

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, OCTOBER 6, 2008
5:00 P.M.**

- A.1 [CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN](#)
- A.2 [PLEDGE OF ALLEGIANCE](#)
- A.3 [INVOCATION BY COUNCIL MEMBER WILLIE STEELE](#)
- A.4 [APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 15, 2008 AND THE CALLED CITY COUNCIL MEETING \(HELD JOINTLY WITH THE SHERMAN ECONOMIC DEVELOPMENT BOARD OF DIRECTORS\) OF SEPTEMBER 18, 2008](#)

Proclamations

- A.5 [PROCLAMATION](#)
“Domestic Violence Awareness Month” – October 2008
- A.6 [PROCLAMATION](#)
“National Night Out - Texas” – October 7, 2008
- A.7 [PROCLAMATION](#)
“Red River Historical Museum Day” – October 11, 2008

Special Recognition

- A.8 [SPECIAL RECOGNITION](#)
Recognition of Freddie Orr, Sr.’s Service on the Texoma Area Paratransit Board of Directors: October 15, 1998 - September 24, 2008

Public Hearing

- B.1 [SECOND READING, PUBLIC HEARING AND FINAL VOTE ON ORDINANCE NO. 5562](#)
Granting to Atmos Energy Corporation, Mid-Tex Division, a Texas and Virginia Corporation, its Successors and Assigns, a Franchise to Furnish, Transport and Supply Gas to the General Public in the City of Sherman, Grayson County, Texas, for the Transporting, Delivery, Sale, and Distribution of Gas in, Out of, and Through Said Municipality for all Purposes; Providing for the Payment of a Fee or Charge for the Use of the Public Rights-of-Way; Providing That it Shall be in Lieu of Other Fees and

Charges, Excepting Ad Valorem Taxes; Repealing all Previous Atmos Energy Gas Franchise Ordinances; Prescribing the Terms, Conditions, Obligations and Limitations Under Which Such Franchise Shall be Exercised; Providing a Most Favored Nations Clause; Providing for an Effective Date

B.2 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5563](#)

Approving an Electric Power Contract with Cities Aggregation Power Project, Inc. (“CAPP”) for Electric Capacity and Energy, Providing Capacity Payments as Public Property Finance Contractual Obligations of the City, Pledging and Levying an Ad Valorem Tax To Such Payments, Providing for Energy Payments for Electric Energy Subject to Annual Appropriation by the City, Providing for the Assignment of Such Capacity Payments to Support Debt Issued by CAPP Incurred to Acquire Electric Capacity Rights from Luminant Generation Company and Related Entities Pursuant to a 24-Year Power Purchase Agreement (“PPA”); Authorizing the City Manager or Other Appropriate City Officer or Employee to Execute and Deliver the Member Contract; Further Authorizing the City Manager or Other Appropriate City Officer or City Employee to Sign Additional Agreements Arranged by CAPP for Electric Power Needed by the City in the Period 2009-2011 in Excess of the Amount Obtained Under the Member Contract; Acknowledging, Authorizing and Directing the City Manager or Appropriate City Officer or City Employee to Sign and Return CAPP’s Disclosure Letter; Further Authorizing the City Manager or Appropriate City Officer or Other City Employee to Accept Conforming Changes to the Member Contract Dependent on the Final Terms of the CAPP PPA; Providing for Validity and Sufficiency of City Employee’s or City Officer’s Signature if the Officer or Employee Leaves Office or Employment Prior to the Delivery of the Member Contract

B.3 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5564](#)

Amending Chapter 13 of the Code of Ordinances, entitled “Utilities”, at Article 13.06, entitled “Solid Waste”, at Sections 13.06.005, 13.06.086, 13.06.087, and 13.06.088 to Increase Certain Solid Waste Fees

B.4 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5565](#)

Repealing Ordinance No. 5408 and Amending Chapter 13 of the Code of Ordinances, entitled “Utilities”, at Article 13.08, entitled “Utility Billing”, adding Sections 13.08.005, “Water Rates”, and 13.08.006, “Sewer Charges”

B.5 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5566](#)

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Donna Reast (Owner), Bryan Luckett (Prospective Buyer), and Sartin & Associates (Surveyors) to Allow a Construction, Equipment Sales, Service, Rental and Repair Shop and Yard (Crane Service) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District at 3111 U.S. Highway 75 South, being 2.7 Acres in the Preston Kitchen Survey, Abstract No. 667; Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

B.6 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5567](#)

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to TX SW1 LP, C/O Levcor (Owners) and Joe Oblas (Tenant) to Allow a Commercial Amusement Center (Baseball Academy) in a C-2 (General Commercial) District and the O-1 (75 & 82) Overlay District at 2711 U.S. Highway 75 North, being Lot 5, Block 1 of Texoma Crossing Addition, Replat of Lots 5 & 5A; Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

Close Public Hearing and Consider Adoption of Ordinances

B.7 [ADOPTION OF ORDINANCES](#)

Consider Adoption of Ordinance Numbers:

- | | |
|-------------|-------------|
| a) 5562 | d) 5565 |
| b) 5563 | e) 5566 |
| c) 5564 | f) 5567 |

B.8 [CONSENT AGENDA](#)

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

Resolutions

C.1 [RESOLUTION NO. 5269](#)

Authorizing Execution of an Interlocal Agreement between the City of Sherman and Grayson County for Emergency Management and Related Homeland Security Services

C.2 [* RESOLUTION NO. 5270](#)

Authorizing Execution of a Deed Without Warranty to Harry Reynolds and Alera Reynolds for the Conveyance of a Portion of a 15-foot Alley in Block 22 of the College Park Addition, with Utility Easement, Bounded by the 400 Blocks of North Grand Avenue and North Lee Street and the Railroad Right-of-Way

C.3 [RESOLUTION NO. 5271](#)

Authorizing the Lease of Certain City-Owned Property located at 1003 North East Street to Recreational Council - Jack and Jill Day Care Center, Inc.

C.4 [* RESOLUTION NO. 5272](#)

Authorizing Execution of a Child Care Local Match Contribution Agreement with Workforce Solutions Texoma for the Period of October 1, 2008 through December 31, 2008

- C.5 [* RESOLUTION NO. 5273](#)
Authorizing the City Manager to Execute Contracts with the Sherman Council for the Arts & Humanities, Inc. and the Friends of the Red River Historical Museum (aka Red River Historical Museum)
- C.6 [* RESOLUTION NO. 5274](#)
Appointing and Authorizing the Execution of an Agreement with Pattillo, Brown & Hill, L.L.P. to Perform the Fiscal Year 2008 Audit
- C.7 [* RESOLUTION NO. 5275](#)
Authorizing Execution of an Agreement with John Robert Hooker, individually and d/b/a J & S Aviation, for the Operation of an Aircraft Maintenance Shop and the Provision of Customer Service Assistance at the Sherman Municipal Airport
- C.8 [* RESOLUTION NO. 5276](#)
Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 616 East Sycamore Street
- C.9 [* RESOLUTION NO. 5277](#)
Authorizing Execution of an Agreement with Terry Peterson for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1302 South Elm Street
- C.10 [* RESOLUTION NO. 5278](#)
Authorizing the Purchase of a 2009 Ford F-450 Frazer Ambulance for the Sherman Fire Department through the Houston-Galveston Area Council of Governments (H-GAC)
- C.11 [* RESOLUTION NO. 5279](#)
Authorizing the Purchase of a 2009 Pierce Fire Engine for the Sherman Fire Department through the Texas Local Government Purchasing Cooperative (BuyBoard)

Other Business

- D.1 [OTHER BUSINESS](#)
Consider Request of the Austin College Kappa Gamma Chi to Temporarily Close Certain Streets for the Homecoming 2008 'Roo Run and Joey Walk on Saturday, October 25, 2008
- D.2 [* OTHER BUSINESS](#)
Final Plat Approval of the Bryan Luckett Addition; Donna Reast, Owner; Bryan Luckett, Prospective Buyer (3111 U.S. Highway 75 South)
- D.3 [CITIZEN REQUESTS](#)
- D.4 [MEDIA QUESTIONS](#)

D.5 [COUNCIL COMMENTS](#)

Executive Session

E.1 [EXECUTIVE SESSION](#)

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

- | | |
|-----------------|--|
| Section 551.074 | Personnel Matters: <ul style="list-style-type: none">(a) Consider the Qualifications, Appointment and Removal of Members to Boards and Commissions:<ul style="list-style-type: none">(i) Sherman Higher Education Finance Corporation Board (7)(ii) Texoma Area Paratransit Systems (TAPS) Board of Directors (1)(iii) Tri-County Senior Nutrition Board of Directors (1)(b) Consider the Qualifications, Appointment, Employment and Duties of a Public Officer or Employee:<ul style="list-style-type: none">(i) Interim City Attorney |
| Section 551.087 | Deliberations Regarding Economic Development Negotiations: <ul style="list-style-type: none">(a) Deliberate Regarding Commercial or Financial Information that the City has Received from Business Prospects and Deliberate any Offers or Incentives to the Business Prospects, including the following:<ul style="list-style-type: none">(i) Panda Energy |

The Council reconvenes into General Session

F.1 [OPEN MEETING](#)

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

Resolution

G.1 [RESOLUTION NO. 5280](#)

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

H.1 [ADJOURNMENT](#)

[COUNCIL CALENDAR](#)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Willie Steele, Council Member



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. A.3

INVOCATION BY COUNCIL MEMBER WILLIE STEELE



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. A.4

APPROVE MINUTES

**THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 15, 2008
AND THE CALLED CITY COUNCIL MEETING (HELD JOINTLY WITH
THE SHERMAN ECONOMIC DEVELOPMENT BOARD OF DIRECTORS)
OF SEPTEMBER 18, 2008**

September 15, 2008

**ORD 5558
ZONE CHANGE
SHERMAN COMMONS
ADDITION**

(WOODMONT SHERMAN, L.P., OWNERS, AND MAYS & COMPANY, PROSPECTIVE BUYER); PROVIDING FOR A REPEALER.

No citizens appeared before the City Council to discuss Ordinance 5558.

Mayor Magers introduced Ordinance 5559 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO WOODMONT SHERMAN, L.P. (OWNERS) AND MAYS & COMPANY (PROSPECTIVE BUYER) TO ALLOW A TIRE SALES BUSINESS AND AN AUTOMOBILE SERVICE AND REPAIR BUSINESS, INCLUDING SALES, SERVICE, REPAIR AND INSTALLATION OF TIRES, MOTOR VEHICLE PARTS AND ACCESSORIES, OIL AND ITS DERIVATIVES, AUTOMOBILE SUPPLIES AND FURNISHINGS IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND O-1 (75 & 82 OVERLAY) DISTRICT AT 3801 U.S. HIGHWAY 75 NORTH, BEING LOT 1, BLOCK 1 OF THE SHERMAN COMMONS ADDITION, REPLAT OF BLOCK C; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.

ORD 5559
SUP FOR
TIRE SALES &
AUTO SERVICE
(3801 HWY 75 NORTH)

No citizens appeared before the City Council to discuss Ordinance 5559.

Mayor Magers introduced Ordinance 5560 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO MIDA ELIZABETH SKIPWORTH ESTATE (OWNERS), CHARLIE SKIPWORTH (EXECUTOR), MARK AND LISA MALONE (PROSPECTIVE BUYERS), AND SARTIN & ASSOCIATES (SURVEYOR) TO ALLOW A TWO-FAMILY DWELLING (DUPLEX) ON THE PROPOSED LOT 1, BLOCK 1 OF MALONE'S ADDITION IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AT 1523-1531 EAST THOMAS STREET, BEING 0.36 ACRES IN THE G.B. PILANT SURVEY, ABSTRACT NO. 963; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.

ORD 5560
SUP FOR
DUPLEX
(1523-1531 E. THOMAS)

No citizens appeared before the City Council to discuss Ordinance 5560.

Mayor Magers introduced Ordinance 5561 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC

ORD 5561
SUP FOR DAY
HABILITATION
PROGRAM FOR
ADULTS

USE PERMIT TO TERRY SC WONG (OWNER), DEAN GILBERT, JR. (PROPERTY MANAGER) AND EVERGREEN PRESBYTERIAN MINISTRIES, INC., THERESA GARRETT (TENANT) TO ALLOW A DAY HABILITATION PROGRAM / SCHOOL AND TRAINING CENTER FOR ADULTS WITH DEVELOPMENTAL DISABILITIES IN A C-1 (RETAIL BUSINESS) DISTRICT AND O-1.1 (FM 1417 OVERLAY) DISTRICT AT 2001 SKYLINE DRIVE, SUITE A-145, BEING LOT 3, BLOCK 1 OF THE SKYLINE BUSINESS PARK REPLAT; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.

No citizens appeared before the City Council to discuss Ordinance 5561.

The Ordinances were introduced and the Public Hearing was closed.

CLOSE PUBLIC
HEARING

ADOPTION OF ORDINANCES

Ordinance 5556

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR THE LEVY OF AD VALOREM TAXES FOR THE CITY OF SHERMAN, TEXAS, FOR THE TAX YEAR 2008; DISTRIBUTING THE SAME AMONG THE VARIOUS FUNDS; PROVIDING FOR A PENALTY AND INTEREST FOR FAILURE TO PAY THE TAXES LEVIED WITHIN THE TIME PROVIDED BY LAW; PROVIDING FOR A REPEALER.

ORD 5556
AD VALOREM
TAX LEVY

Mayor Magers said the Council has fulfilled a promise to the voters by reducing property taxes by 20% with the passage of this ordinance.

Ordinance 5560

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO MIDA ELIZABETH SKIPWORTH ESTATE (OWNERS), CHARLIE SKIPWORTH (EXECUTOR), MARK AND LISA MALONE (PROSPECTIVE BUYERS), AND SARTIN & ASSOCIATES (SURVEYOR) TO ALLOW A TWO-FAMILY DWELLING (DUPLEX) ON THE PROPOSED LOT 1, BLOCK 1 OF MALONE'S ADDITION IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AT 1523-1531 EAST THOMAS STREET, BEING 0.36 ACRES IN THE G.B. PILANT SURVEY, ABSTRACT NO. 963; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.

ORD 5560
SUP FOR
DUPLEX
(1523-1531 E. THOMAS)

Ordinance 5561

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO TERRY SC WONG (OWNER), DEAN

ORD 5561
SUP FOR DAY
HABILITATION
PROGRAM FOR
ADULTS

GILBERT, JR. (PROPERTY MANAGER) AND EVERGREEN PRESBYTERIAN MINISTRIES, INC., THERESA GARRETT (TENANT) TO ALLOW A DAY HABILITATION PROGRAM / SCHOOL AND TRAINING CENTER FOR ADULTS WITH DEVELOPMENTAL DISABILITIES IN A C-1 (RETAIL BUSINESS) DISTRICT AND O-1.1 (FM 1417 OVERLAY) DISTRICT AT 2001 SKYLINE DRIVE, SUITE 1-145, BEING LOT 3, BLOCK 1 OF THE SKYLINE BUSINESS PARK REPLAT; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.

ACTION TAKEN.

Motion by Council Member Adami to approve Ordinance Nos. 5556, 5560, and 5561, as presented.
Second by Council Member Steele.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 5558

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTIES WITHIN THE C-2 (GENERAL COMMERCIAL) DISTRICT AT 3801 U.S. HIGHWAY 75 NORTH, BEING LOT 1, BLOCK C OF THE SHERMAN COMMONS ADDITION, REPLAT OF BLOCK C (WOODMONT SHERMAN, L.P., OWNERS, AND MAYS & COMPANY, PROSPECTIVE BUYER); PROVIDING FOR A REPEALER.

**ORD 5558
ZONE CHANGE
SHERMAN COMMONS
ADDITION**

Ordinance 5559

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO WOODMONT SHERMAN, L.P. (OWNERS) AND MAYS & COMPANY (PROSPECTIVE BUYER) TO ALLOW A TIRE SALES BUSINESS AND AN AUTOMOBILE SERVICE AND REPAIR BUSINESS, INCLUDING SALES, SERVICE, REPAIR AND INSTALLATION OF TIRES, MOTOR VEHICLE PARTS AND ACCESSORIES, OIL AND ITS DERIVATIVES, AUTOMOBILE SUPPLIES AND FURNISHINGS IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND O-1 (75 & 82 OVERLAY) DISTRICT AT 3801 U.S. HIGHWAY 75 NORTH, BEING LOT 1, BLOCK 1 OF THE SHERMAN COMMONS ADDITION, REPLAT OF BLOCK C; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.

**ORD 5559
SUP FOR
TIRE SALES &
AUTO SERVICE
(3801 HWY 75 NORTH)**

Council Member Adami asked if there were any questions on the staff review letter that was presented at the Planning and Zoning Commission Meeting.

The staff review letter states that all aspects of the C-2 (General Commercial) District, the O-1 (75 & 82) Overlay District, the Commercial Tree and Landscaping Ordinance and the Sign Ordinance must be followed, outside storage and display of products will not be allowed, and overhead doors/service bays shall not be located on the parkway side of any building without variance approval.

Ryan Scott, 7821 Vinyard Ct., North Richland Hills, Texas

Mr. Scott is the Construction Manager for Woodmont Development. He stated they are okay with the provisions and added the Planning and Zoning Commission wanted the overhead door painted the same color as the building and that will be done. Council Member Adami verified that the overhead doors will be facing Loy Lake Road instead of Highway 75.

ACTION TAKEN.

Motion by Council Member Adami to approve Ordinance Nos. 5558 and 5559, subject to the staff review comments. Second by Deputy Mayor Wacker.

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

VOTING NAY: None.

MOTION CARRIED.

CONSENT AGENDA

The Council reviewed the Consent Agenda. Mayor Magers removed Item C-6 entitled "Resolution 5263 – Authorizing Execution of an Encroachment License Agreement with Overland Group, LLC for a Multi-Tenant Sign in the Utility Easement along F.M. 1417 and Overland Trail in the O'Hanlon Ranch Addition, Phase 2 to the City of Sherman" from the Consent Agenda for discussion in its regular order of business.

Council Member Adami moved to approve the Consent Agenda, with the exception of Item C-6, which will be discussed in its regular order of business. Second by Council Member Softly. All present voted AYE.

PROCLAMATION

"LION'S WHITE CANE DAY" – OCTOBER 4, 2008

Mayor Magers presented a proclamation designating October 4, 2008 as "Lions White Cane Day" to Dr. Jerry Gundersheimer, Chairman of the White Cane Drive for the Sherman Noon Lions Club.

Dr. Gundersheimer thanked the Mayor and City Council adding that the White Cane Day is their major fund raiser and last year donations from the event helped 212 area children with eye exams.

This year, Dr. Gundersheimer has been advised about the prohibition of allowing organizations to collect money in the streets. Normally the Lions Club collected at two intersections in Sherman. He asked the City Council to allow

CONSENT AGENDA

**LION'S WHITE
CANES DAY
(OCT. 4, 2008)**

their organization to collect money at the intersections of Loy Lake Road and Taylor Street and at Taylor Street and Travis Street.

Mayor Magers said the issue of allowing organizations to collect in the street is one of safety. They would be allowed to collect on the side of the road, but not in the street.

George Olson, City Manager, explained that many organizations have requested to collect in the street, and the staff has determined that it would be dangerous to those soliciting and those contributing, as well as impede traffic.

Dr. Gundersheimer said the Lions Club has a blanket insurance policy to protect anyone from harm working in their behalf. Mayor Magers said other organizations may not have insurance and the City must be consistent in their decisions.

Mr. Olson said the City is following State law and the municipality has the ability to deny a request. Mayor Magers reiterated that the intersections are highly traveled and there is a legitimate safety risk. Council Member Steele verified that they could collect donations in front of other businesses.

Fire Chief Jeff Jones will provide Dr. Gundersheimer with a contact name for Town Center.

RESOLUTIONS

RESOLUTION NO. 5259 - REVOKING AND REPLACING RESOLUTION NO. 5081; ESTABLISHING SALARY STRUCTURES AND INCENTIVE/CERTIFICATION PAY SCHEDULES FOR FIREFIGHTERS AND POLICE OFFICERS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REVOKING AND REPLACING RESOLUTION NO. 5081; ESTABLISHING SALARY STRUCTURES AND INCENTIVE / CERTIFICATION PAY SCHEDULES FOR FIREFIGHTERS AND POLICE OFFICERS; PROVIDING FOR AN EFFECTIVE DATE.
CONSENT AGENDA.

RES 5259
POLICE AND FIRE
SALARIES

RESOLUTION NO. 5260 - APPROVING AND ADOPTING AMENDMENT NUMBER ONE TO THE FLEXIBLE SPENDING ACCOUNT PLAN FOR THE CITY OF SHERMAN'S EMPLOYEES AND DEPENDENTS EFFECTIVE OCTOBER 1, 2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AND ADOPTING AMENDMENT NUMBER ONE TO THE FLEXIBLE SPENDING ACCOUNT PLAN FOR THE CITY OF SHERMAN'S EMPLOYEES AND DEPENDENTS EFFECTIVE OCTOBER 1, 2008.
CONSENT AGENDA.

RES 5260
EMPLOYEE FLEX
SPENDING
ACCOUNT

RESOLUTION NO. 5261 – AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND THE CITY OF FORT WORTH FOR HOUSEHOLD HAZARDOUS WASTE SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND THE CITY OF FORT WORTH FOR HOUSEHOLD HAZARDOUS WASTE SERVICES.
CONSENT AGENDA.

RES 5261
HOUSHOLD
HAZARDOUS
WASTE SERVICES

RESOLUTION NO. 5262 – AUTHORIZING THE PURCHASE OF REPLACEMENT RESIDENTIAL RECYCLING CARTS THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) FOR THE SOLID WASTE SERVICES DEPARTMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF REPLACEMENT RESIDENTIAL RECYCLING CARTS THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) FOR THE SOLID WASTE SERVICES DEPARTMENT.
CONSENT AGENDA.

