

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, AUGUST 4, 2025
5:00 PM**

- A.1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A.2. PLEDGE OF ALLEGIANCE AND INVOCATION LED BY COUNCIL MEMBER CLAY BARNETT**
- A.3. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETINGS OF JULY 7, 2025 AND JULY 21, 2025.**

Citizen Comments

B.1. CITIZEN COMMENTS

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

Consent Agenda

C.1. CONSENT AGENDA

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

Public Hearing

D.1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6855

Ordering an Election of the Qualified Voters of the City of Sherman, Texas, on the 4th day of November 2025, for the Purpose of Electing two City Council Members (District 1 and District 3) to Fill Expiring Terms; Providing that the Election Shall be Administered by Grayson County, Texas; Designating Early Voting Polling Places and Hours; Designating Election Day Polling Places and Hours; Designating Filing Deadlines; Ordering Notices of Election to be Given as Prescribed by Law in Connection with Such Election; Providing for the Appointment of Election Judges; Authorizing the Mayor and City Clerk to Take All Actions Necessary to Comply With Applicable Election Laws.

Close Public Hearing and Consider Adoption of Ordinances

E.1. CLOSE PUBLIC HEARING

Consider Adoption of Ordinance No. 6855

Resolutions

F.1. RESOLUTION NO. 7550

Authorizing Execution of a Sign Donation Agreement between the City of Sherman, Texas and Roger Sanders

F.2. RESOLUTION NO. 7551

Authorizing Execution of a Third Amendment to the Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews

F.3. RESOLUTION NO. 7552

Authorizing Execution of a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the FM1417 Traffic Signals Design at Bel-Air Blvd. and Luella Rd.

F.4. RESOLUTION NO. 7553

Awarding a Bid to and Authorizing Execution of a Contract with Lynn Vessels Construction, LLC Based on an Invitation to Bid for the Phase III Drainage Improvements for Setting Suns

F.5. * RESOLUTION NO. 7554

Authorizing the Execution of an Amended Master Services Agreement with Flock Group, Inc. for the One-Time Purchase of Flock Safety Equipment for the Sherman Police Department;

F.6. * RESOLUTION NO. 7555

Authorizing the City Manager or His Designee to Execute a Sign Encroachment Agreement with Akers Cemetery

F.7. * RESOLUTION NO. 7556

Authorizing the City Manager or His Designee to Execute a Right of Way Warranty Deed for the Purchase and Acquisition of Real Property from Point Man Ventures for the Construction of a Retaining Wall at the Corner of Lamberth and FM 1417, Being 0.0043 Acres in the J.B. McAnair Survey, Abstract No. 763, City of Sherman, Grayson County, Texas

Request to Advertise

G.1. * REQUEST TO ADVERTISE

Annual Requirements for Janitorial Services in Certain City-Owned Facilities

OTHER BUSINESS

H.1. OTHER BUSINESS

Consider Scheduling a Joint Meeting of the City Council and the Planning and Zoning Commission for 12:00p.m. on Thursday, October 9, 2025, for a training workshop conducted by Abernathy, Roeder, Boyd & Hullett

COUNCIL COMMENTS

EXECUTIVE SESSION

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

J.1. TEX. GOV'T CODE § 551.071

Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in

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

which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.

J.2. TEX. GOV'T CODE § 551.072

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

J.3. TEX. GOV'T CODE § 551.073

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

J.4. TEX. GOV'T CODE § 551.074

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

- a) Red River Groundwater Conservation District Board of Directors (1)
- b) City Manager Contract

J.5. TEX. GOV'T CODE § 551.076

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

J.6. TEX. GOV'T CODE § 551.087

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

- a) Bel Air Planned Development

J.7. TEX. GOV'T CODE § 551.089

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

The Council reconvenes into General Session

Adjournment

COUNCIL CALENDAR

M.1. COUNCIL CALENDAR

2025 Council Calendar

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Thursday, July 31, 2025 at 4:59p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 31st day of July 2025. City of Sherman, Texas



City Clerk Administrative Coordinator

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

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

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

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

PERSONS WITH DISABILITIES, WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED ASSISTANCE, ARE REQUESTED TO CONTACT THE CLERKS OFFICE AT (903) 892-7206, TWO (2) WORKING DAYS PRIOR TO THE MEETING SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.

Mayor

Shawn C.
Teamann

Deputy Mayor

Juston Dobbs

Council Members

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

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

ACTION MINUTES

The City Council of the City of Sherman held a regular meeting Monday, July 7, 2025, at 5:00 P.M. in the Community Room of the Sherman Police Department Headquarters at 2600 West Travis Street to consider the following:

The City Council meetings are Video and Audio recorded and can be viewed at:

<https://www.ci.sherman.tx.us/701/Agendas-and-Minutes>

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

Bookmarked at 00:02:37

Mayor Teamann called the meeting to order at 5:00 p.m.

Members Present: Mayor Shawn Teamann, Deputy Mayor Juston Dobbs, Council Members Pamela Howeth, Daron Holland, and Clay Barnett

Members Absent: Council Members Henry Marroquin and Josh Stevenson

A.2. PLEDGE OF ALLEGIANCE AND INVOCATION LED BY DEPUTY MAYOR JUSTON DOBBS

Bookmarked at 00:02:59

A.3. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JUNE 2, 2025, THE CALLED BUDGET WORKSHOP MEETING OF JUNE 12, 2025, AND THE REGULAR CITY COUNCIL MEETING OF JUNE 16, 2025.

Bookmarked at 00:04:50

The City Council reviewed the minutes of the June 2, 2025 Regular Meeting, June 12, 2025 Budget Workshop, and June 16, 2025 Regular Meeting. Motion by Council Member Howeth to approve the Minutes as written. Second by Council Member Holland. All present voted AYE.

Citizen Comments

B.1. CITIZEN COMMENTS

Bookmarked at 00:05:19

Consent Agenda

C.1. CONSENT AGENDA (*)

Bookmarked at 00:10:30

The Council reviewed the Consent Agenda. Council Member Barnett moved to approve Resolutions, Payment Authorization, and Other Business on the Consent Agenda as presented. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

Special Presentations

D.1. SPECIAL PRESENTATION

Presentation of Parks and Recreation Mobile Recreation Vehicle - POP Truck

Bookmarked at 00:10:57

Proclamations

E.1. PROCLAMATION

"Parks and Recreation Month" -- July 2025

Bookmarked at 00:13:15

Public Hearing

F.1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6845

Amending Sherman's Zoning Ordinance/Code of Ordinance Chapter 14, to Rezone a Tract of Land Consisting

of 16.690 acres being part of the Elizabeth Jones Survey, Abstract No. 625, City Of Sherman, Grayson County, Texas, Located in the 800 Block Interurban Parkway, Heretofore Zoned R-6 (Single Family Residential) District; Rezoning And Placing The Tract In The PD (Planned Development) District with a base zoning of MF-30 (Multi-Family Residential) District Zoning Classification, Veronica Munoz, Salient Group, LLC (Owner), Jonathan Hake, Cross Engineering (Representative/Engineer) and Underwood Drafting & Surveying, Inc. (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Bookmarked at 00:14:59 and 00:20:21

F.2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6846

Amending Chapter 9 of the Code of Ordinances, Entitled "Personnel", Article 9.05, Entitled "Civil Service for Firefighters and Police Officers", at Section 9.05.026, Entitled "Authorized Number of Position", to Revise the Number of Authorized Positions in the Police Department; Providing for Inclusion in the Code of Ordinances; Providing for Severability; Providing for a Repealer

Bookmarked at 00:19:13

G.1. CLOSE PUBLIC HEARING

Consider Adoption of Ordinances 6845 & 6846.

Bookmarked at 00:20:00

Ordinance 6845

Motion by Council Member Howeth to approve Ordinance 6845. Second by Council Member Barnett.

VOTING AYE: HOWETH AND BARNETT

VOTING NAY: TEAMANN, DOBBS, AND HOLLAND

MOTION DENIED.

Ordinance 6846

Motion by Deputy Mayor Dobbs to approve Ordinance 6846. Second by Council Member Barnett.

VOTING AYE: TEAMANN, DOBBS, STEVENSON, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

Resolutions

H.1. RESOLUTION NO. 7540

Determining a Public Necessity to Acquire by Eminent Domain Certain Property in Fee Simple for Public Use, Including the Construction, Expansion, Access, Repair and Maintenance of Public Roadway Improvements for Interurban Parkway Project, Consisting of a 1.5652-Acre Tract of Land Conveyed to Moore Street 7, LLC as Recorded under Instrument Number 2021-18410 of the Official Public Records of Grayson County, Texas within the Elizabeth Jones Survey, Abstract No. 625, City of Sherman, Grayson County, Texas, as Deemed Necessary by the City Manager or his Designee; Giving Notice of an Official Determination to Acquire Certain Property for Public Use by Eminent Domain for Such Uses; Authorizing the City Manager of the City of Sherman, Texas to Establish Procedures for Acquiring the Property, Offering to Acquire the Property, Voluntarily, from the Landowner(s) Through the Making of Bona Fide Offers; Appropriating Funds; Providing for Repealing, Savings and Severability Clauses; and Providing for an Effective Date

Bookmarked at 00:22:18

Motion by Council Member Barnett to approve Resolution No. 7540. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

H.2. *RESOLUTION NO. 7541

Authorize Execution of a First Amended Professional Services Agreement for Engineering Services Between the City of Sherman and ParkHill, Smith & Cooper, Inc., for the Contested Hearing for the Application of two Mustang SUD Wells

Bookmarked at 00:10:30

Motion by Council Member Barnett to approve Resolution No. 7541. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

H.3. *RESOLUTION NO. 7542

Authorizing the City Manager or his Designee to Execute an Agreement and Special Warranty Deed for the Purchase and Acquisition of Real Property from Cedar Ridge Development for the Expansion of Interurban Parkway, being 0.6646 Acres and 0.6782 Acres in the Elizabeth Jones Survey, Abstract No. 625, City of Sherman, Grayson County, Texas

Bookmarked at 00:10:30

Motion by Council Member Barnett to approve Resolution No. 7542. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

H.4. *RESOLUTION NO. 7543

Authorizing Execution of a Professional Services Agreement with GEOTEX Engineering, LLC for Geotechnical Engineering and Construction Materials Testing

Bookmarked at 00:10:30

Motion by Council Member Barnett to approve Resolution No. 7543. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

H.5. *RESOLUTION NO. 7544

Authorizing the Execution of an Encroachment Agreement with Garland Sunset, LLC for the Encroachment of an Existing Building within the proposed 10-foot Utility Easement and 15-foot Utility, Landscape, and Sidewalk Easement to be dedicated in the Final Plat of West Houston Addition, to be Filed in the Plat Records, Grayson County, Texas

Bookmarked at 00:10:30

Motion by Council Member Barnett to approve Resolution No. 7544. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

H.6. *RESOLUTION NO. 7545

Repealing and Replacing Resolution No. 7362; Establishing Salary Structures and Incentive/Certification Pay Schedules for Firefighters and Police Officers; Establishing Special Longevity Pay Schedules for Newly Hired Firefighters and Firefighters and Police Officers; Providing for an Effective Date

Bookmarked at 00:10:30

Motion by Council Member Barnett to approve Resolution No. 7545. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

H.7. *RESOLUTION NO. 7546

Suspending the July 31, 2025 Effective Date of Oncor Electric Delivery Company's Requested Rate Change to Permit the City Time to Study the Request and to Establish Reasonable Rates; Approving Cooperation with the Steering Committee of Cities Served by Oncor to Hire Legal and Consulting Services and to Negotiate with the Company and Direct any Necessary Litigation and Appeals

Bookmarked at 00:10:30

Motion by Council Member Barnett to approve Resolution No. 7546. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

Payment Authorization

I.1. * PAYMENT AUTHORIZATION

Authorization to pay for NeoGov Onboard annual services under the Omnia Partners (COBB COUNTY) IT Products and Services (# 23-6692-03).

Bookmarked at 00:10:30

Motion by Council Member Barnett to approve. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

Other Business

J.1. * OTHER BUSINESS

Purchase of Chemicals for the South MBR WWTP under Emergency Designation.

Bookmarked at 00:10:30

Motion by Council Member Barnett to approve. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, HOWETH, HOLLAND, AND BARNETT

VOTING NAY: NONE.

MOTION CARRIED.

COUNCIL COMMENTS

Bookmarked at 00:23:56

EXECUTIVE SESSION

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

Mayor Teamann adjourned for Executive Session at 5:25 p.m.

Bookmarked at 00:27:36

L.1. TEX. GOV'T CODE § 551.071

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

L.2. TEX. GOV.'T CODE § 551.072

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

L.3. TEX. GOV'T CODE § 551.073

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

L.4. TEX. GOV'T CODE § 551.074

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

a) Appoint Planning and Zoning Commission Members and Alternates

b) Texoma Community Center Board of Trustees (1)

L.5. TEX. GOV'T CODE § 551.076

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

L.6. TEX. GOV'T CODE § 551.087

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

L.7. TEX. GOV'T CODE § 551.089

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

The Council reconvenes into General Session Adjournment

Bookmarked at 00:40:12

Mayor Teamann reconvened into General Session at 5:37 p.m.

BOARD/COMMISSION APPOINTMENT

Bookmarked at 00:40:16

a) Appoint Planning and Zoning Commission Members and Alternates

Motion by Deputy Mayor Dobbs to reappoint David Downtain and Bryan Blagg to the Planning & Zoning Commission. Second by Council Member Barnett. All present voted AYE.

b) Texoma Community Center Board of Trustees

Motion by Council Member Barnett to reappoint Judge James Henderson to Place #3 on the Texoma Community Center Board of Trustees. Second by Deputy Mayor Dobbs. All present voted AYE.

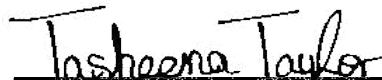
ADJOURNMENT

Bookmarked at 00:40:45

Motion by Council Member Barnett to adjourn. Second by Council Member Holland.

Mayor Teamann adjourned the meeting at 5:38 p.m.

MAYOR



CITY CLERK OR DESIGNEE

ACTION MINUTES

The City Council of the City of Sherman held a regular meeting Monday, July 21, 2025 at 5:00 P.M. in the Community Room of the Sherman Police Department Headquarters at 2600 West Travis Street to consider the following:

The City Council meetings are Video and Audio recorded and can be viewed at:
<https://www.ci.sherman.tx.us/701/Agendas-and-Minutes>

Members Absent: Council Member Barnett and Council Member Howeth

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

Bookmarked at 00:05:02

Mayor Teamann called the meeting to order at 5:00 p.m.

A.2. PLEDGE OF ALLEGIANCE AND INVOCATION LED BY COUNCIL MEMBER MARROQUIN

Bookmarked at 00:05:09

Citizen Comments

B.1. CITIZEN COMMENTS

Bookmarked at 00:06:13

Consent Agenda

C.1. CONSENT AGENDA

Bookmarked at 00:06:32

The Council reviewed the Consent Agenda. Deputy Mayor Dobbs moved to approve F.2, F.3, G.2 and H.1 on the Consent Agenda as presented. Second by Council Member Holland.

VOTING AYE: TEAMANN, DOBBS, STEVENSON, HOLLAND AND MARROQUIN

VOTING NAY: NONE.

MOTION CARRIED.

Public Hearing

D.1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6847

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land consisting of 1.15 acres being in the Rueben Hendrix Survey, Abstract No. 504, City Of Sherman, Grayson County, Texas, Located at 2424 Texoma Parkway, Heretofore C-2 (General Commercial) District Rezoning And Placing The Tract In The C-1 (Retail Business) District Zoning Classification, PHT Hospitality LLC, Pratapbhai R Patel (Owner) and S. Ephraim Osabutey Surveying (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date; Finding And Determining That The Meeting At Which This Ordinance Is Passed Was Noticed And Is Open To The Public As Required By Law

Bookmarked at 00:07:06

D.2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6848

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, And Granting A Specific Use Permit To Allow a Hotel or Motel in a C-1 (General Commercial) District, Located At 2424 Texoma Parkway, Consisting of 1.15 acres being in the Rueben Hendrix Survey, Abstract No. 504, City Of Sherman, Grayson County, Texas PHT Hospitality LLC, Pratapbhai R Patel (Owner) and S. Ephraim Osabutey Surveying (Surveyor) Prescribing Conditions To The Specific Use Permit; Providing A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Bookmarked at 00:08:05

D.3. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6849

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, And Granting A Specific Use Permit To allow automobile, motorcycle, boat, or trailer sales, new or used in a C-2 (General Commercial) District, Located at 4505 and 4511 Texoma Parkway, Consisting of 2.621 acres being Lot 1, Block 1 of Texoma Center Addition, City Of Sherman, Grayson County, Texas Kurt Himmelreich (Owner), Daniel Hinson

(Representative) and Copley Land Surveying (Surveyor) Prescribing Conditions To The Specific Use Permit; Providing A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Bookmarked at 00:10:43

D.4. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6850

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land consisting of 0.08 acres being a portion of Lots 16 and 17, Block 14 of Chaffin's Addition, City Of Sherman, Grayson County, Texas, Located at 814 East Mulberry Street, Heretofore M-2 (Heavy Manufacturing) District; Rezoning And Placing The Tract In The R-4 (Patio Home Residential) District Zoning Classification, Gutierrez Ramirez (Owner) and Burns Surveying (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Bookmarked at 00:11:51

D.5. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6851

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land consisting of 0.703 acres being a Replat of Hilltop Estates, part of Block 6 John Hendrix Survey, Abstract No. 503, City Of Sherman, Grayson County, Texas, Located at 4809 Marshall Street, Heretofore R-6 (Single- Family Residential) District; Rezoning And Placing The Tract In The M-1 (Light Manufacturing) District Zoning Classification, Dkota Investments, Inc.(Owner) and Preston Trail Land Surveying (Surveyor) Providing for a Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Bookmarked at 00:13:31

D.6. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6852

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land consisting of 2.00 acres being a part of the Robert Thompson Survey, Abstract No. 1200, City Of Sherman, Grayson County, Texas, Located at 2717 South First Street, Heretofore R-6 (Single-Family Residential) District; Rezoning And Placing The Tract In The R-12 (Single Family Residential) District. Zoning Classification, Liliana Garcia (Owner), Darius Stephenson and Liliana Morales (Representative) and Underwood Drafting & Surveying (Surveyor) Providing for a Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Bookmarked at 00:15:11

D.7. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6853

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land consisting of 0.163 acres being Lot 5, Block 19, Supplemental Plat of Block 19, South Sherman, City Of Sherman, Grayson County, Texas, Located at 1818 South Montgomery Street, Heretofore C-1 (Retail Business) District; Rezoning And Placing The Tract In An R-5 (Single Family Residential) District Zoning Classification, Claudia Ledezma (Owner), Javier Veleta Ledezma (Representative) and Helvey-Wagner Surveying, Inc. (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Bookmarked at 00:16:09

D.8. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6854

Amending Sherman's Zoning Ordinance/Code Of Ordinances Chapter 14, To Rezone A Tract Of Land consisting of 0.24 acres being Lot 5R, Block 3, Rivera & Cintron Addition, City Of Sherman, Grayson County, Texas, Located at 708 South Montgomery Street, Heretofore MF-30 (Multi Family Residential) District; Rezoning And Placing The Tract In The R-2F (Duplex Residential) District. Zoning Classification, Alpha Rock Holdings, LLC (Owner), Adeyinka Filani (Representative) and Helvey-Wagner Surveying, Inc. (Surveyor) Providing For A Penalty Not To Exceed \$2,000.00; Providing A Repealing/Savings Clause, Severability Clause And An Effective Date

Bookmarked at 00:17:13

E.1. CLOSE PUBLIC HEARING

Consider Adoption of Ordinances 6847, 6848, 6849, 6850, 6851, 6852, 6853 & 6854

Bookmarked at 00:18:18

Ordinance 6847 and Ordinance 6848

Motion by Council Member Stevenson to deny items D.1 and D.2. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, STEVENSON, HOLLAND AND MARROQUIN

VOTING NAY: NONE.

This item was denied by Council.

Ordinance 6849, 6850, 6851, 6852, 6853 and 6854

Motion by Council Member Stevenson to approve items D.3, D.4, D.5, D.6, D.7 and D.8. Second by Deputy Mayor Dobbs.

VOTING AYE: TEAMANN, DOBBS, STEVENSON, HOLLAND AND MARROQUIN

VOTING NAY: NONE.

MOTION CARRIED.

Resolutions

F.1. RESOLUTION NO. 7547

Authorizing Execution of a Professional Services Agreement with Cross Engineering Consultants, Inc. for the Crockett Street Lift Station Abandonment

Bookmarked at 00:29:10

Motion by Council Member Stevenson to approve Resolution No. 7547. Second by Council Member Holland.

VOTING AYE: TEAMANN, DOBBS, STEVENSON, HOLLAND AND MARROQUIN

VOTING NAY: NONE.

MOTION CARRIED.

F.2. * RESOLUTION NO. 7548

Authorizing the Execution of an Encroachment Agreement with Audioengine for the Encroachment of an Existing Building within the Existing Lamar Street Right of Way and an Existing Loading Dock within the Existing Branch Street Right of Way.

F.3. * RESOLUTION NO. 7549

Awarding a Bid to and Authorizing Execution of a Contract with Ferguson Waterworks, LLC for the Annual Supply of Water and Sewer Maintenance Parts and Supplies

Other Business

G.1. OTHER BUSINESS

Consider Scheduling a Joint Meeting of the City Council and the Sherman Economic Development Corporation Board of Directors for 12:00p.m. on Tuesday, September 16, 2025, to Review and Approve SEDCO's Annual Budget and Work Plan

Bookmarked at 00:30:29

No action was taken.

