of the said Maddox tract the following calls and distances;

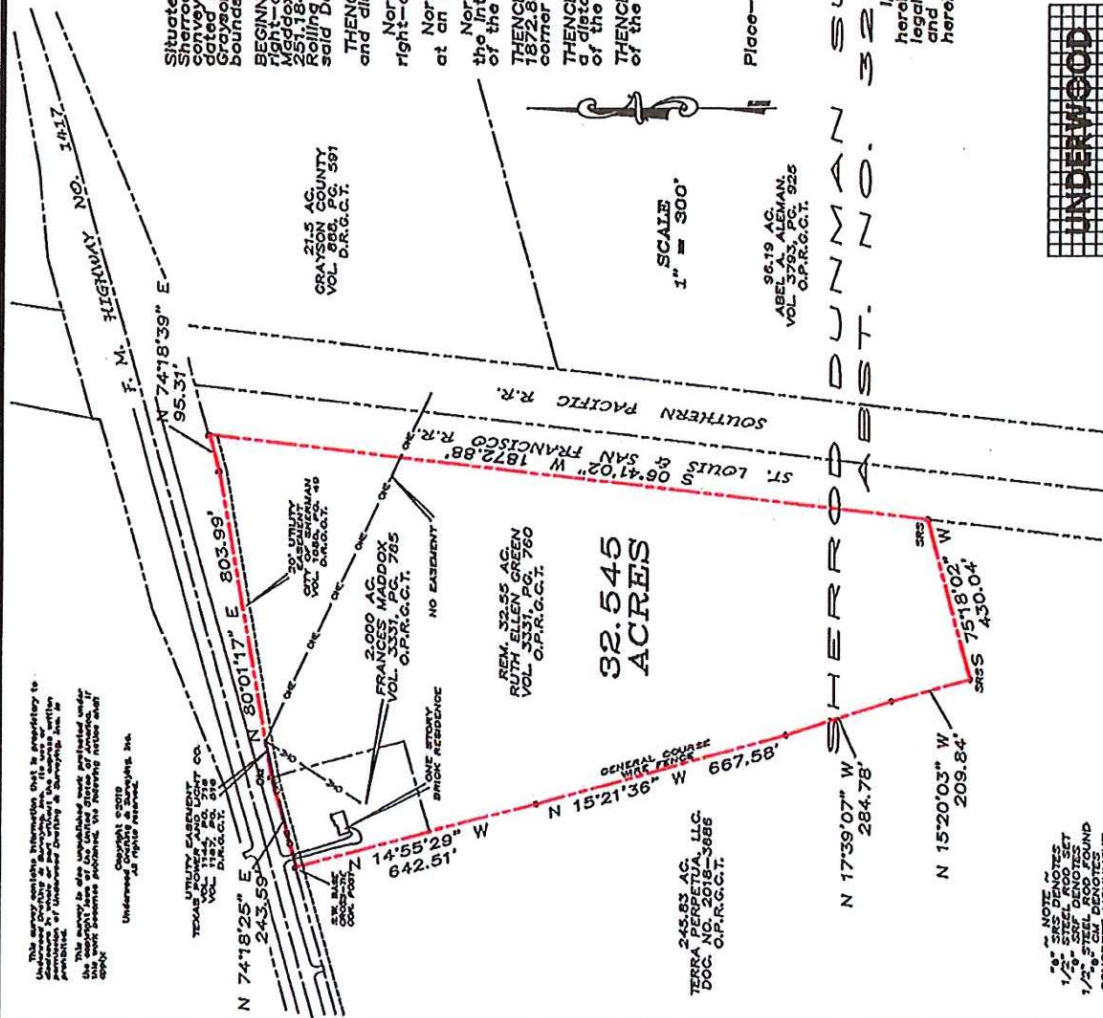
North 15°20'03" West a distance of 209.84 feet to a point;

North 17°39'07" West a distance of 284.78 feet to a point;

North 15°21'36" West a distance of 667.58 feet to a point;

North 14°55'29" West a distance of 642.51 feet to the

Place-of-Beginning and containing 32.545 acres of land more or less...



SHERRARD DUNMAN SURVEY

I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.

D.W. Underwood

Douglas W. Underwood
 Registered Professional
 Land Surveyor No. 4709
 Firm No. 10006300
 DATE OF SURVEY: 09/17/19



3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

NOTE:
 1/2" STEEL ROD SET
 1/4" DENOTES
 1/4" CONCRETE MONUMENT

This survey was made pursuant to the provisions of the Texas Surveying Act, Chapter 131, Texas Government Code, and the rules and regulations of the State Board of Surveying and Mapping. The survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.

BEL AIR VILLAGE

PLANNED DEVELOPMENT

CITY OF SHERMAN, TEXAS

DESIGN TEAM

ION DESIGN GROUP, LLC

7075 Twin Hills Avenue, Suite 350, Dallas, TX 75231

GFF ARCHITECTS

808 Fairmount St SUITE 300, Dallas, TX 75201

REVISED JULY 22, 2020

BEL AIR VILLAGE PLANNED DEVELOPMENT

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I. Components of Bel Air Village Planned Development

A. Introduction

Bel Air Village is a mixed-use community encompassing approximately 278.3 acres east of Highway 75 and immediately south of FM 1417. The Village offers a mix of commercial, residential, and recreational opportunities complemented by almost 14 percent of the land area set aside as parks, open space, trails, buffers, or other village amenities. The use and development regulations set forth in the Development Plan provide for and encourage development that contains a compatible mix of RESIDENTIAL and VILLAGE URBAN CENTER uses in proximity to one another.

Note: Words shown in all CAPITAL LETTERS are defined in VI. Definitions.

B. Village Development Objectives

The Bel Air Village addresses the physical relationship between development and adjacent properties, public streets, neighborhoods, and the natural environment through the following set of development objectives:

- Ensuring buildings relate appropriately to surrounding developments and streets to create cohesive visual identity and attractive street scenes;
- Offering a variety of housing types responsive to current and future residents' desire for a mix of product types based on their demographic and income needs;
- Siting land uses, streets, and pedestrian circulation in a cohesive and complementary layout supportive of the mix of uses and oriented towards the pedestrian realm to enhance and activate streetscapes;
- Applying residential and non-residential architectural FAÇADE elements and finishes;
- Ensuring creation of high quality street and sidewalk environments that are supportive of pedestrian mobility and appropriate to roadway context;
- Creating an enhanced pedestrian realm by the inclusion of wide sidewalks, vegetative avenues and a trail system interconnecting the respective development areas of the village; and,
- Preserving the natural resources of the site to the greatest extent practicable recognizing the value of the floodplain and stream channels as amenities to the development.

C. Key Village Elements

The following enumerates the key elements of the Bel Air Planned Development:

I. Components

A summary of key components covered in the Planned Development, acreages, and overall objectives.

II. Use and Building Envelope Standards

The USE and BUILDING ENVELOPE STANDARDS section establishes basic parameters for permitted and prohibited uses, building siting, lot widths, height, stories, and overall densities.

III. Architectural Standards

The ARCHITECTURAL STANDARDS section governs the VILLAGE URBAN CENTER and VILLAGE RESIDENTIAL DISTRICTS architectural elements and FAÇADE materials, windows, roofs, service areas and other standards.

IV. Lighting, Parking and Signage Standards

The LIGHTING, PARKING and SIGNAGE STANDARDS section establishes the standards for public/private space lighting, provision of adequate parking, and compatible signage.

V. Landscaping and Park/Open Space and Other Recreation Standards

The LANDSCAPING and PARK/OPEN SPACE and OTHER RECREATION STANDARDS section addresses required landscaping and other recreation amenities.

VI. Definitions

The DEFINITIONS section defines terms used within the Bel Air Village Planned Development.

VII. Appendices

The Appendices contain: Appendix A – CONCEPTUAL PLAN MAP; Appendix B – DEVELOPMENT DISTRICT MAP; and Appendix C – STREET CROSS SECTIONS.

D. Conceptual Plan and Development Districts Maps

The Bel Air Village Planned Development includes the CONCEPTUAL PLAN MAP depicting the respective land uses and the DEVELOPMENT DISTRICTS MAP identifying the two regulating districts.

1. Conceptual Plan Map

- a. The CONCEPTUAL PLAN MAP is a depiction of large land use categories that include residential, commercial, open space and major rights-of-way to be developed within the Bel Air Village Planned Development. (See Appendix A – CONCEPTUAL PLAN MAP)
- b. The allocation of land uses and proposed road network may be modified as specific development plans come forward at DETAILED SITE PLAN.
- c. The table below summarizes generalized land use acreages depicted on the CONCEPTUAL PLAN MAP:

Summary Table of Bel Air Village Acreages and Uses

	Acres	%	Units
RESIDENTIAL			
Single-Family Detached & Attached Residential	167.3	60.1	1,900
Mid-Rise Residential & Lagoon Area	51.2	18.4	3,000
COMMERCIAL			
Village Center	4.5	1.6	N/A
OPEN SPACE			
Parks, Open Space, Buffers & Flood Plain Areas	38.6	13.9	N/A
MAJOR RIGHTS-OF-WAY			
Collector Streets (does not include local residential streets)	16.7	6.0	N/A
Total Acres	278.3	100.0%	
<i>Note: Above acreages, units count and percentages are approximate and will be finalized at Site Plan Approval</i>			

2. Development Districts Map

The DEVELOPMENT DISTRICTS MAP consists of two districts, the VILLAGE URBAN CENTER DISTRICT and the VILLAGE RESIDENTIAL DISTRICT. (See Appendix B – DEVELOPMENT DISTRICTS MAP).

- a. VILLAGE URBAN CENTER DISTRICT – land designated for development of COMMERCIAL and MID-RISE RESIDENTIAL uses.
- b. VILLAGE RESIDENTIAL DISTRICT – land designated for development of a mix of DETACHED and ATTACHED SINGLE-FAMILY RESIDENTIAL uses.

II. Use and Building Envelope Standards

A. Village Urban Center District

1. Permitted and Prohibited Uses

a. Permitted uses

- (1) VILLAGE URBAN CENTER uses including BUSINESS SERVICE, OFFICE, PERSONAL SERVICE, RETAIL SERVICE, RETAIL SPECIALTY, RETAIL TRADE, STUDIO USES, restaurants, coffee shops, except where requiring a SPECIFIC USE PERMIT or prohibited by this Ordinance or the City of Sherman's Zoning Ordinance.
- (2) COMMERCIAL INDOOR AMUSEMENT
- (3) HOTEL, FULL-SERVICE or LIMITED-SERVICE
- (4) MID-RISE RESIDENTIAL
- (5) SENIOR/ASSISTED LIVING FACILITY
- (6) SCHOOL, PRIMARY OR SECONDARY
- (7) SKILLED NURSING HOME FACILITY
- (8) RECREATIONAL LAGOON

b. Permitted ACCESSORY USES

- (1) AFFILIATED RESIDENTIAL USES
- (2) AMENITY CENTER
- (3) Home Occupations
- (4) PARK/OPEN SPACE
- (5) Special events
- (6) STRUCTURED PARKING

c. Uses permitted upon review and approval of a SPECIFIC USE PERMIT

- (1) Alcoholic beverage sales and for any qualified restaurants serving alcoholic beverages on site
- (2) CIVIC BUILDING
- (3) Telephonic, radio, television or microwave, communication antennas and tower

d. Prohibited uses

- (1) Check cashing businesses, payday advance/loan businesses, car or motor vehicle title loan businesses, or credit access businesses as defined by applicable provisions of Texas Finance Code.
- (2) Gas wells
- (3) Industrial, manufacturing, and warehousing uses
- (4) Outside storage, unscreened
- (5) Sexually oriented business
- (6) Tattoo parlors
- (7) Vape businesses
- (8) Vehicle-related sales or repair

2. Building Lot Dimensional Standards

a. Dimensional Table

	Mln. Lot Width (ft)	Mln. Lot Depth (ft)	Mln. Front Yard Setback (ft)	Mln. Rear Yard Setback (ft)	Mln. Side Yard Setback (ft)	Maximum Units /Ac.	Max. Stories	Max. Building Height (ft)	Max. Lot Coverage (%)
Village Urban Center	N/A	N/A	0	0	0	85	5	75'	80

b. Additional Dimensional Standards

- (1) Permitted lot coverage for uses not listed in the Dimensional Table shall be determined upon approval of a SPECIFIC USE PERMIT or DETAILED SITE PLAN.
- (2) Architectural embellishments not intended for human occupancy that are integral to the architectural style of the buildings, including spires, belfries, towers, cupolas, domes, and roof forms whose area in plain view is no greater than twenty-five percent (25%) of the first floor footprint may exceed the height limits by up to twenty (20) feet.
- (3) Mechanical equipment, including mechanical/elevator equipment enclosures, ventilation equipment, chimneys, exhaust stacks and flues, fire sprinkler tanks, and other similar constructions may extend up to twelve (12) feet above the actual building height, provided that:
 - (a) The equipment is set back from all exterior walls a distance at least equal to the vertical dimension that such item(s) extend(s) above the actual building height; or
 - (b) The exterior wall and roof surfaces of such items that are set back less than the vertical dimension above the actual building shall be constructed as architecturally integral parts of the building FAÇADE(S).

B. Village Residential District

1. Permitted and Prohibited Uses

a. Permitted uses

- (1) SINGLE-FAMILY DETACHED RESIDENTIAL (SFD)
- (2) SINGLE-FAMILY ATTACHED RESIDENTIAL (SFA)

b. Permitted ACCESSORY USES

- (1) ACCESSORY BUILDING or STRUCTURE
- (2) AFFILIATED RESIDENTIAL USES
- (3) AMENITY CENTER
- (4) Home Occupations
- (5) PARK/OPEN SPACE

c. Uses permitted upon review and approval of a SPECIFIC USE PERMIT

- (1) CIVIC BUILDING
- (2) SCHOOL, PRIMARY OR SECONDARY
- (3) SENIOR/ASSISTED LIVING FACILITY and/or SKILLED NURSING HOME FACILITY and any STRUCTURED PARKING
- (4) Special events

d. Prohibited uses

Any use that is not expressly set forth as a permitted use in this Subsection "VILLAGE RESIDENTIAL DISTRICT" or not considered incidental to the primary permitted use.

2. Building Lot Dimensional Standards

a. Dimensional Table

Description	Single-Family Residential Detached	Single-Family Residential Attached
Building Type	Detached	Attached
Minimum Lot Area	4000 square feet	1200 square feet
Maximum Density	12 units per acre	24 units per acre
Minimum Lot Width	40 feet	20 feet
Minimum Lot Depth	90 feet	50 feet
Front Yard Setback (Alley-Loaded)	10 feet	6 feet
Front Yard Setback (Front-Loaded)	10 feet (building); 25 feet (garage door)	N/A
Side Yard Setback		
Interior Lot	5 feet	0 feet (side abutting another unit); 5 feet (side not abutting another unit)
Interior Lot (Zero Lot Line)	1 foot one side, 9 feet other side	N/A
Corner Lot	10 feet	10 feet
Minimum Rear Yard Setback	10 feet	5 feet
Maximum Building Height	3 stories, 50 feet	3 stories, 50 feet

b. Additional Dimensional Standards

- (1) Zero lot line development shall have a five (5) foot maintenance easement within the lot that abuts the 1-foot side of adjacent lot for maintenance.
- (2) SINGLE-FAMILY ATTACHED RESIDENTIAL shall be alley-loaded with overall building length not to exceed two hundred (200) feet and a required building separation of not less than ten (10) feet between buildings.

III. Architectural Standards

A. Architectural Standards – Village Urban Center District

1. Building FAÇADE Materials

- a. Permitted primary building materials (which must cover not less than 85% of the area of the FAÇADE) shall be:
 - (1) MASONRY/STONE
 - (2) STUCCO/PLASTER
 - (3) Hardie-Plank™ equivalent or better siding
 - (4) Other primary building materials shall be required to obtain a SPECIAL EXCEPTION as a part of DETAILED SITE PLAN approval
- b. Accent building materials (no greater than 15% of the area of the FAÇADE) may be:
 - (1) Pre-cast masonry (for trim and cornice elements only)
 - (2) Gypsum reinforced fiber concrete (for trim elements only)
 - (3) Metal (for beams, lintels, trim elements and ornamentation only)
 - (4) Split-faced CMU block (only for pilers, foundation walls and chimneys)
 - (5) EIFS

2. Building AWNINGS and CANOPIES

- a. Materials, Illumination and Location
 - (1) AWNINGS and CANOPIES shall be architectural and constructed with fully opaque materials that complement the building to which they are attached; provided, however, no shiny or reflective materials are permitted.
 - (2) AWNINGS and CANOPIES shall not be internally illuminated in a manner that illuminates the AWNINGS or CANOPY material; provided, however, downward lighting limited to lighting the building FAÇADE, sidewalk areas, and seating areas, is permitted to be installed beneath AWNINGS and CANOPIES.

3. Building Roofs

- a. Permitted Roof Materials
 - (1) Architectural asphalt shingles
 - (2) Tile, clay or concrete (faux clay)
 - (3) Slate (equivalent synthetic or better)
 - (4) Metal (standing seam, equivalent or better)
 - (5) Roofing material for flat roofs shall be monolithic Thermoplastic Polydefn (TPO) membrane or equivalent determined by BUILDING OFFICIAL
- b. Flat Roofs – roof material interior to the PARAPET shall not be visible from any adjacent ground-level areas.

4. Building Mechanical, Underground Utilities, and Solid Waste Facilities

- a. Mechanical Equipment
 - (1) Ground level transformers, HVAC equipment, lift stations, utility meters, and other machinery shall be located at the rear of the lot where practical
 - (2) Roof mounted equipment shall be screened from view from the PUBLIC SPACE where practical.
- b. All electrical, phone, cable and other similar types of facilities shall be underground except for service boxes which shall be approved at the time of DETAILED SITE PLAN.

c. Solid Waste Collection and Disposal

- (1) Location of solid waste facilities shall be approved at time of DETAILED SITE PLAN.
- (2) Solid waste facilities including trash compactors shall be screened by a MASONRY wall of a height that is at least one (1) foot above the height of the solid waste facility or trash compactor. Such screening wall shall be built with the same materials as used for the principal building, or an otherwise CITY approved material
- (3) Access to Solid waste facilities shall be provided by a metal gate or door equal in height of the wall and shall remain closed at all times when not being accessed for purpose of disposing solid waste into, or collecting for off-site disposal from, the facility.

B. Architectural Standards – Village Residential District**1. Architectural Diversity**

- a. Floor plans and front FAÇADES of the same PRIMARY BUILDING MATERIAL color for SINGLE-FAMILY DETACHED RESIDENTIAL shall be separated from one another by no fewer than three (3) lots for same floor plans and no fewer than four (4) lots for the same front FAÇADE.
- b. No combination of the same masonry color, mortar color, and sand color shall be repeated for SINGLE FAMILY DETACHED RESIDENTIAL buildings located on adjacent lots.
- c. The following list of architectural elements shall be incorporated into FAÇADES of SINGLE-FAMILY DETACHED RESIDENTIAL buildings with a choice of at least two (2) different elements occurring no more often than every fourth (4th) lot and be included in the DETAILED SITE PLAN:
 - (1) BALCONY
 - (2) Front Porch (may occur more often than every 4th lot)
 - (3) Chimney
 - (4) Patio courtyard
 - (5) MASONRY, stone, or cast stone accents
 - (6) Double entry doors
 - (7) Covered entry
 - (8) DORMERS
 - (9) Cedar shutters
 - (10) Natural stone (30% front FAÇADE)
 - (11) 10:12 or great roof pitch (may occur more often than every 4th lot)
 - (12) Gables with architecture feature
 - (13) Arch top windows
 - (14) Circle top windows
 - (15) Stained wood columns

2. Building FAÇADES

FAÇADE treatments are those portions of a building's STREET FRONTAGE FAÇADE elevation extending from the ground to the roof that consists of a single layer or architectural expression.

- a. RESIDENTIAL buildings shall have a finished floor elevation of not less than one (1) foot above the top of the front curb elevation.
- b. Wall openings shall not span vertically more than one story.

3. Building FAÇADE Materials

- a. Permitted primary building materials (which must cover not less than 85% of each area of the area of the FAÇADE) shall be:
 - (1) MASONRY/STONE
 - (2) STUCCO/PLASTER
 - (3) Hardie-Plank™ equivalent or better siding
 - (4) Other primary building materials shall be required to obtain a SPECIAL EXCEPTION as a part of SITE PLAN approval
- b. Accent building materials (which may cover no more than 15% of the area of the FAÇADE) may be:
 - (1) Pre-cast masonry (limited trim and cornice elements only)
 - (2) Gypsum reinforced fiber concrete (limited to trim elements only)
 - (3) Metal (limited to roofing, beams, lintels, trim elements and ornamentation only)
 - (4) Split-faced CMU block (but used only for piers, foundation walls and chimneys)
 - (5) EIFS
- c. Calculation of the percentage of the area of permitted building materials on a FAÇADE shall not include:
 - (1) The area occupied by windows and doors (including garage doors); and
 - (2) Other architectural features above the roofline, or areas not in plane with first-floor wall.

4. Building Windows

Windows shall conform to the following:

- a. Window Materials
 - (1) Specialty windows such as stained, opalescent, or glass block shall be permitted in limited amounts but in no case greater than fifteen (15) percent of the total window area of the FAÇADE.
 - (2) Solar screens are permitted only on FAÇADES not visible from the PUBLIC SPACE.
- b. Window Configurations
 - (1) The horizontal dimension of the window opening shall not exceed the vertical dimension except as provided in subparagraph b. (2), below.
 - (2) A maximum of five (5) windows may be mulled horizontally together to form a compound window which may be wider than it is tall if each grouping is separated by a mullion, column, pier or wall section that is not less than seven (7) inches wide.
- c. Alterations to these standards may be granted as part of a DETAILED SITE PLAN.

5. Building Roofs and PARAPETS

- a. Permitted Roof Materials
 - (1) 30-year dimensional shingles.
 - (2) Tile, clay or concrete (faux clay).
 - (3) Slate (equivalent synthetic or better).
 - (4) Metal on porches and accent roofs.
 - (5) Roofing material for flat roofs shall be monolithic Thermoplastic Polydefin (TPO) membrane or equivalent determined by BUILDING OFFICIAL.
 - (6) Roofing materials shall have a minimum 30-year rated warranty.
- b. Authorized Roof Configurations
 - (1) Pitched Roofs

Hip and gable roofs shall be symmetrically pitched 8:12 or greater.

(2) Flat Roofs

Roof material interior to the PARAPET shall not be visible from any adjacent ground-level areas.

c. Roofs, Dormers and Chimneys

(1) DORMERS and chimney chases above the roof structure shall be finished with a permitted PRIMARY BUILDING MATERIAL

(2) Fireplace flues shall be enclosed and finished to be complimentary of the building's exterior. Finished construction that provides for an exposed pre-fabricated metal flue piping (other than gas appliance vent stacks required by applicable construction codes) is prohibited

6. Underground Utilities

- a. All electrical, phone, cable and other similar types of facilities shall be underground except for service boxes which shall be approved at the time of DETAILED SITE PLAN.

IV. Lighting, Parking and Signage Standards

A. Lighting

1. STREET Lights

- a. STREET LIGHTS shall be install in accordance with the following:
 - (1) MAJOR STREETS – spaced a maximum of one hundred and fifty feet (150) feet including one (1) at each intersection.
 - (2) MINOR STREETS – spaced a maximum of one hundred feet (100) feet including one (1) at each intersection.
 - (3) LOCAL STREETS – lighting shall be at each intersection.
- b. STREET LIGHTS shall not cast a perceptively unnatural spectrum of light (such as low-pressure sodium) or project light skyward (dark sky friendly lighting).

2. VILLAGE URBAN CENTER Lighting

- a. An exterior Lighting Plan shall be approved as part of the DETAILED SITE PLAN for the VILLAGE URBAN CENTER.
- b. Lighting Standards
 - (1) Site lighting shall be of a design, height, and location to illuminate only the lot on which the light fixture is located unless illumination across lot lines is by a lighting fixture is authorized by the approved lighting plan included in the approved DETAILED SITE PLAN.
 - (2) Lighting elements shall not cast a clearly/perceptively unnatural spectrum of light (such as low pressure sodium). Lighting elements shall be limited to incandescent, metal halide, or halogen type fixtures.
 - (3) No flashing, traveling, animated, or intermittent lighting shall be visible from the exterior of any building whether such lighting is of temporary or long-term duration.

B. Parking

1. Parking Standards

- a. SINGLE-FAMILY RESIDENTIAL
 - (1) SINGLE-FAMILY RESIDENTIAL DETACHED and ATTACHED shall provide a minimum of two (2) garage parking spaces that shall remain usable for parking of two (2) passenger vehicles.
 - (2) Additional visitor parking (on or off street) shall be provided for SINGLE-FAMILY RESIDENTIAL uses at a rate of one (1) space per four (4) dwellings located within five hundred (500) feet for any SINGLE-FAMILY RESIDENTIAL lot providing parking for less than four (4) vehicles.
- b. MID-RISE RESIDENTIAL
 - (1) A minimum of 1.5 parking spaces shall be provided for each MID-RISE RESIDENTIAL unit.
 - (2) Additional onsite visitor parking shall be provided for MID-RISE RESIDENTIAL at a rate of one (1) space per six (6) units.
- c. VILLAGE URBAN CENTER
 - (1) For uses other than MID-RISE RESIDENTIAL, a Parking Plan prepared by a Texas professional engineer shall be submitted to the CITY that sets forth how the uses in the VILLAGE URBAN CENTER will accommodate parking demand. The Parking Plan shall be based on the parking standards set forth herein, or in the absence of a standard for a proposed use, shall be established as part of the approved DETAILED SITE PLAN.
 - (2) Required parking ratios for VILLAGE URBAN CENTER uses shall be:
 - (a) Office – 1 space per 300 square foot

- (b) Retail – 1 space per 250 square foot
- (c) Restaurant – 1 space per 150 square foot

2. On-Street Parking

- a. On-street parallel parking shall be eight (8) feet in depth and twenty-two (22) feet length.
- b. On-street parking may be counted towards meeting off-street parking requirements if authorized by the approved DETAILED SITE PLAN.

C. Signage

3. Signage Plan

- a. A Comprehensive Sign Plan shall be submitted to the CITY as part of the DETAILED SITE PLAN.
- b. Only individual lettering on a VILLAGE URBAN CENTER signage may be internally lit.
- c. Lettering on AWNINGS and CANOPIES shall be limited to six (6) inches tall located only on vertically hanging fabric at curbside.

4. Prohibited or Limited Signs

- a. Billboards, off-premises, pole signs, marquees, animated, flashing or intermittent signs, and roof and painted building FAÇADE signs are prohibited.
- b. Portable or wheeled signs and advertising devices located outside any building shall be prohibited.

V. Landscaping and Park/Open Space Standards

A. Landscaping

1. Landscaping – Trees

a. STREET TREES

- (1) MAJOR STREETS shall have STREET TREES planted along the PARKWAY with a spacing of no greater than one hundred (100) feet on center measured per BLOCK face or on a project by project basis, whichever is the smaller lineal dimension.
- (2) MINOR and LOCAL STREETS shall have STREET TREES planted along the PARKWAY with a spacing of no greater than seventy-five (75) feet on center measured per BLOCK face or on a project by project basis, whichever is the smaller lineal dimension.
- (3) For on-street parking spaces where bump-outs are utilized for parallel parking, one (1) STREET TREE shall be planted in each bump-out.
- (4) STREET TREES shall be at least three (3) caliper inches in diameter measured four (4) feet above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting.

b. VILLAGE URBAN CENTER TREES

- (1) Where the primary structure is located within twenty (20) feet of the front property line, the VILLAGE URBAN CENTER use shall be only responsible for planting STREET TREES in accordance with standards for STREET TREES on MAJOR STREETS.
- (2) Where the primary structure is located greater than twenty (20) feet from the front property line, the following tree planting shall be required:
 - (a) One tree at least three (3) caliper inches in diameter measured four (4) feet above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting for each fifty (50) feet of linear STREET FRONTAGE, which trees shall be planted within fifteen (15) feet of the front property line.
 - (b) Trees may be planted in groups with appropriate spacing for species.
 - (c) The trees required by this Subparagraph b. shall be in addition to the required STREET TREES.

c. SINGLE-FAMILY RESIDENTIAL TREES

(1) General

- (a) Required FRONT YARD TREES shall be in addition to the required STREET TREES
- (b) Required FRONT YARD TREES shall be at least three (3) inches in diameter measured four (4) feet above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting.

(2) Required FRONT YARD TREES

- (a) Lots having building setbacks of ten (10) feet or less no FRONT YARD TREES shall be required.
- (b) Lots having building setbacks of greater than ten (10) feet one (1) FRONT YARD TREES shall be required.

2. Landscaping – Yards

a. VILLAGE URBAN CENTER Yards

- (1) Required Landscaping shall be approved as a part of DETAILED SITE PLAN approval.

b. SINGLE-FAMILY RESIDENTIAL LOTS Yards

- (1) For lots widths of forty (40) feet or greater, no fewer than four (4) five (5) gallon shrubs and twelve (12) one (1) gallon shrubs shall be planted.

- (2) For lots widths twenty-five (25) feet and less than forty (40) feet, no fewer than three (3) five (5) gallon shrubs and eight (8) one (1) gallon shrubs shall be planted.
- (3) For lots widths less than twenty-five (25) feet, no fewer than two (2) five (5) gallon shrubs and six (6) one (1) gallon shrubs shall be planted.
- (4) SINGLE-FAMILY RESIDENTIAL lots shall have full sod installed within any portion of the front yard and side yard abutting a STREET not covered by walkways, driveways, trees, shrubbery, ground cover or planting beds, or other approved landscape materials.
- (5) Decorative rocks shall be permitted in limited amounts and within areas between structures where plant material is difficult to maintain.

3. Landscaping – Parking Lots

- a. Five (5) linear feet of landscaped evergreen screening and/or masonry wall at a height of three (3) feet shall be planted between the STREET right-of-way and the parking area in all parking areas within a parking lot abutting a STREET.
- b. The following interior landscaping shall be planted in off-street, surface parking that contains twenty (20) or more parking spaces:
 - (1) Twenty (20) square feet of landscaping for each parking space shall be installed within the paved boundaries of the parking area.
 - (2) Landscaped islands shall be located at the ends of all parking rows and one (1) landscaped island for each twenty (20) parking spaces in a parking row shall be located on the interior of each parking row. The location the landscape islands within parking areas shall be approved as part of the DETAILED SITE PLAN
 - (3) No fewer than one (1) tree, three-inch (3) caliper inch minimum as measured four (4) feet above grade and not less than ten (10) feet in height measured from the base of the main trunk showing at grade at time of planting shall be planted in each parking lot landscaped island.
 - (4) Landscaped islands shall be not less than six (6) feet wide, not less than ninety percent (90%) of the abutting parking space in length, and planted with approved ground cover.
 - (5) Landscaped areas shall be protected by a raised six (6) inch concrete curb with pavement placed no closer than three (3) feet from the trunk of a tree if no CITY-approved root barrier has been installed.

4. Landscaping – Fences/Walls

- a. Fences/Walls – General
 - (1) Metal fencing shall be ornamental metal, tubular steel or similar material with a consistent design and finished in black.
 - (2) MASONRY walls shall be constructed with MASONRY materials compatible with adjacent buildings.
 - (3) Wood fencing adjacent to STREETS shall be board-on-board with capping, pre-stained cedar, with steel posts.
 - (4) Fences and walls exceeding eight (8) feet in height are prohibited except to screen service areas of VILLAGE URBAN CENTER.
 - (5) Fence and wall materials and location shall be approved as part of the DETAILED SITE PLAN.
- b. Fencing/Walls – MAJOR STREETS
 - (1) WOOD fencing along MAJOR and MINOR STREETS is prohibited.
 - (2) MASONRY walls exceeding two (2) feet in height shall be designed with footings approved by a structural engineer or other appropriately licensed professional.
- c. Fences/Walls – RESIDENTIAL
 - (1) No fence or wall shall be permitted within front yards except on corner lots, wherein approved ornamental metal fences, not exceeding five (5) feet in height, may be installed within the front yard not serving as the main entry point to the dwelling (i.e. the side yard along the STREET).

- (2) On RESIDENTIAL lots abutting or facing a PARK/OPEN SPACE, only ornamental metal fencing shall be used on the side of the lot facing the PARK/OPEN SPACE unless another material approved as part of the DETAILED SITE PLAN.
- (3) Fences and walls consisting of materials or placed in locations not otherwise authorized by this Subparagraph may be approved as part of the approved DETAILED SITE PLAN.

5. Landscaping – Irrigation

Permanent automatic irrigation systems shall be designed, installed, and operated for all required landscaping.

6. Landscaping – Completion

- a. No certificate of occupancy for any building on any lot may be issued until all required irrigation systems, trees and other plant materials have been installed and/or planted on the lot.
- b. Due to on-going drought conditions, the CITY may authorize delay for planting of new landscape materials, in which case, a certificate of occupancy may be issued.
- c. In the event of such authorized delay, all landscape materials shall be planted not later than the date provided in the authorization. Failure to install all landscaping by the date set forth in the delay authorization shall be a violation of this Ordinance.

B. Park/Open Space

1. PARK/OPEN SPACE

- a. VILLAGE URBAN CENTER
 - (1) VILLAGE URBAN CENTER uses, other than MID-RISE RESIDENTIAL, shall not be required to set aside a percentage of lot area for PARK/OPEN SPACE.
 - (2) MID-RISE RESIDENTIAL shall allocate not less than ten percent (10%) of the lot area to PARK/OPEN SPACE.
 - (a) Landscaped parking areas, walkways, yards and entries shall be considered PARK/OPEN SPACE.
 - (b) Areas designated as PARK/OPEN SPACE shall be shown on the approved DETAILED SITE PLAN.
- b. VILLAGE RESIDENTIAL
 - (1) Areas designated as PARK/OPEN SPACE shall be shown on all approved DETAILED SITE PLANS.
 - (2) PARK/OPEN SPACE shall be maintained by either a property or homeowners association or by the CITY if designated public PARK/OPEN SPACE.

2. PEDESTRIAN PATHWAYS

- c. PEDESTRIAN PATHWAYS shall be a minimum of six (6) feet in width on MAJOR and MINOR STREETS and five (5) feet on LOCAL STREETS.
- d. PEDESTRIAN PATHWAYS shall be installed at all required locations on a lot prior to issuance of a certificate of occupancy of the first building constructed on the lot or, if the issuance of a certificate of occupancy is required, the commencement of the provision of utilities to any building on the lot.

VI. Definitions

A. Purpose

The words and phrases as used in this ORDINANCE shall have the following meanings unless the context of such use clearly indicates otherwise. Words and phrases not defined within the Definitions, but which are defined in the City of Sherman's Zoning Ordinance shall have the meaning provided such words and phrases in the Zoning Ordinance. Wherever a word or phrases is printed in CAPITAL LETTERS, it is being used as defined herein.

B. Terms Defined

ACCESSORY BUILDING OR STRUCTURE (RESIDENTIAL DISTRICT) – A subordinate building or structure, detached and used for a purpose customarily incidental to the main structure such as a private garage for automobile storage, tool house, lathe or greenhouse as a hobby (no business), home workshop, children's playhouse, storage house, garden shelter or swimming pool, but not involving the conduct of a business.

ACCESSORY USE (see USE).

AFFILIATED RESIDENTIAL USES (see USE).

ALLEY – A public space or drive which affords secondary means of access to abutting property.

AMENITY CENTER – An OPEN SPACE area developed as a recreational center for the use by VILLAGE residents and their guests that may include pools, hot tubs, meeting rooms, workout spaces, bathrooms, playgrounds and similar uses.

AWNING – A cantilevered, projected or suspended cover over the sidewalk portion of the PUBLIC SPACE. This also includes roof-like coverings, usually of canvas or metal and often adjustable, placed over the sidewalk, windows, or doors to provide protection from sun and rain.

BALCONY – An exterior platform attached to the building FAÇADE extending outward from an interior room located above a GROUND STORY.

BLOCK – An area enclosed by streets and occupied by or intended for buildings; or if said word is used as a term of measurement, it shall mean the full length along the street between the intersection of two streets.

BUILDING HEIGHT – For VILLAGE URBAN CENTER uses, BUILDING HEIGHT is measured in STORIES; for SINGLE-FAMILY RESIDENTIAL uses, BUILDING HEIGHT is measured from the existing grade to the midpoint of a gabled roof line or the top of the PARAPET or mansard roof.

BUILDING OFFICIAL – The official appointed to enforce the ZONING ORDINANCE.

CANOPY – An architectural projection of canvas or similar material that provides weather protection over an area and is supported by the building to which it is attached and at the outer end by not less than two posts.

CITY – City of Sherman, Texas.

CIVIC BUILDING – Publicly- or privately-owned buildings that are open to the public for non-COMMERCIAL purposes.

COMMERCIAL INDOOR AMUSEMENT (see USE).

COMMERCIAL USE (see USE).

CONCEPTUAL PLAN – Proposed land uses as shown on the CONCEPTUAL PLAN.

DETAILED SITE PLAN – A site plan approved by the City of Sherman.

DEVELOPMENT DISTRICTS

VILLAGE URBAN CENTER – Land designated on the DEVELOPMENT DISTRICT MAP as VILLAGE URBAN CENTER intended for more flexible development standards allowing for VILLAGE URBAN CENTER uses ranging from single lot projects such as big-box stores and hotels to larger-scale shopping centers and business centers as well as MID-

RISE RESIDENTIAL uses.

VILLAGE RESIDENTIAL DISTRICT – Land designated on the DEVELOPMENT DISTRICT MAP as RESIDENTIAL Intended for a mix of DETACHED and ATTACHED RESIDENTIAL.

DORMER – Small, roofed ancillary structures with windows providing light and air to habitable space within the roof.

EIFS (EXTERIOR INSULATION AND FINISH SYSTEM) – a no-load bearing, exterior wall cladding system that consists of an insulation board attached either adhesively or mechanically, or both, to the substrate; an integrally reinforced base coat; and a textured protective finish coat.

FAÇADE – Exterior building face.

FENESTRATION – Openings in the building wall allowing light and views between interior and exterior measured as glass area.

FRONT SETBACK LINE – The line at which the building FAÇADE shall be located adjacent to or behind.

FRONT YARD TREE (see TREE, FRONT YARD).

HEIGHT (see BUILDING HEIGHT)

HOTEL, FULL SERVICE – An establishment offering temporary lodging facilities consisting of regular rooms or suites suitable for short-term stays with one or more restaurants and lounges, food and beverage catering, conference meeting rooms, recreational amenities, and STRUCTURED PARKING.

HOTEL, LIMITED SERVICE – An establishment offering temporary lodging facilities consisting of regular rooms or suites suitable for short-term stays that may offer a business center, pool/whirlpool, workout room, a meeting room and a lobby marketplace for snacks and beverages; the establishment may offer restaurant services geared to primarily hotel guests.

LOT, CORNER – A lot that is bounded by intersecting STREETS.

LOT COVERAGE – The percentage of the total area of a lot occupied by the base (first story or floor) of buildings located on the lot or the area determined as the maximum cross-sectional area of the building; eaves, drives, uncovered patios/porches, sidewalk, and similar improvements are excluded from LOT COVERAGE computations.

LOT LINE – The lines bounding a lot.

LOT WIDTH – The width of the lot as measured at the FRONT SETBACK LINE.

MAJOR STREET (see STREET, MAJOR).

MASONRY/STONE – Defined as construction material three (3) inches or thicker composed of natural stone, kiln fired clay brick, decorative concrete block or other masonry material approved by the CITY'S BUILDING OFFICIAL.

MINOR STREET (see STREET, MINOR).

OFFICE BUILDING – A building used to house OFFICE USES.

PARAPET – A low wall projecting from the edge of a platform, terrace, or roof.

PARAPET HEIGHT – Where used to limit building height, PARAPET HEIGHT is the distance measured at the top of the parapet, including any coping.

PARK (see OPEN SPACE).

PARK/OPEN SPACE – Land and water designed for active and/or passive recreational enjoyment, but also including small vegetative spaces, flood plains, AMENITY CENTERS, development entries, PEDESTRIAN PATHWAYS; areas located within a SINGLE-FAMILY RESIDENTIAL LOT or within a public right-of-way shall not be considered PARK/OPEN SPACE.

PARKWAY – An area located immediately between the street curb and sidewalk in which STREET TREES and street lights and other such infrastructure are placed.

PEDESTRIAN PATHWAY – A paved walkway/sidewalk that provides pedestrian access throughout a community to VILLAGE URBAN CENTER and RESIDENTIAL uses; PEDESTRIAN PATHWAYS are not considered appropriate for bicycle use.

PLANNING AND ZONING COMMISSION – The Planning and Zoning Commission of the City of Sherman, Texas.

PUBLIC SPACE – The public domain commonly referred to as the public **STREETS**, **ALLEYS** and rights-of-way but can include travel lanes, **PARKWAYS**, **PEDESTRIAN PATHWAY**, and **PARK/OPEN SPACE**.

REAR LOT LINES – Lot lines located at the rear of the property and often abutting **ALLEYS**.

RETAIL (see **USE**).

RESIDENTIAL (see **USE**)

SCHOOL, PRIMARY OR SECONDARY – A school operated by an independent school district, religious entity or private corporation providing a kindergarten, elementary and/or secondary curriculum.

SCHOOL, COLLEGE OR UNIVERSITY – An academic institution of higher learning, accredited or recognized by the State and offering a program or series of programs of academic study.

SENIOR/ASSISTED LIVING FACILITY – A residential living facility for older adults that may include independent living arrangements designed exclusively for seniors, generally those 55 years or older, to live independently within an apartment-style facility or freestanding home; It may also include, as an **ACCESSORY USE**, living facilities that offer a larger range of services for residents as their level of care expands, as long as the resident does not need skilled 24-hour nursing care.

SKILLED NURSING HOME FACILITY – State-licensed long-term care residential living facility offering 24-hour medical care provided by registered nurses, licensed practical nurses and/or certified nurse assistants for residents who are totally dependent on nursing care or short-term rehabilitation between hospital and home.

STORY – That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

STORY, GROUND – The first level of a building at or above grade.

STREET – A public thoroughfare used for vehicular traffic usually within dedicated right-of-way; this definition does not include **ALLEYS**, **CITY** fire lanes, driveways, or access aisles or easements.

STREET LIGHT – A luminaire installed on both sides of a **STREET** within the public right-of-way.

STREET, MAJOR – A **STREET** having four or more travel lanes with rights-of-way greater than seventy (70) feet.

STREET, MINOR – A **STREET** having three or less travel lanes with rights-of-way exceeding sixty (60) feet but not exceeding seventy (70) feet.

STREET, LOCAL – A **STREET** having two travel lanes with rights-of-way sixty (60) feet or less.

STREET FRONTAGE – That portion of the lot or building that is coincident with the **FRONT SETBACK LINE**.

STREET TREE (see **TREE, STREET**).

STUCCO/PLASTER – Stucco/Plaster material shall only be considered as meeting the masonry requirement when applied using a 3-step process over diamond metal lath mesh to a 7/8-inch thickness or by other processes producing comparable cement stucco finish with equal or greater strength, durability, and fire resistive specifications.

TREE, STREET – A tree planted in the **PARKWAY**.

TREE, FRONT YARD – A tree planted in a front yard area.

USES

ACCESSORY USE – A use of land or building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use; within a **RESIDENTIAL DISTRICT** this may include a pool, children's play equipment, gazebo, picnic table, etc.

AFFILIATED RESIDENTIAL USE – A use intended for the residents and their guests of a RESIDENTIAL use that includes a leasing office, fitness center, game room, laundry, pool, amenity center and other residential-related services and uses.

BUSINESS SERVICE USE – Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, including but not limited to advertising and mailing; building maintenance; employment service; management and consulting services; equipment rental and leasing (does not include outside storage or heavy construction equipment); commercial research; development and testing; photo finishing; and supplies services.

CIVIC USE – Community uses including the following: meeting halls; libraries; schools (kindergarten through college); police and fire stations; post offices (retail operations only, no primary distribution facilities); places of worship; museums; cultural, visual and performing art centers; transit centers; government functions open to the public; and, other similar uses.

COMMERCIAL INDOOR AMUSEMENT USE – Commercial establishments wholly contained within a building that provide amusement, entertainment or games of skill for a fee or admission charge including, but not limited to, billiards, bowling, video or game arcades, movie theaters, and skating rinks.

COMMERCIAL USE – Includes BUSINESS SERVICES, OFFICES, PERSONAL SERVICES, RETAIL SERVICES, RETAIL SPECIALTY USES, RETAIL TRADE USES, STUDIO USES, and RECREATIONAL LAGOON.

PERSONAL SERVICE USE – Establishments primarily engaged in providing services involving the care of a person or his or her apparel, including laundry, cleaning and garment services, garment pressing, coin operated laundries, beauty shops, barber shops, shoe repair, reducing salons and health clubs, clothing rental, doctors, dentists, chiropractors, veterinarians, etc.

