

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, OCTOBER 17, 2011
5:00 P.M.**

- A.1 [CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN](#)
- A.2 [PLEDGE OF ALLEGIANCE](#)
- A.3 [INVOCATION BY COUNCIL MEMBER JOE N. SMITH](#)
- A.4 [APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF OCTOBER 3, 2011 AND THE CALLED CITY COUNCIL MEETING \(HELD JOINTLY WITH THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS\) OF OCTOBER 3, 2011](#)

Proclamation

- A.5 [PROCLAMATION](#)
“Lions White Cane Day” – November 5, 2011

Public Hearing

- B.1 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5723 AND AN APPLICATION TO DRILL AN OIL AND GAS WELL](#)
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow the Drilling of an Oil/Gas Well (Skaggs #2) in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District at 4335 U.S. Highway 82 East, being 194.896 acres in the William Brogden Survey, Abstract No. 92 (Jack and Patsy Pierce, Mineral Rights Owners; Greg Spalding, Longfellow Energy, LP, Representative; and Sartin & Associates, Inc., Surveyors); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00
- B.2 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5724](#)
Relating to the Approval of Taxation of Goods-in-Transit that are Otherwise Exempt from Taxation by Texas Tax Code Section 11.253
- B.3 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5725](#)
Amending Chapter 3, entitled “Building Regulations”, Article 3.12, entitled “Flood Damage Prevention”, at Section 3.12.041, entitled “Designation of Floodplain Administrator”, to Designate the City Engineer as Floodplain Administrator

Close Public Hearing and Consider Adoption of Ordinances

B.4 [ADOPTION OF ORDINANCES](#)

Consider Adoption of Ordinance Numbers:

- (a) 5723
- (b) 5724
- (c) 5725

B.5 [CONSENT AGENDA](#)

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

Resolutions

C.1 [TABLED AT THE OCTOBER 3, 2011 CITY COUNCIL MEETING:](#) [RESOLUTION NO. 5620](#)

Nominating a Candidate to the Grayson Central Appraisal District Board of Directors

C.2 [RESOLUTION NO. 5626](#)

Repealing in its Entirety Resolution No. 5280, which Authorized the Execution of an Agreement with Panda Sherman Power, LLC for Water Services

C.3 [RESOLUTION NO. 5627](#)

Authorizing Execution of an Agreement with Panda Sherman Power, LLC for Water Services

C.4 [* RESOLUTION NO. 5628](#)

Authorizing Execution of an Agreement with Underwood Drafting and Surveying, Inc. for Surveying Services on the Storm Sewer Data Collection and Mapping Project

Request to Advertise

D.1 [* REQUEST TO ADVERTISE](#)

Water Meters and Water Meter Radio-Read Endpoints

Other Business

D.2 [* OTHER BUSINESS](#)

Consider Longfellow Energy, LP's Application for a Permit to Drill an Oil and Gas Well (Skaggs #2) in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District at 4335 U.S. Highway 82 East, being 194.896 Acres in the William Brogden Survey, Abstract No. 92

D.3 [* OTHER BUSINESS](#)

Consider Request of the Austin College Kappa Gamma Chi to Temporarily Close Certain Streets for the Homecoming 2011 'Roo Run and Joey Walk on Saturday, October 29, 2011

D.4 [* OTHER BUSINESS](#)

Set Date to Canvass Results of the City of Sherman's Regular and Special Municipal Elections

D.5 [CITIZEN REQUESTS](#)

D.6 [MEDIA QUESTIONS](#)

D.7 [COUNCIL COMMENTS](#)

Executive Session

E.1 [EXECUTIVE SESSION](#)

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

Section 551.074

Personnel Matters

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

(i) Sherman Economic Development Corporation
Board of Directors (1)

The Council reconvenes into General Session

F.1 [OPEN MEETING](#)

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

F.2 [ADJOURNMENT](#)

[COUNCIL CALENDAR](#)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Joe N. Smith, Council Member



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. A.3

INVOCATION BY COUNCIL MEMBER JOE N. SMITH



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. A.4

APPROVE MINUTES

**OF THE REGULAR CITY COUNCIL MEETING OF OCTOBER 3, 2011
AND THE CALLED CITY COUNCIL MEETING (HELD JOINTLY WITH
THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION BOARD
OF DIRECTORS) OF OCTOBER 3, 2011**

October 3, 2011

MEMBERS PRESENT: MAYOR BILL MAGERS; DEPUTY MAYOR WILLIE STEELE. COUNCIL MEMBERS ADAMI, HOWETH, SMITH, SOFTLY, WACKER.

CALL TO ORDER

CALL TO ORDER

APPROVE MINUTES

PUBLIC HEARING

**ANNEXATION --
1,000' ON BOTH SIDES
OF U.S. HWY 82 &
S.H. 289**

No citizens appeared before the City Council to discuss the proposed annexation of approximately one thousand feet (1,000') on both sides of U.S. Highway 82 and S.H. 289 in the City's extra-territorial jurisdiction.

The Public Hearing was closed.

CONSENT AGENDA

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

**RESOLUTION NO. 5616 – REPEALING IN ITS ENTIRETY
RESOLUTION NO. 5393, WHICH AUTHORIZED THE
EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN
POWER, LLC FOR THE ABATEMENT OF AD VALOREM
PROPERTY TAXES WITHIN INDUSTRIAL REINVESTMENT
ZONE NO. 072009-2**

**RES 5616
REPEAL RES 5393
PANDA ENERGY
TAX ABATEMENT**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING IN ITS ENTIRETY RESOLUTION NO. 5393, WHICH AUTHORIZED EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES WITHIN INDUSTRIAL REINVESTMENT ZONE NO. 072009-2.

RESOLUTION NO. 5617 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES WITHIN INDUSTRIAL REINVESTMENT ZONE NO. 072009-2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES WITHIN INDUSTRIAL REINVESTMENT ZONE NO. 072009-2.

RES 5617
PANDA ENERGY
NEW TAX ABATEMENT

RESOLUTION NO. 5618 – REPEALING IN ITS ENTIRETY RESOLUTION NO. 5394, WHICH AUTHORIZED THE EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING IN ITS ENTIRETY RESOLUTION NO. 5394, WHICH AUTHORIZED EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE.

RES 5618
REPEAL RES 5394
PANDA ENERGY
380 ECONOMIC
DEVELOPMENT
AGREEMENT

RESOLUTION NO. 5619 – AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE.

RES 5619
PANDA ENERGY
380 ECONOMIC
DEVELOPMENT
AGREEMENT

Mayor Magers explained that Resolution Nos. 5616, 5617, 5618, and 5619 all dealt with Panda Energy. The City is extending some dates and the resolutions make these administrative changes.

Robby Hefton, Assistant City Manager/CFO, said a couple of years ago Panda Energy requested a tax abatement which was granted in 2009. Since that time the markets have not been favorable for Panda Energy to raise financing for the project.

Recently the market has been turning around and Panda Energy has asked if the timeline could be extended a couple of years to allow them to recoup the lost time. The Tax Abatement Committee agreed to the extension.

Two of the resolutions repeal the original tax abatement agreement and the original 380 agreement, which is a five year agreement that starts after the tax abatement period is over. The other two resolutions approve the new agreements on basically the exact terms, just extended a couple of years.

Mayor Magers added this is designed to give Panda Energy the full advantage of the tax abatement once they begin construction.

Council Member Adami said originally the City Council felt the agreements were a good deal from a tax standpoint and from the improvement in the property base, as well as the opportunity to sell water to a large water user. He supported the approval of the agreements.

Mr. Hefton added that the water services agreement will probably be on the next City Council Meeting agenda. The two parties agree in concept to the changes but the agreement still needs to be reviewed by the attorneys.

Council Member Adami asked for an explanation of the difference between a tax abatement and a 380 agreement. Mr. Hefton explained that the Tax Code doesn't allow for a tax abatement in excess of 10 years. Since the City's incentive package to Panda Energy was for 15 years, the first 10 years are covered by the tax abatement agreement, which is allowed by law. The 380 agreement is a broad statute which allows cities to offer other economic incentives beyond a tax abatement agreement.

The 380 agreement will effectively extend the tax benefits to Panda Energy for a period of five years after the tax abatement agreement. These benefits do decline over the time of the agreements.

Mr. Hefton said unlike a tax abatement which comes off the top of Panda Energy's bill, a 380 agreement is a tax rebate. They will pay the money in and if the conditions of the agreement are met, then the City will rebate a portion of that money back to the company.

ACTION TAKEN.

Motion by Council Member Adami to approve Resolution Nos. 5616, 5617, 5618, and 5619, as presented. Second by Council Member Smith.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 5620 – NOMINATING A CANDIDATE TO THE GRAYSON CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, NOMINATING A CANDIDATE TO THE GRAYSON CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS.

RES 5620
GRAYSON CENTRAL
APPRAISAL DISTRICT
BOARD NOMINEE
(TABLED)

Mayor Magers said two years ago, the City Council abstained from voting on this issue. The Grayson Appraisal District's votes are based on tax levy instead of tax value. Because of the extremely low property tax in Sherman and despite the fact that Sherman is the second largest value holder in the Appraisal District, Sherman's vote is symbolic.

He has discussed the issue with Dr. Al Hambrick, Sherman Independent School District, in relation to their votes. The deadline has been extended to October 17, 2011 for consideration of the issue.

Mayor Magers said the City could abstain again, nominate their own candidate, or support the School District and their candidate. He asked that the City Council consider tabling consideration of Resolution No. 5620 until the next City Council Meeting.

ACTION TAKEN.

Motion by Council Member Smith to table Resolution No. 5620. Second by Deputy Mayor Steele.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED TO TABLE.

RESOLUTION NO. 5621 – AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS WITH THE SHERMAN COUNCIL FOR THE ARTS & HUMANITIES, INC. AND THE SHERMAN MUSEUM

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

CONSENT AGENDA.

RES 5621
COUNCIL FOR THE
ARTS & HUMANITIES
& SHERMAN MUSEUM

RESOLUTION NO. 5622 – AUTHORIZING THE PURCHASE OF FOUR (4) CHEVROLET TAHOE POLICE PATROL VEHICLES FOR THE SHERMAN POLICE DEPARTMENT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF FOUR (4) CHEVROLET TAHOE POLICE PATROL VEHICLES FOR THE SHERMAN POLICE DEPARTMENT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD).

RES 5622
PURCHASE POLICE
VEHICLES

Mr. Hefton explained that these four vehicles were approved by the City Council during the budget approval process. Since that time the City has been awarded a State grant to purchase an additional Tahoe, which will be purchased at a later date.

ACTION TAKEN.

Motion by Council Member Wacker to approve Resolution No. 5622, as presented. Second by Council Member Softly.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 5623 – AUTHORIZING THE PURCHASE OF A NEW COMMERCIAL FRONT LOAD SOLID WASTE COLLECTION TRUCK CHASSIS FOR THE SOLID WASTE SERVICES DEPARTMENT THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW COMMERCIAL FRONT LOAD SOLID WASTE COLLECTION TRUCK CHASSIS FOR THE SOLID WASTE SERVICES DEPARTMENT THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC).
CONSENT AGENDA.

RES 5623
PURCHASE
COMMERCIAL
SOLID WASTE
TRUCK CHASSIS

RESOLUTION NO. 5624 – AUTHORIZING THE PURCHASE OF A NEW COMMERCIAL FRONT LOAD COLLECTION TRUCK BODY FOR THE SOLID WASTE SERVICES DEPARTMENT 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 COMMERCIAL FRONT LOAD COLLECTION TRUCK BODY FOR THE SOLID WASTE SERVICES DEPARTMENT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD).
CONSENT AGENDA.

RES 5624
PURCHASE
COMMERCIAL
SOLID WASTE
TRUCK BODY

RESOLUTION NO. 5625 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH KIGHT FAMILY, LP #1 FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1333 EAST JONES STREET

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH KIGHT FAMILY, LP #1 FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1333 EAST JONES STREET.
CONSENT AGENDA.

RES 5625
RESIDENTIAL TAX
ABATEMENT
(1333 E. JONES)

CITIZENS REQUESTS

There were no citizens requests.

CITIZENS REQUESTS

MEDIA QUESTIONS

There were no media questions.

**APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO
BOARDS AND COMMISSIONS:**

PARKS AND RECREATION ADVISORY BOARD (2)

ACTION TAKEN.

Motion by Council Member Adami to reappoint John Murphy to the Parks and Recreation Advisory Board for a term from October 6, 2011 to October 6, 2013, and to appoint Paul "Michael" Gillum for a term from October 4, 2011 to October 4, 2013. Second by Council Member Howeth.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

COUNCIL COMMENTS

PANDA ENERGY

Council Member Adami said the Council looks forward to kicking off the project with Panda Energy.

**SHERMAN RATED FIFTH LOWEST COST OF LIVING IN
UNITED STATES**

Mayor Magers said Kiplinger recently rated Sherman, Texas as the fifth lowest cost of living place in the United States.

**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.

SECTION 551.074

**PERSONNEL MATTERS
CONSIDER THE QUALIFICATION,
APPOINTMENT AND REMOVAL
OF MEMBERS TO BOARDS AND
COMMISSIONS:
SHERMAN ECONOMIC
DEVELOPMENT CORPORATION
BOARD OF DIRECTORS (3)**

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:17 p.m.

On Motion duly made and carried, the Executive Session recessed at 5:33 p.m. and reconvened in Open Meeting.

OPEN MEETING

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

MEDIA QUESTIONS

**PARKS & REC
ADVISORY BOARD**

PANDA ENERGY

**FIFTH LOWEST
COST OF LIVING**

EXECUTIVE SESSION

OPEN MEETING

**APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO
BOARDS AND COMMISSIONS:
SHERMAN ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS (3)**

SEDCO

ACTION TAKEN.

Motion by Council Member Smith to reappoint Todd Thompson and Juston Dobbs to the Sherman Economic Development Corporation Board of Directors for a term from October 1, 2011 to October 1, 2013. Second by Council Member Wacker.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

ADJOURNMENT

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 5:34 p.m.

MAYOR

CITY CLERK

§

October 3, 2011

§

BE IT REMEMBERED THAT A Joint Meeting of the Sherman City Council and the Sherman Economic Development Corporation was begun and held in the City Council Chambers on October 3, 2011.

COUNCIL MEMBERS PRESENT: Mayor Bill Magers; Deputy Mayor Willie Steele.
Council Members Adami, Howeth, Smith, Softly, Wacker.

COUNCIL MEMBERS ABSENT: None.

SEDCO MEMBERS PRESENT: Todd Thompson, Juston Dobbs, Rad Richardson, Dean Gilbert, Jr., Chris Pendergrass, Al Hambrick (Ex-Officio), George Olson (Ex-Officio), Robby Hefton (Ex-Officio).

SEDCO MEMBERS ABSENT: None.

CITY STAFF PRESENT: George Olson, City Manager; Robbie Hefton, Assistant City Manager/CFO; Brandon Shelby, City Attorney; Don Keene, Executive Director – Planning and Public Works; Pam Cloer, Assistant to the City Manager; Linda Ashby, City Clerk.

SEDCO STAFF PRESENT: Frank Gadek, Executive Vice President; Darlene Brown, Administrative Assistant.

PURPOSE: Call to Order, Quorum Determined, Meeting Declared Open, Recognition of Guests and Visitors

SEDCO WORK PROGRAM 2011-2012
Executive Vice President's Presentation of the 2011-2012 Work Program

SEDCO WORK PROGRAM 2011-2012
City Council to Discuss and Consider Approval of the SEDCO Work Program 2011-2012

SEDCO BUDGET 2011-2012
Executive Vice President's Presentation of the SEDCO Budget 2011-2012

SEDCO BUDGET 2011-2012
City Council to Discuss and Consider Approval of the 2011-2012 SEDCO Budget

OTHER BUSINESS

ADJOURNMENT

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN, RECOGNITION OF GUESTS AND VISITORS

Mayor Magers called the meeting to order at 5:35 p.m., declared a quorum present, and opened the City Council Meeting. Todd Thompson, Chairman of the Sherman Economic Development Corporation, declared a quorum present, and opened the SEDCO Meeting.

SEDCO WORK PROGRAM 2011-2012

EXECUTIVE VICE PRESIDENT'S PRESENTATION OF THE 2011-2012 WORK PROGRAM

Current Work Program Results 2010-2011

Frank Gadek, Executive Vice President, presented an overview of the 2010-2011 work program results. There were six goals during the work program including retain and expand existing primary employers; recruit targeted national and international primary employers; develop a strategy to recruit targeted large water users; develop a strategy to recruit Dallas area businesses; promote and enhance a quality of place; and raise SEDCO's profile in local, statewide, national, and international markets.

Mr. Gadek said efforts through SEDCO resulted in five expansion projects, three at GlobiTech, one at Sunny Delight, and one at Progress Rail, with total capital investments of \$74 million, 324 retained jobs, 52 new jobs, and \$3.68 million in incentives. Two new industries relocated to Sherman resulting in \$9.52 million in capital investments, 29 new jobs, and \$475,400 in incentives.

They also implemented a new marketing strategy to target large water users which resulted in 360 companies receiving a direct mail piece, and appointments for three site visits. A direct mail campaign targeted 74 Dallas area businesses and resulted in the scheduling of two appointments. Five projects, including a water and sewer extension, road improvements, infrastructure upgrades, and a fire station study helped expand Sherman's tax base and create new jobs. Steps were also taken to increase SEDCO's visibility with other entities.

Deputy Mayor Steele verified that two new companies, American Memorial Restoration and Alpla, relocated to Sherman, resulting in 29 new jobs. Mr. Gadek added that they expect expansion from both Alpla and Sunny Delight in the future.

Mr. Gadek said the benchmarks have been established in the current plan and the upcoming work plan will expand on those numbers. He also outlined additional projects that contributed to SEDCO's mission, including an economic impact analysis for each project, a promotional agreement with Austin College for the IDEA Center, the purchase of property for Sunny Delight, a land option agreement with Panda Power Funds, a grant to extend a fiber link for Grayson County, the purchase of property on Howe Drive, and the lease of the Sherman Youth Center.

He also identified several actions that were not completed and have been rescheduled or remain as part of the 2011-2012 proposed work plan.

Mayor Magers said the economic impact analysis that was begun this year means that SEDCO is now looking at every tax dollar spent on investment from a financial standpoint. Grayson County College also will not consider a tax abatement unless they have this financial information.

He added that Panda Energy had an option on land in the Blalock Industrial District at basically no charge. SEDCO decided that if they were tying up that much acreage, then Panda Energy needed to pay the difference between the discounted value and the worth. They now have an option on the land for approximately \$80,000 for the next three years. SEDCO is ensuring that companies benefiting from the incentives are also paying their way.

Proposed Work Program 2011-2012

Mr. Gadek presented the proposed work program for 2011-2012. Goals for the upcoming year include:

- Retain and expand existing primary employers
2 to 4 projects; \$50 million capital investment; 25-100 new jobs; 75-200 retained jobs; \$15 average wage rate
- Recruit targeted national and international primary employers
2 to 3 primary projects; \$10 million to \$40 million capital investment; 20-100 new jobs; \$15 average wage rate
- Expand strategy to recruit targeted large water users
1 to 2 projects with a water usage of at least 700,000 gallons per day

- Expand strategy to recruit Dallas area businesses
1 to 3 retail / commercial projects; \$1 million to \$5 million capital investment; \$12 average wage rate
- Promote and enhance a quality of place
Enhance SEDCO's ability to expand the tax base and increase jobs by identifying and participating in the funding of community infrastructure projects to create an investment environment for attracting primary employers and other businesses
- Raise SEDCO's profile in local, statewide, national, and international markets
Consider plans to renovate the Sherman Youth Center; \$500,000

SEDCO WORK PROGRAM 2011-2012

CITY COUNCIL TO DISCUSS AND CONSIDER APPROVAL OF THE SEDCO WORK PROGRAM 2011-2012

Council Member Adami said in last year's work plan, the Council reviewed very specific things to fund on the downtown level. The plan includes the completed traffic study for Travis Street. He asked about participation from SEDCO and wanted to encourage communication between the entities. Mr. Gadek said SEDCO would consider any projects the City Council puts before them.

ACTION TAKEN.

Motion by Council Member Wacker to approve the SEDCO Work Program for FY 2011-2012, as presented. Second by Council Member Howeth.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

SEDCO BUDGET 2011-2012

EXECUTIVE VICE PRESIDENT'S PRESENTATION OF THE SEDCO BUDGET 2011-2012

Mr. Gadek presented a proposed budget for SEDCO for 2011-2012. SEDCO is forecasting a 1.93% increase in sales tax revenue for the upcoming year, which would be \$2,871,359. Revenue from the Panda Land Agreement is estimated at \$85,333 and interest revenue is \$75,000. The budget is flat as compared with last year's budget.

Operating expenses and program expenses are projected slightly below last year's budget. The incentive payout schedule lists \$6.8 million in contracted payouts. Mr. Gadek said at this point, it appears that of that amount, \$4 million will not be paid out. This incentive was for Phase 2 of the Certainteed project which was a 120,000 square foot residential insulation plant. They still have until December of 2011 to contact SEDCO regarding Phase 2.

There is another \$75,000 project that may not materialize either. If those incentives are not paid out the money will move to the Unreserved Fund Balance. Currently there is no Unreserved Fund Balance based on this budget.

SEDCO BUDGET 2011-2012

CITY COUNCIL TO DISCUSS AND CONSIDER APPROVAL OF THE 2011-2012 SEDCO BUDGET

Council Member Smith verified that the capital expense line item increased so much because \$500,000 was plugged in for the Youth Center. Council Member Adami asked if any plans had been developed for the Youth Center yet. Mr. Gadek said this month they will meet with the architect to develop space plans and will begin the planning process. A proposed budget will then be presented to the SEDCO Board.

Mr. Thompson added that since the Youth Center is a City-owned facility, they would look for input from the City Council and the citizens on any proposals that are made. They would like for the facility to house smaller meetings and other organizations that would enhance the attraction of businesses and be a gateway to downtown.

Council Member Adami asked about the changes in the marketing/attraction line item and the contract services line item. Contract services include costs for the "headhunter" for the President's search. Mr. Gadek said SEDCO can use up to 10% of their revenue for marketing and attraction, however he did not identify the total amount for the line item. If it becomes necessary, a budget amendment can be used to add additional funding to that line item.

Council Member Adami asked if SEDCO also faced the unreserved fund balance issues that the City did. Robby Hefton, Assistant City Manager/CFO, said when the Comprehensive Annual Financial Report is presented, it will need to use the same methodology as used by the City. Administratively they may have to adopt a similar fund balance policy like the City did recently. Because they don't know about their \$4 million in incentive payouts, Mr. Hefton said the safe thing to do would be to set a minimum, but that money would probably be returned to the unreserved fund balance.

Council Member Adami asked if it presented a problem for the City since they had to report SEDCO on the City's books. Mr. Hefton said "no" because they will be slightly different than the City. They will have a huge amount restricted for economic development purposes.

Mayor Magers said the operating expenses were reduced by 5.49% and that is a result of an on-going review of the expenses by the Board. He felt the Board had done a good job of "culling out some of the less successful programs."

Council Member Adami said he was pleased to see that capital expenses included a budget for making the leased building a gateway to the City.

Mayor Magers said last year the Council asked for specific measurable outcomes from SEDCO so they would have a way to measure their goals. He said there is now a measurable outcome and he appreciated SEDCO's service.

ACTION TAKEN.

Motion by Council Member Adami to approve the SEDCO Budget for FY 2011-2012, as presented.

Second by Council Member Wacker.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

OTHER BUSINESS

There was no other business to come before the City Council or the SEDCO Board.

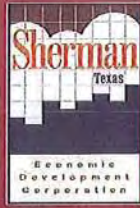
ADJOURNMENT

There being no further business to come before the City Council or the Sherman Economic Development Corporation, motion was duly made and approved to adjourn the Joint Meeting at 6:04 p.m.

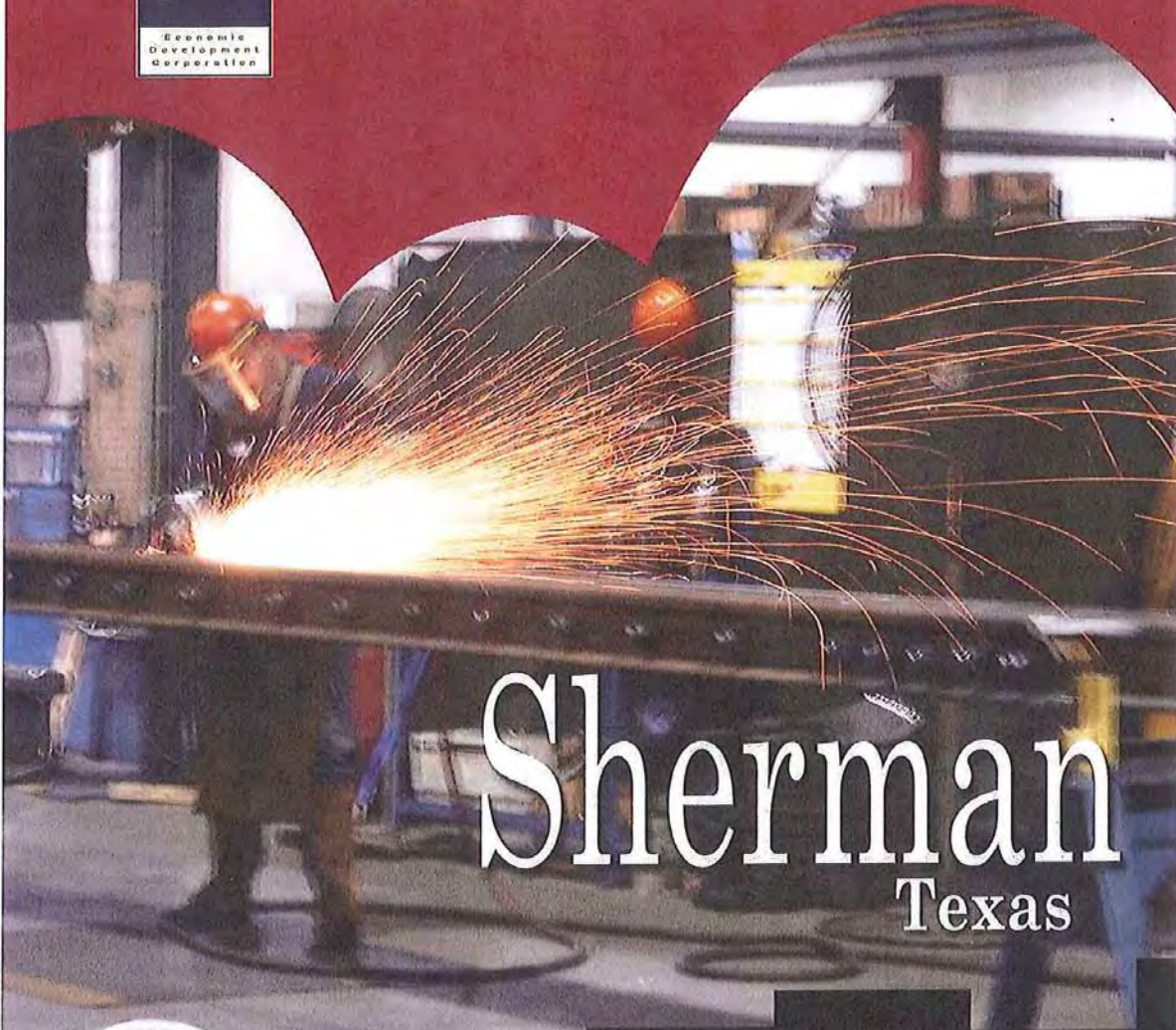
MAYOR

ATTEST

CITY CLERK



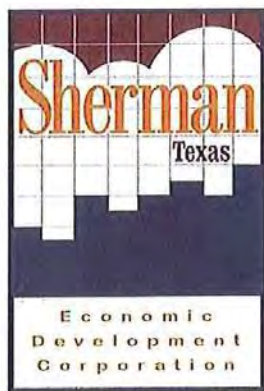
Current Work Program Results 2010-2011



Sherman Texas



E c o n o m i c
D e v e l o p m e n t
C o r p o r a t i o n



BOARD MEMBERS

Todd Thompson
Juston Dobbs
Rad Richardson
Dean Gilbert, Jr.
Chris Pendergrass

STAFF

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Bill Magers, *Mayor of the City of Sherman*
Dr. Al Hambrick, *SISD Superintendent*
George Olson, *Sherman City Manager*

Executive Summary

2010-2011 Current Work Program Results

The Sherman Economic Development Corporation (SEDCO) successfully achieved numerous goals outlined in the 2010-2011 Work Program. With governance provided by an engaged Board of Directors, significant progress continues to present new opportunities for the current year and future plans.

Vigorous activities focused on the following goals for 2010-2011

GOAL A Retain and expand existing primary employers

- Business retention & expansion efforts resulted in five expansion projects at GlobiTech, Sunny Delight & Progress Rail with total capital investments of \$74M, 324 retained jobs, 52 new jobs, \$3.68M in incentives, \$16 average hourly wage.

GOAL B Recruit targeted national and international primary employers

- Two new industries relocated to Sherman resulting in \$9.52M capital investments, 29 new jobs, and \$475.4K in incentives; \$13 average hourly wage.

GOAL C Develop a strategy to recruit targeted large water users

- A new marketing strategy was implemented, including print ads, radio spots, websites, direct mail, and telemarketing campaigns resulting in 360 companies receiving a direct mail piece, and appointments for three site visits.

GOAL D Develop a strategy to recruit Dallas area businesses

- A direct mail campaign targeted 74 retail companies, resulting in follow-up telephone discussions and two appointments scheduled for October.

GOAL E Promote and enhance a quality of place

- Five projects, including water and sewer extension, road improvements, infrastructure upgrades, and a fire station study, helped expand Sherman's tax base and create new jobs.

GOAL F Raise SEDCO's profile in local, statewide, national, and international markets

- Steps to enhance SEDCO's visibility included monthly meetings with City staff, quarterly reports and activity updates to City Council, active relationship-building with educational institutions, and discussions with State, Federal and other agencies.

SHERMAN ECONOMIC DEVELOPMENT CORPORATION
Executive Summary continued

In addition to the results accomplished within each of the defined categories of work, SEDCO identified seven significant projects that contributed to the organization's mission:

- Impact Data Source prepared an economic impact analysis for each SEDCO project. An invaluable analytical tool, the information provides our Board with a financial return on our investment, along with other information needed to make informed decisions.
- SEDCO entered into a Promotional Agreement with Austin College for the IDEA Center (\$38M) in November 2010 that provides incentives of \$300K over five years.
- One hundred nineteen acres of land was purchased for \$1.013M in December 2010 as a part of Project Daylight for Sunny Delight.
- SEDCO negotiated a three-year Land Option Agreement with Panda Power Funds in April 2011, resulting in revenue of \$85,333 per year.
- A \$40,000 cash grant was approved for Project Link, a Grayson County fiber link from the Justice Center to former SISD offices on King Street.
- In September 2011, SEDCO arranged to purchase approximately 10 acres of land for Project Denton on Howe Drive for \$60,000.
- SEDCO secured a lease with the City of Sherman for the Sherman Youth Center in June 2011 as Project SYC.

Actions that were not completed have been rescheduled or remain as part of the 2011-2012 proposed plan:

- GOAL A** • A plant manager appreciation event is scheduled for April 2012
• Visits to local company's headquarters will occur in 2012
- GOAL B** • A networking event for brokers, site consultants, and allies is to be scheduled for November/December 2011
• Purchase of a GIS system was postponed until 2012 to assess real estate components
• SEDCO's website is scheduled to launch on October 7, 2011
• There are plans to attend the Solar Power International Show at the Dallas Convention Center on October 17-20, 2011
- GOAL C** • Follow-up activities will continue with targeted large water users
- GOAL D** • Two prospecting trips to Dallas are scheduled for October 2011
- GOAL E** • Expect to carry over funds for participation in the City's GIS expansion project into 2012
- GOAL F** • Annual Report scheduled for publication in December 2011

Tactics have evolved as challenges were met and outcomes achieved. New information was gained and viable options considered. Our current program of work resulted in numerous successes, with invaluable lessons learned and experience gained that will position us well for the year ahead.

Goal A

■ Retain and expand existing primary employers

Conduct a business retention/expansion program (BREP) maintaining close ties through regular contact with existing primary employers. Complete 1-3 expansion projects with a total capital investment of \$50M, 10-25 new jobs (\$15 median wage rate), retain 50-150 jobs.

RESULTS

Business retention/expansion efforts resulted in five expansion projects.

		CAPITAL INVESTMENT	RETAINED JOBS	NEW JOBS	INCENTIVES	WAGE RATE
GlobiTech (Fab 1)	Aug 2011	\$15M	100	0	\$450K	\$14 hr
GlobiTech (Fab 2)	Oct 2011	\$19M	100	0	\$950K	\$14 hr
GlobiTech (Shine)	Mar 2011	\$18.2M	100	52	\$910K	\$10 hr
Sunny Delight	Mar 2011	\$17M	75	0	\$850K	\$18 hr
Progress Rail Services	July 2011	\$4.8M	149	0	\$192K	\$14 hr
Total		\$74M	324	52	\$3,676	

ACTION A-1

Visit primary employers at least twice annually to learn about changes in their operations and find ways to help strengthen their Sherman operations (complete employer survey and track activity).

RESULTS

- Visited two primary employers each month since March 1, 2011

ACTION A-2

Host at least one annual plant manager appreciation event as a rapport building activity to encourage dialogue among local industry.

RESULTS

- Plans to schedule plant manager appreciation event for April 2012

ACTION A-3

Accept invitations to visit a local company's headquarters.

RESULTS

- Scheduled visit to occur by the end of October 2011

Goal B

■ Recruit targeted national and international primary employers

Develop a marketing strategy to recruit targeted new primary employers. Recruit 1-2 new primary employers with a total capital investment of \$10-\$40M; 20-100 new jobs (\$15 median wage rate).

RESULTS

Two new primary employers relocated to Sherman resulting in 29 new jobs.

		CAPITAL INVESTMENT	NEW JOBS	INCENTIVES	WAGE RATE
American Memorial Restoration	Dec 2010	\$15K	13	\$26K	\$11.50 hr
Alpla	April 2011	\$9.5M	16	\$475,390	\$16 hr
Total		\$9.52M	29	\$475.4K	

ACTION B-1

Identify targeted industry clusters to maximize marketing efforts.

RESULTS

- Targeted markets: food processing, beverages, semi-conductors, high tech, pharmaceuticals, plastics and others

ACTION B-2

Host brokers/site consultants/allies at least one networking event.

RESULTS

- Plans to schedule for November/December 2011

ACTION B-3

Market available sites to potential investors/developers, familiarizing them with Sherman.

RESULTS

- Enacted marketing programs
- Developed advertising campaigns
- Maintained direct contact with brokers

ACTION B-4

Develop and launch lead generation system targeting identified sector niches.

RESULTS

- Conducted target marketing to large water users
- Worked to attract DFW metro businesses
- Established broker contacts

Goal B

ACTION B-5

Purchase a GIS system to enhance technical capabilities for recruitment.

RESULTS

- Action postponed until 2012 to assess real estate component

ACTION B-6

Update SEDCO internet home page so prospects and site locators can obtain necessary due diligence data.

RESULTS

- Scheduled to launch October 7, 2011

ACTION B-7

Work with regional allies on marketing opportunities.

RESULTS

- Achieved exposure through marketing partnerships

ACTION B-8

Participate in one industry specific trade show to attract new primary employers.

RESULT

- Scheduled to attend the Solar Power International Show at the Dallas Convention Center October 17-20, 2011

ACTION B-9

Place ad schedule in multiple publications.

RESULTS

- Accomplished through revised ad schedules in Dallas Business Journal, Co-Star, Business Sites and others

ACTION B-10

Coordinate a direct mail campaign of targeted employers.

RESULTS

- Targeted high tech industries
- Contacted beverage industries

ACTION B-11

Conduct marketing trips based on results of the direct marketing campaign and trade show leads.

RESULTS

- Fulfilled 2 appointments in September 2011

Goal C

■ Develop a strategy to recruit targeted large water users

Develop a recruitment strategy to attract large water users. Recruit 1-2 primary employers with a water usage of at least 700,000 gallons per day.

RESULTS

Marketing strategy in place. New print ads developed and running in the Dallas Business Journal; "Texas Open For Business" magazine (Governor's Office); radio spots; websites; mail-out and telemarketing campaigns resulting in appointments with companies.

■ **ACTION C-1**

Research and identify companies that require large water usage for manufacturing processes obtained from national manufacturing data resources.

RESULTS

- Utilized several databases to identify companies who are large water users
- Among larger water users, 99 were semi-conductors
- Utilized several databases to identify food processing companies

ACTION C-2

Advertise Sherman's abundant water availability utilizing national ads and the SEDCO internet web page.

RESULTS

- Positioned ads in multiple publications
- Dallas Business Journal
- Governor's Office publication
- Co-Star and LoopNet real estate sites
- Placed ads on SEDCO website

Goal C

ACTION C-3

Conduct a direct mail campaign.

RESULTS

- 360 large water users in 5 states received targeted direct mail beginning in March 2011.
- Engaged in 40 follow-up telephone discussions with representatives from large water use industries
- Learned of 8 large water users planning to expand in the next 3 years
- Received requests for additional information from 6 large water users
- 31 food processing companies received targeted direct mail in August 2011
- Learned of 2 food processing companies planning to expand in the next 3 years
- Engaged in 4 telephone discussions with food processing industry reps
- Received request for additional information from 1 food processing company

ACTION C-4

Make prospecting trips based on the results of outreach efforts.

RESULTS

- Appointments were accepted resulting in 3 visits with large water use companies
- Identified 4 additional continuing opportunities among large water users with follow-up scheduled in October
- One appointment was accepted with a food processing company
- One continuing opportunity with a food processing company was identified

Goal D

■ Develop a strategy to recruit Dallas area businesses

Recruit 1-3 Dallas area businesses to Sherman (Retail or Commercial) with capital investment of \$1-\$5M; 10-50 jobs (\$12 median wage rate).

RESULTS

Completed and implemented strategy resulting in two appointments and no relocations thus far. Recruitment campaigns will continue in 2012.

ACTION D-1

Identify targeted companies utilizing the research resources of Co-Star and LoopNet.

RESULTS

- Utilized several databases to identify 99 DFW retail companies, 74 of which were appropriate for targeted marketing
- Focused on grocery stores, retail locations, restaurants

ACTION D-2

Conduct a direct mail campaign.

RESULTS

- Prepared and sent direct mail to identified DFW retail companies
- 74 retail companies received targeted direct mail in July 2011
- Engaged in 4 follow-up telephone discussions
- Learned of 2 companies planning to expand in the next 3 years
- Two continuing opportunities were identified

ACTION D-3

Make prospecting trips to the Dallas area based on marketing results.

RESULTS

- Two appointments are scheduled for October

Goal E

■ Promote and enhance a quality of place

Identify and participate in the funding of community projects that will create an investment environment for attracting primary employers and other businesses.

RESULTS

Participated in the funding of several community infrastructure projects that will have a direct positive impact on the community and enhance SEDCO's ability to expand the tax base and create new jobs.

ACTION E-1

Continue participation in the US Hwy 75 N water and sewer extension to Hwy 691. Annual payment of \$255,000. Estimated completion July 2011.

RESULTS

- Obtained 20-year bonds

ACTION E-2

US Hwy 75 S ramp improvements south of FM 1417 industrial area.

RESULTS

- Approved and funded project (\$1.43M)
- Construction to start October-November 2011
- Estimated completion date of March 2012

ACTION E-3

Participate in Blalock Fire Station Study.

RESULTS

- Concluded study (\$21K)

ACTION E-4

Funding participation of infrastructure upgrade in downtown Sherman as part of Travis Street redevelopment.

RESULTS

- Finalized traffic calming study (\$44.3K)

ACTION E-5

Participate in City's GIS expansion (\$600K).