G.2. * OTHER BUSINESS

Receive Quarterly Progress Report from Sherman Economic Development Corporation President Kent Sharp

Payment Authorization

H.1. * PAYMENT AUTHORIZATION

Receive Quarterly Progress Report from Sherman Economic Development Corporation President Kent Sharp

COUNCIL COMMENTS

Bookmarked at 00:32:12

EXECUTIVE SESSION

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

Bookmarked at 00:33:13

Mayor Teamann adjourned for Executive Session at 5:29 p.m.

H.1. TEX. GOV'T CODE § 551.071

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

H.2. TEX. GOV.'T CODE § 551.072

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

H.3. TEX. GOV'T CODE § 551.073

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

H.4. TEX. GOV'T CODE § 551.074

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

H.5. TEX. GOV'T CODE § 551.076

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

H.6. TEX. GOV'T CODE § 551.087

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

a) Receive Update on Economic Development Prospects

H.7. TEX. GOV'T CODE § 551.089

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

The Council reconvenes into General Session Adjournment

Bookmarked at 01:02:29

Mayor Teamann reconvened into General Session at 5:58 p.m.

ADJOURNMENT

Bookmarked at 01:02:31

Mayor Teamann adjourned the meeting at 5:59 p.m.

Motion by Council Member Stevenson. Second by Council Member Holland.

VOTING AYE: TEAMANN, DOBBS, STEVENSON, HOLLAND AND MARROQUIN

VOTING NAY: NONE.

MOTION CARRIED.

MAYOR



CITY CLERK OR DESIGNEE



City Council Regular Meeting

Agenda Item No. C.1.

Meeting Date: 8/4/2025

Prepared By:

Approved By:

Caption:

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

Issue:

F. 5. * RESOLUTION NO. 7554

Authorizing the Execution of an Amended Master Services Agreement with Flock Group, Inc. for the OneTime Purchase of Flock Safety Equipment for the Sherman Police Department;

F. 6. * RESOLUTION NO. 7555

Authorizing the City Manager or His Designee to Execute a Sign Encroachment Agreement with Akers Cemetery

F. 7. * RESOLUTION NO. 7556

Authorizing the City Manager or His Designee to Execute a Right of Way Warranty Deed for the Purchase and Acquisition of Real Property from Point Man Ventures for the Construction of a Retaining Wall at the Corner of Lamberth and FM 1417, Being 0.0043 Acres in the J.B. McAnair Survey, Abstract No. 763, City of Sherman, Grayson County, Texas

G. 1. * REQUEST TO ADVERTISE

Annual Requirements for Janitorial Services in Certain City-Owned Facilities

Background:

Capital Improvement Program:

Origination:

Financial Consideration:

Staff Recommendation:

Alternatives:

Attachments:

None



City Council Regular Meeting

Agenda Item No. D.1.

Meeting Date: 8/4/2025

Prepared By: Tasheena Taylor, Administrative Assistant

Approved By: Zachary Flores, Acting City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6855

Ordering an Election of the Qualified Voters of the City of Sherman, Texas, on the 4th day of November 2025, for the Purpose of Electing two City Council Members (District 1 and District 3) to Fill Expiring Terms; Providing that the Election Shall be Administered by Grayson County, Texas; Designating Early Voting Polling Places and Hours; Designating Election Day Polling Places and Hours; Designating Filing Deadlines; Ordering Notices of Election to be Given as Prescribed by Law in Connection with Such Election; Providing for the Appointment of Election Judges; Authorizing the Mayor and City Clerk to Take All Actions Necessary to Comply With Applicable Election Laws.

Issue:

To call an Election for November 4, 2025, to elect two City Council Members, (District 1 and District 3).

Background:

In compliance with applicable law, the City must, by ordinance, call an Election.

Capital Improvement Program:

Origination:

City Clerk's Office

Financial Consideration:

Based on prior years, the estimated cost of the upcoming election is projected to range between \$10,000 and \$15,000.

Staff Recommendation:

It is recommended that the City Council approve the ordinance calling the Election for Tuesday, November 4, 2025.

Alternatives:

There is no viable alternative.

Attachments:

1. Ordinance No. 6855

ORDINANCE NO. 6855

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 4th DAY OF NOVEMBER, 2025, FOR THE PURPOSE OF ELECTING TWO CITY COUNCIL MEMBERS (DISTRICT 1 AND DISTRICT 3) TO FILL EXPIRING TERMS; PROVIDING THAT THE ELECTION SHALL BE ADMINISTERED BY GRAYSON COUNTY, TEXAS; DESIGNATING EARLY VOTING POLLING PLACES AND HOURS; DESIGNATING ELECTION DAY POLLING PLACES AND HOURS; DESIGNATING FILING DEADLINES; ORDERING NOTICES OF ELECTION TO BE GIVEN AS PRESCRIBED BY LAW IN CONNECTION WITH SUCH ELECTION; PROVIDING FOR THE APPOINTMENT OF ELECTION JUDGES; AUTHORIZING THE MAYOR AND CITY CLERK TO TAKE ALL ACTIONS NECESSARY TO COMPLY WITH APPLICABLE ELECTION LAWS; 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 Council of the City of Sherman, Texas ("City Council") duly authorizes and hereby orders a general election to be held within the City of Sherman, Texas ("Sherman") on November 4, 2025, for the purpose of electing a Mayor and two members of the Sherman City Council (District 1 and District 3), with each such term being for a period of three years.

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

SECTION 1. That, in compliance with the Sherman Home Rule Charter, and in accordance with the laws and the Constitution of the State of Texas, an election is hereby called and ordered for November 4, 2025, at which all qualified voters may vote for the purpose of electing City Council Members for District 1 and District 3 to fill expiring terms.

SECTION 2. That said election shall be administered by Grayson County, Texas in accordance with a Joint Election Agreement executed pursuant to the authority of a Resolution approved by the City Council.

SECTION 3. That the County Elections Administrator 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 the same "*Official Ballot*" on which ballot shall be printed the names of the candidates and the designation of each position sought, which shall be "Council Member, District 1," and "Council Member, District 3," 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 for a place on the ballot, as provided by the laws of the State.

SECTION 5. Candidates must file for a specific place and adhere to the filing deadlines. The candidate filing period for the election is as follows:

Beginning: July 19, 2025 at 8:00 a.m.
Ending: August 18, 2025 at 5:00 p.m.

SECTION 6. That early voting will begin on October 20, 2025, and continue through October 31, 2025, at times and locations to be determined by the Grayson County Elections Administration. Voting times and locations are subject to change. Applications for ballots by mail shall be requested from and mailed to Early Voting Clerk, Elections Administration Building, 115 W. Houston, Sherman, Texas 75090, or faxed to (903) 891-4370 or emailed to votegrayson@co.grayson.tx.us. (If faxed or emailed, the original application must be mailed and received within 4 days.) Applications for ballots by mail must be received no later than the close of business on October 24, 2025.

SECTION 7. Election Day voting by personal appearance shall be conducted at designated vote centers from 7:00 a.m. to 7:00 p.m. Voting locations and election judges shall be determined by the Grayson County Elections Administration.

SECTION 8. That notice of said election shall be given by the Mayor 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 the caption for 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 Texas Election Code.

SECTION 9. That for early voting in person, early voting by mail, election day voting and provisional voting, the following voting equipment will be used: ES&S ExpressVote Universal voting machines (EVS 6.1.1.0); ES&S DS200 Digital Precinct Scanners (EVS 6.1.1.0) - at least one per polling site for Early Voting; at least one per polling site for Election Day; ES&S DS450 Digital Central Count Scanner/Tabulator (EVS 6.1.1.0) along with the required ancillary parts and services required for such voting tabulation system.

SECTION 10. That the Presiding Judge for Early Voting shall be Donna Coveney, the Alternate Judge shall be Jess Davis and additional Voting Clerks shall be appointed.

SECTION 11. That an Early Voting Ballot Board for verifying Early Voting ballots shall be appointed, by the Early Voting Judge, consisting of a Presiding Judge and additional Clerks.

SECTION 12. 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. Two judges will deliver the election returns and will split the \$25.00 pay for that service. No judge may be paid for more than two hours of work before the polls open.

SECTION 13. That Julie Phillips, County Elections Administrator, is hereby appointed Counting Station Presiding Manager.

SECTION 14. That the election shall be conducted in accordance with the Texas Election Code and other applicable law, and all qualified voters of Sherman shall be eligible to vote at the election.

SECTION 15. The Mayor and City Clerk, in consultation with the City Attorney, are hereby authorized and directed to take any and all actions necessary to comply with the provisions of the Texas Election Code and any other state or federal law in carrying out and conducting the election, whether or not expressly authorized herein.

SECTION 16. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause and phrase thereof regardless of whether any one or more sections, subsections, sentences, clauses or phrases may be declared unconstitutional and/or invalid.

SECTION 17. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portion of conflicting ordinances shall remain in full force and effect.

SECTION 18. This order for an election becomes effective immediately upon its passage.

SECTION 19. 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 4th day of August 2025.

ADOPTED on this the 4th day of August 2025.

EFFECTIVE DATE on this the 4th day of August 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LEAH ROBERTS
EXEC. DIR. OF ADMINISTRATION
ACTING CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY



SHERMAN CITY COUNCIL Agenda Communication Form

City Council Regular Meeting

Agenda Item No. E.1.

Meeting Date: 8/4/2025

Prepared By:

Approved By:

Caption:

Close Public Hearing

Consider Adoption of Ordinance No. 6855

Issue:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6855

Ordering an Election of the Qualified Voters of the City of Sherman, Texas, on the 4th day of November 2025, for the Purpose of Electing two City Council Members (District 1 and District 3) to Fill Expiring Terms; Providing that the Election Shall be Administered by Grayson County, Texas; Designating Early Voting Polling Places and Hours; Designating Election Day Polling Places and Hours; Designating Filing Deadlines; Ordering Notices of Election to be Given as Prescribed by Law in Connection with Such Election; Providing for the Appointment of Election Judges; Authorizing the Mayor and City Clerk to Take All Actions Necessary to Comply With Applicable Election Laws.

D. 1.

Background:

Capital Improvement Program:

Origination:

Financial Consideration:

Staff Recommendation:

Alternatives:

Attachments:

None



City Council Regular Meeting

Agenda Item No. F.1.

Meeting Date: 8/4/2025

Prepared By: Nate Strauch, Community and Support Services Manager

Approved By: Zachary Flores, Acting City Manager

Caption:

RESOLUTION NO. 7550

Authorizing Execution of a Sign Donation Agreement between the City of Sherman, Texas and Roger Sanders

Issue:

Acquiring the Texas Sign

Background:

The City has been working for the last several months to repatriate the Texas Theater sign to downtown Sherman. An agreement has been reached with the sign's private owner to make that happen.

Capital Improvement Program:

N/A

Origination:

Mayor Shawn Teamann

Financial Consideration:

N/A

Staff Recommendation:

Staff recommends approve of this item

Alternatives:

As directed by Council

Attachments:

1. Resolution No. 7550
2. Sign Donation Agreement(4804284.5)
3. Signature Page

RESOLUTION NO. 7550

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A SIGN DONATION AGREEMENT BETWEEN THE CITY OF SHERMAN, TEXAS AND ROGER SANDERS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Sign Donation agreement with Roger Sanders, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 4th day of August 2025.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LEAH ROBERTS
EXECUTIVE DIR. OF ADMIN. /
ACTING CITY CLERK

BY: _____
SHAWN TEAMANN, MAYOR

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

SIGN DONATION AGREEMENT

This Sign Donation Agreement (“Agreement”) is made and entered into by and between the City of Sherman, Texas, a home-rule municipality (“City”), and Roger Sanders (“Donor”). City and Donor are sometimes referred to collectively as the “parties” or individually as a “party.”

WHEREAS, Donor represents and warrants to City that Donor is the sole owner of the original, neon Texas Theater Sign (“Sign”) that was affixed to the Texas Theater building in Downtown Sherman for more than 40 years; and

WHEREAS, Donor desires to transfer ownership of the Sign to the City under the terms and conditions of this Agreement; and

WHEREAS, the City Council finds that it is in the best interest of the citizens of the City to accept the Sign under the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises, covenants and agreements hereinafter set forth, Donor and City agree as follows:

1. Ownership of Sign. Donor represents that to his best knowledge the Sign is free and clear of all liens and other encumbrances and that Donor has full authority to transfer ownership of the Sign to the City pursuant to this Agreement. Donor hereby gives, transfers and delivers all of Donor’s rights, title and interest in and to the Sign to the City, and the City hereby accepts the same, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold for the City and the City’s successors and assigns forever.
2. Delivery. The City shall arrange to move the Sign from its current location at Grayson County College in Denison, Texas, to a City storage facility within 30 days of the Effective Date (hereinafter defined) of this Agreement.
3. Sign Display. The City shall arrange for the display of the Sign on real property owned or controlled by the City at or near the corner of Houston Street and Crockett Street in Downtown Sherman. For the display, the City shall cause the preparation of design plans and specifications for a permanent masonry foundation with pole to which the Sign may be affixed so that the base of the Sign is above grade to the extent the City’s design professional determine (the “Sign Display”). The Sign Display shall include a written narrative of the history of the Sign, the Texas Theater and/or the City prepared by a historian selected with the mutual agreement of the parties.¹ Additionally, Donor has the right to affix a small dedication plaque to honor those honored (or something similar) when the Sign hung at the Bullock Museum in Austin, Texas. The City shall provide to Donor the proposed plans and specifications for the Sign Display, including the text of the historical narrative, within 6 months of the Effective Date. Donor must provide the City with written approval of the proposed plans and specifications for the Sign Display before the City is entitled or obligated to cause the construction of the Sign Display or otherwise

¹ The City is not required to apply for or obtain a historical marker for the Sign from the Texas Historical Commission or other governmental agency, but the City is entitled to do so in its sole discretion.

publicly display the Sign. Within 8 months of the City's receipt of Donor's written approval of the proposed plans and specifications for the Sign Display or on a timeline otherwise agreed to by the parties, the City shall cause the construction of the Sign Display and publicly display the Sign on the completed Sign Display. A general example image of the Sign Display is attached hereto as Exhibit A, but the parties agree that the proposed or final, approved plans for the Sign Display are not required to comply with the same. The Sign and Sign Display shall be covered under the City's property insurance coverage.

4. Alteration and Removal of the Sign and/or Sign Display. Donor agrees the City will be the owner of the Sign as of the Effective Date of this Agreement and therefore the City reserves the right to alter or remove the Sign and/or the Sign Display for any reason determined by the City in its sole discretion on or after the 20th anniversary of the Effective Date or at an earlier time if agreed by the parties in writing. Donor agrees the City is entitled to transfer ownership of, sell or destroy the Sign and/or the Sign Display without notification or compensation to Donor on or after the 20th anniversary of the Effective Date or at an earlier time if agreed by the parties in writing. If the City identifies a need to alter, remove, transfer ownership of, sell or destroy the Sign or the Sign Display before the 20th anniversary of the Effective Date and the parties cannot agree as contemplated in this Section, the City shall be entitled to alter, remove, transfer ownership of, sell or destroy the Sign and/or the Sign Display, in the City's sole discretion, by paying to Donor or his assigns the sum of one hundred fifty thousand dollars (\$150,000), which Donor or his assigns must accept.
5. No Security/Waiver of Damages/Liability. The City shall not be liable for any stolen or damaged property, including the Sign and Sign Display, and any other items associated and/or used in conjunction with the Sign. DONOR HEREBY RELEASES CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM, AND WAIVES ANY AND ALL RIGHTS TO ANY AND ALL CLAIMS FOR DAMAGES, OR OTHERWISE, IT MAY HAVE WITH REGARD TO STOLEN AND/OR DAMAGED PROPERTY, INCLUDING THE SIGN AND SIGN DISPLAY, AND ANY OTHER ITEMS ASSOCIATED AND/OR USED IN CONJUNCTION WITH THE SIGN OR SIGN DISPLAY.
6. Default. If a party fails to comply with the terms and conditions of this Agreement, and such failure is not cured within thirty (30) days after the defaulting party receives written notice of such failure from the non-defaulting party (or such longer period of time as is necessary to cure such default if the defaulting party is using good faith efforts to cure the same), then the non-defaulting party may (a) seek specific performance of this Agreement; or (b) terminate this Agreement. If the non-defaulting party is Donor and Donor terminates this Agreement under Subsection (b) of this Section, then the City shall pay to Donor the sum of one hundred fifty thousand dollars (\$150,000) within 60 days of the date the City receives Donor's written demand for the same as the mutually agreed purchase price for the Sign. In no event is the City required to pay Donor any sum of money for the purchase or transfer of ownership of the Sign if Donor has not exercised Donor's rights under this Subsection (b) of this Section following an uncured default by the City. The remedies described in this Section are the parties' sole and exclusive remedies in the event of an uncured default by a defaulting party.

7. Entirety of Agreement. This Agreement contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. This Agreement supersedes all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the parties prior to the Effective Date of this Agreement which does not concern the subject matter of this Agreement. No amendment to this Agreement shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of this Agreement except as specifically provided for in such amendment.
8. Miscellaneous Provisions.
- a. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third-party beneficiaries by entering into this Agreement.
 - b. No Waiver of Immunity. The parties acknowledge and agree that, in executing and performing this Agreement, the City has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
 - c. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
 - d. Execution. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
 - e. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.
 - f. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his

or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- g. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- h. Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- i. Miscellaneous Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- j. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.
- k. Miscellaneous Drafting Provision. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Zachary Flores, City Manager
Date: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk

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

DONOR:

Roger Sanders

Date: _____

Exhibit A
Example Image



- h. Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- i. Miscellaneous Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- j. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.
- k. Miscellaneous Drafting Provision. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Zachary Flores, City Manager
Date: _____

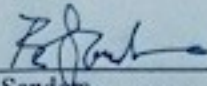
ATTEST:

APPROVED AS TO FORM:

City Clerk

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

DONOR:



Roger Sanders
Date: 7/25/2025



City Council Regular Meeting

Agenda Item No. F.2.

Meeting Date: 8/4/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Zachary Flores, Acting City Manager

Caption:

RESOLUTION NO. 7551

Authorizing Execution of a Third Amendment to the Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews

Issue:

To consider Amendment No. 3 to the Professional Services Agreement with Huitt-Zollars, Inc. for the Development Plan Reviews.

Background:

previous background listed below

On December 6, 2022, City Council awarded a Professional Services Agreement with Huitt-Zollars, Inc., for Development Plan Reviews in the amount of \$183,040.

On September 3, 2024, City staff executed Amendment No. 1 to this contract in the additional amount of \$49,900.

On December 16, 2024, City Council approved Amendment No. 2 to this contract in the additional amount of \$200,000.00

This Amendment No. 3 extends the contract by adding an estimated amount of \$125,000 for a total estimated amount of \$557,940.00.

This contract is needed to augment City staff engineering efforts and ensure timely review of development plans submitted to the Engineering Department. This contract is renewable upon agreement of both parties.

Capital Improvement Program:

Origination:

Engineering Department

Financial Consideration:

This will be funded on a project-by-project basis out of the Engineering Department's Professional Services budget.

Staff Recommendation:

It is recommended that Amendment No. 3 to the Professional Services Agreement with Huitt-Zollars, Inc. for

Development Plan Reviews be approved.

Alternatives:

As may be directed by the City Council.

Attachments:

1. Resolution No. 7551
2. Amendment No. 3
3. Res No. 6950 Professional Services Agreement
4. Amendment No. 1
5. Res No 7453 Amendment No 2

RESOLUTION NO. 7551

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A THIRD AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DEVELOPMENT PLAN REVIEWS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute Amendment No. 3 to the Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TX on this the 4th day of August 2025.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LEAH ROBERTS,
EXECUTIVE DIR. OF ADMIN. /
ACTING CITY CLERK

BY: _____
SHAWN TEAMANN, MAYOR

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

BY: _____
NAME: _____
CITY ATTORNEY

AMENDMENT NO. 3

TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF SHERMAN (CITY) AND
HUITT-ZOLLARS, INC. (CONSULTANT)
FOR THE DEVELOPMENT PLAN REVIEWS PROJECT

Dated September 6, 2022 (“Original Agreement”)

The CITY and CONSULTANT desire to amend the Original Agreement, Amendment No. 1, and Amendment No. 2 for the purpose of: (i) adding additional funding of \$125,000 to the Project, and (ii) making other necessary amendments as follows:

This Amendment No. 3 shall be effective on the date it is executed by the last party to execute it. The CITY and CONSULTANT hereby agree to amend ARTICLE 3 of the Original Agreement and Amendment No. 1, and Amendment No. 2 to read as follows:

- 3.1. **Compensation for Consultant’s Services** – As described in “Article 1, Consultants Services” of this Agreement, compensation for this Project shall be: (a) on an hourly basis in an amount not to exceed (1) **One Hundred Eighty-Three Thousand and Forty Dollars (\$183,040.00)** for the period from the Effective Date of the Original Agreement plus an additional **Forty-Nine Thousand Nine Hundred Dollars (\$49,900.00)** approved with Addendum No. 1 plus an additional **Two Hundred Thousand Dollars (\$200,000.00)** approved with Addendum No. 2 to the Effective Date of this Amendment No. 3, and (2) **One Hundred Twenty-five Thousand Dollars (\$125,000.00)** for the period from the Effective Date of this Amendment No. 3 to the first anniversary of the Effective Date of this Amendment No. 3 (collectively, “Consultant’s Fee”), for a total estimated amount of **Five Hundred Thirty-Two Thousand Nine Hundred Forty Dollars (\$557,940.00)**; and (b) paid in accordance with this Article 3 and as set forth in **Exhibit B** and **Exhibit B-1** and **Exhibit B-2** and **Exhibit B-3**.