RES 5262
RESIDENTIAL
RECYCLING
CARTS

RESOLUTION NO. 5258 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH VESCOR, INC. D/B/A VESSELS CONSTRUCTION FOR CONSTRUCTION OF PECAN GROVE PARK DEVELOPMENT, PHASE 1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH VESCOR, INC. D/B/A VESSELS CONSTRUCTION FOR CONSTRUCTION OF PECAN GROVE PARK DEVELOPMENT, PHASE I.

RES 5258
PECAN GROVE
PARK PROJECT

Kevin Winkler, Parks and Recreation Administrator, presented an update on Phase I of the Pecan Grove Park Development. He thanked the City Councils, past and present, for moving forward with both the Pecan Grove Park Development, the Center Street Complex that will be forthcoming, and Phase II of Pecan Grove Park scheduled for FY 2008-2009.

Bids were received for Phase I and will include all of the base items and two alternate items. The base bid will include a 33 space concrete parking lot that will tie into the existing Cypress Grove, an 8 foot walk way that will extend between the parking lot and the pavilion/playground area, and a playground with a 50x40 foot fall zone.

The two alternate items will include a 1,000 foot walking trail loop and six picnic tables that will be located under the pavilion.

The bid received was under budget and will allow for the two alternate items. Estimated completion of the project should take about 120 days.

ACTION TAKEN.

Motion by Deputy Mayor Wacker to approve Resolution No. 5258, as presented. Second by Council Member Softly.

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

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 5263 – AUTHORIZING EXECUTION OF AN ENCROACHMENT LICENSE AGREEMENT WITH OVERLAND GROUP, LLC FOR A MULTI-TENANT SIGN IN THE UTILITY EASEMENT ALONG F.M. 1417 AND OVERLAND TRAIL IN THE O'HANLON RANCH ADDITION, PHASE 2 TO THE CITY OF SHERMAN

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT LICENSE AGREEMENT WITH OVERLAND GROUP, LLC FOR A MULTI-TENANT SIGN IN THE UTILITY EASEMENT ALONG F.M. 1417 AND OVERLAND TRAIL IN THE O'HANLON RANCH ADDITION, PHASE 2 TO THE CITY OF SHERMAN.

RES 5263
O'HANLON RANCH
MULTI-TENANT
SIGN
(TABLED)

Mayor Magers removed Item C-6 from the Consent Agenda for discussion in its regular order of business.

Mayor Magers verified that the developer is requesting one multi-tenant sign instead of three individual signs. The sign would be larger and in the City easement, but still smaller than the three individual signs.

He also verified that the Planning and Zoning Commission has granted the variance for size and the City Council will consider only the location of the sign in the easement.

Mayor Magers expressed concern that the City Council enacted an Overlay District for Heritage Parkway designating certain criteria for signage as well as other areas. He said Heritage Parkway is the last undeveloped thoroughfare in Sherman.

He said he had no problem with moving the setback a few feet, however if the Council is trying to have a uniform look for an area of higher-end commercial development, they must "stand fast" with elevations and signage. As the governing body of the City, the Council needs to provide direction to the Planning and Zoning Commission as to the Council's desires. He felt the City should stand by the criteria for the Heritage Park Overlay District.

Council Member Steele asked about the actual variances.

Joe Dale, 224 W. Houston

Mr. Dale appeared representing Booth Enterprises, and told the Council that he understood they were granted a variance for location and for size of the sign. The sign requested was originally 14 feet tall and 100 square feet. Overlay District criteria would allow them three monument signs of 65 square feet each.

They have re-evaluated the size of the sign and have reduced it to 12 feet, which is in the Overlay District guidelines. They have reduced the square footage to 70 square feet, which is only 5 square feet larger than what the Overlay District allows. Mr. Dale said the location of the sign is critical and if it is moved, it would be too hard to see.

Council Member Steele asked about the setback. Scott Shadden, Director of Developmental Services, said the current question is about the encroachment and the setback is not an issue at this point. Mayor Magers said he had no problem with the location of the sign in the easement but the size of the sign should be consistent with the 65 square foot requirement in the Overlay District.

Mr. Dale said there could be nine tenants needing nine separate signs and they felt one multi-tenant sign would be better. Mayor Magers felt it was better to have three 65 foot signs if needed rather than one 70 foot sign.

Mr. Dale said their building fronts on Overland Trail and they are requesting one sign on the corner of Overland Trail that will service all three buildings. F.M. 1417 is the side setback, not the front setback.

Council Member Steele verified that the setback would be 25 feet plus the height of the sign. Mr. Shadden said he would meet with the developer to clarify the issues for Council consideration at the next City Council Meeting.

Council Member Steele said once they allow one sign a little closer, where does it stop. Council Member Howeth agreed that once they grant one variance, how do they justify denying other variances for the size of signs.

Mayor Magers clarified the two issues. The size of the sign has already been approved by the Planning and Zoning Commission. The City Council is only considering the easement. He suggested that Mr. Shadden and Mr. Dale meet to see if there is a solution that everyone will be happy with. The item could be tabled now and reconsidered in two weeks.

He said the Council is trying to set a standard as the City moves west and they want to control development. Council Member Adami said no matter what is done now, it will not prevent one of the businesses from coming back and asking for a separate sign in the future. Council Member Steele

agreed that a precedent needs to be set now for the future. Deputy Mayor Wacker added that a citizen's committee originally worked on the Overlay District Ordinance and decisions were made to ensure a specific design quality for the area.

ACTION TAKEN.

Motion by Deputy Mayor Wacker to table Resolution No. 5258, for further discussion. Second by Council Member Adami.

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

VOTING NAY: None.

MOTION CARRIED TO TABLE.

RESOLUTION NO. 5264 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 608 EAST SYCAMORE STREET

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 608 EAST SYCAMORE STREET.

CONSENT AGENDA.

RES 5264
RESIDENTIAL
TAX ABATMENT
(608 E. SYCAMORE)

RESOLUTION NO. 5265 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 612 EAST SYCAMORE STREET

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 612 EAST SYCAMORE STREET.

CONSENT AGENDA.

RES 5265
RESIDENTIAL
TAX ABATEMENT
(612 E. SYCAMORE)

RESOLUTION NO. 5266 – DESIGNATING CODE ENFORCEMENT OFFICIALS FOR THE PURPOSES OF OBTAINING ADMINISTRATIVE SEARCH WARRANTS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING CODE ENFORCEMENT OFFICIALS FOR THE PURPOSES OF OBTAINING ADMINISTRATIVE SEARCH WARRANTS.

CONSENT AGENDA.

RES 5266
CODE ENFORCEMENT
OFFICIALS OBTAIN
SEARCH WARRANTS

RESOLUTION NO. 5267 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH EAGLE UNDERGROUND UTILITY SUPPLY, INC. D/B/A MAINLINE SUPPLY COMPANY FOR AN ANNUAL SUPPLY OF WATER AND SEWER DISTRIBUTION AND COLLECTION MISCELLANEOUS PARTS AND MATERIALS

RES 5267
ANNUAL SUPPLY
PARTS & MATERIALS
FOR WATER &
SEWER DISTRIBUTION
& COLLECTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH EAGLE UNDERGROUND UTILITY SUPPLY, INC. D/B/A MAINLINE SUPPLY COMPANY FOR AN ANNUAL SUPPLY OF WATER AND SEWER DISTRIBUTION AND COLLECTION MISCELLANEOUS PARTS AND MATERIALS.
CONSENT AGENDA.

RESOLUTION NO. 5268 – AUTHORIZING EXECUTION OF AN AMENDMENT TO THE DEVELOPER'S AGREEMENT WITH SHERMAN HILLS COUNTRY CLUB, LTD. FOR THE CONSTRUCTION OF PUBLIC FACILITIES IN SUNRISE TRACT, PHASE I OF THE SHERMAN HILLS ADDITION TO THE CITY OF SHERMAN

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AMENDMENT TO THE DEVELOPER'S AGREEMENT WITH SHERMAN HILLS COUNTRY CLUB, LTD. FOR THE CONSTRUCTION OF PUBLIC FACILITIES IN SUNRISE TRACT, PHASE I OF THE SHERMAN HILLS ADDITION IN THE CITY OF SHERMAN.
CONSENT AGENDA.

REQUEST TO ADVERTISE
BROCKETT STREET BEAUTIFICATION PROJECT

Mr. Olson said the staff is moving forward with the Brockett Street Beautification Project. The design components include a 37 foot wide street with new curb and gutter and replacing existing driveways and storm water inlet boxes. The sidewalk is currently on the north side of the street with ADA ramps. The street lighting will also be improved.

The add alternates include brick paver crosswalks at the intersections and the sidewalk on the south side of the street. Hopefully the bid will be low enough to include some of these items.

ACTION TAKEN.

Motion by Council Member Steele to approve the request to advertise for the Brockett Street Beautification Project, as presented. Second by Council Member Adami.

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

VOTING NAY: None.

MOTION CARRIED.

CHANGE ORDER NO. 1
ROSS AVENUE SEWER MAIN REPLACEMENT; \$14,400.00.
INCREASE

The City Council approved Change Order No. 1 which is a final reconciliatory change order to adjust final project quantities for the sewer line replacement on Ross Avenue.

The change order results in an increase of \$14,400 to the contract amount yielding a final contract price of \$176,869.

RES 5268
SHERMAN HILLS
COUNTRY CLUB
DEVELOPER'S
AGREEMENT
AMENDMENT

REQUEST TO ADV
BROCKETT ST.
BEAUTIFICATION
PROJECT

CHANGE ORDER
ROSS AVE.
SEWER MAIN
REPLACEMENT

The delay in receiving a railroad permit required the contractor to leave the job and return at a later date to complete the project, resulting in additional demobilization and mobilization costs. Fourteen additional sewer taps were also added to the project resulting in an increased project cost.

The project was funded through the Greater Texoma Utility Authority (GTUA) and funds for the change order are available through GTUA.

CONSENT AGENDA.

OTHER BUSINESS

CONSIDER REQUEST OF THE SHERMAN INDEPENDENT SCHOOL DISTRICT AND THE SHERMAN HIGH SCHOOL STUDENT COUNCIL TO TEMPORARILY CLOSE CERTAIN STREETS FOR THE 2008 SHERMAN HIGH SCHOOL HOMECOMING PARADE ON MONDAY, SEPTEMBER 29, 2008

The City Council approved the request from the Sherman Independent School District and the Sherman High School Student Council to close certain streets in the downtown area for the 2008 Sherman High School Homecoming Parade on September 29, 2008. The event will require traffic control assistance, barricades, and emergency medical support from the City of Sherman.

CONSENT AGENDA.

SHS HOMECOMING
PARADE

FINAL PLAT APPROVAL OF THE MALONE'S ADDITION; MIDA ELIZABETH SKIPWORTH ESTATE, OWNER; MARK AND LISA MALONE, PROSPECTIVE BUYERS (1523-1531 EAST THOMAS STREET)

The City Council approved the Final Plat of the Malone's Addition, located at 1523 through 1531 East Thomas Street, between Loving and Dewey Avenues, across from Hawn Park. The developer would like to plat the property into one lot for residential development. The Planning and Zoning Commission recommended approval of the Final Plat.

CONSENT AGENDA.

APPROVE FINAL PLAT
MALONE'S ADDITION
(1523-1531 E.
THOMAS ST.)

FINAL PLAT APPROVAL OF THE RJ SPENCER INVESTMENTS ADDITION; R.J. SPENCER INVESTMENTS, LLC, OWNER (1102 F.M. 1417 NE)

The City Council approved the Final Plat of the RJ Spencer Investments Addition, located at 1102 F.M. 1417 NE, between the railroad tracks and U.S. Highway 82 East. The owner would like to plat the property into two lots for industrial development. The Planning and Zoning Commission recommended approval of the Final Plat.

CONSENT AGENDA.

APPROVE FINAL PLAT
RJ SPENCER
INVESTMENTS
ADDITION

CITIZENS REQUESTS

There were no citizen's requests.

CITIZENS REQUESTS

MEDIA QUESTIONS

There were no media questions.

MEDIA QUESTIONS

COUNCIL COMMENTS

SHERMAN ARTS FESTIVAL

Deputy Mayor Wacker reminded everyone that the Sherman Arts Festival will be held Saturday, September 20, 2008 on the Municipal Building grounds. The Butterfield Trail event will be held Sunday, September 21, 2008 on the Grayson County Court House lawn.

**SHERMAN
ARTS FESTIVAL**

THANKS TO TOURISM DEPARTMENT

Council Member Howeth thanked the Sherman Tourism Department for inviting members of the City Council and staff to a Theatricks' performance of "OLIVER!" She said it was a delightful performance and there are some very talented young people in Sherman.

**THANKS TO
TOURISM DEPT.**

SHERMAN ARTS FESTIVAL

Mayor Magers said the Sherman High Steppers need some people to be dunked in their dunking booth at Arts Festival and he said he would recommend the Chiefs.

**SHERMAN
ARTS FESTIVAL**

YOUTH FOOTBALL

Mayor Magers said during the Arts Festival, from 12 p.m. to 6 p.m., Youth Football will be playing in Bearcat Stadium for the first time since 2002. He thanked the Sherman Independent School District for use of the field and the City of Sherman for making the parks available for practice.

YOUTH FOOTBALL

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

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

EXECUTIVE SESSION

SECTION 551.071 --

**CONSULTATION WITH CITY
ATTORNEY CONCERNING LEGAL
MATTERS:
PANDA ENERGY**

SECTION 551.071 --

**CONSULTATION WITH CITY
ATTORNEY CONCERNING
PENDING OR CONTEMPLATED
LITIGATION:**

**CAUSE NO. 05-06-00420-CV;
CITY OF SHERMAN, ET AL V.
JAMES WAYNE**

**LUCKY STOP #10'S REQUEST
FOR ALCOHOL PERMIT**

SECTION 551.072 -- DELIBERATIONS REGARDING
REAL PROPERTY:
DELIBERATE REGARDING THE
POTENTIAL PURCHASE OF A
PIECE OF REAL PROPERTY

SECTION 551.072 -- PERSONNEL MATTERS:
CONSIDER THE
QUALIFICATIONS, APPOINTMENT
AND REMOVAL OF MEMBERS TO
BOARDS AND COMMISSIONS:
SHERMAN ECONOMIC
DEVELOPMENT CORPORATION (2)
ANNUAL PERFORMANCE
EVALUATION OF THE CITY
MANAGER

SECTION 551.087 -- DELIBERATIONS REGARDING
ECONOMIC DEVELOPMENT
NEGOTIATIONS:
DELIBERATE REGARDING
COMMERCIAL OR FINANCIAL
INFORMATION THAT THE CITY
HAS RECEIVED FROM BUSINESS
PROSPECTS AND DELIBERATE
ANY OFFERS OR INCENTIVES TO
THE BUSINESS PROSPECTS,
INCLUDING THE FOLLOWING:
PANDA ENERGY

On Motion duly made and carried, the Open Meeting
recessed and reconvened in Executive Session at 5:45 p.m.

On Motion duly made and carried, the Executive Session
recessed at 6:24 p.m. and reconvened in Open Meeting.

OPEN MEETING

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

OPEN MEETING

**CONSIDER THE QUALIFICATIONS, APPOINTMENT AND
REMOVAL OF MEMBERS TO BOARDS AND COMMISSIONS:
SHERMAN ECONOMIC DEVELOPMENT CORPORATION (2)**
ACTION TAKEN.

Motion by Council Member Adami to reappoint Kelly
Bickerstaff and Greg Kirkpatrick for a term from October
1, 2008 to October 1, 2010. Second by Council Member
Softly.

VOTING AYE: Adami, Howeth, Softly, Wacker.

VOTING NAY: None.

MOTION CARRIED.

SHERMAN ECONOMIC
DEVELOPMENT
CORPORATION

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:25 p.m.

ADJOURNMENT

MAYOR

CITY CLERK



BASE BID
Pavilion



BASE BID
Playground
Structure



Pecan Grove Park
City of SHERMAN, TEXAS

STATE OF TEXAS §
COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Joint Meeting of the Sherman City Council and the Sherman Economic Development Corporation was begun and held in the City Council Chambers on September 18, 2008.

COUNCIL MEMBERS PRESENT: Mayor Bill Magers; Deputy Mayor Cary Wacker.
Council Members Adami, Smith.

COUNCIL MEMBERS ABSENT: Council Members Howeth, Softly, Steele.

SEDCO MEMBERS PRESENT: Kelly Bickerstaff, Joseph R. Fallon, Jr., Gregory Kirkpatrick, Andrew Olmstead.

SEDCO MEMBERS ABSENT: Rad Richardson.

CITY STAFF PRESENT: George Olson, City Manager; Robbie Hefton, Assistant City Manager/CFO; Doreen McGookey, City Attorney; Jeff Miller, Director of Public Works; Rita Gaither, Development Coordinator; Mary Lawrence, Controller; Pam Cloer, Assistant to the City Manager; Linda Ashby, City Clerk.

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

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

SEDCO WORK PROGRAM 2008-2009

President's Presentation of the 2008-2009 Work Program

SEDCO WORK PROGRAM 2008-2009
City Council to Discuss and Consider Approval of the SEDCO Work
Program 2008-2009

SED CO BUDGET 2008-2009
President's Presentation of the SED CO Budget 2008-2009

SEDCO BUDGET 2008-2009
City Council to Discuss and Consider Approval of the 2008-2009 SEDCO Budget

Other Business

Adjournment

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

Mayor Magers called the meeting to order at 12:15 p.m., declared a quorum present, and opened the City Council Meeting. Joe Fallon, Jr., Chairman of the Sherman Economic Development Corporation, declared a quorum present, and opened the SEDCO Meeting.

SEDCO WORK PROGRAM 2008-2009

PRESIDENT'S PRESENTATION OF THE 2008-2009 WORK PROGRAM

John Boswell, Sherman Economic Development Corporation President, thanked George Olson, City Manager; Robby Hefton, Assistant City Manager/CFO; and Mary Lawrence, Controller; for their work with the SEDCO Board this past year.

On August 11, 2008, the SEDCO Board approved their 2008-2009 Work Program which includes four goals. The goals include retaining and expanding existing primary employers, recruiting primary employers, facilitating government agency support for primary employers, and coordinating real estate, infrastructure, and workforce development to support primary employers.

The marketing plan is directed to the target audience. They focus on food processing, high tech, metal fabrication, and plastics. SEDCO works with State officials and utility companies, and they have a plan to work with Grayson County and the City of Denison for a regional marketing plan. SEDCO also works with the school districts and colleges in the area. SEDCO has a plan to work with Workforce Texoma to fund a billboard to retain existing employees that are driving outside the area.

SEDCO has also developed a marketing campaign where they can respond to requests immediately through the Internet. They can provide customized packages within a matter of minutes. This puts Sherman a step ahead of the competition.

SEDCO WORK PROGRAM 2008-2009

CITY COUNCIL TO DISCUSS AND CONSIDER APPROVAL OF THE SEDCO WORK PROGRAM 2008-2009

Council Member Adami asked how SEDCO came up with the industries that they have chosen to target. Mr. Boswell said they talked with industries already located in Sherman to find out what was available and what Sherman could support. SEDCO is not actively seeking call centers or low tech jobs.

Deputy Mayor Wacker verified that SEDCO Members reviewed the list of target industries annually. She asked if they had considered green industries or innovators that have sustainability products. Sherman is a good area for that type of industry because of the clean air resource.

Mr. Boswell said they are working with Rita Gaither, Development Coordinator, as the Comprehensive Master Plan is developed to identify any emerging industry that should be considered. Sherman doesn't have the skill set yet for those types of jobs.

Mayor Magers understood that SEDCO's incentives are limited to primary employers, but there are opportunities that don't fit SEDCO criteria to receive incentives, but they are important to Sherman. He used an example of a wi-fi company that comes into a City and sets up a franchise, but they need 50,000 households to make it work. The City staff isn't equipped to go after these opportunities but they don't meet SEDCO criteria either. Is it a Chamber of Commerce responsibility? Who needs to work these opportunities for Sherman? He felt there was a gap in this area for Sherman and there would be other opportunities that won't be primary employers but will mean money to Sherman.

Mr. Fallon did not feel that SEDCO would be in the lead with these types of opportunities, however the job falls to everyone. It does need someone to spearhead the effort. Mr. Boswell said SEDCO works with the Chamber of Commerce on a regular basis to encourage retail development, but they are not the lead organization on the job.

Mr. Olmstead reiterated that SEDCO works with more than primary employers. Council Member Adami felt there should be a general plan to approach this type of opportunity and determine where these people will be sent. Mayor Magers said there is a difference between recruiting and incentives.

Mayor Magers said there maybe an opportunity for additional water to become available for purchase from Lake Texoma. He felt that would be a key component for manufacturing and he asked if there was any way SEDCO might be able to participate in the purchase of the water. Mr. Boswell said the interpretation would be "tight" but they could look into the possibility. Mr. Olmstead added that water is a primary attraction to Sherman.

Council Member Adami asked that SEDCO help look for industries that use water, instead of actually funding the purchase. Mr. Boswell said they could focus their target areas for water users if they need too. High tech and food processing industries are generally high water users.

Mayor Magers wanted SEDCO and the City Council to look for opportunities to work together and to have good communication between the entities without breaking the law. Mr. Olmstead agreed that SEDCO is an extension of the City Council and expressed concern about the numerous requests to fund highway construction. Many of these requests are coming from the State. He asked for clarification from the Council on these requests.

Mayor Magers said the Council did not want SEDCO in the road business either, however there may be some instances where the Council feels it is important and might be asked to consider a project.

ACTION TAKEN.

Motion by Council Member Smith to approve the SEDCO Work Program for FY 2008-2009, as presented. Second by Council Member Adami.

VOTING AYE: Magers, Adami, Smith, Wacker.

VOTING NAY: None.

MOTION CARRIED.

SEDCO BUDGET 2008-2009

PRESIDENT'S PRESENTATION OF THE SEDCO BUDGET 2008-2009

Mr. Boswell presented SEDCO's proposed Budget for FY 2008-2009. Mayor Magers said revenue was down \$500,000 and he asked if that was caused by the economy and a reduction in sales tax. Mr. Boswell said the overall revenue is projected to be down 4% from what was budgeted last year. The budgeted amount is still \$3.3 million.