RESULTS

- Expended no funds
- Expectation of carry over into 2012

Goal F

■ Raise SEDCO's profile in local, statewide, national, and international markets

Improve and enhance SEDCO's visibility. Enhance visibility of SEDCO by evaluating a move to Sherman Youth Center building.

RESULTS

Executed lease with the City (30 years).

ACTION F-1

Meet at least monthly with the City Manager and designated staff members to stay current on local development issues.

RESULTS

- Visited with City Manager and/or staff members at least monthly

ACTION F-2

Provide a quarterly results/activity update with potential new developments to the City Council and present an annual report.

RESULTS

- Submitted quarterly reports & activity updates for City Council
- Scheduled annual report for December 2011

ACTION F-3

Maintain a relationship with the educational institutions on workforce training opportunities.

RESULTS

- Fostered established relationships
- Pursued information on available programs

ACTION F-4

Work with the State, Federal and other agencies such as the Texas Workforce Commission, Office of Economic Development, Economic Development Administration, Small Business Administration, Center for Workplace Learning, and Workforce Texoma on available programs.

RESULTS

- Acted on opportunities for interfacing with key entities

Goal F

ACTION F-5

Maintain a good rapport with educational institutions on workforce training opportunities.

RESULTS

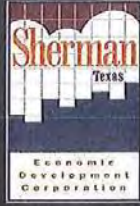
- Maintained frequent dialog on relevant issues

ACTION F-6

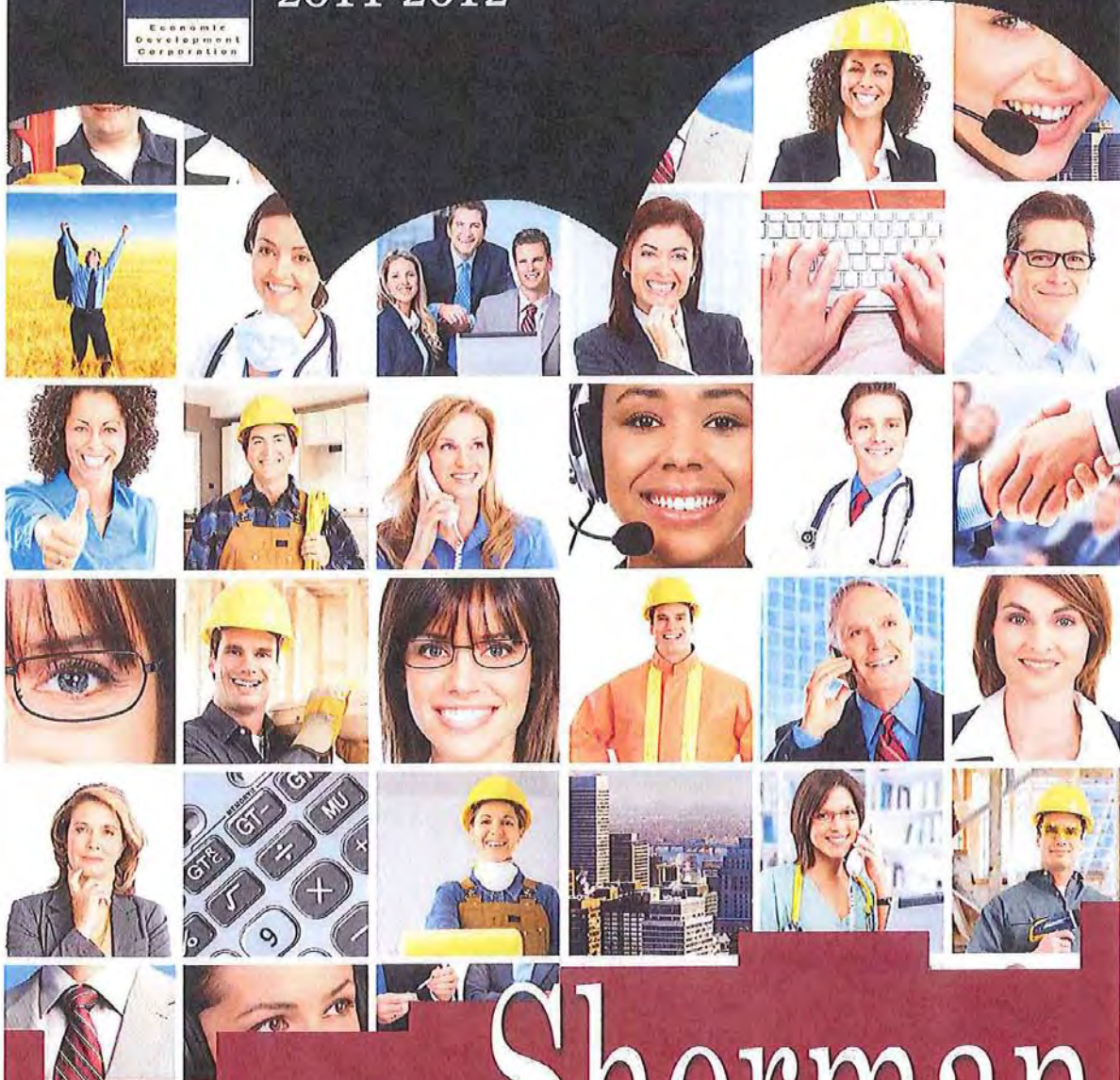
Evaluate ongoing partnerships with the City to enhance infrastructure projects for industrial and commercial businesses.

RESULTS

- Ensured that business infrastructure projects were addressed



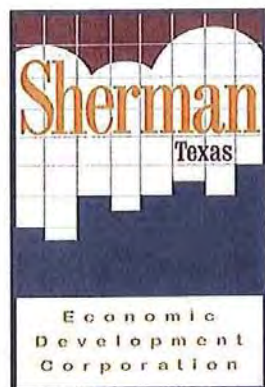
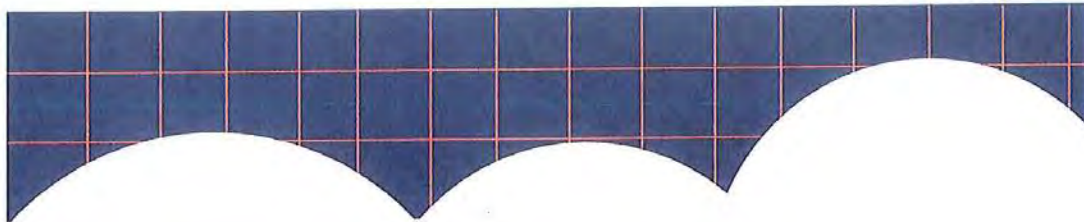
Proposed Work Program 2011-2012



Sherman

Economic
Development
Corporation

Texas



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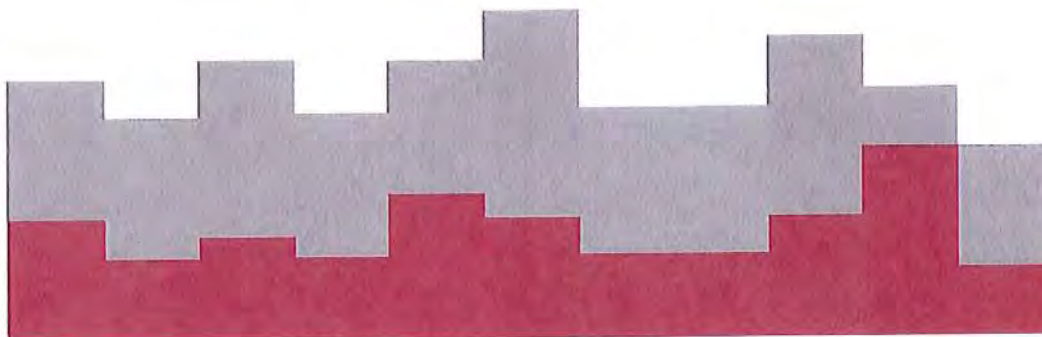
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2011-2012 Proposed Work Program

The Sherman Economic Development Corporation (SEDCO) is confidently building on the successes of 2010-2011 and actively planning for a dynamic and productive new program of work for the year ahead. Our Board of Directors remains committed to fulfilling our mission by identifying opportunities, taking decisive action, tracking leads, and measuring accomplishments.

Vigorous activities focused on the following goals for 2011-2012:

- Retain and expand existing primary employers
 - 2-4 projects; \$50M capital investment; 25-100 new jobs; 75-200 retained jobs; \$15 average wage rate
- Recruit targeted national and international primary employers
 - 2-3 primary projects; \$10M-\$40M capital investment; 20-100 new jobs; \$15 average wage rate
- Expand strategy to recruit targeted large water users
 - 1-2 projects with a water usage of at least 700,000 gallons per day
- Expand strategy to recruit Dallas area businesses
 - 1-3 retail/commercial projects; \$1M-\$5M capital investment; \$12 average wage rate
- Promote and enhance a quality of place
 - Enhance SEDCO's ability to expand the tax base and increase jobs by identifying and participating in the funding of community infrastructure projects to create an investment environment for attracting primary employers and other businesses
- Raise SEDCO's profile in local, statewide, national, and international markets
 - Consider plans to renovate the Sherman Youth Center; \$500K.

With a focus on benchmarks that result in measureable deliverables, SEDCO board and staff will manage resources conservatively and optimize investments for the greatest, and most meaningful, return.

Goals set for 2011-2012 promote capital investment and jobs, the core of our organization's mission. SEDCO plans to aggressively pursue approved objectives, implementing innovative approaches to expanding awareness, captivating interest and securing results.

Goals to promote capital investment and jobs

- A.** Retain and expand existing primary employers
- B.** Recruit targeted national and international primary employers
- C.** Expand strategy to recruit targeted large water users
- D.** Develop strategy to recruit Dallas area businesses
- E.** Promote and enhance a quality of place
- F.** Raise SEDCO's profile within local, statewide, national, and international markets

Goal A

■ Retain and expand existing primary employers

Conduct a business retention/expansion program, maintaining close ties through regular contact with existing primary employers. Complete 2-4 expansion projects with a total capital investment of \$50M; 25-100 new jobs (\$15.00 average wage rate); 100-400 retained jobs.

ACTIONS

1. Visit primary employers a minimum of twice a year to learn about changes in their operations and to find ways to help strengthen their Sherman operations (complete employer survey questionnaire and track activity).
2. Host at least one annual plant manager appreciation event as a rapport building activity to encourage dialogue among local industry.
3. Initiate two trips to a local company's headquarters.
4. Economic impact analysis to be prepared.

Goal B

■ Recruit targeted national and international primary employers

Primary employers are those companies whose sales, services and shipments are ultimately used in state-wide, national or international markets.

Recruit targeted national and international primary employers. Recruit 2-3 new primary employers with a total capital investment of \$10-\$40M; 20-100 new jobs (\$15.00 average wage rate).

ACTIONS

1. Contact targeted industry clusters, such as semi-conductors, food processing, beverages, pharmaceuticals, health and beauty, and others, to maximize marketing efforts.
2. Increase marketing of available sites to site locators.
3. Expand the lead generation system targeting identified sector niches.
4. Host at least one networking event for allies, commercial brokers and site consultants.
5. Evaluate and purchase GIS website component to enhance business retention and recruitment.
6. Expand the new SEDCO website with the addition of real estate locator feature.
7. Participate in one industry specific trade show to attract new primary employers.
8. Participate in the Texas One marketing program to increase the scope of our recruitment campaigns of national and international companies.
9. Place ads in targeted publications, to create an awareness of availability of buildings, sites and city amenities in Sherman, TX.
10. Increase the direct mail and telemarketing campaigns of targeted businesses from 360 to 700.
11. Initiate marketing trips based on results of the direct marketing campaign and trade show leads.
12. Economic impact analysis to be prepared.

Goal C

■ Expand strategy to recruit targeted large water users

Expand recruitment strategy to attract large waters users. Recruit 1-2 primary employers with a water usage of at least 700,000 gallons per day.

ACTIONS

1. Contact 300-500 targeted companies that require large water usage for manufacturing processes obtained from national manufacturing data resources.
2. Advertise Sherman's abundant water availability utilizing radio commercials, national ads, the SEDCO website, and other websites.
3. Conduct monthly direct mail and telemarketing campaigns.
4. Initiate prospecting trips based on the results.
5. Network with commercial brokers to market the MEMC building and generate targeted prospect leads.
6. Economic impact analysis to be prepared.

Goal D

■ Expand strategy to recruit Dallas area businesses

Expand a strategy to recruit 1-3 Dallas area businesses to Sherman (Retail or Commercial) with capital investment of \$1-\$5M; 10-50 jobs (\$12 average wage rate).

ACTIONS

1. Contact targeted companies utilizing research resources and other national data bases.
2. Conduct direct mail campaigns and telemarketing campaigns each quarter.
3. Initiate prospecting trips to the Dallas area based on marketing results.
4. Network with commercial brokers specializing in retail and commercial projects.
5. Economic Impact analysis to be prepared.

Goal E

■ Promote and enhance a quality of place

Identify and participate in the funding of community projects that will create an investment environment for attracting primary employers and other businesses.

ACTIONS

1. Work with TxDOT to complete the US Hwy 75 S. ramp improvements south of FM 1417 Industrial area (\$1.43M).
2. Consider the funding of City infrastructure projects that fall within SEDCO's mission and that will create an investment environment for attracting primary employers and other businesses.
3. Participate in City's GIS expansion (\$600K).
4. Continue participation in the US Hwy 75 North water and sewer project extension to Hwy 691. Estimated completion 2011. (\$3.7M)
5. Economic impact analysis to be prepared.

Goal F

■ Raise SEDCO's profile in local, statewide, national, and international markets

Improve and enhance SEDCO's visibility.

ACTIONS

1. Meet at least monthly with the City Manager and designated staff members to stay current on local development issues.
2. Provide a quarterly results/activity update with potential new developments to the City Council and present an annual report.
3. Work with the State, Federal and other agencies such as the Texas Workforce Commission, Office of Economic Development, Economic Development Administration, Small Business Administration, Center for Workplace Learning, and Workforce Texoma on available programs.
4. Actively pursue strong working relationships with educational institutions on workforce training opportunities.
5. Within SEDCO's mission, consider ongoing opportunities with the City to enhance infrastructure projects for industrial and commercial businesses.
6. Consider plans to renovate the Sherman Youth Center. (\$500K)

**Sherman Economic Development Corporation
Proposed Budget for FY 2011-2012**

	Fiscal Year 2005-2006	Fiscal Year 2006-2007	Fiscal Year 2007-2008	Fiscal Year 2008-2009	Fiscal Year 2009-2010	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Percent Change
Beginning Fund Balance	\$ 5,847,212	\$ 6,300,000	\$ 6,693,355	\$ 8,368,265	\$ 9,630,992	\$ 10,651,900	\$ 8,341,000	-21.69%
REVENUES								
Sales tax revenue	2,643,375	2,845,935	3,009,000	2,937,792	2,940,831	2,815,924	2,871,359	1.93%
Other revenue	88,375			28,700		734,400	65,333	-88.38%
Interest	200,000	250,000	450,000	375,451	150,000	75,000	75,000	0.00%
Total Revenue	\$ 2,929,750	\$ 3,095,935	\$ 3,459,000	\$ 3,341,943	\$ 3,090,831	\$ 3,625,324	\$ 3,031,692	-16.40%
EXPENSES								
Administrative								
Salaries	208,750	219,160	232,000	237,800	242,556	242,556	254,292	4.84%
Taxes	16,545	17,370	18,477	18,950	10,750	10,750	20,850	5.57%
Retirement/Insurance	81,788	88,100	93,000	88,500	88,000	89,255	72,562	-18.70%
Total Administrative Expenses	\$ 307,083	\$ 324,630	\$ 343,477	\$ 345,250	\$ 350,306	\$ 351,561	\$ 347,704	-1.10%
Percent of Revenue	10.48%	10.49%	9.93%	10.33%	11.33%	9.69%	11%	
Operations								
Training	2,500	3,000	3,000	2,500	2,500	2,500	3,200	28.00%
Dues/Fees	4,250	4,500	4,500	4,500	4,500	4,500	3,814	-15.24%
Auto	12,600	12,600	12,600	13,200	13,200	13,200	14,400	9.09%
Office Supplies	7,000	7,700	7,700	7,700	7,700	7,700	2,500	-67.53%
Rent	32,200	30,000	30,000	30,000	30,000	30,000	30,000	0.00%
Communications	9,000	11,000	11,500	11,600	11,500	12,000	10,316	-14.03%
Insurance	7,000	8,000	8,000	8,000	7,000	7,000	8,012	14.46%
Maintenance & Repairs	1,000	3,000	3,000	2,500	2,500	2,500	2,800	12.00%
Taxes	-	-	-	-	-	-	-	-
Total Operating Expenses	\$ 75,550	\$ 79,800	\$ 80,300	\$ 79,900	\$ 78,900	\$ 79,400	\$ 75,042	-5.49%
Percent of Revenue	2.58%	2.58%	2.32%	2.39%	2.56%	2.19%	2%	
Programs								
Luncheons/Meetings	5,500	7,500	8,000	8,000	8,000	8,000	13,200	65.00%
Conferences	6,000	7,600	7,000	7,000	7,000	7,000	5,250	-25.00%
Retention/Expansion	5,000	6,500	6,500	6,500	6,500	6,500	16,300	150.77%
Marketing/Attraction	132,000	135,000	165,000	178,000	294,093	281,692	138,650	-60.67%
Contract Services	62,000	65,000	65,000	65,000	65,000	65,000	150,300	131.23%
Total Program Expenses	\$ 210,500	\$ 221,000	\$ 251,500	\$ 262,600	\$ 360,593	\$ 368,192	\$ 324,000	-12.00%
Percent of Revenue	7.18%	7.14%	7.27%	7.85%	12.31%	10.15%	11%	
Total Expenses (Admin-Oper-Prog)	\$ 593,133	\$ 625,430	\$ 675,277	\$ 687,650	\$ 809,799	\$ 799,153	\$ 746,746	-6.56%
Percent of Revenue	20.25%	20.20%	19.52%	20.58%	26.20%	22.04%	25%	
Net Revenue/Loss	\$ 2,336,617	\$ 2,470,505	\$ 2,783,723	\$ 2,654,293	\$ 2,281,042	\$ 2,827,171	\$ 2,284,946	-19.18%
Incentive Payouts (scheduled)	885,576	1,517,151	1,840,860	4,229,457	981,133	3,775,028	6,866,695	81.90%
Land & Infrastructure	1,250,000	250,000	13,397	240,000	200,000	1,500,000	75,000	-95.00%
Capital Expenses	4,500	10,000	8,988	10,000	10,000	100,000	500,000	400.00%
Debt Service (P&I)	-	-	-	281,544	281,544	281,544	453,447	61.05%
Total Incentives/Invest/Capital Exp	\$ 2,141,076	\$ 1,777,151	\$ 1,863,244	\$ 4,751,001	\$ 1,472,677	\$ 5,656,572	\$ 7,895,142	
Total Op & Incentive Expenses	\$ 2,734,211	\$ 2,402,581	\$ 2,538,521	\$ 5,448,651	\$ 2,282,466	\$ 6,455,725	\$ 8,641,888	
Net Income (loss)	\$ 105,540	\$ 883,355	\$ 920,479	\$ (2,106,708)	\$ 808,385	\$ (2,829,401)	\$ (5,610,195)	
Ending Fund Balance	\$ 6,142,752	\$ 8,993,355	\$ 9,913,834	\$ 7,261,557	\$ 10,439,357	\$ 7,822,499	\$ 2,730,804	
Reserved Fund Balance	\$ 5,992,752	\$ 6,506,000	\$ 6,506,000	\$ 6,506,000	\$ 6,216,400	\$ 6,908,733	\$ 2,730,804	
Unreserved Fund Balance	\$ 150,000	\$ 2,487,355	\$ 3,407,834	\$ 755,557	\$ 2,657,557	\$ 915,766	\$ -	



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. A.5

PROCLAMATION

“Lions White Cane Day” – November 5, 2011

Issue

Each year, the Sherman Noon Lions Club participates in “White Cane Day” to collect donations to help the needy with sight problems.

Background

The Lions Club voluntarily provides all manpower and leadership for the effort to collect donations from citizens wishing to participate in saving vision.

Origination

The request came from Dr. Jerry Gundersheimer, Chairman of the White Cane Drive, Sherman Noon Lions Club.

Financial Consideration

There is no financial consideration.

Staff Recommendation

The staff recommendation is to present the proclamation naming November 5, 2011 as “Lions White Cane Day” in Sherman.

Alternatives

The City Council could choose not to present the proclamation.

Attachments

The proclamation is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN



Proclamation

WHEREAS, Lions Club International, with over 1,350,000 members in the free world, has been dedicated to saving sight for nearly 100 years, and

WHEREAS, Lions Club International has distributed more than 147 million treatments for river blindness, provided nearly 8 million cataract surgeries, and prevented serious vision loss for more than 30 million people worldwide, and

WHEREAS, through their work they have saved the sight of more than 14 million children by providing eye screenings, glasses, and other treatments through Sight for Kids, and

WHEREAS, the Sherman Noon Lions Club has been outstanding in its community in helping the needy with sight problems through the use of its White Cane Donations, and

WHEREAS, the Sherman Noon Lions Club provides eye exams and eyeglasses to the needy school children of Grayson County, leader dogs for the blind, cornea transplants courtesy of the Lions Organ and Eye Bank, and eyeglass collections for needy people around the world, and

WHEREAS, the Sherman Noon Lions Club has invited its neighbors to share in saving vision by donating to its White Cane Day event.

NOW THEREFORE, I, Bill Rogers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim November 5, 2011

LIONS WHITE CANE DAY

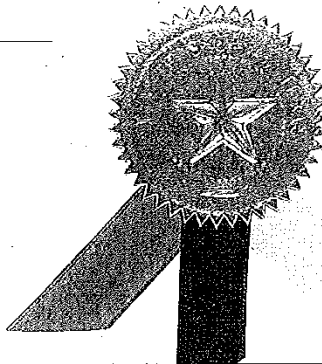
in the City of Sherman and invite all citizens to join me in sharing the Lions concern for the best sight possible for our neighbors in need, by giving generously to Lions White Cane Day. Every penny will give "The Gift of Sight."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed, this the 17th day of October, 2011.

Mayor

ATTEST:

Linda Ashby
City Clerk





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. B.1

**INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5723
AND AN APPLICATION TO DRILL AN OIL AND GAS WELL**

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow the Drilling of an Oil/Gas Well (Skaggs #2) in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District at 4335 U.S. Highway 82 East, being 194.896 acres in the William Brogden Survey, Abstract No. 92 (Jack and Patsy Pierce, Mineral Rights Owners; Greg Spalding, Longfellow Energy, LP, Representative; and Sartin & Associates, Inc., Surveyors); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00

Issue

To consider the request of Jack and Patsy Pierce (Mineral Rights Owners), Greg Spalding, Longfellow Energy, LP (Representative), and Sartin & Associates, Inc. (Surveyors) concerning the property located at 4335 U.S. Highway 82 East, being 194.896 acres in the William Brogden Survey, Abstract No. 92, to allow the drilling of an oil/gas well (Skaggs #2) in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District

Background

The property is located at 4335 U.S. Highway 82 East; the northwest corner of U.S. Highway 82 East and the F.M. 1417 NE Junction. The mineral rights owners would like to drill an oil/gas well on the property.

Origination

Jack and Patsy Pierce (Mineral Rights Owners), Greg Spalding, Longfellow Energy, LP (Representative), and Sartin & Associates, Inc. (Surveyors)

Board Recommendation

At the September 20, 2011 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Attachments

Ordinance No. 5723, Location Map, Photograph, Site Plan, P&Z Communication Form, and Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager

ORDINANCE NO. 5723

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW THE DRILLING OF AN OIL/GAS WELL (SKAGGS #2) IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT/O-1 (75 & 82) OVERLAY DISTRICT AT 4335 U.S. HIGHWAY 82 EAST, BEING 194.896 ACRES IN THE WILLIAM BROGDEN SURVEY, ABSTRACT NO. 92 (JACK AND PATSY PIERCE, MINERAL RIGHTS OWNERS; GREG SPALDING, LONGFELLOW ENERGY, LP, REPRESENTATIVE; AND SARTIN & ASSOCIATES, INC., SURVEYORS); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; 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 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 passage of this ordinance, Jack and Patsy Pierce (Mineral Rights Owners), Greg Spalding, Longfellow Energy, LP (Representative), and Sartin & Associates, Inc. (Surveyors) are granted a Specific Use Permit to allow the drilling of an oil/gas well (Skaggs #2) in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District at 4335 U.S. Highway 82 East, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

Tract 3

BEING a tract of land out of the William Brogden Survey, Abstract No. 92, Grayson County, Texas and being a part of a 637.07 acre tract of land described

in 4 tracts, conveyed to Anna Lee Howdeshell by deed recorded in Volume 1126, Page 384 and being more particularly described as follows:

BEGINNING at a concrete highway monument at the intersection of the east R.O.W. of F.M. 1417 (U.S. Highway 82) and the northwest R.O.W. of the Texas and Pacific Railroad;

THENCE northeasterly along the east R.O.W. of F.M. 1417 (U.S. Highway 82) the following bearings and distances;

NORTH 03° 07' East a distance of 246.14 feet to a concrete highway monument found;

NORTHEASTERLY in a curve to the right with radius of 3154.04 feet and a central angle of 16° 03' 04" (chord bears 880.69 feet at North 11°09'53" East) an arc distance of 883.58 feet to a concrete highway monument found;

NORTH 24°14' East a distance of 340.00 feet to a concrete highway monument found;

NORTH 21°43' East a distance of 675.70 feet to a concrete highway monument found, said point being the intersection of the east R.O.W. of F.M. 1417 and the south R.O.W. of U.S. Highway 82;

THENCE Northeasterly along the south R.O.W. of U.S. Highway 82 the following bearings and distances;

NORTH 59°10' East a distance of 79.50 feet;

NORTH 85°40' East a distance of 257.10 feet;

NORTH 77°59' East a distance of 429.00 feet;

THENCE South 88°54' East continuing along the South R.O.W. of U.S. Highway 82 a distance of 558.10 feet to a ½" iron rod found for corner, said point also being in the east line of said 637.07 acre tract;

THENCE South 01°32'58" West along the east line of said 637.07 acre tract a distance of 1,397.21 feet to a ¼" iron rod found for corner, said point also being in the northeast line of a 2.00 acre tract of land conveyed to Maurice F. Reinsch by deed recorded in Volume 1667, Page 422;

THENCE North 75°05'45" West along the northeast line of said Reinsch tract and continuing along the northeast line of a tract of land conveyed to Preston Warren by deed recorded in Volume 1205, Page 483, a total distance of 1,461.53

feet to a ½" iron rod found for corner, said point being the north corner of said Warren tract;

THENCE South 15°34' West along the northwest line of said Warren tract a distance of 1,169.61 feet to a ½" iron rod found for corner, said point also being in the northwest R.O.W. of the Texas and Pacific Railroad;

THENCE southwesterly along the northwest R.O.W. of said T&P Railroad in a curve to the right with radius of 5,679.65 feet and central angle of 01°11'05" (Chord bears 117.43 feet at South 70°32'39" West) an arc distance of 117.43 feet to the **Place of Beginning and containing 44.104 acres of land.**

Tract 4

BEING a tract of land out of the William Brogden Survey, Abstract No. 92, Grayson County, Texas and being a part of a 637.07 acre tract of land described in 4 tracts, conveyed to Anna Lee Howdeshell by deed recorded in Volume 1126, Page 384 and being more particularly described as follows:

BEGINNING at a P-K nail set in the north R.O.W. of U.S. Highway 82 at it's intersection with the centerline of Skaggs Road, said point also being the southeast corner of a 10.58 acre tract of land conveyed to North Park Baptist Church by deed recorded in Volume 2281, Page 279;

THENCE North 01°37'14" East along the centerline of Skaggs Road a distance of 487.98 feet to a 50d nail found for corner, said point being in the center of public road;

THENCE North 82°19'56" East along the centerline of said public road a distance of 201.40 feet to a 50d nail found for corner;

THENCE South 88°43'32" East continuing along the centerline of said public road a distance of 4743.07 feet to a 50d nail found for corner, said point being in the west line of a tract of land conveyed to Stella Mae Roberts by deed recorded in Volume 1860, Page 537, and being the northeast corner of said 637.07 acre tract;

THENCE South 01°09'37" West along the west line of said Roberts tract and the east line of said 637.07 acre tract a distance of 1941.32 feet to a ½" iron rod found for corner, said point also being in the north R.O.W. of U.S. Highway 82;

THENCE westerly along the north R.O.W. of U.S. Highway 82 the following bearings and distances:

NORTH 65°11' West a distance of 203.20 feet;

NORTH 49°52' West a distance of 466.50 feet;

NORTH 64°08' West a distance of 208.80 feet;

NORTH 58°13" West a distance of 130.00 feet;

NORTH 33°10' West a distance of 83.90 feet;

NORTH 19°10' East a distance of 92.20 feet;

NORTH 70°50' West a distance of 325.00 feet to a concrete highway monument found;

SOUTH 19°10' West a distance of 185.00 feet to a concrete highway monument found;

SOUTH 62°30' West a distance of 217.70 feet to a concrete highway monument found;

SOUTH 88°15' West a distance of 305.90 feet to a concrete highway monument found;

SOUTH 79°01' West a distance of 522.30 feet to a concrete highway monument found;

SOUTH 86°10' West a distance of 297.00 feet to a concrete highway monument found;

NORTH 73°10' West a distance of 669.70 feet to a concrete highway monument found;

NORTH 71°17' West a distance of 763.80 feet to a concrete highway monument found;

NORTH 55°19' West a distance of 730.80 feet to a concrete highway monument found;

NORTH 72°01' West a distance of 294.00 feet to a concrete highway monument found;

NORTH 38°46' West a distance of 182.40 feet to a concrete highway monument found;

THENCE North 72°01' West continuing along the north R.O.W. of U.S. Highway 82 a distance of 23.74 feet to the **PLACE OF BEGINNING and containing 150.792 acres of land.....**

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

Zoning:

1. All requirements of the Oil and Gas Well Ordinance (Chapter 4, Article 4.10) shall be followed.
2. Provide copy of Railroad Commission Application to drill and copies of requirements of Railroad Commission based on application.
3. Provide name address and phone number of operator of lease and property owner and name and number of contact person for the operator.
4. Provide description of the lease or lands involved and length of time surface operations are expected to occur.
5. Provide a scale drawing showing location of the well, ownership of the land, property lines, structures and offset operators or land owners.
6. Provide the name and address of the drilling contractor.
7. Provide a scaled drawing showing the proposed site and the location, distance to and nature of adjacent land uses.
8. Provide a statement warning of possible hazardous formation conditions that may be encountered during or as a result of the proposed drilling or exploration operation as maintenance of an existing well site.
9. Provide a copy of Operators Spill Prevention Plan.
10. Provide a certificate of insurance that carries a minimum coverage for bodily injury of \$500,000 for each occurrence and \$1,000,000 aggregate, and for the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage or pollution damage as first party recovery for the operator and related expenses, including but not limited to evacuation of residents, in the amount of at least \$5,000,000 per occurrence. The lease owner shall carry at all times this minimum limit of insurance until such time the well is out of production and all appurtenances removed from the site. The insurance under all situations and at all times shall list the City of Sherman as additionally named insured.
11. The oil or fuel storage tank or tank battery shall be installed in conformance with the spill prevention control and counter measure plan published by the U.S. Environmental Protection Agency.
12. A tank or tank battery shall not be located nearer than 150' from any residence or dwelling, unless the tank or tank battery existed prior to the residence or dwelling.
13. A tank or tank battery shall not be closer than 30' from any combustible structure.
14. Oil and fuel storage tanks or tank batteries, fences and wall shall be kept well painted and in good repair.
15. If the well(s) associated with an oil storage tank or tank battery is/are plugged, or if the storage tank battery is no longer in use, the storage tank or tank battery and associated pipelines shall be removed and the land restored. This provision includes all associated appurtenances with the wells and or tank batteries. This removal shall occur within six months unless documentation can be provided that the well and or tank battery will be used within the next two years. For the purpose of this provision, the term no longer in user shall mean that the tank or tank battery, while it or they may contain some residue of fuel, has not been pumped into or out of within the past six months.
16. Other oil or fuel storage tanks that receive products from transmission or distribution lines that are not pumped into or out of for a period of six months shall be considered abandoned and/or unused. The leaseholder shall disassemble and completely remove such tanks and all associated appurtenances from the site unless it is shown that there are plans to reuse the storage tanks within the next two years.

17. Within six months after the removal of any oil storage tanks or tank batteries, the permittee shall restore the property to its original state insofar as possible, to include removal and/or restoration of any un-remediated soil.
18. Pumps shall be electrically powered.
19. All surface equipment shall be kept clean, painted, in good repair and properly lubricated in order that they will operate quietly. The noise produced by well jacks or units on a producing well shall not exceed 50 decibels at any boundary of the parcel on which the well is located.
20. All flow lines shall be buried at least (1) one foot under the ground. Depending upon adjacent land uses and proposed streets, roads and highways, the City may require lines to be buried at a greater depth.
21. Upon the removal of the associated tank batteries and/or the plugging of wells associated with such pipelines, the pipelines shall be removed.
22. Any waste oil or water in, on, or around any premises shall be immediately cleaned up and the ground shall be cleaned of any oil bearing dirt.
23. The leaseholder shall proceed with the drilling operations with the highest degree of care so as not to injure adjoining property or persons in any manner by keeping the premises suitably fenced or guarded 24 hours a day in such manner as to avoid trespassing during the drilling and exploratory operations; and to remove all drilling mud upon completion of drilling operations; immediately cleaning the grounds around the well of all drilling mud and/or salt water or water. The area shall be made to conform in appearance to the lands in the neighborhood wherein such drilling, exploration or maintenance operations are so conducted. All pits and contents shall be removed from the premises and the drill site within 30 days after completion of the well. Prior to the commencement of any drilling operations a private road shall be installed to the drill site and the operation site that is at least (10) ten feet wide and has an overhead clearance of at least 14 feet and is surfaced and maintained to prevent dust and mud.
24. Sounds during drilling operations shall not exceed 60 decibels during daytime hours between 7 a.m. and 7 p.m. and 50 decibels during nighttime hours between 7 p.m. and 7 a.m. measured at any occupied structure on a parcel other than the parcel on which the oil or gas well is located.
25. The center of any well at the surface shall be a minimum of 25 feet from any storage tank or source of ignition; 100 feet from any building accessory to the well, public street, road, highway, right-of-way or property line; 300 feet from any water well; 400 feet from any commercial or industrial building and 600 feet from any residence. The minimum distances may be reduced by a waiver granted by the Planning and Zoning Board and the City Council or by written notarized waivers granted by owners of all buildings within the radius being protected from drilling. All waivers must identify the property address, block and lot number, subdivision name (if applicable), and plat volume and page. Such waivers must be filed, at the expense of the operator in the Grayson County Records.
26. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

27. All City Ordinances pertaining to drilling oil and gas wells are to be followed.

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 _____ day of _____, 2011.

ADOPTED on this the _____ day of _____, 2011.

EFFECTIVE DATE on this the _____ day of _____, 2011.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



City of Sherman, Texas
Developmental Services Department

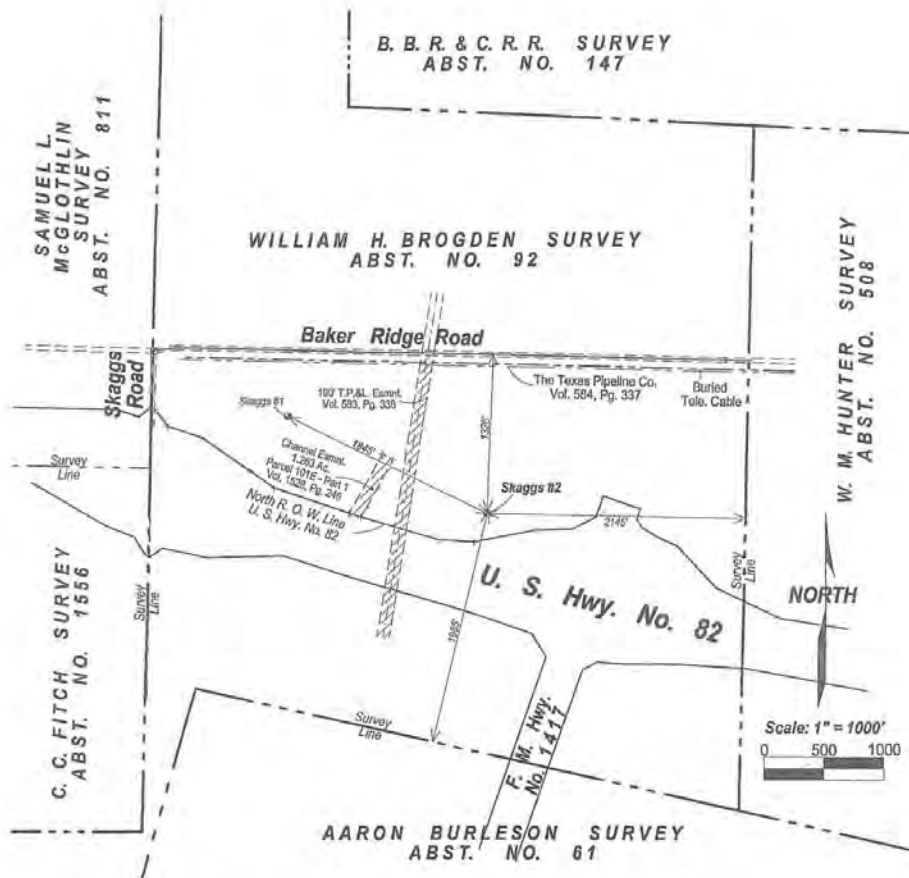
4335 U.S. Highway 82 East



1 inch = 1,073 feet

4335 U.S. Highway 82 E.





SARTIN & ASSOCIATES, INC.
Registered Professional Land Surveyors

109 S. Travis, P. O. Box 1843 Sherman, Texas 75091 - 1843
Ph: (903) 892-8003 Fax: (903) 868-2970 Email - msartin@gccisp.com

WELL LOCATION PLAT SKAGGS NO. 2
WILLIAM BROGDEN SURVEY, ABSTRACT NO. 92
GRAYSON COUNTY, TEXAS

Perpendicular distances from nearest designated lines

1326 feet FNL of Lease
2145 feet FEL of Survey
1965 feet FSL of Survey

Ground Elevation = 754 feet
Lat. 33 Deg. 39 Min. 40 Sec. N (33.661111)
Lng. -96 Deg. 33 Min. 48 Sec. W (-96.563333)

OPERATOR
LONGFELLOW ENERGY, LP
4801 Gaillardia Parkway, Suite 225, Oklahoma City, OK 73142

WARNING: This plat may not show all crossings of pipelines or cables. Sartin & Associates, Inc. assumes no responsibility to locate pipeline or cable crossings. No claim is hereby made regarding current or actual surface/mineral fee ownership or lessor.

I, Marshall Sartin, Registered Professional Land Surveyor, do hereby certify that the above captioned well location was surveyed and staked on the ground under my supervision.

SKAGGS-2.pcs

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



4-C

Longfellow Energy
Skaggs #2 Well site



City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
September 20, 2011
Lawrence Davis, Chairman

Jim Jacobs, Vice Chairman
Vacant, Commissioner
Ron Barton, Commissioner
Don Hicks, Commissioner

Brad Morgan, Commissioner
David Plyler, Commissioner
Darren Tankersley, Commissioner
Richard Barber, Commissioner

4335 U.S. Highway 82 East
Being 194.896 acres in the William Brogden Survey, Abstract No. 92
Specific Use Permit & Site Plan

Requested Action/Proposed Use:

Planning and Zoning Board

Specific Use Permit and site plan approval to allow the drilling of an oil/gas well in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District.

Background:

The property is located at 4335 U.S. Highway 82 East; the northwest corner of U.S. Highway 82 East and the F.M. 1417 NE Junction. The mineral rights owners would like to drill an oil/gas well on the property.