OFFICE USE – Includes, but are not limited to lawyers, engineers, architects, landscape architects, accountants, insurance agencies, economic consultants, general business offices, or other similar professions.

RECREATIONAL LAGOON – A large, artificially-created recreational water body for swimming and other water-related activities (can be a COMMERCIAL or CIVIC use).

RESIDENTIAL USE – A range of housing uses that encompass SINGLE-FAMILY and MID-RISE uses, and SENIOR/ASSISTED and/or SKILLED NURSING HOME FACILITIES.

RESIDENTIAL, SINGLE-FAMILY ATTACHED – A SINGLE-FAMILY RESIDENTIAL use constructed in a group of two (2) or more attached units separated by property lines in which each unit extends from foundation to roof.

RESIDENTIAL, SINGLE-FAMILY DETACHED – A free-standing, SINGLE-FAMILY RESIDENTIAL use occupying a single lot not sharing any walls in common with adjacent SINGLE-FAMILY RESIDENTIAL use.

RESIDENTIAL, MID-RISE – A multi-storied residential building containing multiple separate housing units above one another for residential purposes within one building or complex, commonly referred to as "apartments;" this definition does not include a HOTEL or any short-term stay facility (stays of less than six months) but may include ground-floor commercial.

RESIDENTIAL, SINGLE-FAMILY – A residential dwelling occupied by persons living as a single household unit; this definition includes DETACHED and ATTACHED residential uses but does not include MID-RISE RESIDENTIAL.

RETAIL SERVICE USE – Establishments providing services, as opposed to products, to the general public, including restaurants, LIMITED and FULL SERVICE HOTELS, finance, real estate and insurance, travel agencies, health and educational services, and galleries.

RETAIL SPECIALTY USE – Include, but are not limited to the sale of gifts, antiques, flowers, books, jewelry, wearing apparel or craft shops making articles exclusively for sale at retail on the premises. Establishments selling used goods or merchandise and retail store sales consisting primarily of specialty and novelty items as defined by City of Sherman Resolution No. 77-028 are specifically excluded.

RETAIL TRADE USE – Establishments engaged in selling new goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. Establishments primarily engaged in the selling of used goods or merchandise are specifically excluded.

STUDIO USE – Includes, but is not limited to dance, art, music, photography, radio or television and specifically excluding any type of sexually oriented business.

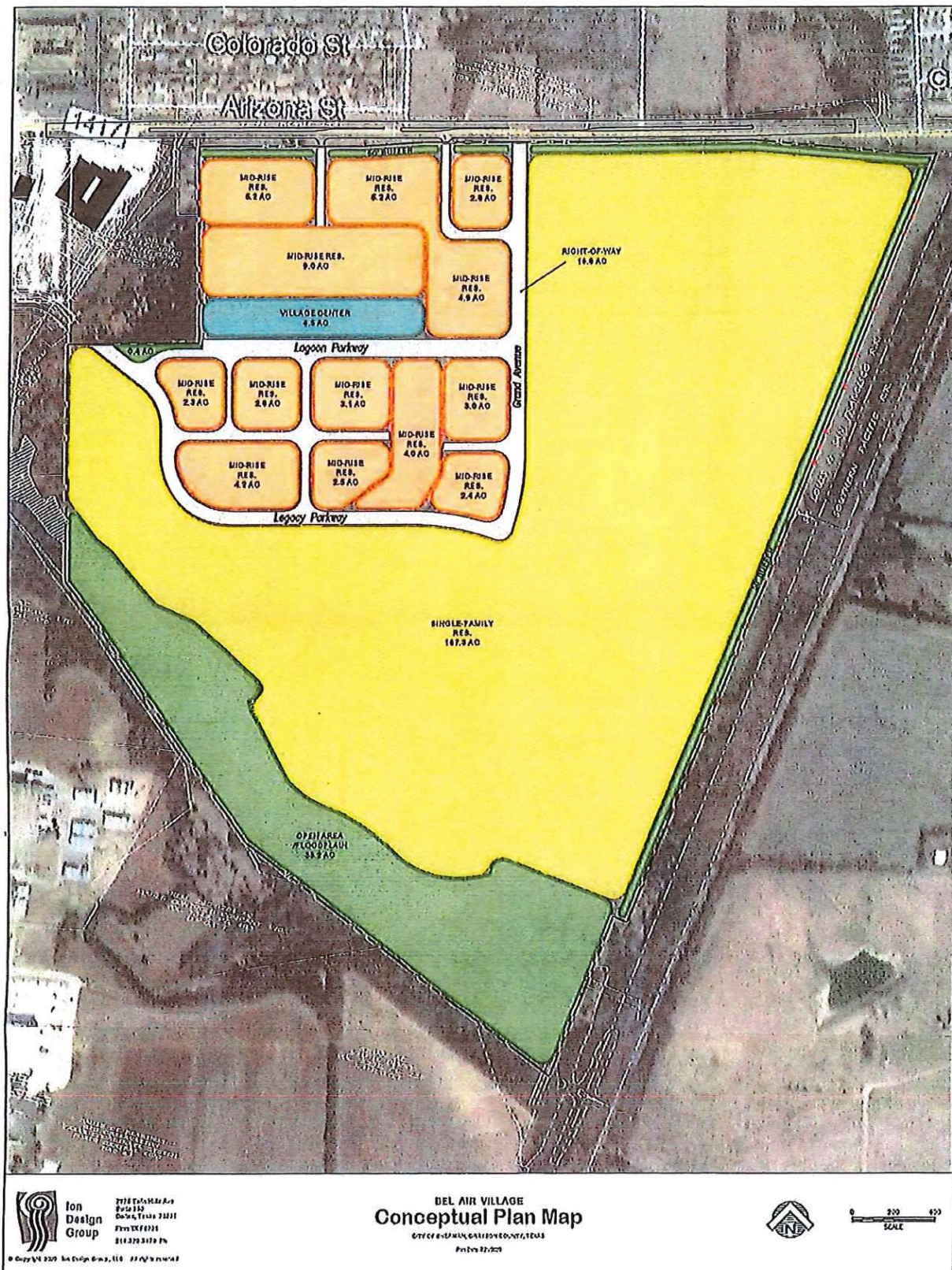
VILLAGE URBAN CENTER USE – Any use that is defined herein as a MID-RISE RESIDENTIAL, BUSINESS SERVICE, OFFICE, PERSONAL SERVICE, RETAIL SERVICE, RETAIL SPECIALTY, RETAIL TRADE, and STUDIO uses but specifically excluding any uses prohibited by this ORDINANCE.

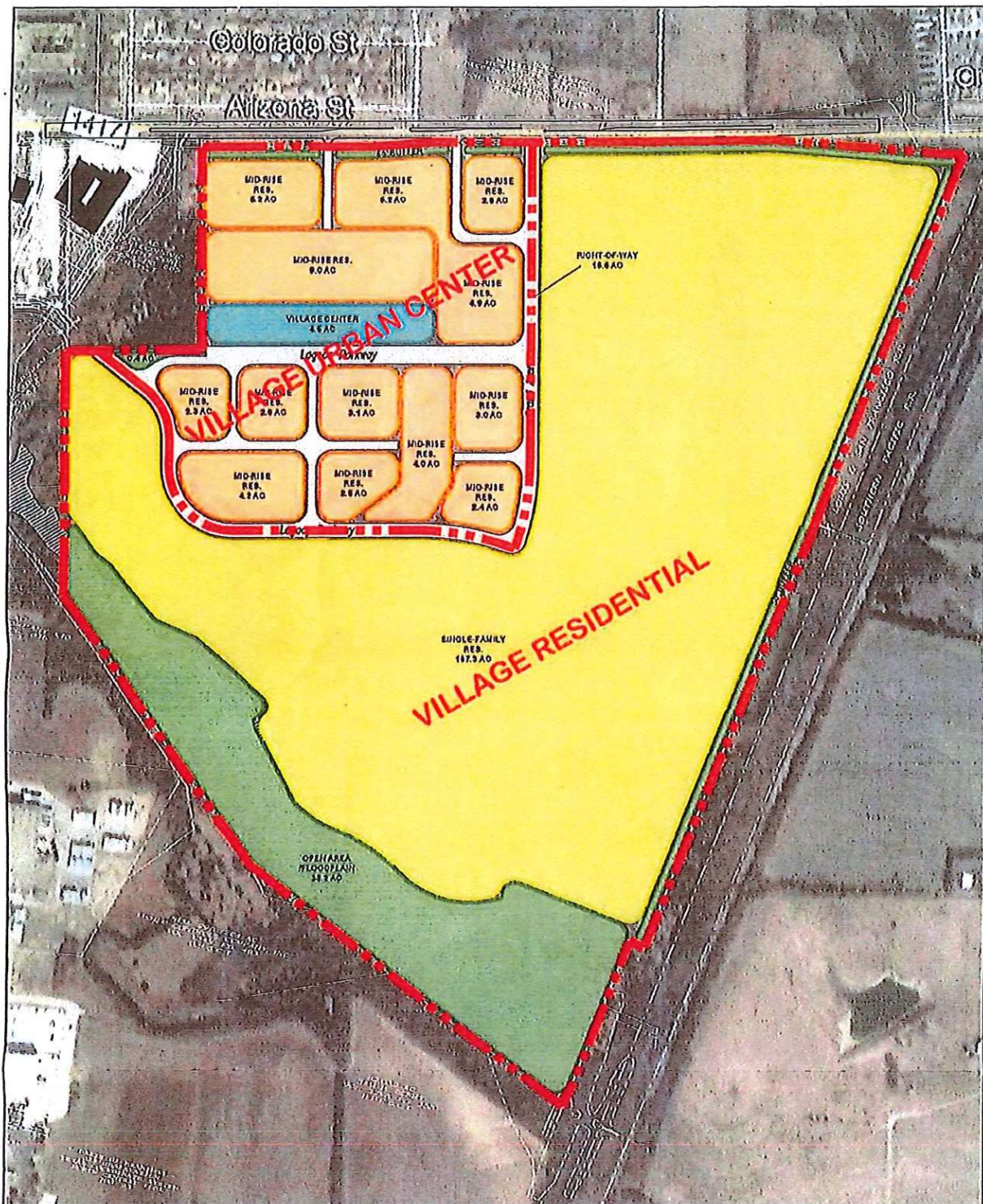
VILLAGE URBAN CENTER USE (see USE).

ZONING ORDINANCE – The Zoning Ordinance of the City of Sherman, as amended from time to time, including any future codifications.

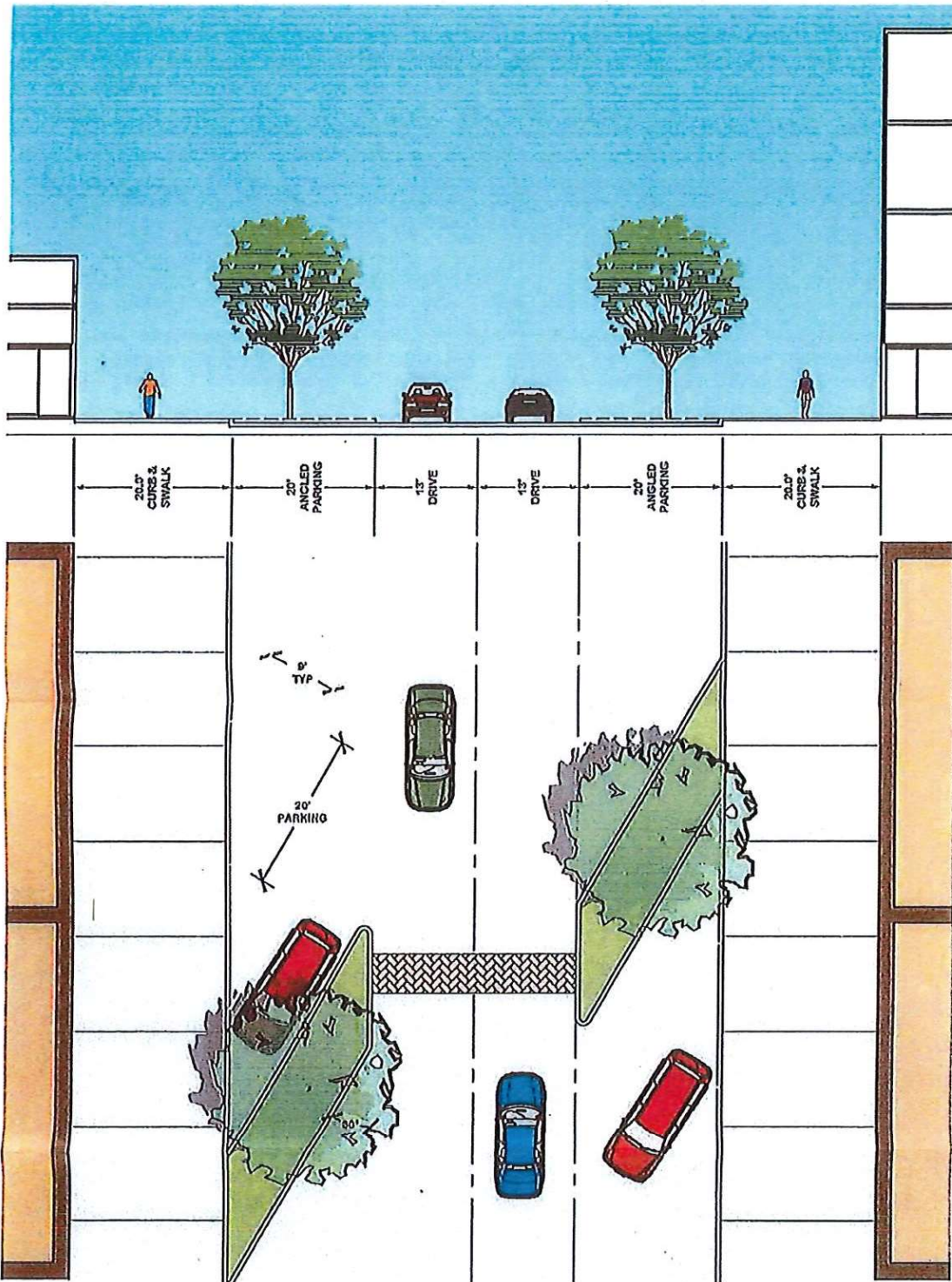
VII. Appendices

- A. Appendix – Conceptual Plan Map
- B. Appendix – Development Districts Map
- C. Appendix – Street Cross Sections





LAGOON PARKWAY - 106' R.O.W.



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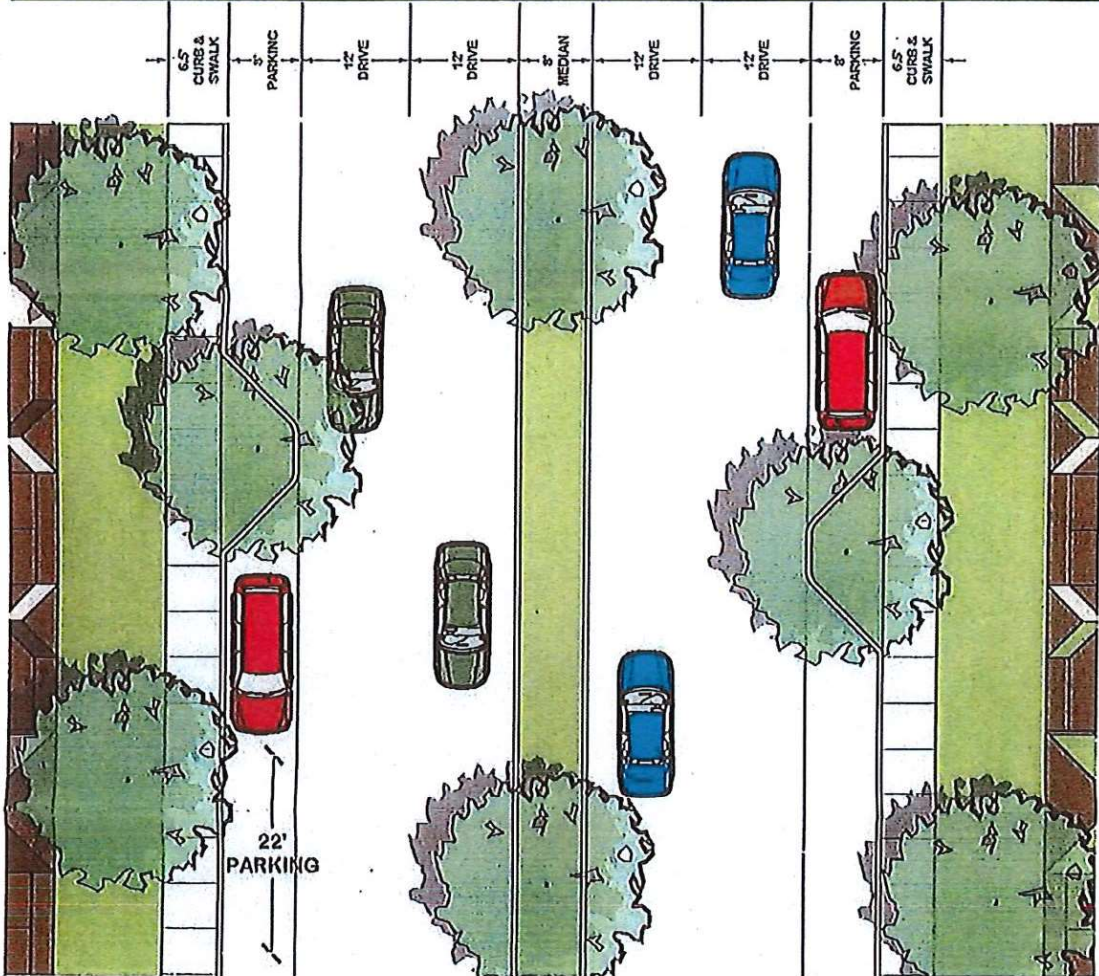
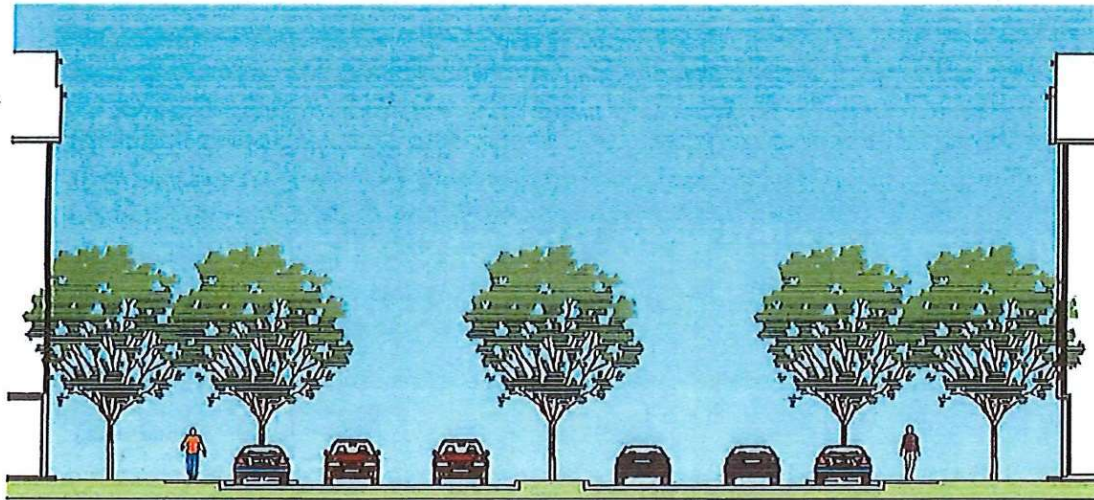
**BEL AIR VILLAGE
STREET SECTIONS**
SHERMAN, TEXAS
May 2020



**Ion
Design
Group**

7075 Twin Hills Ave
Suite 350
Dallas, Texas 75231
Firm TX F0701
214.370.3470 Ph

GRAND AVENUE - 85' R.O.W.



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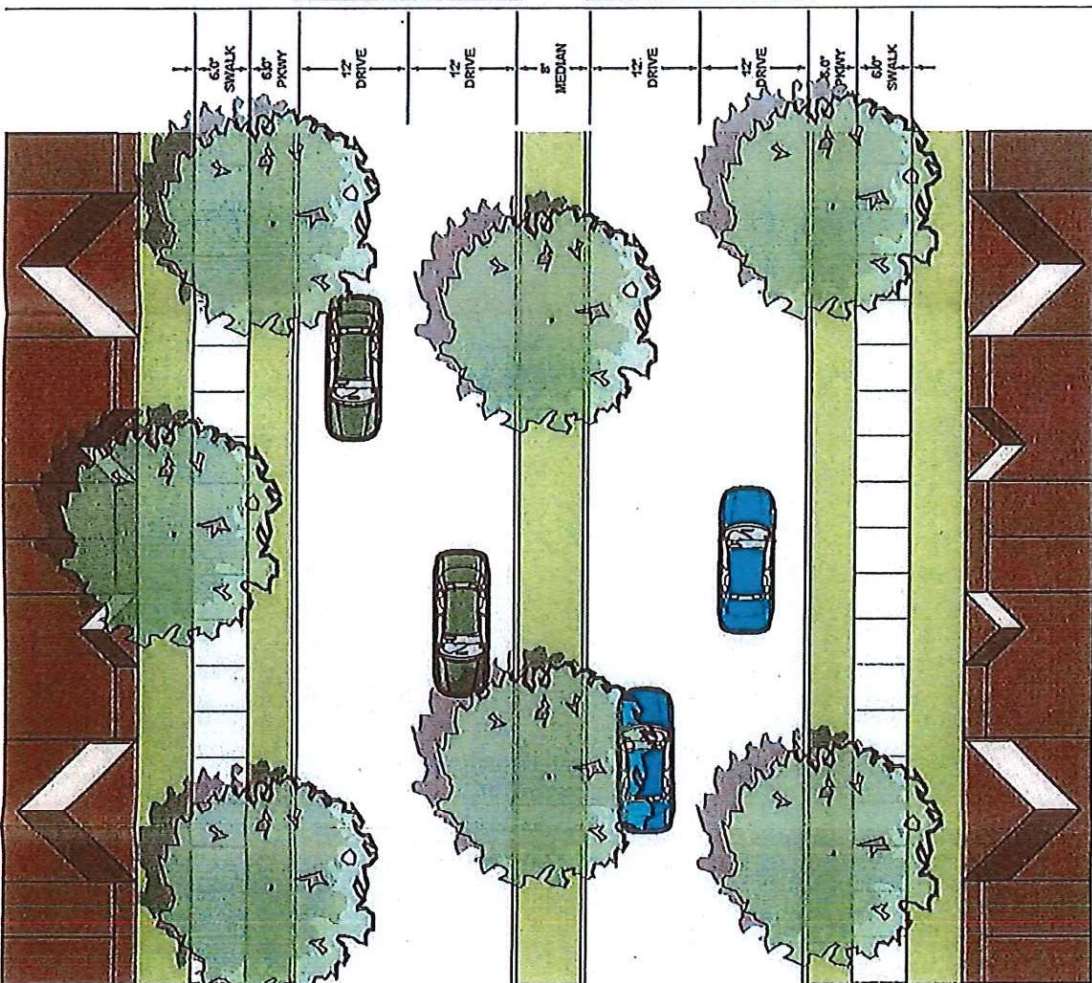
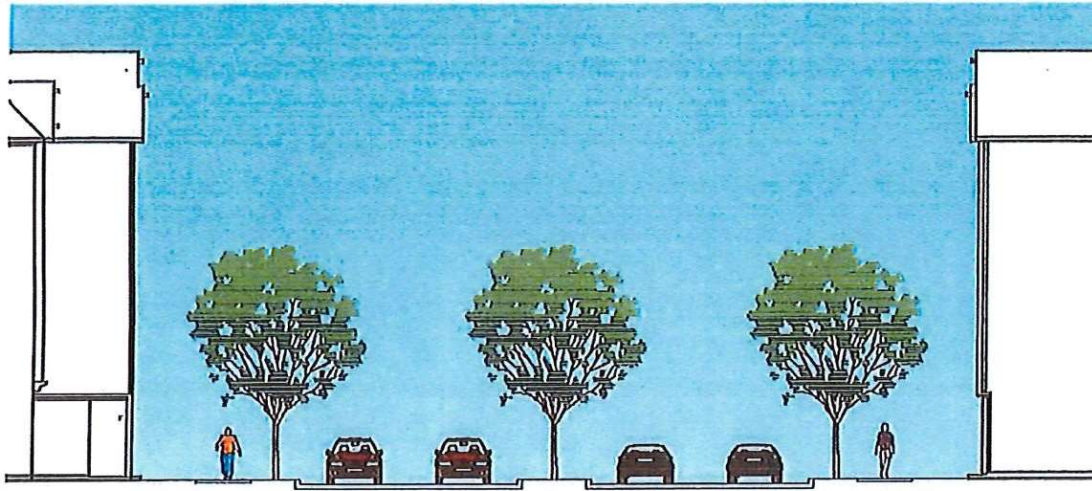
**BEL AIR VILLAGE
STREET SECTIONS**
SHERMAN, TEXAS
May 2020



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LEGACY PARKWAY - 80' R.O.W.



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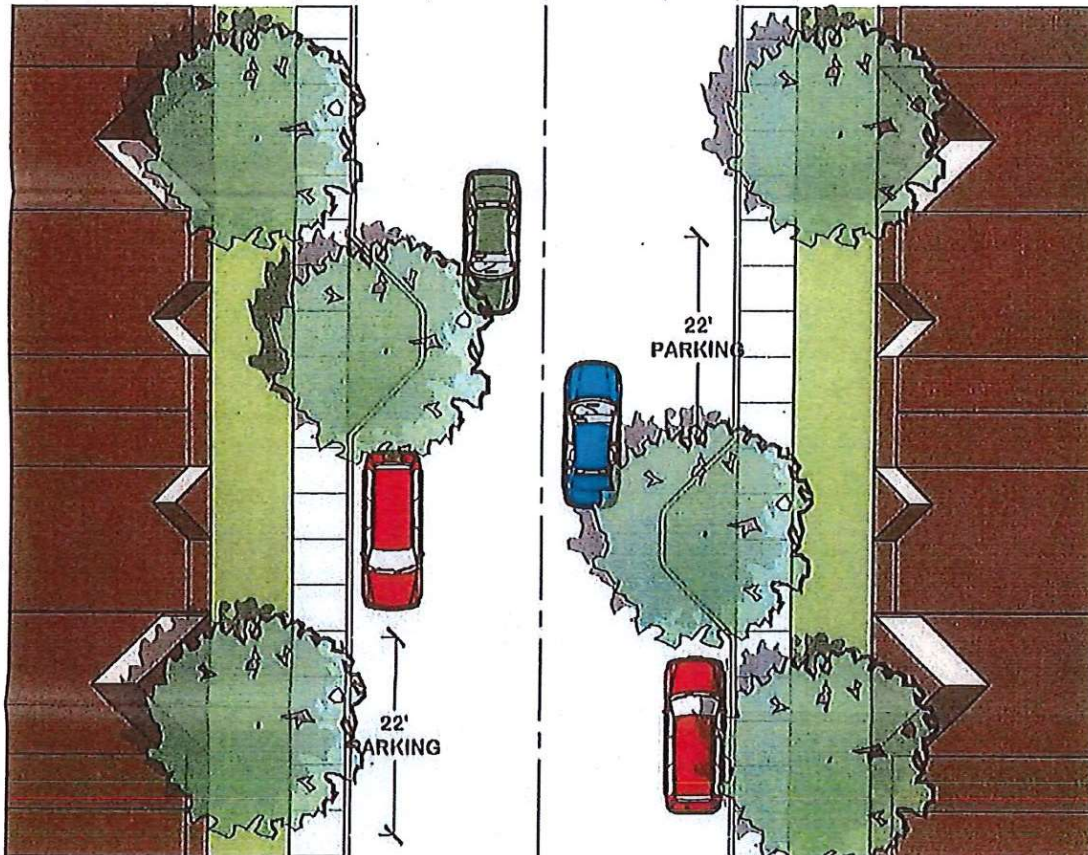
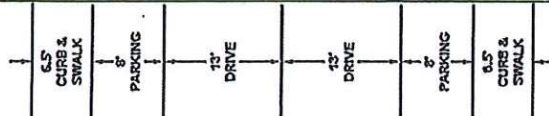
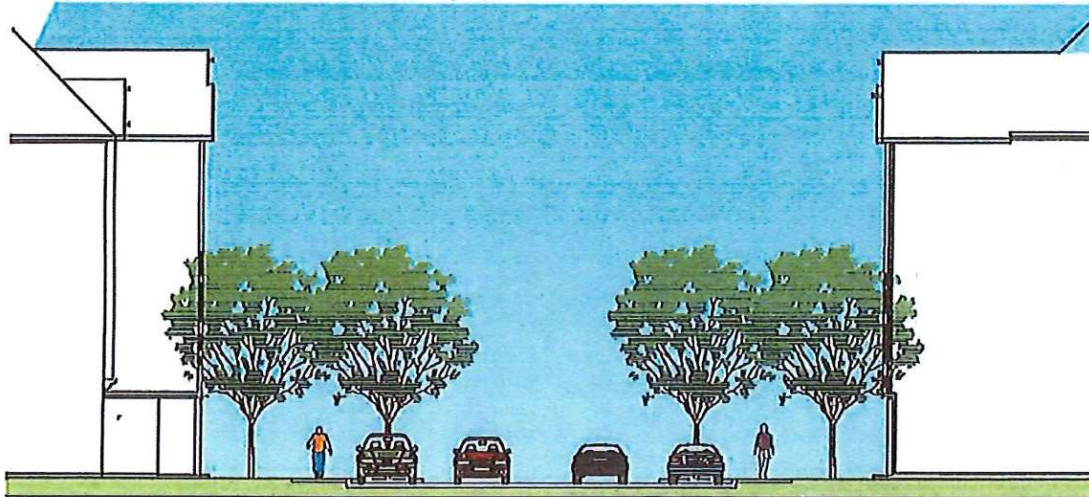
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VILLAGE RESIDENTIAL - 55' R.O.W.



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**BEL AIR VILLAGE
STREET SECTIONS**
SHERMAN, TEXAS
May 2020



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214.370.3470 Ph



Memo to: City of Sherman

July 23, 2020

Bel Air PD Review

C/O: Rob Rae, AICP, Director of Development Services

Rob,

Per the requested review of the revised Bel Air PD, Halff has completed a review of the revised language and discussed refinements with the applicants as of July 20, 2020.

To summarize the proposed revisions, the applicant has proposed increasing the property within the PD framework, adjusted the developments district framework and the focus of the project amenities around the recreational lagoon feature. The land uses and anticipated development characteristics have added definition and clarity to frame the expectations for this mixed-use, mixed-density development. Additionally, exhibits have been refined with additional design clarity and the PD has added sections with summary tables that communicate project requirements more clearly and concisely than before.

Halff's task was to review the revisions in the context of the PD ordinance to ensure that the changes were consistent with the approved PD and the City's ordinance. The ordinance intent is clear in its purpose statement - *"A PD district may be used to permit innovative and superior land utilization concepts not permitted by other zoning districts in this ordinance."* The Bel Air PD revisions set a clear framework for density, a public gathering space in the lagoon feature, and a mix of uses and housing opportunities, much of which could not be achieved under the zoning regulations and, thus, a PD is necessary to facilitate the project.

The minimum ordinance qualifications of multiple housing types, retail/employment, and a public destination are achieved. The components of the PD have been achieved as provided in the Development Plan and Conceptual Plan. The enhancements required in the ordinance, including examples of a cohesive mixed-use setting, variety of housing, pedestrian-friendly streets, architectural certainty, etc. are all presented in a manner that is understandable and supportive of the overarching theme of the project.

The only question that was outstanding after the review and conversation with the project team was the proposed public parkland in the original PD, which is no longer proposed in the revision. The proposal of the recreational lagoon is being presented instead as the public destination component. It should be noted that there is no specific requirement for a park in the PD ordinance. Therefore, there is no inconsistency with the ordinance, just a reviewer's note that the parkland has been replaced with the lagoon concept, which is less detailed at this time because the feature has not been designed or precisely located on the site.

After a thorough review and conversation with the project team, Halff has determined that the proposed revisions to the Bel Air PD are consistent and supportive of the elements of the City of Sherman PD ordinance and recommends approval.

Reviewed by:

Jordan Maddox, AICP

A handwritten signature in dark ink, appearing to read "Jordan Maddox", is written over a horizontal line.

Planning Team Leader, Halff Associates, Inc.



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

Agenda Item No. 11.

Meeting Date: 08/18/2020

Prepared by: Patsy Reeves, Developmental Services Coordinator

Scott Shadden, Director of Development Services

Rob Rae, Incoming Director of Development Services

Clay Mahone, Chairman

David Downtain, Vice Chairman

Shawn Davis, Commissioner

Trish Wood, Commissioner

Leigh Ann Sims, Commissioner

Paul Manley, Commissioner

Glenn Whitaker, Commissioner

Requested Action/Proposed Use:

300-1000 BLOCKS EAST FM 1417 (VIETNAM VETERANS PARKWAY)

The request of Terra Perpetua LLC (Owners), Bryan Klein, ION Design Group (Representative), Bush Architects, LLC (Architect) and Underwood Drafting and Surveying (Surveyor) concerning the property located in the 300-1000 Blocks East FM 1417 (Vietnam Veterans Parkway) to include 32.545 acres for a total of 278.313 acres in the Sherrod Dunman Survey Abstract No. 329, as follows:

Planning and Zoning Commission

Amending Planned Development and site plan approval under Ordinance No. 2280, Section 6.11, for Bel Air Village formerly known as Terra Perpetua Village (Ord No. 6232).

Background:

The property is located in the 300-1000 blocks East FM 1417 (Vietnam Veterans Parkway) between U.S. Highway 75 and State Highway 11 (Dewey Avenue). A portion of the property (245.83 acres) was approved for a Planned Development for Terra Perpetua Village by Ordinance 6232, August 5, 2019. The owner has purchased an additional 32.545 acres east of the development which is currently zoned an R-1 (One Family Residential) District. The owner would like to amend the planned development to include this acreage for a total of 278.313 acres and rename it to Bel Air Village.

The Planned Development Ordinance (No. 6186) was approved March 18, 2019; Halff Associates, Inc., a Professional Engineering Service, was consulted to design the ordinance. The planned development district is intended to facilitate the planning, design, and development of integrated land uses on large tracts of land that cannot be adequately accommodated in other zoning districts. A PD shall further the goals of the comprehensive plan, demonstrate enhanced and contextual design standards, present a well-organized and cohesive land plan, and contain clear and concise development regulations.

Adjacent Zoning:

R-1 (One Family Residential) District
C-2 (General Commercial) District
Blalock Industrial Park

Origination:

Terra Perpetua LLC (Owners)
Bryan Klein, ION Design Group (Representative)
Bush Architects, LLC (Architect)
Underwood Drafting and Surveying (Surveyor)

Master Plan Designation:

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

Number of notices mailed:

25

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
Ordinance 6232
Survey - 32 acres
Survey - 245 acres
Bel Air Village Planned Development
Halff & Associates Review
Staff Review Letter

ORDINANCE NO. 6232

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 6.11, ORDINANCE NO. 2280, SO AS TO GRANT A PLANNED DEVELOPMENT FOR TERRA PERPETUA VILLAGE IN THE 300-1000 BLOCKS OF EAST F.M. 1417 (VIETNAM VETERANS PARKWAY), BEING 245.83 ACRES IN THE SHERROD DUNMAN SURVEY, ABSTRACT NO. 329 (TERRA PERPETUA, LLC, OWNERS; BRYAN KLEIN, ION DESIGN GROUP, REPRESENTATIVE; BUSH ARCHITECTS, LLC, ARCHITECT; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYOR); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS PLANNED DEVELOPMENT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

WHEREAS, the City Council finds that it is in the public interest to grant this Planned Development, subject to certain conditions;

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

SECTION 1. That, from and after the passage of this ordinance, Terra Perpetua, LLC (Owners), Bryan Klein, ION Design Group (Representative), Bush Architects, LLC (Architect) and Underwood Drafting and Surveying (Surveyor) concerning the property located in the 300-1000 blocks of East F.M. 1417 (Vietnam Veterans Parkway) and that Section 6.11, Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the County of Grayson, State of Texas, being a part of the Sherrod Dunman Survey, Abstract No. 329, and being the same tract of land described as 246.134 acres conveyed by Edward C. Greene, Trustee to Rolling Meadows Associates by deed dated September 28, 1984, recorded in Volume 1716, Page 384, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point for the most Northerly Northwest corner of the said 246.134 acre tract in the South right-of-way line of F. M. Highway No. 1417 from which a 1/2" steel rod found bears North 15°22'34" West a distance of 0.36 feet, said point also being the Northeast corner of the same tract of land described as 0.84 acres conveyed by Richard J. Self and Brieta Self to Eric Popp and Kelly Popp by deed dated March 20, 2010, recorded in Volume 4809, Page 60, Official Public Records, Grayson County, Texas;

THENCE North 75°03'39" East with said right-of-way line a distance of 799.69 feet to a concrete monument at an angle point;

THENCE North 71°14'48" East continuing with said right-of-way line a distance of 300.67 feet to an angle point at the Southwest base of a concrete monument;

THENCE North 75°03'39" East continuing with said right-of-way line a distance of 814.42 feet to the beginning of a curve to the left having a radius of 11,519.16 feet;

THENCE in an Easterly direction continuing with said right-of-way line along said curve, (chord bears North 74°41'09" East, 150.78 feet) an arc distance of 150.79 feet to the end of said curve;

THENCE North 74°18'39" East continuing with said right-of-way line a distance of 391.99 feet to a point for the most Northerly Northeast corner of the said 246.134 acre tract at the Southwest base of a cross-tie corner post, said point also being the original Northwest corner of the same tract of land described as 32.55 acres conveyed by Frances Maddox to Ruth Ellen Green by deed dated October 8, 2002, recorded in Volume 3331, Page 760, said Official Public Records, also being the Northwest corner of the same tract of land described as 2.00 acres severed from said 32.55 acre tract as conveyed by said Ruth Ellen Green to said Frances Maddox by deed dated October 8, 2002, recorded in Volume 3331, Page 765, said Official Public Records;

THENCE in a Southerly direction with the general course of a fence along the Northerly East line of the said 246.134 acre tract and West line of the said Green and Maddox tracts the following calls and distances:

South 14°55'29" East a distance of 642.51 feet;

South 15°21'36" East a distance of 667.58 feet;

South 17°39'07" East a distance of 284.78 feet;

South 15°20'03" East a distance of 209.84 feet to a 1/2" steel rod set marking the Southwest corner of the said Maddox tract and an inside "L" corner to the said 246.134 acre tract;

THENCE North 75°18'02" East with a fence a distance of 430.04 feet to a 1/2" steel rod set marking the most Easterly Northeast corner of the said 246.134 acre tract and the Southeast corner of the said Maddox tract in the West right-of-way line of the St. Louis & San Francisco Railroad;

THENCE South 06°41'02" West with said West right-of-way line a distance of 2152.98 feet to an "L" corner;

THENCE North 83°18'58" West a distance of 75.00 feet to an "L" corner;

THENCE South 06°41'02" West continuing with said West right-of-way line a distance of 843.85 feet to a 1/2" steel rod set marking the Southeast corner of the said 246.134 acre tract and the Northeast corner of the same tract of land described as 82.032 acres conveyed by Sherman Development Partnership No. 1 to Sam H. Berry by deed dated October 1, 1993, recorded in Volume 2298, Page 258, Real Property Records, Grayson County, Texas, also being the original Easterly Northeast corner of the same tract of land described as 240.9284 acres conveyed by International Business Machines Corporation to Fisher Controls Company, Inc. by deed dated June 30, 1976, recoded in Volume 1349, Page 493, said Deed Records;

THENCE North 67°19'54" West with the Southwesterly line of the said 246.134 acre tract, passing the Northwest corner of the said 82.032 acre tract and continuing for a total distance of 1879.15 feet to a 1/2" steel rod found at an angle point;

THENCE North 49°31'48" West continuing with said Southwesterly line, passing the Northeast corner of Block 1, Lot 1, Blalock Industrial Park, an addition to the City of Sherman as shown by plat of record in Volume 8, Page 92, Plat Records, Grayson County, Texas, also being the Southeast corner of the same tract of land described as 25.264 acres conveyed by said Sherman Development Partnership No. 1 to Liberty Trust Company, Ltd. by deed dated February 7, 2017, recorded in Volume 5948, Page 836, said Official Public Records, and continuing for a total distance of 1553.66 feet to a 1/2" steel rod found at an angle point;

THENCE North 14°46'12" West now with the West line of the said 246.134 acre tract and East line of the said 25.264 acre tract, passing the Northeast corner of the said 25.264 acre tract and the Southeast corner of the same tract of land described as 12.166 acres conveyed by Anthony Aleman to Ramanujam K. Vangipuram and Samrajyam Kolluru by deed dated February 10, 2017, recorded in Volume 5948, Page 638, said Official Public Records, and continuing for a total distance of 1146.71 feet to a 1/2" steel rod found maintaining the most Westerly Northwest corner of the said 246.134 acre tract and the Southwest corner of the same tract of land described as 13.41 acres conveyed by Garcha Corporation to Sherman Economic Development Corporation by deed dated August 25, 2015, recorded in Volume 5680, Page 685, said official Public Records;

THENCE North 74°28'45" East a distance of 642.18 feet to a 1/2" steel rod found maintaining an inside "L" corner to the said 246.134 acre tract and the Southeast corner of the said 13.41 acre tract;

THENCE North 15°22'34" West with the Northerly West line of the said 246.134 acre tract a distance of 959.39 feet to the **POINT-OF-BEGINNING and containing 245.83 acres of land more or less.....**

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

Zoning:

1. All aspects of the Planned Development Ordinance must be followed.
2. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903-892-7267).
3. A detailed site plan shall be submitted for approval within two (2) years from the approval of the Conceptual Plan for a minimum of 20 percent of the project area. If a Detailed Site Plan is not submitted within two (2) years or no progress toward completion of the project is made in a five-year period, then the previous approval of the Concept Plan and the Development Plan shall expire. Upon expiration, the land within the boundaries of the PD shall automatically revert to the zoning district in place prior to approval of the PD district. The City Council may elect to extend approval periods of a PD with justification as to why the plans should remain in place.

Engineering:

4. Platting of the property is required.
5. Street names must be approved by Building & Zoning Department.
6. Water and sewer shall be extended to serve the development. Sewer capacity shall be verified for proposed use.
7. Privately owned and maintained detention in accordance with City criteria will be required upon development.
8. All requirements of the Floodplain Ordinance should be followed.
9. Final site plans, utility, drainage and grading plan shall be provided and approved by the City Engineering Department.
10. New drive approaches and sidewalks must conform to City of Sherman and TxDOT standards and a permit is required from City of Sherman Engineering Department.
11. Development Agreement required for all Public Infrastructures.

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

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

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

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

INTRODUCED on this the 5th day of August, 2019.

ADOPTED on this the 5th day of August, 2019

EFFECTIVE DATE on this the 5th day of August, 2019.