The CITY and CONSULTANT hereby agree to amend the Original Agreement, Amendment No. 1, and Amendment No. 2 by adding EXHIBIT B-3 to read as follows:

EXHIBIT B-3 PLAN REVIEW FEE SCHEDULE

Compensation will be billed on the below fee schedule. An estimated budget of **One Hundred Twenty-Five Thousand (\$125,000.00)** is established for an estimated twelve (12) month period and may be renewed or extended at the mutual agreement of the City and Consultant. Below is the Huitt-Zollars Fee Schedule for the period of this Amendment No. 3.



**City of Sherman
2025 Plan Review
HOURLY RATE SHEET**

Engineering/Architecture

Principal	\$345.00
Sr. Project Manager	\$305.00
QA Manager	\$320.00
Design Principal	\$330.00
Sr. Structural Engineer	\$290.00
Project Manager	\$255.00
Sr. Civil Engineer	\$265.00
Sr. Mechanical Engineer	\$265.00
Sr. Electrical Engineer	\$265.00
Civil Engineer	\$215.00
Structural Engineer	\$215.00
Mechanical Engineer	\$215.00
Electrical Engineer	\$215.00
Plumbing Engineer	\$215.00
EIT	\$165.00
Sr. Architect	\$265.00
Sr. NL Architectural Staff	\$185.00
NL Architectural Staff	\$145.00
Architect	\$190.00
Architect Intern 1	\$120.00
Architect Intern 2	\$130.00
Architect Intern 3	\$155.00
Sr. Landscape Architect	\$210.00
Landscape Architect	\$165.00
Landscape Architect Intern	\$125.00
Sr. Planner	\$320.00
Planner	\$175.00
Planner Intern	\$140.00
Sr. Sustainability Professional	\$190.00
Sustainability Professional	\$155.00
Sr. Designer	\$190.00
Designer	\$150.00
Sr. CADD Technician	\$170.00
CADD Technician	\$120.00

Interior Design

Sr. Interior Designer	\$ 165.00
Interior Designer	\$ 135.00
Interior Designer Intern	\$ 110.00

Survey

Survey Manager	\$ 255.00
Sr. Project Surveyor	\$ 215.00
Project Surveyor	\$ 160.00
Sr. Survey Technician	\$ 140.00
Survey Technician	\$ 130.00

Survey Crews

1-Person Survey Crew	\$ 130.00
2-Person Survey Crew	\$ 195.00
3-Person Survey Crew	\$ 220.00

Construction

Sr. Construction Manager	\$ 235.00
Construction Manager	\$ 215.00
Resident Engineer	\$ 165.00
Sr. Resident Project Representative	\$ 215.00
Resident Project Representative	\$ 170.00
Sr. Construction Inspector	\$ 165.00

Administrative

Sr. Project Support	\$ 125.00
Project Support	\$ 110.00

Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

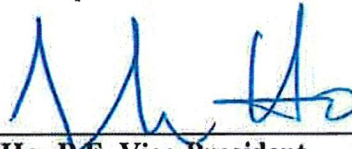
The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and Amendment No. 1 and Amendment No. 2 and acknowledge and agree that the Original Agreement and Amendment No. 1 and Amendment No. 2 remains in full force and effect, except as amended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

EXECUTED on behalf of CONSULTANT as shown below, and on behalf of the CITY by its City Manager (thereunto duly authorized) this ____ day of _____, 2025.

CITY:
City of Sherman, Texas
a Texas Home-Rule Municipality

CONSULTANT
Huitt-Zollars, Inc.
a Texas corporation

Dr. Zachary Flores, City Manager



John Ho, P.E. Vice President

ATTEST:

ATTEST:

Leah Roberts
Executive Director of Administration
Acting City Clerk



APPROVAL RECOMMENDED:



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

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

BY:

Ryan D. Pittman
City Attorney

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

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

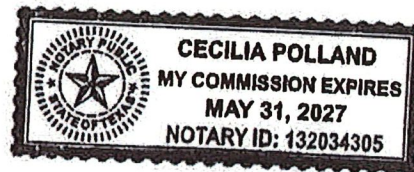
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 24th day of July, A.D. 2025.



Notary Public In and For Dallas County, Texas

My Commission Expires:

May 31, 2027



RESOLUTION NO. 6950

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DEVELOPMENT PLAN REVIEWS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

BY: DP
DAVID PLYLER, MAYOR

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
HUITT-ZOLLARS, INC.
FOR
PROFESSIONAL SERVICES

Made as of the 6 day of September, 2022:

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

and Consultant: **Huitt-Zollars, Inc.**
 5430 LBJ Freeway
 Suite 1500
 Dallas, Texas 75240
 Telephone: (214) 871-3311
 Facsimile: (214) 871-0757

for the following Project: **Development Plan Reviews**

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

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Development Plan Reviews Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) on an hourly basis in an amount not to exceed **One Hundred Eighty-Three Thousand and Forty Dollars (\$183,040.00)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in Exhibit B.
- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in Exhibit B, and consistent with Exhibit C, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for

Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

- 3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph ("**Additional Services**") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:
- 33.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.
 - 33.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 33.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 33.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 33.5 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.
 - 33.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.
- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual hours of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts

and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.

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

- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5

CONSULTANT'S INSURANCE REQUIREMENTS

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

Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

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

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL

ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF

CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

John Ho, P.E.
Vice President
Huitt-Zollars, Inc.
5430 LBJ Freeway
Suite 1500
Dallas, Texas 75240
Telephone: (214) 871-3311
Email: JHo@Huitt-Zollars.com

ARTICLE 12 MISCELLANEOUS

- 121 **Complete Agreement** – This Agreement, including the exhibits hereto labeled “A” through “E,” all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

- 12.1.1 **Exhibit A**, Scope of Services.
- 12.1.2 **Exhibit B**, Project Engineering Budget Summary.
- 12.1.3 **Exhibit C**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.
- 12.1.4 **Exhibit D**, Contractor Insurance Guidelines.
- 12.1.5 **Exhibit E**, Conflict of Interest Questionnaire, Form CIQ.

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

- 122 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting

shall be billed through Consultant, and there shall be no third party billing.

- 123 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 124 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 126 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 127 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 128 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 129 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

- 1210 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 1211 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 1212 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 1213 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 1214 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 1215 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 1216 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 1217 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 1218 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied

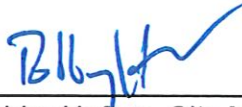
upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.

- 1219 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 1220 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 1221 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 1222 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2021-2022 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.
- 1223 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.
- 1224 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives,

employees and/or any other authorized third parties for whom City is legally responsible.

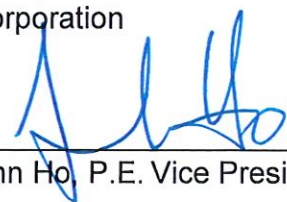
IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

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

By: 

Robby Hefton, City Manager

CONSULTANT:
Huitt-Zollars, Inc.
a Texas corporation

By: 

John Ho, P.E. Vice President

APPROVED AS TO FORM:



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

STATE OF TEXAS §
 §
COUNTY OF Dallas §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **JOHN HO**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **HUITT-ZOLLARS, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

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

Toni Lynn Hollingsworth
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 11-10-24

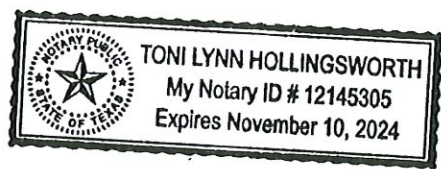


EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

The City of Sherman desires to retain an outside Consultant to assist the City in providing private development engineering plan review. The scope of services of the plan review tasks are but not limited to the following:

- Site Plan
- Grading Plan
- Water and Wastewater Plan
- Drainage Area Map
- Storm Sewer Plan & Calculation(s) with Detention (if required)
- Paving Plan
- Structural Retaining walls that benefit public improvements
- Erosion Control Plan
- Traffic Study
- Preliminary and Final Plat
- Flood Study
- Compliance with City Codes & Regulations, Construction Materials and Construction Details
- Assist City with review and issuance of appropriate project permits (i.e. driveway, Utility installation, etc.)
- Pre-Development Conference
- Assist with Preparation of 3-way contracts
- Pre-Construction Meeting
- Construction Observation
- Final Acceptance
- Assist with obtaining project(s) 2-year 100% warranty
- Any other tasks as directed by the City of Sherman

**EXHIBIT B
PROJECT ENGINEERING BUDGET**

Compensation will be billed on an hourly basis, an estimated budget of **One Hundred and Eighty-Three Thousand and Forty (\$183,040.00)** is established for a twelve (12) months period and could be renewed at the discretion of the City. Below is the Huitt-Zollars Hourly Rate Sheet for period ending December 31, 2022.

Huitt-Zollars 2022 Hourly Rate Sheet

Position	Hourly Rate
Principal	\$285.00
Sr. Project Manager	\$275.00
QA Manager	\$250.00
Design Principal	\$240.00
Sr. Structural Engineer	\$240.00
Project Manager	\$225.00
Sr. Civil Engineer	\$220.00
Sr. Mechanical Engineer	\$205.00
Sr. Electrical Engineer	\$195.00
Civil Engineer	\$180.00
Structural Engineer	\$195.00
Mechanical Engineer	\$160.00
Electrical Engineer	\$160.00
Plumbing Engineer	\$160.00
EIT	\$130.00
Sr. Architect	\$220.00
Architect	\$165.00
Architect Intern 1	\$100.00
Architect Intern 2	\$115.00
Architect Intern 3	\$145.00
Sr. Landscape Architect	\$195.00
Landscape Architect	\$155.00
Landscape Architect Intern	\$115.00
Sr. Planner	\$255.00
Planner	\$165.00
Planner Intern	\$115.00
Sr. Sustainability Professional	\$175.00
Sustainability Professional	\$145.00
Sr. Designer	\$160.00
Designer	\$140.00
Sr. CADD Technician	\$140.00
CADD Technician	\$110.00

EXHIBIT B

Survey Manager	\$210.00
Sr. Project Surveyor	\$200.00
Project Supervisor	\$150.00
Survey Technician	\$120.00
1-Person Survey Crew	\$120.00
2-Person Survey Crew	\$180.00
3-Person Survey Crew	\$205.00
Construction Manager	\$200.00
Resident Engineer	\$155.00
Sr. Resident Project Representative	\$180.00
Resident Project Representative	\$140.00
Sr. Project Support	\$110.00
Project Support	\$90.00

Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT D
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

EXHIBIT D
CONTRACTOR'S INSURANCE GUIDELINES

- X 4. Professional Liability
- Minimum \$2,000,000.00 in the aggregate
 - Minimum \$1,000,000.00 each claim;
 - Minimum \$2,000,000.00 in the aggregate
- X 5. Umbrella Coverage of Excess Liability Coverage
- An amount of \$2,000,000.00
 - Minimum \$2,000,000.00 in the aggregate
- X 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.
- X 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title and bid number.
11. Other Insurance Requirements (State Below):

EXHIBIT E
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.		OFFICE USE ONLY
1 Name of vendor who has a business relationship with local governmental entity. None		Date Received
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. None Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☒ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☒ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7  Signature of vendor doing business with the governmental entity		09/06/2022 Date

AMENDMENT NO. 1

TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF SHERMAN (CITY) AND
HUITT-ZOLLARS, INC. (CONSULTANT)
FOR THE DEVELOPMENT PLAN REVIEWS PROJECT

Dated September 6, 2022 (“Original Agreement”)

Owner and Engineer desire to amend the Original Agreement for the purpose of: (i) renewing the contract for another twelve (12) months, and (ii) making other necessary amendments as follows:

This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The CITY and CONSULTANT hereby agree to amend ARTICLE 3 of the Original Agreement to read as follows:

3.1. **Compensation for Consultant’s Services** – As described in “Article 1, Consultants Services” of this Agreement, compensation for this Project shall be: (a) on an hourly basis in an amount not to exceed **One Hundred Eighty-Three Thousand and Forty Dollars (\$183,040.00)** for the period from the Effective Date of the Original Agreement to the Effective Date of this Amendment No. 1, and in an amount not to exceed **One Hundred Fifty Thousand Dollars (\$150,000.00)** for the period from the Effective Date of this Amendment No. 1 to the first anniversary of the Effective Date of this Amendment No. 1 (collectively, “Consultant’s Fee”); and (b) paid in accordance with this Article 3 and as set forth in **Exhibit B** and **Exhibit B-1**.

The CITY and CONSULTANT hereby agree to amend ARTICLE 12 of the Original Agreement to read as follows:

12.22. **Appropriation of Funds** – Funds are not presently budgeted for City’s performance under this Agreement beyond the end of the City’s 2023-2024 fiscal year. City will give Consultant sixty (60) days’ notice if funds for the City’s performance are not budgeted to continue beyond that time. City shall not have liability for payment of any money for services performed after the end of City’s 2023-2024 fiscal year that have not been encumbered with a Purchase Order (PO) unless and until such funds are budgeted.

The CITY and CONSULTANT hereby agree to amend the Original Agreement by adding EXHIBIT B-1 to read as follows:

EXHIBIT B-1 PLAN REVIEW FEE SCHEDULE

Compensation will be billed on the below fee schedule. An estimated budget of **One Hundred Fifty Thousand (\$150,000.00)** is established for a twelve (12) month period and may be renewed at the mutual agreement of the City and Consultant. Below is the Huitt-Zollars Fee Schedule for the period of this Amendment No. 1.



Dallas/Fort Worth Office

2024 HOURLY RATE SHEET

Engineering/Architecture

Principal	\$325.00
Sr. Project Manager	\$285.00
QA Manager	\$300.00
Design Principal	\$310.00
Sr. Structural Engineer	\$270.00
Project Manager	\$240.00
Sr. Civil Engineer	\$250.00
Sr. Mechanical Engineer	\$250.00
Sr. Electrical Engineer	\$250.00
Civil Engineer	\$200.00
Structural Engineer	\$200.00
Mechanical Engineer	\$200.00
Electrical Engineer	\$200.00
Plumbing Engineer	\$200.00
EIT	\$155.00
Sr. Architect	\$250.00
Sr. NL Architectural Staff	\$170.00
NL Architectural Staff	\$135.00
Architect	\$175.00
Architect Intern 1	\$110.00
Architect Intern 2	\$120.00
Architect Intern 3	\$145.00
Sr. Landscape Architect	\$195.00
Landscape Architect	\$155.00
Landscape Architect Intern	\$115.00
Sr. Planner	\$300.00
Planner	\$165.00
Planner Intern	\$130.00
Sr. Sustainability Professional	\$175.00
Sustainability Professional	\$145.00
Sr. Designer	\$175.00
Designer	\$140.00
Sr. CADD Technician	\$160.00
CADD Technician	\$110.00

Interior Design

Sr. Interior Designer	\$ 155.00
Interior Designer	\$ 125.00
Interior Designer Intern	\$ 100.00

Survey

Survey Manager	\$240.00
Sr. Project Surveyor	\$200.00
Project Surveyor	\$150.00
Sr. Survey Technician	\$130.00
Survey Technician	\$120.00

Survey Crews

1-Person Survey Crew	\$120.00
2-Person Survey Crew	\$180.00
3-Person Survey Crew	\$205.00

Construction

Sr. Construction Manager	\$220.00
Construction Manager	\$200.00
Resident Engineer	\$155.00
Sr. Resident Project Representative	\$200.00
Resident Project Representative	\$160.00
Sr. Construction Inspector	\$155.00

Administrative

Sr. Project Support	\$115.00
Project Support	\$100.00

Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

**Subject to Annual Escalation

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

EXECUTED on behalf of CONSULTANT as shown below, and on behalf of the CITY by its City Manager (thereunto duly authorized) this ____ day of _____, 2024.

CITY:
City of Sherman, Texas
a Texas Home-Rule Municipality

CONSULTANT
Huitt-Zollars, Inc.
a Texas corporation

Robby Hefton, City Manager

John Ho, P.E. Vice President

ATTEST:

ATTEST:

Linda Ashby
City Clerk

APPROVAL RECOMMENDED:

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

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

BY: _____
Ryan D. Pittman
City Attorney

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

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

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

Notary Public In and For Dallas County, Texas

My Commission Expires:

RESOLUTION NO. 7453

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DEVELOPMENT PLAN REVIEWS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a second amendment to the Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

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

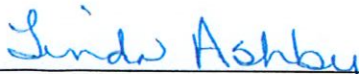
CITY OF SHERMAN, TEXAS

BY:


SHAWN TEAMANN, MAYOR

ATTEST:

BY:


LINDA ASHBY, CITY CLERK

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

BY:


RYAN D. PITTMAN, CITY ATTORNEY

AMENDMENT NO. 2

TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF SHERMAN (CITY) AND
HUITT-ZOLLARS, INC. (CONSULTANT)
FOR THE DEVELOPMENT PLAN REVIEWS PROJECT

Dated September 6, 2022 ("Original Agreement")

The CITY and CONSULTANT desire to amend the Original Agreement and the Amendment No. 1 for the purpose of: (i) adding additional funding of \$200,000 to the Project, and (ii) making other necessary amendments as follows:

This Amendment No. 2 shall be effective on the date it is executed by the last party to execute it. The CITY and CONSULTANT hereby agree to amend ARTICLE 3 of the Original Agreement and Amendment No. 1 to read as follows:

- 3.1. **Compensation for Consultant's Services** – As described in "Article 1, Consultants Services" of this Agreement, compensation for this Project shall be: (a) on an hourly basis in an amount not to exceed (1) **One Hundred Eighty-Three Thousand and Forty Dollars (\$183,040.00)** for the period from the Effective Date of the Original Agreement plus an additional **Forty-Nine Thousand Nine Hundred Dollars (\$49,900.00)** approved with Addendum No. 1 to the Effective Date of this Amendment No. 2, and (2) **Two Hundred Thousand Dollars (\$200,000.00)** for the period from the Effective Date of this Amendment No. 2 to the first anniversary of the Effective Date of this Amendment No. 2 (collectively, "Consultant's Fee"), for a total estimated amount of **Four Hundred Thirty-Two Thousand Nine Hundred Forty Dollars (\$432,940.00)**; and (b) paid in accordance with this Article 3 and as set forth in Exhibit B and Exhibit B-1 and Exhibit B-2.

The CITY and CONSULTANT hereby agree to amend ARTICLE 12 of the Original Agreement and Amendment No. 1 to read as follows:

- 12.22. **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2024-2025 fiscal year. City will give Consultant sixty (60) days' notice if funds for the City's performance are not budgeted to continue beyond that time. City shall not have liability for payment of any money for services performed after the end of City's 2024-2025 fiscal year that have not been encumbered with a Purchase Order (PO) unless and until such funds are budgeted.

The CITY and CONSULTANT hereby agree to amend the Original Agreement and Amendment No. 1 by adding EXHIBIT B-2 to read as follows:

EXHIBIT B-2 PLAN REVIEW FEE SCHEDULE

Compensation will be billed on the below fee schedule. An estimated budget of **Two Hundred Thousand (\$200,000.00)** is established for an estimated twelve (12) month period and may be renewed or extended at the mutual agreement of the City and Consultant. Below is the Huitt-Zollars Fee Schedule for the period of this Amendment No. 2.



**City of Sherman
2025 Plan Review
HOURLY RATE SHEET**

Engineering/Architecture

Principal	\$345.00
Sr. Project Manager	\$305.00
QA Manager	\$320.00
Design Principal	\$330.00
Sr. Structural Engineer	\$290.00
Project Manager	\$255.00
Sr. Civil Engineer	\$265.00
Sr. Mechanical Engineer	\$265.00
Sr. Electrical Engineer	\$265.00
Civil Engineer	\$215.00
Structural Engineer	\$215.00
Mechanical Engineer	\$215.00
Electrical Engineer	\$215.00
Plumbing Engineer	\$215.00
EIT	\$165.00
Sr. Architect	\$265.00
Sr. NL Architectural Staff	\$185.00
NL Architectural Staff	\$145.00
Architect	\$190.00
Architect Intern 1	\$120.00
Architect Intern 2	\$130.00
Architect Intern 3	\$155.00
Sr. Landscape Architect	\$210.00
Landscape Architect	\$165.00
Landscape Architect Intern	\$125.00
Sr. Planner	\$320.00
Planner	\$175.00
Planner Intern	\$140.00
Sr. Sustainability Professional	\$190.00
Sustainability Professional	\$155.00
Sr. Designer	\$190.00
Designer	\$150.00
Sr. CADD Technician	\$170.00
CADD Technician	\$120.00

Interior Design

Sr. Interior Designer	\$ 165.00
Interior Designer	\$ 135.00
Interior Designer Intern	\$ 110.00

Survey

Survey Manager	\$ 255.00
Sr. Project Surveyor	\$ 215.00
Project Surveyor	\$ 160.00
Sr. Survey Technician	\$ 140.00
Survey Technician	\$ 130.00

Survey Crews

1-Person Survey Crew	\$ 130.00
2-Person Survey Crew	\$ 195.00
3-Person Survey Crew	\$ 220.00

Construction

Sr. Construction Manager	\$ 235.00
Construction Manager	\$ 215.00
Resident Engineer	\$ 165.00
Sr. Resident Project Representative	\$ 215.00
Resident Project Representative	\$ 170.00
Sr. Construction Inspector	\$ 165.00

Administrative

Sr. Project Support	\$ 125.00
Project Support	\$ 110.00

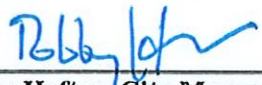
Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

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

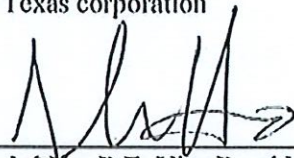
EXECUTED on behalf of CONSULTANT as shown below, and on behalf of the CITY by its City Manager (thereunto duly authorized) this 19 day of December, 2024.