Adjacent Zoning:

R-1 (One Family Residential) District

Origination:

Jack & Patsy Pierce (Mineral Rights Owners), Greg Spalding, Longfellow Energy, LP (Representative) and Sartin & Associates, Inc. (Surveyors)

Master Plan Designation:

Agricultural and Rural – Typically are large parcels that are primarily used for crops or pasture land. These low density regions surrounding the City do not have significant demands on the transportation or utilities network.

Number of notices mailed:

1

Objections Received:

0

Attachments:

Location map, Photographs, Site Plan, Staff Review Letter

Prepared by:
Patsy Reeves,
Developmental Services Secretary

Approved by:
Scott Shadden,
Director of Developmental Services

**STAFF REVIEW LETTER**

September 14, 2011

Jack & Patsy Pierce
2001 Skaggs Rd.
Sherman, TX 75090

Greg Spalding
PO Box 1989
Addison, TX 75001

Dear Applicants,

The request for approval of a Specific Use Permit and site plan approval to allow the drilling of an oil/gas well in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District for the property at 4335 U.S. Highway 82 East has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, September 20, 2011 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 requirements of the Oil and Gas Well Ordinance (Chapter 4, Article 4.10) shall be followed.
2. Provide copy of Railroad Commission Application to drill and copies of requirements of Railroad Commission based on application.
3. Provide name address and phone number of operator of lease and property owner and name and number of contact person for the operator.
4. Provide description of the lease or lands involved and length of time surface operations are expected to occur.
5. Provide a scale drawing showing location of the well, ownership of the land, property lines, structures and offset operators or land owners.
6. Provide the name and address of the drilling contractor.
7. Provide a scaled drawing showing the proposed site and the location, distance to and nature of adjacent land uses.
8. Provide a statement warning of possible hazardous formation conditions that may be encountered during or as a result of the proposed drilling or exploration operation as maintenance of an existing well site.
9. Provide a copy of Operators Spill Prevention Plan.
10. Provide a certificate of insurance that carries a minimum coverage for bodily injury of \$500,000 for each occurrence and \$1,000,000 aggregate, and for the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage or pollution damage as first party recovery for the operator and related expenses, including but not limited to evacuation of residents, in the amount of at least \$5,000,000 per occurrence. The lease owner shall carry at all times this minimum limit of insurance until such time the well is out of production and all appurtenances removed from the site. The insurance under all situations and at all times shall list the City of Sherman as additionally named insured.
11. The oil or fuel storage tank or tank battery shall be installed in conformance with the spill prevention control and counter measure plan published by the U.S. Environmental Protection Agency.
12. A tank or tank battery shall not be located nearer than 150' from any residence or dwelling, unless the tank or tank battery existed prior to the residence or dwelling.
13. A tank or tank battery shall not be closer than 30' from any combustible structure.
14. Oil and fuel storage tanks or tank batteries, fences and wall shall be kept well painted and in good repair.
15. If the well(s) associated with an oil storage tank or tank battery is/are plugged, or if the storage tank battery is no longer in use, the storage tank or tank battery and associated pipelines shall be removed and

the land restored. This provision includes all associated appurtenances with the wells and or tank batteries. This removal shall occur within six months unless documentation can be provided that the well and or tank battery will be used within the next two years. For the purpose of this provision, the term no longer in user shall mean that the tank or tank battery, while it or they may contain some residue of fuel, has not been pumped into or out of within the past six months.

16. Other oil or fuel storage tanks that receive products from transmission or distribution lines that are not pumped into or out of for a period of six months shall be considered abandoned and/or unused. The leaseholder shall disassemble and completely remove such tanks and all associated appurtenances from the site unless it is shown that there are plans to reuse the storage tanks within the next two years.
17. Within six months after the removal of any oil storage tanks or tank batteries, the permittee shall restore the property to its original state insofar as possible, to include removal and/or restoration of any unremediated soil.
18. Pumps shall be electrically powered.
19. All surface equipment shall be kept clean, painted, in good repair and properly lubricated in order that they will operate quietly. The noise produced by well jacks or units on a producing well shall not exceed 50 decibels at any boundary of the parcel on which the well is located.
20. All flow lines shall be buried at least (1) one foot under the ground. Depending upon adjacent land uses and proposed streets, roads and highways, the City may require lines to be buried at a greater depth.
21. Upon the removal of the associated tank batteries and/or the plugging of wells associated with such pipelines, the pipelines shall be removed.
22. Any waste oil or water in, on, or around any premises shall be immediately cleaned up and the ground shall be cleaned of any oil bearing dirt.
23. The leaseholder shall proceed with the drilling operations with the highest degree of care so as not to injure adjoining property or persons in any manner by keeping the premises suitably fenced or guarded 24 hours a day in such manner as to avoid trespassing during the drilling and exploratory operations; and to remove all drilling mud upon completion of drilling operations; immediately cleaning the grounds around the well of all drilling mud and/or salt water or water. The area shall be made to conform in appearance to the lands in the neighborhood wherein such drilling, exploration or maintenance operations are so conducted. All pits and contents shall be removed from the premises and the drill site within 30 days after completion of the well. Prior to the commencement of any drilling operations a private road shall be installed to the drill site and the operation site that is at least (10) ten feet wide and has an overhead clearance of at least 14 feet and is surfaced and maintained to prevent dust and mud.
24. Sounds during drilling operations shall not exceed 60 decibels during daytime hours between 7 a.m. and 7 p.m. and 50 decibels during nighttime hours between 7 p.m. and 7 a.m. measured at any occupied structure on a parcel other than the parcel on which the oil or gas well is located.
25. The center of any well at the surface shall be a minimum of 25 feet from any storage tank or source of ignition; 100 feet from any building accessory to the well, public street, road, highway, right-of-way or property line; 300 feet from any water well; 400 feet from any commercial or industrial building and 600 feet from any residence. The minimum distances may be reduced by a waiver granted by the Planning and Zoning Board and the City Council or by written notarized waivers granted by owners of all buildings within the radius being protected from drilling. All waivers must identify the property address, block and lot number, subdivision name (if applicable), and plat volume and page. Such waivers must be filed, at the expense of the operator in the Grayson County Records.
26. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

27. All City Ordinances pertaining to drilling oil and gas wells are to be followed.

P&Z - 9/20/11 - Staff Review Letter - 4335 U.S. Highway 82 E.

Any other changes made to the site plan prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning and Zoning Commission.

You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

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

Respectfully,



Scott Shadden
Secretary, Planning and Zoning Board and Board of Adjustment

CC: George Olson, City Manager
Mark Gibson, Director Utilities & Engineering Services
Don Keene, Exec. Dir. of Planning & Public Works

Nathan Huffman, Fire Marshal
Brandon Shelby, City Attorney
Lisa Whitfield, Engineering & Development Coordinator

**CITY OF SHERMAN
APPLICATION FOR PERMIT TO DRILL OR DEEPEN**

Date: September 30, 2011

Name or Company or Operator

1. Name of Applicant: Longfellow Energy, LP.
2. Permanent Address: 16803 North Dallas Parkway
3. City, State, Zip: Addison, Texas 75001
4. Is applicant an individual, partnership, or corporation?
o Individual ☒ Partnership o Corporation
5. Principal Office: Addison, Texas
Address: 16803 North Dallas Parkway State: TX Zip: 75001
6. Names of all partners or officers: Malone Mitchell-Partner, Todd Dutton President.

Description of Lease

1. Block Number: NA (See City Drilling Map)
2. Size of Block: NA square feet
3. Amount of block owned or leased by applicant: NA square feet
4. Names of all owners and lessees in block other than applicant, with number of square feet in block owned by each:

<u>Harold Skaggs Jr.</u>	<u>1/3 of 640 mineral acres more or</u>
<u>13600 FM Rd, Austin, TX 78737</u>	<u>less see attached OGL</u>

<u>Patsy Jane Pierce</u>	<u>1/3 of 640 mineral acres more or</u>
	<u>less see attached OGL</u>

2001 Skaggs Rd, Sherman, TX
75091

<u>Anna Keller</u>	<u>1/3 of 640 mineral acres more or</u>
	<u>less see attached OGL</u>

1901 Skaggs Rd, Sherman, TX
75091

<u>West Gold Realtors</u>	<u>133.2 acres surface only</u>
---------------------------	---------------------------------

4545 Allstate Dr. Riverside, CA
92501

5. Names of streets, roads, lanes or alleys surrounding block:
North: Baker Ridge Road South: Texas State HWY 82
East: NA, private property West: Skaggs Rd
6. Distance from nearest producing well: 1,846 feet.
7. Elevation of proposed location: 754 feet from sea level
8. Distance from nearest hospital, school, church, or public building: 1,091 feet.
Direction: SSE.

9. Distance from nearest dwelling: 2,108 feet
10. Type of rig; rotary or cable: rotary.

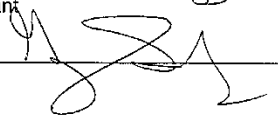
APPLICATION FOR PERMIT TO DRILL OR DEEPEN

11. Source of power: ☒ Diesel ☐ Electric
12. Amount of well casing on hand with diameters: @50' of 16" 2.650' of 9 and 5/8' and @11,500' of 5 and 1/2'.
13. Describe proposed arrangement for slush pit if allowed by City Council and arrangement for handling mud and waste if slush pit not allowed:
We are using a closed loop system for oil-based mud no pits necessary.
14. Describe location and type of proposed production tanks, if allowed, and proposed arrangement for disposition of oil and gas produced:
Tank battery to be constructed with 2-3 steel tanks (210-300 bbls each). Proposed disposition of oil is Sunco via truck. Proposed disposition of gas is by SEMGAS via pipeline.
15. Name of surety company to carry bond required: RLI CORP.
16. Name of carrier of tort liability insurance required: ACE American Insurance Company.
17. Notice of this application was sent by registered mail to all owners and lessees (other than applicant) within the above-described block on October 4, 2011.

Attached to this application are:

1. Map or plat, scale: 1 inch = 20 feet, of block covered in application showing exact location of the proposed well and all improvements on block.
2. Certified copies of leases or deeds showing ownership of fee or mineral interests in block (or abstracts of title if ownership or application is contested).
3. Copies of Registry receipts on notices mailed to other owners or lessees on same block, and if notice is had by publication, an affidavit of publisher showing dates of publication.

Applicant recognizes that the permit granted hereunder, if any, does not and will not constitute a vested right, and applicant will comply with all provisions of Ordinances of the City of Sherman and any and all subsequent changes or amendments thereto.

Longfellow Energy
Applicant
By: 

ORIGINAL DOCUMENT HAS A SECURITY VOID BACKGROUND PANTOGRAPH/MICROPRINTED BORDER. SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES (A)

BANK OF AMERICA
HOUSTON, TX

LONGFELLOW ENERGY LP
PO BOX 1989
ADDISON, TX 75001

CHECK NO	CHECK DATE	CHECK AMOUNT
21920	08/31/11	\$*****650.00

PAY THIS AMOUNT:
***650 Dollars and No Cents

TO
THE
ORDER
OF
CITY OF SHERMAN
220 W MULBERRY
SHERMAN TX 75091

Michael W. Burnett

⑈0021920⑈ ⑆111000025⑆ ⑈488001507467⑈

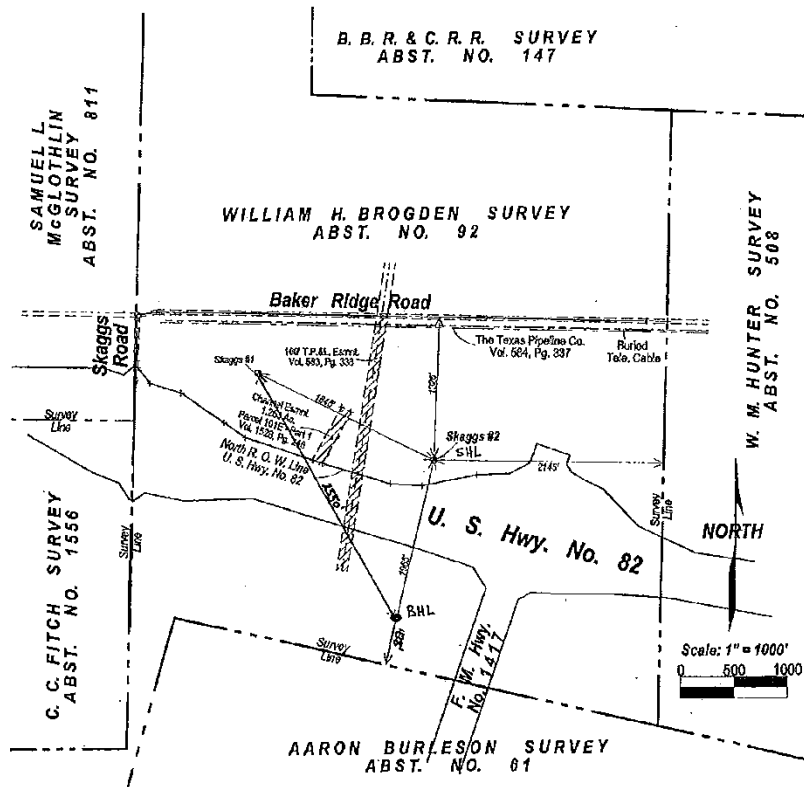
LONGFELLOW ENERGY LP PO BOX 1989, ADDISON, TX 75001 405/286-6324

INVOICE	DATE	DESCRIPTION	NET
083111A	08/31/11	PERMIT-INSIDE CITY LIMITS	650.00

Skaggs #2

City Clerk (903) 892-7206
REC'D 08/31/11 10/24/2011 4:01 PM
DEPT: 000 TOWN: 102
REF: 01920
TOWN: 113-0000 OTHER WISC
LONGFELLOW ENERGY
OIL WELL PERMIT
OIL & GAS RENTAL
TENDERED: 450.00 CHECK
APPLIED: 450.00
CHARGE: 0.00
VST: www.ci.sherman.tx.us
Utility Billing (903) 892-7207
Finance (903) 892-7209
Court (903) 892-7206

VENDOR	CITSHE	CHECK	21920	DATE	08/31/11	650.00
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SARTIN & ASSOCIATES, INC.
Registered Professional Land Surveyors

109 S. Travis, P. O. Box 1843 Sherman, Texas 75091-1843
Ph.: (903) 892-8083 Fax: (903) 868-2970 Email: msartin@gccclsp.com

WELL LOCATION PLAT ----- SKAGGS NO. 2
WILLIAM BROGDEN SURVEY, ABSTRACT NO. 92
GRAYSON COUNTY, TEXAS

Perpendicular distances from nearest designated lines

1326 feet FNL of Lease
2145 feet FEL of Survey
1965 feet FSL of Survey

Ground Elevation = 754 feet
Lat. 33 Deg. 39 Min. 40 Sec. N (33.661111)
Lng. -98 Deg. 33 Min. 48 Sec. W (-96.563333)

OPERATOR

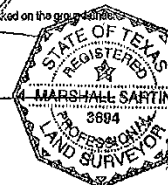
LONGFELLOW ENERGY, LP
4801 Gallardia Parkway, Suite 226, Oklahoma City, OK 73142

WARNING: This plat may not show all crossings of pipelines or cables. Sartin & Associates, Inc. assumes no responsibility to locate pipeline or cable crossings. No claim is hereby made regarding current or actual surface/mineral fee ownership or lesser.

I, Marshall Sartin, Registered Professional Land Surveyor, do hereby certify that the above captioned well location was surveyed and placed on this plat under my supervision.

SKAGGS-2.pcs

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



**RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION**

PERMIT TO DRILL, DEEPEN, PLUG BACK, OR RE-ENTER ON A REGULAR OR ADMINISTRATIVE EXCEPTION LOCATION

PERMIT NUMBER 721454	DATE PERMIT ISSUED OR AMENDED Aug 08, 2011	DISTRICT * 09	
API NUMBER 42-181-31481	FORM W-1 RECEIVED Aug 02, 2011	COUNTY GRAYSON	
TYPE OF OPERATION NEW DRILL	WELLBORE PROFILE(S) Directional	ACRES 640	
OPERATOR LONGFELLOW ENERGY, LP PO BOX 7915 EDMOND, OK 73083		508409 NOTICE This permit and any allowable assigned may be revoked if payment for fee(s) submitted to the Commission is not honored. District Office Telephone No: (940) 723-2153	
LEASE NAME SKAGGS		WELL NUMBER 2	
LOCATION 3 miles E direction from SHERMAN		TOTAL DEPTH 13000	
Section, Block and/or Survey SECTION ◀ BLOCK ◀ ABSTRACT ◀ 92 SURVEY ◀ BROGDEN, W H			
DISTANCE TO SURVEY LINES 2145 ft. EAST 3390 ft. NORTH		DISTANCE TO NEAREST LEASE LINE 965 ft.	
DISTANCE TO LEASE LINES 2145 ft. EAST 3390 ft. NORTH		DISTANCE TO NEAREST WELL ON LEASE See FIELD(s) Below	
FIELD(s) and LIMITATIONS: * SEE FIELD DISTRICT FOR REPORTING PURPOSES *			
FIELD NAME LEASE NAME	ACRES NEAREST LEASE	DEPTH NEAREST LEASE	WELL # NEAREST WB DIST
WILDCAT SKAGGS	640.00 965	13,000 2550	2 09
WELLBORE PROFILE(S) FOR FIELD: Directional			
RESTRICTIONS: Bottom Hole: BH1 Lease Lines: 2206.0 F EAST L 1930.0 F SOUTH L Survey Lines: 2206.0 F EAST L 438.0 F SOUTH L			
THE FOLLOWING RESTRICTIONS APPLY TO ALL FIELDS This well shall be completed and produced in compliance with applicable special field or statewide spacing and density rules. If this well is to be used for brine mining, underground storage of liquid hydrocarbons in salt formations, or underground storage of gas in salt formations, a permit for that specific purpose must be obtained from Environmental Services prior to construction, including drilling, of the well in accordance with Statewide Rules 81, 95, and 97.			

“Notice is hereby given that Longfellow Energy, LP, acting under and pursuant to the terms and provisions of Article 4.10 of the Sherman City Code did on the 4th day of October, 2011, file with the city Clerk of the City of Sherman, an application for a permit to drill a well for oil and gas upon Tract 3: BEING a tract of land containing 44.104 acres of land more or less out of the William Brogden Survey, Abstract No. 92, Grayson County, Texas and being a part of a 637.07 acre tract of land described in 4 tracts, conveyed to Anna Lee Howdeshell by deed recorded in Volume 1126, Page 384 and Tract 4: BEING a tract of land containing 150.792 acres of land more or less out of the William Brogden Survey, Abstract No. 92, Grayson County, Texas and being a part of a 637.07 acre tract of land described in 4 tracts, conveyed to Anna Lee Howdeshell by deed recorded in Volume 1126, Page 384. A hearing upon such application will be held in the Council Room of the City of Sherman at 220 W. Mulberry at 5:00 o’clock p.m. on the 17th day of October, 2011.”

7011 1570 0001 4437 0683

U.S. Postal Service [®]	
CERTIFIED MAIL [™] RECEIPT	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To <u>Harold Skaggs</u>	
Street, Apt. No., or PO Box No. <u>13600 FM Rd.</u>	
City, State, ZIP+4 <u>Austin, TX 78737</u>	
PS Form 3800, August 2006 See Reverse for Instructions	

7011 1570 0001 4437 0676

U.S. Postal Service [®]	
CERTIFIED MAIL [™] RECEIPT	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To <u>Anna Skaggs Keller</u>	
Street, Apt. No., or PO Box No. <u>1901 Skaggs Rd.</u>	
City, State, ZIP+4 <u>Sherman, TX 75090</u>	
PS Form 3800, August 2006 See Reverse for Instructions	

7011 1570 0001 4437 0690

U.S. Postal Service [®]	
CERTIFIED MAIL [™] RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To <u>Fatsy Jane Pierce</u>	
Street, Apt. No., or PO Box No. <u>2001 Skaggs Rd.</u>	
City, State, ZIP+4 <u>Sherman, TX 75091</u>	
PS Form 3800, August 2006 See Reverse for Instructions	



October 1, 2011

Mr. Harold Skaggs Jr.
13600 FM Rd.
Austin, TX 78737

Re: Skaggs No. 2 Drill site
Grayson County, Texas

Dear Mr. Skaggs,

You executed a Paid Up Oil and Gas Lease dated March 14, 2008 to Grayson County Properties, LLC, which Lease is recorded in Volume 4533, Page 398 of the records of Grayson County, Texas. Grayson County Properties, LLC is a subsidiary company of Longfellow Energy, LP (hereinafter referred to as "Longfellow") headquartered in Addison, Texas.

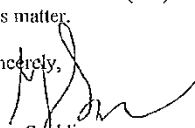
Longfellow has plans to drill its Skaggs No. 2 well at a legal location on the lands that are covered by the Oil and Gas Lease. Paragraph 17 of Exhibit "A" attached to the Lease prohibits any surface or drilling operations on the leased lands without written permission from the Lessor.

Therefore, we respectfully request that you grant us permission to enter the leased lands to conduct additional surveying, construction of a well site and road for the drilling, completion of and operations for the subject well. All damages to the land in conducting these operations will be paid by Longfellow to the surface owner of the land on rates comparable for other drill sites in the area.

Please signify your permission by signing the attached copy and returning it to us in the stamped, addressed envelope, which we have enclosed, or by a signed, scanned emailed copy.

Please call me at (405) 203-9056 if you have any questions or need any additional information relative to this matter.

Sincerely,


Greg Spalding
greg.spalding@longfellowenergy.com

COPY

Accepted by Harold Skaggs Jr. _____ dated _____

16803 DALLAS PARKWAY | ADDISON, TX 75001 | P.O. BOX 1989 |
972.590.9943 | FAX 972.590.9943



October 1, 2011

Mrs. Patsy Jane Pierce
2001 Skaggs Rd.
Sherman, TX 75091

Re: Skaggs No. 2 Drill site
Grayson County, Texas

Dear Mr. and Mrs. Pierce,

You executed a Paid Up Oil and Gas Lease dated March 14, 2008 to Grayson County Properties, LLC, which Lease is recorded in Volume 4533, Page 392 of the records of Grayson County, Texas. Grayson County Properties, LLC is a subsidiary company of Longfellow Energy, LP (hereinafter referred to as "Longfellow") headquartered in Addison, Texas.

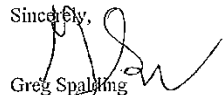
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Therefore, we respectfully request that you grant us permission to enter the leased lands to conduct additional surveying, construction of a well site and road for the drilling, completion of and operations for the subject well. All damages to the land in conducting these operations will be paid by Longfellow to the surface owner of the land on rates comparable for other drill sites in the area.

Please signify your permission by signing the attached copy and returning it to us in the stamped, addressed envelope, which we have enclosed.

Please call me at (405) 203-9056 if you have any questions or need any additional information relative to this matter.

Sincerely,


Greg Spallmg

COPY

Accepted by Patsy Jane Pierce _____ dated _____

16803 DALLAS PARKWAY | ADDISON, TX 75001 | P.O. BOX 1989 |
972.590.9943 | FAX 972.590.9943



October 1, 2011

Mr. and Mrs. Stephen Keller
1901 Skaggs Rd.
Sherman, TX 75090

Re: Skaggs No. 2 Drill site
Grayson County, Texas

Dear Mr. and Mrs. Keller,

You executed a Paid Up Oil and Gas Lease dated March 14, 2008 to Grayson County Properties, LLC. which Lease is recorded in Volume 4533, Page 386 of the records of Grayson County, Texas. Grayson County Properties, LLC is a subsidiary company of Longfellow Energy, LP (hereinafter referred to as "Longfellow") headquartered in Addison, Texas.

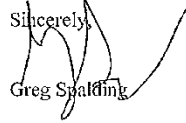
Longfellow has plans to drill its Skaggs No. 2 well at a legal location on the lands that are covered by the Oil and Gas Lease. Paragraph 17 of Exhibit "A" attached to the Lease prohibits any surface or drilling operations on the leased lands without written permission from the Lessor.

Therefore, we respectfully request that you grant us permission to enter the leased lands to conduct additional surveying, construction of a well site and road for the drilling, completion of and operations for the subject well. All damages to the land in conducting these operations will be paid by Longfellow to the surface owner of the land on rates comparable for other drill sites in the area.

Please signify your permission by signing the attached copy and returning it to us in the stamped, addressed envelope, which we have enclosed.

Please call me at (405) 203-9056 if you have any questions or need any additional information relative to this matter.

Sincerely,


Greg Spalding

COPY

Accepted by Anna Keller Skaggs _____ dated _____

16803 DALLAS PARKWAY | ADDISON, TX 75001 | P.O. BOX 1989 |
972.590.9943 | FAX 972.590.9943

7011 1570 0001 4437 0720

USPS Form 3800, AUGUST 2006	
CERTIFIED MAIL RECEIPT	
OFFICIAL USE	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent to	
Neal Sorenson	
Street, Apt. No., or PO Box No. 4545 Ailstate Pr.	
City, State, ZIP+4 Riverside, CA 92501	

US Form 3800, AUGUST 2006

See Reverse for Instructions



Mr. Neal Sorenson
West Gold Realtors
4545 Allstate Drive
Riverside, CA 92501-1701

Re: Skaggs No. 2 well site
M. H. Brogden Survey A-92
Grayson County, Texas

September 29, 2011

Dear Mr. Sorenson,

Longfellow Energy, LP (hereinafter referred to as "Longfellow") received your letter dated September 12, 2011, with your request for Longfellow to contact Mr. Addison Terry regarding the well site(s) on the above referenced property. Longfellow has been in contact with Mr. Terry multiple times by email and phone since January 17, 2011, regarding the surface issues of your property in Grayson County, Texas.

On September 16, 2011, we emailed the survey plat of the Skaggs #1 and #2 well sites to Mr. Terry in addition; I spoke to Mr. Terry by phone on September 19, 2011, the day he viewed the Longfellow Skaggs well sites on your property. At his request, we have supplied Mr. Terry with the acreage measurement of the two (2) well sites.

- Skaggs #1 well site is 3.00 acres.
- Skaggs #2 well site is 3.62 acres.

Per your written request, Longfellow will continue to contact Mr. Terry, regarding settlement of your surface damages; however if you have any questions or need any additional information, please call me at 972.590.9943 or email me at greg.spalding@longfellowenergy.com

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Greg Spalding'. The signature is fluid and cursive, with a large loop at the end.

Greg Spalding

Enclosures (1)
cc: Addison Terry 'addison@addisonterry.com'

16803 DALLAS PARKWAY | ADDISON, TX 75001 | P.O. BOX 1989 |
972.590.9943 | FAX 972.590.9943

James Gray Management, Inc.

4545 Allstate Drive, Riverside, CA 92501
Phone 951-781-0910 Fax 951-781-0371

September 12, 2011

Greg Spaulding c/o
Longfellow Energy
16803 Dallas Parkway
Addison, TX 75001

RE: Surface damage Sherman Freeway 353

Dear Mr. Spaulding:

Please contact our attorney on the above referenced matter. Mr. Addison Terry, telephone number (903) 624-3007, 2500 Stewart Drive, Waco, Texas, 76708. His e-mail address is addison@addisonterry.com.

Sincerely,

Niels Sorensen
Niels T. Sorensen *ct*

cc: SF 353 file
Addison Terry

**RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION**

PERMIT TO DRILL, DEEPEN, PLUG BACK, OR RE-ENTER ON A REGULAR OR ADMINISTRATIVE EXCEPTION LOCATION

PERMIT NUMBER 721454	DATE PERMIT ISSUED OR AMENDED Aug 08, 2011	DISTRICT * 09
API NUMBER 42-181-31481	FORM W-1 RECEIVED Aug 02, 2011	COUNTY GRAYSON
TYPE OF OPERATION NEW DRILL	WELLBORE PROFILE(S) Directional	ACRES 640
OPERATOR LONGFELLOW ENERGY, LP PO BOX 7915 EDMOND, OK 73083		NOTICE This permit and any allowable assigned may be revoked if payment for fee(s) submitted to the Commission is not honored. District Office Telephone No: (940) 723-2153
LEASE NAME SKAGGS		WELL NUMBER 2
LOCATION 3 miles E direction from SHERMAN		TOTAL DEPTH 13000
Section, Block and/or Survey SECTION ☒ BLOCK ☒ ABSTRACT ☒ 92 SURVEY ☒ BROGDEN, W H		
DISTANCE TO SURVEY LINES 2145 ft. EAST 3390 ft. NORTH		DISTANCE TO NEAREST LEASE LINE 965 ft.
DISTANCE TO LEASE LINES 2145 ft. EAST 3390 ft. NORTH		DISTANCE TO NEAREST WELL ON LEASE See FIELD(s) Below
FIELD(s) and LIMITATIONS: * SEE FIELD DISTRICT FOR REPORTING PURPOSES *		
FIELD NAME LEASE NAME	ACRES NEAREST LEASE	DEPTH WELL # NEAREST WB
WILDCAT	640.00	13,000
SKAGGS	965	2550
WELLBORE PROFILE(S) FOR FIELD: Directional		
RESTRICTIONS: Bottom Hole: BH1 Lease Lines: 2206.0 F EAST L 1930.0 F SOUTH L Survey Lines: 2206.0 F EAST L 438.0 F SOUTH L		
THE FOLLOWING RESTRICTIONS APPLY TO ALL FIELDS This well shall be completed and produced in compliance with applicable special field or statewide spacing and density rules. If this well is to be used for brine mining, underground storage of liquid hydrocarbons in salt formations, or underground storage of gas in salt formations, a permit for that specific purpose must be obtained from Environmental Services prior to construction, including drilling, of the well in accordance with Statewide Rules 81, 95, and 97.		



City of Sherman
P.O. Box 1106
Sherman, Texas 75091
Phone: (903) 892-7204
Fax: (903) 892-7394

OIL WELL PERFORMANCE BOND

STATE OF TEXAS §
COUNTY OF GRAYSON §
CITY OF SHERMAN §

BOND NO. RLB0013957

KNOW ALL MEN BY THESE PRESENTS:

That we, Longfellow Energy, LP, as principal, and RLI Insurance Company as surety, hereby acknowledge ourselves, bound to the City of Sherman, a municipal corporation, for the benefit of the said City, and all persons, firms and corporations concerned, in the sum of One Hundred Thousand and No/100 dollars for the payment of which well and truly to be made, the said principal binds himself, his heirs, executors, administrators and assigns, and the surety does hereby bind itself and its successors, firmly by these presents, all being bound jointly and severally by these presents.

The condition of the above obligation is such that, whereas the above bounden principal has applied to the City of Sherman for a permit to drill an oil well within the City limits and on Drilling Block No. N/A in compliance with the provisions of Article 4.10 of the 2005 recodified ordinances, as amended, and whereas the said ordinances require a bond conditioned that if the permit be granted and if drilling operations be commenced thereunder the applicant and his assigns will comply with the terms and conditions of the said ordinances, and all future amendments and regulations thereunder in the drilling and operation of said well; and that the applicant will restore the streets and sidewalks and other public places of the City which may be disturbed in the operations to their former conditions, and will clear the blocks and lots of all litter, machinery, derricks and buildings erected or used in the drilling or operation of said well whenever the well shall be completed, abandoned or the operations therefor discontinued and that the applicant or his assigns will pay such sums as may be due by them by reason of production of oil, gas or other minerals to all persons, firms or corporations owning lots, blocks or tracts of land in said drilling block or area who have not executed, at the time of filing of such bond, or who shall not execute during the term of said bond and prior to the accrual of liabilities thereunder, leases, drilling contracts, waivers or other form of contract under which the applicant or his assigns is or are authorized to operate the premises of said owner of the development and production of oil and gas in accordance with the provisions of said ordinances.

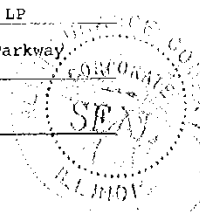
NOW, THEREFORE, if the above bounden principal, his heirs, executors, administrators, and assigns, shall well and truly keep, do and perform each and every, all and singular the obligations, matters and things required by said Article 4.10 of the 2005 recodified ordinances, as amended, then this obligation shall be null and void; otherwise to be and remain in full force and effect.

IN TESTIMONY WHEREOF witness our hands this 16th day of August, 20 11.

Longfellow Energy, LP
PRINCIPAL [Signature]
SURETY RLI Insurance Company
[Signature]
Jason T. Kilpatrick, Attorney-in-Fact

AGENT USI Southwest-San Angelo
P. O. Box 1111
ADDRESS San Angelo, TX 76902
PHONE NO 325-486-5130

PRINCIPAL Longfellow Energy, LP
16803 North Dallas Parkway
ADDRESS Dallas, TX 75001
PHONE NO 972-590-9946





RLB0013957

RLI Surety
A Division of RLI Insurance Company

POWER OF ATTORNEY

RLI Insurance Company

Know All Men by These Presents:

That the RLI INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Illinois, and authorized and licensed to do business in all states and the District of Columbia does hereby make, constitute and appoint: JASON T. KILPATRICK in the City of HOUSTON, State of TEXAS, as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of documents to-wit:

\$100,000.00

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; policies indemnifying employers against loss or damage caused by the misconduct of their employees; official, bail and surety and fidelity bonds. Indemnity in all cases where indemnity may be lawfully given; and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company, and to compromise and settle any and all claims or demands made or existing against said Company.

The RLI INSURANCE COMPANY further certifies that the following is a true and exact copy of a Resolution adopted by the Board of Directors of RLI Insurance Company, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers-of-Attorney, or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

(Blue shaded areas above indicate authenticity)

IN WITNESS WHEREOF, the RLI Insurance Company has caused these presents to be executed by its PRESIDENT with its corporate seal affixed this

ATTEST:
Jean M. Stephenson
CORPORATE SECRETARY
State of Illinois)
) SS
County of Peoria)



On this 16 day of August 2011 before me, a Notary Public, personally appeared Michael J. Stone and Jean M. Stephenson, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as President and Corporate Secretary, respectively, of the said RLI INSURANCE COMPANY, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler
Notary Public



SPA028 (03/11)



RLI Insurance Company
Peoria, Illinois 61615

TEXAS POLICYHOLDER NOTICE

TEXAS IMPORTANT NOTICE

To obtain information or make a complaint:

You may call RLI Insurance Company's toll-free telephone number for information or to make a complaint at:

1-800-444-0406

You may also write to RLI Insurance Company at:

RLI Insurance Company
9025 N. Lindbergh Drive
Peoria, Illinois 61615

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may also write the Texas Department of Insurance:

P.O. Box 149104
Austin, Texas 78714-9104
Fax Number: (512) 475-1771

Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

TEXAS AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de RLI Insurance Company's para informacion o para someter una queja al:

1-800-444-0406

Usted tambien puede escribir a RLI Insurance Company:

RLI Insurance Company
9025 N. Lindbergh Drive
Peoria, Illinois 61615

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P.O. Box 149104
Austin, Texas 78714-9104
Fax Number: (512) 475-1771

Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

Client#: 151533 LONGFENE
ACORD_{TM} CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
 09/29/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Southwest San Angelo CL 133 W. Concho Ave., Ste. 301 San Angelo, TX 76903 325 655-5656		CONTACT NAME: PHONE (AC, No, Ext): 325 655-5656 FAX (AC, No): 325 658-4519 E-MAIL: ADDRESS: PRODUCER CUSTOMER ID #:															
INSURED Longfellow Energy, L.P. P.O. Box 1989 Addison, TX 75001-1989		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Ace American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER B: AXIS Surplus Insurance Company</td> <td>26620</td> </tr> <tr> <td>INSURER C: Texas Mutual Insurance Company</td> <td>22945</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Ace American Insurance Company	22667	INSURER B: AXIS Surplus Insurance Company	26620	INSURER C: Texas Mutual Insurance Company	22945	INSURER D:		INSURER E:		INSURER F:	
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INSURER F:																	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR NSR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC		G23860399004	02/01/2011	02/01/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS		HO8303186004	02/01/2011	02/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DEDUCTIBLE		G24917034	02/01/2011	02/01/2012	EACH OCCURRENCE \$10,000,000 AGGREGATE \$
B	☒ RETENTION \$ 10000		EAU73891701201	02/01/2011	02/01/2012	\$10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A	TSF0001225904	07/01/2011	05/15/2012	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Well Name: Skaggs #2
 General Liability and Auto Liability provides a Blanket Waiver of
 (See Attached Descriptions)

CERTIFICATE HOLDER City of Sherman P.O. Box 1106 Sherman, TX 75091	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Jennifer P. Heard</i>
--	--

DESCRIPTIONS (Continued from Page 1)

Subrogation and Blanket Additional Insured In favor of the City of Sherman where required by written contract. Workers' Compensation provides a Blanket Waiver of Subrogation In favor of the City of Sherman as required by written contract.



Texas Commission
on Environmental Quality
Surface Casing Program

DEPTH OF USABLE-QUALITY GROUND WATER TO BE PROTECTED

Date **July 29, 2011**

TCEQ File No.: SC- **2934**

***** EXPEDITED APPLICATION *****

API Number **18100000**

Attention: **BRETT FELDER**

RRC Lease No. **000000**

SC_508409_18100000_000000_2934.pdf

LONGFELLOW ENERGY LP
16803 NORTH DALLAS PKWY
ADDISON TX 75001

--Measured--

Digital Map Location:

2145 ft FEL X-coord/Long **96.56333**

1965 ft FSL Y-coord/Lat **33.66111**

MRL: SURVEY Datum **83** Zone

P-5# 508409

County **GRAYSON**

Lease & Well No. **SKAGGS #2**

Purpose **ND**

Location **SUR-BROGDEN W., A-92, --[TD=13000], [RRC 9],**

To protect usable-quality ground water at this location, the Texas Commission on Environmental Quality recommends:

The interval from the land surface to a depth of 100 feet must be protected. In addition, the Woodbine, which is estimated to occur from a depth of 600 feet to 975 feet, and the Trinity (including the Houston), which is estimated to occur from a depth of 1475 feet to 2250 feet, must be protected.

Notes: Unless stated otherwise, this recommendation is intended to apply only to the subject well and not for area-wide use. Approval of the well completion methods for protection of this groundwater falls under the jurisdiction of the Railroad Commission of Texas. This recommendation is intended for normal drilling, production, and plugging operations only. It does not apply to saltwater disposal operation into a nonproductive zone (RRC Form W-14).

If you have any questions, please contact us at 512-239-0515, www.tceq.state.tx.us, or by mail MC-151.

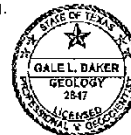
Sincerely,


I hereby certify that I am
Gale L. Baker, a Professional Geologist,
No. 2847, in the State of Texas.
I am duly licensed and qualified to
perform the duties of a Professional Geologist.
Date: 2011/07/29 15:01:05

Gale L. Baker, P.G.

Geologist, Surface Casing Team
Waste Permits Division

GEOLOGIST SEAL



The seal appearing on this document was authorized by Gale L. Baker on 7/29/2011.
Note: Alteration of this electronic document will invalidate the digital signature.

TCEQ Form 0051R
Rev. 8/9/2000

P.O. Box 13087 Austin, Texas 78711-3087

512-239-1000

Internet address: www.tceq.state.tx.us



Texas Commission
on Environmental Quality
Surface Casing Program

DEPTH OF USABLE-QUALITY GROUND WATER TO BE PROTECTED

Date July 29, 2011

TCEQ File No.: SC- 2934

***** EXPEDITED APPLICATION *****

API Number 18100000

Attention: BRETT FELDER

RAC Lease No. 000000

SC_508409_18100000_000000_2934.pdf

LONGFELLOW ENERGY LP
16803 NORTH DALLAS PKWY
ADDISON TX 75001

---Measured---

2145 ft FEL

1965 ft FSL

MRL: SURVEY

Digital Map Location:

X-coord/Long 96.56333

Y-coord/Lat 33.66111

Datum 83 Zone

P-5# 508409

County GRAYSON

Lease & Well No. SKAGGS #2

Purpose ND

Location SUR-BROGDEN W., A-92, -- [TD=13000], [RRC 9],

To protect usable-quality ground water at this location, the Texas Commission on Environmental Quality recommends:

The interval from the land surface to a depth of 100 feet must be protected. In addition, the Woodbine, which is estimated to occur from a depth of 600 feet to 975 feet, and the Trinity (including the Hosston), which is estimated to occur from a depth of 1475 feet to 2250 feet, must be protected.