The Budget shows a 1.83% increase in expenses, with the largest amount in the marketing and attraction line item and includes some of the programs discussed earlier. The net income after the scheduled incentive payouts is at negative \$2.1 million. This amount uses some of the reserves, but all are payable based on reserves SEDCO has and the revenue expected. Mayor Magers confirmed that SEDCO would probably have flat revenues for the year. Mr. Hefton said the Budget includes the payback to Texas Instruments which is over 16 years and is interest free.

SEDCO BUDGET 2008-2009

CITY COUNCIL TO DISCUSS AND CONSIDER APPROVAL OF THE 2008-2009 SEDCO BUDGET

Mayor Magers asked about the \$2.5 million increase for incentive payouts. Mr. Boswell said Tyson is \$1 million of that amount. MD Helicopters is also included for \$1 million, but that incentive won't be paid if they don't come to the North Texas Regional Airport at Perrin Field. Tyson has met the terms of this contract, but it won't be paid until the time frame is reached. Total incentive payouts are budgeted at \$4.7 million.

ACTION TAKEN.

Motion by Deputy Mayor Wacker to approve the SEDCO Budget for FY 2008-2009, as presented. Second by Council Member Adami.

VOTING AYE: Magers, Adami, Smith, Wacker.

VOTING NAY: None.

MOTION CARRIED.

OTHER BUSINESS

There was no other business to be discussed.

ADJOURNMENT

There being no further business to come before the City Council or the Sherman Economic Development Corporation, motion was duly made and approved to adjourn the Joint Meeting at 12:48 p.m.

MAYOR

ATTEST

CITY CLERK

Sherman Economic Development Corporation
DRAFT Work Program
2008-2009

Mission

Grow and diversify the Sherman and surrounding area economies through the addition of new jobs and investment of primary employers.

Goals to promote capital investment and jobs:

- A. Retain and expand existing primary employers.
- B. Recruit primary employers.
- C. Facilitate government agency support for primary employers.*
- D. Coordinate real estate, infrastructure, and workforce development to support primary employers.

* Primary employers are those companies whose sales, service and shipments are ultimately used in statewide, national or international markets.

A. Goal: Retain and Expand Existing Primary Employers

Strategy: Conduct a business retention/expansion program, maintaining close ties through regular contact with existing primary employers.

Actions:

- 1. Visit primary employers a minimum of twice annually to learn about changes in their operations and to seek ways to help them strengthen their Sherman operations.
- 2. Host plant manager forums as needed to create an opportunity to encourage local dialogue among Sherman Plant Managers.
- 3. Make trips, when appropriate, to a local company's headquarters.
- 4. Maintain and update a Sherman Primary Employers Directory for distribution to local businesses and prospects.

B. Goal: Recruit Primary Employers.

Strategy: Directly or indirectly facilitate the attraction of new primary employers through a targeted marketing campaign.

Actions:

1. Present marketing materials to regional allies such as: utilities, real estate brokers, site consultants and the Office of Economic Development so that they may become familiar with Sherman.
2. Host brokers/site consultants/allies at an event.
3. Attend Corporate Real Estate Network (CoreNet) national meeting to generate prospect leads.
4. Market available sites to potential investors and developers.
5. Maintain a current Web site to market Sherman.
6. Work with regional allies on marketing opportunities.
7. Participate in Texas Economic Development Council and International Economic Development Council meetings.
8. Participate in marketing trips and industry specific trade shows to attract new primary employers.
9. Annually evaluate targeted industry clusters to maximize marketing efforts.
10. Foster awareness of Sherman through appropriate advertising.

C. Goal: Facilitate government agency support for primary employers.

Strategy: Coordinate economic development in the Sherman area.

Actions:

1. Meet regularly with community leaders to discuss and review local development issues.
2. Update the City Council quarterly and present an annual report.
3. Coordinate with the local, state and federal agencies such as the Texas Workforce Commission, Governor's Office of Economic Development, Economic Development Administration, Small Business Administration, Center for Workplace Learning and Workforce Texoma on available programs.
4. Maintain a relationship with area educational institutions.
5. Work with taxing entities on economic development incentives.
6. Maintain representation on the Chamber of Commerce Board.

- D. Goal: Coordinate real estate, infrastructure, and workforce development to support primary employers.
- Strategy: Assist prospective employers with up-to-date, accurate location information.

Actions:

1. Maintain a database on available buildings and real estate to respond to requests for such information.
2. Work with the City, County and TxDOT on infrastructure necessary to promote or develop new or expanded business enterprises limited to streets and roads, rail spurs, water and sewer utilities, electric utilities, gas utilities, drainage, site improvements and related improvements, telecommunications and Internet improvements.
3. Maintain a relationship with local workforce agencies such as the Sherman Independent School District, Austin College, Grayson Community College and Workforce Texoma to coordinate industry training needs.

Sherman Economic Development Corporation
Budget
October 1, 2008 / September 30, 2009

	Fiscal Year 2004-2005	Fiscal Year 2005-2006	Fiscal Year 2006-2007	Fiscal Year 2007-2008	Fiscal Year 2008-2009	Percent Change
Beginning Fund Balance	\$ 5,228,043	\$ 5,947,212	\$ 8,300,000	\$ 8,993,355	\$ 8,751,003	-2.69%
REVENUES						
Sales tax revenue	2,435,500	2,643,375	2,845,936	3,009,000	2,937,792	-2.37%
Other revenue	45,000	88,375			28,700	
Interest	50,000	200,000	250,000	450,000	350,040	-22.21%
Total Revenue	\$ 2,530,500	\$ 2,929,750	\$ 3,095,936	\$ 3,459,000	\$ 3,316,532	-4.12%
EXPENSES						
Administrative						
Salaries	190,250	208,750	219,160	232,000	237,800	2.50%
Taxes	15,284	16,545	17,370	18,477	18,950	2.56%
Retirement/Insurance	72,925	81,788	88,100	93,000	88,500	-4.84%
Total Administrative Expenses	\$ 278,459	\$ 307,083	\$ 324,630	\$ 343,477	\$ 345,250	0.52%
Percent of Revenue	11.00%	10.48%	10.49%	9.93%	10.41%	
Operations						
Training	2,500	2,500	3,000	3,000	2,500	-16.67%
Dues/Fees	3,730	4,250	4,500	4,500	4,500	0.00%
Auto	9,600	12,600	12,600	12,600	13,200	4.76%
Office Supplies	7,700	7,000	7,700	7,700	7,700	0.00%
Rent	32,200	32,200	30,000	30,000	30,000	0.00%
Communications	8,600	9,000	11,000	11,500	11,500	0.00%
Insurance	6,500	7,000	8,000	8,000	8,000	0.00%
Maintenance & Repairs	500	1,000	3,000	3,000	2,500	-16.67%
Taxes	11,000	-	-	-	-	
Total Operating Expenses	\$ 82,330	\$ 75,550	\$ 79,800	\$ 80,300	\$ 79,900	-0.50%
Percent of Revenue	3.25%	2.58%	2.58%	2.32%	2.41%	
Programs						
Luncheons/Meetings	5,500	5,500	7,500	8,000	8,000	0.00%
Conferences	6,000	6,000	7,000	7,000	7,000	0.00%
Retention/Expansion	5,000	5,000	6,500	6,500	6,500	0.00%
Marketing/Attraction	116,000	132,000	135,000	165,000	178,000	6.67%
Contract Services	62,000	62,000	65,000	65,000	65,000	0.00%
Total Program Expenses	\$ 194,500	\$ 210,500	\$ 221,000	\$ 251,500	\$ 262,500	4.37%
Percent of Revenue	7.69%	7.18%	7.14%	7.27%	7.91%	
Total Expenses (Admin-Oper-Prog)	\$ 555,289	\$ 593,133	\$ 625,430	\$ 675,277	\$ 687,650	1.83%
Percent of Revenue	21.94%	20.25%	20.20%	19.52%	20.73%	
Net Revenue/Loss	\$ 1,975,211	\$ 2,336,617	\$ 2,470,506	\$ 2,783,723	\$ 2,628,882	-5.56%
Incentive Payouts (scheduled)	1,001,542	886,578	1,517,151	1,579,393	4,229,467	167.79%
Land and Infrastructure	250,000	1,250,000	250,000	250,000	240,000	-4.00%
Capital Expenses	4,500	4,500	10,000	10,000	10,000	0.00%
Debt Service (P&I)	-	-	-	-	281,544	
Total Incentives/Invest/Capital Exp	\$ 1,256,042	\$ 2,141,078	\$ 1,777,151	\$ 1,839,393	\$ 4,761,011	158.84%
Total Op & Incentive Expenses	\$ 1,811,331	\$ 2,734,211	\$ 2,402,581	\$ 2,514,670	\$ 5,448,661	116.67%
Net Income (loss)	\$ 719,169	\$ 195,540	\$ 693,355	\$ 944,330	\$ (2,132,129)	-325.78%
Ending Fund Balance	\$ 5,947,212	\$ 6,142,752	\$ 8,993,355	\$ 9,937,685	\$ 6,618,874	-33.40%
Reserved Fund Balance	\$ 4,132,698	\$ 5,992,752	\$ 6,506,000	\$ 6,506,000	\$ 6,603,784	1.50%
Unreserved Fund Balance	\$ 1,814,514	\$ 150,000	\$ 2,487,355	\$ 3,431,685	\$ 15,090	-99.56%



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. A.5

PROCLAMATION

“Domestic Violence Awareness Month” – October 2008

Issue

To present a proclamation designating October 2008 as “Domestic Violence Awareness Month” in the City of Sherman

Background

Each year, the Crisis Center recognizes “Domestic Violence Awareness Month” to encourage citizens to become aware of the tragedy of domestic violence and to support those who are working toward its end.

Origination

The request originated with the City Manager’s Office.

Financial Consideration

There is no financial consideration to the City.

Staff Recommendation

It is the recommendation of the staff to present a proclamation proclaiming “Domestic Violence Awareness Month.”

Alternatives

The Council could choose not to present the proclamation.

Attachments

A proclamation proclaiming “Domestic Violence Awareness Month” is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN



Proclamation

WHEREAS, home should be a place of warmth, unconditional love, tranquility, and security, and for most of us, home and family can indeed be counted among our greatest blessings, and

WHEREAS, tragically, for many Americans, these are blessings that are tarnished by violence and fear, and

WHEREAS, during the past year, the Crisis Center answered 1,141 hotline crisis calls from or about victims of domestic violence, and

WHEREAS, a coalition of organizations directly confront this crisis, including law enforcement officials, those involved with shelters and hotline services, health care providers, the clergy and other concerned citizens, that are helping in the effort to end domestic violence, and

WHEREAS, we must recognize the compassion and dedication of these volunteers and professionals, applaud their efforts and increase public understanding of this important problem.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim the month of October, 2008, as

DOMESTIC VIOLENCE AWARENESS MONTH

in the City of Sherman and encourage all citizens to observe this month by becoming aware of the tragedy of domestic violence, supporting those who are working toward its end, and participating in community efforts.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed, this the 6th day of October, 2008.

Mayor

ATTEST:

Linda Ashley
City Clerk





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. A.6

PROCLAMATION

“National Night Out - Texas” – October 7, 2008

Issue

To present a proclamation designating October 7, 2008 as “National Night Out - Texas” in Sherman

Background

Each year, the National Association of Town Watch sponsors “National Night Out,” a nationwide crime, drug, and violence prevention program that encourages citizens to work together to prevent crime in their neighborhoods. This year, Texas only is testing October 7th for “National Night Out.”

Origination

The request for this proclamation originated with the Police Department.

Financial Consideration

There is no financial consideration to the City.

Staff Recommendation

It is the recommendation of the staff to present a proclamation proclaiming October 7, 2008 as “National Night Out - Texas” in Sherman.

Alternatives

The Council could choose not to present the proclamation.

Attachments

A proclamation proclaiming “National Night Out - Texas” is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN



Proclamation

WHEREAS, each year the National Association of Town Watch sponsors "National Night Out," a nationwide crime, drug and violence prevention program that encourages citizens to work together to prevent crime in their neighborhoods, and

WHEREAS, because of the extreme heat concerns expressed by numerous "National Night Out" participants, Texas is holding the "National Night Out - Texas" event on October 7, 2008, and

WHEREAS, many Texas communities will celebrate "National Night Out - Texas" on Tuesday, October 7, 2008, with neighborhoods celebrating with block parties and cookouts, and

WHEREAS, the goal of the event is to promote police-community partnerships, heighten drug and crime prevention awareness, and strengthen neighborhood spirit.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim October 7, 2008

NATIONAL NIGHT OUT - TEXAS

in the City of Sherman, and encourage all citizens to participate and send a message to criminals that neighborhoods are organized and fighting back against crime.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed, this the 6th day of October, 2008.

Mayor

ATTEST:

Linda Ashby
City Clerk





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. A.7

PROCLAMATION

“Red River Historical Museum Day” – October 11, 2008

Issue

To present a proclamation designating October 11, 2008 as “Red River Historical Museum Day” in the City of Sherman

Background

The Red River Historical Museum has designated October 11, 2008 as “Red River Historical Museum Day” in Sherman.

Origination

The request originated with the City Manager’s Office.

Financial Consideration

There is no financial consideration to the City.

Staff Recommendation

It is the recommendation of the staff to present a proclamation designating October 11, 2008 as “Red River Historical Museum Day.”

Alternatives

The City Council could choose not to present a proclamation.

Attachments

A proclamation designating October 11, 2008 as “Red River Historical Museum Day” is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN



Proclamation

WHEREAS, museums hold in trust for future generations a substantial part of humankind's material patrimony produced by the skill of our ancestors and our contemporaries, and

WHEREAS, museums encourage curiosity in the very young, offer enlightenment and education to the student, and provide a continuing source of enjoyment and cultural enrichment for all, and

WHEREAS, museums are centers of research for scholars and contribute significantly to our knowledge of history, science and the arts, and

WHEREAS, museums enhance the quality of life in our communities and provide a sense of continuity and perspective which reinforces the cultural opportunities offered by schools, colleges, universities, libraries and other institutions of learning, and

WHEREAS, the Red River Historical Museum deserves recognition for their contribution to the preservation of the heritage of Grapson County and the greater North Texas area, and to the furtherance of understanding concerning the people of the United States and the people of other countries in the past, present and future.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim October 11, 2008

RED RIVER HISTORICAL MUSEUM DAY

in the City of Sherman and encourage all citizens to visit the Red River Historical Museum and other area museums to learn more about their heritage, past, present and future.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed this the 6th day of October, 2008.

Mayor

ATTEST:

Sinda Ashby
City Clerk





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. A.8

SPECIAL RECOGNITION

**Recognition of Freddie Orr, Sr.'s Service on the Texoma Area Paratransit Board
of Directors: October 15, 1998 - September 24, 2008**

Issue

Freddie Orr, Sr. has served on the Texoma Area Paratransit Board of Directors since October 15, 1998; and his term expired September 24, 2008. The TAPS Board and the City Council would like to recognize Mr. Orr for his years of service. Sheriff Keith Gary, Vice Chairman of the TAPS Board, will present a plaque to Mr. Orr.

Background

The TAPS Board determines rules and regulations for TAPS service in Grayson, Cooke, Fannin, Clay, and Wise Counties.

Origination

TAPS Board of Directors

Financial Consideration

None

Staff Recommendation

It is recommended that the City Council recognize Mr. Orr's service on the TAPS Board.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. B.1

**SECOND READING, PUBLIC HEARING AND FINAL VOTE
ON ORDINANCE NO. 5562**

**Granting to Atmos Energy Corporation, Mid-Tex Division,
a Texas and Virginia Corporation, its Successors and Assigns, a Franchise to Furnish,
Transport and Supply Gas to the General Public in the City of Sherman, Grayson County,
Texas, for the Transporting, Delivery, Sale, and Distribution of Gas in, Out of, and
Through Said Municipality for all Purposes; Providing for the Payment of a Fee or Charge
for the Use of the Public Rights-of-Way; Providing That it Shall be in Lieu of Other Fees
and Charges, Excepting Ad Valorem Taxes; Repealing all Previous Atmos Energy Gas
Franchise Ordinances; Prescribing the Terms, Conditions, Obligations and Limitations
Under Which Such Franchise Shall be Exercised; Providing a Most Favored
Nations Clause; Providing for an Effective Date**

Issue

Pursuant to the City Charter, the City of Sherman is enacting a Franchise Ordinance with Atmos Energy Corp., Mid-Tex Division ("Atmos"), for access to the City's Rights-of-Way and the appurtenances in the public roads, streets, alleys, etc., in exchange for the payment of a franchise fee.

Background

Atmos contacted the City in an effort to secure a new Franchise Ordinance. The Franchise was delayed since the Atmos Steering Committee and Atmos were negotiating a settlement. Now the City and Atmos are ready to move forward with the proposed Franchise Ordinance. Pursuant to the City Charter, any ordinance granting a franchise must have two readings, thirty (30) days apart; and no ordinance shall pass any reading except by a majority vote of the City Council members.

Origination

The City Attorney

Financial Consideration

The proposed ordinance raises the franchise rate from four percent (4%) to five percent (5%) of gross revenues. The projected increase in annual revenues from the proposed gas franchise rate is about \$185,000. A list of cities that have adopted and denied the increase in the rate is attached to this item.

Staff Recommendation

Staff recommends approval of the proposed Franchise Ordinance.

Alternatives

The City Council could choose not to approve this Franchise Ordinance.

Attachments

Ordinance No. 5562

Prepared by:

Doreen E. McGookey, City Attorney

Approved by:

George Olson, City Manager

ORDINANCE NO. 5562

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION, MID-TEX DIVISION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; REPEALING ALL PREVIOUS ATMOS ENERGY GAS FRANCHISE ORDINANCES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING A MOST FAVORED NATIONS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR 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.

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

SECTION 1. GRANT OF AUTHORITY

A. The City of Sherman, Texas, herein after called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos" or "Company," its successors and assigns, consent to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

B. Said privilege and license being granted by this Ordinance is for a term ending December 30, 2023.

C. The provisions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System within the City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, the City does

not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of the City Charter or present or future ordinances of the City, except as may be set out herein. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 2. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

A. “Affiliate” shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term “control” means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

B. “City” shall mean the City of Sherman, Texas.

C. “City Manager” means City’s manager, or his or her designee.

D. “Company” shall mean Atmos Energy Corporation, Mid-Tex Division, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 19.

E. “Gross Revenues” shall mean all revenue derived or received, directly or indirectly, from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City.

- (1) “Gross revenues” shall include:
 - (a) revenues derived from the following ‘miscellaneous charges’:
 - i. charges to connect, disconnect, or reconnect gas within the City;
 - ii. charges to handle returned checks from consumers within the City;
 - iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
 - iv. contributions in aid of construction (“CIAC”).
 - (b) revenues billed but not ultimately collected or received by the Company;
 - (c) gross receipts fees;
 - (d) all revenues derived by Company from the transportation of gas through the System of Company within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City); and
 - (e) the value of gas transported by Company for Transport Customers through the System of Company located in the City’s Public Rights-of-Way (“Third Party Sales”) (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Company’s monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time that the transportation service is performed.
- (2) “Gross revenues” shall not include:
 - (a) the revenue of any Person including, without limitation, an Affiliate, to the extent that such revenue is also included in Gross Revenues of the Company; and
 - (b) sales taxes; and

- (c) any interest income earned by the Company; and
- (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's Public Right-of Way.

F. "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

G. "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, public easements, rights-of way, public thoroughfares, grounds, and sidewalks of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City. "Public Right-of-Way" shall not include parks, schools, playgrounds, or greenbelts.

H. "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas for heating, lighting, and power, located in the Public Right-of-Way within the corporate limits of the City.

I. "Transport Customer" shall mean any Person for which Company transports gas through the System of Company within the City's Public Rights-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within the City).

SECTION 3. CONDITIONS OF OCCUPANCY

A. All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force and that may hereafter be adopted by the City relating to the use of its Public Rights-of-Way. Company's System shall be so constructed as not to unreasonably interfere with any existing water and wastewater lines, storm sewer lines, open drainage areas, cable, fiber optic cable, electric lines, roadways, sidewalks, alleys, traffic control devices, public signs, or any other publicly owned or publicly franchised facility.

B. The Company shall install, maintain, construct, operate and replace its facilities in accordance with applicable city ordinances and so as to interfere as little possible with traffic.

The placement of new facilities in the Public Rights-of-Way shall be subject to the approval of the City Manager. In determining the location of the Company's new facilities within the City, the Company shall minimize interferences with then-existing or documented planned underground structures of the City or with existing facilities of other users of the Public Rights-of-Way. In determining the location of the facilities of the City and other utility franchisees and other users of the Public Rights-of-Way within the City, the City shall minimize the interference with existing facilities of the Company and shall require other utility franchisees or users of the Public Rights-of-Way to minimize interference with existing facilities of the Company. Company shall attempt to utilize the alleys of the City insofar as is reasonably practicable in conducting its work and activities hereunder. Notwithstanding the foregoing, however, Company may, when reasonably necessary, utilize the streets and other Public Rights-of-Way to perform such work and activities.

C. Any and all excavations and obstructions in and upon the Public Rights-of-Way caused by the Company's operations under this Ordinance shall be repaired and removed as quickly as is reasonably possible, under the circumstances. All excavations shall be repaired in a good and workmanlike manner consistent with applicable City Code and documented City rules, regulations, and policies, and restored to at least the condition that existed prior to the excavation. The public shall be properly warned and protected by barriers and lights or other applicable traffic control devices placed, erected, marked and maintained by the Company in accordance with standards set forth in the current Texas Manual on Uniform Traffic Control Devices (TMUTCD), as well as any other applicable local, state and federal requirements. Company warrants that any such restoration work performed in the Public Rights-of-Way shall be in satisfactory condition for a period of one year, to the extent that such restoration work has not been disturbed by other users of the Public Rights-of-Way. In the event that the Company fails to repair or restore an excavation site within fourteen (14) calendar days after receipt of written notice from the City of a deficiency, the City may, at its option, perform the needed repair or restoration and the Company shall promptly, but in no event later than thirty (30) days, reimburse the City for the cost of such repair or restoration. Any work conducted within the Public Rights-of-Way shall require prior written approval of the City in accordance with city ordinance or documented rule or regulation, except for repairs, day to day maintenance, or in cases of emergency conditions, issued by the City prior to commencement of work. In no

instance shall the Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, unless the Company has failed to make any necessary repairs or is in default in its reimbursement to the City under this paragraph.