CITY OF SHERMAN, TEXAS

BY:



DAVID PLYLER, MAYOR

ATTEST:

BY:



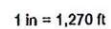
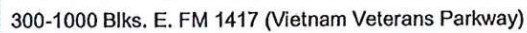
LINDA ASHBY, CITY CLERK

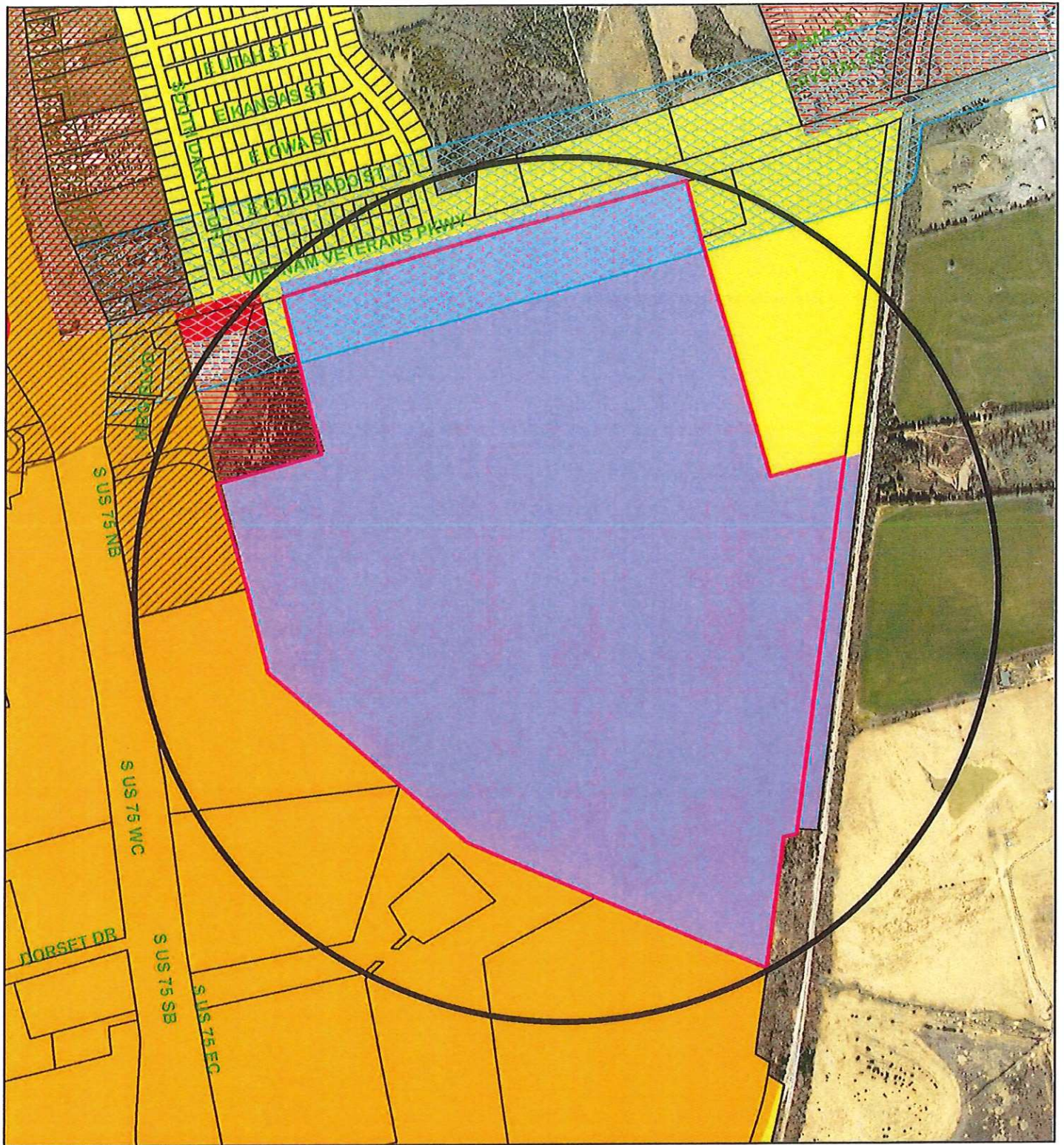
**APPROVED AS TO FORM
AND CONTENT:**

BY:



**BRANDON S. SHELBY,
CITY ATTORNEY**





Zoning - 300-1000 Blocks East FM 1417 (Vietnam Veterans Parkway)

Legend

Special Districts Overlay

DISTRICT_NAME

- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District
- Transportation Corridor

Representation: ShermGIS.DBO.TransportationCorridor_Rep_1

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

Zoning Districts

Representation: ShermGIS.DBO.ZoningDistrict_Rep

- Unknown
- BP Blalock Industrial Park
- C-1 Retail Business District

Representation: ShermGIS.DBO.ZoningDistrict_Rep

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

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

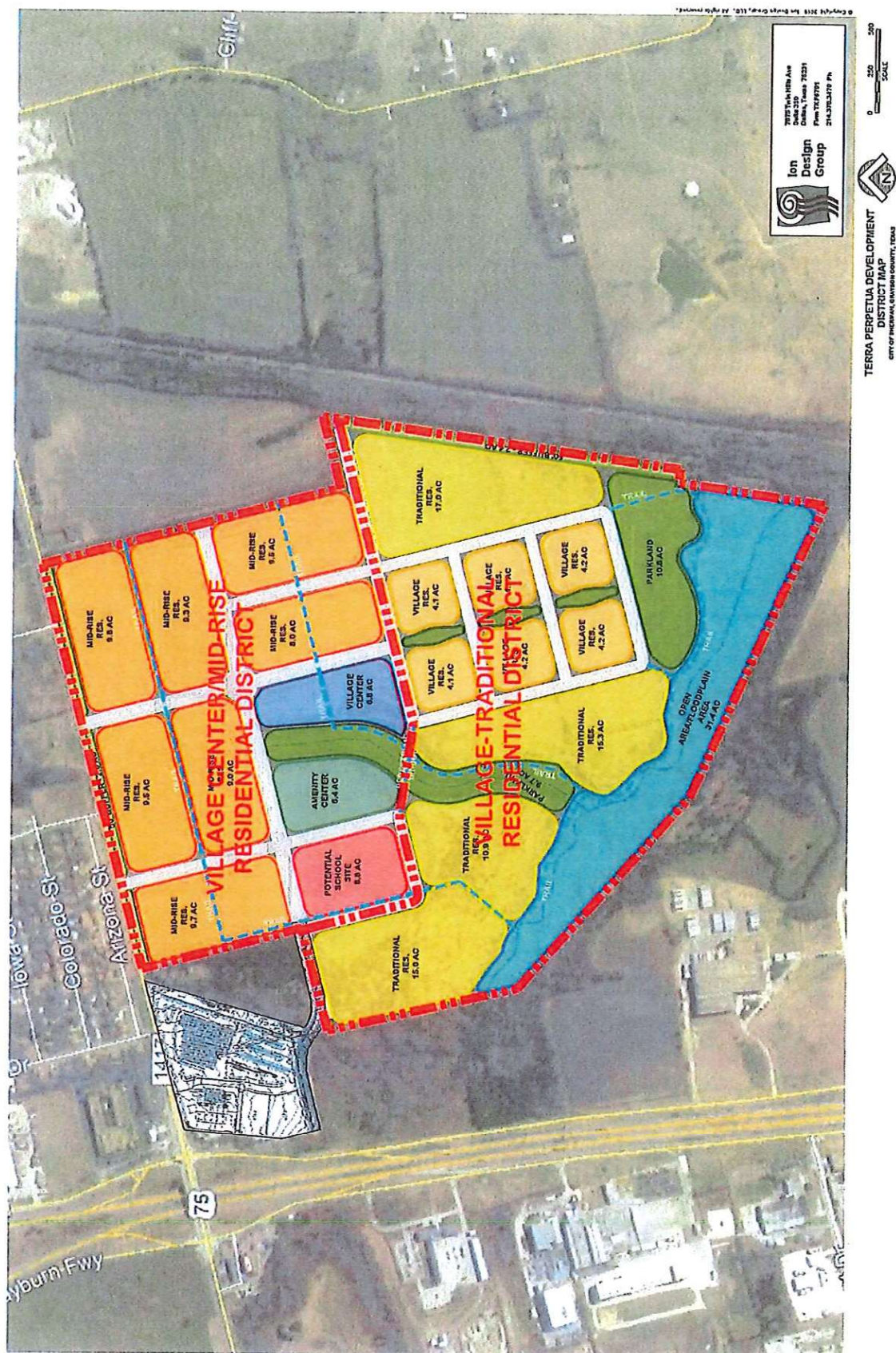


NOT TO SCALE

1 in = 800 ft

**300-1000 East FM 1417
(Vietnam Veterans Parkway)**







City Council Regular Meeting

Agenda Item No. D.4.

Meeting Date: 2/17/2025

Prepared By: Rob Rae, Developmental Services Director

Approved By: Zachary Flores, Assistant City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6812

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land Consisting Of 0.674 acres being part of Lots 1, 3, 5 and 7, Block 26 of the Original Town Plat, City Of Sherman, Grayson County, Texas, Located in the 500 Block East Lamar Street, Heretofore Zoned M-1 (Light Manufacturing) District; Rezoning And Placing The Tract In The C-2 (General Commercial) District Zoning Classification, JE Holdings, LLC (Owner), Kent Hughlett (Representative) and Underwood Drafting & Surveying (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Issue:

Consideration of a Zone Change for 0.674 acres of land located in the 500 Block East Lamar Street from an M-1 (Light Manufacturing) District to a C-2 (General Commercial) District.

Background:

The property is located in the 500 Block East Lamar Street at the corner of South East Street and East Lamar Street. The owner is requesting a Zone Change from an M-1 (Light Manufacturing) District to a C-2 (General Commercial) District.

Origination:

JE Holdings, LLC (Owner), Kent Hughlett (Representative) and Underwood Drafting & Surveying (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 22, 2025 regular meeting, the Planning and Zoning Commission voted 6/0 to recommend to City Council that the Zone Change be approved. The proposed use is compatible with the City of Sherman Comprehensive Plan. Staff has no objection to the approval of this item.

Alternatives:

The City Council could deny the request.

Attachments:

1. Ordinance No. 6812
2. Exhibit A - Survey
3. Location Map
4. Zoning Map
5. Future Landuse Map
6. Property Notification Sign
7. Narrative
8. Site Plan

ORDINANCE NO. 6812

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.674 ACRES BEING PART OF LOTS 1, 3, 5 AND 7, BLOCK 26 OF THE ORIGINAL TOWN PLAT, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 500 BLOCK EAST LAMAR STREET, HERETOFORE ZONED M-1 (LIGHT MANUFACTURING) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-2 (GENERAL COMMERCIAL) DISTRICT ZONING CLASSIFICATION, JE HOLDINGS, LLC (OWNER), KENT HUGHLETT (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

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

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

WHEREAS, the City Council finds that it is in the public interest to rezone the property as described in this Ordinance.

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

SECTION 1. That, from and after the effective date of this Ordinance, the property described in **Exhibit A – Survey and Legal Description**, attached hereto, located in the 500 Block East Lamar Street and all streets, roads and alleyways contiguous and/or adjacent thereto, shall be rezoned and placed in the C-2 (General Commercial) District, and that Sherman's Zoning Ordinance/Code of Ordinances, Chapter 14, is hereby amended so as to hereafter include such property.

SECTION 2. That this Ordinance shall be entered upon the Official Zoning Map as provided in Sherman's Zoning Ordinance/Code of Ordinances, Chapter 14, Section 14.01.002.

SECTION 3. That no person shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed or amended by the City Council in the manner provided for by law.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this Ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 17th day of February 2025.

ADOPTED on this the 17th day of February 2025.

EFFECTIVE DATE on this the 17th 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

JOB NO. 22040457
FW: WK — DFT BAU

SCALE
1" = 50'



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of Lots 1, 3, 5, and 7, Block 26 of the Original Town Plat of the City of Sherman, Texas as shown by Plat Record in Volume 8, Page 1 Deed Records, Grayson County, Texas being conveyed to Justin Ellis as recorded in Document Number 2020-22987, Official Public Records, Grayson County, Texas and being described by metes and bounds as follows:

Beginning at a Found $\frac{1}{2}$ " steel rod at the Northwest Corner of Block 26 of Said Original Town Plat;

Thence North $74^{\circ}48'58''$ East with the South Right-of-Way of South Lamar Street a distance of 97.03 feet to a found Spike Nail;

Thence South $15^{\circ}13'47''$ East a distance of 150.22 feet to a found $\frac{1}{2}$ " steel rod at an ell corner of the hereinabove referenced tract;

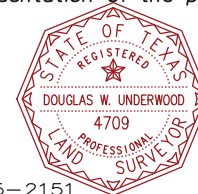
Thence North $74^{\circ}48'58''$ East a distance of 3.43 feet to a set $\frac{1}{2}$ " steel rod at the base of a Chain link Corner post;

Thence South $14^{\circ}24'42''$ East with said Chain link fence a distance of 149.23 feet to a set $\frac{1}{2}$ " steel rod;

Thence South $74^{\circ}48'58''$ West with the North Right-of-Way line of East Jones Street a distance of 98.02 feet to a found $\frac{1}{2}$ " steel rod;

Thence North $15^{\circ}17'11''$ West with the East Line of South East Street a distance of 299.44 feet to the Point of Beginning and containing 0.674 acres of land.

I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.



DLW. Underwood

Douglas W. Underwood
Registered Professional
Land Surveyor No. 4709
Firm No. 10006300
DATE OF SURVEY: 06/02/2022

Z & P POCZA
PROPERTIES
VOL. 4835, PG. 15
O.P.R.G.C.T.

TRACT 1
0.674 AC.

~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE

UNDERWOOD
DRAFTING & SURVEYING

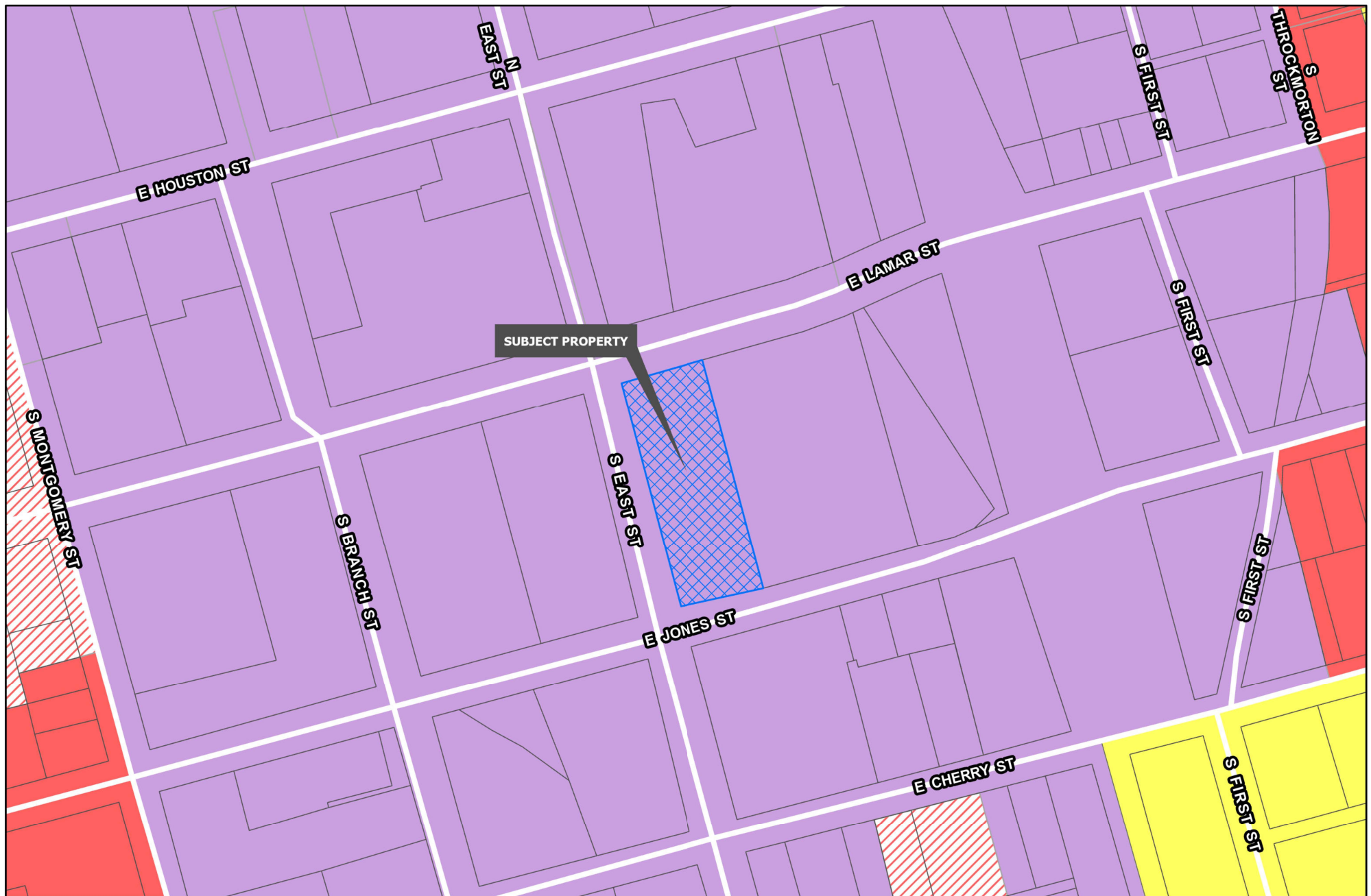
3404 INTERURBAN ROAD DENISON, TEXAS 75021

(903)465-2151

This survey contains information that is proprietary to Underwood Drafting & Surveying, Inc. Its use or disclosure in whole or part without the express written permission of Underwood Drafting & Surveying, Inc. is prohibited.

This survey is also unpublished work protected under the copyright laws of the United States of America. If this work becomes published, the following notice shall apply:

Copyright © 2022
Underwood Drafting & Surveying, Inc.
All rights reserved.



Development Services
Department

R-A Residential Agricultural	MF-15 Multi-Family Residential	M-1.5 Medium Manufacturing
R-E Estate Residential	MF-30 Multi-Family Residential	M-2 Heavy Manufacturing
R-12 Single Family Residential	MH Manufactured Housing	PD Planned Development
R-6 Single Family Residential	C-N Neighborhood Commercial	Road Names All
R-5 Single Family Residential	C-O Office	Planning & Zoning
R-4 Patio Home Residential	C-1 Retail Business	
R-2F Duplex Residential	C-2 General Commercial	
R-TH Townhome Residential	M-1 Light Manufacturing	

CITY OF SHERMAN
ZONING MAP
500 BLK E LAMAR ST



Marlow, Lauren

From: laurenm@cityofsherman.com
To: Kent Hughlett
Subject: RE: Zoning sign at 500 E Lamar

From: Kent Hughlett
Sent: Monday, January 13, 2025 12:11 PM
To: Marlow, Lauren
Subject: Zoning sign at 500 E Lamar

12:08 5G 

Today
12:08 PM  



December 9, 2024

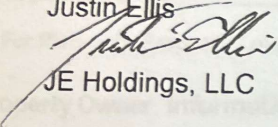
City of Sherman
220 W. Mulberry
Sherman, TX 75091

Re: Project narrative - 0.6810 acres of vacant land at Lamar and East

JE Holdings owns the 0.6810 acres at the southeast corner of Lamar St and East St. I desire to rezone the property to C-2 for use of the land. Current zoning is M2 which requires a minimum of 1 acre of lot area.

The plan is to rezone the 0.6810 acres to C-2, and then build an office/warehouse building for lease to commercial-use tenants. Total warehouse space of 9,981 square feet. Individual lease spaces to be determined by the tenant.

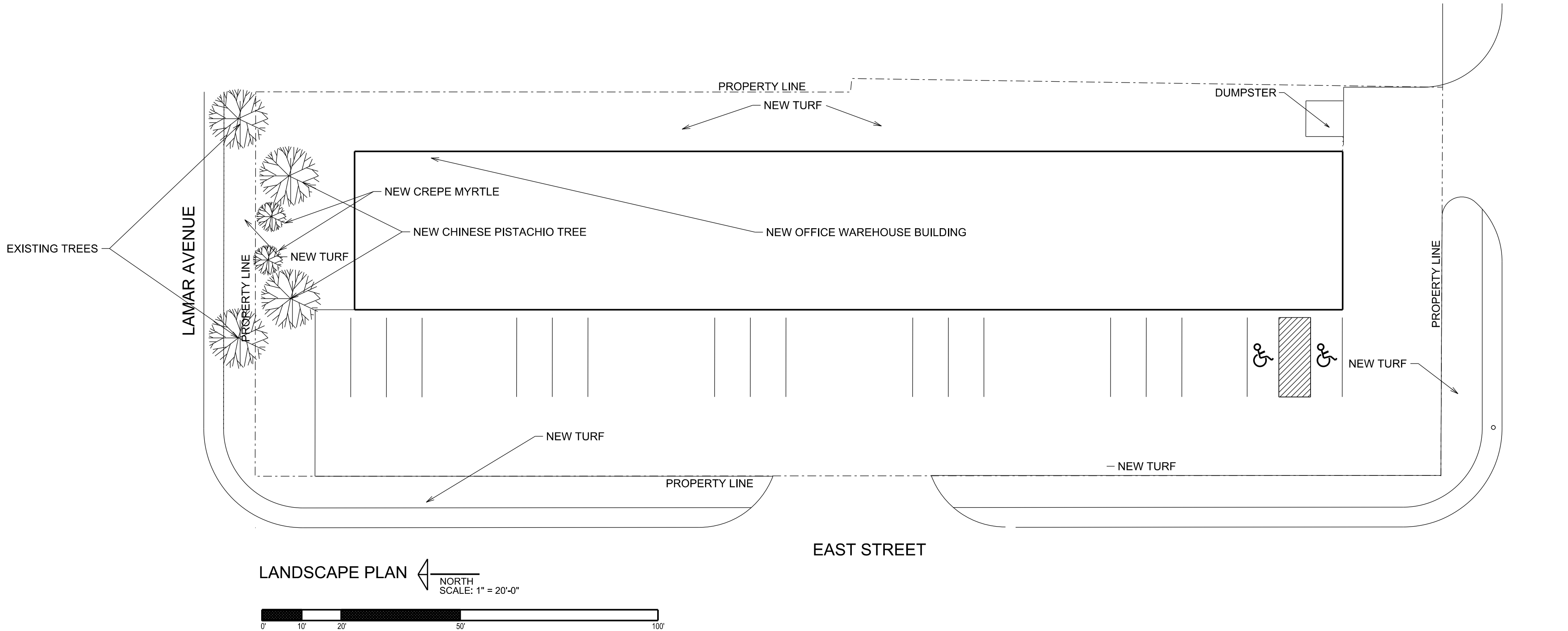
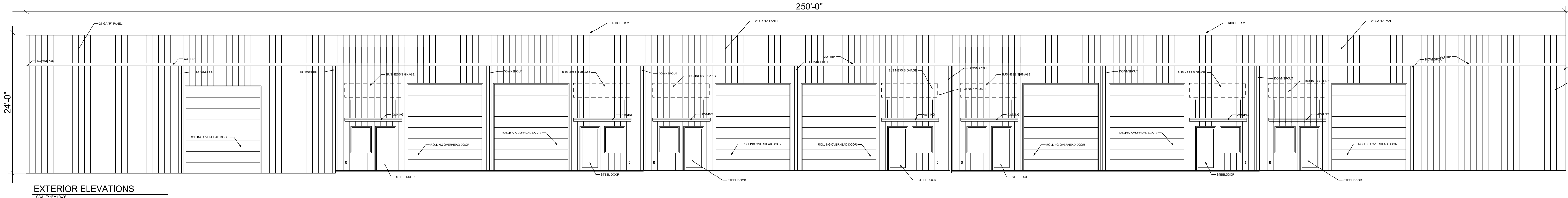
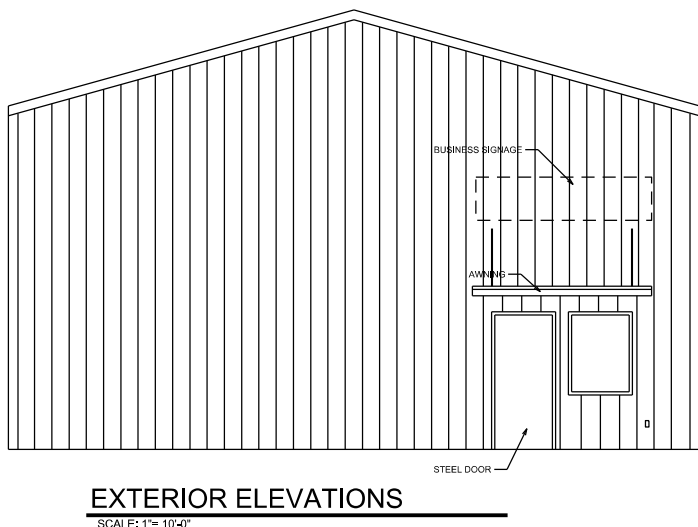
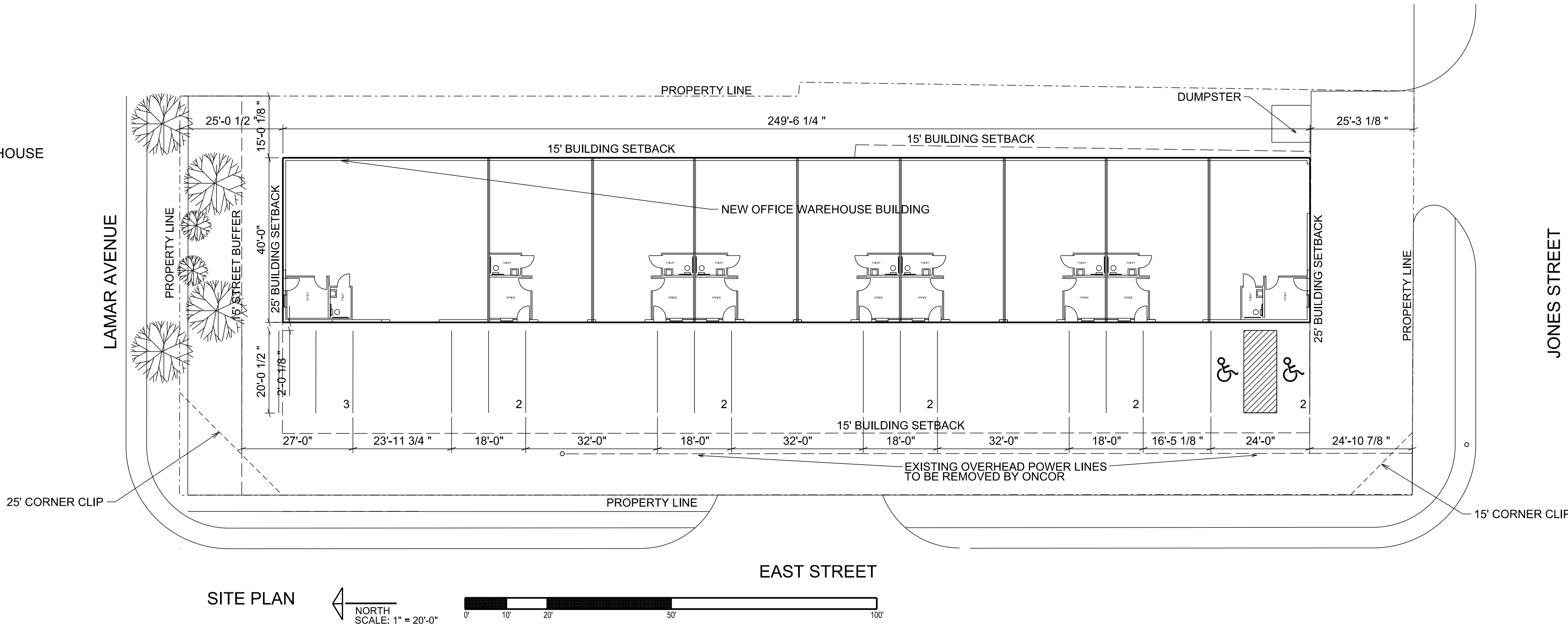
Justin Ellis


JE Holdings, LLC

SITE TABULATION TABLE

GROSS SQUARE FOOTAGE OF STRUCTURES	9,981 SF
GROSS SQUARE FOOTAGE OF PROPERTY	29,377 SF
REQUIRED PARKING	12 SPACES; 3 FOR OFFICE AND 9 FOR WAREHOUSE
PARKING PROVIDED	13 SPACES
CURRENT ZONING	M-2
PROPOSED ZONING	C-2
HARD SURFACE	25,155 SF
LANDSCAPED AREA SQUARE FEET	7,883 SF
FLOOR TO AREA RATIO	.34

WAREHOUSE: 1 PARKING SPACE / 1000SF; 8559SF = 9 SPACES
OFFICE: 1 PARKING SPACE / 400SF; 1422SF = 4 SPACES



KENT HUGHLETT, ARCHITECT PLLC
177 TIMBERBROOK CIRCLE
DENISON, TEXAS 75021
RKHUGHLETT@GMAIL.COM 972-743-8398

OFFICE WAREHOUSE
500 E LAMAR AVENUE
SHERMAN, TEXAS

A-1.0

DEC. 11, 2024



City Council Regular Meeting

Agenda Item No. D.5.

Meeting Date: 2/17/2025

Prepared By: Rob Rae, Developmental Services Director

Approved By: Zachary Flores, Assistant City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6813

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land Consisting Of 11.067 acres in the John Jennings Survey, Abstract No. 647, City Of Sherman, Grayson County, Texas, Located in the 4600 Block North Travis Street, Heretofore Zoned R-6 (Single Family Residential) District; Rezoning And Placing The Tract In The R-4 (Single Family Residential) District Zoning Classification, Rafeeq Ali Dareediya, Roshan Building Company, LLC (Owner) and Helvey-Wagner Surveying, Inc. (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Issue:

Consideration of a Zone Change for 11.067 acres of land located in the 4600 Block North Travis Street from an R-6 (Single Family Residential) District to an R-4 (Single Family Residential) District.

Background:

The property is located in the 4600 Block North Travis Street between Forest Creek Drive and East Northcreek Drive. The owner is requesting a Zone Change from R-6 (Single Family Residential) District to an R-4 (Single Family Residential) District.

Origination:

Rafeeq Ali Dareediya, Roshan Building Company, LLC (Owner) and Helvey-Wagner Surveying, Inc. (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 22, 2025 regular meeting, the Planning and Zoning Commission voted 6/0 to recommend to City Council that the Zone Change be approved. **The proposed use is compatible with the City of Sherman Comprehensive Plan. Staff has no objection to the approval of this item.**

Alternatives:

The City Council could deny the request.

Attachments:

1. Ordinance No. 6813
2. Exhibit A - Survey
3. Location Map
4. Zoning Map
5. Future Land Use Map
6. Property Notification Sign
7. Site Plan

ORDINANCE NO. 6813

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 11.067 ACRES IN THE JOHN JENNINGS SURVEY, ABSTRACT NO. 647, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 4600 BLOCK NORTH TRAVIS STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-4 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, RAFEEQ ALI DAREDIYA, ROSHAN BUILDING COMPANY, LLC (OWNER) AND HELVEY-WAGNER SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

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

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

WHEREAS, the City Council finds that it is in the public interest to rezone the property as described in this Ordinance.

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

SECTION 1. That, from and after the effective date of this Ordinance, the property described in **Exhibit A – Survey and Legal Description**, attached hereto, located in the 4600 Block North Travis Street and all streets, roads and alleyways contiguous and/or adjacent thereto, shall be rezoned and placed in the R-4 (Single Family Residential) District, and that Sherman's Zoning Ordinance/Code of Ordinances, Chapter 14, is hereby amended so as to hereafter include such property.

SECTION 2. That this Ordinance shall be entered upon the Official Zoning Map as provided in Sherman's Zoning Ordinance/Code of Ordinances, Chapter 14, Section 14.01.002.

SECTION 3. That no person shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed or amended by the City Council in the manner provided for by law.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this Ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 17th day of February 2025.

ADOPTED on this the 17th day of February 2025.

EFFECTIVE DATE on this the 17th 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 PITTMAN, CITY ATTORNEY

Job No. BGS38616

John Jennings Survey
Abstract No. 647
Grayson County, Texas

James Thomas Connor
22.3 Acres
Vol. 3394, Pg. 159

P.O.B.

F. M. HWY. 131

Easement Certification:
1. The location of easement to Texas Power & Light Co. in Vol. 388, Pg. 429, D.R.G.C.T. cannot be determined with available information.
2. The location of easement to Texas Power & Light Co. in Vol. 857, Pg. 369, D.R.G.C.T. does not affect subject property.
3. The location of "blanket" easement to Texas Pipe Line Company in Vol. 792, Pg. 465 and assigned to Bay Pipe Line Company in Volume 1503, Pg. 273, D.R.G.C.T. does affect subject property.
4. The location of easement to Lone Star Gas in Vol. 1098, Pg. 429, D.R.G.C.T. does affect subject property. However, the exact location cannot be determined with available information.
5. The location of easement to Sherman Oaks Corporation in Vol. 1138, Pg. 492 and assigned to the City of Sherman in Vol. 1154, Pg. 711, D.R.G.C.T. does affect subject property and is shown hereon.
6. The location of easement to Enserch Corporation in Vol. 1455, Pg. 316, D.R.G.C.T. does affect subject property and is shown hereon.
7. The location of easement to the City of Sherman in Vol. 4682, Pg. 630, O.P.R.G.C.T. does affect subject property and is shown hereon.

11.065 Acres
Patrick J. Clark & Barbara Ann Clark
11.049 Acres
Vol. 1528, Pg. 191

James Thomas Connor
22.3 Acres
Vol. 3394, Pg. 159

Bearing Base: GNC North, NAD83
Texas State Plane, Coordinate System
North Central Zone, as derived by
survey-grade Global Positioning
System.

Owner: Patrick James Clark and Barbara Ann Clark,
Co-Trustees and Grantors of The
Clark Family Trust Agreement
Buyer: Saeed Rouhani-Nasab and
Moisa Sapozhnikov

Helvey-Wagner Surveying, Inc.
222 W. Main St.
Denison, Texas 75020
Ph (903) 463-6191 Fax (903) 463-4986
Firm Registration No. 10086100
Texas Board of Professional Land Surveying

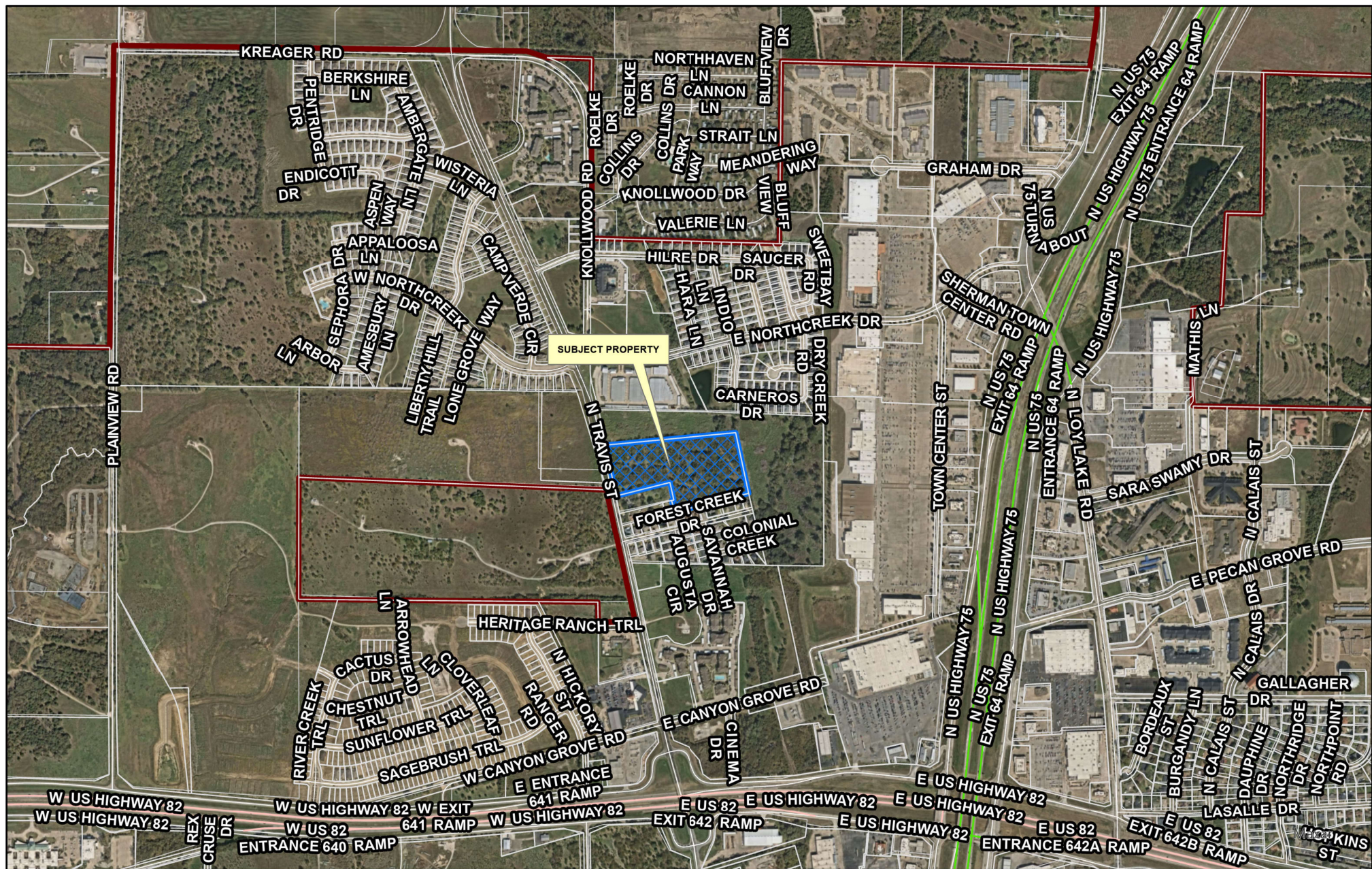
I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that a survey was performed on the ground of the property shown hereinabove under my personal and direct supervision, that visible and observable evidence of easements or rights-of-way that were detected during the course of this survey are shown hereon, that the plat substantially complies with the Current Minimum Standards for Professional Land Surveyors, as adopted by the Texas Board of Professional Land Surveying and is a true and correct representation of the property shown hereon.

A portion of the subject property shown hereon lies within the limits of a Zone "AE" 100-year Flood Hazard Area, as scaled from the "FEMA" Flood Insurance Rate Map for Grayson County, Texas, Map No. 48181C0290 F, Revised Date: September 29, 2010.

This survey is for the sole benefit of the transaction by and between: Owners and Buyers stated hereon and is null and void for any other transaction. Any unauthorized use of this survey without the sole consent of the undersigned surveyor will infringe upon state and federal copyright statutes. Any violation of said statutes will be aggressively pursued.

Kate A. Wagner, R.P.L.S. No. 6578
Copyright Date: June 27, 2016

© Land Projects 102111-Acres-John-Jennings-Survey-Cont. 11-Acres-John-Jennings-Survey-102111-Cont. 11-Acres-John-Jennings-Survey-102111-Cont. 11-Acres-John-Jennings-Survey-102111-Cont.

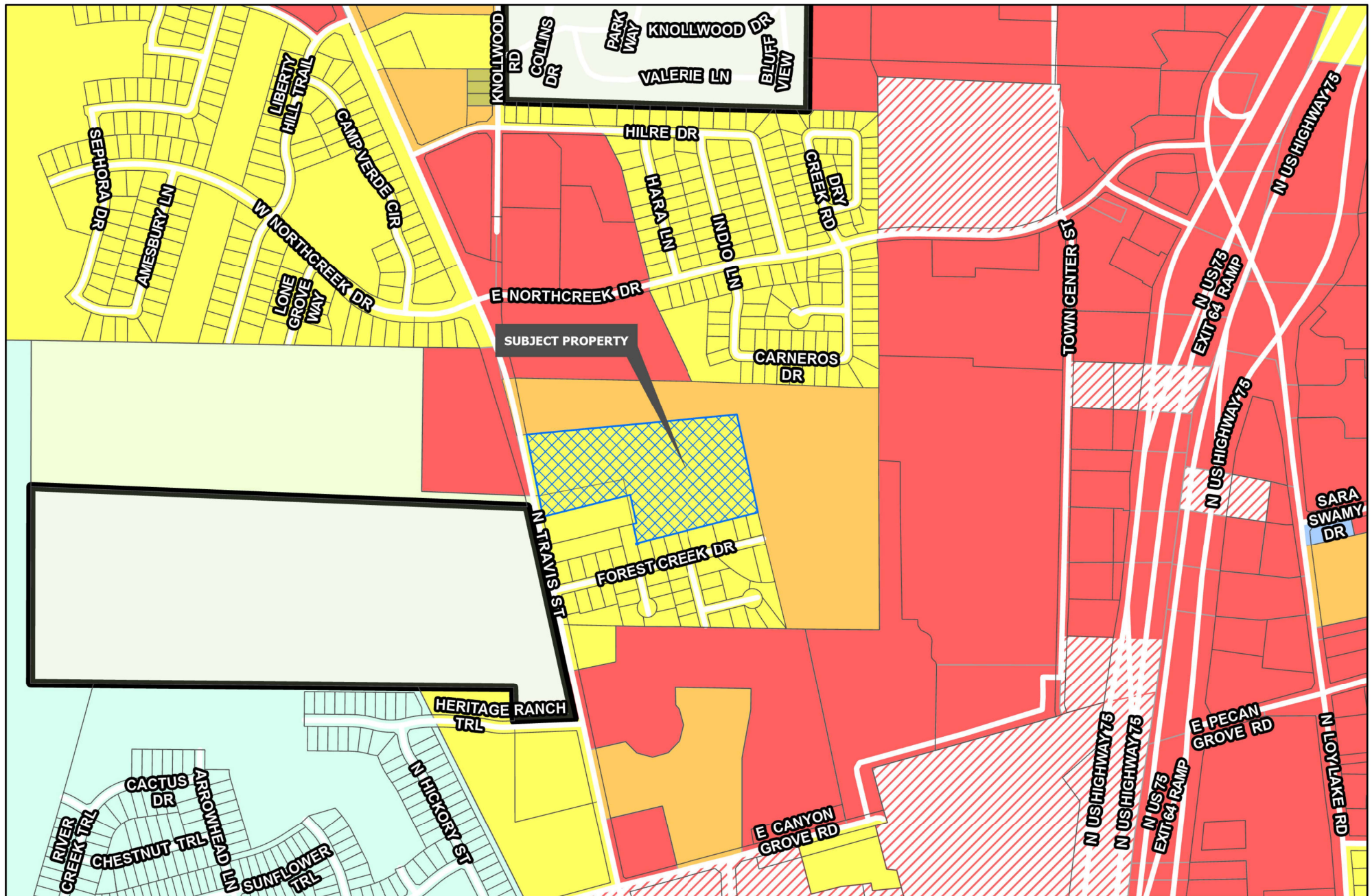


City of Sherman, Texas
Development Services Department

CITY OF SHERMAN
LOCATION MAP
4600 BLK N TRAVIS ST



Date: 12/27/2024 5:40 PM



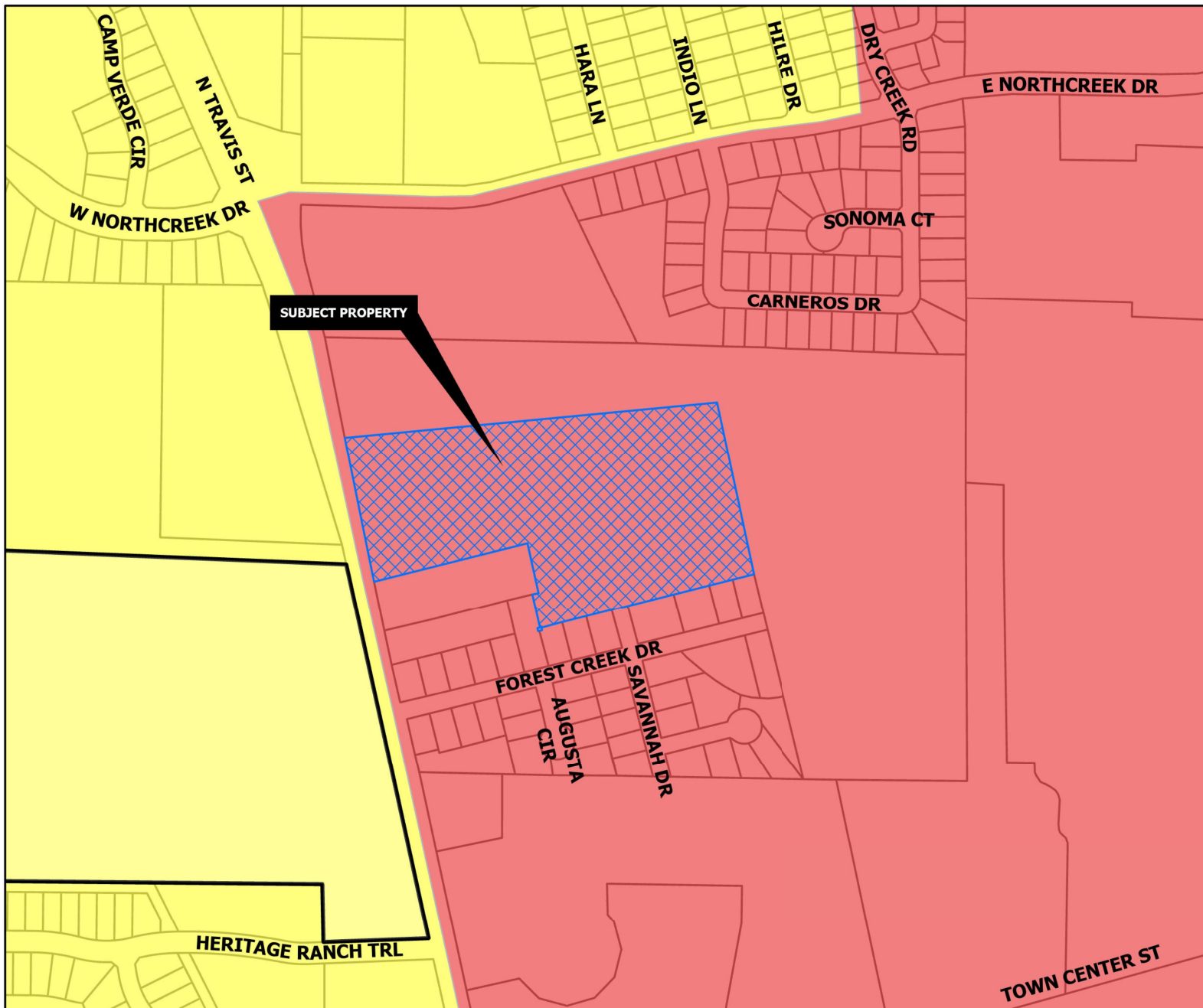
Sherman
CLASSIC TOWN. BROAD HORIZON.