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If you have any questions, please contact us at 512-239-0515, sc@tceq.state.tx.us, or by mail MC-151.

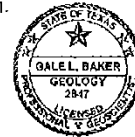
Sincerely,


Digitally signed by Gale L. Baker
DN: cn=Gale L. Baker, o=Texas Commission
on Environmental Quality, email=gale.baker@tceq.state.tx.us,
c=US, email=gale.baker@tceq.state.tx.us

Gale L. Baker, P.G.

Geologist, Surface Casing Team
Waste Permits Division

GEOLOGIST SEAL



The seal appearing on this document was authorized by Gale L. Baker on 7/29/2011.
Note: Alteration of this electronic document will invalidate the digital signature.

TCEQ Form-0051R
Rev. 3/8/2008

P.O. Box 13087 Austin, Texas 78711-3087

512-239-1000

Internet address: www.tceq.state.tx.us



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. B.2

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5724 **Relating to the Approval of Taxation of Goods-in-Transit that are Otherwise Exempt from Taxation by Texas Tax Code Section 11.253**

Issue

Continuation of the City of Sherman's taxation of "Super Freeport" goods-in-transit that would otherwise be exempt from taxation as of January 1, 2012

Background

Senate Bill 1, passed during the 82nd Texas Legislature's special session, modified the law relating to property taxes on certain types of "goods-in-transit". A property tax exemption, commonly referred to as the "Super Freeport" exemption, allows a local option exemption for goods traveling elsewhere in Texas and can be claimed when the goods are at certain warehouses not owned by the owner of the goods. The exemption is not available for goods stored at a warehouse that is in any way owned or controlled by the owner of the goods.

Senate Bill 1 requires cities to take official action through adoption of an ordinance or resolution between October 1, 2011 and December 31, 2011, to provide for the taxation of goods-in-transit in 2012. The City must conduct a public hearing prior to doing so. These new requirements apply to the City of Sherman despite its previous action on November 19, 2007 to adopt Ordinance No. 5498, to tax "Super Freeport" goods. In other words, the City must conduct a public hearing and adopt a new ordinance in the specific timeframe in order to collect property taxes on "Super Freeport" goods in 2012. So, adoption of this ordinance would continue the City's taxation of "Super Freeport" goods.

Origination

Glenn E. Smith, Jr., Linebarger Goggan Blair & Sampson, LLP (Tax Attorney)

Financial Consideration

Should we choose to take no action and permit this exemption to take effect on January 1, 2012, we would lose potential revenue from any exempted inventory. When this "Super Freeport" tax issue was originally considered by the Council in 2007, the Grayson County Appraisal District estimated that the possible taxable value which would have been lost to the City of Sherman would have been \$21,363,456, which would equate to an estimated revenue loss of about \$68,000 at the current tax rate of \$.32/\$100.

Staff Recommendation

The staff recommends the Council hold a public hearing at the October 17th meeting to allow public input on the issue and consider adoption of the ordinance to continue to tax the "Super

Freeport” goods covered under Senate Bill 1. In a later year, the Council could choose to exempt the goods from taxation.

Alternatives

The Council could take no action on this item, which would automatically exempt these goods from taxation in 2012.

Attachments

Ordinance No. 5724

Tax Attorney’s Letter of September 16, 2011 with attachments

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5724

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, RELATING TO THE APPROVAL OF TAXATION OF GOODS-IN-TRANSIT THAT ARE OTHERWISE EXEMPT FROM TAXATION BY TEXAS TAX CODE SECTION 11.253; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the 82nd Texas Legislature during its Special Session enacted Senate Bill 1, which amended Texas Tax Code §11.253, under which personal property consisting of goods-in-transit, as newly defined, are exempt from taxation; and

WHEREAS, a new subsection (j-1) was added to Texas Tax Code §11.253 by Senate Bill 1, which provides for a local option under which a taxing unit may tax such goods-in-transit otherwise exempt, if the governing body of such taxing unit after a public hearing takes official action to tax such personal property; and

WHEREAS, on the 17th day of October, 2011, the City Council of the City of Sherman, Texas, held a public hearing at which members of the public were permitted to speak for or against the taxation of certain goods-in-transit personal property; and

WHEREAS, following the public hearing, the City Council of the City of Sherman, Texas, has determined that such goods-in-transit personal property, as exempted by Texas Tax Code §11.253, should be subject to taxation by the City of Sherman, Texas, for tax year 2012 and all subsequent years;

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

SECTION 1. That all of the above recitals are incorporated herein and made a part of this Ordinance.

SECTION 2. That all such goods-in-transit personal property, as defined by the amendments to Texas Tax Code §11.253 under Senate Bill 1, shall be and are hereby declared to be taxable by the City of Sherman, Texas, for tax year 2012 and for every year thereafter, all as provided for and in accordance with Texas Tax Code §11.253.

SECTION 3. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the _____ day of _____, 2011.

ADOPTED on this the _____ day of _____, 2011.

EFFECTIVE DATE on this the _____ day of _____, 2011.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

ATTORNEYS AT LAW
115 EAST LAMAR
SHERMAN, TEXAS 75090

903/893-4941
FAX 903/893-2131

September 16, 2011

George Olson, City Manager
City of Sherman
P. O. Box 1106
Sherman, TX 75091-1106

RE: Senate Bill 1 / Exemption of goods in transit

Dear Mr. Olson:

BACKGROUND

In 2007, the 80th Texas Legislature enacted Tex. Tax Code § 11.253 (House Bill 621) which implemented the goods-in-transit exemption authorized by Texas Constitution, Art. 8, sec. 1-n. That bill defined “goods-in-transit” in part as tangible personal property detained in a location in this state whose owner did not have direct or indirect ownership of the facility at which the property was assembled, stored, manufactured, processed, or fabricated.

House Bill 621 also provided for a local option to tax goods-in-transit notwithstanding the authorized exemption. And, a number of taxing units chose to do so beginning in tax year 2008 by taking official action through their governing bodies.

NEW LOCAL OPTION AVAILABLE

The 82nd Legislature has now enacted Senate Bill 1, amending § 11.253 and, through that amendment, has narrowed the definition of “goods-in-transit.” The amendment is effective October 1, 2011 and it applies to tax years 2012 and subsequent. The only exemption now authorized relates only to those goods being stored.

Senate Bill 1, under the new subsection (j-1) of Section 11.253, also requires that if a taxing unit wishes to tax the newly defined goods-in-transit, then it must take affirmative action to do so, even if the taxing unit previously acted under House Bill 621 back in 2007. If the taxing unit favors the exemption, then no affirmative action need be taken.

STEPS TO TAKE IN EXERCISING LOCAL OPTION TO TAX THE PROPERTY

The governing body of a local taxing entity may elect to tax goods-in-transit, but only after holding a public hearing for the purpose of providing your taxpayers the opportunity to express their opinions on the subject. The public hearing may be held in conjunction with a regular meeting of the governing body. And, there is no requirement for publishing notice of the

Page | 1

hearing other than including notice of the public hearing on a regular meeting agenda.

*If your taxing unit chooses to tax goods-in-transit for the tax year 2012 and subsequent years, the governing body **must act no sooner than October 1, 2011 and no later than December 31, 2011.*** If your taxing unit elects to tax goods-in-transit, those goods will remain taxable until the governing body takes action to rescind or repeal its previous action and grant the exemption.

In the event that your governing body wishes to take the affirmative action necessary in taxing the property, we are enclosing herewith a form of Resolution, Ordinance, or Order which needs to be passed and approved by the governing body prior to January 1, 2012. A copy of the relevant part of Senate Bill 1 and a copy of its analysis are also enclosed. We hope you find this material helpful, regardless of which policy your taxing unit chooses to follow.

Please remember a **public hearing must be conducted as a separate agenda item prior to adopting the resolution.** These may be done at the same meeting. Finally, you must *send a copy of any resolution, ordinance, or order passed by your governing body to each chief appraiser for each appraisal district that serves your taxing unit.* A form of transmittal letter to the chief appraiser is enclosed for your convenience.

We are recommending that our clients have the public hearing and pass the resolution/ordinance in order to tax goods-in-transit. Please feel free to call on us if we can be of further assistance.

Very truly yours,

LINEBARGER GOGGAN BLAIR
& SAMPSON, LLP

By: _____
GLENN E. SMITH, JR.
Attorney at Law

Enclosures

cc: John Ramsey, Tax Assessor Collector
Grayson County Tax Office
P. O. Box 2107
Sherman, Texas 75091-2107

Teresa Parsons, Chief Appraiser
Grayson Central Appraisal District
P. O. 669
Sherman, Texas 75091-0669

ARTICLE 48. AD VALOREM TAXATION OF CERTAIN STORED PROPERTY

SECTION 48.01. Subsection (a), Section 11.253, Tax Code, is amended by amending Subdivision (2) and adding Subdivisions (5) and (6) to read as follows:

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is stored under a contract of bailment by a public warehouse operator ~~[detained]~~ at one or more public warehouse facilities ~~[a location]~~ in this state that are not in any way owned or controlled by ~~[in which]~~ the owner of the personal property ~~[does not have a direct or indirect ownership interest]~~ for the account of ~~[assembling, storing, manufacturing, processing, or fabricating purposes by]~~ the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment

inventory, or retail manufactured housing inventory.

(5) "Bailee" and "warehouse" have the meanings assigned by Section 7.102, Business & Commerce Code.

(6) "Public warehouse operator" means a person that:

(A) is both a bailee and a warehouse; and

(B) stores under a contract of bailment, at one or more public warehouse facilities, tangible personal property that is owned by other persons solely for the account of those persons and not for the operator's account.

SECTION 48.02. Section 11.253, Tax Code, is amended by amending Subsections (e) and (h) and adding Subsections (j-1) and (j-2) to read as follows:

(e) In determining the market value of goods-in-transit that in the preceding year were ~~[assembled,]~~ stored~~[, manufactured, processed, or fabricated]~~ in this state, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held by the owner of the

component parts during the preceding year at a location in this state that was not owned by or under the control of the owner of the component parts in determining whether the component parts were transported to another location in this state or outside this state before the expiration of 175 days.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for storage [~~assembling, storing, manufacturing, processing, or fabricating purposes~~] was not owned by or under the control of the owner of the goods-in-transit. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(j-1) Notwithstanding Subsection (j) or official action that was taken under that subsection before October 1, 2011, to tax goods-in-transit exempt under Subsection (b) and not exempt under other law, a taxing unit may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after

October 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the goods-in-transit. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(j-2) Notwithstanding Subsection (j-1), if under Subsection (j) the governing body of a taxing unit, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, the tax officials of the taxing unit may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the

contract by which the debt was created.

SECTION 48.03. Subdivision (2), Subsection (a), Section 11.253, Tax Code, as amended by this article, applies only to an ad valorem tax year that begins on or after January 1, 2012.

SECTION 48.04. (a) Except as provided by Subsection (b) of this section, this article takes effect January 1, 2012.

(b) Section 48.02 of this article takes effect October 1, 2011.

EXCERPT FROM BILL ANALYSIS OF C.S.S.B. 1

Article 47. Ad Valorem Taxation of Certain Stored Property

C.S.S.B. 1 amends the Tax Code to prohibit a taxing unit from taxing goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after October 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the goods-in-transit. The bill requires official action to tax the goods-in-transit to be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit and requires the governing body of the taxing unit to conduct a public hearing required by the Texas Constitution before acting to tax the exempt property. The bill establishes that, if the governing body provides for such taxation, the tax exemption for goods-in-transit does not apply to that unit and that the goods-in-transit remain subject to taxation by the taxing unit until the governing body, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption will apply to that taxing unit.

C.S.S.B. 1 authorizes the tax officials of a taxing unit, if the unit's governing body, before October 1, 2011, took the required official action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, to continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created. The bill makes these provisions relating to the taxation of goods-in-transit, including changes conforming to a redefinition by the bill, effective October 1, 2011.

C.S.S.B. 1 redefines "goods-in-transit" as it relates to the property tax exemption for certain good-in-transit, in part, as tangible personal property that is stored under contract of bailment by a public warehouse operator at one or more public warehouse facilities in Texas that are not in any way owned or controlled by the owner of the personal property for the account of the person who acquired or imported the property, rather than as such property that is detained at a location in Texas in which the owner of the property does not have a direct or indirect ownership interest for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property. The bill makes related conforming changes and limits the applicability of the redefinition to a property tax year that begins on or after January 1, 2012.

C.S.S.B. 1 defines "public warehouse operator" and provides for the meanings of "bailee" and "warehouse" by reference to the Business & Commerce Code. The bill makes this article effective January 1, 2012, except as otherwise provided.



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. B.3

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5725
**Amending Chapter 3, entitled “Building Regulations”, Article 3.12, entitled
“Flood Damage Prevention”, at Section 3.12.041, entitled “Designation of Floodplain
Administrator”, to Designate the City Engineer as Floodplain Administrator**

Issue

Adoption of a revision to the floodplain management regulations to designate the City Engineer as the Floodplain Administrator

Background

The current ordinance language designates the Assistant Director of Engineering and Public Works as the Floodplain Administrator. Following a reorganization of the staff, the Assistant Director of Engineering and Public Works position has been eliminated and replaced with the City Engineer position. The City Engineer will be designated as the administrator to implement the provisions of the floodplain ordinance.

Origination

Department of Engineering

Financial Consideration

None

Staff Recommendation

It is recommended that the ordinance be formally adopted.

Alternatives

As may be directed by the City Council

Attachments

Ordinance No. 5725

Prepared by:
Mark Gibson, Director of Engineering & Utilities

Approved by:
George Olson, City Manager

ORDINANCE NO. 5725

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 3, ENTITLED "BUILDING REGULATIONS", ARTICLE 3.12, ENTITLED "FLOOD DAMAGE PREVENTION", AT SECTION 3.12.041, ENTITLED "DESIGNATION OF FLOODPLAIN ADMINISTRATOR", TO DESIGNATE THE CITY ENGINEER AS FLOODPLAIN ADMINISTRATOR; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That Chapter 3, Article 3.12, Section 3.12.41 of the Code of Ordinances of the City of Sherman, Texas, entitled "Designation of floodplain administrator", be and is hereby amended so that such Section shall read as follows:

ARTICLE 3.12 FLOOD DAMAGE PREVENTION

Division 2. Administration

Sec. 3.12.041 Designation of floodplain administrator

The ~~assistant director of engineering and public works~~ *city engineer* is hereby appointed the floodplain administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (Emergency Management and Assistance – National Flood Insurance Program regulations) pertaining to floodplain management.

SECTION 2. That it is the intention of the City Council of the City of Sherman, Texas, that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Sherman, Texas, and that the section of this ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 3. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the _____ day of _____, 2011.

ADOPTED on this the _____ day of _____, 2011.

EFFECTIVE DATE on this the _____ day of _____, 2011.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. B.4

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers: 5723, 5724 and 5725

B.1 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5723 AND AN APPLICATION TO DRILL AN OIL AND GAS WELL

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow the Drilling of an Oil/Gas Well (Skaggs #2) in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District at 4335 U.S. Highway 82 East, being 194.896 acres in the William Brogden Survey, Abstract No. 92 (Jack and Patsy Pierce, Mineral Rights Owners; Greg Spalding, Longfellow Energy, LP, Representative; and Sartin & Associates, Inc., Surveyors); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00

B.2 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5724

Relating to the Approval of Taxation of Goods-in-Transit that are Otherwise Exempt from Taxation by Texas Tax Code Section 11.253

B.3 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5725

Amending Chapter 3, entitled "Building Regulations", Article 3.12, entitled "Flood Damage Prevention", at Section 3.12.041, entitled "Designation of Floodplain Administrator", to Designate the City Engineer as Floodplain Administrator



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. B.5

CONSENT AGENDA

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

C.4 * RESOLUTION NO. 5628

Authorizing Execution of an Agreement with Underwood Drafting and Surveying, Inc. for Surveying Services on the Storm Sewer Data Collection and Mapping Project

D.1 * REQUEST TO ADVERTISE

Water Meters and Water Meter Radio-Read Endpoints

D.2 * OTHER BUSINESS

Consider Longfellow Energy, LP's Application for a Permit to Drill an Oil and Gas Well (Skaggs #2) in an R-1 (One Family Residential) District/O-1 (75 & 82) Overlay District at 4335 U.S. Highway 82 East, being 194.896 Acres in the William Brogden Survey, Abstract No. 92

D.3 * OTHER BUSINESS

Consider Request of the Austin College Kappa Gamma Chi to Temporarily Close Certain Streets for the Homecoming 2011 'Roo Run and Joey Walk on Saturday, October 29, 2011

D.4 * OTHER BUSINESS

Set Date to Canvass Results of the City of Sherman's Regular and Special Municipal Elections



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. C.1

**TABLED AT THE OCTOBER 3, 2011 CITY COUNCIL MEETING:
RESOLUTION NO. 5620**

Nominating a Candidate to the Grayson Central Appraisal District Board of Directors

Issue

To consider nominating a candidate to the Grayson Central Appraisal District Board of Directors. **This resolution was tabled at the October 3, 2011 City Council meeting. A motion and order are required to remove the item from the table for City Council discussion and consideration of approval.**

Background

Every two years, the taxing entities of Grayson County elect the five members of the Grayson Central Appraisal District's Board of Directors. Votes are apportioned on the basis of the tax levy of each entity. The City of Sherman does not have enough votes to elect a board member on its own.

The City could potentially make an agreement with other taxing entities to jointly elect a member. The number of votes needed to assure a candidate's election is 1,000. The City of Sherman has been allocated 255 votes. We would need to secure 745 more votes to assure the election of the candidate that we nominate.

Nominations must be received by the Appraisal District no later than October 17th; and the vote will take place on or before December 15th.

Origination

Teresa Parsons, Grayson Central Appraisal District Chief Appraiser

Financial Consideration

There is no direct impact on the City's finances.

Attachments

Resolution No. 5620

Letter from Chief Appraiser Teresa Parsons dated September 20, 2011

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5620

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, NOMINATING A CANDIDATE TO THE GRAYSON CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, pursuant to the authority of V.T.C.A., Tax Code §6.01, an appraisal district is established in each county in the State of Texas; and

WHEREAS, pursuant to such authority, the Grayson Central Appraisal District has been created in Grayson County; and

WHEREAS, the governing bodies of the taxing authorities participating in said district are authorized to nominate not more than five (5) candidates to serve as directors of said appraisal district;

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

SECTION 1. That all of the above recitals and preambles are found to be true and correct and are made a part hereof for all purposes.

SECTION 2. That the following named individual is hereby nominated as a candidate to the Board of Directors of the Grayson Central Appraisal District:

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

PASSED AND APPROVED on this the ____ day of _____, 2011.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

GRAYSON CENTRAL APPRAISAL DISTRICT

205 North Travis Street
Sherman, Texas 75090

Phone - 903.893.9673
Fax - 903.892.3835

E-mail - parsonst@graysonappraisal.org
Website - www.graysonappraisal.org

September 20, 2011

George Olson, City Mgr.
City of Sherman
P.O. Box 1106
Sherman, TX 75091

RE: Election – Appraisal District Board of Directors
Notice of Entity Votes

Dear Presiding Officer,

As provided by the Texas Property Tax Code, Section 6.03(e), I have calculated the number of votes to which each eligible taxing entity is entitled, according to its proportion of tax levy. All five (5) Appraisal District board positions are open for appointment each odd-numbered year, thus there are a total of 5,000 votes allocated among the voting entities. The number of votes thus allocated to your entity is:

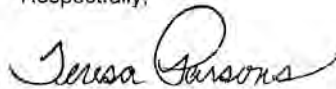
255

The next step in the election process is nomination of candidates. **Before October 15th**, taxing units may nominate by resolution adopted by its governing body, one candidate for each position to be filled on the Board of Directors, or any number from one to five candidates. Names of the unit's nominees are submitted to the Chief Appraiser. Board members serve 2-year terms, the next term running from January 1, 2012 to December 31, 2013. The candidates must meet the requirements set forth in the Property Tax Code, Section 6.03(a). After nominations are received, an official ballot will be delivered to your entity by the end of October. Candidate qualifications are:

- District resident for at least two (2) years;
- Not an employee of a taxing entity unless also serving on the governing body or being an elected official.

Please let me know if there are questions regarding any aspect of the Board election process. Thank you in advance for your participation.

Respectfully,



Teresa Parsons
Chief Appraiser

**Grayson Central Appraisal District
Board of Directors Election
2012-2013
Voting Allocation**

ENTITY	2010 TAX LEVY	% OF TOTAL	# OF VOTES
Bells ISD	2,826,350.77	2.0419	102
City of Bells	231,525.33	0.1673	8
Celina ISD	3,389.89	0.0024	0
Collinsville ISD	1,525,968.76	1.1025	55
City of Collinsville	151,512.24	0.1085	5
Denison ISD	17,002,909.34	12.2839	614
City of Denison	6,058,817.73	4.3773	219
Gunter ISD	3,292,675.45	2.3788	119
City of Gunter	479,401.21	0.3463	17
Howe ISD	2,580,946.40	1.8646	93
City of Howe	447,930.08	0.3236	16
Pilot Point ISD	145,029.73	0.1048	5
Pottsboro ISD	7,945,203.62	5.7401	287
City of Pottsboro	538,878.11	0.3893	19
Sadler/Southmayd ISD	4,500,563.29	3.2515	163
City of Southmayd	180,086.35	0.1301	7
Sherman ISD	32,938,756.98	23.7970	1,190
City of Sherman	7,055,449.54	5.0973	255
Tioga ISD	1,016,426.48	0.7343	37
City of Tioga	186,299.44	0.1346	7
Tom Bean ISD	1,754,834.09	1.2678	63
City of Tom Bean	162,708.35	0.1176	6
Trenton ISD	80,241.27	0.0580	3
Van Alstyne ISD	5,753,852.76	4.1569	208
City of Van Alstyne	1,047,978.36	0.7571	38
Whitesboro ISD	6,142,572.67	4.4378	222
City of Whitesboro	612,483.66	0.4425	22
Whitewright ISD	1,935,885.00	1.3986	70
City of Whitewright	375,376.53	0.2712	14
Grayson County	31,424,498.63	22.7030	1,135
City of Knollwood	17,172.18	0.0124	1
TOTALS	138,415,724.22	100.0000	5,000



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. C.2

RESOLUTION NO. 5626

Repealing in its Entirety Resolution No. 5280, which Authorized the Execution of an Agreement with Panda Sherman Power, LLC for Water Services

Issue

Repealing an existing Water Services Agreement between the City of Sherman and Panda Sherman Power, LLC (Panda) in preparation for a new agreement with modified terms

Background

In October 2008, the City Council entered into a 30-year water services agreement with Panda, whereby the City would provide raw water to Panda for use in the industrial cooling process for its proposed five hundred (500) megawatt power plant and related infrastructure to be located exclusively in Sherman's city limits. Due to the delay in funding and construction of their project, Panda has requested certain revisions to the existing agreement, including the following:

- At Sections 3.3(b) and 11.4(d), the Commencement Date would be completed within eight (8) years [rather than five (5) years] of the Effective Date of the Agreement.
- At Section 6.1(a), the Project Water Fee would be revised from \$0.55 to \$0.61 per 1,000 gallons; and the Minimum Annual Fee would be revised from \$400,000 to \$446,000.
- At Section 6.1(b), the Reservation Fee would be changed from \$18,250 to \$20,350 per month.
- At Section 11.1, the Term would be for a period of thirty (30) years from the Commencement Date, rather than from the Effective Date.

In addition to the timing changes, Panda has agreed to revisions to the rates, reservation fee, and minimum payments to reflect changes in the water rates they have implemented since the original agreement was executed in October 2008.

Procedurally, it is necessary to first terminate the existing agreement and then ratify the modified terms, which is proposed in the next agenda item.

Origination

Panda Sherman Power, LLC

Financial Consideration

The agreement modification will increase projected annual water revenues by about \$70,000.

Staff Recommendation

It is recommended that the City Council approve the resolution to repeal the existing Water Services Agreement.

Alternatives

No other alternatives are recommended.

Attachments

Resolution No. 5626

Resolution No. 5280

Water Services Agreement (original) with Exhibits “A”, “B” and “C”

Prepared by:

Robby Hefton, Assistant City Manager/CFO

Approved by:

George Olson, City Manager

RESOLUTION NO. 5626

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING IN ITS ENTIRETY RESOLUTION NO. 5280, WHICH AUTHORIZED THE EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR WATER SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas, pursuant to Resolution No. 5280, passed and approved on October 6, 2008, authorized execution of a Water Services Agreement with Panda Sherman Power, LLC for its approximately five hundred (500) megawatt power plant and related infrastructure to be located exclusively in the city limits of the City of Sherman, Texas; and

WHEREAS, due to the delay in funding and construction of their project, Panda desires to void the agreement authorized by Resolution No. 5280 and reapply for a new Water Services Agreement with modified terms;

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

SECTION 1. That, from and after the passage of this resolution, Resolution No. 5280, passed and approved by the Sherman City Council on the 6th day of October, 2008, be and is hereby repealed in its entirety and the agreement is hereby declared null and void.

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

PASSED AND APPROVED on this the ____ day of _____, 2011.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

RESOLUTION NO. 5230

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR WATER SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

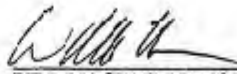
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Agreement with Panda Sherman Power, LLC, a Delaware Limited Liability Corporation, for Water Services in accordance with the terms and provisions of the contract documents attached hereto and incorporated herein for all purposes.

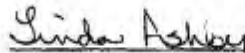
SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the 6th day of October, 2008.

CITY OF SHERMAN, TEXAS

BY: 
BILL MAGERS, MAYOR

ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

WATER SERVICES AGREEMENT

Between

CITY OF SHERMAN

and

PANDA SHERMAN POWER, LLC

October 6, 2008

WATER SERVICES AGREEMENT

This Water Services Agreement (this "Agreement") is entered into as of this 6th day of October, 2008 by and between the CITY OF SHERMAN, TEXAS, a municipal corporation in the County of Grayson, Texas (the "City"), and PANDA SHERMAN POWER, LLC, a Delaware limited liability company authorized to conduct business in the state of Texas ("Panda"). Each of the City and Panda is referred to herein, individually, as a "Party" and, collectively, as the "Parties."

Recitals

WHEREAS, Panda is developing for construction and operation an approximately five hundred (500) megawatt power plant and related infrastructure as may be expanded and/or upgraded (the "Plant") to be located exclusively in the city limits of Sherman, Texas as further described on Exhibit A (the "Property"); and

WHEREAS, Panda requires a supply of water for the construction, testing and operation of such Plant at an initial estimated average rate of approximately four million (4,000,000) gallons per day on an annualized basis; and

WHEREAS, the City obtains a water supply from the GTUA (as defined below), pursuant to a certain "Contract for Water Supply and Sewer Service," dated March 1, 1985, between GTUA and the City ("Water Supply Contract"); and

WHEREAS, the City desires to make available to Panda a supply of water in connection with its operations at the Plant according to the terms and conditions set forth in this Agreement; and

WHEREAS, prior to the Effective Date, Panda is under no obligation to purchase water from the City, and the City is under no obligation to sell water to Panda; and

WHEREAS, the Parties desire to enter into a water services agreement for Project Water, whereby the City will provide to Panda, and Panda will purchase from the City, Project Water, on a take or pay basis, according to the terms and conditions in this Agreement; and

WHEREAS, the Sherman City Council, at its October 6, 2008 City Council meeting, approved the delivery of water to the Plant on the terms and subject to the conditions set forth in this Agreement by Resolution No. 5280 on October 5, 2008, in accordance with City Code; and

WHEREAS, the Parties enter into this Agreement with the understanding and intent that City will be under no duty to provide Panda with water once this Agreement terminates as set forth herein; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

**Article I
DEFINITIONS**

Section 1.1 Defined Terms. The following capitalized terms used in this Agreement and in any exhibit or attachment that is or is made a part of this Agreement, and not otherwise defined herein, shall have the following meanings:

a. "Affected Party" has the meaning ascribed to such term in Section 1.1(u) of this Agreement.

b. "Affiliate" means, in relation to any Person, any Person (i) who directly or indirectly controls, or is controlled by, or is under common control with, such other Person; or (ii) who directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock of such other Person; or (iii) who has fifty (50%) or more of any class of voting stock that is directly or indirectly beneficially owned or held by such other Person; or (iv) who either holds a general partnership interest in such other Person or such other Person holds a general partnership interest in the Person.

c. "Agreement" has the meaning ascribed to such term in the Preamble hereto.

d. "Business Day" means any Day other than Saturdays, Sundays and Days on which banks in the City of Sherman, Texas are required or permitted to be closed for all or part of their customary hours of operation.

e. "Calendar Year" shall mean January 1 through December 31 of any given year.

f. "City" has the meaning ascribed to such term in the Preamble hereto.

g. "City Code" means the Sherman municipal code and all other Requirements of Law of the City, as the same may be amended from time to time.

h. "City System" means the infrastructure owned and operated by the City pursuant to which it delivers Project Water to the Plant and includes all of the City's facilities, infrastructure, properties, and any interests it may hold in GTUA or NTMWD infrastructure and facilities, insofar as they are related to the City providing Project Water to the Plant, together with all future extensions, improvements, enlargements, additions to and replacements of such systems.

i. "Claim" means any claim, action, cause of action, suit or proceeding before any Governmental Authority or arbitral tribunal.

j. "Commission" or "TCEQ" means the Texas Commission on Environmental Quality, or its successor agencies.

k. "Commencement Date" has the meaning ascribed to such term in Section 2.1(c) of this Agreement.

l. "Confidential Information" means certain information relating to Panda, its contractors and Affiliates, that includes aspects of their respective businesses or operations, including designs and/or patented process, if such information is expressly and specifically labeled as Confidential Information.

m. "Daily Requirement" has the meaning ascribed to such term in Section 2.1(a) of this Agreement.

n. "Day" means a 24-hour period commencing at 0:00:00 hours each Day and ending at 23:59:59 hours on the same Day, determined by reference to prevailing Central time.

o. "Discharge Permit" means the Texas Pollutant Discharge Elimination System Permit No. WQ0010329001, issued by the State of Texas to the City for the Post Oak Wastewater Treatment Facility.

p. "Economic Indicators" means the annual change in costs as reflected in the US Army Corps of Engineers' *Civil Works Construction Cost Index System (CSCCIS), Table A-2, Yearly Cost Indexes by CWBS Feature Code*. The change shall be calculated as the weighted-average change in the following feature codes, as reflected in Table A-2:

- (i) Relocations (02)
- (ii) Reservoirs (03)
- (iii) Dams (04)
- (iv) Roads, Railroads & Bridges (08)
- (v) Levees & Floodwalls (11)
- (vi) Buildings, Grounds & Utilities (19)
- (vii) Permanent Operating Equipment (20)

An example of the calculation and use of the Economic Indicator is attached hereto as Exhibit C.

q. "Effective Date" has the meaning ascribed to such term in Section 12.15 of this Agreement.

r. "Encumbrance" means any lien, claim, interest, security interest, charge or other encumbrance.

s. "Event of Default" has the meaning ascribed to such term in Section 8.1 of this Agreement.

t. "Financing Party" means one or more Person or Persons providing debt and/or equity contributions, commitments or financing in connection with Panda property or Plant, including any Person or Persons providing credit enhancement for Panda or its

Affiliates, refinancing or take-out of any financing with respect to the Property or Plant, and any trustee, agent or authorized representative of such Person or Persons.

ii. "Force Majeure" means and shall be limited to any event or circumstance which is beyond the reasonable control of, without the fault or negligence of, and should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by, the Party asserting Force Majeure (the "Affected Party"), and which delays or prevents the Affected Party from timely performing any obligation hereunder, including, without limitation: (i) acts of God, earthquakes, fire, storms, severe droughts, floods, lightning, hurricanes, tornadoes, and severe snow storms; (ii) explosions, wars, civil insurrections, acts of the public enemy, acts of civil or military authority, sabotage, and terrorism; (iii) strikes, lockouts or other labor disputes with respect to which the Affected Party has not been determined by the National Labor Relations Board to have engaged in any unfair labor practices; (iv) any event which would require either Party to act illegally in order to remain in conformance with this Agreement; (v) an event that would prohibit the City from utilizing any City, NTMWD or GTUA utility infrastructure in the delivery of Project Water to Panda; and (vi) any change in any Requirement of Law or the interpretation thereof by a responsible Governmental Authority which shall in any circumstances under this Subsection (vi) require or prevent any change in the development, construction, ownership, operation or financing of the Plant or related real property (including, without limitation, Panda's inability, despite due diligence, to obtain any Permit of any Governmental Authority required for the development, construction, ownership, operation or financing of the Property or the Plant); provided that "Force Majeure" shall not include (y) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic or (z) inability of a Party to make payment when due under this Agreement, unless the cause of such inability is an event that physically prevents payment and that would otherwise constitute Force Majeure as described above.

v. "Forced Outage" means a shut down by the City in the operation of that portion of the City System such that no Project Water is delivered to any Interconnection Point(s): (i) which shut down is in the reasonable opinion of the City, and consistent with Prudent Water Industry Practice, necessary or required to protect Persons or property (including such water and wastewater system) from contamination or releases that could reasonably result in harm, injury or material damage; (ii) with respect to which the City has notified Panda in accordance with Subsection 2.3(b), (iii) which is of no more than five (5) Days' in duration; and (iv) has an impact on operations at the Plant.

w. "Governmental Authority" means any federal, state, local or other governmental body; any governmental or quasi-governmental, regulatory or administrative agency commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

x. "GTUA" means the Greater Texoma Utility Authority, a conservation and reclamation authority created by the Texas Legislature or any successor agency.

y. "Interconnection Point" means the location where Project Water from the City System passes through a Master Meter and enters Panda's water infrastructure as more specifically described in Exhibit B hereto.

z. "Loss(es)" means any loss, cost, expense, Claim, demand, damage, fine, liability, obligation or penalty (including court costs and reasonable attorney's fees and expenses).

aa. "Master Meter" means the necessary metering equipment, including a meter house or pit, and any other required devices of standard type, for properly measuring the quantity of Project Water traveling through the Interconnection Point.

ab. "Minimum Annual Fee" has the meaning ascribed to such term in Section 6.1(a) of this Agreement.

ac. "Notice of Supply" has the meaning ascribed to such term in Section 3.3 of this Agreement.

ad. "NTMWD" means the North Texas Municipal Water District, a conservation and reclamation authority created by the Texas Legislature or any successor agency.

ae. "Panda" has the meaning ascribed to such term in the Preamble hereto.

af. "Permit" means any permit, order, license, declaration, consent, waiver, approval, registration or filing with or other requirement of any Governmental Authority.

ag. "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other legally recognized entity of whatever nature.

ah. "Planned Outage" means a shut down by the City in the operations the City System such that no Project Water is delivered to the Interconnection Point: (i) which shut down is scheduled by the City in order to carry out foreseeable preventive, corrective and other maintenance activities on such system; (ii) for which the City has notified Panda in accordance with Section 2.3(a); (iii) which lasts for no more than seven (7) Days; and (iv) has a negative impact on operations at the Plant.

ai. "Plant" has the meaning ascribed to such term in the Recitals hereto.

aj. "Post Oak Facility" has the meaning ascribed to such term in Section 2.4 of this Agreement.

ak. "Project Water" means a supply of untreated raw water received by the City pursuant to the Water Supply Contract from a NTMWD water line extending from Lake Texoma and delivered by the City to Plant at the Interconnection Point.

al. "Project Water Fee" has the meaning ascribed to such term in Section 6.1(a) of this Agreement.

am. "Property" has the meaning ascribed to such term in the Recitals hereto.

an. "Prudent Water Industry Practice" means those practices, methods, standards and acts engaged in or approved by a significant portion of the water supply industry in the United States that, during the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable Requirements of Law.

ao. "Requirement of Law" means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any Permit or any other binding determination of any Governmental Authority.

ap. "Reservation Fee" has the meaning ascribed to such term in Section 6.1(b) of this Agreement.

aq. "Term" has the meaning ascribed to such term in Section 11.1 of this Agreement.

ar. "Termination Fee" has the meaning ascribed to such term in Section 11.8 of this Agreement.

as. "Water Infrastructure" means (i) the planning, siting, development, design, engineering, procurement, construction and testing; (ii) all pipes, pumps, mains, trunk lines, junctions, extensions, and other infrastructure, improvements and facilities, including but not limited to the Master Meter and the Interconnection Point; and (iii) easements and rights-of-way acquisitions required for the City to deliver Project Water to the Interconnection Point.

at. "Water Pipelines" means (i) the planning, siting, development, design, engineering, procurement, construction and testing; (ii) all pipes, interconnects, pumps, mains, trunk lines, junctions, extensions, and other infrastructure, equipment, improvements and facilities; and (iii) the easements and right-of-way acquisitions required for Panda to transport the Project Water from the Interconnection Point.

au. "Water Supply Contract" has the meaning ascribed to such term in the Recitals hereto.

1.2 Rules of Construction. In this Agreement:

(a) unless the context otherwise clearly requires, (i) references to the plural include the singular, and references to the singular include the plural, (ii) references to the masculine, feminine or neuter include all such forms, (iii) the words "include," "includes," and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation," (iv) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement, (v) "or" is used in the inclusive sense of "and/or," (vi) unless otherwise specified, the terms "day" and "days" mean and refer to calendar day(s), and (vii) the terms "year" and "years" mean and refer to year(s);

(b) unless otherwise specified, any reference to any document, instrument or agreement (i) includes and incorporates all exhibits, schedules and other attachments thereto, (ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof, and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time;

(c) unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement; and

(d) the headings are for reference purposes only and shall not affect in any way the meaning or interpretation of such agreement.

1.3 Recitals. All of the above recitals of this Agreement are incorporated and made a part of this Agreement.

1.4 Captions. All titles of the Sections of this Agreement have been inserted for reference only, and shall in no way affect the interpretation of any provisions of this Agreement.

**Article II.
SUPPLY OF PROJECT WATER**

2.1 Supply.

(a) **Delivery.** Beginning on the Commencement Date and each Day thereafter during the Term, the City agrees to make available and deliver to the Interconnection Point the Project Water in amounts needed by Panda on any given Day to operate the Plant (the "Daily Requirement"), not to exceed in the aggregate, Four Thousand Five Hundred (4,500) acre-feet per year. Accordingly, for the Term of this Agreement, the City agrees to reserve a supply of Four Thousand Five Hundred (4,500) acre-feet per year of Project Water for exclusive use by Panda.

(b) **Specifications.** The City shall deliver the Project Water to the Interconnection Point located in the City limits with a peak rate of not less than Four Thousand (4,000) gallons per minute and not more than Four Thousand Five Hundred (4,500) gallons per minute at the Master Meter. Panda agrees that the City is under no obligation to increase any of its water utility infrastructure or capacity to satisfy any of the provisions of the Agreement, except as otherwise expressly stated herein. The Parties may agree in writing to relocate the Interconnection Point or to add additional Interconnection Points within the City limits, as necessary, and at Panda's sole expense, within the City limits.

(c) **Commencement of Water Services.** Following the completion of the construction of the Water Infrastructure and Water Pipelines in accordance with the requirements of Article III herein, and the City's delivery of the Notice of Supply pursuant to Section 3.3 herein, the City shall commence supplying Project Water to the Interconnection Point on the date set forth in a written notice from Panda to commence water services (the "Commencement Date"). From and following the Commencement Date, the City will use its best efforts to ensure a continuous flow of Project Water to the Interconnection Point.