D. Company shall cooperate with the City by providing complete information regarding the location of current and future System facilities. Upon request, reproducible copies of maps showing the location of all Company facilities within the Public Rights-of-Way shall be furnished to the Department of Public Works. The maps shall be provided in GIS format and electronic digital format, if available.

E. Company's property and operations within the Public Rights-of-Way shall be subject to the City's ordinances and the City Charter, including, but not limited to, the provisions of ARTICLE VIII. FRANCHISE AND PUBLIC UTILITIES of the City Charter, whether expressed in this Ordinance or not. This Ordinance shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other local, state or federal Law.

F. If the City believes that Company has failed to comply with any operational or maintenance standards as required by this Ordinance, City shall give the Company written notice of such failure to comply. Company shall have the reasonable opportunity to cure such failure during a period not to exceed ten (10) working days from receipt of the written notice. If the Company fails to cure the alleged failure to comply within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than ten (10) calendar days prior to the posting date of the agenda for the City Council meeting at which such alleged failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) business days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Ordinance, Company shall pay Three Hundred Dollars (\$300.00) per day for each day that such noncompliance continues.

SECTION 4. RELOCATION OF SYSTEM FACILITIES

A. If, during the period of this Franchise, the City shall elect to alter or change the grade or alignment of any street, alley or other Public Easement, or any water pipe, wastewater

pipe, or any overhead or underground structure within the corporate limits of the City, so as to conflict with the facilities of the Company, the Company shall remove or relocate, as necessary, all of its facilities at its own expense. Schedules for this work shall be developed by designated representatives of the Company and the City. If such representatives cannot agree on the schedule, the City Manager, after consultation with the Company, shall establish a schedule. This schedule shall provide for a minimum of thirty (30) days to exist between the time the schedule is furnished to the Company and the time that any specific work to be done by the Company covered in the schedule is to begin.

B. Whenever any such project is funded, in whole or in part, with federal or state highway monies, if the federal or state government provides compensation for utility adjustments, the City shall request that compensation be provided to the Company by the funding authority. If the City receives such requested utility adjustment compensation, it shall deliver same to the Company. When the Company is required to remove or relocate its mains, laterals or other facilities to accommodate work by City without reimbursement from City, the Company shall have the right to seek recovery of relocations costs as provided for in applicable state and/or federal law.

C. If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 5. LAYING OF LINES IN ADVANCE OF PUBLIC IMPROVEMENTS

A. Whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes, the Company will be provided the opportunity, at no expense to the City, in

advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located.

B. The Company shall be given written notice of the intention of the City to make public improvements in any such Public Right-of-Way. Within thirty (30) days from receipt of such notice, the Company, if it has determined a need, shall initiate work and thereafter proceed in a workmanlike manner to completion of the necessary work, but in no event shall the work exceed ninety (90) days from the date of the notice, unless otherwise agreed to by the parties. If the Company should fail to so proceed, and such street or alley is thereupon paved, except in an emergency or in response to a request for initiation of new service the Company shall for two (2) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose. All pavement cuts or excavations within the two (2) year period, except in response to an emergency or request for initiation of new service, shall be performed only upon written permission of the Director of Public Works under such terms and conditions as the Director of Public Works may prescribe. Company shall give notice to the City of emergency work as soon as possible, but in no event later than twenty-four (24) hours, after the commencement of such work. Notice shall be given by contacting the City personnel designated by the City for this purpose.

SECTION 6. INSTALLATION OF METERS

If a meter is to be installed in or near the Public Rights-of-Way, Company agrees to discuss with the Director of Public Works or his/her delegate the aesthetics of the meter placement. If the City requires a meter upgrade, the Company will comply so long as the City reimburses the Company for the reasonable costs incurred by the Company in changing meters; provided, however, that in no event shall underground meters be required.

SECTION 7. EXTENSIONS FOR CUSTOMERS

Company shall extend distribution mains in any street up to one hundred (100) feet for any one residential or commercial customer so long as the customer at a minimum uses gas for unsupplemented space heating and water heating. Company shall not be required to extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION 8. DUTY TO SERVE

A. The Company hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for the Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Manager, said hearing to be held within forty-five (45) days from the date of the request for hearing. If the City Manager determines that the refusal to provide service was an arbitrary refusal, then the matter may be referred to the City Council. The hearing before the City Council will be heard within thirty (30) days of the written determination by the City Manager that the refusal to provide service by the Company was arbitrary, unless the Person, City staff, and the Company agreed to another date to present the matter to Council. The Council may order the Company to provide service or take any other action necessary to bring the Company into compliance with the intent of the Council in granting this Franchise, including the adoption of an ordinance or resolution in accordance with Section 16.B. or termination or forfeiture of the Franchise in accordance with Section 16. The Council shall render its opinion at its next regular meeting but in no event shall it be required to act in less than seven (7) days.

B. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Ordinance, Company shall pay Three Hundred Dollars (\$300.00) per day for each day that such noncompliance continues.

SECTION 9. RATES

Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefore; and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with the City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extension policies. The rates and charges collected from its customers in the City shall be subject to revision and change by either the City or Company in the manner provided by law.

SECTION 10. PAYMENTS TO THE CITY

A. In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its

successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided herein for franchise fee payments based on CIAC, franchise fee payments shall be made on a quarterly basis, on or before the thirtieth (30th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section 2.E., for the preceding calendar quarter and shall be for the rights and privileges herein provided during the quarter in which the payment is made .

B. The franchise fee amounts based on CIAC shall be calculated on an annual calendar year basis, and shall be paid annually on or before April 30 of each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee amount due hereunder will be paid on or before April 30, 2009 and will be based on the calendar year January 1 through December 31, 2008. The final CIAC franchise fee amount will be paid on or before April 30, 2024 and will be based on the calendar year January 1 through December 31, 2023.

C. It is also expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a special or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except however, Company's separate obligation to reimburse the City for City's reasonable rate case expenses and for street repairs in accordance with City's ordinances are not affected by Company's payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

D. If the Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest at the current prime rate per annum from such due date until payment is received by City.

E. City shall within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by the City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the city limits no later than sixty (60) days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments.

SECTION 11. EFFECT OF OTHER MUNICIPAL FRANCHISE ORDINANCE FEES ACCEPTED AND PAID BY COMPANY

A. If Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Company's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its Public Rights-of-Way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

B. The provisions of this Section 11 apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

SECTION 12. BOOKS AND RECORDS

A. Company agrees that at the time of each quarterly payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section 2.E. City shall be entitled to treat such statement as though it were sworn and signed by an officer of Company.

B. City may, if it sees fit and upon reasonable notice to the Company, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein. The Company shall make available to the auditor such personnel and records as the City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefore. The Company shall assist the City in its review by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If such an examination reveals that Company has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 10.D. Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

C. If, after receiving reasonable notice from the City of the City's intent to perform an audit as provided herein, the Company fails to provide data, documents, reports, or information required to be furnished hereunder to the City, or fails to reasonably cooperate with the City during an audit conducted under the terms hereunder, the Company shall be liable for payment of a fee as set forth herein. The City shall give the Company written notice of its intent to impose a fee and shall provide Company with a period to cure its failure, such period not to exceed five (5) working days. If the Company fails to cure the alleged failure within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five (5) calendar days prior to the posting date of the agenda for the City Council meeting at which such failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of

Company to comply with the requirements of this Section, Company shall pay a fee of Three Hundred Dollars (\$300.00) per day for each day that such noncompliance continues.

SECTION 13. RESERVATION OF RIGHTS: GENERAL

A. The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

B. The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas for light, heat, and power for City and the inhabitants thereof.

C. City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City and inhabitants thereof.

D. Nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the City as same now exists or as such limits may be extended from time to time hereafter.

SECTION 14. RIGHT TO INDEMNIFICATION, LEGAL DEFENSE AND TO BE HELD HARMLESS

A. IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, AGENTS, AND EMPLOYEES (CITY AND SUCH OTHER PERSONS AND ENTITIES BEING COLLECTIVELY REFERRED TO HEREIN AS "INDEMNITEES"), FROM AND AGAINST ALL SUITS, ACTIONS OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY DEATH, INJURIES TO, OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF, OR OCCASIONED BY COMPANY'S INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS IN CONNECTION WITH

COMPANY'S OPERATIONS, CONSTRUCTION, AND MAINTENANCE OF COMPANY'S SYSTEM, INCLUDING ANY COURT COSTS, EXPENSES AND DEFENSES THEREOF, WHEN SUCH INJURY SHALL HAVE BEEN CAUSED BY THE NEGLIGENT ACT OR OMISSIONS, OR MISCONDUCT, OF COMPANY OR ANY OF ITS OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS, OR EMPLOYEES.

B. The Company's obligation to indemnify Indemnitees under this Ordinance shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the Company and the City.

C. By entering into this Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas law or waive any of the defenses of the parties under Texas law.

D. Except for instances of the City's own negligence, City shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Company's construction, reconstruction, maintenance, repair, use, operation or dismantling of System or Company's provision of service.

E. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 14. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the right to retain

defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnitees.

SECTION 15. INSURANCE

Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise and that is consistent with best industry practices. The minimum amount of such insurance shall be six million dollars (\$6,000,000), consisting of two million dollars (\$2,000,000) primary plus four million dollars (\$4,000,000) umbrella coverage. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to City.

SECTION 16. TERMINATION

A. Right to Terminate. In addition to any rights set out elsewhere in this Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the Franchise.

B. Procedures for Termination.

(1) The City may, at any time, terminate this Franchise for a continuing material violation by the Company of any of the substantial terms hereof. In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 22 hereof. The Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated. In no event, however, will the

Company's ability to cure such violations under this paragraph exceed one hundred and twenty days (120) from the date the City notifies the Company of the violation.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least fifteen (15) days prior written notice of any public hearing concerning the termination of the Franchise.

(3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

C. In lieu of terminating the franchise and rights granted herein pursuant to this Section, the City may, in the event of a substantial and material breach by Company of the terms and conditions of this Ordinance, charge and collect from the Company a civil penalty of five (\$500.00) per day for each breach by Company hereof. Provided, however, that the City shall first have furnished to Company the notices, right to public hearing, and opportunity to cure described in this section.

SECTION 17. RENEGOTIATION

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION 18. NO THIRD PARTY BENEFICIARIES

This Franchise is made for the exclusive benefit of the City and the Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 19. SUCCESSORS AND ASSIGNS

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate without approval of the City Council of the City. Written notice of said transfer or assignment to an Affiliate shall be provided to the City Manager. The City will grant such approval unless withheld for good cause such as: (1) the failure of the proposed Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance, and (2) the failure of the proposed Assignee or Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. Upon approval, the rights, privileges, and Franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

SECTION 20. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Sherman City Charter, as amended, and all other generally applicable ordinances of the City of Sherman, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

SECTION 21. FORCE MAJEURE

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event either the City or the Company is unable to comply with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which such party is so prevented shall not be counted against such party for any reason. The term “force majeure”

as used herein shall mean any cause not reasonably within the control of the party unable to comply with its obligation or undertaking hereunder and includes, but is not limited to, acts of God, wars, riots, orders or decrees of any lawfully constituted federal, state, or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions.

SECTION 22. PREVIOUS ORDINANCES

When this Franchise becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to the Company or its predecessors in interest granted by the City of Sherman, Texas, are hereby repealed.

SECTION 23. NOTICES

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY

City Manager
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

COMPANY

Manager of Public Affairs
Atmos Energy Corp.,
Mid-Tex Division
800 E. Border Street
Arlington, Texas 76010

SECTION 24. PARAGRAPH HEADINGS, CONSTRUCTION

The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION 25. SEVERABILITY

This Ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this Ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

SECTION 26. NO WAIVER

Either City or the Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 27. EFFECTIVE DATE

This Franchise shall be effective on October 1, 2008, if Company has filed its acceptance as provided by Section 28 herein.

SECTION 28. ACCEPTANCE OF TERMS OF FRANCHISE

The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Clerk. If the Company does not file such written acceptance of this Franchise, the Franchise shall be rendered null and void. The effective date shall be determined in accordance with the requirements of Section 27. Company shall pay all publication expense regarding notification of the Franchise ordinance.

INTRODUCED on this the _____ day of _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

By: _____
BILL MAGERS, MAYOR

ATTEST:

By: _____
LINDA ASHBY, CITY CLERK

HOW OTHER CITIES VOTED ON THE 5% INCREASE ON THE FRANCHISE FEE

Cities Voting for the 5% Increase	Cities Voting Against the 5% Increase
Abbott	Lewisville
Abilene	Honey Grove
Alvord	Beverly Hills
Anson	Denison
Aubrey	
Aurora	
Avery	
Balch Springs	
Ballinger	
Bangs	
Bedford	
Bellmead	
Belton	
Benjamin	
Bertram	
Blackwell	
Blanket	
Blooming Grove	
Blue Mound	
Blum	
Bowie	
Bronte	
Brownsboro	
Bryan	
Buffalo	
Burkburnett	
Burnet	
Byers	
Caldwell	
Calvert	
Canton	
Carbon	
Cashion Community	
Celeste	
Chico	
Childress	
Cisco	
Clarksville	
Coleman	
Collinsville	
Colorado City	
Comanche	
Cooper	

Copperas Cove	
Covington	
Crowley	
Cumby	
Dalworthington Gardens	
De Leon	
Deport	
Desoto	
Dublin	
Eastland	
Electra	
Eustace	
Everman	
Fairview	
Ferris	
Forest Hill	
Fort Worth	
Fredericksburg	
Frost	
Gainesville	
Georgetown	
Godley	
Goldthwaite	
Gordon	
Goree	
Gorman	
Granger	
Greenville	
Groesbeck	
Gustine	
Haltom City	
Hamilton	
Hamlin	
Haskell	
Henrietta	
Hewitt	
Highland Park	
Hillsboro	
Holland	
Holliday	
Hubbard	
Hutchins	
Iredell	
Jewett	
Josephine	
Kaufman	
Keene	

Kemp	
Killeen	
Knox City	
Kosse	
Krum	
Lacy-lakeview	
Ladonia	
Lancaster	
Leander	
Leonard	
Lipan	
Little Elm	
Lorraine	
Lorena	
Madisonville	
McGregor	
McKinney	
Megargel	
Melissa	
Meridian	
Mesquite	
Midlothian	
Midway	
Miles	
Milford	
Moody	
Moran	
Muenster	
Newark	
Newcastle	
Nocona	
Oak Leaf	
Olney	
Ovilla	
Paradise	
Petrolia	
Pilot Point	
Pleasant Valley	
Point	
Ponder	
Poynor	
Prosper	
Quitman	
Ranger	
Rhome	
Richland Hills	
Riesel	

Robert Lee Robinson Roby Rockwall Rogers Roscoe Rotan Round Rock Roxton Runaway Bay Sadler San Angelo San Saba Sanger Santa Anna Seagoville Shady Shores Somerville Strawn Streetman Sweetwater Taylor Teague Thorndale Tom Bean Trenton Troy Tuscola University Park Van Alstyne Venus Waco Walnut Springs Watauga Weinert West White Settlement Whitney Wichita Falls Windom Woodway Post Oak Bend Early	
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SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. B.2

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5563

Approving an Electric Power Contract with Cities Aggregation Power Project, Inc. ("CAPP") for Electric Capacity and Energy, Providing Capacity Payments as Public Property Finance Contractual Obligations of the City, Pledging and Levying an Ad Valorem Tax To Such Payments, Providing for Energy Payments for Electric Energy Subject to Annual Appropriation by the City, Providing for the Assignment of Such Capacity Payments to Support Debt Issued by CAPP Incurred to Acquire Electric Capacity Rights from Luminant Generation Company and Related Entities Pursuant to a 24-Year Power Purchase Agreement ("PPA"); Authorizing the City Manager or Other Appropriate City Officer or Employee to Execute and Deliver the Member Contract; Further Authorizing the City Manager or Other Appropriate City Officer or City Employee to Sign Additional Agreements Arranged by CAPP for Electric Power Needed by the City in the Period 2009-2011 in Excess of the Amount Obtained Under the Member Contract; Acknowledging, Authorizing and Directing the City Manager or Appropriate City Officer or City Employee to Sign and Return CAPP's Disclosure Letter; Further Authorizing the City Manager or Appropriate City Officer or Other City Employee to Accept Conforming Changes to the Member Contract Dependent on the Final Terms of the CAPP PPA; Providing for Validity and Sufficiency of City Employee's or City Officer's Signature if the Officer or Employee Leaves Office or Employment Prior to the Delivery of the Member Contract

Issue

Approval of an Energy Sales Contract with the Cities Aggregation Power Project ("CAPP") for the purchase of long-term electricity for the City

Background

The City is a member of the Cities Aggregation Power Project ("CAPP"), a non-profit political subdivision corporation aggregator. Created in 2001 in anticipation of the deregulation of the Texas retail electric market, CAPP pools members' electric power needs in order to negotiate lower, more stable prices through bulk purchasing. CAPP has entered into a Power Purchase Agreement ("PPA") with Luminant Generation Company LLC, Big Brown Power Company, LLC and Oak Grove Management Company, LLC (collectively, "Luminant") for approximately 150 MW of baseload power from seven different units over a 24-year period. CAPP has entered into the contract on behalf of all CAPP members that are willing to be allocated a portion of approximately 150 MW, corresponding to each participating member's energy consumption as a percentage of all participating members' consumption. The attached ordinance commits the City to purchasing electric power to satisfy a portion of its annual energy needs (approximately 60%) through the CAPP PPA for up to 24 years from CAPP and to pay a capacity payment equal to its proportionate amount of the debt service obligation associated with CAPP's prepayment of PPA

capacity costs. The Member Contract approved by this ordinance makes certain that capacity payments (debt service obligation) payable by the City will be secured by a pledge of the City's ad valorem taxes. The ordinance approves the Energy Sales Contract between CAPP and the City (the "Member Contract") and authorizes the City officers and employees as may be appropriate to take all actions necessary to carry out the terms of this ordinance and the Member Contract.

Origination

Geoffrey M. Gay of Lloyd Gosselink Rochelle & Townsend, P.C. on behalf of CAPP

Financial Consideration

The effect of this contract is to fix the cost of about 60% of the City's base electricity costs and allow for a separate "wrap" contract to provide a negotiated price for the remaining electricity needed by the City. Also, this PPA will require a property tax pledge as security; however, most of the costs for this contract will be paid through the Utility Fund. This contract should not affect the property tax rate. This PPA is expected to save the City about 20% on utility costs over market costs, which for fiscal year 2008-2009 equates to about \$360,000.

Staff Recommendation

The staff recommends approval of this contract.