Development Services
Department

R-A Residential Agricultural	MF-15 Multi-Family Residential	M-1.5 Medium Manufacturing
R-E Estate Residential	MF-30 Multi-Family Residential	M-2 Heavy Manufacturing
R-12 Single Family Residential	MH Manufactured Housing	PD Planned Development
R-6 Single Family Residential	C-N Neighborhood Commercial	Road Names All
R-5 Single Family Residential	C-O Office	Planning & Zoning
R-4 Patio Home Residential	C-1 Retail Business	
R-2F Duplex Residential	C-2 General Commercial	
R-TH Townhome Residential	M-1 Light Manufacturing	

CITY OF SHERMAN
ZONING MAP
4600 BLK N TRAVIS ST





REGIONAL COMMERCIAL

Intent & Character

The Regional Commercial category is intended to promote large-scale commercial development along US-75, while promoting community character through design. US-75 serves as the major gateway to and through the community; therefore, aesthetics and design should be promoted in this corridor. This category should allow large-scale commercial uses that serve the region and the community alike. A mix of uses and inter-connectivity between parcels should be encouraged.

Appropriate Land Use Types

- Retail and Restaurants
- Multi-Family Living
- Office Complex
- Medical
- Mixed Use
- Indoor Entertainment

Compatible Zoning Districts

- Retail Business
- General Commercial
- Office
- Multi-Family Residential (MF-15 and MF-30)
- Planned Development (for larger tracts)

Considerations

- Site design considerations should be given to parking, landscaping, and building articulation.
- Where possible, parking should be screened from view or well-landscaped with native, drought-tolerant plants.
- All buildings facades fronting a public street or within significant public view should have aesthetically-pleasing horizontal and vertical articulation.
- Signage should be multi-tenant, where possible, and should match the character of the primary structure.
- High density residential should be included in mixed use developments.
- High density residential is appropriate behind commercial areas, with inter-connectivity.
- If high density is stand alone, the surrounding uses and connectivity should be considered to avoid an "island."



Development Services
Department

Agriculture/Rural	Core Neighborhood	Technology Hub
Airport	Downtown	Planning & Zoning
City Parkland	Regional Commercial	
Community Commercial	Suburban Neighborhood	

CITY OF SHERMAN
FUTURE LAND USE MAP
4600 BLK N TRAVIS ST



Marlow, Lauren

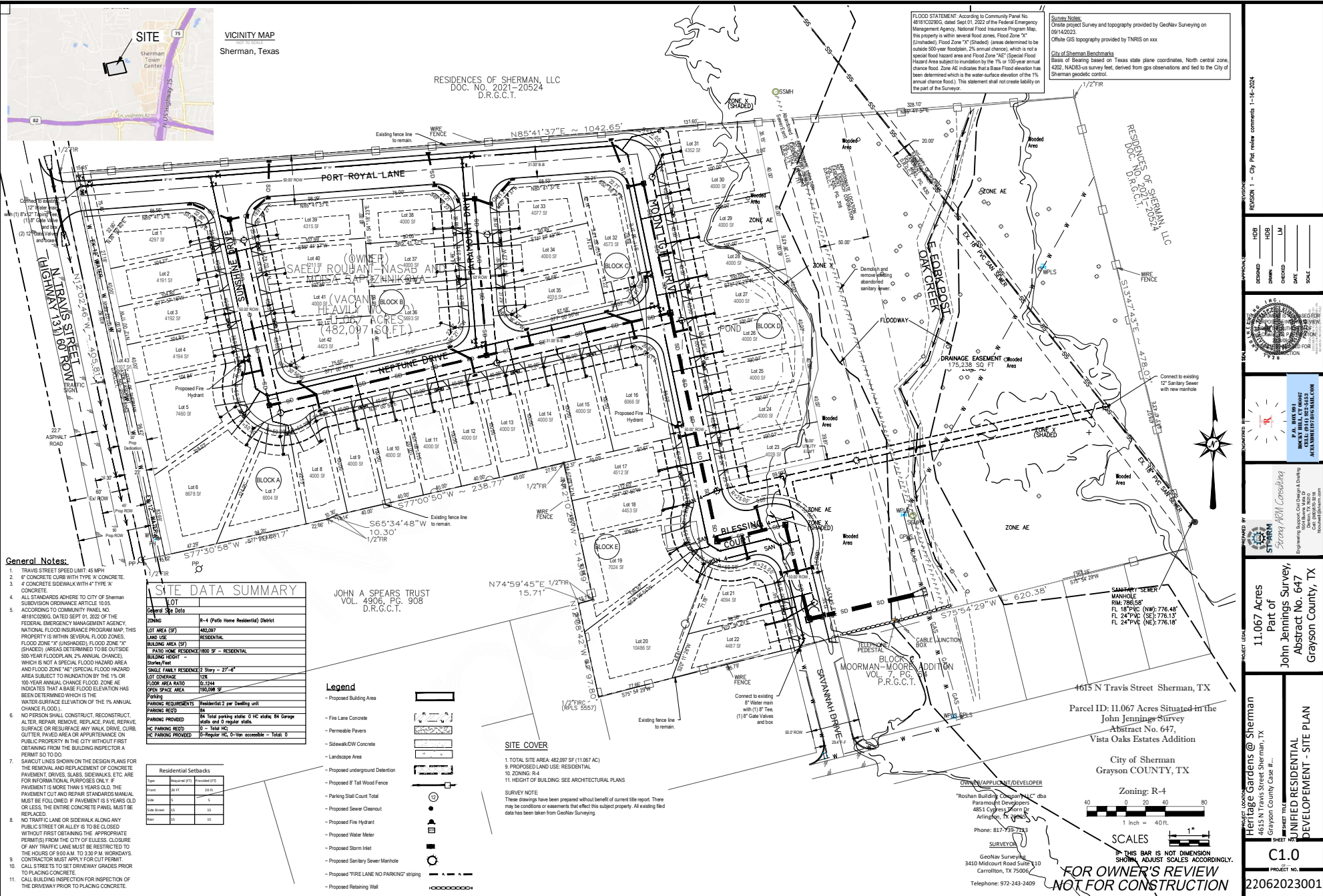
From: laurenm@cityofsherman.com
To: Rafeeqali Daradiya
Subject: RE: Zone Change Request - Submission

From: Rafeeqali Daradiya
Sent: Tuesday, January 7, 2025 12:48 PM
To: Marlow, Lauren
Subject: Re: Zone Change Request - Submission

Here with attached the photos of sign displayed in front of the property



Thanks please let me know if you need anything further Sent from my iPhone





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. E.1.

Meeting Date: 2/17/2025

Prepared By:

Approved By:

Caption:

Close Public Hearing

Consider Adoption of Ordinances 6809, 6810, 6811, 6812 & 6813.

Issue:

D. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6809

1. Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land being a Replat of Lots A, A-2 and C of Taylor Plaza and Lot 1 of the Altona's Replat of Lot B, Taylor Plaza, City Of Sherman, Grayson County, Texas, Located at 719-725 East Taylor Street and 2000-2030 North Loy Lake Road, Heretofore M-1 (Light Manufacturing) District and C-2 (General Commercial) District; Rezoning And Placing The Tract In The C-2 (General Commercial) District Zoning Classification, Altona, Inc (Owner), Barkat Ali (Representative) and Underwood Drafting & Surveying (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

D. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6810

2. Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, And Granting A Specific Use Permit To Allow a Secondhand Store or Rummage Shop in a C-2 (General Commercial) District, Located At 4800 Texoma Parkway, Suite B401B, Consisting of 42.8134 acres being in the John Hendrix Survey, Abstract No. 503, the W.F. Patterson Survey, Abstract No. 969, the Daniel Shelp Survey, Abstract No. 1097 and the T.J. Shannon Survey, Abstract No. 1136, Lots 1 and 3, Block 1, Midway Mall, City Of Sherman, Grayson County, Texas Scott Cresswell (Owner), Kerry Smith (Representative) and Old Republic (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

D. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6811

3. Repealing Ordinance No. 6410 and Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land, Consisting Of 288.278 Acres In The Sherrod Dunmore Survey, Abstract No. 329, City Of Sherman, Grayson County, Texas, Located In The 300-1000 Block East Fm 1417 (Vietnam Veterans Parkway), Heretofore Zoned PD (Planned Development) District And R-6 (Single Family Residential) District, C-1 (Retail Business) District And C-2 (General Commercial) District; Rezoning And Placing The Tract In The Bel Air Village PD (Planned Development) District Classification; Modifying Certain Development Standards Applicable To The Bel Air Village PD (Planned Development) District Classification And Adding A 9.9645- Acre Tract Of Land To The Bel Air Village PD (Planned Development) District; Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

D. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6812

4. Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land Consisting Of 0.674 acres being part of Lots 1, 3, 5 and 7, Block 26 of the Original Town Plat, City Of Sherman, Grayson County, Texas, Located in the 500 Block East Lamar Street, Heretofore Zoned M-1 (Light Manufacturing) District; Rezoning And Placing The Tract In The C-2 (General Commercial) District Zoning Classification, JE Holdings, LLC (Owner), Kent Hughlett (Representative) and Underwood Drafting & Surveying (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

D. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6813

5. Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land Consisting Of 11.067 acres in the John Jennings Survey, Abstract No. 647, City Of Sherman, Grayson County, Texas, Located in the 4600 Block North Travis Street, Heretofore Zoned R-6 (Single Family Residential) District; Rezoning And Placing The Tract In The R-4 (Single Family Residential) District Zoning Classification, Rafeeq Ali Dareediya, Roshan Building Company, LLC (Owner) and Helvey-Wagner Surveying, Inc. (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Background:

Origination:

Financial Consideration:

Staff Recommendation:

Alternatives:

Attachments:

None



City Council Regular Meeting

Agenda Item No. F.1.

Meeting Date: 2/17/2025

Prepared By: Billy Hartsfield, Fire Chief

Approved By: Zachary Flores, Assistant City Manager

Caption:

RESOLUTION NO. 7481

Authorizing Execution of a Standard Form of Agreement Between The City of Sherman and Hidell and Associates Architects, Inc. for Professional Services Relating to the Renovation of Fire Station No. 3.

Issue:

Station 3 will be undergoing remodel and expansion to improve fire department operations and facilities needs.

Background:

This project was approved in FY 25 CIP budget. Station 3 is approximately 20 years old and has several deferred maintenance issues that must be addressed. Additionally, the building lacks the appropriate facilities to accommodate female firefighters and the slope of the property forces water toward the foundation of the building.

Origination:

Station 3 Remodel project

Financial Consideration:

Project was approved in FY 25 CIP budget and will be funded by the 2025 Certificates of Obligation. Total cost of \$291,500, including supplemental services.

Staff Recommendation:

Staff recommends approval.

Alternatives:

N/A

Attachments:

1. Resolution No. 7481
2. A201-2017 v4 (06-11-2020) (Fire Station 3)(4570256.1) - Final - (3)
3. B133-2019 v2 (03-31-21) (Fire Station 3)(4570254.1) - Final - (3)

RESOLUTION NO. 7481

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A STANDARD FORM OF AGREEMENT BETWEEN THE CITY OF SHERMAN AND HIDEELL AND ASSOCIATES ARCHITECTS, INC. FOR PROFESSIONAL SERVICES RELATING TO THE RENOVATION OF FIRE STATION NO. 3; 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 Standard Form of Agreement Between Owner and Architect with Hidell and Associates, Inc. professional services relating to the renovation of Fire Station No. 3, 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 17th 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



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

A201-2017 v4 (06-11-2020)

for the following PROJECT:

(Name and location or address)

ARBH File No. 6262.0031 City of Sherman/Fire Station No. 3 Renovation

City of Sherman, Texas

Updates to the apparatus bay to develop spaces that properly clean and store contaminated items, isolating them from the living areas. The living quarters shall be updated to meet current individual dorm and restroom standards, as well as updates to the kitchen, pantry, and office areas. The building systems will require modification and replacement.

THE OWNER:

(Name, legal status and address)

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090
Phone: 903-892-

THE ARCHITECT:

(Name, legal status and address)

Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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User Notes:

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10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.1.1 The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel.

Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their

respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the Owner.

§ 1.1.9 EQUAL TO (OR APPROVED EQUAL)

Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

§ 1.1.10 FORCE MAJEURE

An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

§ 1.1.11 KNOWLEDGE

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

§ 1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

§ 1.2.6 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in

writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization.

Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 Intentionally deleted.

§ 2.2 Evidence of the Owner’s Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as “confidential,” the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose “confidential” information, after seven (7) days’ notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose “confidential” information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner may furnish existing surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of the information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4.1 The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor’s information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. . If the Contractor discovers conditions that vary significantly from those that it anticipated or that it would not have reasonable inferred from the

examination of the site and available information, the Contractor may seek an equitable adjustment in the Contract Time or Contract Sum, or both.

§ 2.3.5 The information identified in Section 2.3.4, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and shall exercise proper precautions relating to the safe performance of the Work. If the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.6 ADDITIONAL RIGHTS

§ 2.6.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

§ 2.6.2 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner. Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays and/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of

delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

§ 3.3.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.6 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or by test, inspections, or approvals required or performed by persons other than Contractor.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§ 3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved or authorized by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

§ 3.4.4 Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

§ 3.4.5 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

§ 3.4.6 By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§3.4.7 The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner.

§ 3.6 Taxes

The Contractor shall pay all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 10 days

after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 Prior to starting work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contractor may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

§ 3.9.2 Intentionally deleted.

§ 3.9.3 Intentionally deleted.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Contractor, promptly after being awarded the Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within

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ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

§ 3.10.2 The Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) completion of any parking structures; and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of \$5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

§ 3.10.3 The Contractor shall perform the Work in accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

§ 3.10.4 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

§ 3.10.4.1 A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

§ 3.10.4.2 A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

§ 3.10.4.3 A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

§ 3.10.4.4 A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

§ 3.10.4.6 A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

§ 3.10.4.7 A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

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§ 3.10.4.8 A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

§ 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

§ 3.10.4.10 An updated Material Purchase Log.

§ 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

§ 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

§ 3.10.5.2 Actual versus estimated work in place for each activity and Project total;

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

§ 3.10.5.4 Actual versus estimated cash flow; and

§ 3.10.5.5 Any change in the critical path.

§ 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

§ 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3, 2.4., or 2.5.

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

§ 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner. Contractor shall make available at any time such information for review by the Architect or Owner.

§ 3.10.10 Contractor shall prepare and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the Project site, the Contract Documents, including the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely

upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, except for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

§3.13.5 The Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect, and their representatives, access to the Work in preparation and progress at all times and wherever located and shall provide proper and safe facilities for such access.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's officers and trustees, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by any act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages (subject to the mutual waiver of consequential damages in Section 15.1.6), compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show: (1) bidding addendums, (2)

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executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable. Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

- .1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.
- .2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.
- .3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.
- .4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.
 - (a) Recommended spare parts including catalog number and name of local suppliers or factory representative.
 - (b) Belt sizes, types, and lengths.
 - (c) Wiring diagrams.
- .5 Manufacturer's Certificate of Warranty: Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.
- .6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when

fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents, and any such determination shall be communicated through the Architect.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

§5.5 OWNER PAYMENTS TO SUBCONTRACTORS

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the

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Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for such proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

(Paragraphs Deleted)

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

- .1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
- .5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.7.1 through 7.3.7.5;
- .6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;
- .7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are Subcontracts, they shall be itemized also.
- .8 For the Construction Manager when there are adjustments to the Contract sum that increase the GMP total, the Construction Manager's fee shall be at the percentage established in the contract and the

combined total of the Construction Manager's fee plus the subcontractors overhead and profit should not exceed 15%.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Claims for extension of time shall be stated in whole or half calendar days.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only in accordance with Section 8.3.5 below.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by other causes that the Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay caused by either party under other provisions of the Contract Documents.

§ 8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at <http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm> or other data as mutually agreed by the Architect and Contractor for the Project area or as set forth in an exhibit to the Guaranteed Maximum Price Amendment, if applicable. In allowing delays for weather, the Architect will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis of one (1) calendar day credit for every working day lost, with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the

same weather conditions. Extensions of Contract Time shall be the sole remedy for delays due to weather conditions; compensation shall not be available.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the Work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. Such schedule, when approved by the Architect, unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

§ 9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

§ 9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

§ 9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's

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Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

§ 9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to

make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 **failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract**

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§ 9.5.2 Intentionally deleted.

§ 9.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of any Work.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall

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be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when construction is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy and utilize the Work as a whole for the use for which it is intended.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have

accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect, (3) a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; (7) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and (8) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be

submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and attorneys' fees. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner.
(Paragraphs Deleted)

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (A) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.2.1 If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3 except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the

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agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

§10.2.10 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

§10.2.11 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

§ 10.2.12 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 Intentionally deleted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Intentionally deleted.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

(Paragraph Deleted)

"Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- 1. Premises Operations (including X, C and U coverage as applicable).
- 2. Independent Contractor's Protective
- 3. Products and Completed Operations.
- 4. Personal Injury Liability.
- 5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
- 6. Owned, non-owned and hired motor vehicles."

§11.1.2.2 The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

- 1. Worker's Compensation:
 - (a) State: Statutory
 - (b) Applicable Federal: Statutory
 - (c) Employer's Liability: \$500,000 per Accident
 - \$500,000 Disease, Policy Limit
 - \$500,000 Disease, Each Employee
- 2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):
 - (a) Each Occurrence: \$1,000,000
 - Aggregate: \$2,000,000
 - (b) Products and Completed Operations to be maintained for two years after final payment:
 - \$2,000,000 Aggregate
- (c) Coverage to be extended to include the interests of the Architect and his consultants.
 - (d) No total pollution exclusion should be included.
- 3. Business Auto \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.
- 4. Umbrella Excess Liability:
 - (a) Over Primary Insurance: \$1,000,000 Each Occurrence
- 5. Occurrence Policy: \$1,000,000 Each Occurrence
 - (applicable for asbestos related projects only)

If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final

payment, certified in accordance with Subparagraph 9.10.2.

§11.1.2.3 Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

§11.1.2.4 Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The

Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 PERFORMANCE BOND AND PAYMENT BOND

§ 11.6.1 The Contractor shall furnish a Performance Bond and a Payment Bond. The amount of each bond shall be equal to 100 percent of the Contract Sum. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Work made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond.

§11.6.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§11.6.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

§11.6.1.3 The Contractor shall provide each bond on the form required by Owner.

§11.6.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction, shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall be extended from the date corrective Work is performed by the Contractor.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

Init.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§13.1.2 The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars (\$60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded and (2) tests, inspections, or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection, or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at twelve percent (12%) per annum.

§ 13.7 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§13.8 Equal Opportunity

§13.8.1 The Contractor shall maintain policies of employment as follows:

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

§13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

§13.9 Criminal Background

§13.9.1 No person shall be engaged by the Contractor or any Sub-Contractor to work on Owner property where students are present who have charges pending, or who have been convicted, received probation or deferred adjudication for the following:

1. Any offense against a child;
2. Any sex offense;
3. Any crimes against persons involving weapons or violence;
4. Any felony offense involving controlled substances;

5. Any felony offense against property; or
6. Any other offense that the Owner believes might compromise the safety of students, staff or property.

It shall be the responsibility of the Contractor and Sub-Contractor to ensure compliance with this provision.

§13.9.2 Any person associated with, engaged and/or representing on site or doing business with the Owner shall submit such background information as may be requested by the Owner in order to enable the Owner to perform criminal background evaluations/investigations for the following individuals:

1. General Contractor - Project Manager, Superintendent, Field Engineers and Foreman.
2. Subcontractors - Project Manager, Superintendent, Foreman.
3. Trades - Management personnel on site.

A copy of Criminal History Check form shall be available for review by the employer and affected party at the Owner's Administrative Office during normal business hours.

§13.10 Working Time and Working Restrictions

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES.

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

§13.10.7 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Owner has not made payment on a Certificate for Payment approved by the Architect within thirty (30) days after receipt of written notification from Contractor that the time for payment stated in the Contract Documents has expired.

§ 14.1.2 Intentionally deleted.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, as well as reasonable overhead and profit on Work not executed.

§ 14.1.4 Intentionally deleted.

§ 14.1.5 Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

- (a) the fair value (not Contractor's cost or profit) of the properly executed Work; or
- (b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

§ 14.2.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein, including without limitation, attorney and other professional fees, insurance premiums and interest costs.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum may include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim.

This notice shall be given by the Contractor before proceeding to execute the portion of the Work that is the subject of the Claim except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with paragraph 10.4. Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall provide written notice as required by Sections 8.3.1 and 8.3.5.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.5.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision - Intentionally Deleted

(Paragraphs Deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. A request for mediation shall be filed in writing with the other party to this Contract.

§ 15.3.3 Intentionally deleted.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration – Intentionally Deleted

(Paragraph Deleted)

§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES

§16.1 Contractual Provisions

§16.1.1 **It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract.**

§16.1.2 **Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.**

§16.1.3 If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for **\$500.00, for each and every calendar day** that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

§16.1.4 **The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.**

§16.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:

- .1 To any **performance, priority or allocated order duly issued by the Government;**
- .2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;
- .3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

§16.1.6 Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

Additions and Deletions Report for AIA® Document A201® – 2017

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ARBH File No. 6262.0031 City of Sherman/Fire
Station No. 3 Renovation

City of Sherman, Texas

Updates to the apparatus bay to develop spaces that
properly clean and store contaminated items,
isolating them from the living areas. The living
quarters shall be updated to meet current individual
dorm and restroom standards, as well as updates to
the kitchen, pantry, and office areas. The building
systems will require modification and replacement.

...

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090
Phone: 903-892- -

...

Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666 -

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ARTICLE 1 GENERAL PROVISIONS

...

§ 1.1.1.1 The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner

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and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, ~~and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.~~ plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

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The Initial Decision Maker is the ~~person identified~~ Owner.

...

§ 1.1.9 EQUAL TO (OR APPROVED EQUAL)

...

~~in the Agreement to render initial decisions~~ Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

...

§ 1.1.10 FORCE MAJEURE

...

~~on Claims~~ An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

...

§ 1.1.11 KNOWLEDGE

...

~~in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~ The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and

similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

...

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

...

§1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

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§1.2.6 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

...

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

...

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the this Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

...

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. Intentionally deleted.

...

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents. Intentionally deleted.

...

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Intentionally deleted.

...

§ 2.3.4 The Owner ~~shall furnish~~ may furnish existing surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of the information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other **2.3.4.1** The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. . If the Contractor discovers conditions that vary significantly from those that it anticipated or that it would not have reasonable inferred from the examination of the site and available information, the Contractor may seek an equitable adjustment in the Contract Time or Contract Sum, or both.

...
information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. § 2.3.5 The information identified in Section 2.3.4, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and shall exercise proper precautions relating to the safe performance of the Work. If the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

...
If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3-6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

...
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~ If

...
§ 2.6 ADDITIONAL RIGHTS

...
§ 2.6.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

...
~~the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~ **§ 2.6.2** The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use,

possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions, carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

...

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

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§ 3.3.1 Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner. Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays and/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float

available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

...

§ 3.3.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

...

§ 3.3.2-3.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

...

§ 3.3.3-3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

...

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

...

§ 3.3.6 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or by test, inspections, or approvals required or performed by persons other than Contractor.

...

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment.

Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

...

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

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§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

...

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

...

§3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

...

§ 3.4.2 Except in the case of minor changes in the Work approved or authorized by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

...

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

...

§3.4.4 Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

...

§3.4.5 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

...

§3.4.6 By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

...

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

...

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

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.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

...

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

...

§3.4.7 The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of

...

amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection

...

Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards,

...

whichever are most restrictive.

...

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the ~~Owner, and shall commence in accordance with Section 9.8.4.~~ Owner.

...

~~The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~ all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

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If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~44-10~~ 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required

for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim proceed as provided in Article 15.

...

§ 3.9.1 ~~The Contractor shall employ a competent superintendent and necessary assistants who~~ Prior to starting work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contractor may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the superintendent Superintendent shall be as binding as if given to the Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

...

§ 3.9.2 ~~The Intentionally deleted.~~

...

§ 3.9.3 ~~Intentionally deleted.~~

...

§ 3.10 Contractor's Construction and Submittal Schedules

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Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days **§ 3.10.1** Contractor, promptly after being awarded the Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

...

of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional **§ 3.10.2** The Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities,

dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) completion of any parking structures; and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of \$5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

...

time for review. Failure of the Architect to provide notice within the 14 day period shall constitute notice of no reasonable objection. ~~§ 3.10.3~~ The Contractor shall perform the Work in accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

...

~~§ 3.9.3~~ The Contractor shall not employ a proposed superintendent ~~3.10.4~~ Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

...

to whom the Owner or Architect has made reasonable ~~§ 3.10.4.1~~ A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

...

and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. ~~§ 3.10.4.2~~ A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

...

~~§ 3.10 Contractor's Construction and Submittal Schedules~~ ~~3.10.4.3~~ A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

...

~~§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for~~ 3.10.4.4 A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

...

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

...

~~the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for~~ § 3.10.4.6 A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

...

~~the Project, including (1) the date of commencement~~ § 3.10.4.7 A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

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~~of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion~~ § 3.10.4.8 A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

...

~~of the Work. The schedule shall provide for the orderly progression of the Work~~ § 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

...

§ 3.10.4.10 An updated Material Purchase Log.

...

~~to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work~~ § 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

...

~~and Project.~~ § 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

...

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule.
3.10.5.2 Actual versus estimated work in place for each activity and Project total;

...

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

...

§ 3.10.5.4 Actual versus estimated cash flow; and

...

the Architect's approval. The Architect's approval shall not
§ 3.10.5.5 Any change in the critical path.

...

be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow
§ 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

...

the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule,
§ 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3, 2.4., or 2.5.

...

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

...

Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.
§ 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific

jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner. Contractor shall make available at any time such information for review by the Architect or Owner.

...

~~§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~
§ 3.10.10 Contractor shall prepare and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

...

The Contractor shall ~~make available, maintain~~ at the Project site, the Contract Documents, including the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form ~~or~~ and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

...

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

...

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

...

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

...

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, except for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

...

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

...

§3.13.5 The Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

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§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the ~~Contract~~. ~~Contract~~ and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the ~~Project~~. ~~Project~~ and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

...

The Contractor shall provide the Owner and ~~Architect with Architect, and their representatives,~~ access to the Work in preparation and progress ~~wherever located at all times and wherever located and shall provide proper and safe facilities for such access.~~

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or patent is discovered by, or made known to, the Contractor, a patent, the Contractor shall be responsible for ~~the loss unless the such loss unless such~~ information is promptly furnished to the Architect.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, Owner's officers and trustees,~~ and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by ~~the negligent acts or omissions in whole or in part by andy act or omission, whether negligent or otherwise,~~ of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that which~~ would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of ~~damages,~~ damages (subject to the mutual waiver of consequential damages in Section 15.1.6), compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

...

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable. Submission of all of the following shall

be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

...

.1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.

...

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.

...

.3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.

...

.4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.

...

(a) Recommended spare parts including catalog number and name of local suppliers or factory representative.

...

(b) Belt sizes, types, and lengths.

...

(c) Wiring diagrams.

...

.5 Manufacturer's Certificate of Warranty:

...

Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.

...

.6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

...

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations Documents and from the most recent construction schedule submitted by the Contractor, and (3) (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections ~~13.4.2 and 13.4.3~~, 13.5.2 and 13.5.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

...

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or or, unless otherwise specifically stated by the Architect,~~ of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

...

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may ~~order authorize~~ minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. ~~The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.~~

...

§ 4.2.11 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

...

§ 4.2.12 Interpretations ~~and decisions~~ of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

...

§ 4.2.13 ~~The Architect's decisions on matters relating to aesthetic effect will be final if Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.~~ Documents, and any such determination shall be communicated through the Architect.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect~~ furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect (1-) has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Architect to provide notice Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

...

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

...

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor;~~ Contractor in writing; and

...

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall ~~nevertheless remain legally responsible for all of the successor contractor's~~ be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

...

§5.5 OWNER PAYMENTS TO SUBCONTRACTORS

...

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

...

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly ~~notify-report~~ to the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for such proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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.4 As provided in Section 7.3.4.7.3.7.

...

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

...

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

...

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

...

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable ~~amount~~ amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section ~~7.3.4~~ 7.3.7 shall be limited to the following:

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- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, ~~workers' compensation insurance, and other employee costs approved by the Architect; and workers' compensation insurance;~~

...

- .5 ~~Costs~~ Additional costs of supervision and field office personnel directly attributable to the change.

...

~~§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.~~

...

~~§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.~~

...

~~§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.~~

...

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

...

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

...

- .1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

...

- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;

...

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

...

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

...

.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-paragraphs 7.3.7.1 through 7.3.7.5;

...

.6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;

...

.7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are Subcontracts, they shall be itemized also.

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8. For the Construction Manager when there are adjustments to the Contract sum that increase the GMP total, the Construction Manager's fee shall be at the percentage established in the contract and the combined total of the Construction Manager's fee plus the subcontractors overhead and profit should not exceed 15%.

...

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Claims for extension of time shall be stated in whole or half calendar days.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only in accordance with Section 8.3.5 below.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) ~~an a wrongful~~ act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor; (2) ~~separate~~ contractor employed by the Owner; or by changes ordered in the Work; (3) ~~or by~~ labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2; casualties or other causes beyond the Contractor's control; (4) ~~by delay authorized by the Owner pending mediation and binding dispute resolution;~~ or (5) ~~by other causes that the Contractor asserts, and the Architect determines,~~ Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for

such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay caused by either party under other provisions of the Contract Documents.

...

§ 8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

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§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at <http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm> or other data as mutually agreed by the Architect and Contractor for the Project area or as set forth in an exhibit to the Guaranteed Maximum Price Amendment, if applicable. In allowing delays for weather, the Architect will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis of one (1) calendar day credit for every working day lost, with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions. Extensions of Contract Time shall be the sole remedy for delays due to weather conditions; compensation shall not be available.

...

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the ~~total~~ maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum. Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect Work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. require. Such schedule, when approved by the Architect, unless it be found to be in error, shall be

used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

...

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. ~~The Such~~ application shall be notarized, if required, and supported by ~~all such~~ data substantiating the Contractor's right to payment ~~that as~~ the Owner or Architect may require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

...

§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

...

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

...

§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

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§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

...

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner ~~shall, to the best of the Contractor's knowledge, information, and belief,~~ shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities ~~that making a claim by reason of having~~ provided labor, materials, and equipment relating to the Work.

...

§9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and

shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

...

§9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

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- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

...

- .7 repeated failure to carry out the Work in accordance with the Contract Documents; ~~Documents;~~ or

...

- .8 failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract

...

Time.

...

~~§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.~~Intentionally deleted.

...

§ 9.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

...

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors ~~and suppliers~~ to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a ~~Subcontractor or supplier,~~ Subcontractor, except as may otherwise be required by law.

...

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of ~~Work not in accordance with the Contract Documents.~~ any Work.

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the ~~Architect or awarded by binding dispute resolution, Architect~~, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when ~~the Work or designated portion thereof construction~~ is sufficiently complete in accordance with the Contract Documents so that the Owner ~~can occupy or utilize the Work for its intended use~~ may occupy and utilize the Work as a whole for the use for which it is intended.

§ 9.9.3 ~~Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of~~ In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

...

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner **(1)** an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, **(2)** a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect, **(3)** a written statement ~~that the Contractor knows of no reason that the insurance will not be renewable to~~ satisfactory to the Owner that the insurance will cover the period required by the Contract Documents, **(4)** consent of surety, if any, to final payment, **(5)** documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and **(6)** if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner-Owner~~ Owner; **(7)** certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and (8) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and

other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and attorneys' fees. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor ~~may~~ must furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

...

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

...

§ 9.10.4 The making of final payment shall not constitute a waiver of ~~Claims by the Owner except those arising from~~ many Claims by the Owner.

...

~~.1—liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~

...

~~.2—failure of the Work to comply with the requirements of the Contract Documents;~~

...

~~.3—terms of special warranties required by the Contract Documents; or~~

...

~~.4—audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~

...

§ 9.10.6 In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted

from the amount due the Contractor.

...

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

...

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (A) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

...

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

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§10.2.2.1 If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

...

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. ~~The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 10.2.1.3 except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.~~ The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

...

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, ~~notice of the~~ written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§10.2.9 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

...

§10.2.10 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

...

§10.2.11 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

...

§ 10.2.12 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous

Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the ~~condition~~condition in writing.

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§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

...

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~Intentionally deleted.

...

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally deleted.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located~~located as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally

liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

...

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

...

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;

...

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

...

.4 Claims for damages insured by usual personal injury liability coverage;

...

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

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.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

...

.7 Claims for bodily injury or property damage arising out of completed operations; and

...

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section The 3.18.

...

The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. 11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be

...

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

...

§ 11.2 Owner's Insurance

...

§ 11.2.1 The Owner shall purchase and maintain insurance of the types "Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

...

and limits of liability, containing the endorsements, 1. Premises Operations (including X, C and U coverage as applicable).

...

2. Independent Contractor's Protective

...

and subject to the terms 3. Products and Completed Operations.

...

4. Personal Injury Liability.

...

5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.

...

and conditions, as described in the Agreement or elsewhere in the Contract Documents. 6. Owned, non-owned and hired motor vehicles."

...

The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. **§11.1.2.2** The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M.

Best and shall be written in limits for not less than the minimum required by law or the following:

...

1. Worker's Compensation:

...

(a) State: Statutory

...

(b) Applicable Federal: Statutory

...

(c) Employer's Liability: \$500,000 per Accident

...

\$500,000 Disease, Policy Limit

...

\$500,000 Disease, Each Employee

...

2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):

...

(a) Each Occurrence: \$1,000,000

...

Aggregate: \$2,000,000

...

(b) Products and Completed Operations to be maintained for two years after final payment: \$2,000,000 Aggregate

...

§ 11.2.2 Failure to Purchase Required Property Insurance. ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages~~ (c) Coverage to be extended to include the interests of the Architect and his consultants.

...

(d) No total pollution exclusion should be included.

...

~~and in~~ 3. Business Auto \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.

...

4. Umbrella Excess Liability:

...

(a) Over Primary Insurance: \$1,000,000 Each Occurrence

...

5. Occurrence Policy: \$1,000,000 Each Occurrence

...

(applicable for asbestos related projects only)

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~~the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement~~ If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

...

~~of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain~~ §11.1.2.3 Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

...

~~insurance that will protect the interests~~ §11.1.2.4 Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

...

~~of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~ § 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be

furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

...

§ 11.2.3-11.1.4 Notice of Cancellation or Expiration of Owner's Required Property-Contractor's Required Insurance.

Within three (3) business days of the date the Owner-Contractor becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner-Contractor shall provide notice to the Contractor-Owner of such impending or actual cancellation or expiration. Unless Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. the Contractor. The furnishing of notice by the Owner-Contractor shall not relieve the Owner-Contractor of any contractual obligation to provide any required coverage.

...

§ 11.2 Owner's Insurance

...

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ 11.6 PERFORMANCE BOND AND PAYMENT BOND

...

§ 11.6.1 The Contractor shall furnish a Performance Bond and a Payment Bond. The amount of each bond shall be equal to 100 percent of the Contract Sum. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Work made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond.

...

§11.6.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

...

§11.6.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

...

§11.6.1.3 The Contractor shall provide each bond on the form required by Owner.

...

§11.6.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

...

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate.~~ costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, ~~the costs of uncovering the Work,~~ such costs and the cost of correction, shall be at the Contractor's expense ~~expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.~~

...

§ 12.2.2.3 The one-year period for correction of Work shall ~~not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~ be extended from the date corrective Work is performed by the Contractor.

...

§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

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The Contract shall be governed by the law of the place where the Project is located, ~~excluding that jurisdiction's choice located.~~

...

of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. §13.1.2 The Owner has adopted a prevailing wage rate schedule as more

fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars (\$60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

...

§ 13.3 Written Notice

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

...

§ 13.4 Rights and Remedies

...

~~§ 13.3.1~~ **§ 13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

...

~~§ 13.3.2~~ **§ 13.4.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

...

§ ~~13.4~~ 13.5 Tests and Inspections

...

~~§ 13.4.1~~ **§ 13.5.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for concluded and (2) tests, inspections, or approvals where building codes or applicable laws or regulations so require. prohibit the Owner from delegating their cost to the Contractor.

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§ 13.4.2-13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section ~~13.4.1, 13.5.1,~~ the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section ~~13.4.3, 13.5.3,~~ shall be at the Owner's expense.

...

§ 13.4.3-13.5.3 If such procedures for testing, inspection, or approval under Sections ~~13.4.1 and 13.4.2-13.5.1 and 13.5.2~~ reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

...

§ 13.4.4-13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

...

§ 13.4.5-13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

...

§ 13.4.6-13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

...

§ 13.5-13.6 Interest

...

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at twelve percent (12%) per annum.

...

§ 13.7 Time Limits on Claims

...

~~the rate.~~ The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

...

§13.8 Equal Opportunity

...

§13.8.1 The Contractor shall maintain policies of employment as follows:

...

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

...

~~the parties agree upon in writing or,~~ §13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

...

§13.9 Criminal Background

...

§13.9.1 No person shall be engaged by the Contractor or any Sub-Contractor to work on Owner property where students are present who have charges pending, or who have been convicted, received probation or deferred adjudication for the following:

...

1. Any offense against a child;

...

2. Any sex offense;

...

3. Any crimes against persons involving weapons or violence;

...

4. Any felony offense involving controlled substances;

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5. Any felony offense against property; or

...

6. Any other offense that the Owner believes might compromise the safety of students, staff or property.

...

It shall be the responsibility of the Contractor and Sub-Contractor to ensure compliance with this provision.

...

§13.9.2 Any person associated with, engaged and/or representing on site or doing business with the Owner shall submit such background information as may be requested by the Owner in order to enable the Owner to perform criminal background evaluations/investigations for the following individuals:

...

1. General Contractor - Project Manager, Superintendent, Field Engineers and Foreman.

...

2. Subcontractors - Project Manager, Superintendent, Foreman.

...

3. Trades - Management personnel on site.

...

the absence thereof, A copy of Criminal History Check form shall be available for review by the employer and affected party at the Owner's Administrative Office during normal business hours.

...

§13.10 Working Time and Working Restrictions

...

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES.

...

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

...

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at the legal rate prevailing from times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

...

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

...

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

...

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at the place where no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

...

the Project is located. §13.10.7 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, Contractor or a Subcontractor, Sub-subcontractor or their agents or employees, or any other persons or entities performing portions of the Work, Work under direct or indirect contract with the Contractor, for any of the following reasons:

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.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

...

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment approved by the Architect within thirty (30) days after receipt of written notification from Contractor that the time for payment stated in the Contract Documents; or

...

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.2. Documents has expired.

...

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less. Intentionally deleted.

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ~~seven days'~~ fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, as well as reasonable overhead and profit on Work not ~~executed~~, and costs incurred by reason of such termination. executed.

...

§ 14.1.4 ~~If~~ Intentionally deleted.

...

~~the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under~~ §14.1.5 Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

...

~~the Contract Documents with respect to matters important to the progress of the Work, (a) the fair value (not Contractor's cost or profit) of the properly executed Work; or~~

...

~~the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3. (b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.~~

...

~~.4 otherwise is guilty of substantial breach of a provision of the Contract Documents. Documents; or~~

...

~~.5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.~~

...

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that ~~sufficient cause exists to justify such action, above reasons exist,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

...

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein, including without limitation, attorney and other professional fees, insurance premiums and interest costs.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum ~~shall~~ may include profit. No adjustment shall be made to the extent

...

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

...

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~24~~ 10 days after occurrence of the event giving rise to such Claim or within ~~24~~ 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. ~~In such event, no decision by the Initial Decision Maker is required.~~

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§ 15.1.4.2 ~~The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will~~ The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

...

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given. Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to Claim except in an emergency endangering life or property arising under Section 10.4. in which case the Contractor shall proceed in accordance with paragraph 10.4. Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, ~~notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~ the Contractor shall provide written notice as required by Sections 8.3.1 and 8.3.5.

...

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, ~~could not have been reasonably anticipated, and had an adverse effect on the scheduled construction in accordance with Section 8.3.5.~~

...

§ 15.2 Initial Decision - Intentionally Deleted

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

...

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

...

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

...

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

...

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

...

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

...

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

...

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

...

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

...

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to ~~binding dispute resolution.~~ the institution of legal or equitable proceedings by either party.

...

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, ~~unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code.~~ A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. filed in writing with the other party to this Contract.

...

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision. Intentionally deleted.

...

§ 15.4 Arbitration – Intentionally Deleted

...

§ 15.4.1 If

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ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES

...

§16.1 Contractual Provisions

...

~~the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, §16.1.1~~ **It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract.**

...

~~shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration §16.1.2~~ **Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.**

...

~~shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. §16.1.3~~ **If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to**

...

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~ the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for \$500.00, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

...

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~ 16.1.4 The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.

...

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in § 16.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:~~

...

any court having jurisdiction thereof. 1 To any

...

~~§ 15.4.4 Consolidation or Joinder~~ performance, priority or allocated order duly issued by the Government;

...

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~ 2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

...

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~ 3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

...

~~§ 15.4.4.3~~ The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.§16.1.6 Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher C. Zillmer/blg, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:42:11 CT on 10/11/2024 under Order No. 4104242442 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

 /blg

(Signed)

(Title)

October 11, 2024

(Dated)



AIA® Document B133® – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

B133-2019 v2 (03-31-2021)

AGREEMENT made as of the _____ day of _____ in the year Two Thousand Twenty-Four.
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090
Phone: 903-892-7206

and the Architect:
(Name, legal status, address, and other information)

Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

for the following Project:
(Name, location, and detailed description)

ARBH File No. 6262.0031 City of Sherman/Fire Station No. 3 Remodel

City of Sherman, Texas

Updates to the apparatus bay to develop spaces that properly clean and store contaminated items, isolating them from the living areas. The living quarters shall be updated to meet current individual dorm and restroom standards, as well as updates to the kitchen, pantry, and office areas. The building systems will require modification and replacement.

The Construction Manager (if known):
(Name, legal status, address, and other information)

To be determined.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Architect agree as follows.

Init.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Shall be developed as part of the basic scope of services.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Renovation and Addition of the existing facility.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

The Owner's overall budget for the Cost of the Work is TBD, excluding the Architect's fee.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

Init.

/

The date of commencement of construction shall be established with a Notice to Proceed by the Owner.

.3 Substantial Completion date or dates:

To be determined.

.4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

- ☒ AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
- ☐ AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner’s requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

N/A

§ 1.1.7 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

N/A

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Zachary Flores
Executive Director of Public Safety
220 W. Mulberry Street
Sherman, TX 75090

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:
(List name, address, and other contact information.)

N/A

Init.

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§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:

To be selected by Owner.

.2 Land Surveyor:

To be determined.

.3 Geotechnical Engineer:

To be determined.

.4 Intentionally Deleted:

.5 Other consultants and contractors:

(List any other consultants and contractors retained by the Owner.)

Boundary and Topographic Survey
Construction Period Materials Testing
HVAC Test and Balance

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Aaron Babcock, Principal
Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

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.1 Structural Engineer:

To be determined.

.2 MEP Engineer:

To be determined.

.3 Landscape Architect:

To be determined.

.4 Civil Engineer:

To be determined.

§ 1.1.12.2 Consultants retained under Supplemental Services:

If required and with the Owner's prior written approval, other consultants deemed necessary and not included in the Basic Services will be proposed and provided by the Architect and submitted as a Reimbursable Expense.

§ 1.1.13 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation by written amendment hereto. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project, which representative shall be acceptable to Owner.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 **Insurance.** The Architect shall maintain the following insurance until termination of this Agreement.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000.00) each accident, Two Million Dollars (\$2,000,000.00) each employee, and Two Million Dollars (\$2,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate. If the Professional Liability is made on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment.