CITY:
City of Sherman, Texas
a Texas Home-Rule Municipality



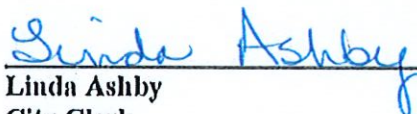
Robby Hefton, City Manager

CONSULTANT
Huitt-Zollars, Inc.
a Texas corporation



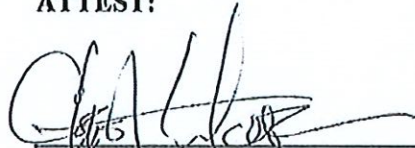
John Kato, P.E. Vice President

ATTEST:



Linda Ashby
City Clerk

ATTEST:



Notary Public

APPROVAL RECOMMENDED:



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

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

BY:



Ryan D. Pittman
City Attorney

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

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

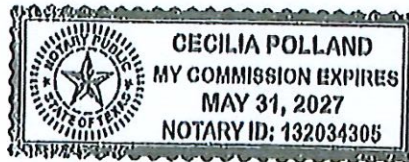
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12th day of December, A.D. 2024.

Cecilia Polland

Notary Public In and For Dallas County, Texas

My Commission Expires:

May 31, 2027



AMENDMENT NO. 1

TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF SHIRMAN (CITY) AND
HUITT-ZOLLARS, INC. (CONSULTANT)
FOR THE DEVELOPMENT PLAN REVIEWS PROJECT

Dated September 6, 2022 ("Original Agreement")

Owner and Engineer desire to amend the Original Agreement for the purpose of: (i) adding additional funding of \$49,900.00 to the contract, and (ii) making other necessary amendments as follows:

This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The CITY and CONSULTANT hereby agree to amend ARTICLE 3 of the Original Agreement to read as follows:

- 3.1. Compensation for Consultant's Services – As described in "Article 1, Consultants Services" of this Agreement, compensation for this Project shall be: (a) on an hourly basis in an amount not to exceed **One Hundred Eighty-Three Thousand and Forty Dollars (\$183,040.00)** with an Effective Date of the Original Agreement, and an additional amount effective with Amendment No. 1 not to exceed **Forty-Nine Thousand Nine Hundred Dollars (\$49,900.00)** for a total amount not to exceed of **Two Hundred Thirty-Two Thousand Nine Hundred Forty Dollars (\$232,940.00)** (collectively, "Consultant's Fee"); and (b) paid in accordance with this Article 3 and as set forth in Exhibit B and Exhibit B-1.

The CITY and CONSULTANT hereby agree to amend ARTICLE 12 of the Original Agreement to read as follows:

- 12.22. Appropriation of Funds – Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2023-2024 fiscal year. City will give Consultant sixty (60) days' notice if funds for the City's performance are not budgeted to continue beyond that time. City shall not have liability for payment of any money for services performed after the end of City's 2023-2024 fiscal year that have not been encumbered with a Purchase Order (PO) unless and until such funds are budgeted.

The CITY and CONSULTANT hereby agree to amend the Original Agreement by adding EXHIBIT B-1 to read as follows:

EXHIBIT B-1 PLAN REVIEW FEE SCHEDULE

Compensation will be billed on the below fee schedule after execution of Amendment No. 1. A total contract not to exceed amount of **Two Hundred Thirty-Two Thousand Nine Hundred Forty Dollars (\$232,940.00)** is established and may be renewed at the mutual agreement of the City and Consultant. Below is the Huitt-Zollars Fee Schedule for this Amendment No. 1.



Dallas/Fort Worth Office

2024

HOURLY RATE SHEET

Engineering/Architecture

Principal	\$325.00
Sr. Project Manager	\$285.00
QA Manager	\$300.00
Design Principal	\$310.00
Sr. Structural Engineer	\$270.00
Project Manager	\$240.00
Sr. Civil Engineer	\$250.00
Sr. Mechanical Engineer	\$250.00
Sr. Electrical Engineer	\$250.00
Civil Engineer	\$200.00
Structural Engineer	\$200.00
Mechanical Engineer	\$200.00
Electrical Engineer	\$200.00
Plumbing Engineer	\$200.00
EIT	\$155.00
Sr. Architect	\$250.00
Sr. NL Architectural Staff	\$170.00
NL Architectural Staff	\$135.00
Architect	\$175.00
Architect Intern 1	\$110.00
Architect Intern 2	\$120.00
Architect Intern 3	\$145.00
Sr. Landscape Architect	\$195.00
Landscape Architect	\$155.00
Landscape Architect Intern	\$115.00
Sr. Planner	\$300.00
Planner	\$165.00
Planner Intern	\$130.00
Sr. Sustainability Professional	\$175.00
Sustainability Professional	\$145.00
Sr. Designer	\$175.00
Designer	\$140.00
Sr. CADD Technician	\$160.00
CADD Technician	\$110.00

Interior Design

Sr. Interior Designer	\$ 155.00
Interior Designer	\$ 125.00
Interior Designer Intern	\$ 100.00

Survey

Survey Manager	\$240.00
Sr. Project Surveyor	\$200.00
Project Surveyor	\$150.00
Sr. Survey Technician	\$130.00
Survey Technician	\$120.00

Survey Crews

1-Person Survey Crew	\$120.00
2-Person Survey Crew	\$180.00
3-Person Survey Crew	\$205.00

Construction

Sr. Construction Manager	\$220.00
Construction Manager	\$200.00
Resident Engineer	\$155.00
Sr. Resident Project Representative	\$200.00
Resident Project Representative	\$160.00
Sr. Construction Inspector	\$155.00

Administrative

Sr. Project Support	\$115.00
Project Support	\$100.00

Reimbursable Expenses

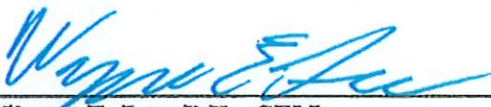
Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

**Subject to Annual Escalation

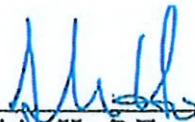
The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1. To the extent that any provision contained herein conflicts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

EXECUTED on behalf of CONSULTANT as shown below, and on behalf of the CITY by its City Manager (thereunto duly authorized) this 3rd day of SEPTEMBER, 2024.

CITY:
City of Sherman, Texas
a Texas Home-Rule Municipality


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

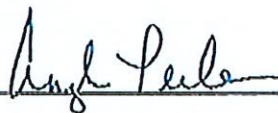
CONSULTANT
Hultt-Zollars, Inc.
a Texas corporation


John Ho, P.E.
Vice President

ATTEST:


Krista Jenkins

ATTEST:


Angel Perla

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

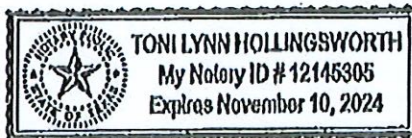
BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared JOHN HO of HUITT-ZOLLARS, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 27th day of August, A.D. 2024.

Toni Lynn Hollingsworth
Notary Public In and For Dallas County, Texas

My Commission Expires:

11-10-24



RESOLUTION NO. 6950

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DEVELOPMENT PLAN REVIEWS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

ATTEST:

BY:

Linda Ashby
LINDA ASHBY, CITY CLERK

BY:

DP
DAVID PLYLER, MAYOR

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

BY:

R. Pittman
RYAN D. PITTMAN, CITY ATTORNEY

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

Linda Ashby
CITY CLERK, SHERMAN, TEXAS

ISSUED:

9.27.2022

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
HUITT-ZOLLARS, INC.
FOR
PROFESSIONAL SERVICES

Made as of the 6 day of September, 2022:

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

and Consultant: Huitt-Zollars, Inc.
 5430 LBJ Freeway
 Suite 1500
 Dallas, Texas 75240
 Telephone: (214) 871-3311
 Facsimile: (214) 871-0757

for the following Project: Development Plan Reviews

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

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Development Plan Reviews Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1
CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) on an hourly basis in an amount not to exceed **One Hundred Eighty-Three Thousand and Forty Dollars (\$183,040.00)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in Exhibit B.
- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in Exhibit B, and consistent with Exhibit C, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for

Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

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

33.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.

33.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

33.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

33.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

33.5 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.

33.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual hours of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts

and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.

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

- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

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

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10
INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL

ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF

CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

John Ho, P.E.
Vice President
Huitt-Zollars, Inc.
5430 LBJ Freeway
Suite 1500
Dallas, Texas 75240
Telephone: (214) 871-3311
Email: JHo@Huitt-Zollars.com

ARTICLE 12 MISCELLANEOUS

- 121 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "E," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

- 12.1.1 **Exhibit A**, Scope of Services.
- 12.1.2 **Exhibit B**, Project Engineering Budget Summary.
- 12.1.3 **Exhibit C**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.
- 12.1.4 **Exhibit D**, Contractor Insurance Guidelines.
- 12.1.5 **Exhibit E**, Conflict of Interest Questionnaire, Form CIQ.

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

- 122 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting

shall be billed through Consultant, and there shall be no third party billing.

- 123 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 124 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 126 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 127 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 128 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 129 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

- 12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.16 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied

upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.

- 1219 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 1220 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 1221 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 1222 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2021-2022 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.
- 1223 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.
- 1224 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives,

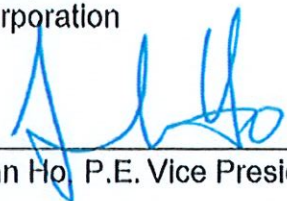
employees and/or any other authorized third parties for whom City is legally responsible.

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

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

By: 
Robby Hefton, City Manager

CONSULTANT:
Hultt-Zollars, Inc.
a Texas corporation

By: 
John Ho P.E. Vice President

APPROVED AS TO FORM:


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

STATE OF TEXAS §
 §
COUNTY OF Dallas §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED JOHN HO, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR HUITT-ZOLLARS, INC., AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

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

Toni Lynn Hollingsworth
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 11-10-24

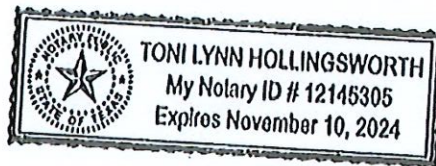


EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

The City of Sherman desires to retain an outside Consultant to assist the City in providing private development engineering plan review. The scope of services of the plan review tasks are but not limited to the following:

- Site Plan
- Grading Plan
- Water and Wastewater Plan
- Drainage Area Map
- Storm Sewer Plan & Calculation(s) with Detention (if required)
- Paving Plan
- Structural Retaining walls that benefit public improvements
- Erosion Control Plan
- Traffic Study
- Preliminary and Final Plat
- Flood Study
- Compliance with City Codes & Regulations, Construction Materials and Construction Details
- Assist City with review and issuance of appropriate project permits (i.e. driveway, Utility installation, etc.)
- Pre-Development Conference
- Assist with Preparation of 3-way contracts
- Pre-Construction Meeting
- Construction Observation
- Final Acceptance
- Assist with obtaining project(s) 2-year 100% warranty
- Any other tasks as directed by the City of Sherman

**EXHIBIT B
PROJECT ENGINEERING BUDGET**

Compensation will be billed on an hourly basis, an estimated budget of **One Hundred and Eighty-Three Thousand and Forty (\$183,040.00)** is established for a twelve (12) months period and could be renewed at the discretion of the City. Below is the Huitt-Zollars Hourly Rate Sheet for period ending December 31, 2022.

Huitt-Zollars 2022 Hourly Rate Sheet

Position	Hourly Rate
Principal	\$285.00
Sr. Project Manager	\$275.00
QA Manager	\$250.00
Design Principal	\$240.00
Sr. Structural Engineer	\$240.00
Project Manager	\$225.00
Sr. Civil Engineer	\$220.00
Sr. Mechanical Engineer	\$205.00
Sr. Electrical Engineer	\$195.00
Civil Engineer	\$180.00
Structural Engineer	\$195.00
Mechanical Engineer	\$160.00
Electrical Engineer	\$160.00
Plumbing Engineer	\$160.00
EIT	\$130.00
Sr. Architect	\$220.00
Architect	\$165.00
Architect Intern 1	\$100.00
Architect Intern 2	\$115.00
Architect Intern 3	\$145.00
Sr. Landscape Architect	\$195.00
Landscape Architect	\$155.00
Landscape Architect Intern	\$115.00
Sr. Planner	\$255.00
Planner	\$165.00
Planner Intern	\$115.00
Sr. Sustainability Professional	\$175.00
Sustainability Professional	\$145.00
Sr. Designer	\$160.00
Designer	\$140.00
Sr. CADD Technician	\$140.00
CADD Technician	\$110.00

EXHIBIT B

Survey Manager	\$210.00
Sr. Project Surveyor	\$200.00
Project Supervisor	\$150.00
Survey Technician	\$120.00
1-Person Survey Crew	\$120.00
2-Person Survey Crew	\$180.00
3-Person Survey Crew	\$205.00
Construction Manager	\$200.00
Resident Engineer	\$155.00
Sr. Resident Project Representative	\$180.00
Resident Project Representative	\$140.00
Sr. Project Support	\$110.00
Project Support	\$90.00
<u>Reimbursable Expenses</u>	
Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

**EXHIBIT D
CONTRACTOR'S INSURANCE GUIDELINES**

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

**EXHIBIT D
CONTRACTOR'S INSURANCE GUIDELINES**

- X 4. Professional Liability
- " Minimum \$2,000,000.00 in the aggregate
 - " Minimum \$1,000,000.00 each claim;
 - " Minimum \$2,000,000.00 in the aggregate
- X 5. Umbrella Coverage of Excess Liability Coverage
- " An amount of \$2,000,000.00
 - " Minimum \$2,000,000.00 in the aggregate
- X 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.
- X 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title and bid number.
11. Other Insurance Requirements (State Below):

EXHIBIT E
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY	
1 Name of vendor who has a business relationship with local governmental entity. None		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. None Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(n)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☒ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☒ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(u)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 Signature of vendor doing business with the governmental entity 09/06/2022 Date		

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 1/1/2021



City Council Regular Meeting

Agenda Item No. F.3.

Meeting Date: 8/4/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Zachary Flores, Acting City Manager

Caption:

RESOLUTION NO. 7552

Authorizing Execution of a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the FM1417 Traffic Signals Design at Bel-Air Blvd. and Luella Rd.

Issue:

To consider a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the FM1417 Traffic Signals Design at Bel-Air Blvd. and Luella Rd. project.

Background:

Traffic Impact studies have shown the need for traffic signals at FM 1417 and Bel Air Boulevard and at FM 1417 and Luella Road. The installation of traffic signals at FM 1417 and Bel Air Boulevard by the City of Sherman after Phase 1 is sufficiently built out is part of the Development Agreement with Bel Air Village.

Capital Improvement Program:

These Capital Improvements are planned to be constructed in FY2026.

Origination:

Engineering Department

Financial Consideration:

Funding needed for this contract is \$180,200.00 and is in current CIP funds.

Staff Recommendation:

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

Alternatives:

As may be directed by City Council.

Attachments:

1. Resolution No. 7552
2. Professional Services Agreement Form - FM1417-IntersectionImprovements_Final

RESOLUTION NO. 7552

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE FM1417 TRAFFIC SIGNALS DESIGN AT BEL-AIR BLVD. AND LUELLA RD.; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the FM1417 Traffic Signals Design at Bel-Air Blvd. and Luella Rd., in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 4th day of August 2025.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LEAH ROBERTS,
EXECUTIVE DIR. OF ADMIN. /
ACTING CITY CLERK

BY: _____
SHAWN TEAMANN, MAYOR

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

BY: _____
NAME: _____
CITY ATTORNEY

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
KIMLEY-HORN AND ASSOCIATES, INC
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2025:

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

and Consultant: **Kimley-Horn and Associates, Inc.**
 2600 North Central Expressway, Suite 400
 Richardson, Texas 75080
 Telephone: (972) 770-3030

for the following Project: **FM 1417 Traffic Signals Design at Bel-Air Blvd. and Luella Rd.**

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

WHEREAS, City desires to engage Consultant to provide professional services for the FM 1417 Traffic Signals Design at Bel-Air Blvd. and Luella Rd. Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a Lump Sum basis in an amount not to exceed **One Hundred and Eighteen Thousand Dollars (\$118,000.00)**; and (b) for Special Services, in an amount not to exceed **Sixty Seven Thousand Two Hundred Dollars (\$67,200.00)** (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in **Exhibit B**.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in **Exhibit C**, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to

declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

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

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

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

3.3.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.

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

Hourly Billable Rates by Position

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

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

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

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

- 3.10 **Fixed Budget Limit for Construction Cost** – If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in this Agreement. All adjustments in the Scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of the agreed upon price prior to bidding (Current Opinion of Probable Construction Cost is \$500,000) due to the negligence or other fault of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in **Exhibit A**. Upon completion of the work, or any earlier termination of this Agreement under **Article 3** and/or **Article 8** of this Agreement, Consultant will revise plans, data, documents, maps, and any other information as defined in **Exhibit A** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under **Article 3** and/or **Article 8** of this Agreement, and promptly furnish the same to City in an acceptable electronic format. All such reproductions shall be the property of City who may use them without Consultant's permission for any purpose relating to the Project,

including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at City's own risk.

- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) under this Agreement are instruments of service in respect of the Project and property of City. Upon completion of the Project, all of the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) shall thereafter be subject to the Texas Public Information Act (Chapter 552, TEX. GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT’S ACCOUNTING RECORDS

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

ARTICLE 7

AUDITS AND RECORDS/VENDOR DISCLOSURE

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

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

ARTICLE 8

TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS “CITY” FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES AND EXPENSES (INCLUDING ATTORNEY’S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS “CONSULTANT” FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, “CLAIMS”). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM “CLAIMS” IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND

UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS

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

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

L. Nathan Ante, P.E.

Principal

Kimley-Horn and Associates, Inc.

225 E John W Carpenter Freeway, Suite 1100

Irving, TX 75062

Telephone: (214) 420-5603

Email: Nathan.Ante@kimley-horn.com

ARTICLE 12 MISCELLANEOUS

12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled “A” through “F,” all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 **Exhibit A**, Scope of Services.

12.1.2 **Exhibit B**, Project Engineering Budget Summary.

12.1.3 **Exhibit C**, Guidelines for Computer Aided Design and Drafting (CADD).

12.1.4 **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.5 **Exhibit E**, Contractor Insurance Guidelines.

12.1.6 **Exhibit F**, Conflict of Interest Questionnaire, Form CIQ.

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

12.2 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

12.3 **Attorney’s Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys’ fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV’T CODE § 271.153, as it exists or may be amended, if applicable.

12.4 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees,

representatives and administrators are hereby bound to the terms and conditions of this Agreement.

- 12.5 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have

waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.

- 12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.16 **No Third-Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

- 12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's current fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's current fiscal year unless and until such funds are budgeted.
- 12.23 **Certifications Required by Texas Law** – In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott Israel and will not boycott Israel during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 809 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott energy companies and will not boycott energy companies during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 2274 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of any contract with City, including during the term of this Agreement. The foregoing terms have the meanings ascribed to them in the referenced statutes if defined therein.
- 12.24 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

12.25 **Reference to City** – When referring to “City,” this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

CITY:

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

By: _____
Dr. Zachary Flores, CPM,CID,CIC
City Manager

CONSULTANT:

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

By: 
L. Nathan Ante, P.E.
Principal

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF Dallas §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **L. NATHAN ANTE, P.E.**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE SENIOR VICE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **KIMLEY-HORN AND ASSOCIATES, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 21st DAY OF July 2025.



Tina L Trevino

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: 2/28/2028

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

Kimley-Horn will prepare construction plans for new traffic signals at the intersections of FM 1417 at Bel Air Boulevard and FM 1417 at Luella Road. The two intersections will be designed as two separate construction packages as the intersections will be bid and constructed separately (managed by City of Sherman during bidding and construction phases). The project will be reviewed and approved by the City of Sherman and TxDOT. The proposed traffic signal designs will include strain poles with span wire signals and potential future mast arm pole locations identified based on readily available future FM 1417 widening plans/concepts. The project will include topographic and right-of-way (ROW) [boundary] survey for the 2 project intersections, traffic signal design construction plans, and limited bidding and construction phase services. Metes and bound documents may be prepared by Kimley-Horn, if needed. City of Sherman will acquire the ROW or easements identified. Right-of-way previously acquired (or known to be in the process of being acquired) and anticipated future ROW acquisition (by TxDOT/City) will be shown in the plans for reference if readily available. The project does not include subsurface utility engineering, but topographic survey will pick up utility locates provided by 811 services. It is anticipated that the traffic signal construction plans will require the contractor to provide vacuum excavation for traffic signal pole foundation locations prior to installing drilled shaft foundations to verify that pole locations are clear of existing utilities. No paving improvements (driveways, roadways, sidewalks, curb ramps) are anticipated to be included as part of the project except for adding a north-south pedestrian crossing at FM 1417 at Bel Air Boulevard (pedestrian crossing requested by City Staff).

II. GENERAL REQUIREMENTS

- A.** Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B.** Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
- C.** Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents,

EXHIBIT A SCOPE OF SERVICES

provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

- D.** The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
- E.** Communications and Reporting:
- i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
 - ii Attend review meeting with the City at the end of each design phase.
 - iii Prepare and submit monthly invoices in the format acceptable to the City.
 - iv Prepare and submit monthly progress reports.
 - v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
 - vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
 - vii With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs and make changes necessary to meet their requirements.
 - viii Attend additional project coordination meetings, if needed.

III. TASK SUMMARY. BASIC SERVICES

A. Topographic and Boundary Survey

- a. Property Research
 - i. Collect property owner and record information.
 - ii. Gather existing plat information.
 - iii. Gather existing right-of-way and easement information. Identify easements available through typical research methodologies (i.e. plats, courthouse filings, etc.). Undocumented easements may not be identified.
- b. Design Survey
 - i. The limits of the survey will include the intersections of FM 1417 at Bel Air Boulevard and FM 1417 at Luella Road. All existing approaches will be surveyed up to 200' beyond the curb return. The width will be the width of the existing ROW plus an additional 25' beyond the ROW lines.