Alternatives

The Council could choose not to approve the Energy Sales Contract with CAPP

Attachments

Ordinance No. 5563

Energy Sales Contract between CAPP and City

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5563

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AN ELECTRIC POWER CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. ("CAPP") FOR ELECTRIC CAPACITY AND ENERGY, PROVIDING CAPACITY PAYMENTS AS PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS OF THE CITY, PLEDGING AND LEVYING AN AD VALOREM TAX TO SUCH PAYMENTS, PROVIDING FOR ENERGY PAYMENTS FOR ELECTRIC ENERGY SUBJECT TO ANNUAL APPROPRIATION BY THE CITY, PROVIDING FOR THE ASSIGNMENT OF SUCH CAPACITY PAYMENTS TO SUPPORT DEBT ISSUED BY CAPP INCURRED TO ACQUIRE ELECTRIC CAPACITY RIGHTS FROM LUMINANT GENERATION COMPANY AND RELATED ENTITIES PURSUANT TO A 24-YEAR POWER PURCHASE AGREEMENT ("PPA"); AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR EMPLOYEE TO EXECUTE AND DELIVER THE MEMBER CONTRACT; FURTHER AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN ADDITIONAL AGREEMENTS ARRANGED BY CAPP FOR ELECTRIC POWER NEEDED BY THE CITY IN THE PERIOD 2009-2011 IN EXCESS OF THE AMOUNT OBTAINED UNDER THE MEMBER CONTRACT; ACKNOWLEDGING, AUTHORIZING AND DIRECTING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN AND RETURN CAPP'S DISCLOSURE LETTER; FURTHER AUTHORIZING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR OTHER CITY EMPLOYEE TO ACCEPT CONFORMING CHANGES TO THE MEMBER CONTRACT DEPENDENT ON THE FINAL TERMS OF THE CAPP PPA; PROVIDING FOR VALIDITY AND SUFFICIENCY OF CITY EMPLOYEE'S OR CITY OFFICER'S SIGNATURE IF THE OFFICER OR EMPLOYEE LEAVES OFFICE OR EMPLOYMENT PRIOR TO THE DELIVERY OF THE MEMBER CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman must purchase electricity in order to perform its proprietary and governmental functions;

WHEREAS, the price of power sold in the deregulated retail market in Texas has been directly linked to the daily fluctuations for natural gas futures prices, regardless of the type of generation fuel;

WHEREAS, natural gas prices are extremely volatile, resulting in an upward cost trend and significant electric price instability;

WHEREAS, the City is a member of the non-profit political subdivision corporation Cities Aggregation Power Project, Inc. (“CAPP”), which has the legal authority to contract for the purchase of electricity on behalf of more than 100 political subdivision members;

WHEREAS, CAPP has endeavored to provide its members with the most favorable energy pricing available in the market, delivering more than \$100 million in savings for its members since 2002;

WHEREAS, the CAPP Board of Directors is a voluntary ten-member board comprised entirely of city employees and city officials that directs the activities of CAPP’s legal and energy advisors;

WHEREAS, the CAPP Board of Directors has investigated potential long-term contracting options to both lower and stabilize electric prices for member political subdivisions that must prepare annual budgets and require cost predictability for essential services like electricity;

WHEREAS, CAPP negotiated a Purchase Power Agreement (“PPA”) with owners of non-gas fired generation for the long-term, fixed price supply of power, which will allow participating CAPP members to meet a portion of energy needs (approximately 60 percent) at a stable, known price for a 24-year period; and

WHEREAS, the PPA calls for CAPP to contract with Luminant Generation Company LLC, Big Brown Power Company, LLC and Oak Grove Management Company, LLC (collectively, “Luminant”) for approximately 150 MW of baseload power supplied by seven different units over 24 years and pre-paying a portion of the capacity costs associated with power purchased pursuant to the long-term contract;

WHEREAS, the City wishes to acquire a portion of its future electric energy pursuant to the PPA between CAPP and Luminant;

WHEREAS, to acquire power pursuant to the PPA, the City must enter into an electric power contract, the Energy Sales Contract Between CAPP and the City of Sherman (the “Member Contract”), substantially in the form attached hereto;

WHEREAS, CAPP will issue general revenue bonds, with the bond proceeds used to pre-pay a portion of the 24-year capacity commitment pursuant to the PPA on behalf of the City and all participating CAPP members;

WHEREAS, bonds issued by CAPP will be backed by the individual Member Contracts of each participating CAPP city committing to pay a capacity payment equal to its proportionate amount of the debt service obligation associated with CAPP’s prepayment of PPA capacity costs;

WHEREAS, the City's allocated total maximum capacity payment is \$8,444,000 (total maximum monthly capacity payment is \$58,000);

WHEREAS, the Member Contract requires that certain capacity payments payable by each participating CAPP member will be public property finance contractual obligations pursuant to Texas Local Government Code Chapter 271, Subchapter A, secured by a pledge of such member's ad valorem taxes, which will be assigned to support debt issued by CAPP to pay the capacity costs of the PPA;

WHEREAS, the fixed capacity component constitutes a long-term, general obligation tax debt of each participating member that is secured by a pledge of the member's ad valorem taxes;

WHEREAS, CAPP must secure an additional "wrap" agreement to arrange for power deliveries when needed to meet the remaining portion of the City's energy needs in excess of the baseload power provided under the Member Contract, with said wrap agreement needing ratification/approval of the City;

WHEREAS, the resulting power supply blend adds to both stability and savings for the City;

WHEREAS, the total capacity and energy to be purchased under the long-term PPA cannot be known until all CAPP members have acted on their opportunity to participate in the transaction;

WHEREAS, a change in total capacity and energy obligated under the PPA will change the cost of the transaction and may change the percentage of debt service obligation and energy assigned to participating CAPP members;

WHEREAS, the PPA is an effort, initiated by CAPP pursuant to direction and support of its participating members, including the City, to diversify fuel sources and minimize the risk associated with complete reliance upon electric pricing linked to natural gas costs that are influenced by unpredictable weather, geo-political and global economic factors, but nonetheless the PPA involves a number of somewhat unique risks and uncertainties;

WHEREAS, CAPP has prepared and distributed a Disclosure Statement dated September 10, 2008, in the form attached hereto that identifies and describes certain risks (but may not describe all risks) associated with the transactions contemplated by the Member Contract and the PPA;

WHEREAS, the Disclosure Statement is to be acknowledged, signed, and returned to CAPP, prior to pricing of CAPP's bonds, if the Member Contract is approved;

WHEREAS, it is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; and

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

SECTION 1. That the CAPP Member Contract, attached hereto and incorporated herein for all purposes is deemed necessary and desirable for the City to meet its proprietary functions and basic governmental responsibilities and is hereby approved.

SECTION 2. That the City acknowledges that the Member Contract requires that certain capacity payments payable by the City will be public property finance contractual obligations pursuant to Texas Local Government Code Chapter 271, Subchapter A, secured by a pledge of such member's ad valorem taxes, which will be assigned to support debt issued by CAPP to pay the capacity costs of the PPA; and the City further acknowledges that the fixed capacity component constitutes a long-term, general obligation tax debt of the City that is secured by a pledge of the City's ad valorem taxes.

SECTION 3. That the City of Sherman hereby acknowledges that it has reviewed the Member Contract and the Disclosure Statement dated September 10, 2008, and the City Manager, or other appropriate officer or staff person of the City, is authorized and directed to sign, date, and return by November 5, 2008, to CAPP both the Member Contract and such Disclosure Statement.

SECTION 4. That the City Manager, or other appropriate officer or staff person of the City, is authorized to approve modifications and corrections to the Member Contract that are necessary to conform to changes to the assigned cost in the PPA after all CAPP members have made decisions regarding participation in the long-term PPA, so long as no such changes increase the City's capacity payment obligations in any year from the amounts reflected in the Member Contract attached hereto.

SECTION 5. That the City Manager, or other appropriate officer or staff person of the City, is authorized to sign additional agreements arranged by CAPP for the provision of electricity during the period 2009-2011 that are necessary to meet the City's power needs that exceed the power arranged through the Member Contract with CAPP, with the understanding that any agreement for energy beyond 2009 is subject to the right of annual appropriation.

SECTION 6. That the City Manager, or other appropriate officer or staff person of the City, is hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this ordinance, the Member Contract and the Disclosure.

SECTION 7. That the City Manager, or other appropriate officer or staff person of the City, is hereby authorized and directed to approve any changes or corrections necessary to this ordinance, the Member Contract or any ancillary agreement, certificate or document, prior to the initial delivery of the Member Contract in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this ordinance, (ii) approve any changes to the Member Contract as contemplated in the recitals hereto and Section 3 hereto, or (iii) obtain the approval of the Member Contract (and the debt issued by CAPP relating to the PPA) by the Texas Attorney General's office.

SECTION 8. That, in case any officer of the City whose signature shall appear on the Member Contract shall cease to be such officer before the delivery of such Member Contract, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 9. That if any one or more sections or clauses of this ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this ordinance and the remaining provisions of the ordinance shall be interpreted as if the offending section or clause never existed.

SECTION 10. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 11. That the City hereby finds that the statements set forth in the recitals of this ordinance are true and correct, and the City hereby incorporates such recitals as a part of this ordinance.

SECTION 12. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the _____ day of _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

ENERGY SALES CONTRACT
BETWEEN
CITIES AGGREGATION POWER PROJECT
AND
CITY OF SHERMAN, TEXAS

**ENERGY SALES CONTRACT
BETWEEN
CITIES AGGREGATION POWER PROJECT
AND
CITY OF SHERMAN, TEXAS**

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**ENERGY SALES CONTRACT
BETWEEN
CITIES AGGREGATION POWER PROJECT
AND
CITY OF SHERMAN, TEXAS**

This Energy Sales Contract ("**Contract**") is executed on the date set opposite each signature below, effective, however, on December ___, 2008 ("**Effective Date**"), by and between the Cities Aggregation Power Project, Inc. ("**CAPP**"), a political subdivision corporation incorporated in the State of Texas, and the City of Sherman ("**Member**"). CAPP and Member are collectively referred to herein as the "**Parties**", and individually as a "**Party**".

RECITALS:

Capitalized terms used herein not otherwise defined shall have the meanings set forth in Article 1 hereof.

Member is a political subdivision of the State of Texas.

Member is a member of CAPP.

As the result of adoption of Senate Bill 7, enacted as Chapter 405, Acts of the 76th Legislature, Regular Session, 1999, municipalities now have the opportunity to competitively acquire electricity on more advantageous terms. This opportunity was the impetus for the creation of CAPP. CAPP was created to assist Member and the Participating Members in obtaining electricity used in such Members' own buildings and facilities by aggregating each Participating Member's electric load, and negotiating the best electric price based on the aggregated load.

Recognizing that all retail sales in the Texas deregulated electric market have been based on the price of natural gas on the Nymex Futures Market, Member desires to diversify the sources of its electric supplies in order to mitigate potential price volatility associated with a single fuel source supply of electric energy.

Member has a need for reliable electric energy at favorable and stable rates to fulfill its proprietary needs and governmental responsibilities in said buildings and facilities.

Member desires to increase its bargaining power in the deregulated market for Energy by relying upon and combining with other participating CAPP member cities ("**Participating Members**") to negotiate for future sources of electricity. The Participating Members are listed on Exhibit "A" attached hereto and incorporated by this reference herein for all purposes.

Member has determined to utilize the CAPP aggregation method of electric energy procurement for meeting the electric energy needs of governmental facilities that are located within its deregulated jurisdictional boundaries, as provided in this Contract.

CAPP has identified a source of Energy from selected units in the Big Brown generating station in Freestone County, Texas ("**Big Brown Facility**"), Martin Lake generating station located in Rusk County, Texas ("**Martin Lake Facility**"), and Oak Grove generating station located in Robertson County, Texas ("**Oak Grove Facility**") that are owned, respectively, by Big Brown Power Company, LLC, Luminant Generation Company LLC and Oak Grove Management Company, LLC (collectively, the "**Facility Owners**"), and that CAPP believes will assist Member in (i) mitigating potential price volatility of Energy, and (ii) accessing a wholesale power supply to meet the base load requirements of Member and Participating Members for twenty-four (24) years, commencing on January 1, 2009 at 12:00:00 a.m. CPT ("**Service Commencement Date**") and ending at one minute before 12:01 a.m. on January 1, 2033 unless the agreement for the procurement of such Energy is terminated sooner as therein provided ("**Term**"). The Big Brown Facility, Martin Lake Facility, and Oak Grove Facility are collectively called the "**Facilities**".

CAPP has entered into a Power Purchase Agreement with the Facility Owners in substantially the form attached hereto as Exhibit "B" and incorporated by this reference herein for all purposes ("**PPA**"), pursuant to which PPA, CAPP will contract to obtain 150 megawatts of Contract Capacity ("**Contract Capacity**") in the Facilities and access to wholesale power supplies to meet base load Energy needs of Member and Participating Members throughout the Term of the PPA.

Certain obligations of the Facility Owners under the PPA have been partially guaranteed by Texas Competitive Electric Holdings Company, LLC ("TCEH") through execution of a Guaranty substantially in the form attached to the PPA, and TCEH and its subsidiaries have guaranteed the original leveraged buyout ("LBO") documents and the PPA is a secured obligation under such LBO documents and as such is subject to the guaranty provided therein.

Member desires to acquire its Member Contract Energy Allocation in the Project from CAPP ("**Member Capacity**").

All Participating Members, including Member, have collectively contracted for and reserved the full Contract Capacity in the Facilities from CAPP. The PPA provides the terms for CAPP's purchase of all Contract Capacity from the Facility Owners for the benefit and on behalf of Member and Participating Members.

As a result of negotiations with the Facility Owners it has been determined that substantial savings in energy costs based upon today's energy market and current forecasts of future market prices can be realized by purchasing capacity rights in the Facilities from the Facility Owners as provided in the PPA on or before the Service Commencement Date.

CAPP has determined that it is in the best interests of Member and the Participating Members to prepay Facility Owners for Contract Capacity in the Facilities ("**Capacity Prepayment**") out of the proceeds of Bonds issued for such purpose by CAPP. Member and each of the other Participating Members in their respective Participant Contracts, agree to pay Member's Energy Allocation Percentage of the costs incurred by CAPP to issue the Bonds, pay the Capacity Prepayment to the Facility Owners, pay interest costs, establish a reserve, and pay all other costs, fees and charges that CAPP incurs under the Bonds directly to the Trustee, as hereinafter defined, until the Bonds are paid in full according to the payment schedule set forth in the Bonds. The Bonds shall be secured by the collateral assignment of this Contract and all Participant Contracts, as provided in this Contract, including all rights of collection thereon, to the Trustee. A copy of the payment schedule is attached hereto as Exhibit "C" and incorporated by this reference herein for all purposes.

Member acknowledges that CAPP shall additionally provide to Member at Member's expense, through Designated Agent(s), all services required and necessary to deliver the Energy from the Facility Owners Delivery Point to Member's Delivery Points, including all costs of transmission, distribution, and including all necessary tariffs, and fees as provided herein.

Member agrees to the terms of this Contract, and consents to the terms of the PPA. In reliance thereon, and in reliance upon the acceptance and agreement of all other Participating Members, CAPP (i) has entered or shall enter the PPA for the benefit of Member and Participating Members, (ii) shall cause the Bonds to be issued, and (iii) shall cause the Capacity Prepayment to be paid to the Facility Owners as provided in the PPA.

Accordingly, CAPP and Member have determined that it is in their mutual best interests to enter into this Contract as the means of providing Member with the Member Contract Energy Allocation for its base load needs during the Delivery Period described in Section 3.2, below. Other Participating Members have respectively entered or have committed to enter into contracts with CAPP that, when aggregated with this Contract, collectively account for all Contract Energy associated with the Contract Capacity in the Facilities during the Delivery Period that has or will be acquired by CAPP for the benefit of all Participating Members under the PPA.

The Public Property Finance Act, Subchapter A, Chapter 271, Local Government Code, as amended (the "**Act**"), authorizes Member to execute, perform and make payments under contracts with any person for the use, acquisition or purchase of personal property as described in the Act, including the electricity provided for in this Contract.

The Act permits the governing body of Member to execute contracts in any form deemed appropriate by said governing body in connection with the use, acquisition or purchase of personal property.

Member desires to acquire electricity property pursuant to this Contract as described herein from CAPP, and such personal property is deemed by the governing body of Member to be necessary, useful, and/or appropriate for the purposes of Member as contemplated by Section 304.001, Government Code, as amended.

In consideration of the mutual undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions. The following capitalized terms shall have the following meanings assigned to them under this Contract unless the context shall clearly indicate otherwise:

“Aggregated Expenses” shall mean the sum of charges to CAPP that are payable under the PPA to the Facility Owners and under a Wrap Contract for: (a) adjustments to the Capacity Prepayment under Section 4.2(b) of the PPA, (b) sums charged to CAPP under Section 3.3 of the PPA, (c) the amount of Disputed Charges that are payable by CAPP under Section 8.3 of the PPA or as a result of an Audit under Section 8.4 of the PPA, (d) sums payable by CAPP under Article 10 of the PPA, (e) sums, if any, required for the indemnity of the Facility Owners under Section 13.1 of the PPA, (f) Governmental Charges payable by CAPP pursuant to Section 20.1 of the PPA, (g) New Governmental Charges payable by CAPP pursuant to Section 20.2 of the PPA, (h) the cost of environmental improvements that are required to be paid by CAPP under the PPA, (i) any unforeseen non-recurring expenses approved by CAPP, and (j) the amount of any Seller Termination Payment due by CAPP to the Facility Owners pursuant to Article 12 of the PPA. The amount of Aggregated Expenses shall be reduced by (i) credits to the Capacity Prepayment under Section 4.2(a) of the PPA, (ii) credits under Section 3.4 of the PPA on account of the failure of the Facility Owners to deliver the Products to CAPP, and (iii) the amount of Disputed Charges that are payable by the Facility Owners to CAPP under Section 8.3 of the PPA or as a result of an Audit under Section 8.4 of the PPA.

“Alternate Energy” has the meaning set forth in the PPA.

“Appropriate”, “Appropriated”, and/or “Appropriation” means, with respect to any Energy Payment that Member is obligated to make under this Contract during a Fiscal Year, the adoption by the governing body of Member of a budget for such Fiscal Year that includes such payment.

“Available Funds” means, when used to describe funds of Member, those funds of the Member which have been lawfully Appropriated, within the sole and

uncontestable discretion of the Member, from current revenues and which may be expended, during the Fiscal Year for which Appropriated, for the purpose expressed in such Appropriation.

“Bankrupt” means a Party that: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced and regardless of whether the bankruptcy or insolvency is voluntary or involuntary), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Base Year” means an annual period determined by CAPP as of the Effective Date to be representative of the typical total current Energy requirements of all Participating Members.

“Big Brown Facility” means Unit 1 and Unit 2 of the Big Brown generating station located in Freestone County, Texas, with an appropriate cumulative Net Rated Capacity of 1203 megawatts as of the Effective Date.

“Bonds” shall mean all contract revenue bonds issued by CAPP for the purpose of prepaying and funding the Capacity Prepayment plus cost of issuance of and reserve funds required to be maintained under such contract revenue bonds, said bonds to be secured by the pledge and assignment by CAPP to a trustee, pursuant to a trust agreement between CAPP and such trustee of the Capacity Prepayment Component of each Participating Member’s contract, it being stipulated and agreed that this Contract and each Participant Contract constitutes a contract under Subchapter A of Chapter 271, Local Government Code, State of Texas, as amended, payable from such respective Participating Member’s ad valorem taxes within the limits prescribed by law.

“Business Day” means any Day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. CPT and close at 5:00 p.m. CPT.

“Capacity Prepayment” has the meaning set forth in Section 7.1, below.

“CAPP” shall mean the Cities Aggregation Power Project, a political subdivision corporation in Texas organized pursuant to Local Government Code Chapter 304 for the purpose of contracting for electric power for Participating Members and for assisting in procurement of REP and QSE services for governmental electric accounts of Participating Members.

"Code" means Texas Local Government Code, Title 7, Chapter 271, Subchapter 1, Sections 271.151 through 271.160.

"Contract" shall mean this Energy Sales Contract and all related exhibits, as same may be amended from time to time by the mutual written agreement of the Parties.

"Contract Capacity" means 150 megawatts, being the Contract Capacity acquired by CAPP in the Facilities under the PPA on behalf of Member and the Participating Members.

"Contract Energy" has the meaning set forth in the PPA. Additionally, the Parties understand that if, in any Settlement Interval, the output of one or more of the Facilities is less than its Net Rated Capacity, due to a Planned Outage or Forced Outage as provided in the PPA, the Contract Energy may be reduced. In such an event, CAPP shall only receive a share of the output as provided in the PPA. In such event, the reduced amount of output received by CAPP will be delivered to and apportioned between Member and the other Participating Members based on their respective Member's Energy Allocation Percentages.

"Contract Price" has the meaning set forth in Section 6.1.

"CPT" means central prevailing time.

"Day" means the consecutive twenty-four (24) hour period beginning at 12:00:00 a.m. CPT on any calendar day and ending at 12:00:00 p.m. CPT on such calendar day.

"Default" has the meaning set forth in Article 11 hereof.

"Defaulting Member" shall mean one or more Participating Members that default under a Participant Contract that has been collaterally assigned in whole or in part as security for the repayment of the Bonds.

"Delivery Month" has the meaning set forth in the PPA.

"Delivery Period" means that period of time in which Energy shall be delivered to CAPP as agent for Member as the Energy is delivered by the Facility Owners under the PPA, commencing on January 1, 2009 at 12:01:00 a.m. CPT and ending on the earlier of: (i) 12:01:00 a.m. CPT on January 1, 2033, (ii) the date and time that the PPA is terminated in accordance with its terms, or (iii) the date and time that this Contract is rightfully terminated in accordance with its terms.

"Designated Agent(s)" means service providers such as, but not limited to, REPs, QSEs, and other market service product providers that are engaged from time-to-time by CAPP to act as agents for and representatives of CAPP, Member, and/or

Participating Members for the purposes of: (i) receiving and accounting for Products delivered by Facility Owners under the PPA, and Energy that is delivered to Member and Participating Members under this Contract and Participant Contracts, (ii) remitting payments, including payments of ERCOT fees, transmission fees, congestion fees, QSE fees, REP charges, and tariffs, (iii) allocating costs between Member and Participating Members, and/or (iv) billing, netting, and collecting sums due under this Contract.

“Effective Date” has the meaning set forth in the preamble of this Contract.

“Energy” has the meaning set forth in the PPA.

Energy Payment means the product of the Energy Price times the number of megawatt hours delivered to Member.

“Energy Price” has the meaning set forth in Section 6.1(a)(i).

“ERCOT” shall mean the Electric Reliability Council of Texas, or its successor in function.

“ERCOT Guides” means the then-current ERCOT Operating Guides, Market Guides, Protocols, Nodal Protocols, Transaction Guides, and/or ISO procedures, as they may be amended from time to time.

“ESI-IDs” shall mean Electric Service Identifiers as defined in ERCOT Protocols, or their successor in function, same being the basic identifier assigned to each service delivery point used in the registration and settlement systems managed by ERCOT.

“Facilities” means the Big Brown Facility, Martin Lake Facility, and upon COD of the Oak Grove Unit 1 and Oak Grove Unit 2, the Oak Grove Facility as defined and described in the PPA, including, with respect to each, the land, structures, fixtures, equipment, machinery, lignite, and related auxiliary equipment required to operate each such facility.

“Facility Owner Delivery Points” means the point at a Facility at which Contract Energy is capable of being injected for the credit of CAPP into the ERCOT high voltage transmission system with Member and other Participating Members being fully responsible for reimbursing CAPP for any and all charges and assessments by ERCOT related to delivery of energy from the Facility Owner’s Delivery Points into the ERCOT high voltage transmission system.

“Facility Owners” shall mean Big Brown Power Company, LLC, Oak Grove Management Company, LLC, Luminant Generation Company, LLC, and their respective successors and assigns.

"Fiscal Year" means the fiscal year of Member.

"Forced Outage" has the meaning set forth in the PPA.

"Governmental Authority" has the meaning set forth in the PPA.

"Governmental Charges" has the meaning set forth in the PPA and which are charged to or payable by CAPP, including those Governmental Charges that survive the termination of the PPA.

"Guarantor" shall mean Texas Competitive Electric Holdings Company, LLC, a Delaware limited liability company.

"Guaranty" shall mean that certain Guaranty Agreement executed by Guarantor and delivered to CAPP at closing.

"Interest and Sinking Fund" means that a special fund or account designated as the **"City of Sherman Electric Public Property Finance Contractual Obligation Interest and Sinking Fund"**, authorized, established and maintained in a depository bank of the Member, so long as the contractual obligation to make Monthly Capacity Payments hereunder are outstanding and unpaid.