§ 2.6.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services and other specialty consultants required to address the needs of the Project. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's written approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review of each phase (Schematic Design, Design Development, and Construction Documents), for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause which shall promptly be defined in detail and submitted in writing to Owner, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall include:

- (1) A conceptual Site Plan, scaled accurately, to depict all features of the site, including but not necessarily limited to drives, parking, streets, alleys, easements, finish floor elevation and site contours, location of existing utilities as provided by Owner under Section 5.5 and the building locations indicating proposed sidewalks and other site appurtenances. The site plan shall bear a schedule indicating the acreage of the site, the area of the site proposed for concrete or asphalt paving, the total area of the building, and area of proposed covered walks and overhangs.
- (2) Floor Plan or plans, drawn to scale, indicating the dimensions and net areas of each individual space, labeled as to use, and indicating door swings, window or glassed areas, wall thickness, conceptual casework/millwork and other design features, which require Owner approval. Spaces too small at the plan scale to be adequately examined shall be enlarged and illustrated as necessary. Floor plan sheet shall bear a schedule indicating the gross area of the building and the square footage allocated to instruction, administration, support, circulation, and ancillary preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- (3) Exterior Elevations, drawn to scale, proposing the design concept and indicating proposed materials and design features.
- (4) A preliminary code search, indicating the anticipated code requirements governing building, fire, life safety, accessibility, and health, and a statement as to the Architect's and Architect's Consultants' approach to accommodate these requirements shall be included. At the Owner's direction, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. The Architect shall obtain approval of Schematic Design Documents from Owner before proceeding to Design Development Phase.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 The extent of presentation shall be such that all aspects of the design and features, locations of equipment, switching, lighting, door numbers/types, room numbers/finishes, ceiling types/finishes and any other issue which may be incorporated into the Construction Documents shall have been presented to and approved by the Owner.

A complete code review, addressing building, fire, safety, ADA/TAS, health, and any or all other code/ordinance requirements shall be included, indicating the Architect's and Architect's Consultants' interpretations as to the code requirements and the features incorporated into the design that satisfy the requirements.

Site plans shall depict the final locations of all site appurtenances, utility connections and routing, drives, walks, yard irrigation, and other features to illustrate to the Owner that essentially all decisions have been made and that decisions of significance will not be required during Construction Document Phase.

Specifications shall be in outline form, and shall describe the materials and methods intended for use within the project, as well as potential alternates, allowances, and other significant information to be included in the Architectural and Engineering technical specifications sections of a project manual.

(Paragraph deleted)

§ 3.4.3 The Architect shall review the Construction Manager's detailed estimate of the final Cost of the Work.

§ 3.4.4 The Architect shall submit the Design Development Documents to the Owner and request the Owner's approval.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents. Owner shall approve Design Development Documents prior to Architect proceeding with Construction Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents which shall comply with all laws, statutes, ordinances, codes, rules and regulations, including, but not limited to, fire building, health, ADA/TAS, and indoor air quality.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site not less than once per week while Work is in progress, and as often as necessary and appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine for the Owner's benefit and protection, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§3.6.2.1.1 The Architect shall provide services made necessary by major defects or deficiencies in the Work of the Construction Manager(s) or its agents, employees or subcontractors which through reasonable care the Architect should have discovered and promptly reported to the Owner but failed to do so. In addition, the Architect shall follow the usual and customary standards of the profession in performing all services under this Agreement. Any defective design drawings or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner.

The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liability or the Owner's rights.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations, the Architect shall endeavor to secure faithful performance by the Construction Manager, and shall not be liable for results of interpretations or decisions rendered without negligence and in good faith. The Owner shall have final authority on matters relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques,

sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1

(Paragraphs deleted)

Paragraph Intentionally Deleted.

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 Paragraph Intentionally Deleted.

§ 4.1.2.2 Paragraph Intentionally Deleted.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall, by mutual agreement of Owner and Architect, entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations, after the date of Owner's acceptance of the Construction Drawings, of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .8 Intentionally deleted;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

- .11 Intentionally deleted;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Intentionally deleted;
- .14 Intentionally deleted; and
- .15 Intentionally deleted.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims submitted by the Owner's consultants, the Contractor or others in connection with the Work except where such extensive number of claims could have been rectified by more descriptive original Contract Documents or addenda thereto; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide

(Paragraphs deleted)

during Construction Phase Services all services necessary to complete and completely discharge its responsibilities under this Agreement.

§ 4.2.4 Paragraph intentionally deleted.

§ 4.2.5 Paragraph intentionally deleted.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner

selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observations, inspection or investigation.

§ 5.13 The Owner shall include the Architect in communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and approved in writing by the Owner, and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work shall not include the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time, with no adjustment in the Architect's compensation;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.4, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget

for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction as amended by the Owner. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and

expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be conducted in accordance with the provisions of Section 154.023, Texas Civil Practices and Remedies Code. The request may be made concurrently with the filing of a suit for legal or equitable relief.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration – Intentionally Deleted

(Paragraphs deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner wrongfully fails to make payments to the Architect in accordance with this Agreement, and such failure continues for a period of 30 days after written demand from Architect to Owner, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services, upon submitting and receiving an approved proposal to resume services to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted at the mutual consent of the parties to the Agreement.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect may be compensated for expenses incurred in the interruption and resumption of the Architect's services upon submitting and receiving an approved proposal to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

- .1 Termination Fee (Additional expenses that are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated):

Zero.

- .2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

The Owner's payment to Architect in accordance with Section 9.6 shall constitute payment for a licensing fee for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, as amended by the Owner. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such

consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action. Unless otherwise provided in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations, but only at such times and dates as stipulated by the Owner's Designated Representative. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 In accordance with Texas Government Code, Chapter 2270, the undersigned avers that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

Compensation shall be a Stipulated Sum of Two Hundred Forty-Two Thousand and No/100 Dollars (\$242,000.00).

- .2 Percentage Basis
(Insert percentage value)

Init.

N/A () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

N/A

§ 11.2 Prior to the commencement of any Sustainability Services required pursuant to Section 4.1.3, Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

§ 11.3 Prior to the commencement of any Additional Services that may arise during the course of the Project, including those under Section 4.2, Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect with no mark-up.
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

SUPPLEMENTAL SERVICES LUMP SUM TOTAL: \$49,500.00
(broken down by category as follows)

Civil Engineering Services: \$27,000.00 (comprised of the following):

- Topographic Survey: \$1,500.00
- Site Plan: \$3,000.00
- Construction Documents: \$22,500.00

Other Services: \$22,500.00 (comprised of the following):

- Geotech Report: \$4,500.00
- Landscape Design Services: \$10,000.00
- Equipment & Furniture Selection: \$8,000.00
 - Fee includes the layout and selection of furniture for use in coordination during facility design.

Other Services (only if required – not included in the lump sum total above):

- As-Built Documents: \$4,500.00
 - Preparation of CAD files to match as-built conditions.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Ten	percent (	10	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding	Five	percent (	5	%)
Construction Administration	Twenty-Five	Percent (	25	%)

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Total Basic Compensation	one hundred	percent (	100	%)
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The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
o Principal.....	\$220.00/hr
o Project Architect.....	\$180.00/hr
o Architect.....	\$110.00/hr
o CADD.....	\$80.00/hr
o Administration.....	\$60.00/hr

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation in connection with the Project, when such transportation is not a function of routine performance of duties of the Architect or Architect's Consultants in connection with the Project, and when such transportation extends beyond 50 miles from the project site; authorized out-of-town travel and substance, which shall be prior approved by the Owner's Designated Representative, and which reimbursements shall be governed by the same travel policies provided for Owner's employees according to current adopted Owner's policy. Prior to the event, the Architect shall request, and the Owner's designated Representative shall provide the provisions and restrictions applicable to out-of-town travel reimbursements. Electronic communication reimbursable expense shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project;
- .2 Intentionally deleted;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Reproductions, specifically limited to progress prints prepared for presentation to Owner at each phase of progress, and final construction documents prepared for distribution at bidding phase, provided that the Architect has duly obtained at least three quotations from commercial printing firms and has chosen the best value for the Owner. Plots shall be limited to plotting of final documents, provided that the Architect has duly obtained at least three quotations from commercial firms offering plotting services, and has chosen the best value for the Owner. Standard form documents are reimbursable if bulk-purchase discounts and other privileges afforded the Architect are extended to the Owner. If licensed electronic document forms are provided in lieu of hard-copy standard forms and are furnished by the Architect, the Architect may charge as reimbursable up to fifty percent (50%) of the purchase price of the corresponding hard-copy documents, subject to restrictions and limitations of copyright provisions governing both documents. Postage and delivery of Instruments of Service are reimbursable provided the Architect duly

considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Owner, which may require comparison of delivery costs offered by three or more sources or methods of delivery, which at minimum shall include US Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Architect. Handling is not reimbursable;

- .5 Intentionally deleted;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in writing in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested in writing by the Owner or required for the Project;
- .8 Intentionally deleted;
- .9 Intentionally deleted;
- .10 Site office expenses;
- .11 Intentionally deleted; and
- .12 Other similar Project-related expenditures, which are duly presented in advance and approved by the Owner's Designated Representative in writing. Telephone service charges, including office or cellular phones, WATTS or Metro line services or similar charges are not reimbursable. Toll road subscriptions or toll plaza receipts are not reimbursable. Meals or any other related expenses are not reimbursable unless incurred outside a 50-mile radius of the Project, and then only reimbursable subject to compliance with Owner Policy. Faxed transmissions not requiring long distance toll charges are not reimbursable.

The Architect shall be solely responsible for the auditing of all Reimbursable Expenses, including the Architect's prior to submitting to Owner for reimbursement, and shall be responsible for the accuracy thereof. Any overpayment by the Owner for errors in submittals for reimbursement may be deducted from the Architect's subsequent payment for services.

Reimbursable Expenses shall not exceed Four Thousand Two Hundred and No/100 Dollars (\$4,200.00); unless the Scope of Work is modified.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants without any additional mark-up.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

The rate of interest computed in accordance with the provisions of the Texas Government Code, Section 2251.025.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect. Owner may withhold amounts from Architect's compensation to offset sums requested by or paid to contractors for the cost of changes in the Work caused by Architect's errors, omission or negligence.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

§ 12.1 The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or 505 E. Huntland Drive, Suite 350, Austin, Texas 78752, Phone: 512-305-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 This AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 Building Information Modeling Exhibit, if completed:

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[☐] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

[☒] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Contract Proposal for Renovation / Addition of Fire Station No. 3. To the extent that any terms contained in Exhibit A conflict with the terms of this B133 or the A201 described below, this B133 or the A201 described below, as applicable, will control.

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

A201-2017 v. 4 (06-11-2020) General Conditions of the Contract for Construction, as modified by Owner, attached hereto and incorporated herein for all purposes.

This Agreement entered into as of the day and year first written above.

CITY OF SHERMAN

HIDELL AND ASSOCIATES ARCHITECTS

By:

OWNER *(Signature)*

(Printed name and title)

By:

ARCHITECT *(Signature)*

William Hidell, President

(Printed name, title, and license number, if required)

Init.

/

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Additions and Deletions Report for AIA® Document B133® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:41:55 CT on 10/11/2024.

PAGE 1

B133-2019 v2 (03-31-2021)

AGREEMENT made as of the _____ day of _____ in the year Two Thousand Twenty-Four.

...

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090
Phone: 903-892-7206

...

Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

...

ARBH File No. 6262.0031 City of Sherman/Fire Station No. 3 Remodel

...

City of Sherman, Texas

Updates to the apparatus bay to develop spaces that properly clean and store contaminated items, isolating them from the living areas. The living quarters shall be updated to meet current individual dorm and restroom standards, as well as updates to the kitchen, pantry, and office areas. The building systems will require modification and replacement.

...

To be determined.

PAGE 2

Shall be developed as part of the basic scope of services.

...

Renovation and Addition of the existing facility.

...

The Owner's overall budget for the Cost of the Work is TBD, excluding the Architect's fee.

PAGE 3

The date of commencement of construction shall be established with a Notice to Proceed by the Owner.

...

To be determined.

...

[☒] AIA Document A133-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

...

N/A

...

N/A

...

Zachary Flores
Executive Director of Public Safety
220 W. Mulberry Street
Sherman, TX 75090

...

N/A

PAGE 4

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

To be selected by Owner.

...

To be determined.

...

To be determined.

...

.4 ~~Civil Engineer:~~Intentionally Deleted:

...

(List any other consultants and contractors retained by the Owner.)

Boundary and Topographic Survey
Construction Period Materials Testing
HVAC Test and Balance

...

Aaron Babcock, Principal
Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

PAGE 5

To be determined.

...

.2 ~~Mechanical~~ MEP Engineer:

To be determined.

...

.3 ~~Electrical Engineer:~~ Landscape Architect:

To be determined.

.4 Civil Engineer:

To be determined.

...

If required and with the Owner's prior written approval, other consultants deemed necessary and not included in the Basic Services will be proposed and provided by the Architect and submitted as a Reimbursable Expense.

...

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's ~~compensation~~-compensation by written amendment hereto. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

...

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the ~~model-model~~, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

PAGE 6

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the ~~Project.~~Project, which representative shall be acceptable to Owner.

...

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. ~~If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, Two Million Dollars (\$ 2,000,000.00) each employee, and Two Million Dollars (\$ 2,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate. If the Professional Liability is made on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment.

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§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering ~~services.~~services and other specialty consultants required to address the needs of the Project. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely ~~on, and shall not be responsible for, the accuracy, completeness, and timeliness of,~~on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's written approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's ~~review,~~review of each phase (Schematic Design, Design Development, and Construction Documents), for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable ~~cause,~~cause which shall promptly be defined in detail and submitted in writing to Owner, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. ~~The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals.~~ In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

PAGE 8

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall ~~consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations.~~ include:

- (1) A conceptual Site Plan, scaled accurately, to depict all features of the site, including but not necessarily limited to drives, parking, streets, alleys, easements, finish floor elevation and site contours, location of existing utilities as provided by Owner under Section 5.5 and the building locations indicating proposed sidewalks and other site appurtenances. The site plan shall bear a schedule indicating the acreage of the site, the area of the site proposed for concrete or asphalt paving, the total area of the building, and area of proposed covered walks and overhangs.
- (2) Floor Plan or plans, drawn to scale, indicating the dimensions and net areas of each individual space, labeled as to use, and indicating door swings, window or glassed areas, wall thickness, conceptual casework/millwork and other design features, which require Owner approval. Spaces too small at the plan scale to be adequately examined shall be enlarged and illustrated as necessary. Floor plan sheet shall bear a schedule indicating the gross area of the building and the square footage allocated to instruction, administration, support, circulation, and ancillary preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- (3) Exterior Elevations, drawn to scale, proposing the design concept and indicating proposed materials and design features.
- (4) A preliminary code search, indicating the anticipated code requirements governing building, fire, life safety, accessibility, and health, and a statement as to the Architect's and Architect's Consultants' approach to accommodate these requirements shall be included. At the Owner's direction, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. The Architect shall obtain approval of Schematic Design Documents from Owner before proceeding to Design Development Phase.

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§ 3.4.2 ~~Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.~~ The extent of presentation shall be such that all aspects of the design and features, locations of equipment, switching, lighting, door numbers/types, room numbers/finishes, ceiling types/finishes and any other issue which may be incorporated into the Construction Documents shall have been presented to and approved by the Owner.

A complete code review, addressing building, fire, safety, ADA/TAS, health, and any or all other code/ordinance requirements shall be included, indicating the Architect's and Architect's Consultants' interpretations as to the code requirements and the features incorporated into the design that satisfy the requirements.

Site plans shall depict the final locations of all site appurtenances, utility connections and routing, drives, walks, yard irrigation, and other features to illustrate to the Owner that essentially all decisions have been made and that decisions of significance will not be required during Construction Document Phase.

Specifications shall be in outline form, and shall describe the materials and methods intended for use within the project, as well as potential alternates, allowances, and other significant information to be included in the Architectural and Engineering technical specifications sections of a project manual.

~~§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.~~

§ 3.4.3 The Architect shall review the Construction Manager's detailed estimate of the final Cost of the Work.

§ 3.4.4 The Architect shall submit the Design Development Documents to the Owner and request the Owner's approval.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents. Owner shall approve Design Development Documents prior to Architect proceeding with Construction Documents.

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§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Documents which shall comply with all laws, statutes, ordinances, codes, rules and regulations, including, but not limited to, fire building, health, ADA/TAS, and indoor air quality.

...

§ 3.6.2.1 The Architect shall visit the site at intervals not less than once per week while Work is in progress, and as often as necessary and appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, determine for the Owner's benefit and protection, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably-informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§3.6.2.1.1 The Architect shall provide services made necessary by major defects or deficiencies in the Work of the Construction Manager(s) or its agents, employees or subcontractors which through reasonable care the Architect should have discovered and promptly reported to the Owner but failed to do so. In addition, the Architect shall follow the usual and customary standards of the profession in performing all services under this Agreement. Any defective design drawings or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liability or the Owner's rights.

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§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, interpretations, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, the Construction Manager, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if without negligence and in good faith. The Owner shall have final authority on matters relating to

aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

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§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	
§ 4.1.1.2 Programming	
§ 4.1.1.3 Multiple Preliminary Designs	
§ 4.1.1.4 Measured drawings	
§ 4.1.1.5 Existing facilities surveys	
§ 4.1.1.6 Site evaluation and planning	
§ 4.1.1.7 Building Information Model management responsibilities	
§ 4.1.1.8 Development of Building Information Models for post construction use	
§ 4.1.1.9 Civil engineering	
§ 4.1.1.10 Landscape design	
§ 4.1.1.11 Architectural interior design	
§ 4.1.1.12 Value analysis	
§ 4.1.1.13 Cost estimating	
§ 4.1.1.14 On-site project representation	
§ 4.1.1.15 Conformed documents for construction	
§ 4.1.1.16 As-designed record drawings	
§ 4.1.1.17 As-constructed record drawings	
§ 4.1.1.18 Post-occupancy evaluation	
§ 4.1.1.19 Facility support services	
§ 4.1.1.20 Tenant-related services	
§ 4.1.1.21 Architect's coordination of the Owner's consultants	
§ 4.1.1.22 Telecommunications/data design	
§ 4.1.1.23 Security evaluation and planning	
§ 4.1.1.24 Commissioning	
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.26 Historic preservation	
§ 4.1.1.27 Furniture, furnishings, and equipment design	
§ 4.1.1.28 Other services provided by specialty Consultants	
§ 4.1.1.29 Other Supplemental Services	

Paragraph Intentionally Deleted.

...

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)Paragraph Intentionally Deleted.

...

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)Paragraph Intentionally Deleted.

...

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 ~~shall~~ shall, by mutual agreement of Owner and Architect, entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

...

- .1 Services necessitated by a change in the Initial Information, previous instructions or ~~recommendations given by the Construction Manager or the Owner~~, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- ...

- .4 Changing or editing previously prepared Instruments of Service necessitated by official ~~interpretations~~ interpretations, after the date of Owner's acceptance of the Construction Drawings, of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner ~~or Construction Manager~~ not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- ...

- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the ~~Owner or Construction Manager~~ Owner;
- .8 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~ Intentionally deleted;

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- .11 ~~Assistance to the Initial Decision Maker, if other than the Architect;~~ Intentionally deleted;
- ...

- .13 ~~Services necessitated by the Owner's delay in engaging the Construction Manager;~~ Intentionally deleted;

- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and Intentionally deleted; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate. Intentionally deleted.

...

- .4 Evaluating an extensive number of Claims as ~~the Initial Decision Maker;~~ submitted by the Owner's consultants, the Contractor or others in connection with the Work except where such extensive number of claims could have been rectified by more descriptive original Contract Documents or addenda thereto; or

...

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 ~~()~~ reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 ~~()~~ visits to the site by the Architect during construction
- .3 ~~()~~ inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~()~~ inspections for any portion of the Work to determine final completion during Construction Phase Services all services necessary to complete and completely discharge its responsibilities under this Agreement.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. Paragraph intentionally deleted.

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~()~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. Paragraph intentionally deleted.

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§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. Service, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observations, inspection or investigation.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and approved in writing by the Owner, and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes shall not include the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

...

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, ~~or due to market conditions the Architect could not reasonably anticipate.~~ estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

...

- ~~.2~~ authorize rebidding or renegotiating of the Project within a reasonable time, with no adjustment in the Architect's compensation;
- ~~.3~~ terminate in accordance with Section 9.5;
- ~~.3~~ ~~.4~~ in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- ~~.4~~ ~~.5~~ implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section ~~6.5.3, 6.5.4,~~ the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

PAGE 17

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for ~~Construction.~~ Construction as amended by the Owner. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. ~~The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.~~

PAGE 18

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to ~~binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~ litigation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.~~ conducted in accordance with the provisions of Section 154.023, Texas Civil Practices and Remedies Code. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration

proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings suit for legal or equitable relief.

...

[☒] Litigation in a court of competent jurisdiction

...

§ 8.3 Arbitration – Intentionally Deleted

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 8.3.4 Consolidation or Joinder

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

...

§ 9.1 If the Owner wrongfully fails to make payments to the Architect in accordance with this Agreement, and such failure continues for a period of 30 days after written demand from Architect to Owner, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any

expenses incurred in the interruption and resumption of the Architect's ~~services~~ services, upon submitting and receiving an approved proposal to resume services to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably ~~adjusted~~ adjusted at the mutual consent of the parties to the Agreement.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect ~~shall~~ may be compensated for expenses incurred in the interruption and resumption of the Architect's ~~services~~ services upon submitting and receiving an approved proposal to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

PAGE 19

- .1 Termination ~~Fee~~ Fee (Additional expenses that are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated):

Zero.

...

The Owner's payment to Architect in accordance with Section 9.6 shall constitute payment for a licensing fee for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project.

...

§ 10.1 This Agreement shall be governed by the law of the place where the Project is ~~located, excluding that~~ jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. ~~located.~~

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, ~~except as modified in this Agreement.~~ as amended by the Owner. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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§ 10.6 ~~Unless otherwise required~~ The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action. Unless otherwise provided in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such ~~representations, representations, but only at such times and dates as stipulated by the~~ Owner's Designated Representative. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

...

§ 10.10 In accordance with Texas Government Code, Chapter 2270, the undersigned avers that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

Compensation shall be a Stipulated Sum of Two Hundred Forty-Two Thousand and No/100 Dollars (\$242,000.00).

N/A () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

N/A

§ 11.2 ~~For the Architect's Supplemental Services designated in Section 4.1.1 and for Prior to the commencement of any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows: (Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)~~ Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

§ 11.3 ~~For Prior to the commencement of any Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows: (Insert amount of, or basis for, compensation.)~~ Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (—%), or as follows: with no mark-up.

SUPPLEMENTAL SERVICES LUMP SUM TOTAL: \$49,500.00
(broken down by category as follows)

Civil Engineering Services: \$27,000.00 (comprised of the following):

- Topographic Survey: \$1,500.00
- Site Plan: \$3,000.00
- Construction Documents: \$22,500.00

Other Services: \$22,500.00 (comprised of the following):

- Geotech Report: \$4,500.00
- Landscape Design Services: \$10,000.00
- Equipment & Furniture Selection: \$8,000.00
 - Fee includes the layout and selection of furniture for use in coordination during facility design.

Other Services (only if required – not included in the lump sum total above):

- As-Built Documents: \$4,500.00
 - Preparation of CAD files to match as-built conditions.

Schematic Design Phase	<u>Ten</u>	percent (	<u>10</u>	<u>%</u>)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	<u>%</u>)
Construction Documents Phase	<u>Forty</u>	percent (	<u>40</u>	<u>%</u>)
Construction Phase Bidding	<u>Five</u>	percent (	<u>5</u>	<u>%</u>)
Construction Administration	<u>Twenty-Five</u>	Percent (	<u>25</u>	<u>%</u>)

PAGE 22

o <u>Principal.....</u>	<u>\$220.00/hr</u>
o <u>Project Architect.....</u>	<u>\$180.00/hr</u>
o <u>Architect.....</u>	<u>\$110.00/hr</u>
o <u>CADD.....</u>	<u>\$80.00/hr</u>
o <u>Administration.....</u>	<u>\$60.00/hr</u>

- ...
- .1 ~~Transportation and authorized out-of-town travel and subsistence;~~ in connection with the Project, when such transportation is not a function of routine performance of duties of the Architect or Architect's Consultants in connection with the Project, and when such transportation extends beyond 50 miles from the project site; authorized out-of-town travel and substance, which shall be prior approved by the Owner's Designated Representative, and which reimbursements shall be governed by the same travel policies provided for Owner's employees according to current adopted Owner's policy. Prior to the event, the Architect shall request, and the Owner's designated Representative shall provide the provisions and restrictions applicable to out-of-town travel reimbursements. Electronic communication reimbursable expense shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project;
- .2 ~~Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets; Intentionally deleted;~~
- ...
- .4 ~~Printing, reproductions, plots, and standard form documents;~~ Reproductions, specifically limited to progress prints prepared for presentation to Owner at each phase of progress, and final construction documents prepared for distribution at bidding phase, provided that the Architect has duly obtained at least three quotations from commercial printing firms and has chosen the best value for the Owner. Plots shall be limited to plotting of final documents, provided that the Architect has duly obtained at least three quotations from commercial firms offering plotting services, and has chosen the best value for the Owner. Standard form documents are reimbursable if bulk-purchase discounts and other privileges afforded the Architect are extended to the Owner. If licensed electronic document forms are provided in lieu of hard-copy standard forms and are furnished by the Architect, the Architect may charge as reimbursable up to fifty percent (50%) of the purchase price of the corresponding hard-copy documents, subject to restrictions and limitations of copyright provisions governing both documents. Postage and delivery of Instruments of Service are reimbursable provided the Architect duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Owner, which may require comparison of delivery costs offered by three or more sources or methods of delivery, which at minimum shall include US Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Architect. Handling is not reimbursable;
- .5 ~~Postage, handling, and delivery; Intentionally deleted;~~
- .6 Expense of overtime work requiring higher than regular rates, if authorized in writing in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested in writing by the Owner or required for the Project;

- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;Intentionally deleted;

PAGE 23

- .9 All taxes levied on professional services and on reimbursable expenses;Intentionally deleted;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; andIntentionally deleted; and
- .12 Other similar Project-related expenditures, which are duly presented in advance and approved by the Owner's Designated Representative in writing. Telephone service charges, including office or cellular phones, WATTS or Metro line services or similar charges are not reimbursable. Toll road subscriptions or toll plaza receipts are not reimbursable. Meals or any other related expenses are not reimbursable unless incurred outside a 50-mile radius of the Project, and then only reimbursable subject to compliance with Owner Policy. Faxed transmissions not requiring long distance toll charges are not reimbursable.

The Architect shall be solely responsible for the auditing of all Reimbursable Expenses, including the Architect's prior to submitting to Owner for reimbursement, and shall be responsible for the accuracy thereof. Any overpayment by the Owner for errors in submittals for reimbursement may be deducted from the Architect's subsequent payment for services.

- ~~.12~~ Other similar Project-related expenditures. Reimbursable Expenses shall not exceed Four Thousand Two Hundred and No/100 Dollars (\$4,200.00); unless the Scope of Work is modified.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent (— %) of the expenses incurred without any additional mark-up.

...

§ 11.10.1.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

PAGE 24

%—The rate of interest computed in accordance with the provisions of the Texas Government Code, Section 2251.025.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the ~~Architect, or Architect.~~ Owner may withhold amounts from Architect's compensation to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. Work caused by Architect's errors, omission or negligence.

...

§ 12.1 The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or 505 E. Huntland Drive, Suite 350, Austin, Texas 78752, Phone: 512-305-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS.

.1 This AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

[N/A] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.

[X] Other Exhibits incorporated into this Agreement:

Exhibit A – Contract Proposal for Renovation / Addition of Fire Station No. 3. To the extent that any terms contained in Exhibit A conflict with the terms of this B133 or the A201 described below, this B133 or the A201 described below, as applicable, will control.

A201-2017 v. 4 (06-11-2020) General Conditions of the Contract for Construction, as modified by Owner, attached hereto and incorporated herein for all purposes.

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CITY OF SHERMAN

HIDELL AND ASSOCIATES ARCHITECTS

By:

By:

William Hidell, President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher C. Zillmer/blg, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:41:55 CT on 10/11/2024 under Order No. 4104242442 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

 /blg

(Signed)

(Title)

October 11, 2024

(Dated)



City Council Regular Meeting

Agenda Item No. F.2.

Meeting Date: 2/17/2025

Prepared By: Loren Siems, Right of Way Specialist

Approved By: Zachary Flores, Assistant City Manager

Caption:

RESOLUTION NO. 7482

Authorizing the City Manager or His Designee to Execute Reservation of Property of 0.513 Acres being Part of East Street in Sherman, Texas

Issue:

To consider executing a right of way reservation for a portion of East Street.

Background:

In 1999 the City of Sherman City Council petitioned to close East Street which terminated at Post Oak Creek.

Three Oaks Development has a new subdivision to the west of East Street. Allen Drive, located in the new subdivision will connect to the previously closed East Street. This right-of-way reservation will allow public traffic in and out of the new subdivision.

Origination:

City of Sherman

Financial Consideration:

none

Staff Recommendation:

City staff has no objections to the proposed right of way reservation, it is recommended that the right of way reservation be executed.

Alternatives:

As may be directed by City Council

Attachments:

1. Resolution No. 7482
2. East Street dedication legal
3. LocationMap
4. Three Oaks Addn, Sec. 4 - Prelim Plat
5. Reservation of Property for Street and Water Purposes

RESOLUTION NO. 7482

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE RESERVATION OF PROPERTY FOR 0.513 ACRES BEING PART OF EAST STREET IN SHERMAN, TEXAS. FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to execute a Reservation of Property for 0.513 acres for being part of East Street located in the Preston Kitchen Survey, Abstract No. 667, Grayson County, Texas, more particularly described in the attached Exhibit "A" attached hereto and made a part hereof for all purposes.

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

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

Exhibit A

This survey contains information that is proprietary to Underwood Drafting & Surveying, Inc. Its use or disclosure in whole or part without the express written permission of Underwood Drafting & Surveying, Inc. is prohibited.

This survey is also unpublished work protected under the copyright laws of the United States of America. If this work becomes published, the following notice shall apply:

Copyright © 2024
Underwood Drafting & Surveying, Inc.
All rights reserved.

SCALE
1" = 100'

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the Preston Kitchen Survey, Abstract No. 667 and being a part of that tract of land described in the deed to City of Sherman, recorded in Volume 876, Page 150, Deed Records, Grayson County, Texas and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the northeast corner of that 11.69 acre tract of land described in the deed to Three Oaks Development and Construction Company, recorded in Document Number 2024-1751, Real Property Records, Grayson County, Texas, common to the southeast corner of Three Oaks Addition, an addition to the City of Sherman, Texas, as shown by the plat of record in Document Number 2021-261, Plat Records, Grayson County, Texas;

Thence North 77°00'49" East, with the northerly line of said City of Sherman Tract, a distance of 63.65 feet to a 1/2" steel rod set for the northeast corner of the herein described tract of land, said point being in the northerly line of said City of Sherman Tract;

Thence over and across said City of Sherman Tract, the following calls and distances:

Thence with a curve to the right having a radius of 1037.65 feet, (chord bears South 26°00'17" East, with a chord length of 212.81 feet) an arc length of 213.18 feet to a set 1/2" steel rod;

South 15°32'11" East a distance of 157.46 feet to a set 1/2" steel rod;

South 74°03'08" West a distance of 60.00 feet to a set 1/2" steel rod;

North 15°32'11" West a distance of 155.45 feet to a set 1/2" steel rod;

Thence with a curve to the left having a radius of 977.65 feet, (chord bears North 26°40'42" West, with a chord length of 218.66 feet) an arc length of 219.12 feet to the Point of Beginning and containing 0.513 acres of land.

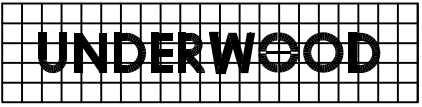
I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.



Douglas W. Underwood

Douglas W. Underwood
Registered Professional
Land Surveyor No. 4709
Firm No. 10006300

DATE OF SURVEY: 12/12/24



DRAFTING & SURVEYING

3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE

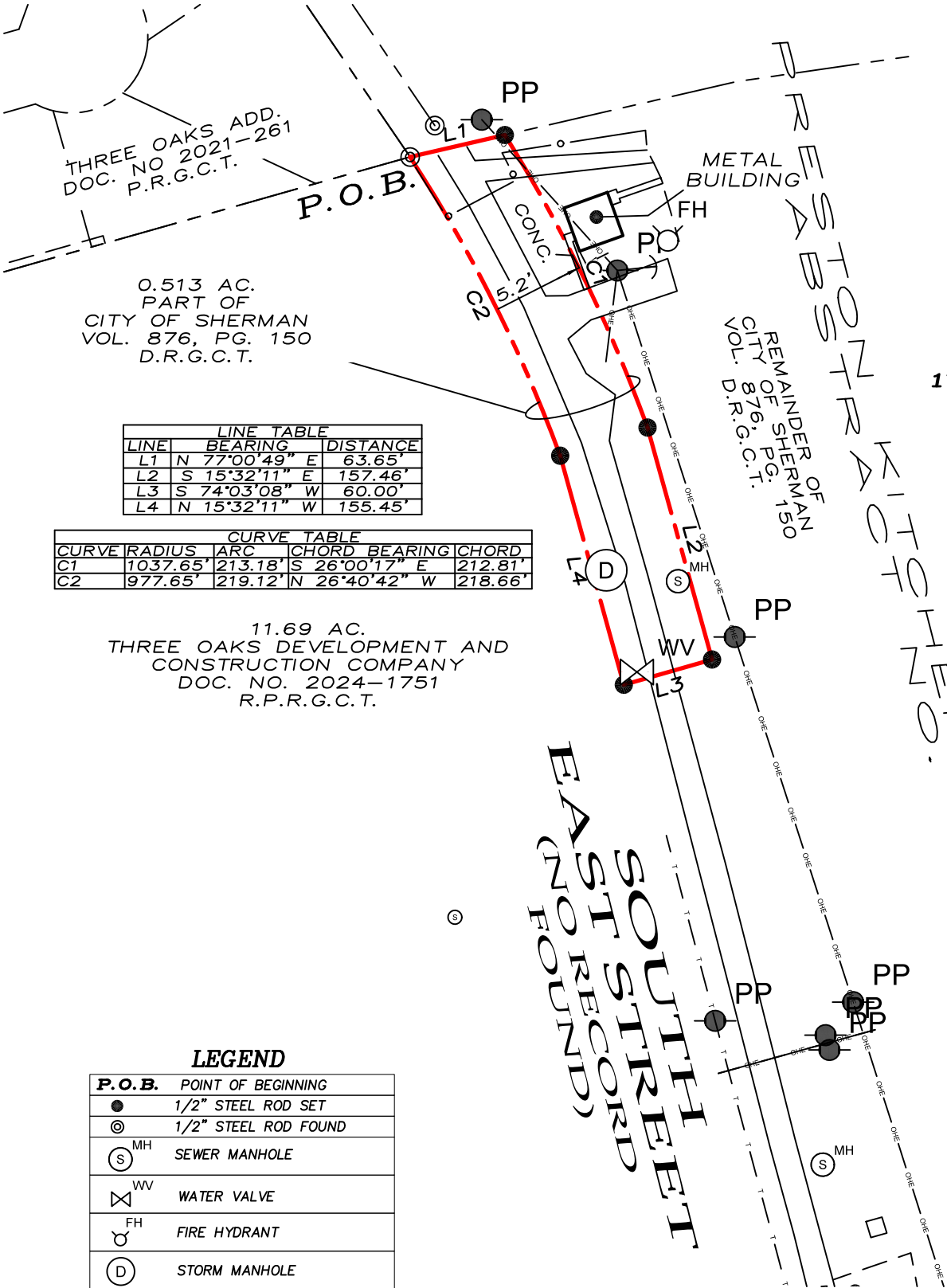
LEGEND	
P.O.B.	POINT OF BEGINNING
●	1/2" STEEL ROD SET
⊙	1/2" STEEL ROD FOUND
ⓂH	SEWER MANHOLE
ⓌV	WATER VALVE
ⓕH	FIRE HYDRANT
ⓓ	STORM MANHOLE
---	BOUNDARY LINE
- - -	PROPERTY LINE
- x - x - x - x -	BARBWIRE FENCE
- o -	CHAINLINK FENCE
- SS - SS -	SEWER LINE
- OHE - OHE -	OVERHEAD ELEC.
- T - T -	TELEPHONE LINE

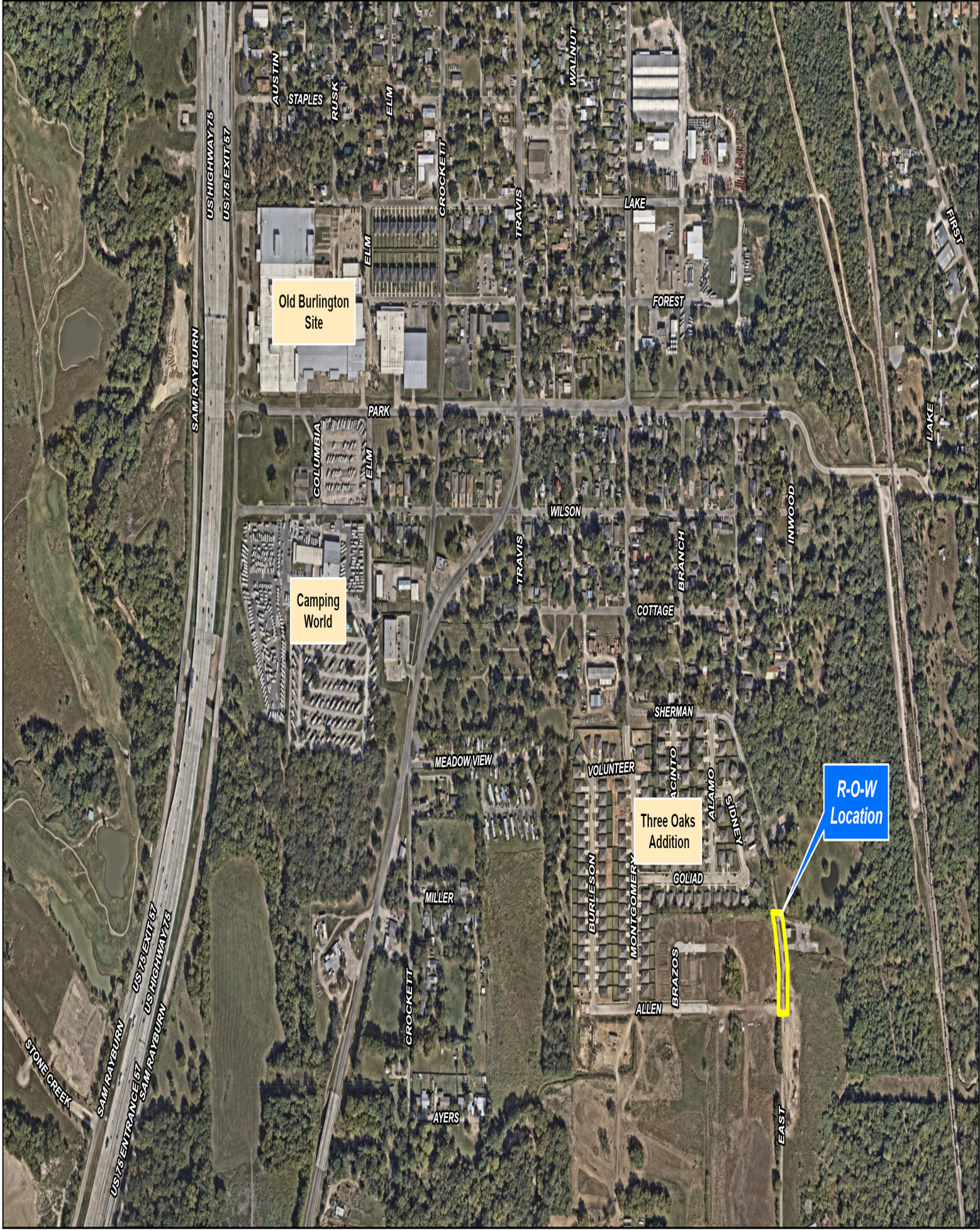
LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 77°00'49" E	63.65'
L2	S 15°32'11" E	157.46'
L3	S 74°03'08" W	60.00'
L4	N 15°32'11" W	155.45'

CURVE TABLE				
CURVE	RADIUS	ARC	CHORD BEARING	CHORD
C1	1037.65'	213.18'	S 26°00'17" E	212.81'
C2	977.65'	219.12'	N 26°40'42" W	218.66'

11.69 AC.
THREE OAKS DEVELOPMENT AND
CONSTRUCTION COMPANY
DOC. NO. 2024-1751
R.P.R.G.C.T.

0.513 AC.
PART OF
CITY OF SHERMAN
VOL. 876, PG. 150
D.R.G.C.T.





East St Right-Of-Way Dedication

1" = 600'



PRELIMINARY PLAT THREE OAKS ADDITION SECTION 4

AN ADDITION TO THE CITY OF
SHERMAN, TEXAS
BEING A PART OF THOSE TRACTS
OF LAND CONVEYED TO THREE
OAKS DEVELOPMENT AND
CONSTRUCTION COMPANY, AS
RECORDED IN DOCUMENT
NUMBERS 2023-28428, 2020-27922
AND ALL OF THAT TRACT OF
LAND CONVEYED IN DOCUMENT
NUMBER 2024-1751
SITUATED IN THE PRESTON
KITCHEN SURVEY, ABSTRACT NO.
667

GRAYSON COUNTY, TEXAS
BEING 19.893 ACRES OF LAND

CERTIFICATE OF COMPLIANCE

The undersigned, the City Clerk of the City of Sherman, hereby certifies that the foregoing, THREE OAKS ADDITION SECTION 4, an addition to the City of Sherman, Texas, was submitted to the City Council on the day of _____, 2024, and the City Council has taken action thereon and accepted the dedication of streets, alleys, easements and public places, as shown and set forth in and upon said map or plat, and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as herein above subscribed.

Witness my hand this _____ day of _____, 2024.

Clerk, City of Sherman, Texas

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the Preston Kitchens Survey, Abstract No. 667, and being a part of those tracts of land conveyed to Three Oaks Development and Construction Company, as recorded in document numbers 2023-28428, 2020-27922 and all of that tract of land conveyed in document number 2024-1751, Official Public Records, Grayson County, Texas and being described by metes and bounds as follows:
Beginning at a Set $\frac{1}{2}$ " steel rod at the southwest corner of the Three Oaks Addition, Section Two, being recorded in Document Number 2023-234, of said Official Public Records;
Thence North $74^{\circ}03'08''$ East a distance of 1380.22 feet to a set $\frac{1}{2}$ " steel rod;
Thence South $15^{\circ}32'11''$ East a distance of 54.61 feet to a set $\frac{1}{2}$ " steel rod;
Thence South $14^{\circ}22'00''$ East a distance of 655.36 feet to a set $\frac{1}{2}$ " steel rod;
Thence with a non-tangent curve to the left having a radius of 1068.43 feet (chord bears South $16^{\circ}57'22''$ East, a distance of 7.67 feet) an arc length of 7.67 feet to a set $\frac{1}{2}$ " steel rod;
Thence South $72^{\circ}49'46''$ West a distance of 140.70 feet to a set $\frac{1}{2}$ " steel rod;
Thence South $81^{\circ}21'15''$ West a distance of 267.75 feet to a set $\frac{1}{2}$ " steel rod;
Thence South $72^{\circ}29'11''$ West a distance of 56.98 feet to a set $\frac{1}{2}$ " steel rod;
Thence South $72^{\circ}29'11''$ West a distance of 15.87 feet to a set $\frac{1}{2}$ " steel rod;
Thence South $86^{\circ}09'05''$ West a distance of 829.30 feet to a set $\frac{1}{2}$ " steel rod;
Thence North $52^{\circ}01'57''$ West a distance of 127.14 feet to a set $\frac{1}{2}$ " steel rod;
Thence North $15^{\circ}32'13''$ West a distance of 411.78 feet to the Point of Beginning and containing 19.893 acres of land.

GRAPHIC SCALE



(IN FEET)
1 inch = 60 ft.