(d) **Water Conservation and Drought Contingency Planning.** Panda shall comply with the provisions of any water conservation and drought contingency plan adopted by the City which is prescribed or approved by the TCEQ, including implementation of any necessary rationing plan or program which the City adopts for implementation. In lieu of adopting the City's water conservation and drought contingency plans, Panda may implement alternative water conservation and drought contingency plans, provided those plans comply with Title 30 Texas Administrative Code, Chapter 288 and will conserve the same or a greater amount of water as under the plans implemented by the City, and further provided the alternative plans are approved by the City within thirty (30) Days after the Effective Date. Such water conservation and/or drought contingency plans shall be applicable to Project Water accepted by Panda from the City. At all times, the City shall provide Panda with an updated copy of any applicable water conservation and drought contingency plans.

(e) **Resale of Water.** Except as provided in Section 12.3, Panda shall have no right to transfer, transport, reallocate, or resell any water received under this Agreement without the prior written authorization by the City. If the Agreement is assigned to another party pursuant to Section 12.3, once the Agreement is assigned, any subsequent assignees shall have no right to transfer, transport, reallocate, or resell any water received under this Agreement without the prior written authorization by the City.

(f) **WATER QUALITY AND "AS IS" SALE.** OTHER THAN THE REPRESENTATION, WARRANTIES AND COVENANTS PROVIDED FOR HEREIN, THE PARTIES ACKNOWLEDGE THAT THERE IS NO WARRANTY WITH RESPECT TO THE QUALITY OF THE PROJECT WATER UNDER THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, AND THAT PROJECT WATER IS PROVIDED TO PANDA BY THE CITY "AS IS", WITHOUT WARRANTY OF ANY KIND AS TO QUALITY, SUFFICIENCY, ADEQUACY OR USEFULNESS FOR ANY INTENDED PURPOSE; PROVIDED, THAT THE CITY HAS NOT AND SHALL NOT ALTER, TREAT OR OTHERWISE MODIFY THE PROJECT

WATER IN ANY WAY BEFORE SUCH PROJECT WATER PASSES THROUGH THE INTERCONNECTION POINT.

2.2 Title, Care, Custody and Control; Risk of Loss. As between the Parties, the City shall be deemed to have exclusive title, care, custody and control for all Project Water up to, and shall be responsible for all Losses associated with all Project Water to, the Interconnection Point. The City shall deliver to Panda, at the Interconnection Point, good and marketable title to all Project Water delivered under this Agreement, free and clear of all Encumbrances. Panda shall be deemed to take exclusive title, care, custody and control of all Project Water, and shall be responsible for all Losses associated with all Project Water, from and after the Interconnection Point.

2.3 Maintenance and Outages.

(a) **Planned Outages.** By December 1 of any Calendar Year during the Term, the City shall provide notice to Panda of the number and duration of any Planned Outages to be conducted by the City during the following Calendar Year; provided, however, that the City shall not schedule more than two (2) such Planned Outages in any given Calendar Year. The City shall coordinate the timing of any Planned Outage with Panda and shall cooperate with Panda to minimize the impact of any Planned Outage on the operation and maintenance of the Plant.

(b) **Forced Outages.** When a Forced Outage occurs, curtailing the flow of Project Water to the Interconnection Point, the City shall notify Panda of the existence, nature and expected duration of the Forced Outage as soon as practical. The City shall use its best efforts to ensure that any interruption in Project Water service to the Plant due to a Forced Outage shall continue only for so long as reasonably necessary. The City shall immediately inform Panda of any changes in the nature and expected duration of such Forced Outage for the duration of such Forced Outage.

2.4 Additional Water Services. The Parties acknowledge that pursuant to its current Discharge Permit, the City is unable to provide effluent at an alternative water source in connection with the operation of the Plant. In the event that the City makes upgrades to its Post Oak Wastewater Treatment Facility located on the date hereof generally in the southeastern quadrant of the City of Sherman, Texas (the "Post Oak Facility") and obtains modifications to its Discharge Permit, such that (i) Panda would be able to utilize effluent from the Post Oak Facility in connection with its operations at the Plant; and/or (ii) the City would be able to take return wastewater from the Plant at the Post Oak Facility, the Parties hereto agree to negotiate in good faith terms and conditions relating to such water services that may be provided by the City; provided, that nothing in this Section 2.4 shall require Panda to construct or fund the construction of any additional infrastructure in order to deliver effluent to the Plant or return wastewater to the Post Oak Facility, and nothing in this Section 2.4 shall require the City to accept or treat wastewater from the Plant at the Post Oak Facility or any other City-owned wastewater treatment facility.

Article III.
DESIGN AND CONSTRUCTION OF ADDITIONAL INFRASTRUCTURE FOR
DELIVERING PROJECT WATER AND RETURN FLOWS

3.1 Water Infrastructure.

(a) **Design and Construction.** Panda shall be responsible for and shall pay all costs of the Water Infrastructure in accordance with this Agreement. The City shall grant all easements in, through and over real property owned or controlled by the City necessary for the design and construction of the Water Infrastructure. Panda shall design and construct the Water Infrastructure pursuant to Prudent Water Industry Practice and City standards as may be more specifically provided for in the City Code. Upon completion of the Water Infrastructure design, Panda shall submit such designs to the City for approval, and such approval shall not be unreasonably withheld, conditioned or delayed. Upon completion of the Water Infrastructure, Panda shall transfer title to the Water Infrastructure, and any and all real property interests associated with the Water Infrastructure, to the City free and clear of all Encumbrances. In connection with the construction of the Water Infrastructure, Panda shall obtain a warranty from the construction contractor for the Water Infrastructure, which shall extend for a period of at least one (1) year from the final completion of the Water Infrastructure, and shall warrant that the construction work furnished or performed by such contractor (i) has been performed in a good and workmanlike manner and is of the quality specified in the applicable construction contract; (ii) has been performed in accordance with and conformed in all respects to the specifications of the applicable construction contract and all Requirements of Laws and applicable Permits; and (iii) is free of defects and deficiencies. In addition, Panda shall use reasonable efforts to obtain a warranty from the construction contractor that the construction work performed by the contractor associated with the Water Infrastructure is fit for its intended purpose.

(b) **Use of Water Infrastructure.** During the Term, the City shall not use the Water Infrastructure for any purpose other than to deliver Project Water to the Plant and perform its obligations under this Agreement without the prior written consent of Panda, which such consent shall be at Panda's sole discretion.

3.2 Additional Infrastructure. Panda shall be responsible for and shall pay all costs associated with the Water Pipelines in accordance with this Agreement. Panda shall design and construct the Water Pipelines pursuant to Prudent Water Industry Practice and City standards as may be more specifically provided for in the City Code.

3.3 Commencement of Design and Construction.

(a) Panda may, at its sole discretion, design and/or construct the Water Infrastructure or Water Pipelines before it has received written notice from the City that GTUA and NTMWD have entered into an agreement providing for the transportation and supply of Project Water to the Interconnection Point (the "Notice of Supply"). Notwithstanding the foregoing, in no event shall the City be required to provide Project Water to Panda until the Notice of Supply has been issued, the design of the Water

Infrastructure and Water Pipelines have been approved, and the Water Infrastructure and Water Pipelines have been constructed in accordance with the requirements of this Agreement.

(b) Panda agrees that the construction of the Water Infrastructure and Water Pipelines necessary to provide Project Water on the Commencement Date shall be completed within five (5) years of the Effective Date of this Agreement.

(c) The City agrees that it will, at Panda's request and in accordance with its normal practice, process all City or other regulatory agency permits, approvals, or processes reasonably requested by Panda for its performance under this Agreement. Panda agrees to provide the City with a copy of any licenses, permits, or approvals that are not obtained from the City.

ARTICLE 4 METERING EQUIPMENT

4.1 Master Meter. The City shall furnish, install, operate, and maintain at Panda's sole expense, a Master Meter at the Interconnection Point. The Master Meter shall remain the property of the City at all times and shall be located on the City's property. For the purposes of this Agreement, the volume of water delivered by the City through the Interconnection Point to the Plant shall be determined based upon the data collected at the Master Meter.

4.2 Access to Master Meter. Panda may have access to the Master Meter only upon approval by the City. Such approval shall not be unreasonably withheld or delayed, so long as Panda provides the City with a written request forty-eight (48) hours before such access would occur.

4.3 Regular Testing of the Master Meter. The City shall test the Master Meter for accuracy once each twelve (12) month period in accordance with Prudent Water Industry Practice and in accordance with the American Water Works Association Standards for water meters. In the event the percentage of accuracy of the Master Meter is found to be within the tolerance of two percent (2%), such meter shall be deemed to have correctly measured the quantity of water taken under this Agreement. The City shall provide Panda with five (5) Days notice of its intent to test the Master Meter, and Panda shall have the right to be present when such testing is conducted. If, however, upon any test of the percentage of accuracy tolerance, such tolerance is found to be in excess of two percent (2%), then the Master Meter shall be adjusted at once to register correctly and accurately, and the amount of water accepted by Panda shall be corrected in accordance with the percentage of inaccuracies found by such test for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then the correction shall account for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. Any amounts owed to either Party as a result of the testing provided for in this Section 4.3 and Section 4.4 shall be paid in accordance with Section 6.3(b) hereof.

4.4 Additional Testing of the Master Meter(s). Panda shall have the right to request the City to test the Master Meter more frequently than once per year as contemplated by Section 4.3 herein, but no more frequently than once per month. Upon any such request, the City agrees to perform its testing and calibration of the Master Meter in the presence of a representative of Panda, and the Parties shall jointly observe any adjustments that are made to the Master Meter in case any adjustments shall be necessary. For such additional testing requests, the City shall give Panda notice forty-eight (48) hours in advance of the time when any such testing shall occur. The City may proceed with such testing and adjustment, if necessary, in the absence of any representative of Panda. Panda shall pay the cost of any additional test for the Master Meter if the test shows that the Master Meter is accurate (within two percent (2%) registration), but the City shall pay the costs of the additional test for such if the results indicate that such Master Meter is not accurate (in excess of two percent (2%) registration).

4.5 Maintenance of the Master Meter(s). Except as provided in Section 4.4, above, all maintenance and/or repairs to the Master Meter at the Interconnection Point shall be made by the City or a contractor on behalf of the City, at Panda's sole expense. All expenses thereof shall be the usual and customary expenses in accordance with Prudent Water Industry Practices. The City shall provide repairs to the Master Meter in a prompt and timely manner and in accordance with Prudent Water Industry Practice and in accordance with the American Water Works Association Standards for water meters. If the City cannot make such repairs in a timely manner, then Panda shall have the option of making such repairs at its own expense, subject to prior approval and post-inspection of the repairs by the City Manager or the City Manager's designee.

ARTICLE 5

OWNERSHIP, OPERATION AND MAINTENANCE OF WATER INFRASTRUCTURE; COMMENCEMENT OF WATER SERVICE

5.1 Ownership and Operation; Required Permits.

(a) Upon conveyance of the Water Infrastructure and the underlying real property by Panda to the City, the City shall maintain and operate the Water Infrastructure during the Term of this Agreement, in accordance with Prudent Water Industry Practices, all applicable Requirements of Law, and all applicable Permits, and Panda shall reimburse the City for the usual and customary expenses in accordance with Prudent Water Industry Practices costs associated therewith as provided for in Section 6.2.

(b) Panda, at all times during the Term of this Agreement, shall operate and maintain the Water Pipelines at its sole cost and in accordance with Prudent Water Industry Practices, all applicable Requirements of Law, and all applicable Permits.

(c) During the Term of this Agreement, the City shall obtain and use its best efforts to maintain in full force and effect all Permits and agreements required as of the

Effective Date and during the term of this Agreement, for the City to perform its obligations under this Agreement.

5.2 Relationship of the Parties. Each of the Parties undertake performance of this Agreement as an independent contractor. Nothing in this Agreement shall create a relationship of agency, employment, joint venture or partnership between Panda and the City, or their respective officers, directors, employees, agents, subcontractors and representatives for any purpose whatsoever.

ARTICLE 6 BILLING AND PAYMENT FOR SERVICES

6.1 Water Fees. Beginning on the Commencement Date and continuing throughout the duration of this Agreement, unless otherwise provided for herein, Panda agrees to pay to the City the following fees:

(a) **Project Water Fee and Minimum Annual Fee.** Panda shall pay the City a fee, which shall initially be set at a rate of fifty-five cents (\$0.55) per one thousand (1,000) gallons, for all of the Project Water flowing through the Master Meter at the Interconnection Point (the "Project Water Fee"). In the event that the total amount of Project Water Fees paid by Panda in any given Calendar Year is less than \$400,000.00 (as may be adjusted pursuant to Section 6.1(c) below) (the "Minimum Annual Fee"), at the end of such Calendar Year, Panda shall pay an amount to the City equal to the Minimum Annual Fee less the actual amount of Project Water Fees paid by Panda in accordance with Section 6.2. If the first and/or last year of the Term of this Agreement shall be less than a full Calendar Year, then the applicable Minimum Annual Fee shall be pro-rated accordingly.

(b) **Reservation Fee.** In addition to any amounts paid pursuant to Section 6.1(a) above, Panda agrees to pay the City a fee in the initial amount of Eighteen Thousand Two Hundred Fifty Dollars and No Cents (\$18,250.00) per month, in consideration for the City's reservation of Four Thousand Five Hundred (4,500) acre-feet of Project Water per year (the "Reservation Fee"). The Reservation Fee shall be adjusted in accordance with Section 6.1(c) below.

(c) **Modification of the Rates.** The Project Water Fee, the Minimum Annual Fee, and the Reservation Fee shall be adjusted annually starting with the first full Calendar Year during the Term of this Agreement by multiplying the applicable fee by one plus the Economic Indicator, which shall be calculated for the applicable Calendar Year as shown on Exhibit C hereto. The City shall make any adjustments for the upcoming Calendar Year and shall send written notice of such adjustments to Panda by December 1st of the then current Calendar Year. Additionally, the Parties recognize that the City obtains its water supply from various sources, the costs of which are also subject to change. At each and every instance that the City's direct costs associated with providing the Project Water increase, the Parties agree that the City may further adjust the Project Water Fee once each Calendar Year to reflect such actual proportional cost increases. Panda may dispute any adjustments made in the fees

charged by the City in accordance with this Section 6.1(c) and request that such adjustments be reviewed by an independent third-party accounting firm selected by the City and approved by Panda. The City and Panda shall share equally in all costs associated with such independent review; provided, that, if such review results in no changes to the adjustments calculated by the City, Panda shall reimburse the City for all costs relating to such review previously paid by the City and if such review results in changes to the adjustments calculated by the City, the City shall reimburse Panda for all costs relating to such review previously paid by Panda.

(d) **Just and Reasonableness of the Rates.** The Parties recognize that the City is subject to public utility regulations in connection with providing Project Water to the Interconnection Point and accordingly, the Parties agree that the initial Project Water Fee established in Section 6.1(a), above, is just and reasonable, and does not adversely affect the public interest. The Parties further agree that any increases to the Project Water Fee are also just and reasonable and do not adversely affect the public interest, so long as such increases are made in accordance with Section 6.1(e) of this Agreement. Panda agrees not to object, oppose, or contest the Project Water Fee, so long as the Project Water Fee and/or any increases thereto are made in accordance with Section 6.1(c) of this Agreement. Notwithstanding the foregoing, nothing herein shall limit or prohibit Panda from exercising its right to contest and/or dispute any fee as set forth herein.

6.2 Billing and Payment. The City shall invoice Panda on a monthly basis in an amount equal to the Project Water Fee plus the Reservation Fee; and Panda shall pay all amounts within fifteen (15) Days of its receipt of any such invoice. By January 15th of every year during the Term of this Agreement, the City shall invoice Panda for an amount representing the shortfall, if any, between the total Project Water Fee paid for the prior Calendar Year and the applicable Minimum Annual Fee, as set forth in Section 6.1(a), and any applicable operation and maintenance costs for the Water Infrastructure incurred by the City during the prior Calendar Year. In the event Panda does not pay any amounts in full within thirty (30) Days of each and every invoice date, the City may charge interest on the unpaid balance at a rate of one and one-half percent (1.5%) per month as calculated from the date when the invoice payment is due until the date that such payment is received by the City. If Panda at any time disputes the fees charged by the City or the amount of a monthly invoice, Panda agrees to nevertheless timely make the disputed payment or payments. If it is subsequently determined by agreement or court decision that the disputed amount paid by Panda should have been less, or more, the City shall promptly revise the monthly invoice amount in a manner that Panda or the City will recover the amount due and interest, with interest being calculated at the rate of one and one-half percent (1.5%) per month. Notwithstanding the foregoing, in the event Panda has failed to pay an invoice and such non-payment has lasted for at least sixty (60) Days, then the City may immediately stop supplying Project Water pursuant to Section 2.1 until it has received the payment in question and such non-payment shall qualify as an Event of Default by Panda.

6.3 Maintenance and Audit of Records.

(a) During the Term, and for a minimum period of one (1) year from and after the termination or expiration of this Agreement (unless Panda is making payments pursuant to Section 11.8, in which case this Section 6.3 shall stay in full force and effect until twelve (12) months following the last payment made by Panda pursuant to Section 11.8), the City shall keep all books and records necessary for calculation, billing and payment of all fees to be paid by Panda pursuant to this Agreement, and shall allow Panda, its Affiliates, lenders, auditors, representatives, agents and advisors reasonable access to those books and records at any time during the period such books and records are required to be maintained, upon request and during normal business hours.

(b) In the event an audit discloses an overpayment by Panda to the City, the City shall reimburse Panda within thirty (30) Days of written notification of such overpayment. If the Parties mutually agree, the overpayment to be reimbursed may be applied to current or future amounts owed by Panda to the City based upon the terms of this Agreement. In the event an audit discloses that an underpayment by Panda was made to the City, Panda shall reimburse the City within thirty (30) Days of written notification of such underpayment.

ARTICLE 7 FORCE MAJEURE

7.1 Procedure for Calling Force Majeure

(a) **Notice of Force Majeure.** The Affected Party shall give prompt notice to the other Party of any event or circumstance of Force Majeure as soon as reasonably practicable after becoming aware of such event or circumstance. Each notice served by an Affected Party to the other Party pursuant to this Section 7.1(a) shall specify the event or circumstance of Force Majeure in respect of which the Affected Party is claiming relief. Noncompliance by the Affected Party with the procedure specified in this Section 7.1(a) shall relieve the other Party from accepting the Affected Party's claim of Force Majeure until the Affected Party so complies, and the Affected Party shall not be excused from performance of any obligation under this Agreement until it so complies.

(b) **Obligations During Pendency of Force Majeure.** The Affected Party shall, by reason of any event or circumstance of Force Majeure in respect of which it has claimed relief under this Section 7.1:

(i) use its best efforts to mitigate the effects of such Force Majeure and to remedy any inability to perform its obligations hereunder due to such event or circumstance as promptly as reasonably practicable;

(ii) furnish weekly reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of Force Majeure; and

(iii) resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the event or circumstance of Force Majeure is remedied or such event or circumstance, or the effect thereof on the Affected Party, ceases to exist.

(iv) if performance is available in part and appropriate under the circumstances of the Force Majeure then the Party that is claiming the Force Majeure will perform to the performance level not affected by the Force Majeure, with the approval of the other Party. This subparagraph shall not apply if the performance level available under the circumstances of the Force Majeure will interfere with the City's ability to provide necessary water services to the general public.

(c) **Resumption of Performance.** When the Affected Party is able, or would have been able if it had complied with its obligations under this Section 7.1, to resume the performance of any or all of its obligations under this Agreement affected by the occurrence of an event or circumstance of Force Majeure, then the period of Force Majeure relating to such event or circumstance shall be deemed to have ended.

7.2 Effects of Force Majeure

(a) **Relief From Obligation of Performance.** Provided it has complied with its obligations under Section 7.1, the Affected Party shall be relieved from any liability for the non-performance of its obligations under this Agreement where and to the extent that such non-performance is attributable directly to the event or circumstance of Force Majeure asserted.

(b) **Relief From Obligation of Counterperformance.** The non-Affected Party shall not be required to perform or resume performance of its obligations to the Affected Party corresponding to the obligations of the Affected Party excused by reason of Force Majeure.

7.3 Limitations on Force Majeure

(a) **Scope and Duration.** No event or circumstance of Force Majeure shall relieve the Affected Party of any obligation that accrued prior to the commencement of such event or circumstance of Force Majeure, and the suspension of the Affected Party's performance shall be no longer in duration and no greater scope than is required by the event or circumstance of Force Majeure.

(b) **No Extension of Term.** Except as agreed by the Parties, no suspension, delay or failure of performance caused by a Force Majeure event shall extend this Agreement beyond the Term.

ARTICLE 8
DEFAULT AND REMEDIES; INDEMNITY

8.1 Event of Default.

(a) **By the City.** The following event shall each be an "Event of Default" by the City, immediately upon its occurrence, without requirement of notice or right to cure, any failure to deliver Project Water in the Daily Requirement as set forth in Section 2.1(a) on or after the Commencement Date to the Interconnection Point due to any cause other than a Forced Outage, a Planned Outage, a cessation of Project Water as authorized in Section 6.2 or Section 8.2, or an outage due to Force Majeure, whenever occurring.

(b) **By Either Party.** Except as set forth in Sections 8.1(a), it shall be an "Event of Default" by either Party if such Party shall breach any material covenant, obligation, representation or warranty of such Party under this Agreement, which breach remains uncured for a period of thirty (30) Days after written notice from the non-breaching Party of the existence of such breach; provided, that the non-breaching Party shall extend the cure period for any such breach (and no Event of Default shall occur) if the nature of the default is such that it cannot reasonably be remedied within such thirty (30) Day period, and the breaching Party has diligently commenced corrective action within such thirty (30) Day period and is diligently pursuing such correction thereafter.

8.2 Remedies. Other than as set forth in Section 11.8, if an Event of Default has occurred and is continuing, the non-defaulting Party shall be entitled to the following remedies which shall be cumulative: (i) injunctive relief; (ii) specific performance; (iii) the right to cure the other Party's default; (iv) termination; (v) any of the remedies afforded in this Agreement; and (vi) any other remedies permitted at law or in equity, including damages. In addition to the aforementioned remedies, in the occurrence of an Event of Default by Panda, the City shall also be entitled to stop supplying Panda with Project Water pursuant to Section 2.1 herein until the Event of Default is cured.

8.3 Indemnification by Panda.

(c) **Indemnification by Panda.** IN ADDITION TO THE OTHER REMEDIES AFFORDED TO THE CITY IN THIS AGREEMENT, PANDA SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, ATTORNEYS, CONTRACTORS, OR AGENTS (HEREINAFTER "CITY'S INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART) PANDA'S PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.

(b) **Notice of Indemnified Loss.** The City's Indemnified Party shall promptly notify Panda of any indemnified Losses or Claim for indemnified Losses in respect of which the City's Indemnified Party may be entitled to indemnification under this Section 8.3. Such notice shall be given as soon as reasonably practicable after the City's Indemnified Party becomes aware of the Loss or Claim for Losses.

(c) **Defense of Third Party Claims.** In the event any action or proceeding shall be brought against the City's Indemnified Party by reason of any matter for which the City's Indemnified Party is indemnified hereunder, Panda shall, upon notice from the City's Indemnified Party or its authorized agents or representatives, at Panda's sole cost and expense, resist and defend the same with legal counsel selected by Panda provided, however, that Panda shall not admit liability in any such matter on behalf of the City's Indemnified Party. Panda's obligation to defend shall apply regardless of whether the City's Indemnified Party is solely or concurrently negligent. Nothing herein shall be deemed to prevent the City's Indemnified Party at its election and at its own expense from cooperating with Panda and participating in the defense of any litigation by their own counsel. If Panda fails to retain defense counsel within seven (7) business days after receipt of City's Indemnified Party written notice that the City's Indemnified Party is invoking its right to indemnification under this Agreement, the City's Indemnified Party shall have the right to retain defense counsel on their own behalf, and Panda shall be liable for all usual and customary defense costs incurred by the City's Indemnified Party.

(d) **Limitation on Indemnity.** The amount owing to an indemnified Party will be the amount of the indemnified Party's Losses net of any insurance proceeds received by the indemnified Party following a reasonable effort by the indemnified Party to obtain such insurance proceeds.

8.4 Insurance.

(a) Panda shall, at its sole cost and expense, obtain, maintain, and provide, throughout the term of this Contract, insurance in the amounts, types and coverages in accordance with Prudent Water Industry Practices. Such insurance may be in the form of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

(1) General commercial liability of two million dollars (\$2,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate.

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

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

(b) The insurance coverage required herein must include coverage for work performed by Panda's contractors and subcontractors.

(c) Panda shall provide the City with written proof of insurance at least thirty (30) Days prior to the start of construction of the Water Infrastructure, and such insurance shall list the City as an additional insured, except for the Worker's compensation coverage. Panda shall not be required to furnish separate proof when applying for permits.

ARTICLE 9 REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 City Representations and Warranties. The City hereby represents and warrants to Panda, as of the date hereof, as follows:

(a) The City is a municipal corporation organized under the laws of the State of Texas, and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(b) This Agreement has been duly executed and delivered on behalf of the City by the appropriate officials of the City, and constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles.

(c) The execution, delivery and performance of this Agreement by the City have been duly authorized under the Charter, the City Code and all other applicable Requirements of Law of the City and will not contravene any provision of or constitute a default under any other agreement or instrument to which the City is a party or by which the City or its property may be bound, and do not conflict with any Requirement of Law currently in force and applicable to the City.

(d) There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the City's knowledge) threatened, against the City, whether related to the operation of any City facility that will supply Project Water under this Agreement, or otherwise, before or by any Governmental Authority which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the City of its obligations hereunder, (ii) could have a material adverse affect on the condition (financial or otherwise), business or operations of the City, or (iii) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

9.2 Panda Representations and Warranties. Panda represents and warrants to City, as of the date of this Agreement, as follows:

(a) Panda is a limited liability company organized and in good standing under the laws of the State of Delaware, is authorized to conduct business in Texas, and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(b) This Agreement has been duly executed and delivered on behalf of Panda, and constitutes the legal, valid and binding obligation of Panda, enforceable against Panda in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles.

(c) There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of Panda's knowledge) threatened, against Panda or related to the operation of the Plant before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Panda of its obligations hereunder, (ii) could have a material adverse affect on the condition (financial or otherwise), business or operations of Panda, or (iii) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

(d) No City officer or employee has been or will be compensated in any manner with respect to directly or indirectly bringing the Parties together, agreement negotiations, or the entering into this Agreement. In no event will Panda pay a fee to or in any other manner compensate any City of Sherman Council member, officer, or employee in connection with the acceptance of this Agreement. A breach of this Section 9.2(d) shall result in automatic and immediate termination of this Agreement and shall be an Event of Default.

ARTICLE 10 CONFIDENTIALITY

10.1 Confidential Information. The City acknowledges that the City and its officers, directors, employees, contractors, agents and representatives may have access to Confidential Information and that such information constitutes the valuable, special and unique property of Panda, its contractors and affiliates, to the extent that such information is expressly and specifically labeled as "Confidential Information."

10.2 Limitations on Use and Disclosure. The City shall maintain the Confidential Information pursuant to the Public Information Act (formerly known as the Open Records Act), Chapter 552 of the Texas Government Code. In the event a request is made for Confidential Information under such Chapter, the City shall promptly inform Panda of the request and shall seek all protective measures as may be provided by such Chapter in connection with such disclosure.

10.3 Survival. The provisions of this Article X shall survive the dissolution or termination of this Agreement.

ARTICLE 11

TERM, SUSPENSION AND TERMINATION, DISPUTE RESOLUTION

11.1 Term. Unless earlier terminated in accordance with this Agreement, this Agreement shall be effective as of the Effective Date, and the Term of this Agreement shall continue in full force and effect for a period of thirty (30) years from the Effective Date.

11.2 Termination by Panda for Cause. Panda shall have the right (but not the obligation) to terminate this Agreement upon thirty (30) Days prior written notice to the City upon the occurrence of any Event of Default by the City.

11.3 Termination or Suspension by Panda for Convenience. At any time prior to the Commencement Date, Panda shall have the right, for its sole convenience and without cause, to terminate or suspend, for a period not to exceed three (3) years, in whole or in part, the City's performance of any of its duties or obligations under this Agreement, upon thirty (30) Days prior written notice to the City. If this Agreement is terminated pursuant to this provision or if the suspension of the Agreement exceeds three (3) years, then the City is entitled to all expenses it incurred as a result of this Agreement after the Effective Date of the Agreement.

11.4 Termination by the City for Cause. Except as otherwise provided in this Agreement, the City shall have the right (but not the obligation) to terminate this Agreement (in accordance with the terms of this Agreement) upon any of the following:

- (a) the occurrence of any Event of Default by Panda;
- (b) if Panda has not taken delivery of Project Water for a period of twelve (12) consecutive months after the Commencement Date; or
- (c) Panda has failed to make or dispute a payment pursuant to Section 6.2 and such non-payment has lasted for more than sixty (60) Days; or
- (d) Panda's construction of the Water Infrastructure and Water Pipelines necessary to provide Project Water on the Commencement Date is not completed within five (5) years of the Effective Date of this Agreement.

11.5 Automatic Termination. This Agreement shall automatically terminate in the event that:

- (e) the City fails to deliver the Notice of Supply due to failure of the GTUA and NTMWD to execute the transportation agreement referenced in Section 3.3 above (provided that the City has used its best efforts to secure the transportation agreement) within six (6) months after the Effective Date of this Agreement; or

(b) notwithstanding any rights and remedies available to Panda, the City is unable to obtain any necessary Permit, Permit amendment, or other necessary authorization from the TCEQ, such that the City is unable to perform its obligations hereunder and the City is unable to cure such defect for a period of twelve (12) consecutive months; provided it has used its best efforts to remedy such defect; and provided, further that Panda has not terminated this Agreement pursuant to Section 11.2.

11.6 Termination by Either Party for Force Majeure. Either Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) Days prior written notice to the other Party in the event the suspension of any material obligation of the Affected Party resulting from one or more events of Force Majeure continues (i) prior to the Commencement Date, for a period of more than one (1) month, or (ii) from and after the Commencement Date, for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Affected Party shall only be entitled to terminate this Agreement under this Section 11.6 if it has met its obligations under Section 7.1. The Party not Claiming Force Majeure may, but shall not be obligated to, extend either such period for such additional period as it deems appropriate, if the Affected Party is exercising due diligence in its efforts to cure the Force Majeure event.

11.7 Effect of Termination: Survival. Upon receipt of any notice of termination delivered pursuant to this Article 11, this Agreement shall terminate, effective immediately, and will be of no further force or effect, except with respect to (i) rights and obligations of the Parties arising during or relating to any period prior to termination, and (ii) the covenants and obligations of the Parties set forth in this Agreement intended to survive the expiration or termination of this Agreement, which shall survive the expiration or earlier termination of this Agreement as expressly provided in this Agreement, or if no express survival period is provided for, then until such obligations have been satisfied, or, if later, pursuant to any applicable statute of limitations.

11.8 Termination Fee. If, any time following the Commencement Date, this Agreement is terminated by the City pursuant to Section 11.4, Panda shall pay to the City an annual amount of Two Hundred Nineteen Thousand Dollars (\$219,000.00) as may be adjusted below (the "Termination Fee") until Panda has made such payment for a number of years equal to 30 less the actual Term of the Agreement (taking into account full years only). The Termination Fee shall automatically be reduced by \$22.23 per every equivalent acre foot of water sold by the City for industrial uses. It is the Parties intent that the Termination Fee shall only be adjusted downward, with the adjusted Termination Fee carrying forward each year until the City has contracted to sell an equivalent of approximately 4,500 cumulative acre feet of water for industrial uses. The first Termination Fee shall be paid no later than sixty days following the date of termination and on the anniversary of the termination date each year thereafter for the applicable time period set forth in this Section 11.8. The Parties acknowledge that if Panda should default under this Agreement, the amount of damages to the City would be difficult if not impossible to determine and the amount specified as liquidated damages in this section that Panda would incur is sufficient and shall represent the

City's sole and exclusive remedy and shall be paid in lieu of any Minimum Annual Fee that may be owed at the time of termination pursuant to Section 6.1(c).

11.9 Friendly Consultation and Mediation. Except in circumstances where equitable relief is sought by a Party, any dispute, controversy or claim between the Parties arising out of or relating to this Agreement, or the breach, termination or invalidity thereof (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days, then the Dispute shall be submitted to a senior executive officer of Panda on the one hand and the City Manager on the other hand, with authority to resolve all issues and who shall meet within ten (10) days after the date of a written submission by either Party, describing the Dispute. If such senior executive officer and the City Manager do not resolve the Dispute within five (5) days, then the Parties agree to submit the Dispute to non-binding mediation prior to the initiation of judicial proceedings. If mediation is not conducted within ninety (90) days after the date of written notification of dispute, then either party can initiate judicial proceedings. The Parties agree to provide each other with reasonable access during normal business hours to any and all non-privileged and nonconfidential records, information and data pertaining to any such Dispute, and such other information as the Parties may mutually agree. Notwithstanding each Party's right of reasonable access under this subparagraph, this requirement may be satisfied by supplying copies of such materials to the requesting Party.

ARTICLE 12 MISCELLANEOUS

12.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the Parties.

12.2 Entire Agreement. This Agreement embodies the entire agreement of the Parties on the subjects contained herein and therein and shall supersede all previous communications, representations, or agreements either verbal or written between the Parties with respect to the same.

12.3 Assignment. Neither Party may assign its rights and duties hereunder, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that Panda may assign this Agreement and all of its rights hereunder to any Affiliate. In addition, this agreement and all rights hereunder may be assigned for the benefit of any Financing Party including, but not limited to an assignment to such parties upon a foreclosure.

12.4 Financing Parties. The City acknowledges that Panda or its Affiliates will borrow funds for the development, construction, ownership and operation of the Plant from a Financing Party. Any Financing Party, as a condition to making such loans or other payment, may request as a condition to such financing, and certain due diligence or other, documents from the City. In connection therewith, the City agrees to use its best efforts to promptly furnish, at Panda's expense, to such Financing Party, such

written information, certificates, opinions, affidavits, and other like documents as Panda or the Financing Party may reasonably request. However, in no event shall the City Attorney be obligated to provide an opinion letter to Panda or a Financing Party concerning the rights or obligations of either Party under this Agreement. The parties shall negotiate in good faith, changes to this Agreement reasonably requested by a Financing Party and any amendment will be in accordance with Section 12.8.

12.5 Notice. Unless otherwise stated herein, any notice or other communication required or permitted under this Agreement shall be in writing, may be delivered (and shall be deemed to be received) as follows: (i) when delivered personally or by a nationally recognized overnight courier service that provides written proof of delivery, upon the date of delivery; (ii) when delivered by United States mail, registered or certified, with return receipt requested and postage prepaid, on the date of receipt, refusal or non-delivery as indicated on the return receipt; and (iii) when delivered by facsimile, upon confirmation of receipt from the recipient's fax portal, provided that, in each such case, such notice is sent to the address or fax number of the recipient set forth below:

If to City:

City Manager
City of Sherman, Texas
220 West Mulberry Street
P. O. Box 1106
Sherman, Texas 75091-1106
Facsimile: (903)-892-7355

If to Panda:

Panda Sherman Power, LLC
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
Attention: General Counsel
Facsimile: (972) 455-3890

Any Party may change the address at which it is to receive any notice to be sent under this Agreement by providing notice of such change to the other Party in the manner set forth in this Section 12.5.

12.6 Cooperative Drafting. This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

12.7 Severability. If any provision of this Agreement is held to be in conflict with any applicable Requirement of Law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or

of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent.

12.8 Amendment. This Agreement may not be amended, modified, supplemented or revoked except by an instrument in writing signed by the Parties.

12.9 Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal Person other than the Parties, any right, remedy, or Claim under or by reason of this Agreement; or any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreements of any Party with any third Party.

12.10 Deadlines. To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

12.11 No Waiver of Rights.

(a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character or shall be effective unless in writing, duly executed by a duly authorized representative of the Party waiving any such default.

(b) Neither the failure by a Party to insist on any occasion upon the strict performance of the terms, conditions and provisions of this Agreement, nor time or other indulgence granted by one Party to the other, shall act as a waiver of such breach.

12.12 Governing Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Texas, other than with respect to conflicts of law. Jurisdiction and venue shall be proper and exclusive in the state and federal district courts located in the County of Grayson, State of Texas. If the federal district courts are relocated from Grayson County during the pendency of this Agreement, then venue shall be proper in the federal district court in the Eastern District, Plano Division. Each of the Parties irrevocably submits to the exclusive jurisdiction of such courts in any such proceeding and waives any objection it may now or hereafter have as to venue or to convenience of forum.

12.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may execute this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement and exchange the counterparts of such documents by means of facsimile transmission, and the Parties agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. Thereafter, the Parties shall promptly exchange original

versions of this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission.

12.14 Recording. The City shall file a copy of this Agreement with the TC3Q within 30 Days of the Effective Date.

12.15 Effective Date. The Effective Date of this Agreement shall be immediately upon the latter of the date that this Agreement is executed by the City and Panda.

[Signatures follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Day and year first above-written.