"kW" means kilowatt(s).

"Law" means (i) any law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, judgment, or other similar legal requirement, and (ii) any legally binding announcement, directive or published practice or interpretation thereof, including but not limited to, ERCOT Guides, enacted, issued or promulgated by any Governmental Authority having jurisdiction over this Contract, the Facilities, and the delivery of Energy pursuant to this Contract.

"Martin Lake Facility" means Unit 1, Unit 2, and Unit 3 of the Martin Lake generating station located in Rusk County, Texas, with an approximate cumulative Net Rated Capacity of 2,345 megawatts as of the Effective Date of the PPA.

"Member Contract Energy Allocation" shall equal the product of the Member's Energy Allocation Percentage and the Contract Energy during each Delivery Month of the Delivery Period.

"Member's Monthly Aggregated Energy Payment" has the meaning set forth in Section 6.1(a).

"Member's Energy Allocation Percentage" is 1.46%, being calculated by multiplying 100 by a fraction, the numerator of which is Member estimated energy required during the Base Year, and the denominator of which is the

estimated total energy requirement of all Participating Members during the Base Year.

“Member’s Delivery Points” shall be all ESI-IDs accounts that Member has for receipt of energy to the revenue meters of such Member that are metered and the light fixtures for street/outdoor lights or other accounts of such Member that are not metered.

“Member’s Unique Delivery Costs” shall have the meaning set forth in Section 6.1(b) hereof.

“Monthly Capacity Payment” shall have the meaning set forth in Article 7 below.

“Monthly Energy Payment” means the product of the Monthly Energy Price times Member’s Energy Allocation Percentage times the megawatt hours delivered to CAPP by the Facility Owners during the Delivery Month.

“Monthly Energy Price” means the price per megawatt hour as set forth in the PPA.

“MW” means megawatt.

“MWh” means megawatt hour.

“New Governmental Charges” means (i) any Governmental Charges enacted and effective after the Effective Date, including without limitation, that portion of any Governmental Charges or New Governmental Charges that constitutes an increase or that cause the Facility or Facilities to incur additional or new expenses less Governmental Charges enacted or imposed prior to the Effective Date that are replaced by the New Governmental Charge and that become payable by CAPP under the PPA, (ii) any Law or interpretation thereof, enacted and effective after the Effective Date resulting in a new or additional expense to the Facility or the Facilities or the application of any Governmental Charges to a new or different class of parties and that become payable by CAPP under the PPA.

“Oak Grove Facility” means, when the first commercial operation date is reached, Oak Grove Unit 1 and Oak Grove Unit 2 of the lignite coal- fired power generation facility known as the Oak Grove Generating Station located in Robertson County, Texas.

“Ordered Backdown” has the meaning set forth in Section 5.2 of the PPA.

“Participant Contracts” means those individual contracts between CAPP and a Participating Member under which such Participating Member is acquiring a portion of the Contract Energy that CAPP is acquiring for the benefit of all

Members under the PPA. Such term has the same meaning as the term "Member Output Contract" in the PPA. This Contract is one of the Participant Contracts.

“Participating Members” shall mean those members of CAPP that enter into contracts with CAPP for the procurement of electric energy from the Facilities. A list of Participating Members is attached to this Contract as Exhibit “A” and incorporated by this reference herein for all purposes. Member is one of the Participating Members.

“Person” means a natural person, corporation, electric cooperative, partnership, trust, association, joint venture, real estate investment trust or business trust (including any beneficiary thereof), unincorporated association, Governmental Authority, and any other form of business or legal entity.

“Planned Outage” has the meaning set forth in Section 6.1 of the PPA.

“PPA” shall mean that certain Power Purchase Agreement between CAPP and the Facility Owners, a copy of which is attached hereto as Exhibit “B” and incorporated by this reference herein for all purposes.

“Product” or ***“Products”*** means Contract Capacity, Contract Energy and Alternate Energy, if any, received by CAPP from the Facility Owners under the PPA.

“QSE” means the entity which is responsible for performing the responsibilities defined for a Qualified Scheduling Entity under the ERCOT Guides, or their successor in function.

“Regulatory Authorities” has the meaning found in the Utilities Code Vernon’s Texas Codes Annotated.

“REP” means Retail Electric Provider, as defined in ERCOT Protocols.

“REP Services” shall mean all services that a REP provides that are associated with the provision of electric service to a retail customer by a REP in ERCOT.

“Replacement Price” has the meaning in the PPA.

“Resale Price” has the meaning in the PPA.

“Service Commencement Date” has the meaning set forth in Section 3.2 hereof and shall be one minute before 12:01 a.m. CPT on January 1, 2009.

“Settlement Interval” has the meaning as set forth in the ERCOT Guides.

“Term” has the meaning set forth in Section 3.1 hereof.

“Transmission Losses” means losses associated with the transmission of Energy under this Contract and under the PPA from resources used by (a) the Facility Owners to the Delivery Points for the respective Facility Owners, and (b) the Designated Agent(s) from the Facility Owners’ Delivery Point to Member's Delivery Points as determined in accordance with the ERCOT Guides.

“Transmission Service Provider” has the meaning found in the Utilities Code.

“Trustee” means the trustee related to the Bonds pursuant to an indenture of trust with CAPP.

“Unit” means each of the generating units at the Big Brown Facility, the Oak Grove Facility and the Martin Lake Facility that are then the subject of the PPA.

“Unit Contingent Energy” means the Contract Energy supplied to CAPP for delivery to Participating Members from the Facilities under the terms of the PPA, for which non-delivery is excused if: (i) a Facility is unavailable as a result of a Forced Outage or a Planned Outage; (ii) CAPP fails to perform any of its obligations under the PPA; or (iii) an event of Force Majeure prevents delivery of such Energy to CAPP.

“Wrap Contract” means any energy service contract executed by CAPP on behalf of Participating Members for electrical service requirements in addition to the PPA and other associated and ancillary services necessary to fulfill the full requirements for each of the Members electric power needs.

1.2 Principles of Interpretation. Unless the context requires otherwise, any reference in this Contract to any document means such document and all schedules, exhibits, and attachments thereto as amended and in effect from time to time. Unless otherwise stated, any reference in this Contract to any Person or Party includes its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. The words “*hereof*”, “*herein*” and “*hereunder*” and words of similar import when used in this Contract, unless otherwise expressly specified, refers to this Contract as a whole and not to any particular provision of this Contract. The singular includes the plural, and the masculine includes the feminine and neuter genders. Whenever the term “*including*” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. The language used in this Contract is deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. All times set forth in this Contract shall be construed to be CPT.

ARTICLE 2
CAPP'S OBLIGATIONS CONTINGENT UPON
PERFORMANCE BY FACILITY OWNERS UNDER THE PPA;
ASSUMPTION BY MEMBER

2.1 Nature of CAPP's obligations to Member. Member agrees and understands that CAPP has entered or shall enter the PPA on behalf of Member and all Participant Members for the purpose of achieving the benefits set forth in the Recitals, above, including contracting for less than market prices for energy. Member understands that CAPP is not a power provider or power deliverer. Member agrees and understands that CAPP's obligation to perform its covenants under this Contract is absolutely contingent upon the performance of obligations of the Facility Owners and Guarantor to CAPP under the PPA, including, but not limited to, timely delivery of the Products in the quantities required under the PPA.

2.2 CAPP's duty to exercise remedies under the PPA and Guaranty; power coupled with an interest. In the event that the Facility Owners, without an excuse or right permitted under the PPA, fail to deliver the Products and/or fail to perform their obligations to CAPP as required under the PPA and Guaranty, then CAPP, on behalf of itself, Member, and the Participating Members, may exercise one or more of the remedies available to it under the PPA, the Guaranty, or both, as the Board of Directors of CAPP shall determine in its sole judgment and discretion. To the fullest extent necessary, Member hereby irrevocably appoints CAPP as its agent and attorney-in-fact to exercise such of the remedies available to CAPP under the PPA, that CAPP, in the sole judgment and discretion of its Board of Directors, believes to be the best interests of the Parties and Participating Members. Member agrees and understands that the power granted by it to CAPP in this Section 2.2 is and shall be construed to be a power coupled with an interest that cannot be revoked during the Term of this Contract. It is further agreed and understood that Member's obligation to pay the sums set forth in Article 6 and Article 7 on the dates set forth in Article 8, below, shall not be excused, offset, or mitigated on account of a default by Facility Owners under the PPA or by the failure of Facility Owners to deliver the Products.

2.3 Assumption of PPA by Member. Member agrees and understands that CAPP has entered or will enter into the PPA for the benefit of Member and Participating Members to the extent of their respective Member's Energy Allocation Percentages. For the consideration set forth in this Contract, Member assumes CAPP's obligations under the PPA, to the extent of Member's Energy Allocation Percentage, provided, however, that such rights and obligations shall be exercised on Member's behalf as the Board of Directors of CAPP shall determine in its sole and absolute discretion.

ARTICLE 3

TERM OF CONTRACT AND DELIVERY OF PRODUCTS

3.1 Term. The term ("*Term*") of this Contract shall commence on the Effective Date, and shall continue until the later of: (a) January 1, 2033 at 12:00:00 a.m., or (b) the date that the Bonds have been repaid in full and all covenants required to be performed and all interest and costs required to be paid by CAPP under the Bonds have been performed and paid in full by CAPP.

3.2 Delivery of Products. A Member's Contract Energy Allocation of the Products shall be provided by CAPP to Member as set forth herein at 12:00:00 a.m. CPT on January 1, 2009 (the "*Service Commencement Date*") provided that the Products are then commenced to be delivered by Facility Owners to CAPP under the PPA. Thereafter, the Products shall be received by CAPP or its Designated Agent(s) for the benefit of and as agent for Member as the Products are delivered by Facility Owners under the PPA until the earlier of: (a) one second following 11:59:59 p.m. CPT on December 31, 2032, (b) the date that the PPA is terminated in accordance with its terms, or (c) the date that this Contract is terminated in accordance with its terms ("*Delivery Period*"). In the event that the Facility Owners fail to deliver all of the Products they are required to deliver under the PPA, Member shall be entitled to receive only Member's Energy Allocation Percentage of the Products actually delivered to and received by CAPP, net of Transmission Losses.

ARTICLE 4

PAYMENT OF CAPACITY PREPAYMENT TO FACILITY OWNERS

4.1 Provided that the PPA has not been terminated by CAPP or by the Facility Owners prior to the Service Commencement Date pursuant to Article 11 of the PPA, CAPP shall pay or cause the Capacity Prepayment to be paid to Facility Owners on or before the date described in said Section 4.1(b) of the PPA. CAPP and Member stipulate and agree that the Capacity Prepayment shall be paid to the Facility Owners as required by the PPA, in whole or in part, from the proceeds of the Bonds, interest earned while such Bond proceeds are escrowed, and, as CAPP may elect, funds paid to CAPP by Member and Participating Members.

ARTICLE 5

DELIVERY OF CONTRACT ENERGY

5.1 Acquisition and Delivery of Product. Upon the Service Commencement Date, CAPP shall require (i) Facility Owners to provide and deliver the Contract Energy described in the PPA to the Designated Agent(s) at the Facility Owners' Delivery Point, and (ii) the Designated Agent(s) to deliver Energy to Member at the Member's Delivery Points, in both cases from Products generated from the Facilities or acquired by the

Facility Owners for delivery under the PPA as Alternate Energy pursuant to Section 5.3 of the PPA.

5.2 Title and Risk of Loss. Risk of loss of the Energy provided in accordance with this Contract shall transfer to CAPP as agent for Member and Participating Members at the Facility Owners' Delivery Points. Title to the Energy (subject to loss) shall be held by CAPP as agent for Member and Participating Members between the Facility Owners' Delivery Points and Member's Delivery Points.

5.3 Member's Failure to Accept Product. If Member fails to accept all or part of the Product under this Contract and such failure is not excused under the terms of this Contract or by failure of the Facility Owners to deliver same under the PPA, then Member shall pay to CAPP or to the Designated Agent(s) from time-to-time designated by CAPP, on the date payment would otherwise be due with respect to the month in which the failure occurred, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Resale Price from the Contract Price. The invoice for such amount shall include reasonable detail as to the calculation of such amount.

5.4 Failure of Facility Owners to Schedule or Deliver Product to CAPP. If one or more of the Facility Owners fail to schedule and/or deliver all or part of the Product as required by it under the PPA, and such failure is not excused under the terms of the PPA or by CAPP's failure to perform, then CAPP or the then-designated Designated Agent(s) shall, on behalf of all Participating Members, at the expense of and in the proportion of their respective Member's Energy Allocation Percentages, seek to collect sums from the Facility Owners that are recoverable pursuant to Section 3.4 of the PPA; provided, however, that any obligation by CAPP or by the Designated Agent(s), as the case may be, to pay Member in such event is limited to the amount that CAPP or the Designated Agent(s) actually collect from the Facility Owners and the Guarantor, net of costs of collection. For the avoidance of doubt, CAPP shall not be required to pay damages under this Section 5.4 when the failure to schedule and/or deliver is excused under the definition of Unit Contingent Energy.

ARTICLE 6 PRICING OF AND PAYMENT FOR ENERGY

6.1 Payment of Member's Monthly Aggregated Energy Payment. In consideration for the Energy received by it under this Contract, Member shall pay Member's Monthly Aggregated Energy Payment to CAPP, or to the Designated Agent(s), as the case may be, on or before the dates for payment set forth in Article 8, below, and calculated as follows:

(a) **Calculation of Member's Monthly Energy Payment.** Commencing on the Service Commencement Date, and continuing during each Delivery Month during the Term, but subject to annual appropriation therefore by Member during such Member's Fiscal Year, Member shall pay to CAPP, or to the Designated Agent(s) from time-to-time designated by it, the Member's Monthly Energy Payment, as computed monthly pursuant to the provisions of this Section 6.1(a). The Member's Monthly Energy Payment shall be the sum of (i) the Energy Component of Member's Energy Payment and (ii) the Aggregated Expenses Component of Member's Energy Payment, both determined as follows:

(i) **Energy Component of Member's Monthly Energy Payment.** The price of Energy deliverable to CAPP under the PPA at the Facility Owners' respective Delivery Points during the Delivery Month as provided in the PPA is set forth in the schedule attached hereto as Exhibit "D" and incorporated herein by reference herein for all purposes. The Parties recognize that the PPA calls for the Contract Energy to be delivered to CAPP at the Facility Owners' respective Delivery Points at which points the Energy Payment is measured and calculated pursuant to Section 4.1(a) of the PPA. The Wrap Contracts shall provide that the cost of energy delivered to Member will be measured at Member's Delivery Points. The price of energy deliverable to CAPP under the Wrap Contracts shall be at a price determined by negotiations at that time. Member recognizes that the Energy Component in the monthly invoices will reflect a blended rate per MWh taking into account the Energy provided to all Participating Members under all energy procurement contracts and shall include (1) the cost of Contract Energy; (2) ancillary services under Section 3.5 of the PPA; (3) the cost of engaging a QSE under Section 7.1 of the PPA or under any Wrap Contracts; (4) the cost of engaging a REP under the PPA or under any Wrap Contracts; (5) the cost of delivering the Contract Energy to the Delivery Points of all Participating Members from the Facility Owners' respective Delivery Points; and (6) the cost of energy and other expenses associated with one or more Wrap Contract. The Energy Component of Member's Monthly Energy Payment shall be computed as the product of such blended rate and the total Energy delivered to Member's Points of Delivery during the billing month.

(ii) **Aggregated Expenses Component of Member's Monthly Energy Payment.** The total Aggregated Expenses for each Delivery Month shall be allocated and apportioned between Member and each of the other Participating Members based upon each Member's Energy Allocation Percentage. The total amount so allocated to Member shall be billed to Member on a monthly basis by CAPP or its Designated Agent(s) as they shall determine appropriate.

(b) **Member's Unique Delivery Costs.** The Parties further recognize that Member and each of the Participating Members require delivery of the Energy by the Designated Agent(s) from the Facility Owners Delivery Point to their respective Member's Delivery Points, the cost of which may vary between Participating Members based on a number of factors, including, but not limited to, distance from the Facility

Owners Point of Delivery, differing zones into which Energy shall be delivered, different tariffs that may change from time to time as ordered by Regulatory Authorities, loss of Energy during transmission, and differing contractual arrangements that must be made to effect the delivery of Energy to the required points of delivery. In this connection, CAPP shall, as agent for Participating Members (including Member) (i) enter into one or more contracts with Designated Agent(s) for delivery of the Products to all Participating Members from the Facility Owners Delivery Point to each of their respective Member's Delivery Points, and (ii) require the Designated Agent(s) to separately account to and bill each Participating Member for the unique costs that are associated with delivery of the Energy from the Facility Owners Point of Delivery. Commencing on the Service Commencement Date, and continuing during each Delivery Month during the Term, but subject to annual appropriation therefore by Member during such Member's Fiscal Year, Member shall pay to CAPP or to the Designated Agent(s) from time-to-time designated by it the Member's Unique Delivery Costs. The Member's Unique Delivery Costs shall be due and payable at the same time that the Member's Aggregated Monthly Energy Payment is due.

(c) **Governmental Charges and New Governmental Charges.** Member shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Facility Owners' Delivery Points. In the event CAPP and/or the Designated Agent(s) are required by Law to remit or pay Governmental Charges which are Member's responsibility hereunder, or in the event that CAPP must remit or pay to Facility Owners for Governmental Charges that it may pass through to CAPP for reimbursement under the PPA, CAPP shall notify Member of the amount of Governmental Charges owed, whether such payment is to Facility Owners or to the governmental entities that made such Governmental Charges, on Member's behalf. Such notice shall be provided in a commercially practicable manner and may be provided by a Designated Agent. Notwithstanding any other provision of this Contract to the contrary, if a New Governmental Charge (as defined in the PPA) is passed through to CAPP for reimbursement, including but not limited to New Governmental Charges imposed on all coal and lignite generating facilities in ERCOT, including the Product, and CAPP's share of any such New Governmental Charge is greater than the Materiality Threshold set forth in the PPA (after taking into account the application of any entitlements and the extent of old charges that are replaced by the New Governmental Charge), such charges shall be treated as though they were incurred by CAPP for the benefit of all Participating Members (including Member). All Governmental Charges and New Governmental Charges shall be apportioned between Member and the Participating Members as an energy charge reflected on monthly bills from a Designated Agent. If, as, and when CAPP pays Governmental Charges and New Governmental Charges, it shall be deemed to have paid same on behalf of Member and all Participating Members in the proportion stated immediately above, and Member shall pay CAPP and/or the Designated Agent(s) its proportionate share, subject, however, to Appropriation by Member during Member's Fiscal Year. The obligation to pay such Governmental Charges and New Governmental Charges shall continue until such time as reimbursement of Facility Owners therefore are no longer required by the PPA.

(d) **Adjustments.** Section 4.2 of the PPA provides for monthly adjustments if the Equivalent Availability Factor for such month is greater or less than 90%. It is the intention of the Parties to this Contract that (i) such credits and supplemental payments shall be allocated and passed through to Member and each of the **other** Participating Members, on a pro rata basis, in the month payable or credited against the Energy Payment based on an energy basis and (ii) the Designated Agent responsible for billing shall net the adjustments under Section 4.2 of the PPA against other amounts owed. It is understood that Member's obligation to pay any adjustments under this Section 6.1(d), as part of an Energy Payment or Payments, is subject to appropriation by Member during Member's Fiscal Year.

(e) **Other Adjustments.** In the event that inequities arise between Participating Members or between Member and Participating Members in energy based allocation of credits and supplemental charges under this or other energy contracts, the Board of Directors of CAPP, in its sole discretion, may direct further adjustments as necessary to preserve the integrity of the allocation process and relative economic position of Member and Participating Members; provided, however, no adjustments shall affect the obligation to make Capacity Payments under Article 7 of this Contract.

6.2 Payments through Retail Electric Provider and Designated Agent(s). CAPP reserves the right to bill and invoice Member and Participating Members for the Contract Price, collect sums due by Member and Participating Members under Article 6, pay sums to Facility Owners that CAPP is required to pay pursuant to the terms of the PPA, collect payments and credits due to CAPP by the Facility Owners, and allocate and distribute credits and payments received from Facility Owners and third parties to Member and Participating Members as their respective interests appear through a REP or through Designated Agent(s). Notwithstanding the foregoing, it is expressly agreed and understood that (a) the Capacity Payments required to be paid by Member pursuant to Section 7, below, must be paid by Member directly to CAPP or the Trustee, and (b) payments received by CAPP or by Member from the Facility Owners, Guarantor, or any of same as a result of Early Termination of the PPA as defined in and calculated under Article 12 of the PPA must be paid by the recipient of such payments directly to CAPP or the Trustee for application to the Bonds.

6.3 Payments from Available Funds. Notwithstanding any provision herein to the contrary, the obligations of Member under this Contract to make Energy Payments shall be payable solely from the Available Funds received in each Fiscal Year during the Term of this Contract. The obligation of the Member to make any Energy Payments pursuant to this Contract shall constitute a current expense of Member during each Fiscal Year and shall not constitute an indebtedness of Member within the meaning of the laws of the State of Texas. Nothing in this Contract shall constitute a pledge by the Member of any taxes or other money, other than such funds so Appropriated and received in each Fiscal Year during the Term of this Contract and constituting Available Funds, to the payment of any Energy Payment due or to become due hereunder.

6.4 Intent to Continue Payments. Member presently intends to continue this Contract for the entire Term and to pay all Energy Payments required hereunder. Member presently intends to Appropriate, from lawfully Available Funds received in each Fiscal Year, money sufficient to pay the Energy Payments required hereunder. However, Member has no obligation to, and makes no representation that it will, Appropriate or seek to Appropriate in any Fiscal Year Available Funds for the payment of Energy Payments due pursuant to this Contract.