EXHIBIT A SCOPE OF SERVICES

- ii. Survey will identify and locate existing topographic elements within the corridor including, but not limited to the following:
 - a. Property corner monumentation;
 - b. Existing pavement, curbs, driveways, sidewalks, barrier free ramps, etc.;
 - c. Existing storm sewer inlets, manholes, junction boxes (including culvert sizes and invert elevations);
 - d. Existing driveway culverts and swales;
 - e. Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities;
 - f. Traffic signal poles, cabinets, and other signal equipment;
 - g. Signs (excluding temporary signs);
 - h. Trees and landscaping, including species and caliper (for 6" caliper and up) (Dense stands of trees can be generally described by their limits);
 - i. Permanent structures;
 - j. Retaining walls;
 - k. Mailboxes;
 - l. Fence limits and material types (excluding temporary fences).
- iii. Coordinate with Texas811 to locate and mark existing franchise and public utilities prior to performing the field survey.
- iv. Establish horizontal (NAD 83) and vertical (NAVD 88) control points. City to provide established monument information for the area.
- v. City will arrange and make all provisions for access to perform the services specified within this scope. The surveyor will provide the City with the name and address of the property owners.
- vi. Prepare a right-of-way strip map on standard size plan sheet (22"x34"), identifying future right-of-way needs by parcel:
- vii. Prepare a final topographic drawing in digital format (including contours and break lines) showing the features located in the field as well as right-of-way strip map information, an ASCII coordinate file of the points located in the field, and a hard copy of the coordinates and feature descriptions.

B. Traffic Signal Design

- a. Contact power provider to coordinate and identify a power service location for the 2 proposed traffic signals. Any permitting/fees/design work/construction work fees required by the power provider will be provided by the City.
- b. Conduct a field investigation to verify existing signage, pedestrian facilities, and roadway infrastructure.

EXHIBIT A SCOPE OF SERVICES

- c. Review topographic survey, boundary survey, proposed paving improvements, proposed utility improvements, future anticipated roadway paving limits and/or existing utility information provided via separate task/contract/others in a timely manner.
- d. Construction plans for the 2 project intersections will be prepared as separate construction documents as the City plans to bid/construct the intersections separately.
- e. Prepare preliminary traffic signal plans for City review which will include a plan view layout of the proposed traffic signal and equipment.
- f. Incorporate comments on the preliminary traffic signal layout and prepare 60% traffic signal construction plans for the intersection. 60% traffic signal construction plans will be submitted to City and TxDOT for review.
- g. 60% Traffic signal construction plans will include the following sheets:
 - a. Cover Sheet
 - b. Quantity Summary
 - c. General Notes
 - d. Proposed Traffic Signal Design Layouts
 - e. Proposed Traffic Signal Tables and Charts
 - f. Proposed Pavement Markings/Signing Layout
 - g. Applicable City/ TxDOT Standards and Details
 - h. TxDOT Standard TCP Detail Sheets for Signal Work (WZ(BTS-1&2)-13)
- h. Address 1 round of simultaneous comments from City and TxDOT on each 60% traffic signal construction plans and prepare 90% traffic signal construction plans, Prepare Preliminary Project Manual based on City provided template, including Bid Form and Special Conditions and technical specifications, and engineer's opinion of probable construction costs for proposed signal equipment.
- i. Address 1 round of simultaneous comments from City and TxDOT on each 90% traffic signal construction plans, project manual, and OPCC and prepare 100% traffic signal construction plans, project manual, and OPCC for proposed signal plans.
- j. Design assumptions for the traffic signal modifications include:
 - a. TxDOT standard pedestal power service
 - b. TxDOT standard traffic signal cabinet and battery backup
 - c. TxDOT standard span wire steel poles to be constructed with locations identified for future permanent mast arm signal poles.
 - d. Dual vehicle detection per City standard

EXHIBIT A SCOPE OF SERVICES

- e. Luminaires provided on mast arm poles if no conflict with overhead electric
- f. Illuminated Street Name Signs for each approach (if requested by the City)
- k. Pedestrian signal poles, signal heads and push buttons for existing/proposed (by others) pedestrian crossings identified at the Bel Air intersection. No pedestrian crossings will be designed for the Luella intersection.
- l. Prepare up to 2 Preliminary Project Manuals (1 per intersection), including Bid Form and Special Conditions and technical specifications.
- m. This task includes up to 6 project meetings.

IV. TASK SUMMARY. SPECIAL SERVICES

C. Instruments of Conveyance

No additional right of way or easements are anticipated for this project; however, the following tasks are included in the scope of services and may be provided upon written authorization by the City. It is assumed that the City will perform right of way and easement acquisition services for this project. Instruments of conveyance will be prepared in accordance with TxDOT guidelines.

- a. Prepare right of way instruments (narrative and graphic exhibits) at \$4,000 per parcel
- b. Prepare easement instruments (narrative and graphic exhibits) at \$3,500 per parcel
- c. Additional instruments requested by City will be provided as an Additional Service and completed on a per unit basis according to the unit prices above.
- d. Individual parcel exhibits will be on 8 ½"x11" paper, will be sealed, dated, and signed by a Registered Professional Land Surveyor and will contain the following:
 - Parcel number;
 - Area required;
 - Area remaining;
 - Legal description;
 - Current owner;
 - Any existing platted easements or easements filed by separate instrument including easements provided by utility companies;
 - All physical features;

EXHIBIT A SCOPE OF SERVICES

- Metes and bounds description of parcel to be acquired. The description will be provided on a separate sheet from the exhibit. Each type of easement will be described separately.
- Upon written notification by the City of acceptance of the right-of-way strip map, exhibits and instruments, and as directed by the City, the surveyor will set all corners and points of curvature for the proposed right-of-way and submit final sealed plans and exhibits, including location of the control points and their NAD-83 reference.
- Client will serve as right-of-way and easement acquisition agent for this project. Engineer can provide agent services as *Additional Services*, only upon written City authorization.

D. Bid Phase Services

Kimley-Horn's role for bid phase services is limited, and services are only provided upon request from the City. Below is a list of possible tasks the City may request Kimley-Horn to provide. This task budget assumes up to 2 bid phases (1 per intersection). The budgeted fee for this task is based on approximately 60 hours of labor + expenses. If additional effort is required, it will be performed as Additional Services.

- a. Prepare up to 2 Preliminary Project Manuals (1 per intersection), including Bid Form and Special Conditions and technical specifications.
- b. Prepare bid set drawings and specifications that address all comments from the final design review and additional information provided by utility relocations and right-of-way negotiations.
- c. Furnish to the City all necessary copies of approved Construction Contract Documents needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of Construction Contract Documents in excess of eight (8) copies are to be paid for separately as provided hereinafter.
- d. Texas Department of Licensing and Regulation (TDLR)
 - i. Identify and analyze the requirements of the Texas Architectural Barriers Act, Chapter 68 Texas Administrative Code, and become familiar with the governmental authorities having jurisdiction to approve the design of the Project,
 - ii. Register the project with TDLR.
 - iii. Submit construction documents (final, signed and sealed plans) to a TDLR licensed Registered Accessibility Specialist (RAS) no later than the 20th

EXHIBIT A SCOPE OF SERVICES

- day after the date the ENGINEER issues the plans for construction.
- iv. Complete all TDLR forms/applications necessary.
 - v. Request an inspection from the RAS no later than 30 calendar days after construction substantial completion. Advise the CITY in writing of the results of the inspection.
 - vi. Respond to agency comments and requests.
 - vii. ASSUMPTIONS
 - a. ENGINEER will pay project registration, plan review, and inspection fees.
 - b. The scope does not include services related to obtaining a variance from TDLR.
 - e. Assist the City in the advertisement of the Project for competitive bids.
 - f. Assist the City with any Pre-Bidders meetings.
 - g. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.
 - h. Assist the City in the opening and tabulation of bids for construction of the Project.
 - i. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the award of the construction contract.
 - j. Assist in the preparation of formal Construction Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.
 - k. The Consultant shall not be required to guarantee the accuracy of the final design Cost of Construction but may be required to provide additional services at no cost to the City if bids for the Project exceed the fixed budget limit for the Construction Cost as provided in Article 3.

E. Construction Phase Services

Kimley-Horn's role for construction phase services is limited, and services are only provided upon request from the City. Below is a list of possible tasks the City may request Kimley-Horn to provide. This task budget assumes up to 2 construction phases (1 per intersection). The budgeted fee for this task is based on approximately 60 hours of labor + expenses. If additional effort is required, it will be performed as Additional Services.

EXHIBIT A SCOPE OF SERVICES

- a. Conformed Document submittal:
 - i. Update the Bid Documents (plans and Project Manual) to incorporate bid addenda items
 - ii. Print up to ten (10) sets 11"x17" plans and Project Manuals for issuance at the Pre-Construction Conference.
 - iii. Package and submit CAD base files upon request.
- b. Site Visits upon request
- c. *Pre-Construction Meeting*. Attend Pre-Construction Meeting(s) prior to commencement of Work at the Site
- d. *Franchise Utility Coordination*. Assist the City with franchise utility coordination efforts and conflict resolution during construction.
- e. *Requests for information*. Coordinate with Engineer and issue clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by City.
- f. *Change Orders*. Recommend Change Orders to City, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor. Task includes preparing plan sheet revisions.
- g. *Shop Drawings, Samples, and Submittals*. Review and approve or take other appropriate action in respect to Shop Drawings, Samples, Submittals and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.
- h. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- i. *Disagreements between City and Contractor*. As necessary, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- j. *Limitation of Responsibilities*. Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant

EXHIBIT A SCOPE OF SERVICES

- shall not have the authority or responsibility to stop the work of any Contractor.
- k. Consultant shall prepare construction Record Documents based on the information received from Contractor within 30 days of final completion in accordance with the Agreement. Consultant shall submit one full size set and one pdf file of the Record Documents.

F. Initial Traffic Signal Timing Parameters

Kimley-Horn will provide basic signal timing parameters for both newly constructed traffic signals. The timing parameters will support free signal operation and consist of min green, min and max split times, and clearance intervals. This task also includes 3 site visits to fine tune the proposed traffic signal timing parameters.

EXHIBIT A SCOPE OF SERVICES

V. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

A **Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

1. Additional topographic or boundary survey
2. Geotechnical engineering
3. Subsurface utility engineering
4. Pavement design (driveways, sidewalks, ramps)
5. Paving/grading design
6. Environmental analysis, studies, design
7. Drainage design
8. Landscaping/Irrigation design
9. Illumination studies/design
10. Public utility design
11. Franchise utility relocation
12. Franchise utility coordination
13. Signal warrant analysis/memo
14. Traffic studies
15. Additional traffic counts
16. Signal timing plans
17. Coordinated signal timing plans
18. Time-of-day signal timing plans
19. Field fine tuning of signal timing
20. Signal equipment procurement assistance
21. Detailed estimated construction schedule
22. Tree surveys
23. Presentations to City Council
24. Public Meetings
25. Additional project meetings
26. Construction staking

EXHIBIT B
PROJECT BUDGET SUMMARY

I. Basic Services

A. Topographic and Boundary Survey
(Expected Completion: 6 weeks) \$23,000.00

B. Traffic Signal Design
(Expected Completion: 10 weeks excluding review time) \$95,000.00

Total Basic Services (Lump Sum) 118,000.00

II. Special Services

C. Instrument of Conveyance \$15,000.00

D. Bid Phase Services \$20,100.00

E. Construction Phase Services \$20,100.00

F. Initial Traffic Signal Timing Parameters \$12,000.00

Total Special Services (Hourly + Expenses) 67,200.00

Project Budget, Grand Total (Not-To-Exceed) \$185,200.00

EXHIBIT C
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

1. Files shall be done in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
 - a. Pre-Construction/As-Built Plans and/or Record Documents:
 - i. Layers from Final Plat Requirements as Applicable to Project Type.
 - ii. Water Utility Features.
 - iii. Sanitary Sewer Features.
 - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be done per accepted industry norms.

Text should not be smaller than 0.08" on a full size sheet, and should be a font such as Simplex, Calibri, or Arial.

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

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

EXHIBIT E
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor doing business with local governmental entity		
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.		OFFICE USE ONLY
1 Name of vendor who has a business relationship with local governmental entity. Kimley-Horn and Associates, Inc.		Date Received
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. _____ Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☒ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☒ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 <u>L. Nathan Ante</u> Signature of vendor doing business with the governmental entity		7/21/2025 Date



City Council Regular Meeting

Agenda Item No. F.4.

Meeting Date: 8/4/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Zachary Flores, Acting City Manager

Caption:

RESOLUTION NO. 7553

Awarding a Bid to and Authorizing Execution of a Contract with Lynn Vessels Construction, LLC Based on an Invitation to Bid for the Phase III Drainage Improvements for Setting Suns

Issue:

To consider awarding a bid to and authorizing execution of a contract with Lynn Vessels Construction, LLC of Sherman, Texas, based on an invitation to bid for the Phase III Drainage Improvements for Setting Suns project.

Background:

In-house Engineering staff has assembled a set of construction drawings and specifications designed to alleviate local flooding within the Setting Suns subdivision, more specifically near the intersection of Navajo Lane and S. Cimmaron Trail. The plans include several area/ wye inlets to capture runoff, as well as closed-conduit pipes and boxes that will convey flow to a receiving channel that, once built, will direct stormwater to an existing channel previously designed by City of Sherman Engineering.

On July 18, 2025, a public bid opening was held. Four (4) bidders responded to the request for bids. The lowest, responsible, responsive bid in the amount of \$238,881.30 was submitted by Lynn Vessels Construction, LLC of Sherman, Texas, which falls within the Engineer's estimate range of \$200,000 to \$240,000.

A bid tabulation is attached.

Capital Improvement Program:

Origination:

Engineering Department

Financial Consideration:

Funding needed for this project is \$238,881.30.

Staff Recommendation:

It is recommended that the bid be awarded for the Phase III Drainage Improvements for Setting Suns to Lynn Vessels Construction, LLC in the amount of \$238,881.30. It is also recommended that the City Manager be authorized to execute the required contract documents.

Alternatives:

As may be directed by City Council

Attachments:

1. Resolution No. 7553
2. Agreement
3. Bid Tabulation
4. Location Map

RESOLUTION NO. 7553

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH LYNN VESSELS CONSTRUCTION, LLC BASED ON AN INVITATION TO BID FOR THE PHASE III DRAINAGE IMPROVEMENTS FOR SETTING SUNS; 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 Lynn Vessels Construction, LLC of Sherman, Texas, is hereby awarded the bid and the City of Sherman hereby approves the contract with Lynn Vessels Construction, LLC, in the amount of Two Hundred Thirty-Eight Thousand Eight Hundred Eighty-One Dollars and Thirty Cents (\$238,881.30) for the Phase III Drainage Improvements for Setting Suns; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a contract with Lynn Vessels Construction, LLC, for the construction of the aforementioned improvements, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 4th day of August 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LEAH ROBERTS,
EXECUTIVE DIR. OF ADMIN /
ACTING CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

AGREEMENT

THIS AGREEMENT is by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality (the "CITY"), and LYNN VESSELS CONSTRUCTION, LLC, a corporation (the "CONTRACTOR"). CITY and CONTRACTOR are sometimes referred to collectively as the "parties" or individually as a "party."

CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Contract Documents. The Work project is generally described as follows:

Phase III Drainage Improvements for Setting Suns

Article 2. ENGINEER

The Project has been designed by the City of Sherman, who is hereinafter called ENGINEER and who is to act as CITY'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME

- 3.1 The Work will be substantially completed and ready for final payment within 130 calendar days from the date when the Contract Time commences to run, as provided in the General Conditions.
- 3.2 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence of this Agreement and that CITY will suffer financial loss and actual damages if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss and damages suffered by CITY if the Work is not completed on time. The exact amount of such loss and damages will be difficult to ascertain. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that CONTRACTOR shall pay CITY \$ 500.00 for each calendar day in which the Work is not completed, not as a penalty but as liquidated damages for the loss and damages that would be suffered by CITY as a result of delay for each and every calendar day that the CONTRACTOR shall have failed to have completed the Work as required herein

Article 4. CONTRACT PRICE

CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

At the unit prices shown on the Unit Price Bid Schedule included in the Contract Documents.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by ENGINEER, as provided in the Special Provisions.

CONTRACTOR and CITY acknowledge and agree that the continuation of this Agreement after the close of any given fiscal year of CITY, which fiscal year ends on September 30th of each year, shall be subject to Sherman City Council approval. In the event that the Sherman City Council does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated, and the parties shall have no further obligations hereunder, except that CITY shall be obligated to pay monies owed CONTRACTOR for Services it has provided pursuant to this Agreement through the end of that fiscal year provided that CONTRACTOR is not in breach of this Agreement.

The CITY shall retain 5% of the amount of each payment until final completion and acceptance of all Work covered by the Contract Documents. When the Work is substantially complete, the retained amount may be reduced to 2%, at the CITY'S discretion.

Article 6. INTEREST

If the contract amount of this contract is less than \$5,000,000, no interest will be paid to the CONTRACTOR on retained money. When the contract amount exceeds \$5,000,000, no interest will be paid unless required by law.

Article 7. CONTRACTOR'S REPRESENTATIONS

In order to induce CITY to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that, in any manner, may affect cost, progress, performance or furnishing of the Work.
- 7.2 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions and drawings of physical conditions, if any, which are contained or identified in the Contract Documents, and accepts the determination set forth in the Contract Documents of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies in addition to, or to supplement, those referred to above, which pertain to the subsurface or physical conditions at or contiguous to the site, or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are, or will be, required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and

assumes responsibility for the accurate location of all Underground Facilities, whether indicated in the Contract Documents, or not. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are, or will be, required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 7.7 CONTRACTOR has reviewed and fully agrees to the limitation of liability provisions included in the Special Provisions.
- 7.8 CONTRACTOR certifies that they are eligible to be awarded government contracts. CONTRACTOR also certifies that any agreement entered into with a subcontractor will contain a clause stating that the subcontractor is eligible to be awarded government contracts.

Article 8. **CONTRACT DOCUMENTS**

The "Contract Documents," which comprise the entire agreement between CITY and CONTRACTOR concerning the Work, consist of the following:

- 8.1 This Agreement
- 8.2 Advertisement for Bids
- 8.3 Instructions to Respondents
- 8.4 Certifications Required by Texas Law
- 8.5 Suspension and Debarment Certification
- 8.6 Bid Bond and Bid Bond POA
- 8.7 Statement of Respondent's Qualifications
- 8.8 Insurance Requirement Affidavit
- 8.9 Bid Submittal
- 8.10 Resolution of Award
- 8.11 Form 1295, Certificate of Interested Parties
- 8.12 Certificate of Insurance
- 8.13 Performance Bond and POA
- 8.14 Payment Bond and POA
- 8.15 Notice to Proceed
- 8.16 Maintenance Bond and POA
- 8.17 Closeout Documents
- 8.18 Davis-Bacon Wage Determinations
- 8.19 Special Provisions
- 8.20 Technical Specification prepared or issued by the City of Sherman dated 06/26/2025.
- 8.21 Drawings, consisting of sheets numbered 1 through 18, inclusive with each sheet bearing the following general title: Construction Plans for Phase III Drainage Improvements Setting Suns.
- 8.22 Addenda numbers 1 to 3, inclusive.

- 8.23 Documentation submitted by CONTRACTOR prior to Notice of Award, identified as _____
- 8.24 The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

All written Amendments, change orders, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the Special Provisions. The parties understand and agree that deviations or modifications to the scope of Work described in the Contract Documents, in the form of one or more written Contingency Change Allowance or also change orders, may be authorized from time to time by CITY ("Change Orders"). "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Change Orders by the Sherman City Manager or his designee will not be authorized for payment and/or shall not become part of this Agreement. A duly executed, written Change Order shall be preceded by the City Council's authorization for the City Manager to execute said Change Order. CONTRACTOR agrees that CITY'S project managers are authorized to issue Contingency Allowance Authorization but CITY'S project managers, superintendents and/or inspectors not authorized to issue verbal or written Change Orders.

There are no contract Documents other than those listed above in this Agreement. The Contract Documents may only be amended, modified or supplemented, as outlined in this Contract.

Article 9. INDEMNITY

CONTRACTOR HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS SECTION), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH GOODS AND/OR SERVICES PROVIDED BY CONTRACTOR, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONTRACTOR IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONTRACTOR" FOR PURPOSES OF THIS SECTION) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONTRACTOR IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE

WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

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

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

Article 10. LIABILITY

To the fullest extent permitted by law, CONTRACTOR shall be fully and solely responsible and liable for its own acts and omissions, including those of its officers, agents, representatives, employees, subcontractors, licensees, invitees and all other parties performing services for or on behalf of CONTRACTOR under this Agreement, and for any and all damage to CONTRACTOR's equipment and other property. CITY assumes no such responsibility or liability. CITY shall have no such responsibility or liability to either CONTRACTOR or its officers, agents, representatives, employees, subcontractors, licensees, invitees or other persons.

Article 11. TERMINATION

CITY is entitled to terminate this Agreement at any time for any reason or for no reason by giving CONTRACTOR at least thirty (30) days' prior written notice of the termination date.

CITY is entitled to terminate this Agreement immediately on breach of any term or provision of the Contract Documents by CONTRACTOR. If at any time during the term of this Agreement, CONTRACTOR shall fail to commence the work in accordance with the provisions of the Contract Documents or fail to diligently perform the work in an efficient, timely and careful manner and in strict accordance with the provisions of the Contract Documents, then CITY shall have the right to terminate this Agreement. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY.