PANDA SHERMAN POWER, LLC
a Delaware limited liability company

By: Ralph Kilham
Name: Ralph Kilham
Title: Sr. Vice President
Date: October 7, 2008

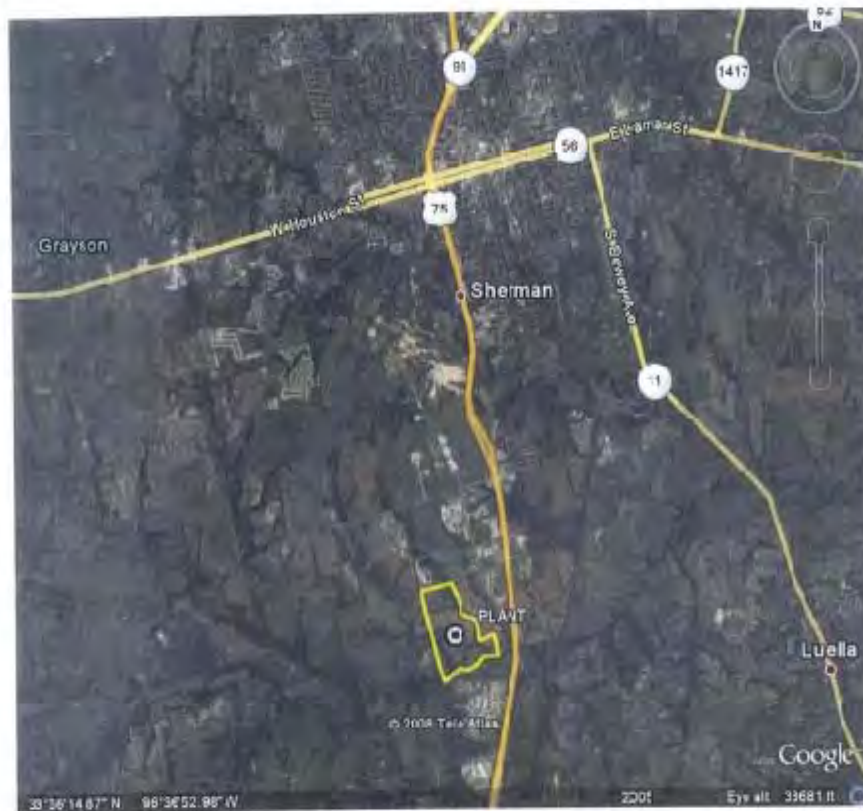
CITY OF SHERMAN, TEXAS,
a body corporate and politic

By: Bill Mager
Bill Mager, Mayor

Date: October 7, 2008

**Exhibit A
to the
Water Services Agreement**

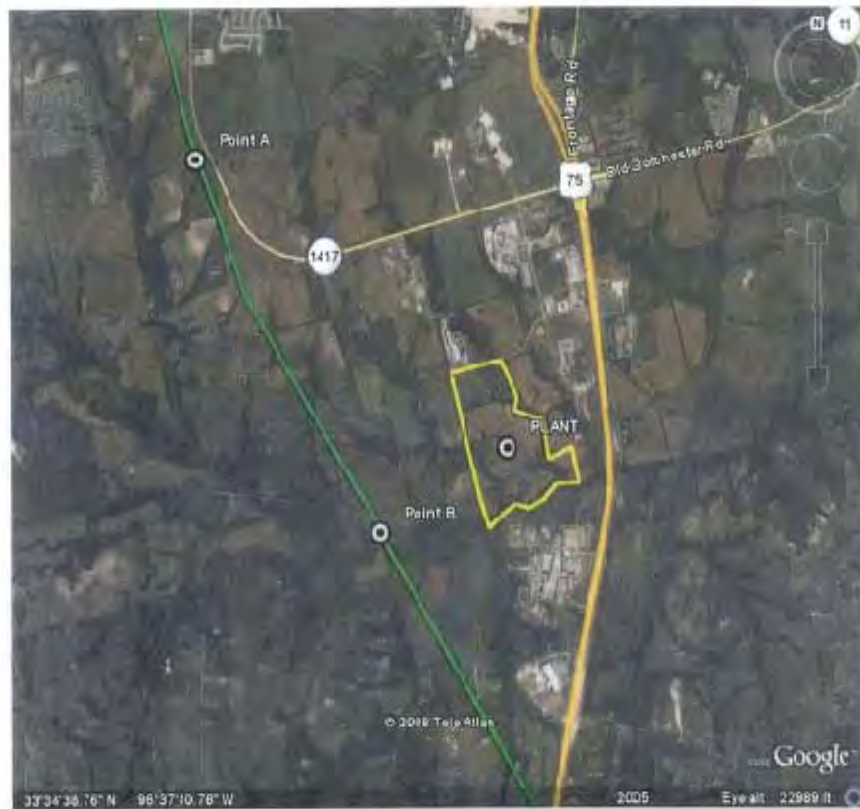
Location of the Panda Plant



**Exhibit B
to the
Water Services Agreement**

Location of the Raw Water Interconnection Point

The location of the Raw Water Interconnection will be located between Point A and Point B (To be determined)



**Exhibit C
to the
Water Services Agreement**

Calculation and use of the Economic Indicator

Excerpt from Civil Works Construction Cost Index System

Index Code	Feature Code	Cost Index		
		Year 3	Year 2	Year 1
02	Relocations	890.88	878.51	848.72
03	Reservoirs	728.73	709.45	872.82
04	Dams	885.12	867.25	835.5
05	Floods, Railroads, & Bridges	800.12	879.81	826.30
11	Levees & Floodwalls	702.01	683.57	655.37
19	Buildings, Grounds & Utilities	702.49	681.88	645.52
20	Permanent Operating Equipment	702.48	681.88	645.52
	(Total)	4,899.94	4,779.05	4,536.54
Percentage Change from Year 1 total to Year 2 total			5.348%	
Percentage Change from Year 2 total to Year 3 total		2.530%		

Calculation of Project Water and Annual Reservation Fee

Project Year	Calculation	Project Water (per 1k gal)
Year 1	Panda Contract Base Amount	\$ 0.550
Year 2	\$.55 + (5.348% X \$.55)	\$ 0.579
Year 3	\$.579 + (2.53% X \$.579)	\$ 0.594

Project Year	Calculation	Annual Reservation Fee
Year 1	Panda Contract Base Amount	\$ 219,000
Year 2	\$219,000 + (5.348% X \$219,000)	\$ 230,707
Year 3	\$230,707 + (2.53% X \$230,707)	\$ 236,643



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. C.3

RESOLUTION NO. 5627

Authorizing Execution of an Agreement with Panda Sherman Power, LLC for Water Services

Issue

Consideration of a proposed Water Services Agreement between the City of Sherman and Panda Sherman Power, LLC (Panda) for an approximately five hundred (500) megawatt power plant and related infrastructure to be located exclusively in Sherman's city limits

Background

In October 2008, the City Council entered into a 30-year water services agreement with Panda, whereby the City would provide raw water to Panda for use in the industrial cooling process for its proposed five hundred (500) megawatt power plant and related infrastructure to be located exclusively in Sherman's city limits. Due to the delay in funding and construction of their project, Panda has requested certain revisions to the existing agreement, including the following:

- At Section 6.1(a), the Project Water Fee would be revised from \$0.55 to \$0.61 per 1,000 gallons; and the Minimum Annual Fee would be revised from \$400,000 to \$446,000.
- At Section 6.1(b), the Reservation Fee would be changed from \$18,250 to \$20,350 per month.
- At Section 11.1, the Term would be for a period of thirty (30) years from the Commencement Date, rather than from the Effective Date.

In addition to the timing changes, Panda has agreed to revisions to the rates, reservation fee, and minimum payments to reflect changes in the water rates the City has implemented since the original agreement was executed in October 2008.

Origination

Panda Sherman Power, LLC

Financial Consideration

This agreement will generate about \$70,000 more in projected annual water revenues than the previous agreement.

Staff Recommendation

It is the staff's recommendation that the Council approve the resolution and proposed Water Services Agreement with Panda Sherman Power, LLC.

Alternatives

No other alternatives are recommended.

Attachments

Resolution No. 5627

Water Services Agreement with Exhibits “A”, “B” and “C”

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5627

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR WATER SERVICES; 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 Mayor be and is hereby authorized, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Agreement with Panda Sherman Power, LLC, a Delaware Limited Liability Corporation, for Water Services in accordance with the terms and provisions of the contract documents attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2011.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

WATER SERVICES AGREEMENT

between

THE CITY OF SHERMAN, TEXAS

and

PANDA SHERMAN POWER, LLC

October 17, 2011

WATER SERVICES AGREEMENT

This Water Services Agreement (this "Agreement") is entered into as of this 17th day of October, 2011, by and between the CITY OF SHERMAN, TEXAS, a municipal corporation in the County of Grayson, Texas (the "City"), and PANDA SHERMAN POWER, LLC, a Delaware limited liability company authorized to conduct business in the State of Texas ("Panda"). Each of the City and Panda is referred to herein, individually, as a "Party" and, collectively, as the "Parties."

Recitals

WHEREAS, Panda is developing for construction and operation an approximately five hundred (500) megawatt power plant and related infrastructure as may be expanded and/or upgraded (the "Plant") to be located exclusively in the city limits of Sherman, Texas as further described on Exhibit A (the "Property"); and

WHEREAS, Panda requires a supply of water for the construction, testing and operation of such Plant at an initial estimated average rate of approximately four million (4,000,000) gallons per day on an annualized basis; and

WHEREAS, the City obtains a water supply from the GTUA (as defined below), pursuant to a certain "Contract for Water Supply and Sewer Service" dated March 1, 1985, between GTUA and the City ("Water Supply Contract"); and

WHEREAS, the City desires to make available to Panda a supply of water in connection with its operations at the Plant according to the terms and conditions set forth in this Agreement; and

WHEREAS, prior to the Effective Date, Panda is under no obligation to purchase water from the City, and the City is under no obligation to sell water to Panda; and

WHEREAS, the Parties desire to enter into a water services agreement for Project Water, whereby the City will provide to Panda, and Panda will purchase from the City, Project Water on a take or pay basis, according to the terms and conditions in this Agreement; and

WHEREAS, the Sherman City Council, at its October 6, 2008 City Council meeting, approved the delivery of water to the Plant on the terms and subject to the conditions set forth in this Agreement by Resolution No. 5280 on October 6, 2008, in accordance with City Code; and

WHEREAS, the Parties enter into this Agreement with the understanding and intent that City will be under no duty to provide Panda with water once this Agreement terminates as set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

Article I. DEFINITIONS

1.1 Defined Terms. The following capitalized terms used in this Agreement and in any exhibit or attachment that is or is made a part of this Agreement, and not otherwise defined herein, shall have the following meanings:

(a) “Affected Party” has the meaning ascribed to such term in Section 1.1(u) of this Agreement.

(b) “Affiliate” means, in relation to any Person, any Person (i) who directly or indirectly controls, or is controlled by, or is under common control with, such other Person; or (ii) who directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock of such other Person; or (iii) who has fifty percent (50%) or more of any class of voting stock that is directly or indirectly beneficially owned or held by such other Person; or (iv) who either holds a general partnership interest in such other Person or such other Person holds a general partnership interest in the Person.

(c) “Agreement” has the meaning ascribed to such term in the Preamble hereto.

(d) “Business Day” means any Day other than Saturdays, Sundays and Days on which banks in the City of Sherman, Texas are required or permitted to be closed for all or part of their customary hours of operation.

(e) “Calendar Year” shall mean January 1 through December 31 of any given year.

(f) “City” has the meaning ascribed to such term in the Preamble hereto.

(g) “City Code” means the Sherman municipal code and all other Requirements of Law of the City, as the same may be amended from time to time.

(h) “City System” means the infrastructure owned and operated by the City pursuant to which it delivers Project Water to the Plant and includes all of the City’s facilities, infrastructure, properties, and any interests it may hold in GTUA or NTMWD (as defined below) infrastructure and facilities, insofar as they are related to the City providing Project Water to the Plant, together with all future extensions, improvements, enlargements, additions to and replacements of such systems.

(i) “Claim” means any claim, action, cause of action, suit or proceeding before any Governmental Authority (as defined below) or arbitral tribunal.

(j) "Commission" or "TCEQ" means the Texas Commission on Environmental Quality, or its successor agencies.

(k) "Commencement Date" has the meaning ascribed to such term in Section 2.1(c) of this Agreement.

(l) "Confidential Information" means certain information relating to Panda, its contractors and Affiliates, that includes aspects of their respective businesses or operations, including designs and/or patented process, if such information is expressly and specifically labeled as Confidential Information.

(m) "Daily Requirement" has the meaning ascribed to such term in Section 2.1(a) of this Agreement.

(n) "Day" means a 24-hour period commencing at 0:00:00 hours each Day and ending at 23:59:59 hours on the same Day, determined by reference to prevailing Central time.

(o) "Discharge Permit" means the Texas Pollutant Discharge Elimination System Permit No. WQ0010329001, issued by the State of Texas to the City for the Post Oak Wastewater Treatment Facility.

(p) "Economic Indicators" means the annual change in costs as reflected in the US Army Corps of Engineers' *Civil Works Construction Cost Index System (CSCCIS)*, Table A-2, *Yearly Cost Indexes by CWBS Feature Code*. The change shall be calculated as the weighted-average change in the following feature codes, as reflected in Table A-2:

- (i) Relocations (02)
- (ii) Reservoirs (03)
- (iii) Dams (04)
- (iv) Roads, Railroads & Bridges (08)
- (v) Levees & Floodwalls (11)
- (vi) Buildings, Grounds & Utilities (19)
- (vii) Permanent Operating Equipment (20)

An example of the calculation and use of the Economic Indicator is attached hereto as Exhibit C.

(q) "Effective Date" has the meaning ascribed to such term in Section 12.15 of this Agreement.

(r) "Encumbrance" means any lien, claim, interest, security interest, charge or other encumbrance.

(s) "Event of Default" has the meaning ascribed to such term in Section 8.1 of this Agreement.

(t) "Financing Party" means one or more Person or Persons providing debt and/or equity contributions, commitments or financing in connection with Panda property or Plant, including any Person or Persons providing credit enhancement for Panda or its Affiliates, refinancing or take-out of any financing with respect to the Property or Plant, and any trustee, agent or authorized representative of such Person or Persons.

(u) "Force Majeure" means and shall be limited to any event or circumstance which is beyond the reasonable control of, without the fault or negligence of, and should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by, the Party asserting Force Majeure (the "Affected Party"), and which delays or prevents the Affected Party from timely performing any obligation hereunder, including, without limitation: (i) acts of God, earthquakes, fire, storms, severe droughts, floods, lightning, hurricanes, tornadoes, and severe snow storms; (ii) explosions, wars, civil insurrections, acts of the public enemy, acts of civil or military authority, sabotage, and terrorism; (iii) strikes, lockouts or other labor disputes with respect to which the Affected Party has not been determined by the National Labor Relations Board to have engaged in any unfair labor practices; (iv) any event which would require either Party to act illegally in order to remain in conformance with this Agreement; (v) an event that would prohibit the City from utilizing any City, NTMWD or GTUA utility infrastructure in the delivery of Project Water to Panda; and (vi) any change in any Requirement of Law or the interpretation thereof by a responsible Governmental Authority which shall in any circumstances under this Subsection; and (vi) require or prevent any change in the development, construction, ownership, operation or financing of the Plant or related real property (including, without limitation, Panda's inability, despite due diligence, to obtain any Permit of any Governmental Authority required for the development, construction, ownership, operation or financing of the Property or the Plant); provided that "Force Majeure" shall not include (a) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic or (b) inability of a Party to make payment when due under this Agreement, unless the cause of such inability is an event that physically prevents payment and that would otherwise constitute Force Majeure as described above.

(v) "Forced Outage" means a shut down by the City in the operation of that portion of the City System such that no Project Water is delivered to any Interconnection Point(s): (i) which shut down is in the reasonable opinion of the City, and consistent with Prudent Water Industry Practice, necessary or required to protect Persons or property (including such water and wastewater system) from contamination or releases that could reasonably result in harm, injury or material damage; (ii) with respect to which the City has notified Panda in accordance with Subsection 2.3(b); (iii) which is of no more than five (5) Days in duration; and (iv) has an impact on operations at the Plant.

(w) "Governmental Authority" means any federal, state, local or other governmental body; any governmental or quasi-governmental, regulatory or administrative agency commission, body or other authority exercising or entitled to

exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

(x) "GTUA" means the Greater Texoma Utility Authority, a conservation and reclamation authority created by the Texas Legislature or any successor agency.

(y) "Interconnection Point" means the location where Project Water from the City System passes through a Master Meter and enters Panda's water infrastructure as more specifically described in Exhibit B hereto.

(z) "Loss(es)" means any loss, cost, expense, Claim, demand, damage, fine, liability, obligation or penalty (including court costs and reasonable attorney's fees and expenses).

(aa) "Master Meter" means the necessary metering equipment, including a meter house or pit, and any other required devices of standard type, for properly measuring the quantity of Project Water traveling through the Interconnection Point.

(ab) "Minimum Annual Fee" has the meaning ascribed to such term in Section 6.1(a) of this Agreement.

(ac) "Notice of Supply" has the meaning ascribed to such term in Section 3.3 of this Agreement.

(ad) "NTMWD" means the North Texas Municipal Water District, a conservation and reclamation authority created by the Texas Legislature or any successor agency.

(ae) "Panda" has the meaning ascribed to such term in the Preamble hereto.

(af) "Permit" means any permit, order, license, declaration, consent, waiver, approval, registration or filing with or other requirement of any Governmental Authority.

(ag) "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other legally recognized entity of whatever nature.

(ah) "Planned Outage" means a shut down by the City in the operations the City System such that no Project Water is delivered to the Interconnection Point: (i) which shut down is scheduled by the City in order to carry out foreseeable preventive, corrective and other maintenance activities on such system; (ii) for which the City has notified Panda in accordance with Section 2.3(a); (iii) which lasts for no more than seven (7) Days; and (iv) has a negative impact on operations at the Plant.

(ai) "Plant" has the meaning ascribed to such term in the Recitals hereto.

(aj) "Post Oak Facility" has the meaning ascribed to such term in Section 2.4 of this Agreement.

(ak) "Project Water" means a supply of untreated raw water received by the City pursuant to the Water Supply Contract from a NTMWD water line extending from Lake Texoma and delivered by the City to Plant at the Interconnection Point.

(al) "Project Water Fee" has the meaning ascribed to such term in Section 6.1(a) of this Agreement.

(am) "Property" has the meaning ascribed to such term in the Recitals hereto.

(an) "Prudent Water Industry Practice" means those practices, methods, standards and acts engaged in or approved by a significant portion of the water supply industry in the United States that, during the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable Requirements of Law (as defined below).

(ao) "Requirement of Law" means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any Permit or any other binding determination of any Governmental Authority.

(ap) "Reservation Fee" has the meaning ascribed to such term in Section 6.1(b) of this Agreement.

(aq) "Term" has the meaning ascribed to such term in Section 11.1 of this Agreement.

(ar) "Termination Fee" has the meaning ascribed to such term in Section 11.8 of this Agreement.

(as) "Water Infrastructure" means (i) the planning, siting, development, design, engineering, procurement, construction and testing; (ii) all pipes, pumps, mains, trunk lines, junctions, extensions, and other infrastructure, improvements and facilities, including but not limited to the Master Meter and the Interconnection Point; and (iii) easements and rights-of-way acquisitions required for the City to deliver Project Water to the Interconnection Point.

(at) "Water Pipelines" means (i) the planning, siting, development, design, engineering, procurement, construction and testing; (ii) all pipes, interconnects, pumps, mains, trunk lines, junctions, extensions, and other infrastructure, equipment,

improvements and facilities; and (iii) the easements and right-of-way acquisitions required for Panda to transport the Project Water from the Interconnection Point.

(au) "Water Supply Contract" has the meaning ascribed to such term in the Recitals hereto.

1.2 Rules of Construction. In this Agreement:

(a) unless the context otherwise clearly requires, (i) references to the plural include the singular, and references to the singular include the plural, (ii) references to the masculine, feminine or neuter include all such forms, (iii) the words "include," "includes," and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation," (iv) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement, (v) "or" is used in the inclusive sense of "and/or," (vi) unless otherwise specified, the terms "day" and "days" mean and refer to calendar day(s), and (vii) the terms "year" and "years" mean and refer to year(s);

(b) unless otherwise specified, any reference to any document, instrument or agreement (i) includes and incorporates all exhibits, schedules and other attachments thereto, (ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof, and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time;

(c) unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement; and

(d) the headings are for reference purposes only and shall not affect in any way the meaning or interpretation of such agreement.

1.3 Recitals. All of the above recitals of this Agreement are incorporated and made a part of this Agreement.

1.4 Captions. All titles of the Sections of this Agreement have been inserted for reference only, and shall in no way affect the interpretation of any provisions of this Agreement.

**Article II.
SUPPLY OF PROJECT WATER**

2.1 Supply.

(a) **Delivery.** Beginning on the Commencement Date and each Day thereafter during the Term, the City agrees to make available and deliver to the Interconnection

Point the Project Water in amounts needed by Panda on any given Day to operate the Plant (the "Daily Requirement"), not to exceed in the aggregate Four Thousand Five Hundred (4,500) acre-feet per year. Accordingly, for the Term of this Agreement, the City agrees to reserve a supply of Four Thousand Five Hundred (4,500) acre-feet per year of Project Water for exclusive use by Panda.

(b) **Specifications.** The City shall deliver the Project Water to the Interconnection Point located in the City limits with a peak rate of not less than Four Thousand (4,000) gallons per minute and not more than Four Thousand Five Hundred (4,500) gallons per minute at the Master Meter. Panda agrees that the City is under no obligation to increase any of its water utility infrastructure or capacity to satisfy any of the provisions of the Agreement, except as otherwise expressly stated herein. The Parties may agree in writing to relocate the Interconnection Point or to add additional Interconnection Points within the City limits, as necessary, and at Panda's sole expense, within the City limits.

(c) **Commencement of Water Services.** Following the completion of the construction of the Water Infrastructure and Water Pipelines in accordance with the requirements of Article III herein, and the City's delivery of the Notice of Supply pursuant to Section 3.3 herein, the City shall commence supplying Project Water to the Interconnection Point on the date set forth in a written notice from Panda to commence water services (the "Commencement Date"). From and following the Commencement Date, the City will use its best efforts to ensure a continuous flow of Project Water to the Interconnection Point.

(d) **Water Conservation and Drought Contingency Planning.** Panda shall comply with the provisions of any water conservation and drought contingency plan adopted by the City which is prescribed or approved by the TCEQ, including implementation of any necessary rationing plan or program which the City adopts for implementation. In lieu of adopting the City's water conservation and drought contingency plans, Panda may implement alternative water conservation and drought contingency plans, provided those plans comply with Title 30 Texas Administrative Code, Chapter 288 and will conserve the same or a greater amount of water as under the plans implemented by the City, and further provided the alternative plans are approved by the City within thirty (30) Days after the Effective Date. Such water conservation and/or drought contingency plans shall be applicable to Project Water accepted by Panda from the City. At all times, the City shall provide Panda with an updated copy of any applicable water conservation and drought contingency plans.

(e) **Resale of Water.** Except as provided in Section 12.3, Panda shall have no right to transfer, transport, reallocate, or resell any water received under this Agreement without the prior written authorization by the City. If the Agreement is assigned to another party pursuant to Section 12.3, once the Agreement is assigned, any subsequent assignees shall have no right to transfer, transport, reallocate, or resell any water received under this Agreement without the prior written authorization by the City.

(f) **WATER QUALITY AND "AS IS" SALE.** OTHER THAN THE REPRESENTATION, WARRANTIES AND COVENANTS PROVIDED FOR HEREIN, THE PARTIES ACKNOWLEDGE THAT THERE IS NO WARRANTY WITH RESPECT TO THE QUALITY OF THE PROJECT WATER UNDER THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, AND THAT PROJECT WATER IS PROVIDED TO PANDA BY THE CITY "AS IS", WITHOUT WARRANTY OF ANY KIND AS TO QUALITY, SUFFICIENCY, ADEQUACY OR USEFULNESS FOR ANY INTENDED PURPOSE; PROVIDED, THAT THE CITY HAS NOT AND SHALL NOT ALTER, TREAT OR OTHERWISE MODIFY THE PROJECT WATER IN ANY WAY BEFORE SUCH PROJECT WATER PASSES THROUGH THE INTERCONNECTION POINT.

2.2 Title, Care, Custody and Control; Risk of Loss. As between the Parties, the City shall be deemed to have exclusive title, care, custody and control for all Project Water up to, and shall be responsible for all Losses associated with all Project Water to, the Interconnection Point. The City shall deliver to Panda, at the Interconnection Point, good and marketable title to all Project Water delivered under this Agreement, free and clear of all Encumbrances. Panda shall be deemed to take exclusive title, care, custody and control of all Project Water, and shall be responsible for all Losses associated with all Project Water, from and after the Interconnection Point.

2.3 Maintenance and Outages.

(a) **Planned Outages.** By December 1 of any Calendar Year during the Term, the City shall provide notice to Panda of the number and duration of any Planned Outages to be conducted by the City during the following Calendar Year; provided, however, that the City shall not schedule more than two (2) such Planned Outages in any given Calendar Year. The City shall coordinate the timing of any Planned Outage with Panda and shall cooperate with Panda to minimize the impact of any Planned Outage on the operation and maintenance of the Plant.

(b) **Forced Outages.** When a Forced Outage occurs, curtailing the flow of Project Water to the Interconnection Point, the City shall notify Panda of the existence, nature and expected duration of the Forced Outage as soon as practical. The City shall use its best efforts to ensure that any interruption in Project Water service to the Plant due to a Forced Outage shall continue only for so long as reasonably necessary. The City shall immediately inform Panda of any changes in the nature and expected duration of such Forced Outage for the duration of such Forced Outage.

2.4 Additional Water Services. The Parties acknowledge that, pursuant to its current Discharge Permit, the City is unable to provide effluent as an alternative water source in connection with the operation of the Plant. In the event that the City makes upgrades to its Post Oak Wastewater Treatment Facility, located on the date hereof generally in the southeastern quadrant of the City of Sherman, Texas (the "Post Oak Facility"), and obtains modifications to its Discharge Permit such that (i) Panda would be able to utilize effluent from the Post Oak Facility in connection with its operations at the Plant; and/or (ii) the City would be able to take return wastewater from the Plant at the Post Oak Facility; the Parties hereto agree to negotiate in good faith terms and conditions relating to such water services that may be provided by the City; provided,

that nothing in this Section 2.4 shall require Panda to construct or fund the construction of any additional infrastructure in order to deliver effluent to the Plant or return wastewater to the Post Oak Facility, and nothing in this Section 2.4 shall require the City to accept or treat wastewater from the Plant at the Post Oak Facility or any other City-owned wastewater treatment facility.

Article III.

DESIGN AND CONSTRUCTION OF ADDITIONAL INFRASTRUCTURE FOR DELIVERING PROJECT WATER AND RETURN FLOWS

3.1 Water Infrastructure.

(a) **Design and Construction.** Panda shall be responsible for and shall pay all costs of the Water Infrastructure in accordance with this Agreement. The City shall grant all easements in, through and over real property owned or controlled by the City necessary for the design and construction of the Water Infrastructure. Panda shall design and construct the Water Infrastructure pursuant to Prudent Water Industry Practice and City standards as may be more specifically provided for in the City Code. Upon completion of the Water Infrastructure design, Panda shall submit such designs to the City for approval; and such approval shall not be unreasonably withheld, conditioned or delayed. Upon completion of the Water Infrastructure, Panda shall transfer title to the Water Infrastructure, and any and all real property interests associated with the Water Infrastructure, to the City free and clear of all Encumbrances. In connection with the construction of the Water Infrastructure, Panda shall obtain a warranty from the construction contractor for the Water Infrastructure, which shall extend for a period of at least one (1) year from the final completion of the Water Infrastructure and shall warrant that the construction work furnished or performed by such contractor (i) has been performed in a good and workmanlike manner and is of the quality specified in the applicable construction contract; (ii) has been performed in accordance with and conformed in all respects to the specifications of the applicable construction contract and all Requirements of Laws and applicable Permits; and (iii) is free of defects and deficiencies. In addition, Panda shall use reasonable efforts to obtain a warranty from the construction contractor that the construction work performed by the contractor associated with the Water Infrastructure is fit for its intended purpose.

(b) **Use of Water Infrastructure.** During the Term, the City shall not use the Water Infrastructure for any purpose other than to deliver Project Water to the Plant and perform its obligations under this Agreement without the prior written consent of Panda, which such consent shall be at Panda's sole discretion.

3.2 Additional Infrastructure. Panda shall be responsible for and shall pay all costs associated with the Water Pipelines in accordance with this Agreement. Panda shall design and construct the Water Pipelines pursuant to Prudent Water Industry Practice and City standards as may be more specifically provided for in the City Code.

3.3 Commencement of Design and Construction.

(a) Panda may, at its sole discretion, design and/or construct the Water Infrastructure or Water Pipelines before it has received written notice from the City that GTUA and NTMWD have entered into an agreement providing for the transportation and supply of Project Water to the Interconnection Point (the "Notice of Supply"). Notwithstanding the foregoing, in no event shall the City be required to provide Project Water to Panda until the Notice of Supply has been issued, the design of the Water Infrastructure and Water Pipelines have been approved, and the Water Infrastructure and Water Pipelines have been constructed in accordance with the requirements of this Agreement.

(b) Panda agrees that the construction of the Water Infrastructure and Water Pipelines necessary to provide Project Water on the Commencement Date shall be completed within five (5) years of the Effective Date of this Agreement.

(c) The City agrees that it will, at Panda's request and in accordance with its normal practice, process all City or other regulatory agency permits, approvals, or processes reasonably requested by Panda for its performance under this Agreement. Panda agrees to provide the City with a copy of any licenses, permits, or approvals that are not obtained from the City.

Article IV. METERING EQUIPMENT

4.1 Master Meter. The City shall furnish, install, operate and maintain, at Panda's sole expense, a Master Meter at the Interconnection Point. The Master Meter shall remain the property of the City at all times and shall be located on the City's property. For the purposes of this Agreement, the volume of water delivered by the City through the Interconnection Point to the Plant shall be determined based upon the data collected at the Master Meter.

4.2 Access to Master Meter. Panda may have access to the Master Meter only upon approval by the City. Such approval shall not be unreasonably withheld or delayed, so long as Panda provides the City with a written request forty-eight (48) hours before such access would occur.

4.3 Regular Testing of the Master Meter. The City shall test the Master Meter for accuracy once each twelve (12) month period in accordance with Prudent Water Industry Practice and in accordance with the American Water Works Association Standards for water meters. In the event the percentage of accuracy of the Master Meter is found to be within the tolerance of two percent (2%), such meter shall be deemed to have correctly measured the quantity of water taken under this Agreement. The City shall provide Panda with five (5) Days' notice of its intent to test the Master Meter; and Panda shall have the right to be present when such testing is conducted. If, however, upon any test of the percentage of accuracy tolerance, such tolerance is found to be in excess of two percent (2%), then the Master Meter shall be adjusted at once to

register correctly and accurately; and the amount of water accepted by Panda shall be corrected in accordance with the percentage of inaccuracies found by such test for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then the correction shall account for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. Any amounts owed to either Party as a result of the testing provided for in this Section 4.3 and Section 4.4 shall be paid in accordance with Section 6.3(b) hereof.

4.4 Additional Testing of the Master Meter(s). Panda shall have the right to request the City to test the Master Meter more frequently than once per year as contemplated by Section 4.3 herein, but no more frequently than once per month. Upon any such request, the City agrees to perform its testing and calibration of the Master Meter in the presence of a representative of Panda; and the Parties shall jointly observe any adjustments that are made to the Master Meter in case any adjustments shall be necessary. For such additional testing requests, the City shall give Panda notice forty-eight (48) hours in advance of the time when any such testing shall occur. The City may proceed with such testing and adjustment, if necessary, in the absence of any representative of Panda. Panda shall pay the cost of any additional test for the Master Meter if the test shows that the Master Meter is accurate [within two percent (2%) registration]; but the City shall pay the costs of the additional test for such if the results indicate that such Master Meter is not accurate [in excess of two percent (2%) registration].

4.5 Maintenance of the Master Meter(s). Except as provided in Section 4.4 above, all maintenance and/or repairs to the Master Meter at the Interconnection Point shall be made by the City or a contractor on behalf of the City, at Panda's sole expense. All expenses thereof shall be the usual and customary expenses in accordance with Prudent Water Industry Practices. The City shall provide repairs to the Master Meter in a prompt and timely manner and in accordance with Prudent Water Industry Practice and in accordance with the American Water Works Association Standards for water meters. If the City cannot make such repairs in a timely manner, then Panda shall have the option of making such repairs at its own expense, subject to prior approval and post-inspection of the repairs by the City Manager or the City Manager's designee.

Article V.

OWNERSHIP, OPERATION AND MAINTENANCE OF WATER INFRASTRUCTURE; COMMENCEMENT OF WATER SERVICE

5.1 Ownership and Operation; Required Permits.

(a) Upon conveyance of the Water Infrastructure and the underlying real property by Panda to the City, the City shall maintain and operate the Water Infrastructure during the Term of this Agreement, in accordance with Prudent Water Industry Practices, all applicable Requirements of Law, and all applicable Permits; and Panda shall reimburse the City for the usual and customary expenses in accordance with

Prudent Water Industry Practices costs associated therewith as provided for in Section 6.2.

(b) Panda, at all times during the Term of this Agreement, shall operate and maintain the Water Pipelines at its sole cost and in accordance with Prudent Water Industry Practices, all applicable Requirements of Law, and all applicable Permits.

(c) During the Term of this Agreement, the City shall obtain and use its best efforts to maintain in full force and effect all Permits and agreements required as of the Effective Date and during the term of this Agreement, for the City to perform its obligations under this Agreement.

5.2 Relationship of the Parties. Each of the Parties undertake performance of this Agreement as an independent contractor. Nothing in this Agreement shall create a relationship of agency, employment, joint venture or partnership between Panda and the City, or their respective officers, directors, employees, agents, subcontractors and representatives for any purpose whatsoever.

Article VI. BILLING AND PAYMENT FOR SERVICES

6.1 Water Fees. Beginning on the Commencement Date and continuing throughout the duration of this Agreement, unless otherwise provided for herein, Panda agrees to pay to the City the following fees:

(a) **Project Water Fee and Minimum Annual Fee.** Panda shall pay the City a fee, which shall initially be set at a rate of sixty-one cents (\$0.61) per one thousand (1,000) gallons, for all of the Project Water flowing through the Master Meter at the Interconnection Point (the "Project Water Fee"). In the event that the total amount of Project Water Fees paid by Panda in any given Calendar Year is less than Four Hundred Forty-Six Thousand Dollars and No Cents (\$446,000.00) [as may be adjusted pursuant to Section 6.1(c) below] (the "Minimum Annual Fee"), at the end of such Calendar Year, Panda shall pay an amount to the City equal to the Minimum Annual Fee less the actual amount of Project Water Fees paid by Panda in accordance with Section 6.2. If the first and/or last year of the Term of this Agreement shall be less than a full Calendar Year, then the applicable Minimum Annual Fee shall be pro-rated accordingly.

(b) **Reservation Fee.** In addition to any amounts paid pursuant to Section 6.1(a) above, Panda agrees to pay the City a fee in the initial amount of Twenty Thousand Three Hundred Fifty Dollars and No Cents (\$20,350.00) per month, in consideration for the City's reservation of Four Thousand Five Hundred (4,500) acre-feet of Project Water per year (the "Reservation Fee"). The Reservation Fee shall be adjusted in accordance with Section 6.1(c) below.

(c) **Modification of the Rates.** The Project Water Fee, the Minimum Annual Fee, and the Reservation Fee shall be adjusted annually starting with the first full Calendar Year during the Term of this Agreement by multiplying the applicable fee by

one plus the Economic Indicator, which shall be calculated for the applicable Calendar Year as shown on Exhibit C hereto. The City shall make any adjustments for the upcoming Calendar Year and shall send written notice of such adjustments to Panda by December 1st of the then current Calendar Year. Additionally, the Parties recognize that the City obtains its water supply from various sources, the costs of which are also subject to change. At each and every instance that the City's direct costs associated with providing the Project Water increase, the Parties agree that the City may further adjust the Project Water Fee once each Calendar Year to reflect such actual proportional cost increases. Panda may dispute any adjustments made in the fees charged by the City in accordance with this Section 6.1(c) and request that such adjustments be reviewed by an independent third-party accounting firm selected by the City and approved by Panda. The City and Panda shall share equally in all costs associated with such independent review; provided, that, if such review results in no changes to the adjustments calculated by the City, Panda shall reimburse the City for all costs relating to such review previously paid by the City and if such review results in changes to the adjustments calculated by the City, the City shall reimburse Panda for all costs relating to such review previously paid by Panda.

(d) **Just and Reasonableness of the Rates.** The Parties recognize that the City is subject to public utility regulations in connection with providing Project Water to the Interconnection Point and, accordingly, the Parties agree that the initial Project Water Fee established in Section 6.1(a), above, is just and reasonable and does not adversely affect the public interest. The Parties further agree that any increases to the Project Water Fee are also just and reasonable and do not adversely affect the public interest, so long as such increases are made in accordance with Section 6.1(c) of this Agreement. Panda agrees not to object, oppose, or contest the Project Water Fee, so long as the Project Water Fee and/or any increases thereto are made in accordance with Section 6.1(c) of this Agreement. Notwithstanding the foregoing, nothing herein shall limit or prohibit Panda from exercising its right to contest and/or dispute any fee as set forth herein.

6.2 Billing and Payment. The City shall invoice Panda on a monthly basis in an amount equal to the Project Water Fee plus the Reservation Fee; and Panda shall pay all amounts within fifteen (15) Days of its receipt of any such invoice. By January 15th of every year during the Term of this Agreement, the City shall invoice Panda for an amount representing the shortfall, if any, between the total Project Water Fee paid for the prior Calendar Year and the applicable Minimum Annual Fee, as set forth in Section 6.1(a), and any applicable operation and maintenance costs for the Water Infrastructure incurred by the City during the prior Calendar Year. In the event Panda does not pay any amounts in full within thirty (30) Days of each and every invoice date, the City may charge interest on the unpaid balance at a rate of one and one-half percent (1.5%) per month as calculated from the date when the invoice payment is due until the date that such payment is received by the City. If Panda at any time disputes the fees charged by the City or the amount of a monthly invoice, Panda agrees to nevertheless timely make the disputed payment or payments. If it is subsequently determined by agreement or court decision that the disputed amount paid by Panda should have been less, or more,

the City shall promptly revise the monthly invoice amount in a manner that Panda or the City will recover the amount due and interest, with interest being calculated at the rate of one and one-half percent (1.5%) per month. Notwithstanding the foregoing, in the event Panda has failed to pay an invoice and such non-payment has lasted for at least sixty (60) Days, then the City may immediately stop supplying Project Water pursuant to Section 2.1 until it has received the payment in question and such non-payment shall qualify as an Event of Default by Panda.

6.3 Maintenance and Audit of Records

(a) During the Term, and for a minimum period of one (1) year from and after the termination or expiration of this Agreement (unless Panda is making payments pursuant to Section 11.8, in which case this Section 6.3 shall stay in full force and effect until twelve (12) months following the last payment made by Panda pursuant to Section 11.8), the City shall keep all books and records necessary for calculation, billing and payment of all fees to be paid by Panda pursuant to this Agreement and shall allow Panda, its Affiliates, lenders, auditors, representatives, agents and advisors reasonable access to those books and records at any time during the period such books and records are required to be maintained, upon request and during normal business hours.

(b) In the event an audit discloses an overpayment by Panda to the City, the City shall reimburse Panda within thirty (30) Days of written notification of such overpayment. If the Parties mutually agree, the overpayment to be reimbursed may be applied to current or future amounts owed by Panda to the City based upon the terms of this Agreement. In the event an audit discloses that an underpayment by Panda was made to the City, Panda shall reimburse the City within thirty (30) Days of written notification of such underpayment.

Article VII FORCE MAJEURE

7.1 Procedure for Calling Force Majeure

(a) **Notice of Force Majeure.** The Affected Party shall give prompt notice to the other Party of any event or circumstance of Force Majeure as soon as reasonably practicable after becoming aware of such event or circumstance. Each notice served by an Affected Party to the other Party pursuant to this Section 7.1(a) shall specify the event or circumstance of Force Majeure in respect of which the Affected Party is claiming relief. Noncompliance by the Affected Party with the procedure specified in this Section 7.1(a) shall relieve the other Party from accepting the Affected Party's claim of Force Majeure until the Affected Party so complies; and the Affected Party shall not be excused from performance of any obligation under this Agreement until it so complies.

(b) **Obligations During Pendency of Force Majeure.** The Affected Party shall, by reason of any event or circumstance of Force Majeure in respect of which it has claimed relief under this Section 7.1:

- (i) use its best efforts to mitigate the effects of such Force Majeure and to remedy any inability to perform its obligations hereunder due to such event or circumstance as promptly as reasonably practicable;
- (ii) furnish weekly reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of Force Majeure; and
- (iii) resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the event or circumstance of Force Majeure is remedied or such event or circumstance, or the effect thereof on the Affected Party, ceases to exist.
- (iv) If performance is available in part and appropriate under the circumstances of the Force Majeure, then the Party that is claiming the Force Majeure will perform to the performance level not affected by the Force Majeure, with the approval of the other Party. This subparagraph shall not apply if the performance level available under the circumstances of the Force Majeure will interfere with the City's ability to provide necessary water services to the general public.

(c) **Resumption of Performance.** When the Affected Party is able, or would have been able if it had complied with its obligations under this Section 7.1, to resume the performance of any or all of its obligations under this Agreement affected by the occurrence of an event or circumstance of Force Majeure, then the period of Force Majeure relating to such event or circumstance shall be deemed to have ended.

7.2 Effects of Force Majeure

(a) **Relief From Obligation of Performance.** Provided it has complied with its obligations under Section 7.1, the Affected Party shall be relieved from any liability for the non-performance of its obligations under this Agreement where and to the extent that such non-performance is attributable directly to the event or circumstance of Force Majeure asserted.

(b) **Relief From Obligation of Counterperformance.** The non-Affected Party shall not be required to perform or resume performance of its obligations to the Affected Party corresponding to the obligations of the Affected Party excused by reason of Force Majeure.

7.3 Limitations on Force Majeure

(a) **Scope and Duration.** No event or circumstance of Force Majeure shall relieve the Affected Party of any obligation that accrued prior to the commencement of such event or circumstance of Force Majeure; and the suspension of the Affected Party's performance shall be no longer in duration and no greater scope than is required by the event or circumstance of Force Majeure.