LINE	TABLE	DISTANCE
L1	N 155°56'22" W	16.96'
L2	N 80°52'29" E	21.24'
L3	S 80°52'29" E	21.24'
L4	S 15°03'08" W	41.27'
L5	S 14°22'00" W	1.83'
L6	S 15°32'11" W	15.87'
L7	N 15°32'11" W	15.87'
L8	S 72°29'11" W	56.98'
L9	S 72°29'11" W	267.75'
L10	S 81°21'15" W	267.75'
L11	S 86°09'05" W	829.30'
L12	N 52°01'57" W	127.14'
L13	N 15°32'13" W	411.78'
L14	N 74°03'08" E	1380.22'
L15	N 74°03'08" E	54.61'
L16	N 74°03'08" E	655.36'
L17	N 74°03'08" E	1068.43'
L18	N 74°03'08" E	7.67'
L19	N 74°03'08" E	140.70'
L20	N 74°03'08" E	267.75'
L21	N 74°03'08" E	56.98'
L22	N 74°03'08" E	15.87'
L23	N 74°03'08" E	54.61'
L24	N 74°03'08" E	655.36'
L25	N 74°03'08" E	1068.43'
L26	N 74°03'08" E	7.67'
L27	N 74°03'08" E	140.70'
L28	N 74°03'08" E	267.75'
L29	N 74°03'08" E	56.98'
L30	N 74°03'08" E	15.87'
L31	N 74°03'08" E	54.61'
L32	N 74°03'08" E	655.36'
L33	N 74°03'08" E	1068.43'
L34	N 74°03'08" E	7.67'
L35	N 74°03'08" E	140.70'
L36	N 74°03'08" E	267.75'
L37	N 74°03'08" E	56.98'
L38	N 74°03'08" E	15.87'
L39	N 74°03'08" E	54.61'
L40	N 74°03'08" E	655.36'
L41	N 74°03'08" E	1068.43'
L42	N 74°03'08" E	7.67'
L43	N 74°03'08" E	140.70'
L44	N 74°03'08" E	267.75'
L45	N 74°03'08" E	56.98'
L46	N 74°03'08" E	15.87'
L47	N 74°03'08" E	54.61'
L48	N 74°03'08" E	655.36'
L49	N 74°03'08" E	1068.43'
L50	N 74°03'08" E	7.67'
L51	N 74°03'08" E	140.70'
L52	N 74°03'08" E	267.75'
L53	N 74°03'08" E	56.98'
L54	N 74°03'08" E	15.87'
L55	N 74°03'08" E	54.61'
L56	N 74°03'08" E	655.36'
L57	N 74°03'08" E	1068.43'
L58	N 74°03'08" E	7.67'
L59	N 74°03'08" E	140.70'
L60	N 74°03'08" E	267.75'
L61	N 74°03'08" E	56.98'
L62	N 74°03'08" E	15.87'
L63	N 74°03'08" E	54.61'
L64	N 74°03'08" E	655.36'
L65	N 74°03'08" E	1068.43'
L66	N 74°03'08" E	7.67'
L67	N 74°03'08" E	140.70'
L68	N 74°03'08" E	267.75'
L69	N 74°03'08" E	56.98'
L70	N 74°03'08" E	15.87'
L71	N 74°03'08" E	54.61'
L72	N 74°03'08" E	655.36'
L73	N 74°03'08" E	1068.43'
L74	N 74°03'08" E	7.67'
L75	N 74°03'08" E	140.70'
L76	N 74°03'08" E	267.75'
L77	N 74°03'08" E	56.98'
L78	N 74°03'08" E	15.87'
L79	N 74°03'08" E	54.61'
L80	N 74°03'08" E	655.36'
L81	N 74°03'08" E	1068.43'
L82	N 74°03'08" E	7.67'
L83	N 74°03'08" E	140.70'
L84	N 74°03'08" E	267.75'
L85	N 74°03'08" E	56.98'
L86	N 74°03'08" E	15.87'
L87	N 74°03'08" E	54.61'
L88	N 74°03'08" E	655.36'
L89	N 74°03'08" E	1068.43'
L90	N 74°03'08" E	7.67'
L91	N 74°03'08" E	140.70'
L92	N 74°03'08" E	267.75'
L93	N 74°03'08" E	56.98'
L94	N 74°03'08" E	15.87'
L95	N 74°03'08" E	54.61'
L96	N 74°03'08" E	655.36'
L97	N 74°03'08" E	1068.43'
L98	N 74°03'08" E	7.67'
L99	N 74°03'08" E	140.70'
L100	N 74°03'08" E	267.75'

~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE

CURVE	RADIUS	ARC	BEARING	CHORD
C1	60.00'	49.72'	S 64°22'53" W	48.31'
C2	60.00'	36.24'	S 32°23'36" E	24.66'
C3	977.85'	24.66'	S 32°23'36" E	24.66'
C4	60.00'	36.24'	S 32°23'36" E	24.66'
C5	60.00'	49.72'	S 64°22'53" W	48.31'
C6	60.00'	36.24'	S 32°23'36" E	24.66'
C7	60.00'	49.72'	S 64°22'53" W	48.31'
C8	977.85'	24.66'	S 32°23'36" E	24.66'
C9	60.00'	36.24'	S 32°23'36" E	24.66'
C10	60.00'	49.72'	S 64°22'53" W	48.31'
C11	60.00'	36.24'	S 32°23'36" E	24.66'
C12	60.00'	49.72'	S 64°22'53" W	48.31'
C13	977.85'	24.66'	S 32°23'36" E	24.66'
C14	60.00'	36.24'	S 32°23'36" E	24.66'
C15	60.00'	49.72'	S 64°22'53" W	48.31'
C16	60.00'	36.24'	S 32°23'36" E	24.66'
C17	60.00'	49.72'	S 64°22'53" W	48.31'
C18	977.85'	24.66'	S 32°23'36" E	24.66'
C19	60.00'	36.24'	S 32°23'36" E	24.66'
C20	60.00'	49.72'	S 64°22'53" W	48.31'
C21	60.00'	36.24'	S 32°23'36" E	24.66'
C22	60.00'	49.72'	S 64°22'53" W	48.31'
C23	977.85'	24.66'	S 32°23'36" E	24.66'
C24	60.00'	36.24'	S 32°23'36" E	24.66'
C25	60.00'	49.72'	S 64°22'53" W	48.31'
C26	60.00'	36.24'	S 32°23'36" E	24.66'
C27	60.00'	49.72'	S 64°22'53" W	48.31'
C28	977.85'	24.66'	S 32°23'36" E	24.66'
C29	60.00'	36.24'	S 32°23'36" E	24.66'
C30	60.00'	49.72'	S 64°22'53" W	48.31'
C31	60.00'	36.24'	S 32°23'36" E	24.66'
C32	60.00'	49.72'	S 64°22'53" W	48.31'
C33	977.85'	24.66'	S 32°23'36" E	24.66'
C34	60.00'	36.24'	S 32°23'36" E	24.66'
C35	60.00'	49.72'	S 64°22'53" W	48.31'
C36	60.00'	36.24'	S 32°23'36" E	24.66'
C37	60.00'	49.72'	S 64°22'53" W	48.31'
C38	977.85'	24.66'	S 32°23'36" E	24.66'
C39	60.00'	36.24'	S 32°23'36" E	24.66'
C40	60.00'	49.72'	S 64°22'53" W	48.31'
C41	60.00'	36.24'	S 32°23'36" E	24.66'
C42	60.00'	49.72'	S 64°22'53" W	48.31'
C43	977.85'	24.66'	S 32°23'36" E	24.66'
C44	60.00'	36.24'	S 32°23'36" E	24.66'
C45	60.00'	49.72'	S 64°22'53" W	48.31'
C46	60.00'	36.24'	S 32°23'36" E	24.66'
C47	60.00'	49.72'	S 64°22'53" W	48.31'
C48	977.85'	24.66'	S 32°23'36" E	24.66'
C49	60.00'	36.24'	S 32°23'36" E	24.66'
C50	60.00'	49.72'	S 64°22'53" W	48.31'
C51	60.00'	36.24'	S 32°23'36" E	24.66'
C52	60.00'	49.72'	S 64°22'53" W	48.31'
C53	977.85'	24.66'	S 32°23'36" E	24.66'
C54	60.00'	36.24'	S 32°23'36" E	24.66'
C55	60.00'	49.72'	S 64°22'53" W	48.31'
C56	60.00'	36.24'	S 32°23'36" E	24.66'
C57	60.00'	49.72'	S 64°22'53" W	48.31'
C58	977.85'	24.66'	S 32°23'36" E	24.66'
C59	60.00'	36.24'	S 32°23'36" E	24.66'
C60	60.00'	49.72'	S 64°22'53" W	48.31'
C61	60.00'	36.24'	S 32°23'36" E	24.66'
C62	60.00'	49.72'	S 64°22'53" W	48.31'
C63	977.85'	24.66'	S 32°23'36" E	24.66'
C64	60.00'	36.24'	S 32°23'36" E	24.66'
C65	60.00'	49.72'	S 64°22'53" W	48.31'
C66	60.00'	36.24'	S 32°23'36" E	24.66'
C67	60.00'	49.72'	S 64°22'53" W	48.31'
C68	977.85'	24.66'	S 32°23'36" E	24.66'
C69	60.00'	36.24'	S 32°23'36" E	24.66'
C70	60.00'	49.72'	S 64°22'53" W	48.31'
C71	60.00'	36.24'	S 32°23'36" E	24.66'
C72	60.00'	49.72'	S 64°22'53" W	48.31'
C73	977.85'	24.66'	S 32°23'36" E	24.66'
C74	60.00'	36.24'	S 32°23'36" E	24.66'
C75	60.00'	49.72'	S 64°22'53" W	48.31'
C76	60.00'	36.24'	S 32°23'36" E	24.66'
C77	60.00'	49.72'	S 64°22'53" W	48.31'
C78	977.85'	24.66'	S 32°23'36" E	24.66'
C79	60.00'	36.24'	S 32°23'36" E	24.66'
C80	60.00'	49.72'	S 64°22'53" W	48.31'
C81	60.00'	36.24'	S 32°23'36" E	24.66'
C82	60.00'	49.72'	S 64°22'53" W	48.31'
C83	977.85'	24.66'	S 32°23'36" E	24.66'
C84	60.00'	36.24'	S 32°23'36" E	24.66'
C85	60.00'	49.72'	S 64°22'53" W	48.31'
C86	60.00'	36.24'	S 32°23'36" E	24.66'
C87	60.00'	49.72'	S 64°22'53" W	48.31'
C88	977.85'	24.66'	S 32°23'36" E	24.66'
C89	60.00'	36.24'	S 32°23'36" E	24.66'
C90	60.00'	49.72'	S 64°22'53" W	48.31'
C91	60.00'	36.24'	S 32°23'36" E	24.66'
C92	60.00'	49.72'	S 64°22'53" W	48.31'
C93	977.85'	24.66'	S 32°23'36" E	24.66'
C94	60.00'	36.24'	S 32°23'36" E	24.66'
C95	60.00'	49.72'	S 64°22'53" W	48.31'
C96	60.00'	36.24'	S 32°23'36" E	24.66'
C97	60.00'	49.72'	S 64°22'53" W	48.31'
C98	977.85'	24.66'	S 32°23'36" E	24.66'
C99	60.00'	36.24'	S 32°23'36" E	24.66'
C100	60.00'	49.72'	S 64°22'53" W	48.31'

OWNERS/DEVELOPER
KIRK ALLEN
418 EAST SHERMAN
SHERMAN, TEXAS 75090

SURVEYOR
DOUGLAS W. UNDERWOOD
R.P.L.S. NO. 4709
3404 INTERURBAN ROAD
DENISON, TEXAS

AVIGATION RELEASE

THE STATE OF TEXAS
COUNTY OF GRAYSON

WHEREAS, THREE OAKS DEVELOPMENT AND CONSTRUCTION, hereinafter called OWNER (whether one or more), is the owner of a certain parcel of land situated in the City of Sherman, Grayson County, Texas, being more particularly described as THREE OAKS ADDITION SECTION 4, an addition to the City of Sherman, Grayson County, Texas.

OWNER does hereby waive, release, remise, quit claim and forever hold harmless the City of Sherman, Texas, a municipal corporation, hereinafter called CITY, and Sherman Municipal Airport, hereinafter called AIRPORT, from any and all claims for damages of any kind that OWNER may now have or may hereinafter have in the future by reason of the passage of all aircraft (aircraft being defined for the purposes of this instrument as any contrivance now known or hereinafter invented, used or designed or navigation of or flight in the air) by whomsoever owned and operated, in the airspace above OWNER'S property. Such release shall include, but not be limited to, any damages to the OWNER'S described property, such as noise, vibration, fumes, dust, fuel and lubricant particles, and all other effects that may be caused by the operation of aircraft landing at or taking off from or operating at or on the Sherman Municipal Airport, whether such claim be for injury or death to person or persons damages to or taking off of property; and OWNER does hereby fully remise and release any right or cause of action which it may now have or which it may in the future have against the CITY or AIRPORT, whether such claims be for injury or death to persons or damages to property due to noises, vibration, fumes, dust, fuel and lubricant particles, and all the other effects that may be caused or may have been caused by the operation and/or maintenance of aircraft or aircraft engines at or on said Sherman Municipal Airport.

It is agreed that this Release shall be binding upon OWNER, his successors, heirs, executors, administrators and assigns. In interest with regard to said property located at THREE OAKS ADDITION SECTION 4, an addition to the City of Sherman, Texas, and it is further agreed that this instrument shall be a covenant running with the land, and shall be recorded in the Deed Records of Grayson County, Texas.

EXECUTED THIS _____ DAY OF _____, 2024

BY: THREE OAKS DEVELOPMENT AND CONSTRUCTION

BY:

ACCEPTANCE

Certificate of approval by the city planning and zoning commission Approved this _____ day of _____, 2024, by the City Planning and Zoning Commission of the City of Sherman, Texas.

Chairman

Secretary

SURVEYOR'S CERTIFICATION

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

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

RESERVATION OF PROPERTY FOR STREET AND UTILITY PURPOSES

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GRAYSON

That the **CITY OF SHERMAN, TEXAS**, a home-rule municipality ("City"), does hereby RESERVE unto itself the right to construct, reconstruct, operate, repair, enlarge, re-build, replace, relocate, alter, remove and perpetually maintain City-owned street, utility, access, sidewalk and other public facilities (collectively, "Facilities"), together with all incidental improvements, and all necessary laterals, over, across, in, on, under and through certain real property located in the City of Sherman, Grayson County, Texas, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein for all purposes ("Reservation Property"). As part of the grant hereby made, any stone, earth, gravel or caliche which may be excavated in the opening, construction or maintenance of the Reservation Property may be removed from said premises.

The Reservation Property is solely owned by the City as of the date of this reservation. The City hereby reserves and restricts the use of the Reservation Property perpetually for the purpose of constructing, reconstructing, operating, repairing, enlarging, re-building, replacing, relocating, altering, removing and perpetually maintaining the Facilities. The City, its successors and assigns, shall have the right and privilege at all times to enter the Reservation Property, or any part thereof, for the purpose of constructing, reconstructing, operating, repairing, enlarging, re-building, replacing, relocating, altering, removing and perpetually maintaining the Facilities, and all incidental improvements thereto and for making connections therewith.

The City's successors and assigns shall WARRANT AND FOREVER DEFEND all and singular the Reservation Property unto City, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under City, but not otherwise.

City, its successors and assigns, shall have the right, but not the obligation, to construct, reconstruct and perpetually maintain additional Facilities at all times in the future within the Reservation Property. If City is unable to access the Reservation Property due to physical barriers or conditions, then City shall have, and is hereby granted, the right of ingress and egress over that portion of the City's adjacent property within fifteen feet (15') of the Reservation

Property as is reasonably necessary to and for the limited purpose of accessing the Reservation Property.

The rights and privileges granted herein are non-exclusive, but City's successors and assigns will not convey any easement or conflicting rights within the area covered by this grant which unreasonably interfere with City's rights granted herein and provided all such other grants comply with all applicable local, state and federal laws, ordinances, rules, regulations and/or requirements, as they exist, may be amended or in the future arising.

Further, notwithstanding anything to the contrary herein, City's successors and assigns shall not place any improvement or take any action, permanent or temporary, which may cause damage or jeopardize the integrity of the Facilities or which will affect or interfere with, in any way, the rights granted herein. City may, due to the necessity of repair and maintenance of the Facilities, remove and keep removed any and all improvements to the extent necessary to make repairs. City will not be responsible for loss of improvements due to failure or maintenance of the Facilities.

This instrument shall be binding on, and inure to the benefit of, City and its respective successors or assigns.

EXECUTED on the dates appearing in the acknowledgements below, however, to be effective on this ____ day of _____, 2025.

CITY OF SHERMAN, TEXAS

By: _____
Robby Hefton
City Manager

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

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

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

Notary Public, State of Texas
My Commission Expires: _____

Exhibit “A”

feet to the Point of Beginning and containing 0.513 acres of land.



City Council Regular Meeting

Agenda Item No. G.1.

Meeting Date: 2/17/2025

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Zachary Flores, Assistant City Manager

Caption:

CHANGE ORDER NO. 1

Approving the Greater Texoma Utility Authority's Intention to Execute Proposed Change Order #1 with Red River Construction

Issue:

Approving the intention of the Greater Texoma Utility Authority (GTUA) to execute proposed Change Order #1 with Red River Construction

Background:

Budget figures to upgrade the existing water treatment plant expansion beyond the 15-MGD UF/RO with a new 10-MGD UF/RO system (expandable to 30-MGD in modules) was estimated to be in the \$300 million dollar range. In light of the proposed expansion cost and looking at the costs currently at the wastewater treatment plant and the new 36" water line being installed, the City decided to rehabilitate the existing EDR system. The older EDR system was basically comprised of a Flocculation / Sedimentation system, a Chemical Feed system, and a Filtration system, in lieu of the major UF/RO expansion. The revised work would restore 10-MGD of treatment back into the treatment plant bringing the total treatment capacity to 25-MGD.

The 10-MGD EDR system rehab was budgeted at \$20 million dollars and is currently on budget. The 10-MGD EDR system will be expected to be useful for another 20-years after the improvements. It will re-use the existing building and existing high service pumps and much of the existing piping is still good. The existing building does not have adequate room for any further expansions.

An unforeseen issue arising out of the EDR rehabilitation work was some of the electrical panels were located in areas subject to chemical attack. The equipment has lasted many years, but much of the old electrical system was found to be in imminent need of replacement. In order to last the 20-years the EDR system will be expected to last, the panels need to be replaced and relocated as well.

Contract contingencies will not have adequate funds to cover the proposed change.

Origination:

Engineering Department

Financial Consideration:

Change Order #1 is for \$212,440.21 (11.66%) which will be paid for through savings on projects within the Greater Texoma Utility Authority (GTUA) 2024 Open Market Bonds.

Staff Recommendation:

Staff recommends approval of this change order

Alternatives:

As may be directed by the City Council

Attachments:

1. Change Order 1 Floc Sed - 2025-02-12
2. Sherman WTP - Control Panel Relocate - Letter to Council - 2025-02-12
3. Site Map
4. WTP Electrical Cabinet 1
5. WTP Electrical Cabinet 2

CHANGE ORDER NO.: 1

Owner: GTUA on behalf of City of Sherman Owner's Project No.: 2024-16
 Engineer: Garver Engineer's Project No.: 21W05325
 Contractor: Red River Construction Co. Contractor's Project No.: 372
 Project: Sherman WTP Flocculation and Sedimentation Improvements
 Contract Name:
 Date Issued: 2/12/2025 Effective Date of Change Order: 2/12/2025

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

Description:

Add \$212,440.21 to the Contract Price to provide for the relocation of the existing control panel (PCM #2)

Attachments: PCM #2 – Control Panel Relocation

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ 1,822,700	Original Contract Times: Substantial Completion: 245 Days Ready for final payment: 275 Days
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order]: \$ N/A	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order]: Substantial Completion: N/A Ready for final payment: N/A
Contract Price prior to this Change Order: \$ 1,822,700	Contract Times prior to this Change Order: Substantial Completion: 245 Days Ready for final payment: 275 Days
Increase this Change Order: \$ 212,440.21	[Increase] [Decrease] this Change Order: Substantial Completion: 0 Days Ready for final payment: 0 Days
Contract Price incorporating this Change Order: \$ 2,035,140.21	Contract Times with all approved Change Orders: Substantial Completion: 245 Days Ready for final payment: 275 Days

Recommended by Engineer (if required) By: <u><i>James Clement</i></u> Title: <u>North Texas Water Team Leader</u> Date: <u>2/12/2025</u> Authorized by Owner By: _____ Title: _____ Date: _____	Accepted by Contractor <u><i>Steven Summerhamp</i></u> <u>Project Manager</u> <u>2/12/2025</u> Approved by Funding Agency (if applicable) _____ _____ _____
---	---

EJCDC® C-941, Change Order EJCDC® C-941, Change Order, Rev.1.
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 and American Society of Civil Engineers. All rights reserved.

DESCRIPTION OF PROPOSED CONTRACT MODIFICATION #2

Project: <u>Sherman WTP Flocculator & Sedimentation Improvements</u>	PROJECT NUMBER
OWNER: <u>City of Sherman, Texas</u>	
CONTRACTOR: <u>RED RIVER CONSTRUCTION CO.</u>	<u>372</u>
ENGINEER: <u>Garver</u>	<u>21W05325</u>
REFERENCE: <u>Control Panel Relocation</u>	<u>Nov. 26, 2024</u>

The Contractor proposes to make the following additions, modifications, or deletions to the Work described in the Contract Documents:

At the engineer and owner's request the below cost is reflective of the work associated with drawing sheets 70-E1001, 70-E1006, 70-E7006, 70-E7007, 80-E1001, 90-E6014, 90-E6015, and 90-E6016 that were emailed to Red River on November 5, 2024.

1 LS	Control Panel Relocation	\$199,334.00	\$199,334.00
		Subtotal:	\$199,334.00
5%	Contractors Fee		\$9,966.70
1.5%	Bond Fee		\$3,139.51
		TOTAL:	\$212,440.21

PCM Total: \$212,440.21

Additional Time Requested: 0 Days

Prepared by Red River Construction Co., Inc.

By: Steve Summerkamp
Steve Summerkamp, Project Manager

Steven Summerkamp

From: Klement, Lance, P <LPKlement@GarverUSA.com>
Sent: Tuesday, November 5, 2024 11:03 AM
To: Steven Summerkamp
Cc: Canales, Oscar; Cross, Jim; Dorley, Leroy; Havard, Luke; Boysen, Robert E. (Buddy)
Subject: Control panel relocate
Attachments: Sherman CP400 Control Panel Relocation Drawings 10-28-24.pdf

Steve-

We'd like to request a price to do the attached panel relocation at the Sherman WTP. Please ignore the work items hatched in green, this would be for the non-hatched work only. We can set up a call if you'd like to discuss before you start pricing it out.

Thank you,



Lance Klement, PE
North Texas Team Leader
Water Team
☎ 214-619-9047
📠 214-250-3497

November 26, 2024

Bid Date: 3/20/2024

Bid Time: 2:00 P.M.

H&H ELECTRICAL CONTRACTORS, INC.

8475 County Rd. 271, Terrell, Tx 75160
Office # (972) 524-0205 Cell # (903) 271-3220
E-Mail: Kevinc@hhelectrical.biz
TDLR ELECTRICAL CONTRACTOR # 17190

Bid Proposal for:
SHERMAN WTP **Flocculator & Sedimentation Improvements**
CHANGE ORDER NO. 1
SHERMAN, TEXAS

To: BIDDING GENERAL CONTRACTORS

We appreciate the opportunity to quote this project. Our scope of work shall include labor and materials as follows:

- Specification Section Division 40 61 13 Through 40 73 36.
- Specification Section Division: 26 05 00 Through 26 67 05.
- NEW CP-400.
- Conduits, as shown.
- Conductors and cables , as shown.
- Grounding as shown and specified.
- Warranty, as specified.
- Electrical Duct Banks as shown and specified.

EXCLUDING THE FOLLOWING:

- **Bonding or sales taxes (Bond adder below).**
- Welding or painting of any kind (If necessary).
- Road bores, saw cutting, paving, or replace or repair of pavement or roads.
- Housekeeping pads for electrical equipment.
- Mechanical installation of all in-line devices (flow meters, valves, etc.).
- Furnishing and installation of mechanical piping saddles/mating flanges/process taps and isolating valves required to connect field instrumentation.
- Surveying or staking.
- Light Pole Foundations (2).
- Grass, Tree removal, Grass seed, sod, watering of grass or final site grading.
- Local power provider charges of any kind.

Any work not listed above will be additional to this bid

Our price for the above work is as follows:

CHANGE ORDER NO. 1

\$199,334.00

Bid Item

Total: \$ 199,334.00

Bond Adder – TBD%

- Workers comp., Liability insurance, and Auto insurance per contract requirements.
- License and permits as required.
- One-year warranty on all materials supplied by H&H Electrical Contractors, Inc.
- This quote is valid for 45 days with a letter of intent to award within 14 days.
- Invoices shall be progressive and include payment for materials and services provided.
- All payments are due net 30.

Thanks again,

Terry Clement
North Texas Manager
terrytpcelec@aol.com
972-524-0205 Office
214-729-7977 Cell

If there are any questions, please do not hesitate to call.

Signature of authorized personal below shall constitute commitment of payment for materials and labor incorporated into this project.

Proceed with order.

Approved by Corporation, District, or Municipality_____

GARVER

THIS DOCUMENT IS THE PROPERTY OF GARVER ENGINEERING, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF GARVER ENGINEERING, INC. ANY UNAUTHORIZED USE OF THIS DOCUMENT IS PROHIBITED AND WILL BE CONSIDERED A VIOLATION OF THE PROFESSIONAL ENGINEERING ETHICS. GARVER ENGINEERING, INC. IS A PROFESSIONAL ENGINEERING FIRM LICENSED IN THE STATE OF TEXAS. GARVER ENGINEERING, INC. 1101 WEST 11TH STREET, SUITE 200, ARLING, TEXAS 76010-3909. PHONE: (817) 461-1101. FAX: (817) 461-1102. WWW.GARVERENGINEERING.COM

100% REVIEW - NOT FOR CONSTRUCTION

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF BRANIFF, CHONG, P.E. #105528 ON AUG. 24, 2024. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING, OR PERMITTING PURPOSES.

REGISTERED ELECTRICAL ENGINEER
F-5713

REV. DATE DESCRIPTION BY

CITY OF SHERMAN
SHERMAN, TX

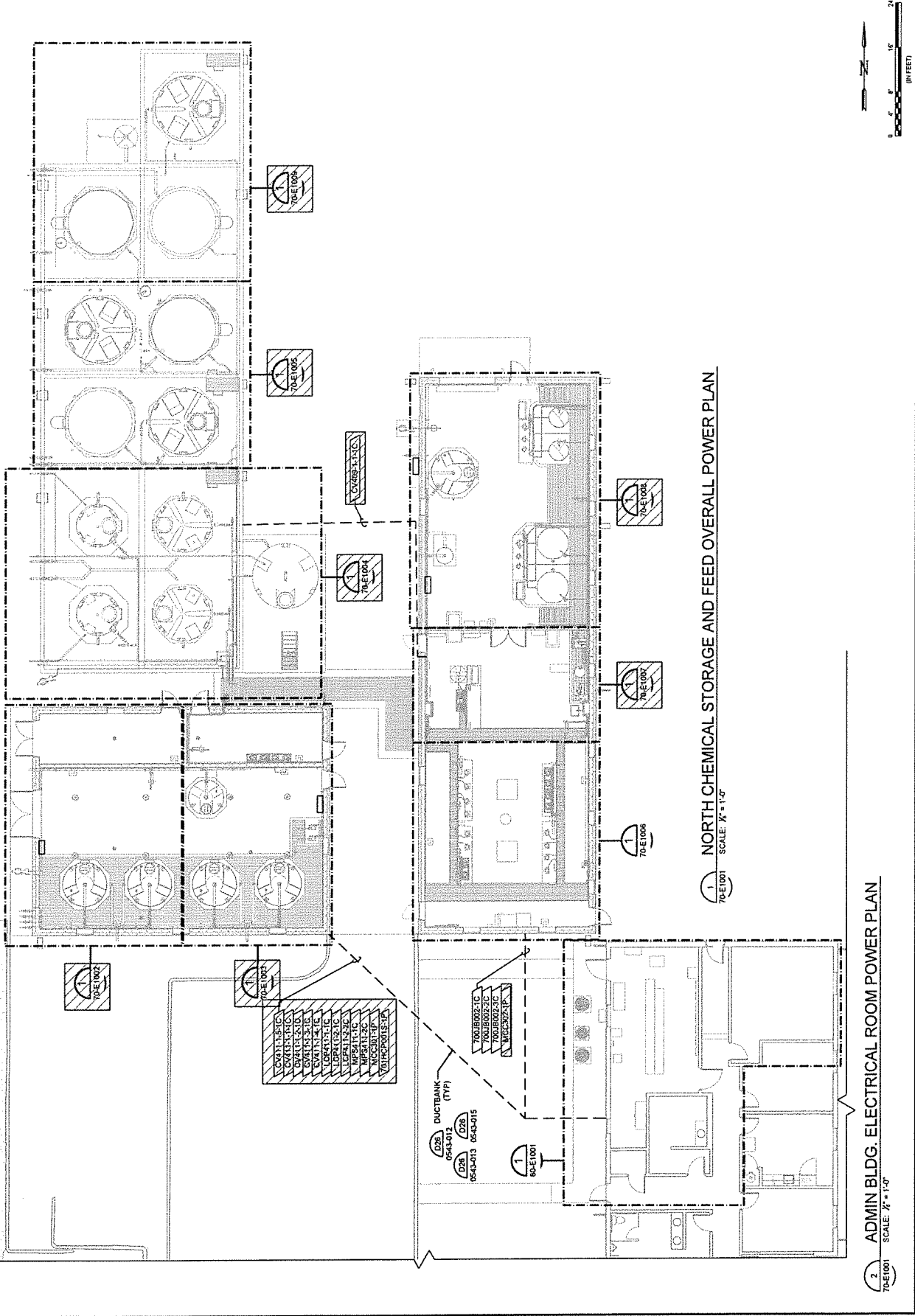
WATER TREATMENT PLANT
EXPANSION - PACKAGE 2

NORTH CHEMICAL
STORAGE AND FEED
OVERALL POWER
PLAN

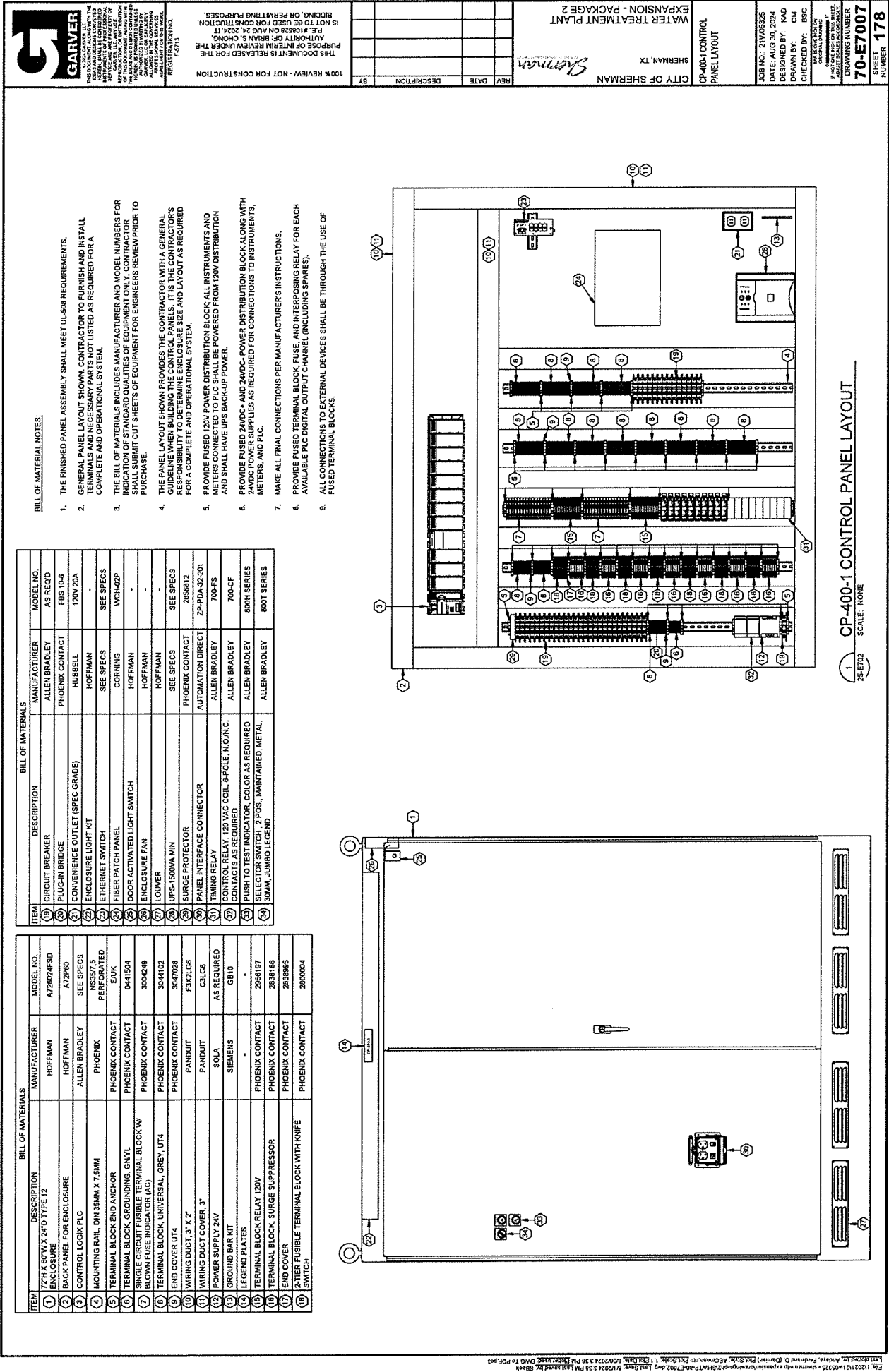
JOB NO.: 21W05325
DATE: AUG 30, 2024
DESIGNED BY: KAO
CHECKED BY: BGC
DRAWN BY: BGC

70-E1001
DRAWING NUMBER

70-E1001
SHEET NUMBER



- GENERAL NOTES:**
- THE CONTRACTOR SHALL FURNISH AND INSTALL ALL CONDUIT, WIRING, TERMINATIONS, DISCONNECTS, CONTROL DEVICES, AND ALL OTHER NECESSARY MATERIALS FOR A COMPLETE AND FUNCTIONAL ELECTRICAL SYSTEM. THE CONTRACTOR SHALL REFER TO THE SPECIFICATIONS AND OTHER SECTIONS OF THE PLANS FOR ITEMS AS MAY BE REQUIRED.
 - ALL EXPOSED CONDUIT AND PORTIONS OF THE CONDUIT SYSTEM FOR THIS STRUCTURE SHALL BE SURFACE MOUNTED AND THE CONDUIT SYSTEM SHALL BE ALUMINUM.
 - CONTRACTOR SHALL COORDINATE CONDUIT, WIRE AND INTERCONNECTIONS AS REQUIRED BY EQUIPMENT SUPPLIER. MAKE ALL REQUIRED CONNECTIONS ACCORDING TO MANUFACTURERS' RECOMMENDATIONS. NOT ALL CONNECTIONS SHOWN.
 - VERIFY LOCATION OF ALL EQUIPMENT PRIOR TO INSTALLATION.
 - SOME CONDUIT RUNS OMITTED FOR CLARITY. COORDINATE ALL CONDUIT ROUTING WITH SUPPLIED EQUIPMENT MANUFACTURER AND ENGINEER PRIOR TO INSTALLATION.
 - PROVIDE SEPARATE CONDUITS FOR POWER, SIGNAL, AND CONTROL CIRCUITS. CONDUCTORS OF LIKE VOLTAGES MAY BE COMBINED IN A SINGLE CONDUIT.
 - ALL CONDUITS TO BE ROUTED ALONG WALLS AND CEILINGS AND MAINTAIN CLEAR WALKING SPACES. 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February 12, 2025

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220 W Mulberry St,
Sherman, TX 75090

Re: Sherman Water Treatment Plant (WTP) Control Panel Relocation

Mr. Pruitt:

The purpose of this letter is to provide the background for Change Order #1 for the Sherman WTP Flocculator and Effluent Trough Improvements project, which totals \$212,440.21.

The current control panel facilitates chemical feed of multiple chemicals through the WTP that are required for daily operation of the existing plant, and is located within the plant's chemical building. The location exposes the panel to hazardous chemical vapors, which has lead to advanced corrosion of the panel's components and has degraded the panel to the end of its useful service life. Corrosion has begun to accumulate on electrical gear within the panel, and could eventually increase to the point that the gear would no longer be functional. This could cause the plant to be placed offline until the repairs are made. Additionally, various replacement parts for the aging panel are no longer available, compounding the need for an updated unit.

The panel was originally intended to be abandoned with the construction of the new WTP train during Phase 2. Once the decision was made to re-use the conventional plant, the Phase 2 design incorporated relocation of the panel with that bid package. Due to the uncertainty of the Phase 2 construction period and increasingly critical nature of the control panel, it is recommended to incorporate the panel relocation now concurrent with ongoing work on site. The work will include relocation of the panel out of the chemical vapor area, and all new wiring, relays, circuits, and panelboards.

The work will provide an additional expected useful life of approximately 20 years for the panel in tandem with the rest of the conventional plant that is currently being rehabilitated. This work is recommended to be done as part of the current Flocculator and Effluent Trough Improvements project for multiple reasons. It is critical to get the work done prior to high summer demands. Doing this work as part of an active project will save advertising costs and the time needed to bid this work out as a separate project. Logistically, it is preferable to only have one contractor onsite at a time. The replacement panel will also operate the same equipment included in this project; and having the same contractor (Red River Construction) perform this work will prevent warranty and liability issues should problems with the work arise.

In summary, Garver suggests including this work in the active Flocculator and Effluent Trough Improvements project for the reasons stated above.

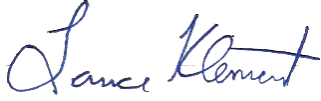
Sherman City Council

January 27, 2025

Page 2 of 2

Sincerely,

GARVER

A handwritten signature in blue ink that reads "Lance Klement". The signature is fluid and cursive, with the first name "Lance" and last name "Klement" clearly distinguishable.

Lance Klement, P.E.

North Texas Water Team Leader

Attachments: Change Order #1



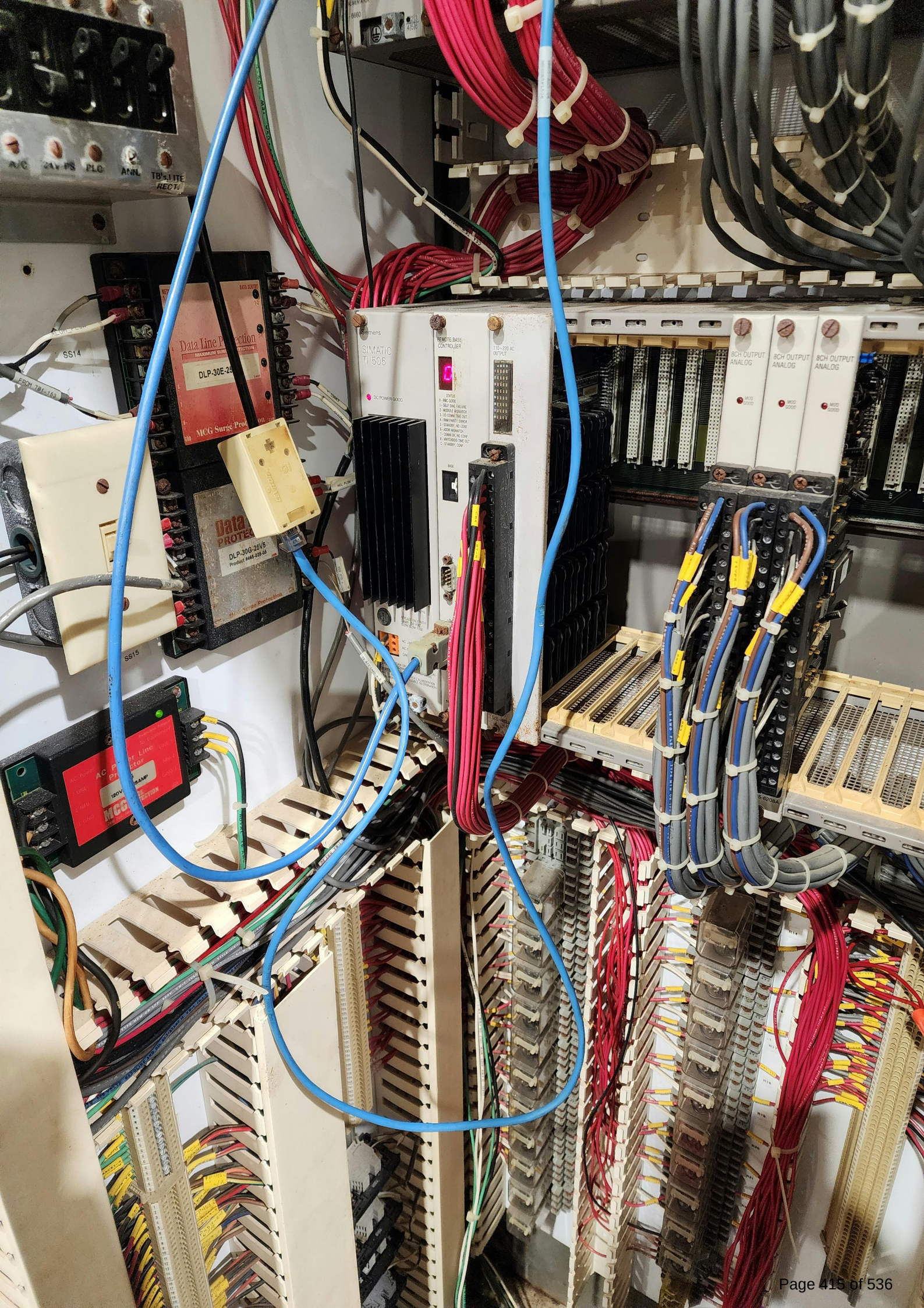
Water Treatment
Flocculation / Sedimentation
Basin Rehab and Filter
Media Replacement

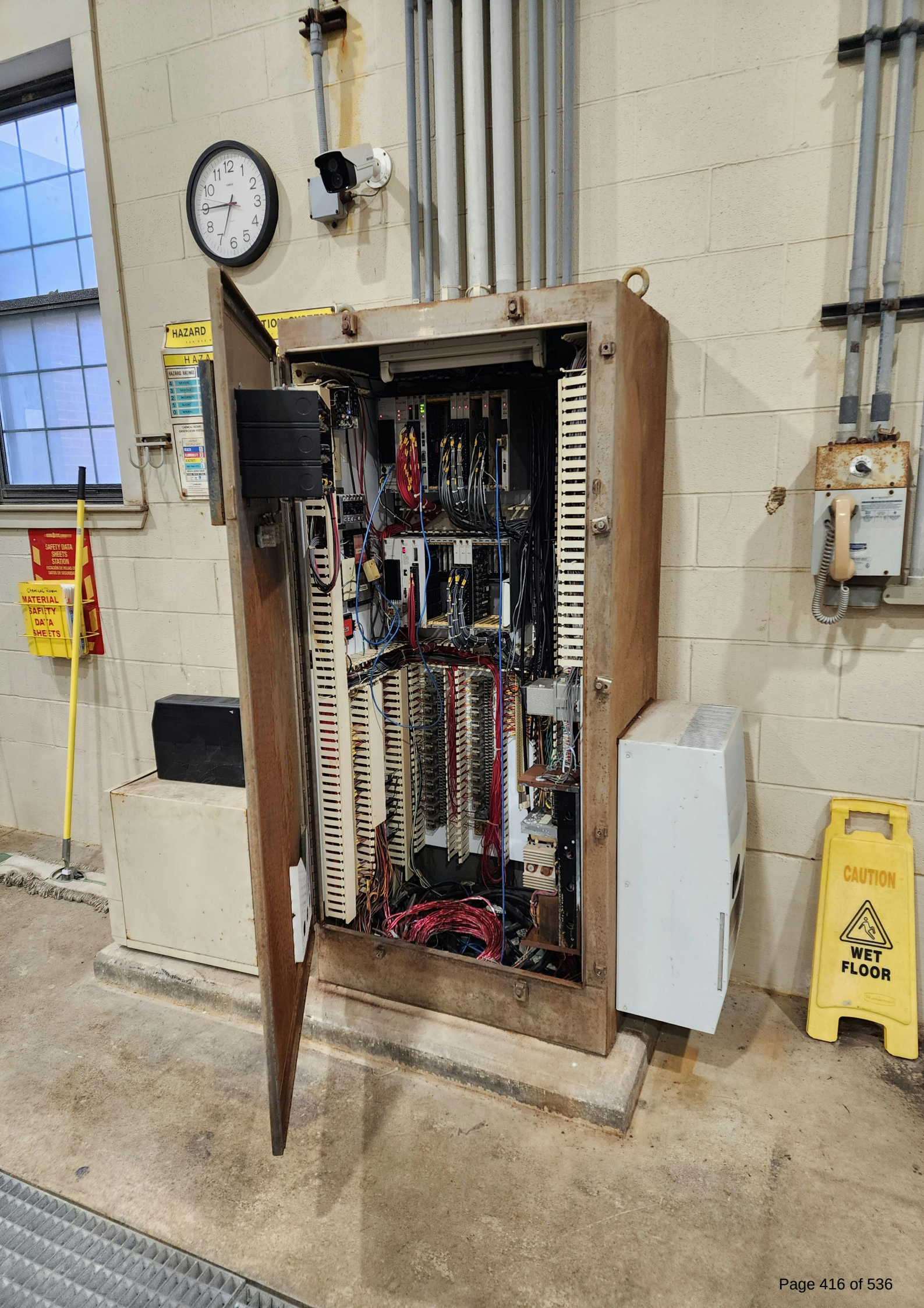


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Esri Community Maps Contributor
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Sherman
CLASSIC TOWN. BROAD HORIZON.