6.5 Failure to Appropriate Available Funds. If, for any Fiscal Year of the Member, the Member does not Appropriate Available Funds received during such Fiscal Year to pay the Energy Payments required under this Contract due and payable by Member during the succeeding Fiscal Year, and if the Member provides CAPP with written notice of such failure to Appropriate thirty (30) days prior to the expiration of Member's then-current Fiscal Year, the obligation to take electric Energy from CAPP under this Contract and make Energy Payments for such electric energy shall terminate and be canceled at the end of such current Fiscal Year for the period of the next Fiscal Year for which the Member has failed to Appropriate Available Funds. The written notice shall be accompanied by a statement as to whether or not Member has made an assignment to another Participating Member under Section 6.6 hereof. The Member may Appropriate Available Funds for any subsequent Fiscal Year for Energy Payments due during such subsequent Fiscal Year and then shall be entitled to receive electric Energy from CAPP under this Contract for such Fiscal Year.

6.6 Assignment Upon Failure to Appropriate. For any Fiscal Year which the Member has failed to Appropriate for Energy Payments (or portion thereof), the Member may assign to another Participating Member all or a portion of such non-appropriating Member's right to receive electric energy for such Fiscal Year provided the Participating Member certifies to CAPP that the assigned electric energy will be utilized by such Participating Member for its buildings and facilities, in compliance with the Local Government Code Chapter 304. The Energy Payments associated to such assigned right to such electric energy shall be calculated according to the terms of this Contract (assuming the Member was receiving such electric energy). At such time the Member provides written notice of its failure to Appropriate for Energy Payments for any Fiscal Year, the Member may also give written notice to CAPP of its assignment of all or a portion of its right to receive electric energy under this Contract, including a written agreement between the Member and the Participating Member reflecting the terms and conditions of such assignment. Prior to the beginning of the relevant Fiscal Year, the assuming Participating Member must provide CAPP written notice of (i) its Appropriation for the Energy Payments associated with the assumed electric energy for the period of the non-appropriating member's Fiscal Year which such non-appropriation is applicable (or portion thereof), (ii) certification that such assumed electric energy will be utilized by such Participating Member for its buildings and facilities, in compliance with the Local Government Code Chapter 304 and (iii) a valid and binding assignment agreement between the Member and the Participating Member. If the Member failing to appropriate for Energy Payments does not assign the Energy to another Participating Member within 30 days following the failure to Appropriate, Member shall assign the

Energy to CAPP, and CAPP shall have the right to assign to a Participating Member, or to otherwise dispose of the Energy in a commercially practicable manner.

6.7 Appropriated Energy Payments to be Unconditional. Except as provided herein, including Section 6.3 hereof, the obligation of Member to make Energy Payments each Fiscal Year from funds that have been appropriated for such purpose when due shall be absolute and unconditional. Notwithstanding any dispute between Member and CAPP or any other Participating Member or person, the Member shall make all Energy Payments required hereunder when due and shall not withhold any such payments pending final resolution of such dispute, nor shall Member assert any right of set-off or counterclaim against its obligation to make such payments required under this Contract. Member's obligation to make Energy Payments during the Term shall not be abated because of accident or unforeseen circumstances. However, nothing herein shall be construed to release CAPP from the performance of its obligations hereunder; if CAPP should fail to perform any such obligation, Member may institute such legal action against CAPP as Member may deem necessary to compel the performance of such obligation. Notwithstanding anything to the contrary above, Member's obligation to pay Energy Payments shall not require it to pay Energy Payments from any source other than Available Funds specifically appropriated by Member for payment of the Energy Payments.

6.8 CAPP as Third Party Beneficiary. Member acknowledges that CAPP is an intended third party beneficiary of all Appropriations made by Member for sums described in this Article 6. As part of the consideration for this Contract, Member grants to CAPP and to any Designated Agent(s) appointed by CAPP all rights to enforce, by a mandamus action against Member and its governing body, such provisions for each Fiscal Year of Member for which there has been an Appropriation as contemplated in this Article.

6.9 Member's Default of the Energy Payment Covenants and CAPP's Remedies.

(a) Events of Default. Each of the following occurrences or events for the purpose of this Contract is hereby declared to be a Default:

(i) The failure to make payment of the Energy Payment when the same becomes due and payable; or

(ii) Default in the performance or observance of any other covenant, agreement or obligation of the Member, the failure to perform which materially, adversely affects CAPP, including, but not limited to, its prospect or ability to be repaid in accordance with this Contract, and the continuation thereof for a period of 30 days after notice of such default is given by CAPP or Trustee to the Member.

(b) Remedies for Default.

(i) Upon the occurrence of a Default, then and in every case, CAPP or an authorized representative thereof may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the benefit of CAPP.

(c) Remedies Not Exclusive.

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Contract, the right to accelerate the Energy Payments shall not be available as a remedy under this Contract.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy. The failure to exercise a remedy upon a Default shall not be deemed to be a waiver of the right to exercise such remedy in the future.

(iii) By accepting the delivery of Energy Payment authorized under this Contract, CAPP agrees that the certifications required to effectuate any covenants or representations contained in this Contract do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Member.

(iv) No official or officer, agent, or employee of the Member, shall be charged personally by CAPP or the Trustee with any liability, or be held personally liable under any term or provision of this Contract, or because of a Default or Default under this Contract.

ARTICLE 7

**CAPACITY PREPAYMENT, MEMBER'S MONTHLY CAPACITY PAYMENT
AND PLEDGE OF AD VALOREM TAXES BY MEMBER**

7.1 Capacity Prepayment. In order to procure Energy at favorable rates produced in the Facilities by the Facility Owners under the PPA, CAPP, at the request of Member and

the other Participating Members, shall (i) prepay to Facility Owners the sum of \$465,000,000.00 (the “*Capacity Prepayment*”) from the proceeds of the Bonds (ii) establish a reserve fund under the Bonds as may be required for issuance of the Bonds, and (iii) pay costs and charges associated with issuance of the Bonds, including legal fees, accounting fees, and consultant’s fees engaged by the bond issuer, bond counsel, and CAPP. The Capacity Prepayment shall be paid to Facility Owners as provided in Section 4.1 hereof and as provided in Section 4.1(b) of the PPA. Once the actual amount of the Bonds and the interest rate established thereunder are known, this Contract shall be amended by CAPP and Member to reflect such facts, and to stipulate the amount of Member’s Monthly Capacity Payment. It is the intention of the Parties that CAPP shall receive from Member and each Participating Member through the Monthly Capacity Payment set forth in Section 7.2(a), based upon the Member’s Energy Allocation Percentage of each, the amount sufficient to pay: (i) CAPP’s costs to issue the Bonds, (ii) the principal and redemption premium, if any, of and interest on the Bonds, (iii) trustee and other administrative fees, and (iv) other costs associated therewith.

7.2 Capacity Payment.

(a) Member shall pay CAPP, its Designated Agent or the Trustee, as CAPP shall direct, upon the assignment of all or a portion of this Contract by CAPP to such trustee, a Monthly Capacity Payment for each Delivery Month throughout the remainder of the Term, or until such earlier date as such Monthly Capacity Payments have been prepaid or otherwise fully defeased as provided in Section 7.4 hereof, in an amount equal to the amount shown in Exhibit “E” times the Member Energy Allocation Percentage.

(b) It is hereby certified and covenanted that the contractual obligation to make the Monthly Capacity Payments when due, as described in subsection (a) above, has been duly and validly authorized and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization and delivery of this Contract have been performed, existed and been done in accordance with law; that the contractual obligation to make the Monthly Capacity Payments herein is a limited tax obligation of Member; and that annual ad valorem taxes, within the limits prescribed by law, sufficient to provide for the payment of the Monthly Capacity Payments, as such payments come due, have been levied and ordered to be levied against all taxable property in Member, and have been pledged from Member’s annual ad valorem maintenance tax for such payment, within the limit prescribed by law.

(c) It is understood and agreed that all Monthly Capacity Payments payable by the Member under this Article 7 are assigned by CAPP to the Trustee for the benefit of the Owners of the Bonds. The Member assents to such assignment.

7.3 Interest and Sinking Fund; Tax Levy for Monthly Capacity Payments. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of Member, and shall be used only for paying the Monthly Capacity Payments when due. All ad valorem taxes levied and collected for and on account of the Monthly

Capacity Payments shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each Fiscal Year while a Monthly Capacity Payment is outstanding and unpaid, the governing body of the Member shall compute and ascertain a rate and amount of ad valorem tax which together with any other lawfully available funds that are on deposit in the Interest and Sinking Fund at the time of such levy will be sufficient to provide and maintain a sinking fund adequate to pay the Monthly Capacity Payments as such payments become due (but never less than 2% of the original aggregate amount of the Monthly Capacity Payments as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the Member, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied and is hereby ordered to be levied, against all taxable property in the Member for each year while any of the Monthly Capacity Payments are outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes to be sufficient to provide for the payment of the Monthly Capacity Payments, as such payments come due, are hereby pledged for such payment, within the limit prescribed by law.

7.4 Prepayments based upon Early Termination under the PPA. In the event that CAPP shall receive a Buyer Termination Payment under Article 12 of the PPA, such amount shall be assigned and paid to the Trustee for payment on the Bonds with such payment to be applied to a prorata redemption of all outstanding maturities of such Bonds. Such prorata redemption on the Bonds shall similarly be applied prorata to reduce Member's Monthly Capacity Payments and the Monthly Capacity payments of other Participating Members. If any balance of the Bonds remains unpaid after application of the Buyer Termination Payment, then notwithstanding the obligation to pay the Monthly Capacity Payment under Section 7.2 above, Member shall pay Member's Energy Allocation Percentage of such balance within thirty (30) days following receipt of notice from CAPP.

7.5 CAPP and Trustee as Third Party Beneficiaries. Member acknowledges that CAPP and Trustee are intended third party beneficiaries of the obligation to pay Monthly Capacity Payments and to make provision for payment from ad valorem tax revenues. As part of the consideration for this Contract, Member grants to CAPP and to Trustee all rights to enforce, by a mandamus action against Member and its governing body, the provisions and obligations of this Article 7.

7.6 Monthly Capacity Payments to be Unconditional. Except as provided herein, including Section 6.3 hereof, the obligation of Member to make Monthly Capacity Payments when due shall be absolute and unconditional. Notwithstanding any dispute between Member and CAPP or any other Participating Member or person, the Member shall make all Monthly Capacity Payments required hereunder when due and shall not withhold any such payments pending final resolution of such dispute, nor shall Member assert any right of set-off or counterclaim against its obligation to make such payments required under this Contract. Member's obligation to make Monthly Capacity Payments during the Term shall not be abated because of accident or unforeseen circumstances.

However, nothing herein shall be construed to release CAPP from the performance of its obligations hereunder; if CAPP should fail to perform any such obligation, Member may institute such legal action against CAPP as Member may deem necessary to compel the performance of such obligation.

7.7 Member's Default on Capacity Prepayment and CAPP's Remedies.

(a) Events of Default. Each of the following occurrences or events for the purpose of this Contract is hereby declared to be a Default:

(i) The failure to make payment of the Capacity Prepayment when the same becomes due and payable; or

(ii) Default in the performance or observance of any other covenant, agreement or obligation of the Member, the failure to perform which adversely affects CAPP, including, but not limited to, its prospect or ability to be repaid in accordance with this Contract, and the continuation thereof for a period of 30 days after notice of such default is given by CAPP or Trustee to the Member.

(b) Remedies for Default.

(i) Upon the happening of a Default, then and in every case, CAPP or an authorized representative thereof, including, but not limited to, the Trustee, may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the benefit of CAPP and/or owners of the Bonds.

(c) Remedies Not Exclusive.

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Contract, the right to accelerate the PPA Capacity Payments shall not be available as a remedy under this Contract.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy. The failure to exercise a remedy upon a Default shall not be deemed to be a waiver of the right to exercise such remedy in the future.

(iii) By accepting the delivery of the Capacity Prepayment authorized under this Contract, CAPP agrees that the certifications required to effectuate any covenants or representations contained in this Contract do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Member.

(iv) No official or officer, agent, or employee of the Member, shall be charged personally by CAPP or the Trustee with any liability, or be held personally liable under any term or provision of this Contract, or because of a Default or Default under this Contract.

ARTICLE 8

BILLING AND PAYMENT

8.1 Invoice and Payment Schedules. CAPP shall cause the Designated Agent(s) to submit invoices to Member for the Contract Price. All such invoices under this Contract shall be due and payable in accordance with the invoice instructions of the Designated Agent(s) consistent with ERCOT protocols, Rules of the Public Utility Commission of Texas, and contractual agreements between CAPP and Designated Agents. CAPP will cause the Designated Agent(s) to render to Member a separate invoice for the Contract Price for each ESI-ID on a billing month basis. All Monthly Capacity Payment invoices under this Contract pursuant to Article 7, shall be separately due and payable directly to CAPP or the Trustee in accordance with the invoice instructions of CAPP, Trustee or Designated Agent.

8.2 Method of Payment. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date, but excluding the date the delinquent amount is paid in full. Because certain charges are aggregated between Member and Participating Members, Member understands that a failure to timely pay an invoice may result in additional costs, interest charges, and damages that CAPP may be required to pay to Facility Owners under the PPA and that are disproportionate to the default by Member. Member agrees, in the event of its default, to reimburse CAPP for all costs, interest charges, and damages that it may be required to pay to Facility Owners that result from Member's default under this Contract. Except for Capacity Payments that are required to be paid by Member directly to CAPP or the Trustee, CAPP may require Member to pay all or any of the payments required to be paid by Member under this Contract to Designated Agent(s) appointed by CAPP.

8.3 Netting. Member understands that CAPP and Facility Owners have agreed to discharge mutual debts and payment obligations due and owing to each other on the same payment due date pursuant to the PPA through netting, so that only the excess amount remaining due shall be paid by the Party who owes such excess amount. All payment obligations of the Parties and all rights to receive payment under this Contract are subject to the netting provisions contained in the PPA. Additionally, it is understood that Designated Agents may net credits and supplemental payments in monthly invoices of the Contract Price.

8.4 Disputed Charges. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Contract or adjust any invoice for any arithmetic or computational error within twenty-three (23) months of the date the invoice, or adjustment to an invoice, was rendered, except when a dispute is limited by ERCOT protocols, Rules of the Public Utility Commission or contracts between CAPP and Designated Agents. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved unless CAPP is required to pay the disputed amount to Facility Owners under the PPA. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution (along with interest accrued, if any, on account thereof under the PPA). Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued only to the extent it accrues under the PPA. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.4 within twenty-three (23) months or shorter period if required by ERCOT protocols, Rules of the Public Utility Commission or contracts between CAPP and Designated Agents after the invoice is rendered or any specific adjustment to the invoice is made.

8.5 Audits. Each Party has the right, at its sole expense and during normal working hours, to examine copies of the relevant portions of the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or calculation made pursuant to this Contract. If any such examination reveals any inaccuracy in any invoice or calculation, the necessary adjustments in such invoice or calculation, and the payment of any adjustment thereto, shall be paid, with interest at the Interest Rate calculated from the date the overpayment or underpayment was made until paid, by the responsible Party pursuant to the terms of the PPA, the Wrap Contract or the applicable contract between CAPP and Designated Agents.

8.6 ERCOT Barred Issue. It is recognized by the Parties that ERCOT has some established time periods for disputing certain matters and the Parties expressly desire to be bound by such periods in their performance under this Contract. Therefore, notwithstanding any provisions in Article 7 of this Contract to the contrary, in the event CAPP is barred from disputing and correcting or adjusting with ERCOT any matter of

any nature whatsoever affecting any matter covered by this Contract (an “*ERCOT Barred Issue*”), then Member shall be barred for all purposes from disputing any portion of any statement, invoice, notice or other matter hereunder to the extent that CAPP is unable to receive adjustment from or dispute such matter with ERCOT because such statement, invoice, notice or other matter is an ERCOT Barred Issue, even if Member’s notice is given within the twenty-three (23) months’ period set forth in this Article 8.

ARTICLE 9

DESIGNATION OF MEMBER'S DELIVERY POINTS

9.1 Designation of Member's Delivery Points. Member has designated its initial Member's Delivery Points by identifying the ESI-IDs and providing that information to CAPP’s Designated Agent(s). Such Member's Delivery Points are all points of receipt for electric service that are subject to retail choice. Member shall have a continuing obligation to provide CAPP and Designated Agent(s) with an updated listing of ESI-IDs by location and profile type.

ARTICLE 10

SECURITY

10.1 Security from Facilities Owners. The Facility Owners and Guarantor have agreed under Article 9 of the PPA to provide CAPP a first lien on certain collateral on a pari passu basis with other creditors. Member acknowledges that it has no direct right to enforce the lien, nor does it have any individual interest in the Facilities in the event of foreclosure of the first lien, nor may it exercise remedies available to CAPP under the PPA. To the extent that CAPP shall determine that it is in CAPP's interest to (i) agree to renewals, modifications, amendments, and refinancing of the first lien indebtedness described in the PPA, (ii) exercise or fail to exercise one or more remedies available to it under the PPA, or (iii) terminate or modify the PPA, Member irrevocably appoints the Board of Directors of CAPP as its agent and attorney in fact to enter into agreements appropriate to the situation, including, but not limited to, agreements to substitute collateral, and agreements to release or partially release liens. The power herein granted to CAPP and its Board of Directors by Member is a power coupled with an interest that may not be revoked while all or any portion of the Bonds is unpaid.

10.2 Collateral Assignment of the Contract to Trustee for Bonds. This Contract and the Participant Contracts shall be collaterally assigned to the Trustee under the Bonds as security for the repayment of the Bonds to the extent of the Capacity Payment payable pursuant to Article 7 of this Contract and each of Participant Contracts.

ARTICLE 11

DEFAULT

11.1 Defaults by Facility Owners; Defaults by Participating Members. In the event of default by Facility Owners under the PPA, or in the event of a default by Member or by a Participating Member under a Participant Contract, the Parties agree and stipulate that decisions as to the exercise or non-exercise of remedies upon such default shall be solely vested in CAPP, as its Board of Directors may determine from time to time. Member acknowledges that CAPP's rights to elect remedies may be subject and subordinate to rights granted to or reserved by the holders and owners of the Bonds or the Trustee thereof.

11.2 Default by CAPP. Except as otherwise excused under this Contract, the occurrence of any of the following shall constitute an event of default by CAPP:

- (a) Failure of CAPP to pay the Capacity Prepayment as required under the PPA;
- (b) Failure by CAPP to timely perform its covenants under the Bonds, including payments required by it, unless such failure is caused by the failure of Member under this Contract or of one or more Participating Members under the Participant Contracts to pay CAPP sums required under Article 6; or
- (c) CAPP breaches any material contractual obligation under this Contract and such breach continues for a period of thirty (30) Days after the date on which written notice thereof is received from Member by CAPP.

11.3 Default by Member. Except as otherwise excused under this Contract, the occurrence of any of the following shall constitute an event of default by Member:

- (a) Member fails to accept delivery of the Products, or any portion thereof from CAPP. In the event of such failure, CAPP may, in addition to other remedies available to it under this Contract, provide the unaccepted Products to another Participating Member or, if no Participating Member elects to accept such Products, to a third party at such price as CAPP may negotiate in the marketplace. If the price obtained in the marketplace is less than the price Member would have been required to pay for such Products, Member shall pay CAPP and CAPP may recover from Member (i) the positive difference, if any, obtained by subtracting what was received from the Participating Member or third party from what would have been received from Member had Member accepted the full delivery of Products required of it, and (ii) all costs of collection incurred by CAPP, including reasonable attorney's fees;

- (b) Except for disputed charges arising under Section 8.4, Member fails to pay amounts due to CAPP as and when required under this Contract, which failure continues for a period of three (3) Business Days after the date on which written notice of a prospective Default is received by Member from CAPP;
- (c) Failure by Member to levy the rate and amount of ad valorem taxes out of the maintenance tax of Member, and failure by Member to establish and maintain a sinking fund for the Monthly Capacity Payments and CAPP fees as required under Section 7.3, above;
- (d) Failure by Member to pay to CAPP any sum of money required to be paid by Member under this Contract;
- (e) Member breaches any material contractual obligation under this Contract and such breach continues for a period of twenty-eight (28) Days after the date on which written notice thereof is received by the breaching Party;
- (f) Member becomes Bankrupt.

11.4 Remedies of CAPP in the event of default by Member. Unless otherwise limited by the terms of this Contract, in the event that Member shall default in the performance of its obligations under this Contract, CAPP may:

- (a) Suspend delivery of Products to Member, and provide such Products to one or more Participating Members or third parties until such default is cured;
- (b) Then and in every case, CAPP or an authorized representative thereof may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies;
- (c) Suspend performance of CAPP's obligations to Member under this Contract until the earlier of (i) the Day the Default has been cured in accordance with the terms of this Contract, except for Member's obligations to make Monthly Capacity payments under Article 7 hereof which shall not be affected by any such action;

- (d) Exercise any other remedy available to CAPP at law or in equity.

In addition to all of the rights and remedies provided to CAPP by the laws of the State of Texas, and in addition to the remedies set forth above, the Member covenants and agrees that in the event of its default under this Contract, including failure to pay Monthly Capacity Payments and payments under Section 7.5 when due or Energy Payments when due after the Member has Appropriated for such payments, or, in the event it fails to make the payments required to be made into the Interest and Sinking Fund or defaults in the observance or performance of any other of the contracts, covenants, conditions or obligations set forth in this Contract, the following remedies shall also be available:

- (e) CAPP, the trustee if CAPP has assigned all or part of this Contract to a trustee for the benefit of bond owners, shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring Member and the officials thereof to observe and perform all agreements, covenants, obligations and conditions prescribed in this Contract;
- (f) Any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient; and
- (g) Any other remedies available to CAPP at law or in equity.