(b) **No Extension of Term.** Except as agreed by the Parties, no suspension, delay or failure of performance caused by a Force Majeure event shall extend this Agreement beyond the Term.

Article VIII. DEFAULT AND REMEDIES; INDEMNITY

8.1 Event of Default

(a) **By the City.** The following event shall each be an "Event of Default" by the City, immediately upon its occurrence, without requirement of notice or right to cure: any failure to deliver Project Water in the Daily Requirement as set forth in Section 2.1(a) on or after the Commencement Date to the Interconnection Point due to any cause other than a Forced Outage, a Planned Outage, a cessation of Project Water as authorized in Section 6.2 or Section 8.2, or an outage due to Force Majeure, whenever occurring.

(b) **By Either Party.** Except as set forth in Sections 8.1(a), it shall be an "Event of Default" by either Party if such Party shall breach any material covenant, obligation, representation or warranty of such Party under this Agreement, which breach remains uncured for a period of thirty (30) Days after written notice from the non-breaching Party of the existence of such breach; provided, that the non-breaching Party shall extend the cure period for any such breach (and no Event of Default shall occur) if the nature of the default is such that it cannot reasonably be remedied within such thirty (30) Day period, and the breaching Party has diligently commenced corrective action within such thirty (30) Day period and is diligently pursuing such correction thereafter.

8.2 Remedies. Other than as set forth in Section 11.8, if an Event of Default has occurred and is continuing, the non-defaulting Party shall be entitled to the following remedies which shall be cumulative: (i) injunctive relief; (ii) specific performance; (iii) the right to cure the other Party's default; (iv) termination; (v) any of the remedies afforded in this Agreement; and (vi) any other remedies permitted at law or in equity, including damages. In addition to the aforementioned remedies, in the occurrence of an Event of Default by Panda, the City shall also be entitled to stop supplying Panda with Project Water pursuant to Section 2.1 herein until the Event of Default is cured.

8.3 Indemnification by Panda.

(a) **Indemnification by Panda.** IN ADDITION TO THE OTHER REMEDIES AFFORDED TO THE CITY IN THIS AGREEMENT, PANDA SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, ATTORNEYS, CONTRACTORS, OR AGENTS (HEREINAFTER "CITY'S INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART) PANDA'S PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.

(b) **Notice of Indemnified Loss.** The City's Indemnified Party shall promptly notify Panda of any indemnified Losses or Claim for indemnified Losses in respect of which the City's Indemnified Party may be entitled to indemnification under this Section 8.3. Such notice shall be given as soon as reasonably practicable after the City's Indemnified Party becomes aware of the Loss or Claim for Losses.

(c) **Defense of Third Party Claims.** In the event any action or proceeding shall be brought against the City's Indemnified Party by reason of any matter for which the City's Indemnified Party is indemnified hereunder, Panda shall, upon notice from the City's Indemnified Party or its authorized agents or representatives, at Panda's sole cost and expense, resist and defend the same with legal counsel selected by Panda; provided, however, that Panda shall not admit liability in any such matter on behalf of the City's Indemnified Party. Panda's obligation to defend shall apply regardless of whether the City's Indemnified Party is solely or concurrently negligent. Nothing herein shall be deemed to prevent the City's Indemnified Party, at its election and at its own expense, from cooperating with Panda and participating in the defense of any litigation by their own counsel. If Panda fails to retain defense counsel within seven (7) business days after receipt of City's Indemnified Party written notice that the City's Indemnified Party is invoking its right to indemnification under this Agreement, the City's Indemnified Party shall have the right to retain defense counsel on their own behalf; and Panda shall be liable for all usual and customary defense costs incurred by the City's Indemnified Party.

(d) **Limitation on Indemnity.** The amount owing to an indemnified Party will be the amount of the indemnified Party's Losses net of any insurance proceeds received by the indemnified Party following a reasonable effort by the indemnified Party to obtain such insurance proceeds.

8.4 Insurance.

(a) Panda shall, at its sole cost and expense, obtain, maintain and provide, throughout the term of this Contract, insurance in the amounts, types and coverages in accordance with Prudent Water Industry Practices. Such insurance may be in the form

of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

- (1) General commercial liability of Two Million Dollars and No Cents (\$2,000,000.00) per occurrence and Two Million Dollars and No Cents (\$2,000,000.00) in the aggregate.
- (2) Automobile liability coverage with a minimum policy limit of One Million Dollars and No Cents (\$1,000,000.00) combined single limit. This coverage shall include all owned, hired and non-owned automobiles.
- (3) Workers compensation and employers liability coverage. Statutory coverage limits for Coverage A and Five Hundred Thousand Dollars and No Cents (\$500,000.00) Coverage B employers' liability is required. Panda must provide the City with a waiver of subrogation for worker's compensation claims.

(b) The insurance coverage required herein must include coverage for work performed by Panda's contractors and subcontractors.

(c) Panda shall provide the City with written proof of insurance at least thirty (30) Days prior to the start of construction of the Water Infrastructure, and such insurance shall list the City as an additional insured, except for the Worker's compensation coverage. Panda shall not be required to furnish separate proof when applying for permits.

Article IX. REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 City Representations and Warranties. The City hereby represents and warrants to Panda, as of the date hereof, as follows:

(a) The City is a municipal corporation organized under the laws of the State of Texas and has all requisite power and authority to enter into and to perform its obligations hereunder and to carry out the terms hereof and the transactions contemplated hereby.

(b) This Agreement has been duly executed and delivered on behalf of the City by the appropriate officials of the City and constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles.

(c) The execution, delivery and performance of this Agreement by the City have been duly authorized under the Charter, the City Code and all other applicable Requirements of Law of the City and will not contravene any provision of or constitute

a default under any other agreement or instrument to which the City is a party or by which the City or its property may be bound, and do not conflict with any Requirement of Law currently in force and applicable to the City.

(d) There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the City's knowledge) threatened, against the City, whether related to the operation of any City facility that will supply Project Water under this Agreement, or otherwise, before or by any Governmental Authority which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the City of its obligations hereunder, (ii) could have a material adverse affect on the condition (financial or otherwise), business or operations of the City, or (iii) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

9.2 Panda Representations and Warranties. Panda represents and warrants to City, as of the date of this Agreement, as follows:

(a) Panda is a limited liability company organized and in good standing under the laws of the State of Delaware, is authorized to conduct business in Texas, and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(b) This Agreement has been duly executed and delivered on behalf of Panda, and constitutes the legal, valid and binding obligation of Panda, enforceable against Panda in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles.

(c) There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of Panda's knowledge) threatened, against Panda or related to the operation of the Plant before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Panda of its obligations hereunder, (ii) could have a material adverse affect on the condition (financial or otherwise), business or operations of Panda, or (iii) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

(d) No City officer or employee has been or will be compensated in any manner with respect to directly or indirectly bringing the Parties together, agreement negotiations, or the entering into this Agreement. In no event will Panda pay a fee to or in any other manner compensate any City of Sherman Council member, officer, or employee in connection with the acceptance of this Agreement. A breach of this Section 9.2(d) shall result in automatic and immediate termination of this Agreement and shall be an Event of Default.

**Article X.
CONFIDENTIALITY**

10.1 Confidential Information. The City acknowledges that the City and its officers, directors, employees, contractors, agents and representatives may have access to Confidential Information and that such information constitutes the valuable, special and unique property of Panda, its contractors and affiliates, to the extent that such information is expressly and specifically labeled as "Confidential Information."

10.2 Limitations on Use and Disclosure. The City shall maintain the Confidential Information pursuant to the Public Information Act (formerly known as the Open Records Act), Chapter 552 of the Texas Government Code. In the event a request is made for Confidential Information under such Chapter, the City shall promptly inform Panda of the request and shall seek all protective measures as may be provided by such Chapter in connection with such disclosure.

10.3 Survival. The provisions of this Article X shall survive the dissolution or termination of this Agreement.

**Article XI.
TERM, SUSPENSION AND TERMINATION, DISPUTE RESOLUTION**

11.1 Term. Unless earlier terminated in accordance with this Agreement, this Agreement shall be effective as of the Effective Date; and the Term of this Agreement shall continue in full force and effect for a period of thirty (30) years from the Commencement Date.

11.2 Termination by Panda for Cause. Panda shall have the right (but not the obligation) to terminate this Agreement upon thirty (30) Days prior written notice to the City upon the occurrence of any Event of Default by the City.

11.3 Termination or Suspension by Panda for Convenience. At any time prior to the Commencement Date, Panda shall have the right, for its sole convenience and without cause, to terminate or suspend, for a period not to exceed three (3) years, in whole or in part, the City's performance of any of its duties or obligations under this Agreement, upon thirty (30) Days prior written notice to the City. If this Agreement is terminated pursuant to this provision or if the suspension of the Agreement exceeds three (3) years, then the City is entitled to all expenses it incurred as a result of this Agreement after the Effective Date of the Agreement.

11.4 Termination by the City for Cause. Except as otherwise provided in this Agreement, the City shall have the right (but not the obligation) to terminate this Agreement (in accordance with the terms of this Agreement) upon any of the following:

- (a) the occurrence of any Event of Default by Panda; or
- (b) if Panda has not taken delivery of Project Water for a period of twelve (12) consecutive months after the Commencement Date; or

- (c) Panda has failed to make or dispute a payment pursuant to Section 6.2 and such non-payment has lasted for more than sixty (60) Days; or
- (d) Panda's construction of the Water Infrastructure and Water Pipelines necessary to provide Project Water on the Commencement Date is not completed within five (5) years of the Effective Date of this Agreement.

11.5 Automatic Termination. This Agreement shall automatically terminate in the event that:

(a) the City fails to deliver the Notice of Supply due to failure of the GTUA and NTMWD to execute the transportation agreement referenced in Section 3.3 above (provided that the City has used its best efforts to secure the transportation agreement) within six (6) months after the Effective Date of this Agreement; or

(b) notwithstanding any rights and remedies available to Panda, the City is unable to obtain any necessary Permit, Permit amendment, or other necessary authorization from the TCEQ, such that the City is unable to perform its obligations hereunder and the City is unable to cure such defect for a period of twelve (12) consecutive months; provided it has used its best efforts to remedy such defect and provided, further, that Panda has not terminated this Agreement pursuant to Section 11.2.

11.6 Termination by Either Party for Force Majeure. Either Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) Days prior written notice to the other Party in the event the suspension of any material obligation of the Affected Party resulting from one or more events of Force Majeure continues (i) prior to the Commencement Date, for a period of more than one (1) month, or (ii) from and after the Commencement Date, for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Affected Party shall only be entitled to terminate this Agreement under this Section 11.6 if it has met its obligations under Section 7.1. The Party not claiming Force Majeure may, but shall not be obligated to, extend either such period for such additional period as it deems appropriate if the Affected Party is exercising due diligence in its efforts to cure the Force Majeure event.

11.7 Effect of Termination; Survival. Upon receipt of any notice of termination delivered pursuant to this Article XI, this Agreement shall terminate, effective immediately, and will be of no further force or effect, except with respect to (i) rights and obligations of the Parties arising during or relating to any period prior to termination, and (ii) the covenants and obligations of the Parties set forth in this Agreement intended to survive the expiration or termination of this Agreement, which shall survive the expiration or earlier termination of this Agreement as expressly provided in this Agreement or, if no express survival period is provided for, then until such obligations have been satisfied or, if later, pursuant to any applicable statute of limitations.

11.8 Termination Fee. If, any time following the Commencement Date, this Agreement is terminated by the City pursuant to Section 11.4, Panda shall pay to the City an annual amount of Two Hundred Nineteen Thousand Dollars and No Cents (\$219,000.00) as may be adjusted below (the "Termination Fee") until Panda has made such payment for a number of years equal to thirty (30) less the actual Term of the Agreement (taking into account full years only). The Termination Fee shall automatically be reduced by Twenty-Two Dollars and Twenty-Three Cents (\$22.23) per every equivalent acre foot of water sold by the City for industrial uses. It is the Parties' intent that the Termination Fee shall only be adjusted downward, with the adjusted Termination Fee carrying forward each year until the City has contracted to sell an equivalent of approximately Four Thousand Five Hundred (4,500) cumulative acre feet of water for industrial uses. The first Termination Fee shall be paid no later than sixty (60) days following the date of termination and on the anniversary of the termination date each year thereafter for the applicable time period set forth in this Section 11.8. The Parties acknowledge that, if Panda should default under this Agreement, the amount of damages to the City would be difficult if not impossible to determine; and the amount specified as liquidated damages in this section that Panda would incur is sufficient and shall represent the City's sole and exclusive remedy and shall be paid in lieu of any Minimum Annual Fee that may be owed at the time of termination pursuant to Section 6.1(c).

11.9 Friendly Consultation and Mediation. Except in circumstances where equitable relief is sought by a Party, any dispute, controversy or claim between the Parties arising out of or relating to this Agreement, or the breach, termination or invalidity thereof (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days, then the Dispute shall be submitted to a senior executive officer of Panda on the one hand and the City Manager on the other hand, with authority to resolve all issues and who shall meet within ten (10) days after the date of a written submission by either Party, describing the Dispute. If such senior executive officer and the City Manager do not resolve the Dispute within five (5) days, then the Parties agree to submit the Dispute to non-binding mediation prior to the initiation of judicial proceedings. If mediation is not conducted within ninety (90) days after the date of written notification of dispute, then either party can initiate judicial proceedings. The Parties agree to provide each other with reasonable access during normal business hours to any and all non-privileged and nonconfidential records, information and data pertaining to any such Dispute, and such other information as the Parties may mutually agree. Notwithstanding each Party's right of reasonable access under this subparagraph, this requirement may be satisfied by supplying copies of such materials to the requesting Party.

Article XII MISCELLANEOUS

12.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the Parties.

12.2 Entire Agreement. This Agreement embodies the entire agreement of the Parties on the subjects contained herein and therein and shall supersede all previous

communications, representations, or agreements either verbal or written between the Parties with respect to the same.

12.3 Assignment. Neither Party may assign its rights and duties hereunder, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Panda may assign this Agreement and all of its rights hereunder to any Affiliate. In addition, this Agreement and all rights hereunder may be assigned for the benefit of any Financing Party including, but not limited to, an assignment to such parties upon a foreclosure.

12.4 Financing Parties. The City acknowledges that Panda or its Affiliates will borrow funds for the development, construction, ownership and operation of the Plant from a Financing Party. Any Financing Party, as a condition to making such loans or other payment, may request as a condition to such financing, and certain due diligence or other, documents from the City. In connection therewith, the City agrees to use its best efforts to promptly furnish, at Panda's expense, to such Financing Party, such written information, certificates, opinions, affidavits, and other like documents as Panda or the Financing Party may reasonably request. However, in no event shall the City Attorney be obligated to provide an opinion letter to Panda or a Financing Party concerning the rights or obligations of either Party under this Agreement. The parties shall negotiate, in good faith, changes to this Agreement reasonably requested by a Financing Party; and any amendment will be in accordance with Section 12.8.

12.5 Notice. Unless otherwise stated herein, any notice or other communication required or permitted under this Agreement shall be in writing, may be delivered (and shall be deemed to be received) as follows: (i) when delivered personally or by a nationally recognized overnight courier service that provides written proof of delivery, upon the date of delivery; (ii) when delivered by United States mail, registered or certified, with return receipt requested and postage prepaid, on the date of receipt, refusal or non-delivery as indicated on the return receipt; and (iii) when delivered by facsimile, upon confirmation of receipt from the recipient's fax portal; provided that, in each such case, such notice is sent to the address or fax number of the recipient set forth below:

If to City:

City Manager
City of Sherman, Texas
220 West Mulberry Street
P. O. Box 1106
Sherman, Texas 75091-1106
Facsimile: (903) 892-7355

If to Panda:

Panda Sherman Power, LLC
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
Attention: General Counsel
Facsimile: (972) 455-3890

Any Party may change the address at which it is to receive any notice to be sent under this Agreement by providing notice of such change to the other Party in the manner set forth in this Section 12.5.

12.6 Cooperative Drafting. This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

12.7 Severability. If any provision of this Agreement is held to be in conflict with any applicable Requirement of Law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent.

12.8 Amendment. This Agreement may not be amended, modified, supplemented or revoked except by an instrument in writing signed by the Parties.

12.9 Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal Person other than the Parties, any right, remedy, or Claim under or by reason of this Agreement; or any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreements of any Party with any third Party.

12.10 Deadlines. To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

12.11 No Waiver of Rights.

(a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character or shall be effective unless in writing, duly executed by a duly authorized representative of the Party waiving any such default.

(b) Neither the failure by a Party to insist on any occasion upon the strict performance of the terms, conditions and provisions of this Agreement, nor time or other indulgence granted by one Party to the other, shall act as a waiver of such breach.

12.12 Governing Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Texas, other than with respect to conflicts of law. Jurisdiction and venue shall be proper and exclusive in the state and federal district courts located in the County of Grayson, State of Texas. If the federal district courts are relocated from Grayson County during the pendency of this Agreement, then

venue shall be proper in the federal district court in the Eastern District, Plano Division. Each of the Parties irrevocably submits to the exclusive jurisdiction of such courts in any such proceeding and waives any objection it may now or hereafter have as to venue or to convenience of forum.

12.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may execute this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement and exchange the counterparts of such documents by means of facsimile transmission, and the Parties agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. Thereafter, the Parties shall promptly exchange original versions of this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission.

12.14 Recording. The City shall file a copy of this Agreement with the TCEQ within thirty (30) Days of the Effective Date.

12.15 Effective Date. The Effective Date of this Agreement shall be immediately upon the latter of the date that this Agreement is executed by the City and Panda.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above-written.

PANDA SHERMAN POWER, LLC
a Delaware limited liability company

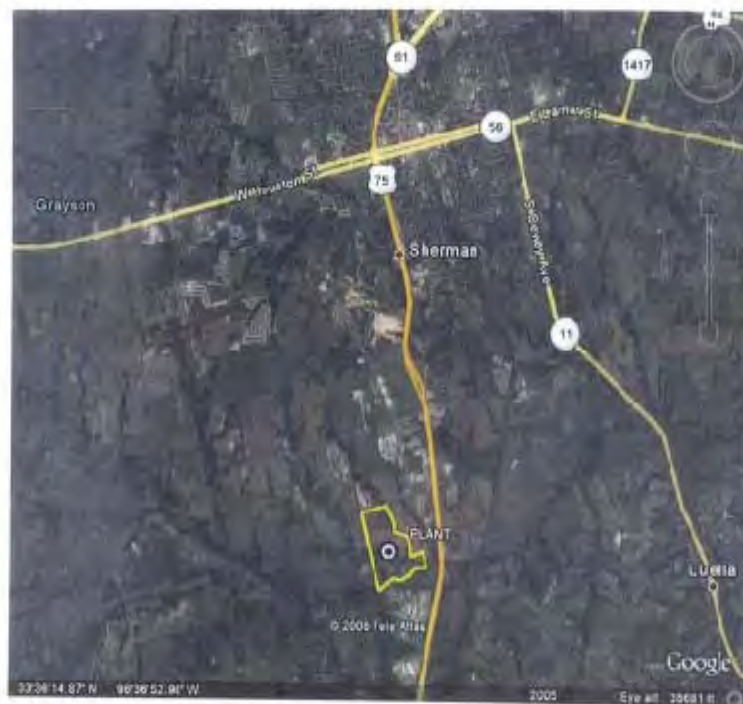
By: _____
Name: _____
Title: _____
Date: _____

CITY OF SHERMAN, TEXAS,
a body corporate and politic

By: _____
Name: Bill Magers
Title: Mayor
Date: _____

**Exhibit A
to the
Water Services Agreement**

Location of the Parda Plant



**Exhibit R
to the
Water Services Agreement**

Location of the Raw Water Interconnection Point

The location of the Raw Water Interconnection will be located between Point A and Point B (To be determined).

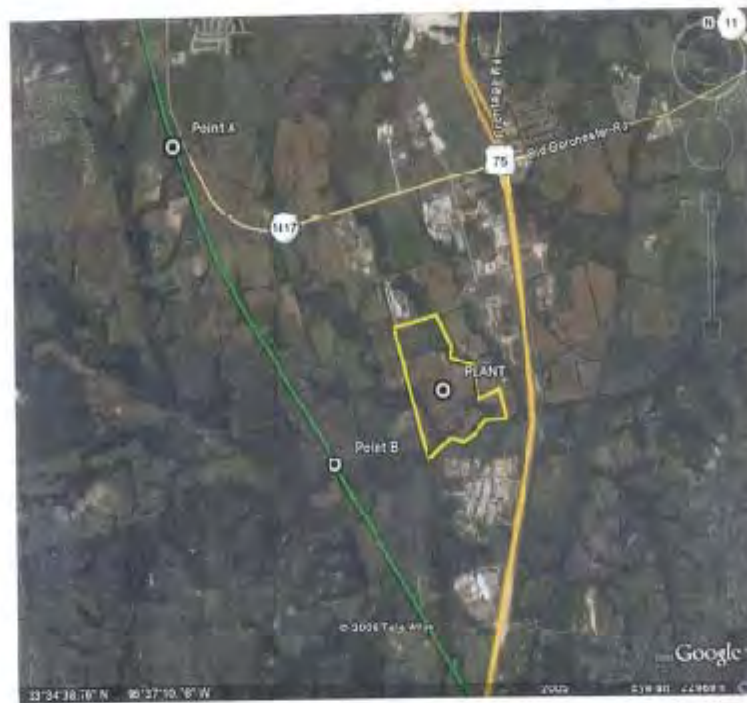


Exhibit "C"

Excerpt from Civil Works Construction Cost Index System

Index Code	Feature Code	Cost Index		
		Year 3	Year 2	Year 1
02	Relocations	896.88	878.51	948.72
03	Reservoirs	728.73	709.48	672.52
04	Dams	888.12	887.21	835.80
05	Roads, Railroads, & Bridges	890.42	878.51	935.39
11	Levees & Floodwalls	705.01	686.57	655.37
19	Buildings, Grounds & Utilities	705.49	681.88	745.52
20	Permanent Operating Equipment	705.49	681.88	745.52
Total:		4,895.94	4,779.01	4,136.54

Percentage Change from Year 1 total to Year 2 total

-5.346%

Percentage Change from Year 2 total to Year 3 total

+2.538%

Calculation of Project Water and Annual Reservation Fee

Project Year	Calculation	Project Water (per 1k gal)
Year 1	Printa Contract Base Amount	\$ 0.110
Year 2	$\$11 \div (6.246\% \times 1.03)$	\$ 0.142
Year 3	$\$142 \div (2.53\% \times 1.043)$	\$ 0.155

Project Year	Calculation	Annual Reservation Fee
Year 1	Printa Contract Base Amount	\$ 244,100
Year 2	$\$244,100 \div (5.346\% \times \$244,100)$	\$ 257,154
Year 3	$\$257,154 \div (2.53\% \times \$257,154)$	\$ 303,052



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. C.4

*** RESOLUTION NO. 5628**

**Authorizing Execution of an Agreement with Underwood Drafting and Surveying, Inc.
for Surveying Services on the Storm Sewer Data Collection and Mapping Project**

Issue

To consider approval of a resolution authorizing execution of an agreement with Underwood Drafting and Surveying, Inc. in the amount of \$60,000.00, for surveying services associated with the EPA/TCEQ mandated Storm Sewer Data Collection and Mapping Project

Background

The current Capital Improvement Program contains a project to complete the surveying and mapping of the storm sewer collection system. The storm sewer system map is meant to demonstrate a basic awareness of the intake and discharge areas of the storm sewer system. This has been an ongoing effort for the City of Sherman; and TCEQ has mandated a completion date of mid-August, 2012.

Origination

Mark Gibson, Director of Engineering and Utilities

Financial Consideration

Capital Improvement Program funding is available in the amount of \$60,000.00 for this service.

Staff Recommendation

It is recommended that the City Council approve the resolution to authorize execution of an agreement with Underwood Drafting and Surveying for the surveying services associated with the Storm Sewer Data Collection and Mapping Project.

Alternatives

As may be directed by the City Council

Attachments

Resolution No. 5628

Agreement

Prepared by:

Mark Gibson, Director of Engineering and Utilities

Approved by:

George Olson, City Manager

RESOLUTION NO. 5628

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH UNDERWOOD DRAFTING AND SURVEYING, INC. FOR SURVEYING SERVICES ON THE STORM SEWER DATA COLLECTION AND MAPPING PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney and subject to budget approval, to execute an agreement with Underwood Drafting and Surveying, Inc. for surveying services associated with the Storm Sewer Data Collection and Mapping Project, in accordance with the terms and provisions of all documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2011.

CITY OF SHERMAN, TEXAS

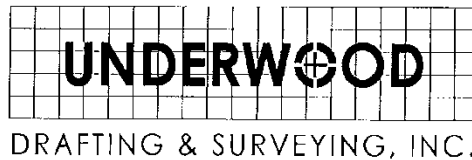
BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON SHELBY,
CITY ATTORNEY**



October 4, 2011

Fees Include:

Survey:

Phase 6 and 7 - Measurements of Storm Sewer Inlets and outfall structures necessary to implement this feature in the overall GIS mapping system of the City of Sherman. Data collected at each storm inlet will include: (1) Top of inlet elevations at both upstream and downstream ends (2) Top of gutter elevations at the mouth of the inlet (3) top of rim elevations (4) invert of inlet elevation and (5) notes of size and direction of inflow and outflow pipes. Data collected at outfall structures will include top of headwall elevations, size, and flow line elevation of pipe. Digital photographs will be taken at each structure.

This data will be measured using the Texas State Plane Coordinate system (NAD83-U.S. Survey feet) as correlated from the City of Sherman Control Monument network.

GIS:

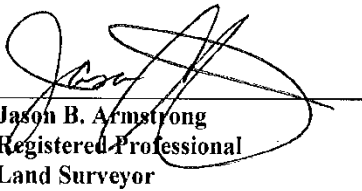
Implement of survey data into the City of Sherman GIS system. All information collected will be available as attribute values listed with each inlet node. Additional information can be added as provided by the City of Sherman staff.

Fee - per inlet \$80.00

Total Fees \$60,000
(750 total inlets and/or outfall structures)

Additional data will be collected and implemented into the City of Sherman GIS mapping system on a per inlet /structure basis at such time as the City may request.

Accepted and Approved:


Jason B. Armstrong
Registered Professional
Land Surveyor

Date 10-4-11

George Olson
City Manager
Sherman, TX

Date _____



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. D.1

*** REQUEST TO ADVERTISE**

Water Meters and Water Meter Radio-Read Endpoints

Issue

Approval of a request to advertise for the purchase of water meters and water meter radio-read endpoints for Sherman's Automated Meter Reading System

Background

The City requests bids to establish a price agreement for the purchase of water meters ranging in sizes 5/8" to 1.5" and replacement water meter radio-read endpoints with applicable assembly kits for use with our existing Automated Meter Reading System. Endpoints must be ITRON devices; and water meters must be compatible with the ITRON MVRS automated meter reading system.

Origination

Department 7711, Utility Billing

Financial Consideration

Funds for the purchase of water meters and water meter radio-read endpoints with assembly kits were appropriated in the recently approved budget for fiscal year 2011-2012. Advertising costs are estimated to be approximately \$200.00.

Staff Recommendation

It is recommended that the City Council approve the advertising related to the purchase of water meters and upgraded water meter radio-read endpoints with applicable assembly kits.

Alternatives

As may be directed by City Council

Attachments

None

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. D.2

*** OTHER BUSINESS**

**Consider Longfellow Energy, LP's Application for a Permit
to Drill an Oil and Gas Well (Skaggs #2) in an R-1 (One Family Residential) District/
O-1 (75 & 82) Overlay District at 4335 U.S. Highway 82 East, being 194.896 Acres
in the William Brogden Survey, Abstract No. 92**

Issue

Longfellow Energy, LP has filed an application with the City of Sherman to drill an oil/gas well at 4335 U.S Highway 82 East. The public hearing on the application is scheduled for this meeting.

Background

Longfellow Energy, LP has provided the necessary paperwork for the application, including a permit from the Railroad Commission; an Oil Well Performance Bond in the amount of \$100,000; Liability Insurance in the amount of \$1,000,000; and a list of citizens notified by registered mail of the public hearing. Longfellow Energy, LP will also supply the City with a Publisher's Affidavit stating that the notice was advertised in the *Herald Democrat* on three separate occasions and return receipts from the registered mail notifications.

Origination

The application originated with Longfellow Energy, LP.

Financial Consideration

There is no financial consideration to the City of Sherman.

Staff Recommendation

The staff recommends approval of the oil well permit.

Alternatives

The City Council could choose not to approve the application or issue a permit.

Attachments

Copies of the application; the plat; Texas Commission on Environmental Quality application; the Liability Insurance; the Oil Well Performance Bond; the permit from the Railroad Commission; a copy of the public hearing notice that was published in the *Herald Democrat*; and a list of citizens notified by registered mail of the public hearing

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

**CITY OF SHERMAN
APPLICATION FOR PERMIT TO DRILL OR DEEPEN**

Date: September 30, 2011

Name or Company or Operator

1. Name of Applicant: Longfellow Energy, LP.
2. Permanent Address: 16803 North Dallas Parkway
3. City, State, Zip: Addison, Texas 75001
4. Is applicant an individual, partnership, or corporation?
o Individual ☒ Partnership o Corporation
5. Principal Office: Addison, Texas
Address: 16803 North Dallas Parkway State: TX Zip: 75001
6. Names of all partners or officers: Malone Mitchell-Partner, Todd Dutton President.

Description of Lease

1. Block Number: NA (See City Drilling Map)
2. Size of Block: NA square feet
3. Amount of block owned or leased by applicant: NA square feet
4. Names of all owners and lessees in block other than applicant, with number of square feet in block owned by each:

<u>Harold Skaggs Jr.</u>	<u>1/3 of 640 mineral acres more or</u>
<u>13600 FM Rd, Austin, TX 78737</u>	<u>less see attached OGL</u>

<u>Patsy Jane Pierce</u>	<u>1/3 of 640 mineral acres more or</u>
	<u>less see attached OGL</u>

2001 Skaggs Rd, Sherman, TX
75091

<u>Anna Keller</u>	<u>1/3 of 640 mineral acres more or</u>
	<u>less see attached OGL</u>

1901 Skaggs Rd, Sherman, TX
75091

<u>West Gold Realtors</u>	<u>133.2 acres surface only</u>
---------------------------	---------------------------------

4545 Allstate Dr. Riverside, CA
92501

5. Names of streets, roads, lanes or alleys surrounding block:
North: Baker Ridge Road South: Texas State HWY 82
East: NA, private property West: Skaggs Rd
6. Distance from nearest producing well: 1,846 feet.
7. Elevation of proposed location: 754 feet from sea level
8. Distance from nearest hospital, school, church, or public building: 1,091 feet.
Direction: SSE.

9. Distance from nearest dwelling: 2,108 feet
10. Type of rig; rotary or cable: rotary.

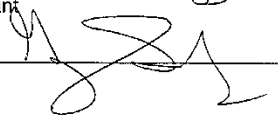
APPLICATION FOR PERMIT TO DRILL OR DEEPEN

11. Source of power: ☒ Diesel ☐ Electric
12. Amount of well casing on hand with diameters: @50' of 16" 2.650' of 9 and 5/8' and @11,500' of 5 and 1/2'.
13. Describe proposed arrangement for slush pit if allowed by City Council and arrangement for handling mud and waste if slush pit not allowed:
We are using a closed loop system for oil-based mud no pits necessary.
14. Describe location and type of proposed production tanks, if allowed, and proposed arrangement for disposition of oil and gas produced:
Tank battery to be constructed with 2-3 steel tanks (210-300 bbls each). Proposed disposition of oil is Sunco via truck. Proposed disposition of gas is by SEMGAS via pipeline.
15. Name of surety company to carry bond required: RLI CORP.
16. Name of carrier of tort liability insurance required: ACE American Insurance Company.
17. Notice of this application was sent by registered mail to all owners and lessees (other than applicant) within the above-described block on October 4, 2011.

Attached to this application are:

1. Map or plat, scale: 1 inch = 20 feet, of block covered in application showing exact location of the proposed well and all improvements on block.
2. Certified copies of leases or deeds showing ownership of fee or mineral interests in block (or abstracts of title if ownership or application is contested).
3. Copies of Registry receipts on notices mailed to other owners or lessees on same block, and if notice is had by publication, an affidavit of publisher showing dates of publication.

Applicant recognizes that the permit granted hereunder, if any, does not and will not constitute a vested right, and applicant will comply with all provisions of Ordinances of the City of Sherman and any and all subsequent changes or amendments thereto.

Longfellow Energy
Applicant
By: 

ORIGINAL DOCUMENT HAS A SECURITY VOID BACKGROUND PANTOGRAPH/MICROPRINTED BORDER. SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES (A)

BANK OF AMERICA
HOUSTON, TX

LONGFELLOW ENERGY LP
PO BOX 1989
ADDISON, TX 75001

CHECK NO	CHECK DATE	CHECK AMOUNT
21920	08/31/11	\$*****650.00

PAY THIS AMOUNT:
***650 Dollars and No Cents

TO
THE
ORDER
OF
CITY OF SHERMAN
220 W MULBERRY
SHERMAN TX 75091

Michael W. Burnett

Security Features
1. Microprint
2. Void Background

⑈0021920⑈ ⑆111000025⑆ ⑈488001507467⑈

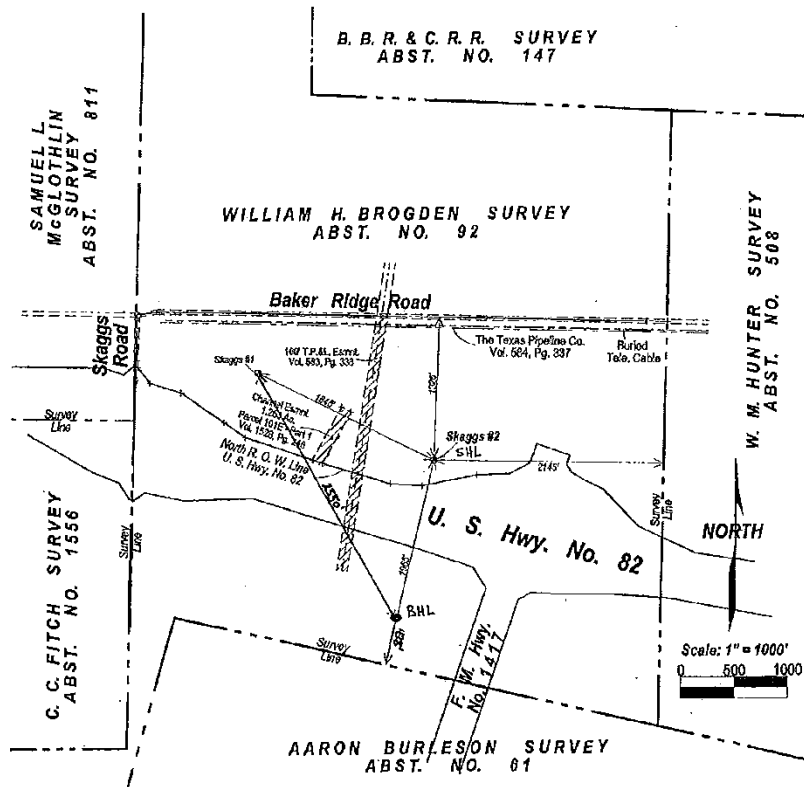
LONGFELLOW ENERGY LP PO BOX 1989, ADDISON, TX 75001 405/286-6324

INVOICE	DATE	DESCRIPTION	NET
083111A	08/31/11	PERMIT-INSIDE CITY LIMITS	650.00

Skaggs #2

City Clerk (903) 892-7206
REC'D 08/31/11 10/24/2011 4:01 PM
DEPT: 000 TOWN: 102
REF: 01920
TOWN: 113-0000 OTHER WISC
LONGFELLOW ENERGY
OIL WELL PERMIT
OIL & GAS RENTAL
TENDERED: 450.00 CHECK
APPLIED: 450.00
CHARGE: 0.00
VST: www.ci.sherman.tx.us
Utility Billing (903) 892-7207
Finance (903) 892-7209
Court (903) 892-7206

VENDOR CITSHE CHECK 21920 DATE 08/31/11 650.00



SARTIN & ASSOCIATES, INC.
Registered Professional Land Surveyors

109 S. Travis, P. O. Box 1843 Sherman, Texas 75091-1843
Ph.: (903) 892-8083 Fax: (903) 868-2970 Email: msartin@gccclsp.com

WELL LOCATION PLAT ----- SKAGGS NO. 2
WILLIAM BROGDEN SURVEY, ABSTRACT NO. 92
GRAYSON COUNTY, TEXAS

Perpendicular distances from nearest designated lines

1326 feet FNL of Lease
2145 feet FEL of Survey
1965 feet FSL of Survey

Ground Elevation = 754 feet
Lat. 33 Deg. 39 Min. 40 Sec. N (33.661111)
Lng. -98 Deg. 33 Min. 48 Sec. W (-96.563333)

OPERATOR

LONGFELLOW ENERGY, LP
4801 Gallardia Parkway, Suite 226, Oklahoma City, OK 73142

WARNING: This plat may not show all crossings of pipelines or cables. Sartin & Associates, Inc. assumes no responsibility to locate pipeline or cable crossings. No claim is hereby made regarding current or actual surface/mineral fee ownership or lesser.

I, Marshall Sartin, Registered Professional Land Surveyor, do hereby certify that the above captioned well location was surveyed and placed on this plat under my supervision.

SKAGGS-2.pcs

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



**RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION**

PERMIT TO DRILL, DEEPEN, PLUG BACK, OR RE-ENTER ON A REGULAR OR ADMINISTRATIVE EXCEPTION LOCATION

PERMIT NUMBER 721454	DATE PERMIT ISSUED OR AMENDED Aug 08, 2011	DISTRICT * 09
API NUMBER 42-181-31481	FORM W-1 RECEIVED Aug 02, 2011	COUNTY GRAYSON
TYPE OF OPERATION NEW DRILL	WELLBORE PROFILE(S) Directional	ACRES 640
OPERATOR LONGFELLOW ENERGY, LP PO BOX 7915 EDMOND, OK 73083		508409 NOTICE This permit and any allowable assigned may be revoked if payment for fee(s) submitted to the Commission is not honored. District Office Telephone No: (940) 723-2153
LEASE NAME SKAGGS		WELL NUMBER 2
LOCATION 3 miles E direction from SHERMAN		TOTAL DEPTH 13000
Section, Block and/or Survey SECTION ◀ BLOCK ◀ ABSTRACT ◀ 92 SURVEY ◀ BROGDEN, W H		
DISTANCE TO SURVEY LINES 2145 ft. EAST 3390 ft. NORTH		DISTANCE TO NEAREST LEASE LINE 965 ft.
DISTANCE TO LEASE LINES 2145 ft. EAST 3390 ft. NORTH		DISTANCE TO NEAREST WELL ON LEASE See FIELD(s) Below
FIELD(s) and LIMITATIONS: * SEE FIELD DISTRICT FOR REPORTING PURPOSES *		
FIELD NAME LEASE NAME	ACRES NEAREST LEASE	DEPTH WELL # NEAREST WB DIST
WILDCAT SKAGGS	640.00 965	13,000 2 09
WELLBORE PROFILE(S) FOR FIELD: Directional		
RESTRICTIONS: Bottom Hole: BH1 Lease Lines: 2206.0 F EAST L 1930.0 F SOUTH L Survey Lines: 2206.0 F EAST L 438.0 F SOUTH L		
THE FOLLOWING RESTRICTIONS APPLY TO ALL FIELDS This well shall be completed and produced in compliance with applicable special field or statewide spacing and density rules. If this well is to be used for brine mining, underground storage of liquid hydrocarbons in salt formations, or underground storage of gas in salt formations, a permit for that specific purpose must be obtained from Environmental Services prior to construction, including drilling, of the well in accordance with Statewide Rules 81, 95, and 97.		