City Council Regular Meeting

Agenda Item No. H.1.

Meeting Date: 2/17/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Zachary Flores, Assistant City Manager

Caption:

OTHER BUSINESS

Consider and act on petition from BM Dorchester, LLC related to 215.288 acres of land located in the Antonio Hernandez Survey, Abstract No. 488, Grayson County, Texas, a portion of which is located within the City of Sherman's Extraterritorial Jurisdiction ("ETJ").

Issue:

Consider and act on petition from BM Dorchester, LLC related to 215.288 acres of land located in the Antonio Hernandez Survey, Abstract No. 488, Grayson County, Texas, a portion of which is located within the City of Sherman's Extraterritorial Jurisdiction ("ETJ").

Background:

The City received a petition from BM Dorchester, LLC on January 31, 2025. The petition purports to seek a "release" of 215.288 acres of land located in the Antonio Hernandez Survey, Abstract No. 488, Grayson County, Texas, from the City's Extraterritorial Jurisdiction pursuant to Chapter 42 of the Texas Local Government Code.

Origination:

Petition submitted by BM Dorchester, LLC

Financial Consideration:

Staff Recommendation:

Recommend denying the petition submitted by BM Dorchester LLC for the release of property from the City's extraterritorial jurisdiction because Senate Bill 2038, Local Government Code Section 42.104 and Section 42.105, are unconstitutional delegations of legislative authority, and are in direct and irreconcilable conflict with Local Government Code Section 42.023, and the City has not consented and does not consent to release of the property from its ETJ or any reduction of the City's ETJ

Alternatives:

Attachments:

1. Petition for ETJ Release
2. Location Map



January 15, 2025

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
CRRRR #7022 1670 0000 9023 7431

Mayor and Members of the City Council
City of Sherman
c/o Linda Ashby
City Clerk, City of Sherman
317 S Travis Street
Sherman, Texas 75090

PO Box 1106
Sherman, TX 75090

Re: *Petition for ETJ Release - Sherman*

Dear Ms. Ashby,

On behalf of BM Dorchester, LLC, I am filing the enclosed Petition for ETJ Release pursuant to Chapter 42.102 of the Texas Local Government Code. Please provide a copy of the enclosed materials to the Grayson County Judge and County Commissioners.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Geo. H. Pigg', written in a cursive style.

George H. Pigg

encl.

1008 Southview Cir
Center, TX 75935
O: +1-936-590-7350
F: +1-936-590-7450
george@highrollergroup.com

**Subsection 42.102(b), Texas local Government Code
Petition for ETJ Release**

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

The undersigned BM Dorchester, LLC a Texas limited liability company (the "Petitioner"), acting pursuant to the provisions of Subsection 42.102(b), Texas Local Government Code, petitions the City of Sherman, Texas (the "City") for the release from the City's extraterritorial jurisdiction ("ETJ") of the portion of the property described and depicted on Exhibit A that is located within the City's ETJ (the "Property"), a copy of which is attached hereto and incorporated herein. The person signing this petition on behalf of Petitioner resides at 4400 State Highway 7 E, Nacogdoches, Texas 75261, and is authorized to sign on behalf of Petitioner.

On November 7, 2023, the Petitioner filed with the City of Sherman a Subsection 42.102(b), Texas Local Government Code, petition for release of the Property from Sherman's ETJ (the "Original Petition"). On December 18, 2023, the Sherman City Council voted to deny the Original Petition "because Senate Bill 2038, Local Government Code, Section 42.104 and Section 42.105 are unconstitutional delegations of legislative authority and in direct irreconcilable conflict with Local Government Code Section 42.023, and the City has not consented and does not consent to the release of property from its ETJ or any reduction of the City." Subsections 42.105(c) and (d) of the Texas Local Government Code state:

(c) If a resident or landowner obtains the number of signatures on the petition required under Section 42.104 to release the area from the municipality's extraterritorial jurisdiction, the municipality shall immediately release the area from the municipality's extraterritorial jurisdiction.

(d) If a municipality fails to take action to release the area under Subsection (c) by the later of the 45th day after the date the municipality receives the petition or the next meeting of the municipality's governing body that occurs after the 30th day after the date the municipality receives the petition, the area is released by operation of law.

The Property was released from Sherman's ETJ by operation of law following the filing of the Original Petition, and the Petitioner reserves all rights and claims related to the release of the Property from Sherman's ETJ based on the filing of the Original Petition notwithstanding the filing of this second Petition for ETJ Release.

BM Dorchester, LLC is the sole owner of the Property and holds title to the Property, as indicated by the tax rolls of the Grayson County central appraisal district. Pursuant to Subsections 42.105(c) and (d), Texas Local Government Code, (a) the City shall immediately release the Property from the City's ETJ; and (b) if the City fails to take action to release the Property from the City's ETJ by the later of the 45th day after the date the City receives this Petition for ETJ Release or the next meeting of the City's governing body that occurs after the 30th day after the date the City receives this Petition for ETJ Release, the Property is released from the City's ETJ by operation of law.

SUBMITTED this 14 day of January, 2025.

PETITIONER:

BM DORCHESTER, LLC,
a Texas limited liability company

By: *Dustin Bailey*
Dustin Bailey, Manager
Date of Birth: January 19, 1984
Date of Execution: 1-14-25

THE STATE OF TEXAS

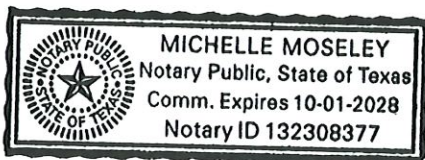
§
§
§

COUNTY OF Shelby

This instrument was acknowledged before me on the 14th day of January, 2025, by Dustin Bailey in his capacity as Manager of BM Dorchester, LLC, a Texas limited liability company, on behalf of said company.

[Signature]
Notary Public in and for the State of Texas

(NOTARY SEAL)



[illegible]

PROPERTY DESCRIPTION TRACT 3 (SHERMAN ETJ)

BEING all that certain tract or parcel of land situated in the **ANTONIO HERNANDEZ SURVEY, ABSTRACT NO. 488, GRAYSON COUNTY, TEXAS**, being out of that certain called 215.288 acre tract of land described as Tract 1 in the deed to BM Dorchester, LLC, recorded in Instrument No. 2023-7865, Official Records, Grayson County, Texas and being more particularly described as follows;

BEGINNING at the Northeast corner of the tract being described herein at a 1/2-inch iron rod found in the West right-of-way line of Old Dorchester Road for the Northeast corner of said 215.288 acre tract of land;

THENCE with said right-of-way line and the East line of said 215.288 acre tract of land, the following courses and distances;

South 10 Degrees 19 Minutes 05 Seconds West, a distance of 1484.34 feet to a point for the beginning of a non-tangent curve to the right;

With said curve to the right, an arc length of 251.04 feet, a central angle of 05 Degrees 42 Minutes 17 Seconds, a radius of 2728.95 feet and a chord that bears South 13 Degrees 03 Minutes 25 Seconds West, a distance of 271.59 feet to a 1/2-inch iron rod found for the most Easterly Southeast corner of said 215.288 acre tract of land and the Southeast corner of said tract herein described;

THENCE South 89 Degrees 15 Minutes 13 Seconds West, with a South line of said 215.288 acre tract of land, a distance of 187.10 feet to a point for the Southwest corner of said tract herein described;

THENCE over and across said 215.288 acre tract of land, the following courses and distances:

North 89 Degrees 36 Minutes 04 Seconds West, a distance of 622.93 feet;

North 02 Degrees 40 Minutes 06 Seconds West, a distance of 437.13 feet;

North 00 Degrees 44 Minutes 36 Seconds West, a distance of 102.03 feet;

North 00 Degrees 28 Minutes 00 Seconds West, a distance of 443.58 feet;

North 01 Degrees 07 Minutes 54 Seconds East, a distance of 589.15 feet;

North 04 Degrees 36 Minutes 17 Seconds East, a distance of 132.78 feet to a point in the North line of said 215.288 acre tract of land for the Northwest corner of said tract herein described;

THENCE North 89 Degrees 01 Minutes 34 Seconds East, with the North line of said 215.288 acre tract of land, a distance of 1140.38 feet to the **POINT OF BEGINNING** and containing 39.224 acres of land, more or less.

PROPERTY DESCRIPTION TRACT 4 (SHERMAN ETJ)

BEING all that certain tract or parcel of land situated in **ANTONIO HERNANDEZ SURVEY, ABSTRACT NO. 488, GRAYSON COUNTY, TEXAS**, being all of that certain called 55.77 acre tract of land described in the deed to 99 International Group, LLC, recorded in Instrument Number 2022-17162 of the Official Records Grayson County, Texas and being more particularly described as follows;

BEGINNING at the Southwest corner of the tract being described herein at a 1/2-inch disturbed iron rod found in the North line of Mackey Road for the Southwest corner of said 55.77 acre tract of land and the Southeast corner of that certain called 26 acre tract of land described in deed to 289 Properties LTD., recorded in Volume 4753, Page 825, Real Property Records, Grayson County, Texas, from which a 1-inch capped iron rod stamped "RPLS 3941" found for the Northwest corner of that certain called 3.5676 acre tract of land described in deed to the City of Dorchester, recorded in Instrument No. 2022-16445, Official Records, Grayson County, Texas bears North 43 degrees 45 minutes 41 seconds West a distance of 614.52 feet;

THENCE North 00 degrees 40 minutes 08 seconds West, along or near a fence, with the West line of said 55.77 acre tract of land and the East line of said 26 acre tract of land, a distance of 78.65 feet to a capped iron rod found for the Southeast corner of said 3.5676 acre of land;

THENCE North 00 degrees 38 minutes 35 seconds West, along or near a fence, with the West line of said 55.77 acre tract of land and the East line of said 3.5676 acre tract of land, a distance of 370.08 feet to a 1-inch capped iron rod stamped "RPLS 3941" found in the East line of said 26 acre tract of land for the Northeast corner of said 3.5676 acre tract of land;

THENCE North 00 degrees 38 minutes 55 seconds West, along or near a fence, with the West line of said 55.77 acre tract of land and the East line of said 26 acre tract of land, a distance of 1,399.86 feet to a 1/2-inch iron rod found for a reentrant corner of said 55.77 acre tract of land and the Northeast corner of said 26 acre tract of land;

THENCE North 89 degrees 57 minutes 53 seconds West, along or near a fence and with the North line of said 26 acre tract of land, a distance of 21.07 feet to a 1/2-inch iron rod in the East right-of-way line of Old Dorchester Road and BNSF Railroad for the West corner of said tract herein described, said point being in a curve to the left;

THENCE with said East right-of-way line, the West line of said 55.77 acre tract of land and with said curve to the left, an arc length of 251.04 feet, a delta angle of 04 degrees 56 minutes 04 seconds, a radius of 2914.93 feet and a chord bearing and distance of North 12 degrees 40 minutes 29 seconds East, 250.96 feet to the end of said curve;

THENCE North 10 degrees 15 minutes 52 seconds East, along or near a fence, continuing with said right-of-way line and the West line of said 55.77 acre tract of land, a distance of 1,505.45 feet to a 5/8-inch iron rod found for the Northwest corner of said 55.77 acre tract of land and the Southwest corner of that certain called 10.054 acre tract of land described as Tract 3 in deed to BM Dorchester, LLC, recorded in Instrument No. 2023-7865, Official Records, Grayson County, Texas;

THENCE North 89 degrees 00 minutes 26 seconds East, along or near a fence, with the North line of said 55.77 acre tract of land and the South line of said 10.054 acre tract of land, a distance of 414.49 feet to a 1/2-inch iron rod found for the Northeast corner of said 55.77 acre tract of land;

THENCE South 01 degrees 15 minutes 55 seconds East, with the East line of said 55.77 acre tract of land, a distance of 3,568.93 feet to a 1/2-inch iron rod found in the North line of said Mackey Road for the Southeast corner thereof;

THENCE South 88 degrees 58 minutes 45 seconds West, along or near a fence with the North line of said Mackey Road and the South line of said 55.77 acre tract of land, a distance of 774.69 feet to the **POINT OF BEGINNING** and enclosing 2,429,298 square feet or 55.77 acres of land, more or less.

PROPERTY DESCRIPTION TRACT 5 (SHERMAN ETJ)

BEING all that certain tract or parcel of land situated in the **ANTONIO HERNANDEZ SURVEY, ABSTRACT NO. 488, GRAYSON COUNTY, TEXAS**, being all of that certain called 10.054 acre tract of land described as Tract 3 in the deed to BM Dorchester, LLC, recorded in Instrument No. 2023-7865, Official Records, Grayson County, Texas and being more particularly described as follows;

BEGINNING at the Southwest corner of the tract being described herein at a point for the Southeast corner of said 10.054 acre tract of land, from which a 1/2-inch iron rod found for the Northeast corner of that certain called 55.77 acre tract of land described in the deed to 99 International Group, LLC, recorded in Instrument Number 2022-17162 of the Official Records Grayson County, Texas bears North 89 Degrees 00 Minutes 26 Seconds East, a distance of 29.67 feet;

THENCE South 89 Degrees 00 Minutes 26 Seconds West, with the South line of said 10.054 acre tract of land, a distance of 384.82 feet to a 5/8-inch iron rod found in the East right-of-way line of BNSF Railroad for the Southwest corner thereof;

THENCE North 10 Degrees 08 Minutes 34 Seconds East, with said right-of-way line and the West line of said 10.054 acre tract of land, a distance of 2154.54 feet to a point for the North corner thereof and the North corner of said tract herein described;

THENCE South 00 Degrees 08 Minutes 41 Seconds East, with the East line of said 10.054 acre tract of land, a distance of 2114.21 feet to the **POINT OF BEGINNING** and containing 9.338 acres of land, more or less.

PROPERTY DESCRIPTION TRACT 6 (SHERMAN ETJ)

BEING all that certain tract or parcel of land situated in the **ANTONIO HERNANDEZ SURVEY, ABSTRACT NO. 488, GRAYSON COUNTY, TEXAS**, being out of that certain called 435.019 acre tract of land described as Tract 2 in the deed to BM Dorchester, LLC, recorded in Instrument No. 2023-7865, Official Records, Grayson County, Texas and being more particularly described as follows;

BEGINNING at the Southeast corner of the tract being described herein at a 1/2-inch iron rod found in the West right-of-way line of Old Dorchester Road and BNSF Railroad for the Southeast corner of said 435.019 acre tract of land;

THENCE South 89 Degrees 01 Minutes 34 Seconds West, with the South line of said 435.049 acre tract of land, a distance of 1140.38 feet to a point for the Southwest corner of said tract herein described;

THENCE over and across said 435.019 acre tract of land, the following courses and distances;

North 04 Degrees 36 Minutes 17 Seconds East, a distance of 558.36 feet;
North 08 Degrees 21 Minutes 18 Seconds East, a distance of 383.27 feet;
North 89 Degrees 36 Minutes 03 Seconds West, a distance of 323.39 feet;
North 24 Degrees 59 Minutes 36 Seconds East, a distance of 82.19 feet;
North 23 Degrees 12 Minutes 05 Seconds East, a distance of 82.19 feet;
North 21 Degrees 24 Minutes 37 Seconds East, a distance of 82.19 feet;
North 19 Degrees 37 Minutes 07 Seconds East, a distance of 82.19 feet;
North 17 Degrees 49 Minutes 37 Seconds East, a distance of 82.19 feet;
North 16 Degrees 02 Minutes 08 Seconds East, a distance of 82.19 feet;
North 14 Degrees 14 Minutes 39 Seconds East, a distance of 82.19 feet;
North 12 Degrees 27 Minutes 10 Seconds East, a distance of 82.19 feet;
North 10 Degrees 39 Minutes 40 Seconds East, a distance of 82.19 feet;
North 08 Degrees 52 Minutes 11 Seconds East, a distance of 82.19 feet;
North 07 Degrees 04 Minutes 42 Seconds East, a distance of 82.19 feet;
North 05 Degrees 17 Minutes 11 Seconds East, a distance of 82.19 feet;
North 03 Degrees 29 Minutes 43 Seconds East, a distance of 82.19 feet;
North 01 Degrees 42 Minutes 14 Seconds East, a distance of 82.19 feet;
North 00 Degrees 50 Minutes 01 Seconds East, a distance of 979.30 feet;
North 00 Degrees 04 Minutes 00 Seconds West, a distance of 82.97 feet;
North 01 Degrees 52 Minutes 03 Seconds West, a distance of 82.97 feet;
North 03 Degrees 40 Minutes 07 Seconds West, a distance of 82.97 feet;
North 05 Degrees 28 Minutes 10 Seconds West, a distance of 82.97 feet;
North 07 Degrees 16 Minutes 12 Seconds West, a distance of 82.97 feet;
North 09 Degrees 04 Minutes 17 Seconds West, a distance of 82.97 feet;
North 10 Degrees 52 Minutes 18 Seconds West, a distance of 82.97 feet;
North 12 Degrees 40 Minutes 22 Seconds West, a distance of 82.97 feet;
North 14 Degrees 28 Minutes 26 Seconds West, a distance of 82.97 feet;
North 16 Degrees 16 Minutes 29 Seconds West, a distance of 82.97 feet;
North 18 Degrees 04 Minutes 31 Seconds West, a distance of 9.64 feet;
North 18 Degrees 04 Minutes 31 Seconds West, a distance of 73.33 feet;
North 19 Degrees 52 Minutes 34 Seconds West, a distance of 82.97 feet;
North 21 Degrees 40 Minutes 38 Seconds West, a distance of 82.97 feet;
North 23 Degrees 28 Minutes 41 Seconds West, a distance of 82.98 feet;
North 25 Degrees 16 Minutes 45 Seconds West, a distance of 82.97 feet;

North 27 Degrees 04 Minutes 48 Seconds West, a distance of 20.13 feet to a point for the Northwest corner of said tract herein described;
North 47 Degrees 33 Minutes 01 Seconds East, a distance of 562.92 feet;
North 50 Degrees 37 Minutes 30 Seconds East, a distance of 691.03 feet;
North 54 Degrees 22 Minutes 30 Seconds East, a distance of 691.03 feet;
North 58 Degrees 07 Minutes 30 Seconds East, a distance of 410.26 feet to a point in Old Dorchester Road and the East line of said 435.019 acre tract of land for the Northeast corner of said tract herein described;

THENCE with the East line of said 435.019 acre tract of land, the following courses and distances:

South 00 Degrees 50 Minutes 39 Seconds East, along said Old Dorchester Road, a distance of 3027.90 feet to a point in the West right-of-way line of BNSF Railroad;

South 10 Degrees 01 Minutes 25 Seconds West, with said right-of-way line, a distance of 885.16 feet;

North 86 Degrees 57 Minutes 56 Seconds West, a distance of 64.30 feet to a point in the West right-of-way line of said Old Dorchester Road;

South 10 Degrees 16 Minutes 17 Seconds West, with said right-of-way line, a distance of 1800.03 feet to the **POINT OF BEGINNING** and containing 179.428 acres of land, more or less.

PROPERTY DESCRIPTION TRACT 7 (SHERMAN ETJ)

BEING all that certain tract or parcel of land situated in the **ANTONIO HERNANDEZ SURVEY, ABSTRACT NO. 488, GRAYSON COUNTY, TEXAS**, being out of that certain called 435.019 acre tract of land described as Tract 2 in the deed to BM Dorchester, LLC, recorded in Instrument No. 2023-7865, Official Records, Grayson County, Texas and being more particularly described as follows;

BEGINNING at the Northwest corner of the tract being described herein at a 1/2-inch iron rod found for the most Northerly Northwest corner of said 435.019 acre tract of land;

THENCE North 75 Degrees 26 Minutes 42 Seconds East, with the North line of said 435.019 acre tract of land, a distance of 688.16 feet to a point in Old Dorchester Road for the Northeast corner thereof and the Northeast corner of said tract herein described;

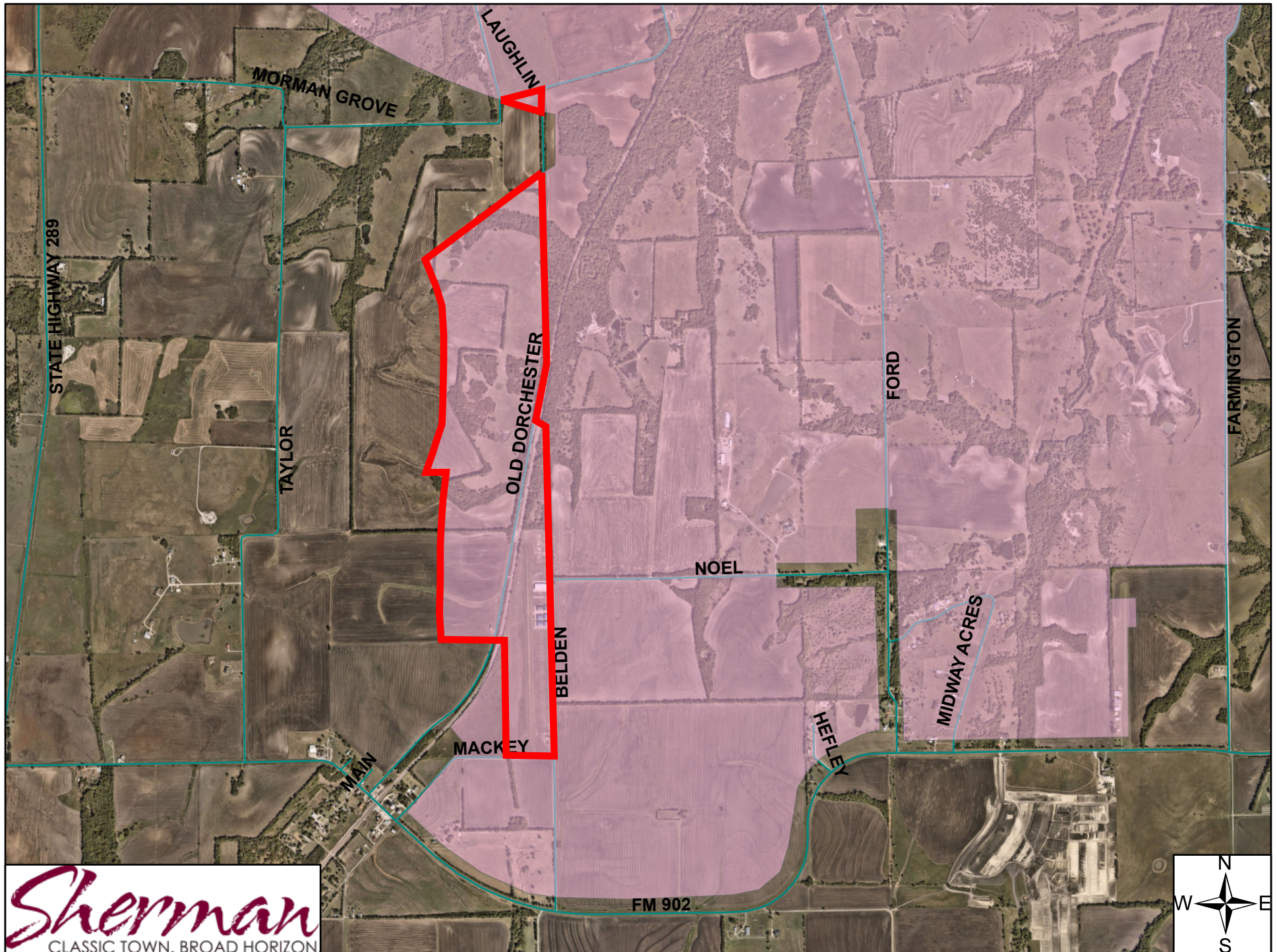
THENCE South 00 Degrees 50 Minutes 39 Seconds East, along said Old Dorchester Road and with the East line of said 435.019 acre tract of land, a distance of 374.10 to a point for the Southeast corner of said tract herein described;

THENCE over and across said 435.019 acre tract of land, the following courses and distances: North 76 Degrees 52 Minutes 30 Seconds West, a distance of 187.17 feet;

North 73 Degrees 07 Minutes 30 Seconds West, a distance of 511.23 feet to a point in a West line of said 435.019 acre tract of land for the Southwest corner of said tract herein described;

THENCE North 00 Degrees 29 Minutes 57 Seconds West, with said West line, a distance of 10.22 feet to the

POINT OF BEGINNING and containing 3.021 acres of land, more or less.





City Council Regular Meeting

Agenda Item No. H.2.

Meeting Date: 2/17/2025

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Teri Fine, Assistant to the City Manager

Caption:

Other Business

Consider and Act on Authorizing the Mayor to Execute a Partnership Agreement between the Texoma Workforce Development Board and Chief Elected Officials for the Texoma Workforce Development Area.

Issue:

Consider and Act on Authorizing the Mayor to Execute a Partnership Agreement between the Texoma Workforce Development Board and Chief Elected Officials for the Texoma Workforce Development Area.

Background:

The proposed Partnership Agreement addresses the “roles, responsibilities, relationships and functions of each party to the agreement,” including the chief elected officials of Cooke, Fannin and Grayson Counties, as defined by Texas law and governing rules and regulations applicable to the Texoma Workforce Development Board.

Sherman mayors have executed a version of the Partnership Agreement for many years. Sherman Mayor Shawn Teamann has been selected as the authorized representative of the chief elected officials of Cooke, Fannin and Grayson Counties on the Texoma Workforce Development Board.

Origination:

City of Sherman Mayor

Financial Consideration:

None

Staff Recommendation:

None

Alternatives:

None

Attachments:

1. Partnership Agreement

PARTNERSHIP AGREEMENT
Between the
Texoma Workforce Development Board
and
Chief Elected Officials
For
The Texoma Workforce Development Area

This agreement is entered into, by and between the Texoma Workforce Development Board, and the Chief Elected Officials of Cooke, Fannin and Grayson Counties, as defined by Texas legislation and governing rules and regulations.

WHEREAS, the Texoma Local Workforce Development Board, hereafter referred to as the Board, as duly certified by the Governor of the State of Texas on October 18, 1996, is recognized as the entity in the Texoma Local Workforce Development Area, hereafter referred to as the Area, with responsibility to provide policy planning, contracting, program oversight, and evaluation of programs funded through the Texas Workforce Commission (TWC); and

WHEREAS, pursuant to HB 1863, Section 11.23 (f), Texas Labor Code 302.062 74th Legislature, and Workforce Innovative and Opportunity Act (WIOA) Title I, Ch.1, Sec 107, 108 and 121, it is necessary for the Chief Elected Officials (CEOs) and the Board to enter into a partnership agreement, setting forth the roles, responsibilities, relationships, and functions of each party hereto, and to determine procedures for the development of the local workforce development plan; and

WHEREAS, the CEOs are required to be parties to this agreement and have selected the Honorable –**Shawn Teamann**, City of Sherman Mayor, as their authorized representative to enter into this agreement on their behalf and perform the duties as signatory authority; and

WHEREAS, **Ms. Kathryn Hicks** has been duly elected to serve as Chairperson of the Board and the authorized representative to enter into this agreement on the Board's behalf, and

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES, BE IT RESOLVED THAT THE PARTIES HERETO AGREE TO SET FORTH ROLES, RESPONSIBILITIES, RELATIONSHIPS, AND FUNCTIONS AS FOLLOWS:

I. PURPOSE OF AGREEMENT

The purpose of this Partnership Agreement is to define the authority, roles, and responsibilities of the Board and the Chief Elected Officials, and to determine the procedures for developing the local workforce plan.

The CEOs hereby charge the Board, to design and implement a locally delivered workforce development system which will enable government, business, education, and labor to provide the

Area with a well-trained, highly-skilled, and competitive workforce. The Board, in concurrence with the CEOs will move toward the goals of integration of resources and programs, sustained and meaningful involvement of the private sector, and a training and education system that serves the needs of both employers and the job seekers of the Area.

II. AUTHORITY, ROLES, RESPONSIBILITIES

GENERAL RESPONSIBILITIES OF BOARD AND CEOs

The Texoma Workforce Development Board is named the administrative entity and is directly responsible for the strategic and operational planning and administration of workforce training and services funded through the Texas Workforce Commission to the Area. The Board will submit for review and approval by the CEOs the strategic plan annually.

While the Board will be responsible for effective outcomes consistent with statewide goals, objectives, and performance standards approved by the Governor, it is understood that the Area's CEOs will take an active role in promoting an effective workforce program and through the Board, assure the proper use of federal and state funds for program development, implementation, and oversight. In addition, the CEOs will be informed by the Board on all matters of strategic importance including but not limited to: workforce center implementation, financial stability, program effectiveness, Board membership vacancies, and other matters regarding the program.

Funds Allocation

The Board is designated as the grant recipient to receive and be accountable for block grant funds. Resources allocated to the Texoma Board will be distributed according to federal and state allocation formulas. In the absence of required formulas, funds distribution will be determined by the Board which will consider unemployment rates, levels of poverty, minority and total population figures, workforce training needs, literacy levels, and educational needs on a proportionate basis.

Audit

The Texoma Workforce Development Board shall provide an annual financial and compliance audit, conducted by an independent firm, covering all programs, services and funds received and expended under the terms of this agreement to the parties hereto, to the Chief Elected Officials of the region and to the appropriate state and federal authorities.

Liability

Responsibilities for disallowed costs and other liabilities will be as follows:

- First Priority: recover funds from the service provider (s) incurring the liability;
- Second Priority: recover funds from an insurance carrier or bond issuer (both service provider and Board carry director/officer insurance and errors and omissions insurance);

- Third Priority: recover WIOA funds from Chief Elected Officials (entities “Cooke County, Fannin County, Grayson County and City of Sherman”).

Open Meetings

The Board and CEOs will meet according to the provisions of the Open Meetings Act and WIOA Sec 107(e); §§679.140 and 679.390.

Reimbursements of Expenses

Neither Board members nor CEOs will serve for compensation, although appropriate and reasonable workforce expenses e.g. travel, training and conferences outside the area, may be reimbursed according to Board travel policies.

III. Local Workforce Development Board Responsibilities

The Board will carry out and comply with all applicable laws and regulations, including the responsibilities as assigned in SB 642, amended by HB 1863, Texas Labor Code 302.062 74th Legislature, WIOA [P.L. 113-128, July 22, 2014], federal regulations 20 C.F.R. §§663.400-662.430, policy of Texas Workforce Commission and any subsequent legislation granting authority to a local private sector led board for workforce development. The Board is directly responsible and accountable to the Texas Workforce Commission for the planning and oversight of all workforce training and services and for evaluation of all workforce development programs, including Job Training Partnership Act until closed out, funded through the Texas Workforce Commission.

Additional Responsibilities

The Board will be responsible, either directly or indirectly through staff, for the following:

- Serving as the fiscal agent for board funds.
- Providing policy guidance on matters pertaining to the provisions of services under state and federal law.
- Establishing a workforce center that markets workforce services to businesses in the Area. The Board will solicit input and participation of the local business community, serve as a single point of contact for local business to communicate their skill needs, and influence the direction of all workforce development programs and services in the workforce development area.
- Considering solicitation of additional funds from other sources, both public and private, but may not solicit funds from an entity with which the Boards contracts for the delivery of services.

- Developing a local workforce plan which will be jointly approved with the CEOs.
- Developing and approving an annual budget.
- Assuming the functions and responsibilities of local workforce development advisory boards, councils, and committees authorized by federal or state laws, including but not limited to private industry councils, quality workforce planning committees, job service employer committees. The Board may also form committees to review local general vocational programs for the purpose of making recommendations for future workforce training.
- Monitoring and evaluating the effectiveness of the workforce centers, state agencies and other contractors providing workforce training and services, and vocational and technical education programs operated by local education agencies and institutions of higher education to ensure that performance is consistent with state and local goals and objectives. This includes approving the termination of any contract or program if not meeting programmatic or regulatory standards.
- Keeping the CEOs informed regarding Board activities, through:
 - agendas for meetings
 - written reports summarizing board plans, monitoring and financial activities
 - Board meeting minutes
 - copies of all annual audit reports; and briefing and/or special reports as may be requested by the CEOs.

All CEOs will serve as ex-officio members of the Texoma Board and will have no voting privileges. The Texoma Board Chairperson will send written reports of meeting minutes, pertinent committee reports, local plans, actions taken by the designated CEO, and other information to all CEOs party to this agreement as the representative CEO requests.

- Reviewing, verifying, modifying, and using labor market information developed through the state or other labor market information systems to identify occupation-specific labor demand in the Area.

- Promoting cooperation and coordination among public organizations, community organizations, and private business providing workforce development services.
- Representing the Area in any meetings, conferences, negotiations, or other activities deemed appropriate for the proper administration of the programs.
- Ensuring that employment services are provided for persons seeking employment in the Area through contracting with appropriate entities.
- Designing creative programs that fit the unique characteristics and needs of the Area by drawing on and uniting the resources of the local community and determine and meet the needs of the local service populations, businesses, and industries.
- Adopting programs to enhance the ability of recipients of financial assistance and services under Chapter 31, Human Resources Code, who are eligible to participate in the Choices training program and/or Welfare-to-Work program to obtain and retain gainful employment.
- Functioning in accordance with all other responsibilities in applicable state and federal laws and in accordance with the established Board by-laws and plan.

Release of Liability

A member or former member of a local workforce development board will not be held personally liable for any claim, damage, loss, or repayment obligation of federal or state funds that arise from the Act unless the act or omission that causes the claim, damage, loss, or repayment obligation constitutes official misconduct on the part of the Board member, willful disregard of the requirements of the Act on the part of the Board member, or gross negligence on the part of the Board member.

IV. CHIEF ELECTED OFFICIALS RESPONSIBILITIES

Board Appointments

The Chief Elected Officials will be responsible for Board member appointments. CEOs will select community leaders from their jurisdictions to serve on the Board who will forge working relationships with business and agencies throughout the Area. CEOs will attempt to ensure that the industrial, ethnic, and gender diversity of the region is maintained on the Board through their appointment responsibility.

Appointment of Board members will be consistent with state and federal laws, including Section 4.02 of SB 642, as amended by Texas Labor Code 302.062 74th Legislature, WIOA Title I, Ch. 1,

Sec. 107 and any successor legislation. All board members must receive board training within 90 days of appointment.

CEOs may appoint a maximum of 36 members, with each CEO selecting up to 5 private sector representatives, representing a balance among the three counties, with at least 1 community-based or labor organization per CEO and nine at-large members representing vocational rehabilitation, public assistance, economic development, organized labor, literacy councils, adult basic/continuing education and Texas Workforce Commission. CEO's will agree upon 1 Secondary Education Representative and 1 Post-Secondary to represent the 3 county area. The minimum number of Board members will be 27.

Board Terms and Re-appointments

CEOs will appoint board members to serve fixed and staggered three year terms of office, expiring on September 30 in the relevant year. In order to continue to serve on the Board, members must be re-appointed in the same manner as the original appointment when their term expires. Re-appointments will be at the discretion of the CEOs.

Required Categories

No individual Board member may be a representative of more than one sector or category described in this section. (See Section 200.5.1 for special Board requirements.) Each Board must have member representatives from:

- the private sector;
- organized labor and community-based organizations (CBOs);
- education;
- public employment service (TWC);
- vocational rehabilitation;
- public assistance;
- economic development;
- local literacy councils; and
- adult basic and continuing education

Special Board Requirements

At least one of the Board members from the representative categories must also meet the requirements in the following list:

- Child Care Requirement — At least one of the members of a Board appointed under Texas Government Code §2308.256(a) must, in addition to the qualifications required for the members under that subsection, have expertise in child care or early childhood education [40 TAC §801.1(g)(2)(C)(vi)]. To meet this requirement, the nominee's

- expertise must be below the pre-kindergarten level.
- Veteran Requirement — At least one of the members of a Board appointed under Texas Government Code §2308.256(h) must, in addition to the qualifications required for the members under that subsection, be a veteran.

Board Vacancies

Any vacancy in Board membership will be filled by CEOs in the same manner as the original appointment within 90 calendar days after the effective date of the resignation or term. Appointees to vacant positions will serve until the end of the term assigned to the position in question.

Proxies or Alternates

Board members are expected to adhere to effective attendance policy as determined by CEO's. The use of proxies or alternates by Boards is prohibited [40 TAC §801.16(e)].

Board Member Removal

Any member of the Board may be removed by a two-thirds majority vote of the Board or by majority vote of the Chief Elected Officials.

V. PROCEDURES FOR DEVELOPMENT OF LOCAL PLAN

Procedures of the Board and CEOs

The Board will be responsible for developing a single Local Area Plan for the delivery of workforce training and services that includes a strategic and operational component as required by Texas Senate Bill 642 and HB 1863, Texas Labor Code 302.062 74th Legislature, WIOA, any successor legislation, and any TWC rules.

In consultation with the CEOs, the Board will establish general parameters and goals of the Local Area Plan. It is also the Board's intention that other interested parties will have an input into the planning process and that the final plan will be consistent with the state's strategic plan.

The Chief Elected Officials represented in the Chief Elected Officials Agreement will be provided a copy of the strategic plan to review prior to the Board's approval. The Board and the CEOs will have joint responsibility for plan approval.

The Board and the Lead Chief Elected Official will be responsible for strategic and local area plan approval. The Local Area Plan will be approved by the Board and the CEOs.

It is understood by all parties to this agreement that this plan is the basis for receipt of state and federal funds for workforce development programs. Any delays in plan development and approval threatens the availability of these funds to provide programs to the Area. Therefore, it is agreed by

all parties that negotiations on specific program items must be completed no later than May of any program year.

VI. ACCOMMODATING CHANGE

Dispute Resolution

Any disputes between partners to the agreement shall be resolved through a Board committee composed of equal representation (two members) from each. Committee membership shall be appointed by the Chair of the Texoma Board and the lead CEO insofar as possible from members who are not residents of any jurisdiction where an action may be at issue. The Lead CEO shall act as Chair of the committee, with voice, but no vote except in case of a tie. An independent mediator shall have final authority in any dispute resolution between the Board and CEOs.

Amending Provisions

This agreement may be amended by the request of any party hereto, consistent with the law, through written agreement by both parties hereto. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal or state law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

Terms of Agreement

The terms of this agreement are effective from the date of signing until September 30, 2027. This agreement may be amended at any time to reflect any changes in fiscal agent/grant recipient, administrative agency or legislation.

This agreement will terminate if either party provides 90 days written notification to the other of its intention to terminate.

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreement between the parties respecting and within the subject matter of this agreement. In addition, no other agreement, assertion, statement, understanding of other commitment occurring during the term of this agreement, or subsequent thereto, shall have any legal force of effect whatsoever unless properly executed in writing and if appropriate, recorded as an addendum to, or amendment of, this agreement.

Statement of Understanding

This is to acknowledge and certify that I, the undersigned, have read, understand, and agree to the terms of the current and legally binding Partnership Agreement. Furthermore, I reserve the option to request negotiations to amend and/or modify the agreement at any time during my individual tenure as Lead CEO or Board Chair Representative.

WHEREFORE, WITNESS OUR HANDS BINDING THE RESPECTIVE PARTIES TO THIS AGREEMENT:

APPROVED:

APPROVED:

BY: _____
Mayor Shawn Teamann
Lead Chief Elected Official

BY: _____
Kathryn Hicks
Board Chairperson

DATE: _____ 11/04/2024

DATE: _____

ATTEST: _____

ATTEST: _____

Individuals may receive, review, and correct information that TWC collects about the individual by e-mailing open.records@twc.state.tx.us or writing to TWC Open Records, Rm. 266, 101 East 15th St., Austin, TX 78778-0001



City Council Regular Meeting

Agenda Item No. H.3.

Meeting Date: 2/17/2025

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** Other Business**

Consider Excusing the Absence of Council Member Daron Holland

Issue:

To consider excusing absences from City Council Member Daron Holland based on City Charter requirement

Background:

Council Member Daron Holland was absent from the regular City Council meetings of January 6, 2025, January 21, 2025 and February 3, 2025 due to injuries sustained in an automobile collision. Under Article II, Section 6(b)(4) of the City of Sherman Home Rule Charter, a Council Member's failure to "attend three (3) consecutive regular meetings of the Council or a total of six (6) such meetings in any one year" results in a Council Member forfeiting their office, unless the absences are "excused by the Council."

Origination:

City Manager's Office

Financial Consideration:

There is no financial consideration for this item

Staff Recommendation:

Staff recommends excusing the absences

Alternatives:

Council could deny this request.

Attachments:

1. Charter for Missed Council Meetings

Chapter CHA. Home Rule Charter

ARTICLE II. CITY COUNCIL

§ 6. Vacancies, forfeitures, filling of vacancies.

- (a) Vacancies. The office of the mayor or councilmember shall become vacant upon their death, resignation, removal from office in any manner authorized by law, or forfeiture of the office. If an elected official changes their primary residence to outside the corporate limits of the City of Sherman or the district to which they were elected, their office shall immediately become forfeit and vacant.
- (b) Forfeiture of office. The mayor or a councilmember shall forfeit their office if, during the term of office, they:
- (1) Lack any qualification for the office prescribed by this charter or by law;
 - (2) Violate any express prohibition of this charter;
 - (3) Have been given probation, deferred adjudication, or are convicted of a crime involving a felony or a crime involving dishonesty or deceit;
 - (4) Fail to attend three (3) consecutive regular meetings of the council or a total of six (6) such meetings in any one year without being excused by the council; or
 - (5) Commits an act of malfeasance, incompetence, or misconduct as determined by a super-majority vote of a quorum of the remaining members of the City Council.
- (c) Filling of vacancies. If only one seat on the council becomes vacant at a time, it shall be filled by a majority vote of the remaining members present and voting until the next regular city election. If two (2) or three (3) seats on the council become vacant at the same time, a special election shall be ordered to fill such vacancies unless the next regular city election is to be held within a ninety (90) day period and, in that event, the seats shall remain vacant until filled at such regular election. If four (4) or more vacancies exist at the same time, the mayor, or the deputy mayor in the mayor's absence, shall have the power and shall immediately order a special election to fill all such vacancies. In the event a special election is not ordered as provided herein, then it shall be ordered as provided in Section 1 of Article III of this charter.

(Ordinance 4745, sec. 2, adopted 3/8/99; Resolution 4442 adopted 5/6/03; Resolution 6300 adopted 11/20/17)



City Council Regular Meeting

Agenda Item No. H.4.

Meeting Date: 2/17/2025

Prepared By: Jason Jeffcoat, Police Chief

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** OTHER BUSINESS**

Receive 2024 Racial Profiling Report

Issue:

To receive the 2024 Racial Profiling Report from the Sherman Police Department

Background:

Sherman Police Department contracts annually with Dr. Alex del Carmen to analyze the Department's Motor Vehicle-Related Contact Information and prepare an annual racial profiling report. Consistent with past reports, Dr. Del Carmen's analysis identified that the Sherman Police Department "is engaging in search practices consistent with national trends in law enforcement."

No "Racial Profiling" complaints were filed during 2024 from a traffic stop.

The information and analysis provided in this report serves as evidence that the Sherman Police Department complies with the Texas Racial Profiling laws. The following contains the basis for Dr. del Carmen's analysis.

(i) Tier 2 Data

Motor Vehicle-Related Contact Information (01/01/2024 - 12/31/2024)

Race/Ethnicity*	Contacts	Searches	Consensual Searches	Custody Arrest
Caucasian	8,249	111	34	32
African American	1,998	90	15	12
Hispanic or Latino	3,178	52	14	20
Asian or Pacific Islander	211	2	1	1
Alaska Native or American Indian	102	1	0	1
Other	0	0	0	0
Total	13,738	256	64	66

Origination:

Sherman Police Department

Financial Consideration:

None

Staff Recommendation:

Staff recommends approval of the 2024 Racial Profiling Report.

Alternatives:

None

Attachments:

1. Memo to City Manager
2. 2024 Racial Profiling Executive Summary
3. Sherman 2024 Racial Profiling Report-Compressed
4. 2024 TCLEDDS Racial Profile Report



SHERMAN POLICE DEPARTMENT
2600 West Travis Street
Sherman, Texas 75092

OFFICE OF THE CHIEF OF POLICE
JASON JEFFCOAT
MEMORANDUM

Date: January 31, 2025
To: Mr. Zachary Flores, City Manager
From: Jason Jeffcoat, Chief of Police
Subject: 2024 Racial Profiling Report

I am pleased to present you with a copy of our 2024 Annual Contact Report prepared by Dr. Alex del Carmen of Del Carmen Consulting, LLC.

In addition, please find the 2024 Racial Profiling Executive Summary prepared by Lieutenant Kevin Garbacik, which summarizes our compliance with the Texas Racial Profiling Law.



MEMORANDUM

Date: January 31, 2025

To: Chief Jason Jeffcoat

From: Lieutenant Kevin Garbacik *KG*104*

Subject: 2024 Racial Profiling Executive Summary

Sherman Police Department contracts annually with Dr. Alex Del Carmen to analyze the Department's motor vehicle-related contact information and prepare an Annual Racial Profiling Report. Consistent with past reports, Dr. Del Carmen's analysis identified that the Sherman Police Department "is engaging in search practices consistent with national trends in law enforcement". No "Racial Profiling" complaints were filed during 2024 from a traffic stop.