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

Article 12. MISCELLANEOUS

12.1 Terms used in the Agreement will have the meanings indicated in the Special Provisions.

- 12.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 12.3 CONTRACTOR acknowledges and agrees that the existence of a prohibited interest during the term of this Agreement will render this Agreement voidable. CONTRACTOR further acknowledges and agrees that it also is aware of, and will abide by, the vendor disclosure requirements set forth in Chapter 176 of the Texas Local Government Code, as amended.
- 12.4 Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.
- 12.5 The parties acknowledge and agree that, in executing and performing this Agreement, CITY has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
- 12.6 In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been included in this Agreement.
- 12.7 If either party files any action or brings any proceeding against the other arising from this Agreement, then as between CITY and CONTRACTOR, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 12.8 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.9 Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 CONTRACTOR covenants and agrees that CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between CITY and

CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONTRACTOR.

- 12.11 This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- 12.12 This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.13 CITY and CONTRACTOR each binds itself, its partners, successors, assign, and legal representatives to the other party hereto, its partners, successors, assign and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 13. OTHER PROVISIONS

None.

IN WITNESS WHEREOF, CITY and CONTRACTOR have signed this Agreement in multiple copies. One counterpart each has been delivered to CITY, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by CITY and CONTRACTOR or by ENGINEER on their behalf. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement (the "Effective Date").

CITY: CITY OF SHERMAN, TEXAS

By: _____

Date: _____

Attest: _____

Address for giving notices:

PO Box 1106

Sherman, TX 75091

CONTRACTOR:

Lynn Vessels Construction, LLC

By: LYNN VESSELS, OWNER/MANAGER

Date: 7/22/2025

(Corporate Seal)

Attest: Meghan

Address for giving notices:

P.O. Box 1212

SHERMAN, TX 75091-1212



Project: Phase III Drainage Improvements for Setting Suns
Owner: City of Sherman
Number: 2025-20
Project #3023-03 and Bid Number 2025-20
Date: 7/18/2025

[illegible]



Navajo Lane



City Council Regular Meeting

Agenda Item No. F.5.

Meeting Date: 8/4/2025

Prepared By: Jason Jeffcoat, Police Chief

Approved By: Zachary Flores, Acting City Manager

Caption:

*** RESOLUTION NO. 7554**

Authorizing the Execution of an Amended Master Services Agreement with Flock Group, Inc. for the One-Time Purchase of Flock Safety Equipment for the Sherman Police Department;

Issue:

The police department operates multiple Flock cameras throughout the city. Two of the cameras were previously obtained through a grant that expired and on a separate contract. The two contracts need to be consolidated into a single annual contract and fee.

Background:

The police department operates multiple Flock cameras throughout the city. Two of the cameras were previously obtained through a grant that expired and on a separate contract. The two contracts need to be consolidated into a single annual contract and fee.

Capital Improvement Program:

Origination:

Sherman Police Department

Financial Consideration:

Requesting to execute the new contract and pay a prorated fee of \$10,849.32, which consolidates the separate contracts into a single contract of \$27,000 due annually in December.

Staff Recommendation:

Staff recommends approval

Alternatives:

If not approved, the agency loses the camera's ability to function.

Attachments:

1. Resolution No. 7554
2. TX - Sherman PD - Amendment Order Form - (2)
3. Resolution No. 7235

RESOLUTION NO. 7554

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF AN AMENDED MASTER SERVICES AGREEMENT WITH FLOCK GROUP INC. FOR THE ONE-TIME PURCHASE OF FLOCK SAFETY EQUIPMENT FOR THE SHERMAN POLICE DEPARTMENT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to execute an amended master services agreement with Flock Group, Inc. for the one-time purchase of Flock Safety equipment for the Sherman Police Department for the annual recurring total of Twenty-Seven Thousand dollars and Zero cents (\$27,000.00). Any agreements related to this purchase must be approved by the City Attorney. Original funds for this purchase are being committed out of the City of Sherman's fiscal year 2023-2024 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 4th day of August 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LEAH ROBERTS,
EXEC. DIR. OF ADMINISTRATION
ACTING CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY



AMENDMENT

This amendment (“**Amendment**”) supersedes and amends the previously executed agreement between the Parties, dated 12/13/2023, relating to the provision of services by Flock Group Inc. (“**Flock**”) to TX - Sherman PD (“**Customer**”) and any schedules or exhibits attached thereto or incorporated therein by reference (the “**Agreement**”). The remainder of the Agreement shall remain in full force and effect. In the event of a conflict between this Amendment and the Agreement the terms of this Amendment will prevail. Any capitalized terms used in this Amendment will have the same meaning as in the Agreement, unless expressly defined otherwise. This Amendment is effective upon execution by both Parties (the “**Effective Date**”).

The Agreement is amended as follows: Any applicable Flock Hardware/Software, Professional Services and/or One Time Purchases listed on the table(s) below are added into the Agreement in its entirety. Any recurring fees added to the Agreement through this Amendment will be prorated as of the Effective Date of this Amendment. Any prorated amounts provided are for recurring fees only and subject to change based on Effective Date. After the current Term, Customer shall pay the fees as set forth in the applicable product tables pursuant to payment terms indicated on the Order Form or prior Agreement.

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$27,000.00
Flock Safety LPR Products			
Flock Safety LPR, fka Falcon	Included	5	Included
Flock Safety Video Products			
Flock Safety Video Camera PTZ w/ LTE Service, fka Condor	Included	4	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			

Annual Recurring Subtotal: \$27,000.00

Amendment Billing Schedule	
Invoice 1 (at Contract Signing – Net 30)	\$10,849.32
Invoice 2 (at 12/13/2025 – Net 30)	\$27,000.00
Invoice 3 (at 12/13/2026 – Net 30)	\$27,000.00
Invoice 4 (at 12/13/2027 – Net 30)	\$27,000.00
Amendment Total	\$91,849.32
Estimated Credits:	-\$16,418.52
Net Amendment Total:	\$81,430.80
Annual Totals	
Invoice 1 of Amendment + Estimated Credit	\$0.00
Invoice 2 of Amendment + Estimated Credit	\$21,430.80
New Annual Recurring	\$27,000.00
Existing Annual Recurring	\$12,500.00
Net Total Annual Recurring	\$39,500.00
Year 1 total is an estimate based on amendment executed date of 06/06/2025	

By executing this Amendment, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the previously executed Agreement.

FLOCK GROUP, INC.

Customer: TX - Sherman PD

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PO Number: _____

RESOLUTION NO. 7235

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF A MASTER SERVICES AGREEMENT WITH FLOCK GROUP INC. FOR THE PURCHASE OF THE FLOCK SAFETY PLATFORM FOR THE SHERMAN POLICE DEPARTMENT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to execute a master services agreement with Flock Group, Inc. for the purchase of the Flock Safety Platform for the Sherman Police Department for a total of Sixty-Two Thousand Five Hundred dollars and Zero cents (\$62,500). Any agreements related to this purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2023-2024 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 4th day of December 2023.

CITY OF SHERMAN, TEXAS

BY:


DAVID PLYLER, MAYOR

ATTEST:

BY:


LINDA ASHBY, CITY CLERK

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

BY:


RYAN D. PITTMAN, CITY ATTORNEY

Flock Safety + Sherman PD

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Ashley Shambo
ashley.shambo@flocksafety.com
972-310-9832

Created Date: 11/10/2023
Expiration Date: 11/03/2023
Quote Number: Q-47798
PO Number:

flock safety

flock safety

Budgetary Quote

This document is for informational purposes only. Pricing is subject to change.

Bill To: 2600 W. Travis St. Sherman, Texas 75092

Ship To: 2600 W. Travis St Sherman, Texas 75092

Billing Company Name: Sherman PD
Billing Contact Name: Karen Wolff
Billing Email Address: karenw@cityofsherman.com
Billing Phone: (903) 892-7290

Subscription Term: 60 Months
Payment Terms: Net 30
Retention Period: 30 Days
Billing Frequency: Annual - First Year at Signing.

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$12,500.00
Flock Safety Flock OS			
FlockOS™	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon®	Included	5	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			

Subtotal Year 1:	\$12,500.00
Annual Recurring Subtotal:	\$12,500.00
Discounts:	\$12,500.00
Estimated Tax:	\$0.00
Contract Total:	\$62,500.00

Taxes shown above are provided as an estimate. Actual taxes are the responsibility of the Customer. This is not an invoice – this document is a non-binding proposal for informational purposes only. Pricing is subject to change.

Discounts Applied	Amount (USD)
Flock Safety Platform	\$12,500.00
Flock Safety Add-ons	\$0.00
Flock Safety Professional Services	\$0.00

Product and Services Description

Flock Safety Platform Items	Product Description
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

FlockOS Features & Description

Package: Essentials

FlockOS Features	Description
Community Cameras (Full Access)	Access to all privately owned Flock devices within your jurisdiction that have been shared with you.
Unlimited Users	Unlimited users for FlockOS
State Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the statewide Flock network.
Nationwide Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the nationwide Flock network.
Direct Share - Surrounding Jurisdiction (Full Access)	Access to all Flock devices owned by law enforcement that have been directly shared with you. Have ability to search by vehicle fingerprint, receive hot list alerts, and view devices on the map.
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations
License Plate Lookup	Look up specific license plate location history captured on Flock devices
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint™ technology. Access vehicle type, make, color, license plate state, missing / covered plates, and other unique features like bumper stickers, decals, and roof racks.
Flock Insights/Analytics page	Reporting tool to help administrators manage their LPR program with device performance data, user and network audits, plate read reports, hot list alert reports, event logs, and outcome reports.
ESRI Based Map Interface	Flock Safety's maps are powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data, such as City infrastructure (i.e., public facilities, transit systems, utilities), Boundary mapping (i.e., precincts, county lines, beat maps), and Interior floor plans (i.e., hospitals, corporate campuses, universities)
Real-Time NCIC Alerts on Flock ALPR Cameras	Alert sent when a vehicle entered into the NCIC crime database passes by a Flock camera
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera

By executing this Order Form, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the Master Services Agreement attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

By:

Name:

Title:

Date:

Customer: Sherman PD

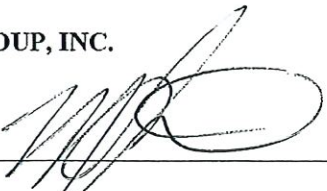
By:

Name:

Title:

Date:

PO Number:



MARK SMITH

GENERAL COUNSEL

13 DECEMBER 2023



Clint Philpott

Assistant City Manager

12.5.2023

Master Services Agreement

This Master Services Agreement (this “*Agreement*”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 (“*Flock*”) and the entity identified in the signature block (“*Customer*”) (each a “*Party*,” and together, the “*Parties*”) on this the 28 day of November 2023. This Agreement is effective on the date of mutual execution (“*Effective Date*”). Parties will sign an Order Form (“*Order Form*”) which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

RECITALS

WHEREAS, Flock offers a software and hardware situational awareness solution through Flock’s technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer (“*Notifications*”);

WHEREAS, Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

WHEREAS, Customer shall have access to the Footage in Flock Services. Pursuant to Flock’s standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the *Order Form*. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

AGREEMENT

NOW, THEREFORE, Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as

exhibits and incorporated by reference, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “*Anonymized Data*” means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “*Authorized End User(s)*” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 “*Customer Data*” means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4. “*Customer Hardware*” means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “*Embedded Software*” means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 “*Flock Hardware*” means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

1.7 “*Flock IP*” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.8 “*Flock Network End User(s)*” means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 “**Flock Services**” means the provision of Flock’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.11 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 “**Installation Services**” means the services provided by Flock for installation of Flock Services.

1.13 “**Retention Period**” means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.14 “**Vehicle FingerprintTM**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form ("*Retention Period*"). Authorized End Users will be required to sign up for an account and select a password and username ("*User ID*"). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of authorized End user which would constitute a breach of this agreement if undertaken by customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 Embedded Software License. Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 Support Services. Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at support@flocksafety.com (such services collectively referred to as "*Support Services*").

2.4 Upgrades to Platform. Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock's products or services to its agencies, the competitive strength of, or market for, Flock's products or services, such platform or system's cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

2.5 Service Interruption. Services may be interrupted in the event that: (a) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("***Service Interruption***"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer's direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

2.6 Service Suspension. Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("***Service Suspension***"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

2.7 Hazardous Conditions. Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately.

3. CUSTOMER OBLIGATIONS

3.1 Customer Obligations. Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as “*Customer Obligations*”).

3.2 Customer Representations and Warranties. Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

4. DATA USE AND LICENSING

4.1 Customer Data. As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.

4.2 Customer Generated Data. Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages,

text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer ("***Customer Generated Data***"). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer's intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 Anonymized Data. Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

5. CONFIDENTIALITY; DISCLOSURES

5.1 Confidentiality. To the extent required by any applicable public records requests, each Party (the "***Receiving Party***") understands that the other Party (the "***Disclosing Party***") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "***Proprietary Information***" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any

such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

5.2 Usage Restrictions on Flock IP. Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

5.3 Disclosure of Footage. Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.

6. PAYMENT OF FEES

6.1 Billing and Payment of Fees. Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.

6.2 Notice of Changes to Fees. Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days' notice (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

6.3 Late Fees. If payment is not issued to Flock by the due date of the invoice, an interest penalty of 1.0% of any unpaid amount may be added for each month or fraction thereafter, until final payment is made.

6.4 Taxes. Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and Flock shall not charge customer any taxes from which it is exempt. If any deduction or

withholding is required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

7. TERM AND TERMINATION

7.1 Term. The initial term of this Agreement shall be for the period of time set forth on the Order Form (the “*Term*”). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a “*Renewal Term*”) unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

7.2 Termination. Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period (“*Cure Period*”). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the *Cure Period*, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 Survival. The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 Manufacturer Defect. Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Customer must notify Flock’s technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

8.2 Replacements. In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

8.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

8.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 Insurance. Flock will maintain commercial general liability policies as stated in Exhibit B.

8.6 Force Majeure. Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

9. LIMITATION OF LIABILITY; INDEMNITY

9.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF

LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 Flock Indemnity. Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 Ownership of Hardware. Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at

Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

10.2 Deployment Plan. Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("***Deployment Plan***"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

10.3 Changes to Deployment Plan. After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer will receive prior notice and confirm approval of any such fees.

10.4 Customer Installation Obligations. Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("***Customer Obligations***"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

10.5 Flock's Obligations. Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

11. MISCELLANEOUS

11.1 Compliance With Laws. Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

11.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

11.3 Assignment. This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

11.4 Entire Agreement. This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

11.5 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

11.6 Governing Law; Venue. This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

11.7 Special Terms. Flock may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual execution by authorized representatives ("*Special Terms*"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

11.8 Publicity. Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

11.9 Feedback. If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

11.10 Export. Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 **Morality.** In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Flock's reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.15 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.16 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non appropriation with thirty (30) days written notice without penalty or other cost.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

EMAIL: legal@flocksafety.com

Customer NOTICES ADDRESS:

ADDRESS: PO Box 1106 Sherman, TX 75091

ATTN: Karen Wolff

EMAIL: karenw@cityofsherman.com

EXHIBIT B
INSURANCE

Required Coverage. Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than "A" and "VII". Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

Types and Amounts Required. Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and

(v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).

Flock Safety + Sherman PD

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Ashley Shambo
ashley.shambo@flocksafety.com
972-310-9832

flock safety

Company Overview

At Flock Safety, technology unites law enforcement and the communities they serve to eliminate crime and shape a safer future, together. We created the first public safety operating system to enable neighborhoods, schools, businesses, and law enforcement to work together to collect visual, audio, and situational evidence across an entire city to solve and prevent crime.

Our connected platform, comprised of License Plate Recognition (LPR), live video, audio detection, and a suite of integrations (AVL, CAD & more), alerts law enforcement when an incident occurs and turns unbiased data into objective answers that increase case clearance, maximize resources, and reduce crime -- all without compromising transparency or human privacy.

Join thousands of agencies reducing crime with Flock Safety's public safety operating system

2000+	120	1B+	<60%*
communities with private-public partnerships	incident alerts / minute	1B+ vehicles detected / month	<60% local crime reduction in Flock cities

*According to a 2019 study conducted by Cobb County Police Department

Introduction

Layer Intelligence to Solve More Crime

The pathway to a safer future looks different for every community. As such, this proposal presents a combination of products that specifically addresses your public safety needs, geographical layout, sworn officer count, and budget. These components make up your custom public safety operating system, a connected device network and software platform designed to transform real-time data into a panoramic view of your jurisdiction and help you zero in on the leads that solve more cases, prevent future crimes, and foster trust in the communities you serve.

Software Platform

Flock Safety's out-of-box software platform collects and makes sense of visual, audio, and situational evidence across your entire network of devices.

Out-of-Box Software Features

Simplified Search	Get a complete view of all activity tied to one vehicle in your network of privately and publicly owned cameras. The user-friendly search experience allows officers to filter hours of footage in seconds based on time, location, and detailed vehicle criteria using patented Vehicle Fingerprint™ technology. Search filters include: • Vehicle make • Body type • Color • License plates ○ Partial tags ○ Missing tags ○ Temporary tags ○ State recognition • Decals • Bumper stickers • Back racks • Top racks
National and Local Sharing	Access 1B+ additional plate reads each month without purchasing more cameras. Solve cross-jurisdiction crimes by opting into Flock Safety's sharing networks, including one-to-one, national, and statewide search networks. Users can also receive alerts from several external LPR databases: <i>California SVS</i> <i>FDLE</i> <i>FL Expired Licenses</i> <i>FL Expired Tags</i> <i>FL Sanctioned Drivers</i> <i>FL Sex Offenders</i> <i>Georgia DOR</i> <i>IL SOS</i> <i>Illinois Leads</i> <i>NCIC</i> <i>NCMEC Amber Alert</i> <i>REJIS</i> <i>CCIC</i> <i>FBI</i>
Real-time Alerts	Receive SMS, email, and in-app notifications for custom Hot Lists, NCIC wanted lists, AMBER alerts, Silver alerts, Vehicle Fingerprint matches, and more.
Interactive ESRI Map	View your AVL, CAD, traffic, and LPR alerts alongside live on-scene video from a single interactive map for a birdseye view of activity in your jurisdiction.
Vehicle Location Analysis	Visualize sequential Hot List alerts and the direction of travel to guide officers to find suspect vehicles faster.

Out-of-Box Software Features (Continued)

Transparency Portal	Establish community trust with a public-facing dashboard that shares policies, usage, and public safety outcomes related to your policing technology.
Insights Dashboard	Access at-a-glance reporting to easily prove ROI, discover crime and traffic patterns and prioritize changes to your public safety strategy by using data to determine the most significant impact.
Native MDT Application	Download FlockOS to your MDTs to ensure officers never miss a Hot List alert while out on patrol.
Hot List Attachments	Attach relevant information to Custom Hot List alerts. Give simple, digestible context to Dispatchers and Patrol Officers responding to Hot List alerts so they can act confidently and drive better outcomes. When you create a custom Hot List Alert, add case notes, photos, reports, and other relevant case information.
Single Sign On (SSO)	Increase your login speed and information security with Okta or Azure Single Sign On (SSO). Quickly access critical information you need to do your job by eliminating the need for password resets and steps in the log-in process.

License Plate Recognition

The Flock Safety Falcon® LPR camera uses Vehicle Fingerprint™ technology to transform hours of footage into actionable evidence, even when a license plate isn't visible, and sends Hot List alerts to law enforcement users when a suspect vehicle is detected. The Falcon has fixed and location-flexible deployment options with 30% more accurate reads than leading LPR.*

*Results from the 2019 side-by-side comparison test conducted by LA County Sheriff's Department

Flock Safety Falcon® LPR Camera	Flock Safety Falcon® Flex	Flock Safety Falcon® LR
Fixed, infrastructure-free LPR camera designed for permanent placement. ✓ 1 Standard LPR Camera ✓ Unlimited LTE data service + Flock OS platform licenses ✓ 1 DOT breakaway pole ✓ Dual solar panels ✓ Permitting, installation, and ongoing maintenance	Location-flexible LPR camera designed for fast, easy self-installation, which is ideal for your ever-changing investigative needs. ✓ 1 LPR Camera ✓ Unlimited LTE data service + software licenses ✓ 1 portable mount with varying-sized band clamps ✓ 1 Charger for internal battery ✓ 1 hardshell carrying case	Long-range, high-speed LPR camera that captures license plates and Vehicle Fingerprint data for increasing investigative leads on high-volume roadways like highways and interstates. ✓ 1 Long-Range LPR Camera ✓ Computing device in protective poly case ✓ AC Power ✓ Permitting, installation, and ongoing maintenance

Your Flock Safety Team

Flock Safety is more than a technology vendor; we are a partner in your mission to build a safer future. We work with thousands of law enforcement agencies across the US to build stronger, safer communities that celebrate the hard work of those who serve and protect. We don't disappear after contracts are signed; we pride ourselves on becoming an extension of your hard-working team as part of our subscription service.

Implementation	Meet with a Solutions Consultant (former LEO) to build a deployment plan based on your needs. Our Permitting Team and Installation Technicians will work to get your device network approved, installed, and activated.
User Training + Support	Your designated Customer Success Manager will help train your power users and ensure you maximize the platform, while our customer support team will assist with needs as they arise.
Maintenance	We proactively monitor the health of your device network. If we detect that a device is offline, a full-time technician will service your device for no extra charge. <i>Note: Ongoing maintenance does not apply to Falcon Flex devices.</i>
Public Relations	Government Affairs Get support educating your stakeholders, including city councils and other governing bodies. Media Relations Share crimes solved in the local media with the help of our Public Relations team.



EXHIBIT A
ORDER FORM

Customer: Sherman PD
Legal Entity Name: Sherman PD
Accounts Payable Email: karenw@cityofsherman.com
Address: 2600 W. Travis St. Sherman, Texas 75092

Initial Term: 60 Months
Renewal Term: 24 Months
Payment Terms: Net 30
Billing Frequency: Annual - First Year at Signing.
Retention Period: 30 Days

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$12,500.00
Flock Safety Flock OS			
FlockOS™	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon®	Included	5	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			

Subtotal Year 1:	\$12,500.00
Annual Recurring Subtotal:	\$12,500.00
Discounts:	\$12,500.00
Estimated Tax:	\$0.00
Contract Total:	\$62,500.00

Billing Schedule

Billing Schedule	Amount (USD)
Year 1	
At Contract Signing	\$12,500.00
Annual Recurring after Year 1	\$12,500.00
Contract Total	\$62,500.00

*Tax not included

Discounts

Discounts Applied	Amount (USD)
Flock Safety Platform	\$12,500.00
Flock Safety Add-ons	\$0.00
Flock Safety Professional Services	\$0.00

Product and Services Description

Flock Safety Platform Items	Product Description	Terms
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Flock Hardware.