“Notice is hereby given that Longfellow Energy, LP, acting under and pursuant to the terms and provisions of Article 4.10 of the Sherman City Code did on the 4th day of October, 2011, file with the city Clerk of the City of Sherman, an application for a permit to drill a well for oil and gas upon Tract 3: BEING a tract of land containing 44.104 acres of land more or less out of the William Brogden Survey, Abstract No. 92, Grayson County, Texas and being a part of a 637.07 acre tract of land described in 4 tracts, conveyed to Anna Lee Howdeshell by deed recorded in Volume 1126, Page 384 and Tract 4: BEING a tract of land containing 150.792 acres of land more or less out of the William Brogden Survey, Abstract No. 92, Grayson County, Texas and being a part of a 637.07 acre tract of land described in 4 tracts, conveyed to Anna Lee Howdeshell by deed recorded in Volume 1126, Page 384. A hearing upon such application will be held in the Council Room of the City of Sherman at 220 W. Mulberry at 5:00 o’clock p.m. on the 17th day of October, 2011.”

7011 1570 0001 4437 0683

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CERTIFIED MAIL RECEIPT
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To Harold Skaggs
 Street, Apt. No.,
 or PO Box No. 13600 FM Rd.
 City, State, ZIP+4 Austin, TX 78737
 PS Form 3800, August 2006 See Reverse for Instructions

7011 1570 0001 4437 0676

U.S. Postal Service[®]
CERTIFIED MAIL RECEIPT
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To Anna Skaggs Keller
 Street, Apt. No.,
 or PO Box No. 1901 Skaggs Rd.
 City, State, ZIP+4 Sherman, TX 75090
 PS Form 3800, August 2006 See Reverse for Instructions

7011 1570 0001 4437 0690

U.S. Postal Service[®]
CERTIFIED MAIL RECEIPT
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 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To Fatsy Jane Pierce
 Street, Apt. No.,
 or PO Box No. 2001 Skaggs Rd.
 City, State, ZIP+4 Sherman, TX 75091
 PS Form 3800, August 2006 See Reverse for Instructions



October 1, 2011

Mr. Harold Skaggs Jr.
13600 FM Rd.
Austin, TX 78737

Re: Skaggs No. 2 Drill site
Grayson County, Texas

Dear Mr. Skaggs,

You executed a Paid Up Oil and Gas Lease dated March 14, 2008 to Grayson County Properties, LLC, which Lease is recorded in Volume 4533, Page 398 of the records of Grayson County, Texas. Grayson County Properties, LLC is a subsidiary company of Longfellow Energy, LP (hereinafter referred to as "Longfellow") headquartered in Addison, Texas.

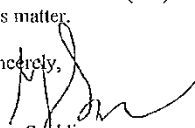
Longfellow has plans to drill its Skaggs No. 2 well at a legal location on the lands that are covered by the Oil and Gas Lease. Paragraph 17 of Exhibit "A" attached to the Lease prohibits any surface or drilling operations on the leased lands without written permission from the Lessor.

Therefore, we respectfully request that you grant us permission to enter the leased lands to conduct additional surveying, construction of a well site and road for the drilling, completion of and operations for the subject well. All damages to the land in conducting these operations will be paid by Longfellow to the surface owner of the land on rates comparable for other drill sites in the area.

Please signify your permission by signing the attached copy and returning it to us in the stamped, addressed envelope, which we have enclosed, or by a signed, scanned emailed copy.

Please call me at (405) 203-9056 if you have any questions or need any additional information relative to this matter.

Sincerely,


Greg Spalding
greg.spalding@longfellowenergy.com

COPY

Accepted by Harold Skaggs Jr. _____ dated _____

16803 DALLAS PARKWAY | ADDISON, TX 75001 | P.O. BOX 1989 |
972.590.9943 | FAX 972.590.9943



October 1, 2011

Mrs. Patsy Jane Pierce
2001 Skaggs Rd.
Sherman, TX 75091

Re: Skaggs No. 2 Drill site
Grayson County, Texas

Dear Mr. and Mrs. Pierce,

You executed a Paid Up Oil and Gas Lease dated March 14, 2008 to Grayson County Properties, LLC. which Lease is recorded in Volume 4533, Page 392 of the records of Grayson County, Texas. Grayson County Properties, LLC is a subsidiary company of Longfellow Energy, LP (hereinafter referred to as "Longfellow") headquartered in Addison, Texas.

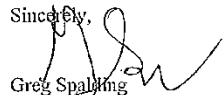
Longfellow has plans to drill its Skaggs No. 2 well at a legal location on the lands that are covered by the Oil and Gas Lease. Paragraph 17 of Exhibit "A" attached to the Lease prohibits any surface or drilling operations on the leased lands without written permission from the Lessor.

Therefore, we respectfully request that you grant us permission to enter the leased lands to conduct additional surveying, construction of a well site and road for the drilling, completion of and operations for the subject well. All damages to the land in conducting these operations will be paid by Longfellow to the surface owner of the land on rates comparable for other drill sites in the area.

Please signify your permission by signing the attached copy and returning it to us in the stamped, addressed envelope, which we have enclosed.

Please call me at (405) 203-9056 if you have any questions or need any additional information relative to this matter.

Sincerely,


Greg Spallling

COPY

Accepted by Patsy Jane Pierce _____ dated _____

16803 DALLAS PARKWAY | ADDISON, TX 75001 | P.O. BOX 1989 |
972.590.9943 | FAX 972.590.9943



October 1, 2011

Mr. and Mrs. Stephen Keller
1901 Skaggs Rd.
Sherman, TX 75090

Re: Skaggs No. 2 Drill site
Grayson County, Texas

Dear Mr. and Mrs. Keller,

You executed a Paid Up Oil and Gas Lease dated March 14, 2008 to Grayson County Properties, LLC. which Lease is recorded in Volume 4533, Page 386 of the records of Grayson County, Texas. Grayson County Properties, LLC is a subsidiary company of Longfellow Energy, LP (hereinafter referred to as "Longfellow") headquartered in Addison, Texas.

Longfellow has plans to drill its Skaggs No. 2 well at a legal location on the lands that are covered by the Oil and Gas Lease. Paragraph 17 of Exhibit "A" attached to the Lease prohibits any surface or drilling operations on the leased lands without written permission from the Lessor.

Therefore, we respectfully request that you grant us permission to enter the leased lands to conduct additional surveying, construction of a well site and road for the drilling, completion of and operations for the subject well. All damages to the land in conducting these operations will be paid by Longfellow to the surface owner of the land on rates comparable for other drill sites in the area.

Please signify your permission by signing the attached copy and returning it to us in the stamped, addressed envelope, which we have enclosed.

Please call me at (405) 203-9056 if you have any questions or need any additional information relative to this matter.

Sincerely,

Greg Spalding

COPY

Accepted by Anna Keller Skaggs _____ dated _____

16803 DALLAS PARKWAY | ADDISON, TX 75001 | P.O. BOX 1989 |
972.590.9943 | FAX 972.590.9943

7011 1570 0001 4437 0720

U.S. MAIL SERVICE CERTIFIED MAIL RECEIPT	
OFFICIAL USE	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent to Neal Sorenson Street, Apt. No., or PO Box No. 4545 Ailstate Pr. City, State, ZIP+4 Riverside, CA 92501	

PS Form 3800, AUGUST 2006 See Reverse for Instructions



Mr. Neal Sorenson
West Gold Realtors
4545 Allstate Drive
Riverside, CA 92501-1701

Re: Skaggs No. 2 well site
M. H. Brogden Survey A-92
Grayson County, Texas

September 29, 2011

Dear Mr. Sorenson,

Longfellow Energy, LP (hereinafter referred to as "Longfellow") received your letter dated September 12, 2011, with your request for Longfellow to contact Mr. Addison Terry regarding the well site(s) on the above referenced property. Longfellow has been in contact with Mr. Terry multiple times by email and phone since January 17, 2011, regarding the surface issues of your property in Grayson County, Texas.

On September 16, 2011, we emailed the survey plat of the Skaggs #1 and #2 well sites to Mr. Terry in addition; I spoke to Mr. Terry by phone on September 19, 2011, the day he viewed the Longfellow Skaggs well sites on your property. At his request, we have supplied Mr. Terry with the acreage measurement of the two (2) well sites.

- Skaggs #1 well site is 3.00 acres.
- Skaggs #2 well site is 3.62 acres.

Per your written request, Longfellow will continue to contact Mr. Terry, regarding settlement of your surface damages; however if you have any questions or need any additional information, please call me at 972.590.9943 or email me at greg.spalding@longfellowenergy.com

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Greg Spalding'. The signature is fluid and cursive, with a large loop at the end.

Greg Spalding

Enclosures (1)
cc: Addison Terry 'addison@addisonterry.com'

16803 DALLAS PARKWAY | ADDISON, TX 75001 | P.O. BOX 1989 |
972.590.9943 | FAX 972.590.9943

James Gray Management, Inc.

4545 Allstate Drive, Riverside, CA 92501
Phone 951-781-0910 Fax 951-781-0371

September 12, 2011

Greg Spaulding c/o
Longfellow Energy
16803 Dallas Parkway
Addison, TX 75001

RE: Surface damage Sherman Freeway 353

Dear Mr. Spaulding:

Please contact our attorney on the above referenced matter. Mr. Addison Terry, telephone number (903) 624-3007, 2500 Stewart Drive, Waco, Texas, 76708. His e-mail address is addison@addisonterry.com.

Sincerely,

Niels Sorensen
Niels T. Sorensen *ct*

cc: SF 353 file
Addison Terry

**RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION**

PERMIT TO DRILL, DEEPEN, PLUG BACK, OR RE-ENTER ON A REGULAR OR ADMINISTRATIVE EXCEPTION LOCATION

PERMIT NUMBER 721454	DATE PERMIT ISSUED OR AMENDED Aug 08, 2011	DISTRICT * 09
API NUMBER 42-181-31481	FORM W-1 RECEIVED Aug 02, 2011	COUNTY GRAYSON
TYPE OF OPERATION NEW DRILL	WELLBORE PROFILE(S) Directional	ACRES 640
OPERATOR LONGFELLOW ENERGY, LP PO BOX 7915 EDMOND, OK 73083		NOTICE This permit and any allowable assigned may be revoked if payment for fee(s) submitted to the Commission is not honored. District Office Telephone No: (940) 723-2153
LEASE NAME SKAGGS		WELL NUMBER 2
LOCATION 3 miles E direction from SHERMAN		TOTAL DEPTH 13000
Section, Block and/or Survey SECTION ☒ BLOCK ☒ ABSTRACT ☒ 92 SURVEY ☒ BROGDEN, W H		
DISTANCE TO SURVEY LINES 2145 ft. EAST 3390 ft. NORTH		DISTANCE TO NEAREST LEASE LINE 965 ft.
DISTANCE TO LEASE LINES 2145 ft. EAST 3390 ft. NORTH		DISTANCE TO NEAREST WELL ON LEASE See FIELD(s) Below
FIELD(s) and LIMITATIONS: * SEE FIELD DISTRICT FOR REPORTING PURPOSES *		
FIELD NAME LEASE NAME	ACRES NEAREST LEASE	DEPTH WELL # NEAREST WB
WILDCAT	640.00	13,000
SKAGGS	965	2550
WELLBORE PROFILE(S) FOR FIELD: Directional		
RESTRICTIONS: Bottom Hole: BH1 Lease Lines: 2206.0 F EAST L 1930.0 F SOUTH L Survey Lines: 2206.0 F EAST L 438.0 F SOUTH L		
THE FOLLOWING RESTRICTIONS APPLY TO ALL FIELDS This well shall be completed and produced in compliance with applicable special field or statewide spacing and density rules. If this well is to be used for brine mining, underground storage of liquid hydrocarbons in salt formations, or underground storage of gas in salt formations, a permit for that specific purpose must be obtained from Environmental Services prior to construction, including drilling, of the well in accordance with Statewide Rules 81, 95, and 97.		



City of Sherman
P.O. Box 1106
Sherman, Texas 75091
Phone: (903) 892-7204
Fax: (903) 892-7394

OIL WELL PERFORMANCE BOND

STATE OF TEXAS §
COUNTY OF GRAYSON §
CITY OF SHERMAN §

BOND NO. RLB0013957

KNOW ALL MEN BY THESE PRESENTS:

That we, Longfellow Energy, LP, as principal, and RLI Insurance Company as surety, hereby acknowledge ourselves, bound to the City of Sherman, a municipal corporation, for the benefit of the said City, and all persons, firms and corporations concerned, in the sum of One Hundred Thousand and No/100 dollars for the payment of which well and truly to be made, the said principal binds himself, his heirs, executors, administrators and assigns, and the surety does hereby bind itself and its successors, firmly by these presents, all being bound jointly and severally by these presents.

The condition of the above obligation is such that, whereas the above bounden principal has applied to the City of Sherman for a permit to drill an oil well within the City limits and on Drilling Block No. N/A in compliance with the provisions of Article 4.10 of the 2005 recodified ordinances, as amended, and whereas the said ordinances require a bond conditioned that if the permit be granted and if drilling operations be commenced thereunder the applicant and his assigns will comply with the terms and conditions of the said ordinances, and all future amendments and regulations thereunder in the drilling and operation of said well; and that the applicant will restore the streets and sidewalks and other public places of the City which may be disturbed in the operations to their former conditions, and will clear the blocks and lots of all litter, machinery, derricks and buildings erected or used in the drilling or operation of said well whenever the well shall be completed, abandoned or the operations therefor discontinued and that the applicant or his assigns will pay such sums as may be due by them by reason of production of oil, gas or other minerals to all persons, firms or corporations owning lots, blocks or tracts of land in said drilling block or area who have not executed, at the time of filing of such bond, or who shall not execute during the term of said bond and prior to the accrual of liabilities thereunder, leases, drilling contracts, waivers or other form of contract under which the applicant or his assigns is or are authorized to operate the premises of said owner of the development and production of oil and gas in accordance with the provisions of said ordinances.

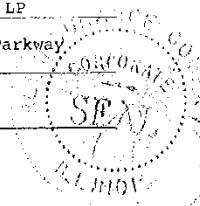
NOW, THEREFORE, if the above bounden principal, his heirs, executors, administrators, and assigns, shall well and truly keep, do and perform each and every, all and singular the obligations, matters and things required by said Article 4.10 of the 2005 recodified ordinances, as amended, then this obligation shall be null and void; otherwise to be and remain in full force and effect.

IN TESTIMONY WHEREOF witness our hands this 16th day of August, 20 11.

Longfellow Energy, LP
PRINCIPAL [Signature]
SURETY RLI Insurance Company
[Signature]
Jason T. Kilpatrick, Attorney-in-Fact

AGENT USI Southwest-San Angelo
P. O. Box 1111
ADDRESS San Angelo, TX 76902
PHONE NO 325-486-5130

PRINCIPAL Longfellow Energy, LP
16803 North Dallas Parkway
ADDRESS Dallas, TX 75001
PHONE NO 972-590-9946





RLB0013957

RLI Surety
A Division of RLI Insurance Company

POWER OF ATTORNEY

RLI Insurance Company

Know All Men by These Presents:

That the RLI INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Illinois, and authorized and licensed to do business in all states and the District of Columbia does hereby make, constitute and appoint: JASON T. KILPATRICK in the City of HOUSTON, State of TEXAS, as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of documents to-wit:

\$100,000.00

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; policies indemnifying employers against loss or damage caused by the misconduct of their employees; official, bail and surety and fidelity bonds. Indemnity in all cases where indemnity may be lawfully given; and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company, and to compromise and settle any and all claims or demands made or existing against said Company.

The RLI INSURANCE COMPANY further certifies that the following is a true and exact copy of a Resolution adopted by the Board of Directors of RLI Insurance Company, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers-of-Attorney, or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

(Blue shaded areas above indicate authenticity)

IN WITNESS WHEREOF, the RLI Insurance Company has caused these presents to be executed by its PRESIDENT with its corporate seal affixed this

ATTEST:
Jean M. Stephenson
CORPORATE SECRETARY
State of Illinois)
County of Peoria) SS



On this 16 day of August 2011 before me, a Notary Public, personally appeared Michael J. Stone and Jean M. Stephenson, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as President and Corporate Secretary, respectively, of the said RLI INSURANCE COMPANY, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler
Notary Public



SPA028 (03/11)



RLI Insurance Company
Peoria, Illinois 61615

TEXAS POLICYHOLDER NOTICE

TEXAS IMPORTANT NOTICE

To obtain information or make a complaint:

You may call RLI Insurance Company's toll-free telephone number for information or to make a complaint at:

1-800-444-0406

You may also write to RLI Insurance Company at:

RLI Insurance Company
9025 N. Lindbergh Drive
Peoria, Illinois 61615

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may also write the Texas Department of Insurance:

P.O. Box 149104
Austin, Texas 78714-9104
Fax Number: (512) 475-1771

Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

TEXAS AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de RLI Insurance Company's para informacion o para someter una queja al:

1-800-444-0406

Usted tambien puede escribir a RLI Insurance Company:

RLI Insurance Company
9025 N. Lindbergh Drive
Peoria, Illinois 61615

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P.O. Box 149104
Austin, Texas 78714-9104
Fax Number: (512) 475-1771

Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

Client#: 151533 LONGFENE
ACORD_{TM} CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
 09/29/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Southwest San Angelo CL 133 W. Concho Ave., Ste. 301 San Angelo, TX 76903 325 655-5656		CONTACT NAME: PHONE (AC, No, Ext): 325 655-5656 FAX (AC, No): 325 658-4519 E-MAIL: ADDRESS: PRODUCER CUSTOMER ID #:															
INSURED Longfellow Energy, L.P. P.O. Box 1989 Addison, TX 75001-1989		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Ace American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER B: AXIS Surplus Insurance Company</td> <td>26620</td> </tr> <tr> <td>INSURER C: Texas Mutual Insurance Company</td> <td>22945</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Ace American Insurance Company	22667	INSURER B: AXIS Surplus Insurance Company	26620	INSURER C: Texas Mutual Insurance Company	22945	INSURER D:		INSURER E:		INSURER F:	
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INSURER F:																	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR NSR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC		G23860399004	02/01/2011	02/01/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS		HO8303186004	02/01/2011	02/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DEDUCTIBLE		G24917034	02/01/2011	02/01/2012	EACH OCCURRENCE \$10,000,000 AGGREGATE \$
B	☒ RETENTION \$ 10000		EAU73891701201	02/01/2011	02/01/2012	\$10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A	TSF0001225904	07/01/2011	05/15/2012	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Well Name: Skaggs #2
 General Liability and Auto Liability provides a Blanket Waiver of
 (See Attached Descriptions)

CERTIFICATE HOLDER City of Sherman P.O. Box 1106 Sherman, TX 75091	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Jennifer P. Heard</i>
--	--

DESCRIPTIONS (Continued from Page 1)

Subrogation and Blanket Additional Insured In favor of the City of Sherman where required by written contract. Workers' Compensation provides a Blanket Waiver of Subrogation In favor of the City of Sherman as required by written contract.



Texas Commission
on Environmental Quality
Surface Casing Program

DEPTH OF USABLE-QUALITY GROUND WATER TO BE PROTECTED

Date **July 29, 2011**

TCEQ File No.: SC- **2934**

***** EXPEDITED APPLICATION *****

API Number **18100000**

Attention: **BRETT FELDER**

RRC Lease No. **000000**

SC_508409_18100000_000000_2934.pdf

LONGFELLOW ENERGY LP
16803 NORTH DALLAS PKWY
ADDISON TX 75001

--Measured--

Digital Map Location:

2145 ft FEL X-coord/Long **96.56333**

1965 ft FSL Y-coord/Lat **33.66111**

MRL: SURVEY Datum **83** Zone

P-5# 508409

County **GRAYSON**

Lease & Well No. **SKAGGS #2**

Purpose **ND**

Location **SUR-BROGDEN W., A-92, --[TD=13000], [RRC 9],**

To protect usable-quality ground water at this location, the Texas Commission on Environmental Quality recommends:

The interval from the land surface to a depth of 100 feet must be protected. In addition, the Woodbine, which is estimated to occur from a depth of 600 feet to 975 feet, and the Trinity (including the Houston), which is estimated to occur from a depth of 1475 feet to 2250 feet, must be protected.

Notes: Unless stated otherwise, this recommendation is intended to apply only to the subject well and not for area-wide use. Approval of the well completion methods for protection of this groundwater falls under the jurisdiction of the Railroad Commission of Texas. This recommendation is intended for normal drilling, production, and plugging operations only. It does not apply to saltwater disposal operation into a nonproductive zone (RRC Form W-14).

If you have any questions, please contact us at 512-239-0515, [sc@tceq.state.tx.us](http://www.tceq.state.tx.us), or by mail MC-151.

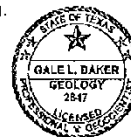
Sincerely,


I hereby certify that I am
Gale L. Baker, a Professional Geologist,
No. 2847, State of Texas, and I am
the duly authorized representative of
Gale L. Baker, P.G.,
Date 08/17/2011 15:01:05

Gale L. Baker, P.G.

Geologist, Surface Casing Team
Waste Permits Division

GEOLOGIST SEAL



The seal appearing on this document was authorized by Gale L. Baker on 7/29/2011.
Note: Alteration of this electronic document will invalidate the digital signature.

TCEQ Form 0051R
Rev. 8/9/2008

P.O. Box 13087 Austin, Texas 78711-3087

512-239-1000

Internet address: www.tceq.state.tx.us



Texas Commission
on Environmental Quality
Surface Casing Program

DEPTH OF USABLE-QUALITY GROUND WATER TO BE PROTECTED

Date July 29, 2011

TCEQ File No.: SC- 2934

***** EXPEDITED APPLICATION *****

API Number 18100000

Attention: BRETT FELDER

RAC Lease No. 000000

SC_508409_18100000_000000_2934.pdf

LONGFELLOW ENERGY LP
16803 NORTH DALLAS PKWY
ADDISON TX 75001

---Measured---

2145 ft FEL

1965 ft FSL

MRL: SURVEY

Digital Map Location:

X-coord/Long 96.56333

Y-coord/Lat 33.66111

Datum 83 Zone

P-5# 508409

County GRAYSON

Lease & Well No. SKAGGS #2

Purpose ND

Location SUR-BROGDEN W., A-92, -- [TD=13000], [RRC 9],

To protect usable-quality ground water at this location, the Texas Commission on Environmental Quality recommends:

The interval from the land surface to a depth of 100 feet must be protected. In addition, the Woodbine, which is estimated to occur from a depth of 600 feet to 975 feet, and the Trinity (including the Hosston), which is estimated to occur from a depth of 1475 feet to 2250 feet, must be protected.

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If you have any questions, please contact us at 512-239-0515, sc@tceq.state.tx.us, or by mail MC-151.

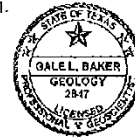
Sincerely,


I hereby certify that I am
the only authorized signatory
for the Texas Commission on
Environmental Quality, and I am
not a salaried employee of the
state of Texas.
Date 2011 07 29 10:00:01 -0500

Gale L. Baker, P.G.

Geologist, Surface Casing Team
Waste Permits Division

GEOLOGIST SEAL



The seal appearing on this document was authorized by Gale L. Baker on 7/29/2011.
Note: Alteration of this electronic document will invalidate the digital signature.

TCEQ Form-0051R
Rev. 3/8/2008

P.O. Box 13037 Austin, Texas 78711-3037

512-239-1000

Internet address: www.tceq.state.tx.us



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. D.3

*** OTHER BUSINESS**

**Consider Request of the Austin College Kappa Gamma Chi
to Temporarily Close Certain Streets for the Homecoming 2011 'Roo Run and Joey Walk
on Saturday, October 29, 2011**

Issue

Austin College Kappa Gamma Chi has submitted a request to close certain streets surrounding the Austin College campus for the Homecoming 2011 'Roo Run and Joey Walk beginning at 8:30 a.m. on Saturday, October 29, 2011

Background

The Austin College Kappa Gamma Chi is sponsoring the Annual 5K 'Roo Run and 1-mile Joey Walk, to be held in conjunction with the Austin College 2011 Homecoming on Saturday, October 29th. The activities will begin at 8:30 a.m. and will follow the route outlined on the attached map. The City will provide traffic barricades only for the event.

Origination

Mary Caroline Ingram, Austin College Kappa Gamma Chi 'Roo Run Service Chair

Financial Consideration

Labor and equipment to implement barricade placement and removal

Staff Recommendation

It is recommended that the City Council approve this request and authorize the necessary assistance to accommodate the event.

Alternatives

Select another date, time or location for the proposed activities.

Attachments

Memo from Ms. Ingram dated September 21, 2011
Map of Proposed Route

Prepared by:
Don Keene, Director of Public Works

Approved by:
George Olson, City Manager



AUSTIN COLLEGE

M E M O R A N D U M

DATE: September 21, 2011
TO: Sherman City Manager
FROM: Mary Caroline Ingram
Austin College Kappa Gamma Chi 'Roo Run
Service Chair
RE: Homecoming 2011 'Roo Run



On Saturday, October 29, 2011 the Annual Kappa Gamma Chi 'Roo Run will be held in connection with Austin College 2011 Homecoming. The 5K 'Roo Run and 1-mile Joey Walk will begin at 8:30 a.m. on the steps of Ida Green Communications Center and then continue as shown on the attached map. Please allow the Austin College 'Roo Run permission to use Sherman city streets and traffic control assistance as in the past years.

Please contact me at 817.676.7639 if you have questions or need additional information.

cc. Cindy Bean, Director of Alumni Relations
Michael Deen, Director of Student Life

Attachment: Roo Run Map

Echelon's Gone Wild

Click here for our \$25,000 Give-away!

Win Prizes!
GARMIN
Echelon
Echelon
Echelon





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. D.4

*** OTHER BUSINESS**

Set Date to Canvass Results of the City of Sherman's Regular and Special Municipal Elections

Issue

Ordinance Nos. 5709 and 5710 (approved by the City Council on August 15, 2011) called the Regular Municipal Election to elect two (2) District City Council Members and the Special Election to consider the reauthorization of the local sales and use tax at the rate of one-eighth of one percent (1/8%) to continue providing revenue for maintenance and repair of municipal streets. The ordinances also set the date to canvass the results from the election for Wednesday, November 16, 2011. Historically, the Called Meeting to canvass the election results has been set for 12:00 noon.

Background

Texas Election Law Section 67.003 states that a City "shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer not earlier than the 8th day or later than the 11th day after Election Day."

Origination

The request originated with the City Clerk's Office.

Staff Recommendation

It is recommended that the City Council approve the date and time (12:00 noon on Wednesday, November 16, 2011) for the canvass of the November 8, 2011 Regular and Special Municipal Elections.

Alternatives

The alternative is to select another date and/or time more convenient for the canvass.

Attachments

Ordinance Nos. 5709 and 5710 are attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

ORDINANCE NO. 5709

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ORDERING AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 8th DAY OF NOVEMBER, 2011, FOR THE PURPOSE OF ELECTING TWO (2) DISTRICT CITY COUNCIL MEMBERS FOR SAID CITY; PROVIDING THAT SAID ELECTION SHALL BE HELD JOINTLY WITH GRAYSON COUNTY, TEXAS; DESIGNATING ELECTION PRECINCTS; APPOINTING ELECTION OFFICIALS; PROVIDING FOR NOTICE OF SAID ELECTION; PROVIDING FOR THE USE OF DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT; PROVIDING FOR EARLY VOTING; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That, in compliance with the Charter of the City of Sherman, Texas, and in accordance with the laws and the Constitution of the State of Texas, an election may be and the same is hereby called and ordered for the first Tuesday after the first Monday in November, 2011, the same being the 8th day of said month, at which election all qualified voters may vote for the purpose of electing a District 2 and a District 4 City Council Member for full terms, as defined in the Charter of the City of Sherman, Texas.

SECTION 2. That said election shall be held jointly with Grayson County, Texas in accordance with the Joint Election Agreement executed pursuant to the authority of Resolution No. 5598, passed and approved on the 15th day of August, 2011.

SECTION 3. That the County Clerk shall prepare electronic ballots for early and election day voting and paper ballots for mail ballots and provisional ballots to be used in said election and shall label same "*Official Ballot*", on which ballot shall be printed the names of the candidates and the position of District Council Member. The designation of each position on the official ballot shall be Council Member, District 2; and Council Member, District 4, respectively.

SECTION 4. That no person's name shall be placed upon the official ballot as a candidate for the position of Council Member unless such person has filed his/her sworn application, as provided by the laws of the State, with the City Clerk at least sixty-one (61) days prior to the election date, and it must also appear on the face of said application the position the candidate is seeking.

SECTION 5. That it shall further appear to the said City Clerk, before said candidate's name is entered on said ballot, that he has filed an affidavit of loyalty with the City Clerk as required by the Election Code of the State of Texas.

SECTION 6. That, in the event there are two or more candidates for the same position, the position of such candidates' names on the ballot shall be determined by lot conducted by the City Clerk in the presence of each candidate or candidate's designated representative.

SECTION 7. That any Council Member candidate receiving the greatest number of the qualified votes cast for the position for which he is a candidate shall be elected to such position. In the event a tie vote occurs, the City Council of said City, immediately after canvass, shall issue a call for Special Election, as required by law, to be held not less than twenty (20) nor more than forty-five (45) days after the results of the Regular Election shall have been declared, at which election the candidates receiving a tie vote for any such position or positions in the regular election shall again be voted. If needed, a run-off election will be held December 6, 2011.

SECTION 8. That the polls shall be kept open from seven o'clock (7:00) a.m. until seven o'clock (7:00) p.m. on Election Day, and that due return shall be made to the City Council showing the number of votes cast for each candidate for each position of District Council Member, respectively.

SECTION 9. That notice of said election shall be given by the Mayor of the City of Sherman by causing an election notice to be posted at City Hall not later than the twenty-first day before election day, and by publishing this ordinance at least one time not more than thirty days nor less than ten days prior to the election date, in at least one daily newspaper published in the City of Sherman in accordance with the provisions of the Election Code of the State of Texas, as amended.

SECTION 10. That the polling places for this election shall be as follows:

PRECINCT NO.	LOCATION	JUDGES
1-2-3-4-5-8-20-32-36-53	Grayson County Courthouse Commissioner's Court 100 West Houston Sherman, Texas	Ann Keeling Presiding Judge Ruby Sprinkle Alternate Judge
21-23-65	West Sherman Baptist Church 1820 West Washington Sherman, Texas	Lee Salinas Presiding Judge Nana Rylander Alternate Judge

SECTION 11. That Direct Recording Electronic Equipment shall be used for voting at the foregoing election precincts.

SECTION 12. That the qualified voters, eligible to cast their ballots early under the laws of this State, shall be permitted to so cast their vote at the Grayson County Courthouse, Commissioner's Courtroom, 100 W. Houston, Sherman, Texas; at the Grayson County Sub-Courthouse, 101 W. Woodward, Denison, Texas; and at Tioga City Hall, 600 Main, Tioga, Texas; during the following schedule:

Monday through Friday, October 24-28, 2011 from 8:00 a.m. to 5:00 p.m.

Saturday, October 29, 2011 from 7:00 a.m. to 7:00 p.m.

Sunday, October 30, 2011 from 12:00 p.m. to 5:00 p.m.

Monday through Wednesday, October 31-November 2, 2011 from 8:00 a.m. to 5:00 p.m.

Thursday and Friday, November 3 and 4, 2011 from 7:00 a.m. to 7:00 p.m.

SECTION 13. That the Presiding Judge for Early Voting shall be Wilma Blackshear Bush, the Alternate Judge shall be Deana Patterson and additional Voting Clerks shall be appointed.

SECTION 14. That an Early Voting Ballot Board for verifying Early Voting ballots shall be appointed, consisting of Presiding Judge Wilma Blackshear Bush and additional Clerks.

SECTION 15. That the rate of pay set by Subchapter E, Sections 32.091 and 32.092 of Title 3 of the Election Code for Election Judges and Clerks shall be at an amount fixed by the appropriate authority, which is at least the federal minimum hourly wage. The judge who delivers the election returns may be paid an amount not to exceed \$25.00 for that service. No judge may be paid for more than one hour of work before the polls open.

SECTION 16. That Wilma Blackshear Bush, County Clerk, is hereby appointed Counting Station Presiding Manager.

SECTION 17. That the canvass of the Election Returns will be held in the Council Chambers of City Hall, 220 West Mulberry, Sherman, Texas, at the Called Council Meeting of November 16, 2011.

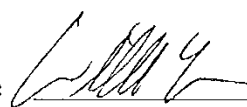
SECTION 18. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

INTRODUCED on this the 15th day of August, 2011.

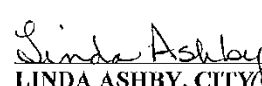
ADOPTED on this the 15th day of August, 2011.

EFFECTIVE DATE on this the 15th day of August, 2011.

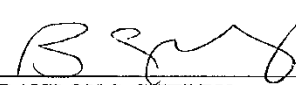
CITY OF SHERMAN, TEXAS

BY: 
BILL MAGERS, MAYOR

ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:

BY: 
BRANDON S. SHELBY,
CITY ATTORNEY

ORDINANCE NO. 5710

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ORDERING AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 8TH DAY OF NOVEMBER, 2011, FOR THE PURPOSE OF THE REAUTHORIZATION OF THE LOCAL SALES AND USE TAX AT THE RATE OF ONE-EIGHTH OF ONE PERCENT (1/8%) TO CONTINUE PROVIDING REVENUE FOR MAINTENANCE AND REPAIR OF MUNICIPAL STREETS; PROVIDING THAT SAID ELECTION BE HELD JOINTLY WITH THE COUNTY OF GRAYSON, TEXAS; DESIGNATING ELECTION PRECINCTS; APPOINTING ELECTION OFFICIALS; PROVIDING FOR NOTICE OF SAID ELECTION; PROVIDING FOR USE OF DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT; PROVIDING FOR EARLY VOTING; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That, pursuant to Chapter 327 of the Texas Tax Code, the governing body of the City of Sherman, Texas, does declare that an election shall be held on the 8th day of November, 2011, at which election the following proposition shall be submitted to all qualified voters:

The question which shall be submitted to the vote of the qualified electors shall be as follows:

FOR or AGAINST the following:

PROPOSITION 1

"THE REAUTHORIZATION OF THE LOCAL SALES AND USE TAX IN THE CITY OF SHERMAN AT THE RATE OF ONE-EIGHTH OF ONE PERCENT (1/8%) TO CONTINUE PROVIDING REVENUE FOR MAINTENANCE AND REPAIR OF MUNICIPAL STREETS."

SECTION 2. That the official ballots for said election shall be prepared in accordance with the Election Code of the State of Texas, as amended, so as to permit the electors to vote "FOR" or "AGAINST". The aforesaid proposition shall be set forth in substantially the following form:

The word "FOR" and beneath it the word "AGAINST" shall be made to appear on the left of the proposition. A square shall be printed on the left of each of the words

"FOR" and "AGAINST" and each elector shall place an "X" in the square beside the statement indicating the way he wishes to vote.

SECTION 3. That should the November 8, 2011, reauthorization of the local sales and use tax pass, the City of Sherman shall call for an election in the year 2015 on a regular, uniform election date, wherein the voters will vote on whether or not to reauthorize said tax with the then existing law.

SECTION 4. That said election shall be held jointly with the County of Grayson, Texas, in accordance with the Joint Election Agreement executed pursuant to the authority of Resolution No. 5598, passed and approved on the 15th day of August, 2011.

SECTION 5. That the County Clerk shall prepare ballots to be used in said election and shall stamp same "*Official Ballot*".

SECTION 6. That the polls shall be kept open from seven o'clock (7:00) a.m. until seven o'clock (7:00) p.m. on Election Day, and that due return shall be made to the City Council showing the number of votes cast.

SECTION 7. That notice of said election shall be given by the Mayor of the City of Sherman by causing an election notice to be posted at City Hall not later than the twenty-first day before election day, and by publishing this ordinance at least one time not more than thirty days nor less than ten days prior to the election date, in at least one daily newspaper published in the City of Sherman in accordance with the provisions of the Election Code of the State of Texas, as amended.

SECTION 8. That the polling places for this election and the names of the officers who are to hold the same, except insofar as the officers may be changed by the County Clerk of the County of Grayson, Texas, shall be as follows:

PRECINCT NO.	LOCATION	JUDGES
1-2-3-4-5-8-20-32-36-53	Grayson County Courthouse Commissioner's Court 100 West Houston Sherman, Texas 75090	Ann Keeling Presiding Judge Ruby Sprinkle Alternate Judge
21-23-65	West Sherman Baptist Church 1820 West Washington Sherman, Texas 75092	Lee Salinas Presiding Judge Nana Rylander Alternate Judge

SECTION 9. That Direct Recording Electronic (DRF) equipment shall be used for voting under the foregoing election precincts.

SECTION 10. That the qualified voters, eligible to cast their ballots early under the laws of this State, shall be permitted to so cast their vote at the Grayson County Courthouse, Commissioner's Courtroom, 100 W. Houston, Sherman, Texas; at the Grayson County Sub-Courthouse, 101 W. Woodward, Denison, Texas; and at Tioga City Hall, 600 Main, Tioga, Texas; during the following schedule:

Monday through Friday, October 24-28, 2011 from 8:00 a.m. to 5:00 p.m.

Saturday, October 29, 2011 from 7:00 a.m. to 7:00 p.m.

Sunday, October 30, 2011 from 12:00 p.m. to 5:00 p.m.

Monday through Wednesday, October 31-November 2, 2011 from 8:00 a.m. to 5:00 p.m.

Thursday and Friday, November 3 and 4, 2011 from 7:00 a.m. to 7:00 p.m.

SECTION 11. That the canvass of the Election Returns will be held in the Council Chambers of City Hall, 220 West Mulberry, Sherman, Texas, at a special called Council Meeting on December 6, 2011.

SECTION 12. 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 15th day of August, 2011.

ADOPTED on this the 15th day of August, 2011.

EFFECTIVE DATE on this the 15th day of August, 2011.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

BY: Bill Magers
BILL MAGERS, MAYOR

APPROVED AS TO FORM
AND CONTENT:

BY: Brandon S. Shelby
BRANDON S. SHELBY,
CITY ATTORNEY



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. D.5

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. D.6

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. D.7

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. E.1

EXECUTIVE SESSION

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

Section 551.074

Personnel Matters

- (a) Consider the Qualifications, Appointment and
Removal of Members to Boards and
Commissions:**
 - (i) Sherman Economic Development
Corporation Board of Directors (1)**

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. F.1

OPEN MEETING

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

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. F.2

ADJOURNMENT

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-17-2011

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2011

CITY COUNCIL MEETINGS

JANUARY

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

FEBRUARY

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

MARCH

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

APRIL

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

MAY

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

JUNE

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

JULY

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

AUGUST

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

SEPTEMBER

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

OCTOBER

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

NOVEMBER

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

DECEMBER

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

01/03/11 - January 3rd Council meeting cancelled
01/17/11 - M.L.K., Jr. Birthday / Regular Council Meeting
02/21/11 - Washington's Birthday / Regular Council Meeting
03/03/11 - 12 Noon Long-Term Planning Meeting
03/28/11 - 12 Noon Called Meeting for PH & Adoption of Ord. #
(Annexation of 23.065 acres south of Dripping Springs Road and west of Cedar Park Village)
04/21/11 - 12 Noon Budget Planning Meeting in Council Chambers
06/17/11 - 8:00 AM Budget Workshop in Council Chambers
06/23/11 - 12 Noon Joint Meeting with SEDCO Board (Ramp Rev.)

07/04/11 - Independence Day - No Meeting Called for 07/05/11
09/05/11 - Labor Day / Called Council Meeting on 09/06/11
~~09/22/11 - 12 Noon Called Joint Meeting with SEDCO Board~~
10/03/11 - 5:15 PM Called Joint meeting with SEDCO Board
10/24/11 - 12 Noon Called Meeting for Annexation Ordinance
(U.S. Highway 82 and S.H. 289)
11/08/11 - City Council Election
11/16/11 - 12 Noon Called Meeting to Canvass Election Results