The information and analysis provided in this report serves as evidence that the Sherman Police Department complies with the Texas Racial Profiling Laws. The following contains the basis for Dr. Del Carmen's analysis:

(I) Tier 2 Data

Motor Vehicle-Related Contact Information (01/01/2024 – 12/31/2025)

Race/Ethnicity*	Contacts	Searches	Consensual Searches	Custody Arrest
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Alaska Native or American Indian	102	1	0	1
Other	0	0	0	0
Total	13,738	256	64	66

RACIAL PROFILING REPORT

2024

Sherman Police Department



DEL CARMEN
Consulting, LLC.

LAW ENFORCEMENT EXPERTS

"Dr. Alex del Carmen's work on racial profiling exemplifies the very best of the Sandra Bland Act, named after my daughter. My daughter's pledge to fight for injustice is best represented in the high quality of Dr. del Carmen's reports which include, as required by law, the data analysis, audits, findings and recommendations. I commend the agencies that work with him as it is clear that they have embraced transparency and adherence to the law."

-Quote by Geneva Reed (Mother of Sandra Bland)



January 23, 2025

Sherman City Council
220 West Mulberry St.
Sherman, TX 75090

Dear Distinguished Members of the City Council,

The Texas Racial Profiling Law was enacted by the Texas Legislature in 2001, with the intent of addressing the issue of racial profiling in policing. During the last calendar year, the Sherman Police Department, in accordance with the law, has collected and reported traffic and motor vehicle related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified, and additional requirements were implemented. Further, in 2017 the Sandra Bland Act was passed and signed into law (along with HB 3051, which introduced new racial and ethnic designations). The Sandra Bland Law currently requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. I am pleased to report that all of these requirements have been met by the Sherman Police Department and are included in this report.

In this annual report, you will find three sections with information on motor vehicle-related contacts. In addition, when applicable, documentation is included which demonstrates the way the Sherman Police Department has complied with the Texas Racial Profiling Law. In section one, you will find the table of contents. Section two documents compliance by the Sherman Police Department relevant to the requirements established in the Texas Racial Profiling Law. That is, you will find documents relevant to the training of all police personnel on racial profiling prevention and the institutionalization of the compliment and complaint processes, as required by law.

Section three contains statistical data relevant to contacts (as defined by the law) which were made during motor vehicle stops that took place between 1/1/24 and 12/31/24. Further, this section includes the Tier 2 form, which is required to be submitted to TCOLE (Texas Commission on Law Enforcement) and the law enforcement agency's local governing authority by March 1 of each year. The data in this report has been fully analyzed and compared to information derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report.

In the last section of the report, you will find the original draft of the Texas Racial Profiling Law, SB1074, as well as the Sandra Bland Act (current law). Also in this section, a list of requirements relevant to the Racial Profiling Law, as established by TCOLE is included. The findings in this report support the Sherman Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.

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Public Education on Responding to Compliments and Complaints

Informing the Public on the Process of Filing a Compliment or Complaint with the Sherman Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Sherman Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by a Sherman Police Officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

All Sherman Police Officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Sherman Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Sherman has been included in this report.

It is important to recognize that the Chief of the Sherman Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Sherman Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

Racial Profiling Course 3256

Texas Commission on Law Enforcement

September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H. Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074



1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)



2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

- A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.
- B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole.
- C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.
- D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.
- E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
2. The driver and passengers are questioned about things that do not relate to the traffic violation
3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)



3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

A. Drug courier profile (adapted from a profile developed by the DEA)

1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
3. Vehicle is rented
4. Driver is a young male, 20-35
5. No visible luggage, even though driver is traveling
6. Driver was over-reckless or over-cautious in driving and responding to signals
7. Use of air fresheners

B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

A. Thinking about the totality of circumstances in a vehicle stop

B. Vehicle exterior

1. Non-standard repainting (esp. on a new vehicle)
2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)

C. Pre-stop indicators

1. Not consistent with traffic flow
2. Driver is overly cautious, or driver/passengers repeatedly look at police car
3. Driver begins using a car- or cell-phone when signaled to stop
4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior

1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074:



Report on Compliments and Racial Profiling Complaints



Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/24-12/31/24 based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.



A check above indicates that the Sherman Police Department has not received any complaints, on any members of its police services, for having violated the Texas Racial Profiling Law during the time period of 1/1/24-12/31/24.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint Number	Alleged Violation	Disposition of the Case

Additional Comments:

Tables Illustrating Motor Vehicle-Related Contacts

TIER 2 DATA

TOTAL STOPS: 13,738

STREET ADDRESS OR APPROXIMATE LOCATION OF STOP.

City Street	11,704
US Highway	1,428
State Highway	583
County Road	16
Private Property	7

WAS RACE OR ETHNICITY KNOWN PRIOR TO STOP?

Yes	196
No	13,542

RACE OR ETHNICITY

Alaska Native/American Indian	102
Asian/Pacific Islander	211
Black	1,998
White	8,249
Hispanic/Latino	3,178

GENDER

Female Total: 5,641

Alaska Native/American Indian	35
Asian/Pacific Islander	66
Black	812
White	3,677
Hispanic/Latino	1,051

Male Total: 8,097

Alaska Native/American Indian	67
Asian/Pacific Islander	145
Black	1,186
White	4,572
Hispanic/Latino	2,127

REASON FOR STOP?

Violation of Law Total: 243

Alaska Native/American Indian	1
Asian/Pacific Islander	2
Black	48
White	124
Hispanic/Latino	68

Pre-existing Knowledge Total: 39

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	7
White	19
Hispanic/Latino	12

Moving Traffic Violation Total: 11,184

Alaska Native/American Indian	85
Asian/Pacific Islander	182
Black	1,596
White	6,730
Hispanic/Latino	2,591

TIER 2 DATA

Vehicle Traffic Violation Total: 2,272

Alaska Native/American Indian	16
Asian/Pacific Islander	26
Black	347
White	1,376
Hispanic/Latino	507

Contraband (in plain view) Total: 9

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	2
White	3
Hispanic/Latino	4

WAS SEARCH CONDUCTED?

	YES	NO
Alaska Native/American Indian	1	101
Asian/Pacific Islander	2	209
Black	90	1,908
White	111	8,138
Hispanic/Latino	52	3,126
TOTAL	256	13,482

Probable Cause Total: 139

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	68
White	50
Hispanic/Latino	21

Inventory Total: 7

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	6
Hispanic/Latino	1

REASON FOR SEARCH?

Consent Total: 64

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	15
White	34
Hispanic/Latino	14

Incident to Arrest Total: 37

Alaska Native/American Indian	1
Asian/Pacific Islander	1
Black	5
White	18
Hispanic/Latino	12

TIER 2 DATA

WAS CONTRABAND DISCOVERED?

	YES	NO
Alaska Native/American Indian	1	0
Asian/Pacific Islander	0	2
Black	48	42
White	51	60
Hispanic/Latino	33	19
TOTAL	133	123

Did the finding result in arrest?

	YES	NO
Alaska Native/American Indian	1	0
Asian/Pacific Islander	0	0
Black	5	43
White	9	42
Hispanic/Latino	1	32
TOTAL	16	117

DESCRIPTION OF CONTRABAND

Drugs Total: 105

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	42
White	41
Hispanic/Latino	22

Currency Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Weapons Total: 1

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	1
Hispanic/Latino	0

Alcohol Total: 22

Alaska Native/American Indian	1
Asian/Pacific Islander	0
Black	4
White	4
Hispanic/Latino	13

TIER 2 DATA

Stolen Property Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Other Total: 10

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	4
White	5
Hispanic/Latino	1

RESULT OF THE STOP

Verbal Warning Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Written Warning Total: 8,759

Alaska Native/American Indian	71
Asian/Pacific Islander	146
Black	1,347
White	5,469
Hispanic/Latino	1,726

Citation Total: 4,913

Alaska Native/American Indian	30
Asian/Pacific Islander	64
Black	639
White	2,748
Hispanic/Latino	1,432

Written Warning and Arrest Total: 43

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	9
White	19
Hispanic/Latino	15

Citation and Arrest Total: 23

Alaska Native/American Indian	1
Asian/Pacific Islander	1
Black	3
White	13
Hispanic/Latino	5

Arrest Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

TIER 2 DATA

ARREST BASED ON

Violation of Penal Code Total: 35

Alaska Native/American Indian	1
Asian/Pacific Islander	0
Black	7
White	17
Hispanic/Latino	10

Violation of Traffic Law Total: 4

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	3
Hispanic/Latino	1

Violation of City Ordinance Total: 1

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	0
Hispanic/Latino	0

Outstanding Warrant Total: 26

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	4
White	12
Hispanic/Latino	9

Was physical force used resulting in bodily injury during the stop?

	YES	NO
Alaska Native/American Indian	0	102
Asian/Pacific Islander	0	211
Black	0	1,998
White	5	8,244
Hispanic/Latino	1	3,177
TOTAL	6	13,732

Tables Illustrating Motor Vehicle Related Contact Data

Table 1. Citations and Warnings

Race/ Ethnicity	All Contacts	Citations	Verbal Warning	Written Warning	Contact Percent	Citation Percent	Verbal Percent	Written Percent
Alaska Native/ American Indian	102	31	0	71	1%	1%	0%	1%
Asian/ Pacific Islander	211	65	0	146	2%	1%	0%	2%
Black	1,998	642	0	1,347	15%	13%	0%	15%
White	8,249	2,761	0	5,469	60%	56%	0%	62%
Hispanic/ Latino	3,178	1,437	0	1,726	23%	29%	0%	20%
TOTAL	13,738	4,936	0	8,759	100%	100%	0%	100%



Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households that have vehicle access.

Race/Ethnicity	Contact Percentage	Households with Vehicle Access
Alaska Native/American Indian	1%	0%
Asian/Pacific Islander	2%	5%
Black	15%	14%
White	60%	60%
Hispanic/Latino	23%	19%
TOTAL	100%	98%

Table 3. Motor Vehicle Searches and Arrests.

Race/Ethnicity	Searches	Consent Searches	Arrests
Alaska Native/American Indian	1	0	1
Asian/Pacific Islander	2	1	1
Black	90	15	12
White	111	34	32
Hispanic/Latino	52	14	20
TOTAL	256	64	66

Table 4. Instances Where Peace Officers Used Physical Force Resulting in Bodily Injury

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Arrest	Location of Stop	Reason for Stop
1	03/23/24	City Street	Traffic Violation
2	06/04/24	City Street	Traffic Violation
3	06/26/24	City Street	Traffic Violation
4	08/09/24	FM Roadway	Pedestrian in Roadway
5	08/27/24	Parking Lot	Drove Wrong Way in Roadway
6	09/07/24	Parking Lot	Erratic Behavior, Called 911 Non-Stop

Table 5. Search Data

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Found No	Arrests	Percent Searches	Percent Contraband Found	Percent No Contraband	Percent Arrest
Alaska Native/ American Indian	1	1	0	1	0%	1%	0%	2%
Asian/ Pacific Islander	2	0	2	1	1%	0%	2%	2%
Black	90	48	42	12	35%	36%	34%	18%
White	111	51	60	32	43%	38%	49%	48%
Hispanic/ Latino	52	33	19	20	20%	25%	15%	30%
TOTAL	256	133	123	66	100%	100%	100%	100%

Table 6. Report on Audits.

The following table contains data regarding the number and outcome of required data audits during the period of 1/1/24-12/31/24.

Audit Data	Number of Data Audits Completed	Date of Completion	Outcome of Audit
1	1	03/01/24	Data was valid and reliable
2	1	06/01/24	Data was valid and reliable
3	1	09/01/24	Data was valid and reliable
4	1	12/01/24	Data was valid and reliable

ADDITIONAL COMMENTS:

Table 7. Instance Where Force Resulted in Bodily Injury.

Race/Ethnicity	Number	Percent
Alaska Native/American Indian	0	0%
Asian/Pacific Islander	0	0%
Black	0	0%
White	5	83%
Hispanic/Latino	1	17%
TOTAL	6	100%

Table 8. Reason for Arrests from Vehicle Contact

Race/ Ethnicity	Violation of Penal Code	Violation of Traffic Law	Violation of City Ordinance	Outstanding Warrant	Percent Penal Code	Percent Traffic Law	Percent City Ordinance	Percent Warrant
Alaska Native/ American Indian	1	0	0	0	3%	0%	0%	0%
Asian/ Pacific Islander	0	0	0	1	0%	0%	0%	4%
Black	7	0	1	4	20%	0%	100%	15%
White	17	3	0	12	49%	75%	0%	46%
Hispanic/ Latino	10	1	0	9	29%	25%	0%	35%
TOTAL	35	4	1	26	100%	100%	100%	100%

Table 9. Contraband Hit Rate

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Hit Rate	Search Percent	Contraband Percent
Alaska Native/ American Indian	1	1	100%	0%	1%
Asian/ Pacific Islander	2	0	0%	1%	0%
Black	90	48	53%	35%	36%
White	111	51	46%	43%	38%
Hispanic/Latino	52	33	63%	20%	25%

Analysis and Interpretation of Data

As previously noted, in 2001, the Texas Legislature passed Senate Bill 1074, which eventually became the Texas Racial Profiling Law. This particular law came into effect on January 1, 2002, and required all police departments in Texas to collect traffic-related data and report this information to their local governing authority by March 1 of each year. This version of the law remained in place until 2009, when it was modified to include the collection and reporting of all motor vehicle-related contacts in which a citation was issued, or an arrest was made. Further, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individuals before detaining them. In addition, it became a requirement that agencies report motor vehicle-related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1 of each year. The purpose in collecting and disclosing this information is to determine if police officers in any particular municipality are engaging in the practice of racially profiling minority motorists.

One of the main requirements of the law is that police departments interpret motor vehicle-related data. Even though most researchers would likely agree that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is in fact very difficult to determine if individual police officers are engaging in racial profiling from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As referenced earlier, in 2009 the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1, 2010. The changes included, but are not limited to, the re-definition of a contact to include motor vehicle-related contacts in which a citation was issued, or an arrest was made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. The 2009 law also required adding "Middle Eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1 of each year.

In 2017, the Texas Legislators passed HB 3051 which removed the Middle Eastern data requirement while standardizing the racial and ethnic categories relevant to the individuals that came in contact with police. In addition, the Sandra Bland Act (SB 1849) was passed and became law. Thus, the most significant legislative mandate (Sandra Bland Act) in Texas history regarding data requirements on law enforcement contacts became law and took effect on January 1, 2018. The Sandra Bland Act not only currently requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

1. A comparative analysis of the information compiled (under Article 2.133):

- a. Evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;*
- b. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;*
- c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.*

2. Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

In an effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Sherman Police Department commissioned the analysis of its 2024 contact data. Hence, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2024 motor vehicle-related data. This particular analysis measured, as required by law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians, who came in contact with police in the course of a motor vehicle-related contact and were either issued a ticket, citation, or warning or an arrest was made. Also included in this data were instances when a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest, and use of physical force resulting in bodily injury.

The analysis on the data performed in this report, was based on a comparison of the 2024 motor vehicle contact data with a specific baseline. When reading this particular analysis, one should consider that there is disagreement in the literature regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Sherman Police Department agreed with our recommendation to rely in part, as a baseline measure, on the Fair Roads Standard. This particular baseline is established on data obtained through the U.S. Census Bureau (2020) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It should be noted that the census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless whether they are among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only, thus excluding individuals who may have come in contact with the Sherman Police Department in 2024 but live outside city limits. In some jurisdictions the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

In 2002, major civil rights groups in Texas expressed their concern and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). In essence this constitutes a comparison that may result in ecological fallacy. Despite this risk, as noted earlier, the Sherman Police Department accepted the recommendation to utilize this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the Dallas Fort-Worth (DFW) Metroplex.

Tier 2 (2024) Motor Vehicle-Related Contact Analysis

When examining the enhanced and more detailed Tier 2 data collected in 2024, it was evident that most motor vehicle-related contacts were made with Whites, followed by Hispanics. Of those who came in contact with police, most tickets or citations were issued to Whites and Hispanics; this was followed by Blacks. However, in terms of written warnings, most of these were issued to Whites, followed by Hispanics.

While reviewing searches and arrests, the data showed that most searches took place among Whites. When considering all searches, most were consented by Whites and Blacks, while most custody arrests were also of Whites. Overall, most searches resulted in contraband; of those that produced contraband, most were of Whites; this was followed by Blacks. Of the searches that did not produce contraband, most were of Whites. Most arrests were made of Whites. Most of the arrests that originated from a violation of the penal code involved Whites. Overall, the police department reports six instances where force was used that resulted in bodily injury.

Comparative Analysis

A comprehensive analysis of the motor vehicle contacts made in 2024 to the census data relevant to the number of “households” in DFW who indicated in the 2020 census that they had access to vehicles, produced interesting findings. Specifically, the percentage of Whites and Asians who came in contact with police was the same or lower than the percentage of White and Asian households in DFW that claimed in the last census to have access to vehicles. The opposite was true of Blacks, Hispanics, and American Indians. That is, a higher percentage of Blacks, Hispanics, and American Indians came in contact with police than the percentage of Black, Hispanic, and American Indian households in DFW that claimed in the last census to have access to vehicles. It should be noted that the percentage difference among Black and American Indian contacts with households is of less than 3%; thus, deemed by some as statistically insignificant.

The comprehensive analysis of the searches resulting in contraband shows that the most significant contraband hit rate is of American Indians. This was followed by Hispanics and Blacks. This means that among all searches performed in 2024, the most significant percentage of these that resulted in contraband was among American Indians. The lowest contraband hit rate was among Asians.

Summary of Findings

As previously noted, the most recent Texas Racial Profiling Law requires that police departments perform data audits in order to validate the data being reported. Consistent with this requirement, the Sherman Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in Table 6, the audit performed reveals that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

While considering the findings produced as a result of this analysis, it is recommended that the Sherman Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected), which may prove to be useful when determining the nature of the contacts police officers are making with all individuals.

As part of this effort, the Sherman Police Department should continue to:

- 1) Perform an independent analysis on contact and search data in the upcoming year.
- 2) Commission data audits in 2025 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The comprehensive data analysis performed serves as evidence that the Sherman Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of Tier 2 data, and ensures that the practice of racial profiling will not be accepted or tolerated.

Checklist

The following requirements were met by the Sherman Police Department in accordance with The Texas Racial Profiling Law:

- ✓ Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- ✓ Include in the racial profiling policy, a statement indicating prohibition of any peace officer employed by the Sherman Police Department from engaging in racial profiling.
- ✓ Implement a process by which an individual may file a complaint regarding racial profiling violations.
- ✓ Provide public education related to the compliment and complaint process.
- ✓ Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- ✓ Collect, report and analyze motor vehicle data (Tier 2).
- ✓ Commission Data Audits and a Search Analysis.
- ✓ Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- ✓ Produce an annual report on police contacts (Tier 2) and present this to the local governing body and TCOLE by March 1, 2025.
- ✓ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.

Legislative & Administrative



TCOLE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of **what** must be accomplished by an agency but allows wide latitude in determining **how** the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling;
and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) ~~[(7)]~~ the date of conviction; and

(9) ~~[(8)]~~ the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

Modifications to the Original Law

(H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION _____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or~~

~~municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race":

~~[(1) "Race]~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~[(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any ~~[each]~~ person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense]~~;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description ~~[the type]~~ of the contraband or evidence ~~[discovered]~~;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle ~~[existed and the facts supporting the existence of that probable cause];~~

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop~~[, including a description of the warning or a statement of the violation charged].~~

SECTION _____. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) ~~[means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].~~

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each ~~[local]~~ law enforcement agency shall submit a report containing the incident-based data ~~[information]~~ compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency ~~[in a manner approved by the agency].~~

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities ~~[determine the prevalence of racial profiling by peace officers employed by the agency]; and~~

(B) examine the disposition of motor vehicle ~~[traffic and pedestrian]~~ stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [the] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic or pedestrian]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle ~~[traffic and pedestrian]~~ stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle ~~[traffic and pedestrian]~~ stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle ~~[traffic and pedestrian]~~ stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle ~~[traffic and pedestrian]~~ stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle ~~[traffic or pedestrian]~~ stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION _____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION _____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION _____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION _____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

- (1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure;
or

(3) a commission rule.

SECTION _____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) [of a particular descent, including Caucasian, African, Hispanic,] Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino [~~Native American, or Middle Eastern descent~~].

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) [of a particular descent, including Caucasian, African, Hispanic,] Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino [~~or Native American descent~~].

SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Sandra Bland Act

(S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision

(1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B

or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].

(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown

otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,], at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

- (a) The commission shall:
- (1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;
 - (2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;
 - (3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;
 - (4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;
 - (5) revise, amend, or change rules and procedures if necessary;
 - (6) provide to local government officials consultation on and technical assistance for county jails;
 - (7) review and comment on plans for the construction and major modification or renovation of county jails;
 - (8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;
 - (9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;
 - (10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;
 - (11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;
 - (12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;
 - (13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;
 - (14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;
 - (15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;
 - (16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:
 - (A) common issues concerning jail administration;
 - (B) examples of successful strategies for maintaining compliance with state law and the rules,

standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A) determine if a prisoner is pregnant; and

(B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read

as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and
(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;
(2) an attempted suicide;
(3) a death;
(4) a serious bodily injury, as that term is defined by
Section 1.07, Penal Code;
(5) an assault;
(6) an escape;
(7) a sexual assault; and
(8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other

than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this

section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

- (1) topics selected by the agency; and
- (2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:
 - (A) civil rights, racial sensitivity, and cultural diversity;
 - (B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]
 - (C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and
 - (D) unless determined by the agency head to be inconsistent with the officer's assigned duties:
 - (i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and
 - (ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read

as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information

relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
- (D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
- (E) the location of the stop; and
- (F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

- (A) the Texas Commission on Law Enforcement; and
- (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

- (A) the person's gender; and
- (B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search

and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship,

available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal

Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and
(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

Senate Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:
Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:
Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

Date

Governor

Chief Clerk of the House

**SHERMAN
POLICE DEPARTMENT
RACIAL PROFILING POLICY**

	SHERMAN POLICE DEPARTMENT Policy and Procedure Manual		
	Policy 3.4	Bias-Based Policing	
	TPCA Best Practices Accreditation Standards 2.01		
	Effective Date: 01-01-02	Revision Date: 01-19-23	Pages - 7

I. POLICY STATEMENT

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, sexual orientation, national origin, ethnicity, age, or religion. Although it is true that all people carry biases, in law enforcement the failure to control our biases can lead to illegal arrests, searches, and detentions, thus thwarting the mission of our Department. Most importantly, actions guided by bias destroy the trust and respect essential for our mission to succeed. We live and work in communities very diverse in population. Respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions -- particularly stops of individuals for traffic and other violations, investigative detentions, arrests, searches, and seizures of persons or property -- shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and by statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions that support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, any other identifiable group, or based on racial or ethnic stereotypes. Officers shall base all of their actions on a reasonable suspicion that the person or an occupant of a vehicle committed an offense. Officers of the Sherman Police Department are strictly prohibited from initiating any action that constitutes racial or bias-based policing.

All Department orders are informed and guided by this policy. Nothing in this policy limits non-enforcement contacts between officers and the public.

II. PURPOSE

The purpose of this order is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

III. DEFINITIONS

Most of the following terms appear in this policy statement. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- A. Bias: Prejudice or partiality based on preconceived ideas, a person's upbringing, culture, experience, or education.

- B. Biased policing: Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- C. Ethnicity: A cluster of characteristics that may include race but also cultural characteristics or traits that are shared by a group with a common experience or history.
- D. Gender: Unlike sex, a psychological classification based on cultural characteristics or traits.
- E. Probable cause: Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.
- F. Race: A category of people of a particular decent, including Caucasian, African, Hispanic, Asian, Middle Eastern, or Native American descent. As distinct from ethnicity, race refers only to physical characteristics sufficiently distinctive to group people under a classification.
- G. Racial profiling: A law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
- H. Reasonable suspicion: Articulable, objective facts that lead an experienced officer to suspect that a person has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be "objectively reasonable."
- I. Sex: A biological classification, male or female, based on physical and genetic characteristics.
- J. Stop: An investigative detention. The detention of a subject for a brief period of time, based on reasonable suspicion.
- K. Motor Vehicle Stop: An occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

IV. PROCEDURES

A. General Responsibilities

1. Officers are prohibited from engaging in bias-based policing or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. (TBP 2.01)
2. Investigative detentions, motor vehicle stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative

detentions, motor vehicle stops, subject stops, arrests, nonconsensual searches, and property seizures. Except as provided in number 3 below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.

3. Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion. Except as provided above, race/ethnicity reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall be subjected to stops, seizures, or detentions only upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.
4. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
 - a. As motor vehicle stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a motor vehicle stop may be crucial to a person's perception of fairness or discrimination.
 - b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
5. All personnel shall treat everyone with the same courtesy and respect that they would have others observe toward Department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
 - a. Personnel shall facilitate an individual's access to other governmental services whenever possible, and shall actively provide referrals to other appropriate agencies.
 - b. All personnel shall courteously accept, document, and forward to the Chief of Police any complaints made by an individual against the Department. Further, officers shall provide information on the complaint process and shall give copies of our "Citizen Complaint Process" brochure when appropriate.
6. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety.
7. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their Department identification number, name of the immediate supervisor, or any other reasonable information.
8. All personnel are accountable for their actions. Personnel shall justify their actions when required.

B. Supervisory Responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.

2. Supervisors shall use the disciplinary mechanisms of the Department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.
4. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to personnel. Lack of control over bias also exposes the Department to liability consequences.
5. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.
6. Supervisors shall ensure that all enforcement actions are duly documented per Department policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.
7. Supervisors shall facilitate the filing of any complaints about law enforcement service.

C. Disciplinary Consequences

Actions prohibited by this order shall be cause for corrective/disciplinary action, up to and including termination.

D. Training (TBP 2.01)

Officers shall be responsible for completing all training required by the Department and by state law regarding bias-based profiling.

V. PUBLIC INFORMATION

The Department will inform the public of its policy against bias-based policing and the process by which a citizen may make a complaint against a Department employee. Initially, the public will be informed through the news media, with additional efforts to educate the public about the policy and the complaint process made during presentations to civic groups, and by including information on the Sherman Police Department website and in the Department lobby.

VI. OVERSIGHT AND REVIEW

Motor vehicle stops will be accompanied by consistent, ongoing supervisory oversight to ensure that officers do not go beyond the parameters of reasonableness in conducting such activities.

- A. Supervisors shall ensure compliance with this policy and other applicable directives.
- B. The patrol shift supervisors shall review a minimum of one motor vehicle stop for each of their subordinates each month.
- C. The patrol shift supervisors shall report the information obtained from their review of officer motor vehicle stops to their Patrol Commander each calendar quarter. The report shall contain the following:

1. The name of the officer under review,
 2. The number of motor vehicle stops that were reviewed,
 3. The date and time of each motor vehicle stop reviewed, and
 4. A written assessment of each motor vehicle stop reviewed, which shall include:
 - a. The race/ethnicity of the citizen contacted;
 - b. Whether a search was conducted;
 - c. If a search was conducted, whether consent was given by the citizen;
 - d. If a search was conducted, whether or not contraband was found;
 - e. The final disposition of the citizen contact by the officer;
 - f. Whether officer's actions were in accordance with Department policy and procedures; and
 - g. A summary of the feedback provided to the officer.
 5. The Patrol Commanders will review these reports to ensure compliance and will submit a quarterly report to the Patrol Bureau Chief.
 6. The quarterly reports will be maintained in PowerDMS, the Department's document management system.
- D. Appropriate corrective/disciplinary action will be taken against any member who, after investigation, is shown to have engaged in bias-based policing in violation of this policy.

VII. DATA COLLECTION

- A. Pursuant to state law, officers are required to collect information relating to all motor vehicle stops by documenting the following required data:
1. The race or ethnicity of the individual detained;
 2. Whether or not a search was conducted;
 3. Whether or not the search was conducted by consent, and
 4. Whether the officer knew the race or ethnicity of the individual detained before detaining that individual.
- B. To ensure that data related to biased/racial profiling is collected in accordance with state law and Department policy, the following procedures shall be followed;
1. For all motor vehicle stops, the officer who initiated the stop shall issue the driver a citation or warning citation for the violation using the Department-issued electronic ticket writers.
 2. When completing citations or warning citations, officers are required to complete all pertinent information fields with special attention placed upon fields related to biased/racial profiling data.
 3. When an arrest is made, the officer will enter the citation, warning, or FI number into the notes section of the RMS Arrest module in conjunction with other required information. The officer will also note that the arrest is based on a motor vehicle stop.

4. The on-duty supervisor is responsible for verifying that arrests resulting from motor vehicle stops are properly documented.
5. The Department-issued electronic ticket writers should not be used to document FI contacts that are not related to motor vehicle stops as this will affect the accuracy of the data.

VIII. MOTOR VEHICLE RECORDING (MVR) EQUIPMENT

- A. All marked patrol vehicles are equipped with video cameras. The video and audio shall be activated before all motor vehicle stops, to record the actions of the vehicle and/or behavior of the person, and shall remain activated until the person is released (refer to Policy 3.16, VII. for additional activation requirements).
- B. Patrol officers are responsible for ensuring that the mobile video recording equipment is fully operational throughout their tour of duty. Any equipment failures or repairs needed should be immediately reported to the on-duty shift supervisor.
- C. Audio/Visual recordings documenting motor vehicle stops will be maintained for a minimum period of ninety (90) days before being purged. If a complaint is filed alleging bias-based policing, the audio and video record of the stop will be retained until the final disposition of the complaint.

IX. REPORTING

- A. The Department will contract with a vendor who:
 1. Will prepare an annual report for the calendar year consisting of a comparative analysis of the collected motor vehicle contact data;
 2. Will conduct a comparative quarterly data audit throughout the calendar year;
 3. The annual report will be submitted to the Chief of Police. At a minimum, the report must include:
 - a. A determination of the prevalence of bias-based policing.
 - b. An examination of the disposition of motor vehicle stops, including searches resulting from the stops.
 - c. Information relating to each complaint within the Department alleging bias-based policing.
 - d. The report may not include identifying information about an officer or about the person stopped or arrested.
- B. The Chief of Police shall submit the vendor's annual report to the City Manager who makes the report available to the City Council.
- C. The Chief of Police shall submit an annual report of the information collected to the Texas Commission on Law Enforcement (TCOLE).

X. COMPLAINT PROCESS

- A. Any individual who believes that a peace officer employed by this Department has engaged in conduct that may constitute racial or bias-based policing with respect to the individual, may file a

complaint with any supervisor of the Department.

- B. Any officer who is the subject of an investigation, based on a complaint alleging that the officer engaged in bias-based policing, who submits a written request for an audio or video copy of the recording of the occurrence will be promptly provided a copy of that recording(s). The written request shall be in a memorandum and submitted to the Investigator conducting the investigation.
- C. The complaint will be received, processed, investigated, and adjudicated in accordance with applicable Sherman Police Department policies and procedures



Jason Jeffcoat, Chief of Police

For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting©
817.681.7840
www.texasracialprofiling.com
www.delcarmenconsulting.com

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Racial Profiling Report | Full

Agency Name: SHERMAN POLICE DEPT.
Reporting Date: 01/31/2025
TCOLE Agency Number: 181208

Chief Administrator: TERRY J. JEFFCOAT

Agency Contact Information:
Phone: (903) 892-7323
Email: jasonj@cityofsherman.com

Mailing Address:
2600 W Travis Street
SHERMAN, TX 75092

This Agency filed a full report

SHERMAN POLICE DEPT. has adopted a detailed written policy on racial profiling. Our policy:

- 1) clearly defines acts constituting racial profiling;
- 2) strictly prohibits peace officers employed by the SHERMAN POLICE DEPT. from engaging in racial profiling;
- 3) implements a process by which an individual may file a complaint with the SHERMAN POLICE DEPT. if the individual believes that a peace officer employed by the SHERMAN POLICE DEPT. has engaged in racial profiling with respect to the individual;
- 4) provides public education relating to the agency's complaint process;
- 5) requires appropriate corrective action to be taken against a peace officer employed by the SHERMAN POLICE DEPT. who, after an investigation, is shown to have engaged in racial profiling in violation of the SHERMAN POLICE DEPT. policy;
- 6) requires collection of information relating to motor vehicle stops in which a warning or citation is issued and to arrests made as a result of those stops, including information relating to:
 - a. the race or ethnicity of the individual detained;
 - b. whether a search was conducted and, if so, whether the individual detained consented to the search;
 - c. whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
 - d. whether the peace officer used physical force that resulted in bodily injury during the stop;
 - e. the location of the stop;
 - f. the reason for the stop.
- 7) requires the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
 - a. the Commission on Law Enforcement; and
 - b. the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

The SHERMAN POLICE DEPT. has satisfied the statutory data audit requirements as prescribed in Article 2.133(c),

Code of Criminal Procedure during the reporting period.

Executed by: KEVIN GARBACIK
Admin Lieutenant

Date: 01/31/2025

Total stops: 13738

Street address or approximate location of the stop

City street	11704
US highway	1428
County road	16
State highway	583
Private property or other	7

Was race or ethnicity known prior to stop?

Yes	196
No	13542

Race / Ethnicity

Alaska Native / American Indian	102
Asian / Pacific Islander	211
Black	1998
White	8249
Hispanic / Latino	3178

Gender

Female 5641

Alaska Native / American Indian	35
Asian / Pacific Islander	66
Black	512
White	3677
Hispanic / Latino	1051

Male 8097

Alaska Native / American Indian	67
Asian / Pacific Islander	145
Black	1186
White	4572
Hispanic / Latino	2127

Reason for stop?

Violation of law 243

Alaska Native / American Indian	1
Asian / Pacific Islander	2
Black	48
White	124

Hispanic / Latino	68
Preexisting knowledge	39
Alaska Native / American Indian	0
Asian / Pacific Islander	1
Black	7
White	19
Hispanic / Latino	12
Moving traffic violation	11184
Alaska Native / American Indian	85
Asian / Pacific Islander	182
Black	1596
White	6730
Hispanic / Latino	2591
Vehicle traffic violation	2272
Alaska Native / American Indian	16
Asian / Pacific Islander	26
Black	347
White	1376
Hispanic / Latino	507
Was a search conducted?	
Yes	256
Alaska Native / American Indian	1
Asian / Pacific Islander	2
Black	90
White	111
Hispanic / Latino	52
No	13482
Alaska Native / American Indian	101
Asian / Pacific Islander	209
Black	1908
White	8138
Hispanic / Latino	3126
Reason for Search?	
Consent	64
Alaska Native / American Indian	0
Asian / Pacific Islander	1
Black	15
White	34

Hispanic / Latino	14				
Contraband	9				
Alaska Native / American Indian	0				
Asian / Pacific Islander	0				
Black	2				
White	3				
Hispanic / Latino	4				
Probable	139				
Alaska Native / American Indian	0				
Asian / Pacific Islander	0				
Black	68				
White	50				
Hispanic / Latino	21				
Inventory	7				
Alaska Native / American Indian	0				
Asian / Pacific Islander	0				
Black	0				
White	6				
Hispanic / Latino	1				
Incident to arrest	37				
Alaska Native / American Indian	1				
Asian / Pacific Islander	1				
Black	5				
White	18				
Hispanic / Latino	12				
Was Contraband discovered?					
Yes	133				
		Did the finding result in arrest?			
		(total should equal previous column)			
Alaska Native / American Indian	1	Yes	1	No	0
Asian / Pacific Islander	0	Yes	0	No	1
Black	48	Yes	5	No	7
White	51	Yes	9	No	23
Hispanic / Latino	33	Yes	1	No	19
No	123				
Alaska Native / American Indian	0				
Asian / Pacific Islander	2				
Black	42				
White	60				
Hispanic / Latino	19				

Description of contraband	
Drugs	105
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	42
White	41
Hispanic / Latino	22
Weapons	1
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	1
Hispanic / Latino	0
Currency	0
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	0
Hispanic / Latino	0
Alcohol	22
Alaska Native / American Indian	1
Asian / Pacific Islander	0
Black	4
White	4
Hispanic / Latino	13
Stolen property	0
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	0
Hispanic / Latino	0
Other	10
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	4
White	5
Hispanic / Latino	1
Result of the stop	
Verbal warning	0

Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	0
Hispanic / Latino	0
Written warning	8759
Alaska Native / American Indian	71
Asian / Pacific Islander	146
Black	1347
White	5469
Hispanic / Latino	1726
Citation	4913
Alaska Native / American Indian	30
Asian / Pacific Islander	64
Black	639
White	2748
Hispanic / Latino	1432
Written warning and arrest	43
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	9
White	19
Hispanic / Latino	15
Citation and arrest	23
Alaska Native / American Indian	1
Asian / Pacific Islander	1
Black	3
White	13
Hispanic / Latino	5
Arrest	0
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	0
Hispanic / Latino	0
Arrest based on	
Violation of Penal Code	35
Alaska Native / American Indian	1
Asian / Pacific Islander	0

Black	7
White	17
Hispanic / Latino	10
Violation of Traffic Law	4
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	3
Hispanic / Latino	1
Violation of City Ordinance	1
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	1
White	0
Hispanic / Latino	0
Outstanding Warrant	26
Alaska Native / American Indian	0
Asian / Pacific Islander	1
Black	4
White	12
Hispanic / Latino	9

Was physical force resulting in bodily injury used during stop?

Yes	5
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	5
Hispanic / Latino	0
Resulting in Bodily Injury To:	
Suspect	2
Officer	0
Both	3
No	13733
Alaska Native / American Indian	102
Asian / Pacific Islander	211
Black	1998
White	8244
Hispanic / Latino	3178

Number of complaints of racial profiling

Total	0
Resulted in disciplinary action	0
Did not result in disciplinary action	0

Comparative Analysis

Use TCOLE's auto generated analysis	☒
Use Department's submitted analysis	☐

Optional Narrative

N/A

Submitted electronically to the



The Texas Commission on Law Enforcement



City Council Regular Meeting

Agenda Item No. I.1.

Meeting Date: 2/17/2025

Prepared By: Linda Ashby, City Clerk

Approved By: Zachary Flores, Assistant City Manager

Caption:

Boards/Commission Appointment

Library Board (2)

Issue:

Laurie Mealy's term on the Library Board expired on January 19, 2025, and Donna Nesbit's term expired on February 5, 2025. Ms. Mealy has served three terms and is not eligible for reappointment. Ms. Nesbit is eligible and does wish to be reappointed. There is an application from John West for service on the Library Board.

Background:

The Library Board serves in an advisory capacity to the City Librarian, the City Manager, and the City Council.

Origination:

City Clerk's Office

Financial Consideration:

There is no financial consideration.

Staff Recommendation:

It is recommended that the City Council reappoint Donna Nesbit and appoint John West to the Library Board.

Alternatives:

The Council could delay appointments or appoint someone else to the Board.

Attachments:

1. Library Board
2. Library Board - Fact Sheet
3. Applicant List for Library Board (2)
4. Donna Nesbit Reappointment Letter
5. John West Application

MEMBERSHIP ROSTER

LIBRARY BOARD

LENGTH OF TERMS: THREE YEARS
Term Limit: Three Consecutive Terms

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
Lisa Hébert	4	A 3/20/2016 R 3/20/2019 R 3/20/2022	3/20/2019 3/20/2022 3/20/2025	1 2 3	Members are required to be residents of Sherman; have knowledge of Library Affairs and operations; and appreciate books.
Rebecca Hogenson	n/a	A 10/22/2024	10/22/2027	1	
Laurie Mealy	1	A 1/19/2016 R 1/19/2019 R 1/19/2022	1/19/2019 1/19/2022 1/19/2025	1 2 3	
Mitchell McCraw	n/a	A 3/22/2022	3/22/2025	1	
Marty Burkart	1	A 3/22/2022	3/22/2025	1	
Cort Myrick	n/a	U 5/4/2021 R 8/4/2023	8/4/2023 8/4/2026	1 2	
Donna Nesbit	4	A 2/5/2019 R 2/5/2022	2/5/2022 2/5/2025	1 2	

NOTE:

CITY STAFF: Melissa Eason, Library Services Manager
Revised 10/22/2024

FACT SHEET

LIBRARY BOARD

Established by ORDINANCE 1736 – APRIL 14, 1948; REVISED ORDINANCE 4223 – OCTOBER 21, 1991; REVISED ORDINANCE 4367 – OCTOBER 3, 1994

1. Number of Members: SEVEN
2. Term of Appointment: THREE YEARS
3. Consecutive Term Rule: THREE TERMS – ORDINANCE 4223 (10/21/91)
4. Qualifications for Membership: RESIDENTS OF SHERMAN; KNOWLEDGE OF LIBRARY AFFAIRS AND OPERATION; APPRECIATION OF BOOKS
5. Appointed by: MAYOR AND CITY COUNCIL
6. Board Organization

CHAIRPERSON E VICE CHAIRPERSON SECRETARY E

ELECTED E APPOINTED
7. Departmental Responsibility: DIRECTOR OF LIBRARY SERVICES
8. Meeting Date: NO RULE – AS SET BY BOARD BY-LAWS
9. Attendance Requirements: NO RULE – AS SET BY BOARD BY-LAWS

=====

PURPOSE:

Shall serve in an advisory capacity with the City Librarian, the City Manager and the City Council.

RESPONSIBILITIES:

Said Board shall have no authority to bind the City of Sherman to any contract or interfere in any manner with City operations of Library Services.

APPLICANT LIST

Library Board

Positions Vacant 2

Applicant	Address	District	Qualifications
Donna Nesbit	1701 Archer	4	Current Member; Wishes to be Reappointed
John West	315 W. McGee	1	Retired Librarian

COMMENTS:

PUBLIC RECORDS DEPARTMENT
Phone No. (903) 892-7204
Fax No. (903) 892-7394

January 13, 2025

Donna Nesbit
1701 Archer
Sherman, Texas 75092



RE: Library Board

Dear Ms. Nesbit:

Your term on the Library Board expires on February 5, 2025. You are eligible for reappointment to the Board. Please let me know whether or not you are interested in reappointment to this board by checking the appropriate statement at the bottom of this letter and returning a copy to me at the address below. If you have any questions or need additional information, please don't hesitate to contact me.

Best regards,

Linda Ashby

Linda Ashby
City Clerk

cc: Melissa Eason, Library Services Administrator

☒

I do wish to be considered for reappointment to this board

☐

I do not wish to be considered for reappointment to this board

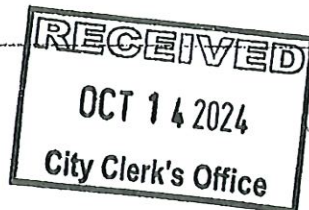
DNesbit
Signature

1/22/2025
Date

Please return to: City of Sherman
City Clerk's Office
P.O. Box 1106
Sherman, Texas 75091-1106



CITY OF SHERMAN
APPLICATION FOR BOARD OR COMMISSION
MEMBERSHIP



Return completed application to:
City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: John Richard West
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: Library Board

☒ Yes, I would be interested in serving on subcommittees that may be formed.

Home Address: <u>315 W. McGee, Sherman</u>		Business Name: _____	
Mailing Address: <u>same</u>		Occupation: <u>retired librarian</u>	
Telephone: <u>(903) 436-4626</u> Fax: _____		Address: _____	
E-Mail: <u>jwest.nevans@gmail.com</u>		Telephone: _____ Fax: _____	
Sherman Resident for <u>40</u> years County: <u>Grayson</u>		E-Mail: _____	
Drivers License No.: <u>13476262</u>		_____	
Voter Registration No.: <u>2166583461</u> ✓		_____	

Which Council District do you live in? (see attached map) 1 ✓

Prior work experience: (please include dates)
1984 - 2016 librarian / library
director at Austin College

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 1969
Business College, Correspondence School, Adult Education, Other? _____
Name of College/University: LaGrange College / Univ of Pittsburgh ☐ Bachelor's ☒ Master's ☐ PhD

Volunteer Work: (please include dates)
previously served on library board
Meals on Wheels - 2019 - and continuing

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Taxes - None

Application held for 12 months from date received

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission (how would you use this experience to benefit the City)?

have served several terms previously & have experience with issues relating to a library & I believe a public library is fundamental to a democracy.

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

- 1) funding - as more types of information are available online "free" there can be a view as to why spend money on sources that cost money. The expression, you get what you pay for, is applicable. Would anyone want someone with no training to use the info on a YouTube video to perform surgery?
- 2) staffing - studies have shown multi-tasking is the best way to have more than one responsibility done badly. People services should have trained individuals, who may have cross-training, but that's for short term situations, only.
- 3) library policies, including collection, retention and challenges to the collection - members of the board, as reasonable people can review and recommend changes, if necessary.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

I have worked in or volunteered at libraries since I was 17/am now 73; have served on library association groups.

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☐ Yes ☒ No
Comments: no recent conversations

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: _____

Date: _____

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN, PROUD HISTORY

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]