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

FlockOS Features & Description

Package: Essentials

FlockOS Features	Description
Community Cameras (Full Access)	Access to all privately owned Flock devices within your jurisdiction that have been shared with you.
Unlimited Users	Unlimited users for FlockOS
State Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the statewide Flock network.
Nationwide Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the nationwide Flock network.
Direct Share - Surrounding Jurisdiction (Full Access)	Access to all Flock devices owned by law enforcement that have been directly shared with you. Have ability to search by vehicle fingerprint, receive hot list alerts, and view devices on the map.
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations
License Plate Lookup	Look up specific license plate location history captured on Flock devices
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint™ technology. Access vehicle type, make, color, license plate state, missing / covered plates, and other unique features like bumper stickers, decals, and roof racks.
Flock Insights/Analytics page	Reporting tool to help administrators manage their LPR program with device performance data, user and network audits, plate read reports, hot list alert reports, event logs, and outcome reports.
ESRI Based Map Interface	Flock Safety's maps are powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data, such as City infrastructure (i.e., public facilities, transit systems, utilities), Boundary mapping (i.e., precincts, county lines, beat maps), and Interior floor plans (i.e., hospitals, corporate campuses, universities)
Real-Time NCIC Alerts on Flock ALPR Cameras	Alert sent when a vehicle entered into the NCIC crime database passes by a Flock camera
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera



City Council Regular Meeting

Agenda Item No. F.6.

Meeting Date: 8/4/2025

Prepared By: Loren Siems, Right of Way Specialist

Approved By: Zachary Flores, Acting City Manager

Caption:

*** Resolution No. 7555**

Authorizing the City Manager or His Designee to Execute a Sign Encroachment Agreement with Akers Cemetery

Issue:

To consider executing an encroachment agreement relating to an existing metal sign on city property

Background:

Due to the development of James Town Square a plat was recorded as Instrument No. 2024-67 dedicating an area of Akers Cemetery drive to the City of Sherman. With the developer relocating the drive for Akers Cemetery, the existing metal sign for Akers Cemetery is now on City of Sherman property.

Capital Improvement Program:

Origination:

City of Sherman

Financial Consideration:

none

Staff Recommendation:

City staff has no objections to the proposed encroachment and upon receiving approval from franchise utilities, it is recommended that the encroachment agreement be executed.

Alternatives:

As may be directed by City Council

Attachments:

1. Resolution No. 7555
2. Encroachment agreement signed by Akers Cemetery
3. Location map

RESOLUTION NO. 7555

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT AGREEMENT TO AKERS CEMETERY FOR THE ENCROACHMENT OF A METAL SIGN WITHIN CITY OF SHERMAN RIGHT OF WAY ESTABLISHED IN INSTRUMENT NO 2024-67, PLAT RECORDS, GRAYSON COUNTY, TEXAS, IN THE CITY OF SHERMAN. FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an encroachment agreement for a metal sign within a right of way established in instrument no. 2024-67, Plat records, Grayson County, Texas, as shown on the Exhibit "A" attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 4th day of August, 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

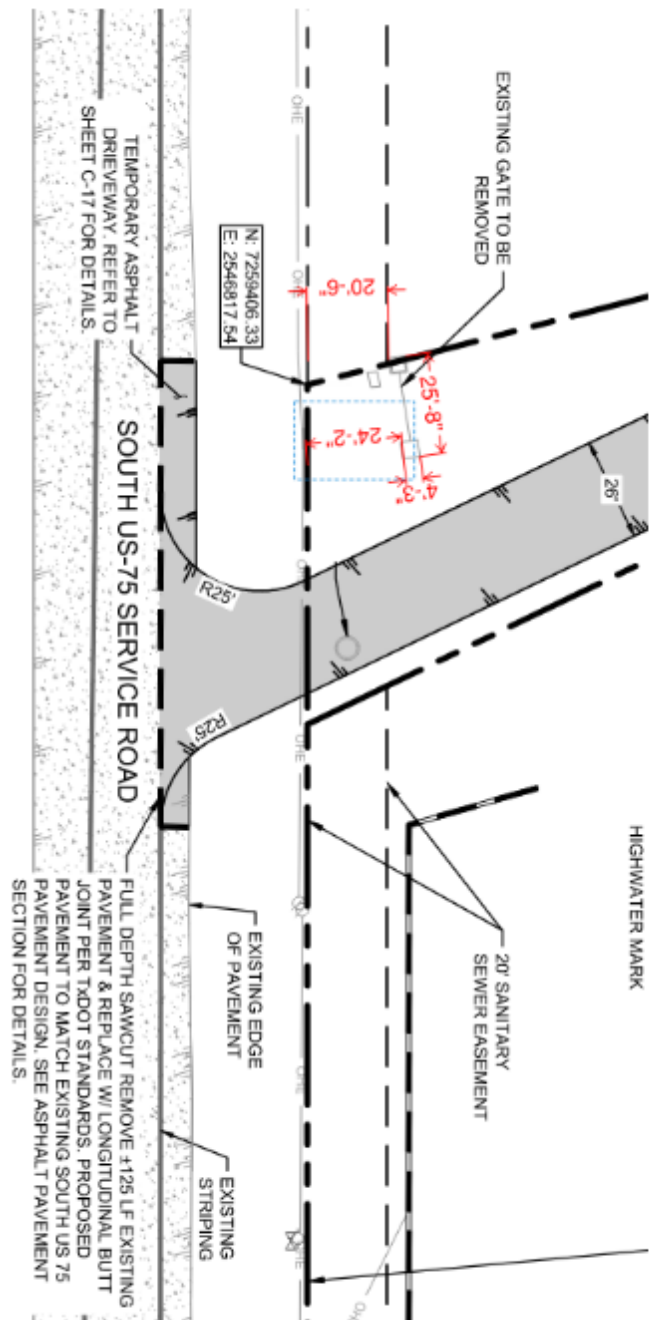
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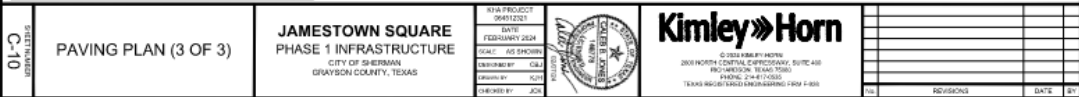
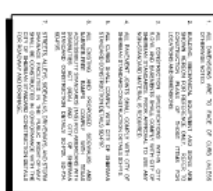
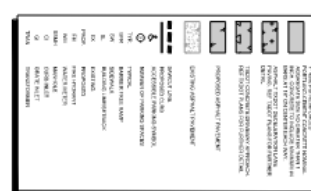
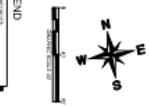
BY: _____
LEAH ROBERTS
EXE. DIR. OF ADMINISTRATION
ACTING CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit “A”





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

After Recording Return to:
City of Sherman
Office of the City Attorney
P. O. Box 1106
Sherman, TX 75091-1106

ENCROACHMENT AND LICENSE AGREEMENT

THIS ENCROACHMENT AND LICENSE AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF SHERMAN, TEXAS, a home-rule municipality** ("City"), and **AKERS CEMETERY** ("Licensee"). City and Licensee are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, City and any Franchise Utility Company (each a "Franchisee") have existing rights in certain real property by virtue of that certain Plat of Jamestown Square, filed in Instrument No. 2024-67, Plat Records, Grayson County, Texas. The Exhibit "A", which more particularly describes and depicts the 0.478 acres of land ("Property"), is incorporated herein by reference for all purposes; and

WHEREAS, Licensee desires to operate, repair and maintain a metal entry sign ("Encroaching Facility"), as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference for all purposes, within the boundaries of the Property; and

WHEREAS, in exchange for the consideration set forth below, City has agreed to grant a license to permit the encroachment of the Encroaching Facility on the Property subject to the terms and conditions of this Agreement and provided that Licensee first complies with the City's ordinances relating to the construction and use of the Encroaching Facility.

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

1. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement.
2. Location of Encroaching Facility. City hereby grants a nonexclusive license to Licensee, authorizing Licensee to, at its own cost and expense, maintain and repair the Encroaching Facility within that portion of the Property as generally depicted

and described in Exhibit A, subject to the terms and conditions of this Agreement. Any modification, alteration, expansion or addition to the Encroaching Facility, or any portion thereof, is prohibited without the prior written consent of City. In particular, Licensee shall not modify the Encroaching Facility in any manner that results in the Encroaching Facility: (a) occupying more space within the Property than as approved by this Agreement; (b) extending further into the Property than as approved by this Agreement; or (c) changing the Encroaching Facility's location within the Property to be outside the area approved by this Agreement. Licensee shall ensure that Licensee and any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility abide by the terms and conditions set forth herein and any permit governing the Encroaching Facility. Licensee shall, at its own cost and expense, provide a copy of this Agreement to any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility. Notwithstanding anything to the contrary herein, nothing in this Agreement shall be deemed to waive any applicable requirement of the City's ordinances or regulations applicable to the Encroaching Facility, and Licensee shall be responsible for obtaining a permit, if required under the City's ordinance, prior to any construction on the Encroaching Facility.

3. Restrictions on Use of Property. In using the Property for the purposes described herein, Licensee shall, at its own cost and expense, comply with all applicable laws, rules, regulations and requirements, as they exist, may be amended or in the future arising, including but not limited to, City's ordinances, and shall promptly execute and fulfill all orders and requirements imposed by City or other governmental authorities for the correction, prevention and abatement of nuisances or Code violations in, on or connected with the Encroaching Facility. At the conclusion of any work in connection with the Encroaching Facility, Licensee shall ensure that any third party and/or contractor of Licensee engaged in such work shall remove all debris and other materials from the Property and restore the same to substantially the same condition it was in prior to the commencement of the work thereon or in proximity thereto, with the exception of the encroachment permitted herein. Licensee shall ensure that any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility does not, and shall not itself, place trash dumpsters, toxic or hazardous substances or flammable material in or on the Property. Additionally, Licensee shall not place in or on the Property any other improvements unless approved in advance in writing by City. Any modification, alteration, expansion or other addition to the Encroaching Facility, or any portion thereof, is prohibited without the prior written consent of City.
4. Maintenance of Encroaching Facility. Licensee shall, at Licensee's sole cost and expense, maintain the Encroaching Facility in good condition and repair. City will not, under any circumstance, be responsible for any costs, whatsoever, of construction, reconstruction, operation, maintenance, repair or removal of the Encroaching Facility. If City notifies Licensee of any deficiencies in any such maintenance, repair or removal of the Encroaching Facility, Licensee shall make the

necessary repairs within the earlier of (a) thirty (30) days after the date of such notice or the (b) another date as determined by City and Licensee in writing. If City notifies Licensee of any deficiencies in any such maintenance, repair or removal of the Encroaching Facility, and Licensee shall thereafter fail to complete such maintenance, repair or removal within the required time period, then City may require Licensee to promptly remove the Encroaching Facility or contract, at Licensee's sole cost and expense, for the maintenance, repair or removal of the Encroaching Facility.

5. Removal of Encroaching Facility. City and any Franchisee are entitled to remove all or a portion of the Encroaching Facility as reasonably necessary to construct, reconstruct, maintain or repair public improvements within the affected Property. City or Franchisee will notify Licensee of any intent to remove all, or a portion, of the Encroaching Facility, and upon receiving such notice, Licensee shall ensure that the requested removal is made within the earlier of (a) thirty (30) days after the date of such notice or (b) another date as determined by City and Licensee in writing. If City or Franchisee notifies Licensee of its intent to remove all, or a portion, of the Encroaching Facility, and Licensee shall thereafter fail to complete the removal within the required time period, then City or Franchisee may require Licensee to promptly remove the Encroaching Facility. Notwithstanding anything to the contrary herein, if the removal is necessitated by an emergency, no notice is required. If so removed, City or Franchisee has no obligation to replace the affected portions of the Encroaching Facility upon completion of such work.
6. Risk and Liability. Licensee assumes all risks and liability resulting or arising from or relating to Licensee's use of the Property, the Encroaching Facility, the existing condition or location of the Property or the existing state of maintenance, repair or operation of the Property. Licensee agrees and acknowledges that City or Franchisee shall not be liable, whatsoever, for any damage to the Encroaching Facility as a result of City's or Franchisee's use or enjoyment of the rights provided it in the Property. Any City and/or Franchisee property or infrastructure damaged or destroyed by Licensee or its agents, employees, representatives, invitees, contractors, subcontractors and/or any other third parties for whom Licensee is legally responsible, shall be repaired or replaced by City or Franchisee at Licensee's sole cost and expense and payment is due immediately upon Licensee's receipt of an invoice from City or Franchisee.
7. **INDEMNIFICATION.** **LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND ANY OTHER THIRD PARTIES FOR WHOM CITY IS LEGALLY RESPONSIBLE, AS WELL AS EACH FRANCHISEE, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, AND ANY OTHER THIRD PARTIES FROM WHOM FRANCHISE IS LEGALLY RESPONSIBLE FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS,**

AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS OF USE), LOSSES, DEMANDS, EXPENSES AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), OR OTHER HARM ARISING OUT OF, OR OCCASIONED BY, ANY NEGLIGENCE, GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT, WHETHER BY ACT OR OMISSION, OF ANY LICENSEE OR ITS AGENTS, REPRESENTATIVES, EMPLOYEES, SEPARATE CONTRACTORS AND/OR SUBCONTRACTORS AND/OR THIRD PARTIES FOR WHOM EACH SUCH LICENSEE IS LEGALLY RESPONSIBLE, REGARDLESS OF ANY JOINT OR CONCURRENT NEGLIGENCE OF CITY OR FRANCHISEE.

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

THE PROVISIONS OF THIS SECTION 7 ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON, ENTITY OR THIRD PARTY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION 7 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

8. No "Permit." NOTHING CONTAINED IN THIS AGREEMENT SHALL CONSTITUTE A "PERMIT" AS DEFINED IN CHAPTER 245, TEX. LOC.

GOV'T CODE, AND NOTHING IN THIS AGREEMENT SHALL BE CONSIDERED TO PROVIDE THE CITY WITH FAIR NOTICE OF A PROJECT. LICENSEE WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEX. LOC. GOV'T CODE BASED ON THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

9. Default/Remedies. If Licensee, its employees, agents, representatives, contractors, subcontractors and/or any other third parties for whom Licensee is legally responsible, defaults under any of the terms and conditions of this Agreement and such default continues for a period of five (5) days after City or Franchisee notifies Licensee of such default in writing, City or Franchisee may, at its sole election and in addition to any other remedies it may exercise, terminate this Agreement, and upon such termination, all of Licensee's rights hereunder shall cease and terminate. This Agreement shall also terminate upon Licensee's abandonment of the Encroaching Facility.

10. Miscellaneous Provisions.

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

If to City, addressed to it at:

City of Sherman

Attention: Wayne E. Lee, P.E., CFM, Director of Engineering

220 W. Mulberry St.

Sherman, TX 75091

Telephone: (903) 892-7327

Email: waynel@cityofsherman.com

with a copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.

Attention: Ryan D. Pittman

1700 Redbud Blvd., Suite 300

McKinney, Texas 75069

Telephone: (214) 544-4000

Email: rpittman@abernathy-law.com

If to Licensee, addressed to it at:

Akers Cemetery
13011 FM 902
Dorchester, TX. 75459

- b. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties.
- c. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- d. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- e. Authority to Execute. Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing its signatories hereto, warrant and represent that they have the authority to bind its respective parties as duly authorized representatives thereof.
- f. Savings/Severability. In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- g. Representations. Each party represents that it has carefully read this Agreement, knows the contents hereof, has consulted with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.
- h. No Third Party Beneficiaries. The parties do not intend that this Agreement be construed as creating any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

- i. Indemnification. The parties agree that the indemnity provisions set forth in Section 7 herein are conspicuous, and the parties have read and understood the same.
- j. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- k. Immunity. The parties acknowledge and agree that, in executing and performing this Agreement, City has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
- l. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the parties. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to system it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement.

CITY:

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____

Zachary Flores, City Manager

Date: _____

LICENSEE:

AKERS CEMETERY

By: _____

BETTY SUE SCOTT

Name: _____

Betty Sue Scott

Title: _____

PRESIDENT

Date: _____

7-9-25

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to system it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement.

CITY:

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Zachary Flores, City Manager

Date: _____

LICENSEE:
AKERS CEMETERY

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared **ZACHARY FLORES**, known to me to be the person whose name is subscribed to the foregoing instrument; he acknowledged to me that he is the city manager and duly authorized representative of the CITY OF SHERMAN, TEXAS, a Texas home-rule municipality, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of the CITY OF SHERMAN, TEXAS.

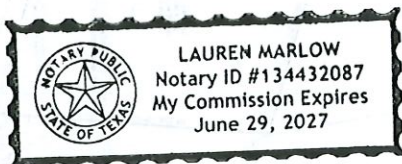
GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

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

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared BETTY SUE SCOTT, known to me to be the person whose name is subscribed to the foregoing instrument; she acknowledged to me that she is the duly authorized representative of AKERS CEMETARY, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th day of July, 2025.



Lauren Marlow

Notary Public in and for the State of Texas
My Commission Expires: 6/29/2027

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared **ZACHARY FLORES**, known to me to be the person whose name is subscribed to the foregoing instrument; he acknowledged to me that he is the city manager and duly authorized representative of the CITY OF SHERMAN, TEXAS, a Texas home-rule municipality, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of the CITY OF SHERMAN, TEXAS.

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

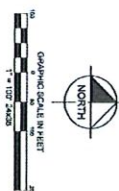
Notary Public in and for the State of Texas
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument; she acknowledged to me that she is the duly authorized representative of AKERS CEMETARY, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

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

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

[illegible]

filed for Record
 in the Official Records Of:
 Garaymín County Clerk
 On: 4/22/2024 10:37:35 AM
 In the PLAT Records
 JARLESTOWN SQUARE
 Doc Number: 2024-67
 Number of Pages: 2
 Amount: 74.00
 Order# 2024042900046
 BY: TM

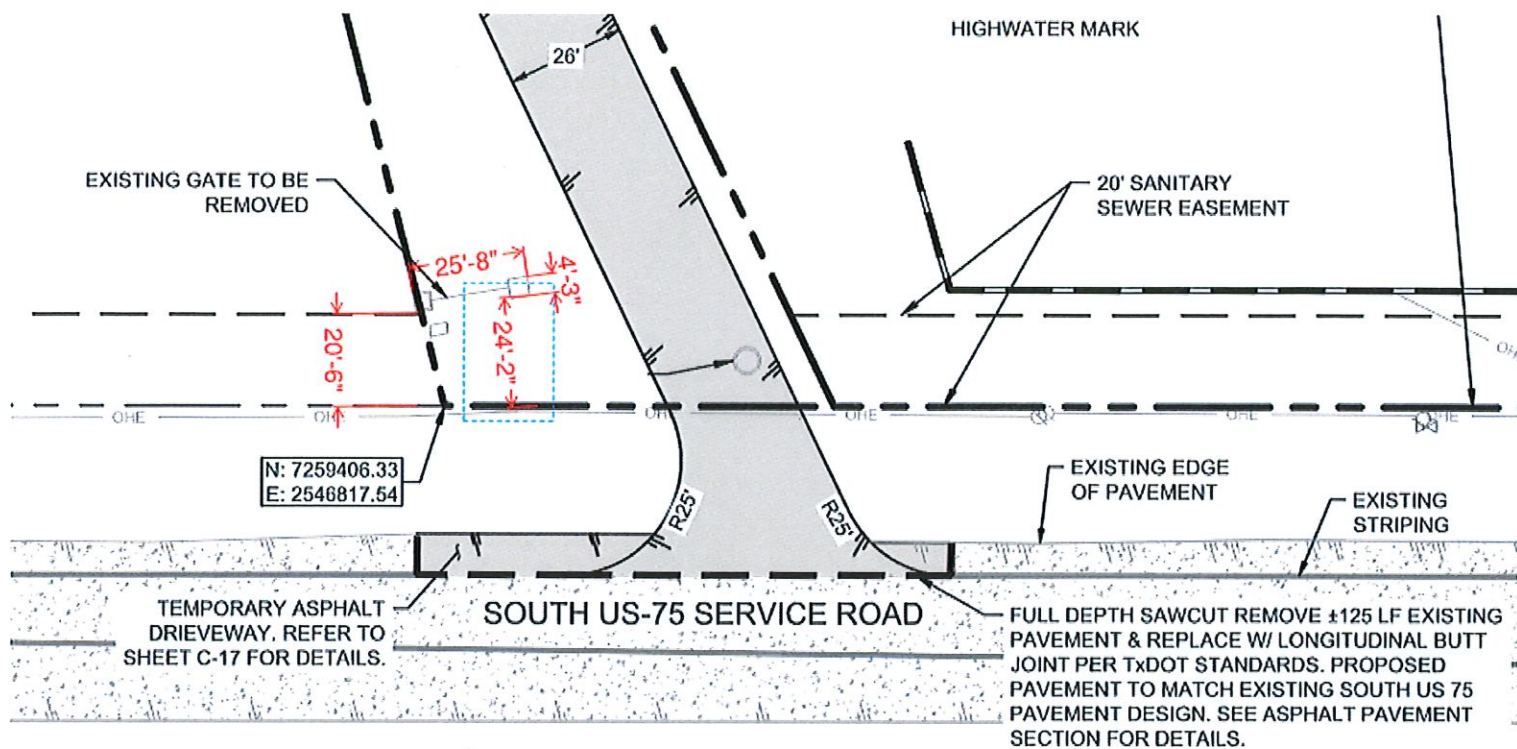
FINAL PLAT
JAMESTOWN SQUARE

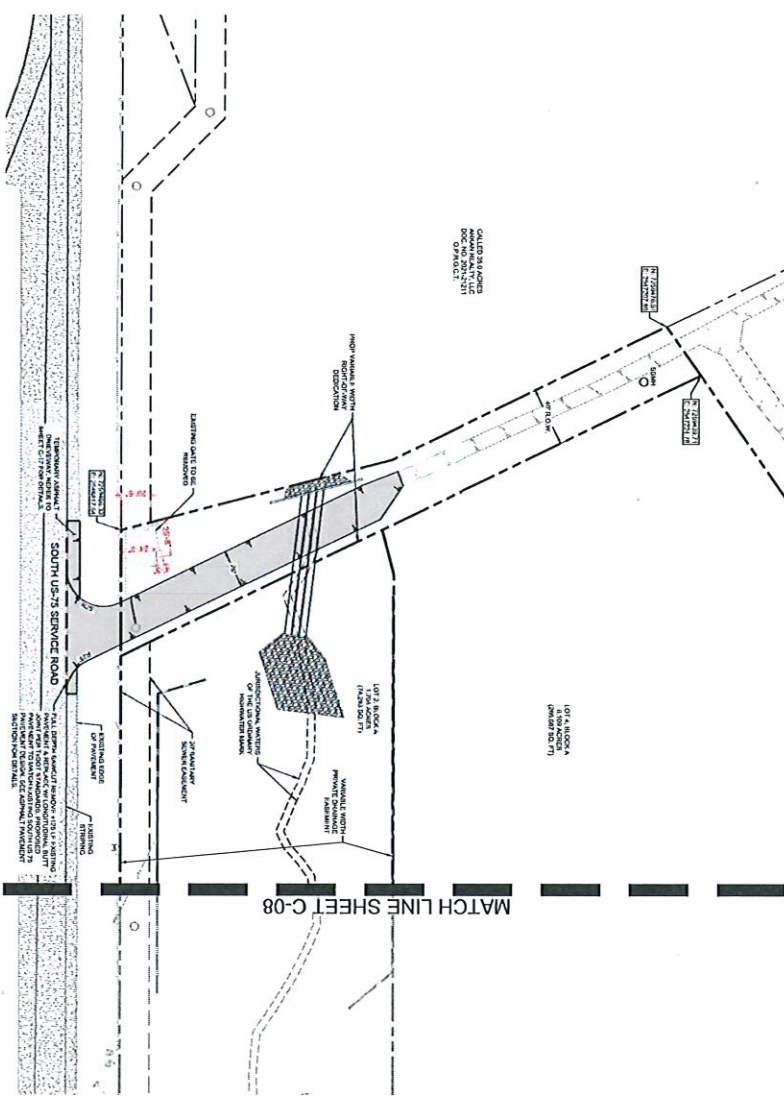
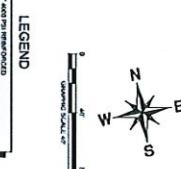
54.445 ACRES SITUATED IN THE
JOHN OHRINGER SURVEY, ABSTRACT NO. 248 AND
THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 755
CITY OF SHERMAN, GRAYSON COUNTY, TEXAS

Kimley»Horn
Tel. No. (972) 440-1100
Fax No. (972) 440-1101
EFD# 1010220
Warren Parkway, Suite 210
Dallas, Texas 75204

Address	JOC	NOA
Generator / Applicant: American Shiping, LLC 800 IV. Bafford Dr., 2nd Sub Dallas, Texas 75245 Tel: (972) 454-5175 Fax: (972) 454-5175	Generator / Applicant: The Chemical of America 850 W. Tarrant St., 2nd Sub Dallas, Texas 75204 Tel: (972) 454-5175 Fax: (972) 454-5175	

EXHIBIT C
 Konyakym and Associates, Inc.
 13408 Lind Rd., Suite 700
 Dallas, TX 75240
 PH: (972) 750-1206
 Corbett Aviation Policy, Pte



[illegible]

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	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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1	2	3	4	5	6	7	8	9	10	11	12	13</																																																																																							

GEOTECHNICAL NOTE
THE OLD PLAN AND GENERAL NOTES REFER TO
GEOTECHNICAL ENGINEERING REPORT
D-33 (UNION) (MND) L-201
PROJECT # 0-072-220
OCTOBER 21, 1972
INCLUDING ALL REVISIONS AND ADDENDA TO THIS
REPORT THAT MAY HAVE BEEN RELEASED AS PER
THE NOTED DATE.

CAUTION:

EXISTING UNDERGROUND UTILITIES IN THE AREA OF THE PROPOSED CONSTRUCTION SHALL BE LOCATED PRIOR TO CONSTRUCTION. CONSTRUCTION SHALL BE RESPONSIBLE FOR ANY HARMING TO EXISTING UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF EXISTING UTILITIES. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DISCREPANCIES ON THE PLANS.



Know what's below.
Call before you dig.

[illegible]





City Council Regular Meeting

Agenda Item No. F.7.

Meeting Date: 8/4/2025

Prepared By: Loren Siems, Right of Way Specialist

Approved By: Zachary Flores, Acting City Manager

Caption:

*** Resolution No. 7556**

Authorizing the City Manager or His Designee to Execute a Right of Way Warranty Deed for the Purchase and Acquisition of Real Property from Point Man Ventures for the Construction of a Retaining Wall at the Corner of Lamberth and FM 1417, Being 0.0043 Acres in the J.B. McAnair Survey, Abstract No. 763, City of Sherman, Grayson County, Texas

Issue:

Authorizing the City Manager or his designee to execute a right of way warranty deed with Point Man Ventures for the construction of a retaining wall.

Background:

The City of Sherman has determined it is necessary for the construction of a retaining wall at the corner of FM 1417 and Lamberth. This will expand the current right of way at the corner to allow the construction of the new retaining wall.

Capital Improvement Program:

Origination:

City of Sherman

Financial Consideration:

None

Staff Recommendation:

City staff recommends that the right of way be executed

Alternatives:

As may directed by City Council

Attachments:

1. Resolution No. 7556
2. McClure ROW- signed ROL and owner
3. Location map

RESOLUTION NO. 7556

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE AN RIGHT OF WAY WARRANTY DEED FOR THE PURCHASE AND ACQUISITION OF REAL PROPERTY FROM POINT MAN VENTURES FOR THE CONSTRUCTION OF A RETAINING WALL AT THE CORNER OF LAMBERTH AND FM 1417, BEING 0.0043 ACRES IN THE J.B. MCANAIR SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager or his designee is authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a Right of Way Warranty Deed for the purchase and acquisition of real property from Point Man Ventures for the construction of a retaining wall at the corner of FM 1417 and Lamberth, being 0.0043 acres in the J.B. McAnair Survey, Abstract 763, City of Sherman, Grayson County, Texas, more particularly described in Exhibit "A," attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 4th day of August 2025.

CITY OF SHERMAN, TEXAS

**BY: _____
SHAWN TEAMANN, MAYOR**

ATTEST:

**BY: _____
LEAH ROBERTS
EXE. DIR. OF ADMINISTRATION
ACTING CITY CLERK**

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

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

Exhibit “A”

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of J.B. McAnair Survey, Abstract No. 763, and being part of Lot 10-A, Block One of the Replat of a Section One "B" and Section Two "A", Canyon Creek Addition, according to the plat thereof recorded in Volume 5, Page 44, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a found 1/2" steel rod with a plastic cap stamped "RPLS 4709" for the southwest corner of said Lot 10-A, and at the intersection of the northerly right-of-way line of Lamberth Road and the easterly right-of-way line of F.M. Highway No. 1417;

Thence North 10°00'44" West, with the westerly line of said Lot 10-A, and with the easterly right-of-way line of said F.M. Highway No. 1417, a distance of 7.27 feet to the northwest corner of the herein described tract of land, and from which a found 1/2" steel rod with a plastic cap stamped "RPLS 4709" for the northwest corner of said Lot 10-A bears North 10°00'44" West, a distance of 153.96 feet;

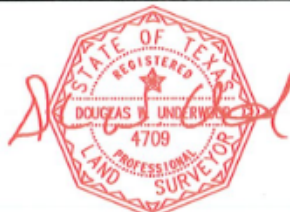
Thence North 78°34'57" East, crossing said Lot 10-A, a distance of 26.89 feet to the northeast corner of the herein described tract of land;

Thence South 11°23'30" East, continuing across said Lot 10-A, a distance of 6.48 feet to the southeast corner of the herein described tract of land, and on the southerly line of said Lot 10-A, and on the northerly right-of-way line of aforesaid Lamberth Road, and from which a found 1/2" steel rod with a plastic cap stamped "RPLS 4709" for the southeast corner of said Lot 10-A bears North 76°55'16" East, a distance of 135.09 feet;

Thence South 76°55'16" West, with the southerly line of said Lot 10-A, and with the northerly right-of-way line of said Lamberth Road, a distance of 27.08 feet to the Point of Beginning and containing 0.0043 acres of land, more or less.

PAGE 2 OF 2

JOB NO. 25060644



DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

SIDEWALK EASMENT



DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75023
(903) 465-2151 FAX: (903) 465-2352

DATE: 07/03/2025

DRAWN BY: BNH

APPROVED BY: DWU

SCALE: 1" = 30'

POINT MAN VENTURES
LOT 10-A, BLOCK 1
REPLAT CANYON CREEK

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

RIGHT-OF-WAY WARRANTY DEED

STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GRAYSON

§

That **POINT MAN VENTURES** ("Grantor"), a Texas Joint Venture, whose address is 2201 N. Heritage Parkway, Sherman, Texas, 75092, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid by the **CITY OF SHERMAN, TEXAS** ("Grantee"), whose mailing address is P.O. Box 1106, Sherman, Texas 75091, the receipt and sufficiency of which consideration is hereby acknowledged, has DEDICATED, GRANTED, SOLD AND CONVEYED in fee simple, and by these presents does DEDICATE, GRANT, SELL AND CONVEY in fee simple unto Grantee as right of way for public street, utility, access, sidewalk and other public purposes, including the right of ingress and egress, and regress therein, and any other public purpose authorized by Texas Local Government Code § 273.001 and deemed necessary by Grantee into and through all that certain real property ("Property") located in the County of Grayson, State of Texas, 0.0043 acres, more or less, and being more particularly described in Exhibit "A" attached hereto and for all purposes.

Grantor specifically reserves from this dedication all its rights, title and interest in all oil, gas and other minerals in and under the Property, provided, however, that Grantor shall not be permitted to, and shall not allow any party to, drill or excavate for oil, gas and other minerals on or from the surface of the Property, but Grantor may extract oil, gas or other minerals from and under the Property by directional drilling or other means that do not interfere with or disturb Grantee's use of the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any way belonging, as right of way for said public street, utility, access, sidewalk and other public purposes unto Grantee, its successors and assigns, forever. Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Each individual executing this instrument on behalf of Grantor represents that all appropriate and necessary actions have been taken to authorize the individual who is executing this instrument to do so for and on behalf of Grantor, that there are no other parties or entities required to execute this instrument in order for the same to be an authorized and binding agreement on Grantor and that the individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

It is understood and agreed that the consideration received by Grantor hereunder includes adequate compensation for the grant of the rights hereunder and for all damages arising out of the construction, reconstruction, repair, operation and maintenance of any street, utility, access, sidewalk or other public facilities.

This instrument shall be binding on, and inure to the benefit of, Grantee and Grantor and their respective successors or assigns.

This instrument may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

When the context requires, singular nouns and pronouns include the plural.

SIGNED and effective this 10 day of July, 2025.

GRANTOR:

A handwritten signature in black ink, appearing to read 'Nat McClure', written over a horizontal line.

Nat McClure, Joint Venturer of Point Man Ventures

A handwritten signature in black ink, appearing to read 'Clint Long', written over a horizontal line.

Clint Long, Joint Venturer of Point Man Ventures

ACKNOWLEDGEMENT

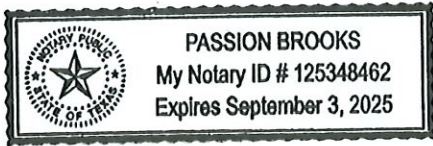
THE STATE OF TEXAS
COUNTY OF GRAYSON

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

BEFORE ME, the undersigned authority, on this day personally appeared **NAT MCCLURE**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is a duly authorized representative of **POINT MAN VENTURES, a Texas Joint Venture**, and that he executed the same for the purposes and consideration therein stated and in the capacity therein stated as the act and deed of said venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this the 10 day of July, 2025.



Passion Brooks

NOTARY PUBLIC, STATE OF TEXAS

Notary's commission expires: 9/3/2025

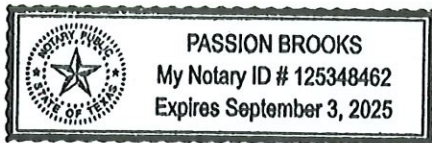
THE STATE OF TEXAS
COUNTY OF GRAYSON

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

BEFORE ME, the undersigned authority, on this day personally appeared **CLINT LONG**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is a duly authorized representative of **POINT MAN VENTURES, a Texas Joint Venture**, and that he executed the same for the purposes and consideration therein stated and in the capacity therein stated as the act and deed of said venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this the 10 day of July, 2025.



Passion Brooks
NOTARY PUBLIC, STATE OF TEXAS

Notary's commission expires: 9/3/2025

GRANTEE:
CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
ACTING CITY CLERK

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

BY: _____
NAME: _____
CITY ATTORNEY

AFTER RECORDING, RETURN TO
City of Sherman
Office of the City Attorney
P. O. Box 1106
Sherman, TX 75091-1106

PARTIAL RELEASE OF LIEN

The undersigned, being the holder of the lien against all or a portion of the Property evidenced by: JERRY GRIFFIN, TRUSTEE, recorded as Volume 4155, Page 223 on November 22, 2006 in Grayson County, Texas, renewed as Volume 5122, Page 36, recorded on May 11, 2012 in Grayson County, Texas, renewed as Instrument No. 2019-12174, recorded on May 28, 2019, in Grayson County, Texas, renewed by GREG MASSY, TRUSTEE, recorded as Instrument No. 2022-15626 on May 5, 2022 in Grayson County, Texas hereby consents to the execution of the foregoing Deed and hereby releases the Property from the lien or lien(s) described above.

FIRST UNITED BANK AND TRUST COMPANY

By: _____

Title: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF

Grayson

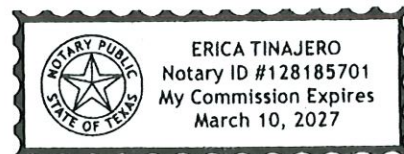
§
§
§

KNOW ALL MEN BY THESE PRESENTS:

BEFORE ME, the undersigned authority, on this day personally appeared Jason Bethel, known to me to be the person whose name is subscribed to the foregoing instrument; he acknowledged to me that he is the S.V.P. and duly authorized representative of FIRST UNITED BANK AND TRUST CO. and that he executed the same for the purpose and consideration therein stated and in the capacity therein stated as the act and deed of said company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this the 14th day of July, 2025.

Erica Tinajero
NOTARY PUBLIC, STATE OF TEXAS



Notary's commission expires: 3-10-27

Exhibit “A”

10' UTILITY EASEMENT
(5' ON EACH SIDE)

1/2" STEEL
ROD FOUND
"RPLS 4709"

J. B. MCANAIR SURVEY
ABSTRACT NO. 763

LOT 10-A, BLOCK ONE
REPLAT OF A SECTION ONE "B"
& SECTION TWO "A"
CANYON CREEK ADDITION
VOL. 5, PG. 44
P.R.G.C.T.

LINE	BEARING	DISTANCE
L1	N 10°00'44" W	7.27'
L2	N 78°34'57" E	26.89'
L3	S 11°23'30" E	6.48'
L4	S 76°55'16" W	27.08'

1/2" STEEL
ROD FOUND
"RPLS 4709"

N 10°00'44" W 153.96'

20' UTILITY
EASEMENT

F.M. HIGHWAY
NO. 1417

L2
0.0043 AC.
L4
P.O.B.
1/2" STEEL
ROD FOUND
"RPLS 4709"

N 76°55'16" E 135.09'

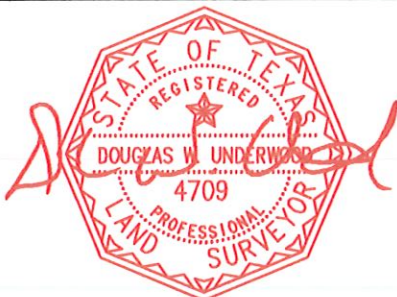
~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE

LEGEND

P.O.B.	POINT OF BEGINNING	WV	WATER VALVE
⊙	1/2" STEEL ROD FOUND	WV	IRRIGATION VALVE
○	POINT FOR CORNER	P.R.G.C.T.	PLAT RECORDS, GRAYSON COUNTY, TEXAS
PP	POWER POLE	---	BOUNDARY LINE
—	GUY WIRE	---	PROPERTY LINE
FH	FIRE HYDRANT	---	EASEMENT LINE
		---	OHE OVERHEAD ELEC.

PAGE 1 OF 2

JOB NO. 25060644



DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

SIDEWALK EASMENT

DATE: 07/03/2025
DRAWN BY: BNH
APPROVED BY: DWU
SCALE: 1" = 30'



DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75023
(903) 465-2151 FAX: (903) 465-2352

POINT MAN VENTURES
LOT 10-A, BLOCK 1
REPLAT CANYON CREEK

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of J.B. McAnair Survey, Abstract No. 763, and being part of Lot 10-A, Block One of the Replat of a Section One "B" and Section Two "A", Canyon Creek Addition, according to the plat thereof recorded in Volume 5, Page 44, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a found 1/2" steel rod with a plastic cap stamped "RPLS 4709" for the southwest corner of said Lot 10-A, and at the intersection of the northerly right-of-way line of Lamberth Road and the easterly right-of-way line of F.M. Highway No. 1417;

Thence North 10°00'44" West, with the westerly line of said Lot 10-A, and with the easterly right-of-way line of said F.M. Highway No. 1417, a distance of 7.27 feet to the northwest corner of the herein described tract of land, and from which a found 1/2" steel rod with a plastic cap stamped "RPLS 4709" for the northwest corner of said Lot 10-A bears North 10°00'44" West, a distance of 153.96 feet;

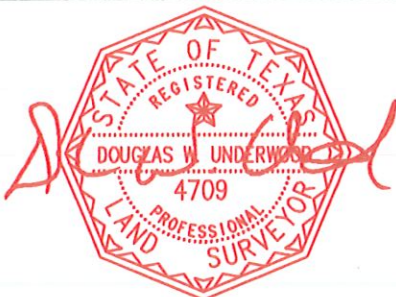
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PAGE 2 OF 2

JOB NO. 25060644



DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

SIDEWALK EASMENT

DATE: 07/03/2025
DRAWN BY: BNH
APPROVED BY: DWU
SCALE: 1" = 30'



DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75023
(903) 465-2151 FAX: (903) 465-2352

POINT MAN VENTURES
LOT 10-A, BLOCK 1
REPLAT CANYON CREEK



Sherman
Development
Engineering
Group

2201, 2203 N FM 1417 (Heritage Parkway)

1" = 50'





City Council Regular Meeting

Agenda Item No. G.1.

Meeting Date: 8/4/2025

Prepared By: Eric Sandberg, Quality Services Manager

Approved By: Zachary Flores, Acting City Manager

Caption:

*** REQUEST TO ADVERTISE**

Annual Requirements for Janitorial Services in Certain City-Owned Facilities

Issue:

Seeking approval to advertise a Request for Proposals (RFP) for janitorial services in certain City-owned facilities

Background:

Historically, the City has contracted for the cleaning of certain City-owned facilities. The City's previous agreement for janitorial services will expire on October 1, 2025. As an ongoing effort to increase efficiency in maintaining City-owned facilities, we request permission to advertise a Request for Proposals for janitorial services for approximately 15 City buildings.

Capital Improvement Program:

Origination:

Building Maintenance Department

Financial Consideration:

Funds for janitorial services were appropriated in the approved budget for fiscal year 2024-2025 and are included in the proposed budget for fiscal year 2025-2026.

Advertising costs are estimated to be approximately \$200.00.

Staff Recommendation:

It is recommended that the City Council approve the advertising of the Request for Proposals for janitorial services for certain City-owned facilities.

Alternatives:

As may be directed by the City Council

Attachments:

None



City Council Regular Meeting

Agenda Item No. H.1.

Meeting Date: 8/4/2025

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Zachary Flores, Acting City Manager

Caption:

Other Business

Consider Scheduling a Joint Meeting of the City Council and the Planning and Zoning Commission for 12:00p.m. on Thursday, October 9, 2025, for a training workshop conducted by Abernathy, Roeder, Boyd & Hullett

Issue:

To conduct a training workshop with the Council and P& Z Commission

Background:

Annual training for P&Z and City Council to ensure continuity between the boards.

Capital Improvement Program:

Origination:

Sherman City Council

Sherman Planning and Zoning Commission

Financial Consideration:

Staff Recommendation:

Alternatives:

Alternative dates for joint meeting are Friday, October 10, 2025 or Tuesday, October 14, 2025

Attachments:

None

Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

March						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

April						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

May						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

June						
Su	Mo	Tu	We	Th	Fr	Sa
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8	9	6	7	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

July						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August						
Su	Mo	Tu	We	Th	Fr	Sa
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10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

September						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

October						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

November						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

December						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

[illegible]