11.5 Remedies of Member in the Event of Default by CAPP. Unless otherwise limited by the terms of this Contract, in the event that CAPP shall default in the performance of its obligations under this Contract, Member may:

- (a) Then and in every case, Member may proceed against CAPP, or any official, officer or employee of CAPP in their official capacity, Sue for the purpose of protecting and enforcing the rights of Member under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of Member hereunder or any combination of such remedies;
- (b) Terminate this Contract, except for Member's obligations to make Monthly Capacity Payments under Article 7 hereof which shall survive any termination of this Contract;

- (c) Exercise any other remedies available to Member at law or in equity.

11.6 No Waiver in Event of Default. Pursuit by either Party of any remedy for default pursuant to Article 11 of this Contract shall not constitute a forfeiture or waiver of any amount due by the defaulting Party or of any damages occurring by reason of the violation of any terms, provisions, or conditions of this Contract, provided however, that in no event shall CAPP be required to return to Member any sums paid by Member to CAPP for Capacity Prepayment. No waiver of any default or breach of this Contract shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, or conditions of this Contract. Forbearance to enforce one or more of the remedies available upon the occurrence of an event of default shall not constitute a waiver of that or any subsequent default or breach.

ARTICLE 12

INDEMNIFICATION; LIMITATION OF LIABILITY

12.1 Member's Indemnification of CAPP. To the extent permitted by the Constitution and laws of the State of Texas, and with full reservation of all defenses and immunities available under the Law, Member agrees to and shall indemnify, defend, and hold harmless CAPP and all of CAPP's officers, directors, shareholders, representatives, and employees, from and against all Indemnified Claims, including Indemnified Claims for personal injury, death, or damages to property, occurring after the Facility Owners' Delivery Points, arising out of or related to the Products. Notwithstanding the foregoing, CAPP agrees and understands that Member cannot indemnify CAPP, Facility Owners, or any individual associated with either of them from and against their own gross negligence and willful misconduct. To the extent that CAPP has agreed to indemnify Facility Owners pursuant to Article 13 of the PPA, then Member agrees to and shall indemnify, defend, and hold harmless CAPP and all of CAPP's officers, directors, shareholders, representatives, and employees, from and against all Indemnified Claims that CAPP has made to Facility Owners, but only to the extent permitted by the Constitution and laws of the State of Texas, and with full reservation of all defenses and immunities available under the Law.

12.2 Claims arising on Facility Owners side of the Facility Owners' Delivery Point. To the extent that claims for personal injury, death, or damages to property: (a) occur at and/or before the Facility Owners' Delivery Point, (b) arise out of or are related to the Product and Products, and (c) are covered as an Indemnified Claim by Facility Owners for the benefit of CAPP, Member and Participating Members, and each of their respective officers, officials, directors, and employees, then CAPP, on behalf of itself, Member, and Participating members, agrees to enforce the indemnity and duty of defense that Facility Owners have granted to CAPP and Member under Article 12 of the PPA.

12.3 Indemnified Claims. "*Indemnified Claims*", as used in Sections 12.1 and 12.2, above, means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject

matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Contract.

12.4 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED EXCEPT AS SET FORTH IN ARTICLE 11 OF THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 13 REPRESENTATIONS

13.1 Mutual representations and warranties. Each Party represents and warrants to the other Party that:

- (a) Such Party has the power and authority to execute, deliver and perform its obligations under this Contract. Such Party has authorized the execution and delivery of this Contract by the person(s) executing this Contract below.

- (b)** No provision contained in Member's charter or enabling legislation, as the case may be, if any, prohibits Member from entering into this Contract and performing the obligations required of Member under this Contract.
- (c)** This Contract constitutes a legal, valid and binding obligation of such Party, except as the enforceability of this Contract may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity which permit the exercise of judicial discretion.
- (d)** Neither the execution or delivery of this Contract results in any breach of or constitutes any default under any material agreement to which such Party is bound or causes such Party to be in violation of any Law, regulation, administrative or judicial order or process or decision to which such Party is a party or by which it or its properties are bound or affected.
- (e)** It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.
- (f)** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.
- (g)** All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Contract or other document relating hereto or thereto to which it is a party have been obtained or submitted and are in full force and effect and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with.
- (h)** No Default with respect to it, or event which with notice and/or lapse of time would constitute such a Default, has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Contract or other document relating hereto or thereto to which it is a party.

There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Contract, or other document relating hereto or thereto to which it is a party or its ability to perform its obligations under the same.

ARTICLE 14

NOTICES

14.1 Notices. All notices and other communications required or permitted by this Contract or by Law to be served upon or given to a Party by the other Party shall be deemed duly served and given when received after being delivered by hand, or courier service, or sent by confirmed facsimile or certified mail, return receipt requested, postage prepaid, to the following address.

To Member:

City of Sherman
P. O. Box 1106
Sherman, Texas 75091-1106
Attention: City Manager
Telephone: 903.892.7201
Facsimile: 903.892.7355

To CAPP:

Attention:
Telephone:
Facsimile:

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the Day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of it in accordance herewith.

ARTICLE 15

CONFIDENTIALITY

15.1 Confidential Information. Parties to this Contract acknowledge that they are obligated to protect the confidentiality of certain information provided by Luminant to CAPP in the course of negotiating the PPA pursuant to Article 17 of the PPA. Member agrees to be bound by the provisions of Article 17 of the PPA regarding any information that counsel to CAPP indicates in writing should be kept confidential and to promptly advise counsel to CAPP of any request for Public Information pursuant to Chapter 552 of the Texas Government Code for public revelation of confidential information provided to Member in its consideration of this Contract and related documents.

ARTICLE 16 ASSIGNMENT

16.1 Assignment. Except as provided otherwise in this Contract, neither Party shall assign this Contract or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the assignee is at the time of assignment a Member of CAPP. In no event shall the assigning Party be relieved from liability under this Contract upon assignment.

ARTICLE 17 CONTINUING DISCLOSURE

17.1 Continuing Disclosure Undertaking of Members. At such time that Member's aggregated unpaid Monthly Capacity Payments equals at least ten percent (10%) of the outstanding principal amount of the Bonds, Member agrees to provide annually to each Nationally Recognized Municipal Securities Information Depositories ("NRMSIR") and any State Information Depositories ("SID") financial information and operating data with respect to the Member of the general type hereinafter described. Subject to the foregoing sentence Member agrees to provide, within 195 days after the end of each Fiscal Year thereof ending in or after 2009, financial information and operating data with respect the Member. Any financial statements so to be provided shall be prepared in accordance with the accounting principles as Member may be required to employ from time to time pursuant to state law or regulation.

17.2 Financial Statements. If Member is required to file financial information pursuant to Section 17.1 and Member commissions an audit of such statements and the audit is completed within the period during which they must be provided, the financial statements to be provided shall be audited. If the audit of such financial statements is not complete within such period, then Participating Member shall provide unaudited financial statements and thereafter audited financial statements for the applicable fiscal year to CAPP, each NRMSIR and any SID, when and if the audit report on such statements become available.

17.3 Change of Fiscal Year. If Member is required to file financial information pursuant to Section 17.1 and Member changes its Fiscal Year, it shall be the duty of such Member to notify each NRMSIR and any SID of the change (and of the date of the new Fiscal Year end) prior to the next date by which such Member otherwise would be required to provide financial information and operating data pursuant to this Article. The financial information and operating data to be provided pursuant to this Article may be set forth in full in one or more documents or may be provided pursuant to this Article may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the Municipal Securities Rulemaking Board ("MSRB") that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

17.4 Failure to Provide Continuing Disclosure. Member shall notify CAPP, any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure of such Member to provide financial information or operating data in accordance with this Article by the time required thereby and hereby. No default by Member in observing or performing its obligations as described in this Article shall constitute a breach of or default under this Contract for purposes of any other provision of this Contract. Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of any Member under federal and state securities laws. If Member fails to provide such continuing disclosure required under this Article, CAPP shall use its best efforts to obtain relevant financial information and operating data with respect to any such Participating Member and to provide the same annually to each NRMSIR and any SID within 195 days after the end of each Fiscal Year of any such Member.

17.5 Amendment of Continuing Disclosure. Member's undertaking under this Article may be amended by Member, with the consent of CAPP, from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of any Member, but only if (1) the undertaking, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of such Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount of the outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with Member (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. If Member amends its undertaking herein, it shall include with any amended financial information or operating data next provided in accordance with this Article an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Member shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, Member remains an "obligated person" with respect to the Bonds within the meaning of the Rule. The provisions of this Article are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person.

ARTICLE 18 TAX-EXEMPT BONDS

18.1 Tax-Exempt Bonds. The Parties understand and agree that CAPP will use commercially reasonable efforts to provide for, but will not be liable for a failure to produce, the lowest overall debt service cost for the Bonds. In connection therewith, the parties intend that CAPP may, with the approval of the Member, issue refunding bonds to refund the Bonds, if possible, the interest on which is excludable from the gross income of the owners thereof for federal income tax purposes. The Parties acknowledge that,

under current federal tax laws, such tax-exempt financing of the Capacity Prepayment is not permitted. The Parties further acknowledge their understanding that the federal income tax laws impose certain restrictions on the use and investment of proceeds of tax-exempt bonds and on the use of the property financed therewith and the output produced therefrom. Accordingly, the Parties agree and covenant that if any refunding bonds are offered to investors with the understanding that the interest thereon will be exempt from federal income taxation, then the Parties, their assigns and agents, will take such action to assure, and refrain from such action which will adversely affect, the treatment of such refunding bonds as obligations described in Section 103 of the Internal Revenue Code of 1986. Should either Party fail to comply with such covenant, the effect of which being that such refunding bonds no longer qualify as obligations described in the Internal Revenue Code of 1986, such defaulting party shall be liable for all costs resulting from the loss of the tax-exempt status of such bonds. The Parties hereby agree and covenant to comply with all of the representations and covenants relating to such exemption which are set out in any relevant trust indenture or bond resolution. The Parties further agree and covenant that in the event any refunding bonds issued are to be tax-exempt, they will modify such agreements, make such filings, restrict the yield on investments, and take such other action necessary to fulfill the applicable provisions of the Internal Revenue Code of 1986. For these purposes, the Parties may rely on the respective opinion of any firm of bond attorneys selected by CAPP.

18.2 Agreement to Pay Beneficiary. In the event that tax-exempt refunding bonds are issued with the consent of the Members as provided in the immediately preceding paragraph above, Member hereby covenants and agrees to pay its proportionate share of any deficiency to CAPP for deposit into the appropriate rebate fund at the times and as described in the indenture of trust related to the Bonds to comply with the provisions of Section 148(f)(2) of the Internal Revenue Code of 1986.

18.3 Financing. Member agrees to cooperate with CAPP in connection with the issuance of the Bonds. Without limiting the foregoing, CAPP and Member acknowledge that this Contract may be an integral part of the documentation securing the Bonds. At CAPP's request, Member shall agree to amend this Contract to include any provision which may reasonably be requested by the issuer of the Bonds, and to include any provision that may be required to correspond to an amendment of the PPA; provided, however, that no such amendment shall increase the burdens or obligations of Member hereunder with respect to the price and purchase obligations set forth herein. Upon the request of CAPP, Member agrees to negotiate in good faith and shall execute additional documents, opinions and instruments reasonably requested by the proposed issuer of the Bonds including (i) a consent and agreement that provides an additional reasonable period of time to remedy any Default, and (ii) a legal opinion of counsel for Member affirming the enforceability of this Contract against Member and other matters reasonably requested, subject to customary exceptions and qualifications.

ARTICLE 19

MISCELLANEOUS

19.1 Applicable Law. This Contract is governed by and shall be construed under the Laws of the State of Texas excluding any conflict of laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts in Dallas County, Texas in connection with any litigation arising hereunder.

19.2 Counterparts. This Contract may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

19.3 Waiver. No waiver of any breach of the terms of this Contract shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

19.4 Modification. The provisions of this Contract, including any exhibits, may only be modified by written agreement duly executed by each Party.

19.5 Severability If any provision of this Contract shall be determined to be unenforceable, void or otherwise contrary to Law, such condition shall in no manner operate to render any other provision of this Contract unenforceable, void or contrary to Law, and this Contract shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition invalidates the purpose or intent of this Contract. In the event that any of the provisions, or portions or applications thereof, of this Contract are held unenforceable or invalid by any court of competent jurisdiction, Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Contract with a view toward effecting the purposes of this Contract by replacing the provision that is unenforceable, void, or contrary to Law with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, void, or contrary to Law.

19.6 Requirements. Each Party shall timely comply with all then-current PUCT and ERCOT requirements (including, without limitation, the ERCOT Guides) that are applicable to it and shall reasonably cooperate upon reasonable notice with the other Party to the extent necessary for the other Party to timely comply with then-current PUCT and ERCOT requirements (including, without limitation, the ERCOT Guides) that are applicable to it.

19.7 Entirety. It is the intention of the Parties that this Contract shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the Products as contemplated herein, and supersedes all prior agreements regarding the subject matter hereof, whether written or oral.

19.8 Captions, Titles and Headings. Captions, titles and headings used in this Contract are for ease of reference only and do not constitute a part of this Contract.

19.9 Forward Contract. The Parties acknowledge and agree that this Contract constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

19.10 Further Assurances. Each Party shall, from time to time, upon the written request of any other Party, execute and deliver such further instruments and documents as shall be necessary to perform its obligations hereunder.

19.11 Survival. The confidentiality and audit provisions, indemnities, releases from liability, and limitations on liability or damages expressed in this Contract shall, unless otherwise provided herein, survive without limitation the termination, cancellation or expiration of this Contract, and shall apply whether in contract, equity, or otherwise. Notwithstanding the foregoing, the statute of limitations for bringing any action with respect to this Contract or either Party’s performance hereunder is not extended by the provisions of this Section 19.11.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed in their respective names by their duly authorized officers.

MEMBER:

CITY OF SHERMAN

By: _____

Printed name: George Olson

Its: City Manager

Date

ATTEST:

Linda Ashby, City Clerk

CAPP:

**CITIES AGGREGATION POWER
PROJECT**

Date

ATTEST:

By: _____

Printed name: _____

Its: _____



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. B.3

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5564

Amending Chapter 13 of the Code of Ordinances, entitled “Utilities”, at Article 13.06, entitled “Solid Waste”, at Sections 13.06.005, 13.06.086, 13.06.087, and 13.06.088 to Increase Certain Solid Waste Fees

Issue

Amending the Code of Ordinances to increase certain basic solid waste residential and commercial collection rates

Background

At this year’s City Council budget workshop, staff was given direction to increase residential solid waste and commercial waste collection rates for a variety of containers and customers, including downtown businesses. Commercial waste collection rates have not increased since the inception of the program in 2001. Residential rates were last increased in September of 2002. Rates with this change increase an average of eleven percent (11%).

Origination

Department of Public Works

Financial Consideration

It is necessary to increase rates at this time to offset the increasing cost of diesel fuel and recently increased tipping fees at the TASWA landfill. This increase is expected to generate about \$500,000 annually.

Staff Recommendation

The staff recommends that the Council approve the proposed solid waste rate changes in Chapter 13 of the Code of Ordinances.

Alternatives

While not recommended, the Council could choose to leave the current solid waste rates unchanged by not adopting the proposed ordinance change.

Attachments

Ordinance No. 5564

Prepared by:
Jeff Miller, Public Works Director

Approved by:
George Olson, City Manager

ORDINANCE NO. 5564

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITLED "UTILITIES", AT ARTICLE 13.06, ENTITLED "SOLID WASTE", AT SECTIONS 13.06.005, 13.06.086, 13.06.087, AND 13.06.088 TO INCREASE CERTAIN SOLID WASTE FEES; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That Chapter 13, Article 13.06 of the Code of Ordinances of the City of Sherman, Texas, entitled "Solid Waste", be amended at Section 13.06.005 to read as follows:

Sec. 13.06.005 Charges for residential refuse collection

(a) Charges for automated residential solid waste collection shall be as follows:

- (1) ~~Ten dollars and seventy cents (\$10.70)~~ *Eleven dollars and ninety cents (\$11.90)* per month per family unit for curb or alley pickup.
- (2) Carry-out service shall be ~~thirty-four dollars and twenty cents (\$34.20)~~ *thirty-eight dollars and no cents (\$38.00)* per month per family unit.
- (3) If the location of garbage for carry-out service is in excess of one hundred fifty (150) feet from the curb or alley, an additional charge of five dollars and fifteen cents (\$5.15) per month will be made for each additional one hundred fifty (150) feet or portion thereof. "Curb" is defined as being within three (3) feet of the curblane of the street.
- (4) For multiple dwellings or apartments, with four (4) or fewer units, each family unit will be considered as a single-family residence in fixing charges for services.
- (5) Residential special refuse pickups, upon customer request, will be charged two hundred ten dollars and no cents (\$210.00) (\$14.00/cubic yard) per fifteen (15) cubic yard load with a minimum charge of twenty dollars (\$20.00). All residential customers charge of twenty dollars (\$20.00). All residential customers requesting roll-off service, irregardless of size container, will be required to pay the first container pull charge before the first container is placed.
- (6) For any 65-gallon cart in addition to the one initially provided to the automated residential solid waste customer, a charge of eight dollars (\$8.00) per cart, per

month will be assessed; and for any additional 100-gallon cart, a charge of ten dollars (\$10.00) per cart, per month will be assessed.

SECTION 2. That Chapter 13, Article 13.06 of the Code of Ordinances of the City of Sherman, Texas, entitled “Solid Waste”, be amended at Section 13.06.086 to read as follows:

Sec. 13.06.086 Charges for standard and automated containers, commercial pickups on Saturdays

- (a) Commercial charges for one (1) standard container, as defined in section 13.06.084, are established as follows:

Pickups Per Week	Monthly Charge
1	\$13.13 14.57
2	26.25 29.14
3	39.38 43.71
4	52.52 58.30
5	65.38 72.57
6	78.75 87.41

For additional standard containers over the allowable one, there will be added an additional four dollars and forty-four cents (\$4.44) per container to the charges specified above.

- (b) The commercial charge for one (1) optional automated 100-gallon container, as defined in section 13.06.084, shall be ~~seventeen dollars and no cents (\$17.00)~~ *eighteen dollars and seventy cents (\$18.70)* per month for one pickup per week. For additional 100-gallon containers over the allowable one (1), there will be added an additional twelve dollars and no cents (\$12.00) per container, per month to the initial charge of ~~seventeen dollars and no cents (\$17.00)~~ *eighteen dollars and seventy cents (\$18.70)*.
- (c) For any combination of pickups which include Saturday, there will be charged an additional ~~seventeen dollars and fifty cents (\$17.50)~~ *nineteen dollars and no cents (\$19.00)* per month above the regular rate.
- (d) Other charges will be based on the time required for pickup at a rate of fifty-two dollars and eighty-five cents (\$52.85) per hour. This provision is intended to apply to special commercial pickups upon customer request and also commercial refuse not placed in standard containers as defined in section 13.06.084.
- (e) No commercial pickups will be made on Saturdays except from restaurants, food stores and food dispensing institutions.

- (f) When two (2) or more businesses are located in a single building with a single water meter, each business will be required to obtain their own solid waste service and each business will be billed independently for said waste service.

SECTION 3. That Chapter 13, Article 13.06 of the Code of Ordinances of the City of Sherman, Texas, entitled “Solid Waste”, be amended at Section 13.06.087 to read as follows:

Sec. 13.06.087 Charges for commercial front-load containers

- (a) Deposits for commercial front load containers are established as follows for the collection of compacted and non-compacted waste.

Cubic Yards	Deposit
2	\$100.00
3	150.00
4	175.00
6	200.00
8	250.00

- (b) Monthly service charges for commercial front-load containers, as defined in section 13.06.084, are established as follows:

WASTE COLLECTION

Monthly Service Charges per Container

Container in Cubic Yards	Collection Days Per Week						
Noncompacted Trash	1x	2x	3x	4x	5x	6x	Additional Unscheduled Pickups–Per Pickup
2	\$40.00 44.00	\$65.00 70.00	\$95.00 105.00	\$130.00 145.00	\$160.00 180.00	\$190.00 210.00	\$15.00 16.00
3	50.00 55.00	90.00 100.00	135.00 150.00	180.00 200.00	225.00 250.00	270.00 300.00	20.00 22.00
4	65.00 72.00	110.00 120.00	170.00 190.00	225.00 250.00	280.00 310.00	335.00 370.00	25.00 27.00
6	80.00 90.00	130.00 145.00	200.00 220.00	265.00 290.00	330.00 365.00	395.00 435.00	35.00 38.00

8	90.00 100.00	155.00 170.00	230.00 255.00	310.00 340.00	385.00 425.00	460.00 505.00	40.00 44.00
6	90.00 100.00	145.00 160.00	220.00 240.00	295.00 325.00	365.00 400.00	435.00 480.00	40.00 44.00
8	100.00 110.00	170.00 190.00	255.00 280.00	345.00 380.00	425.00 470.00	510.00 560.00	45.00 49.00

RECYCLING COLLECTION

	Collections Per Week				
Corrugated (OCC) Recycling Service	1x	2x	3x	4x	5x
2 yds. recycling containers	\$22.00 24.00	N/A	N/A	N/A	N/A
4 yds. recycling containers	30.00 33.00	N/A	N/A	N/A	N/A
8 yds. recycling containers	50.00 55.00	\$75.00 80.00	\$100.00 110.00	\$125.00 140.00	\$150.00 165.00
With city commercial waste service	35.00 40.00	50.00 55.00	65.00 70.00	80.00 90.00	95.00 105.00
With multiple waste containers or 8 yds. waste service, 5x/week	30.00 33.00	30.00 33.00	30.00 33.00	30.00 33.00	30.00 33.00

(c) Optional services available for commercial front load containers are established as follows:

- (1) On-call special container service 6 yds-\$40.00/pickup
(not for construction material or residential use) 8 yds-\$55.00/pickup
- (2) Special container delivery charge \$50.00/container
- (3) Servicing containers with locks \$40.00 one-time charge
- (4) Servicing containers with casters \$18.00/month

SECTION 4. That Chapter 13, Article 13.06 of the Code of Ordinances of the City of Sherman, Texas, entitled "Solid Waste", be amended at Section 13.06.088 to read as follows:

Sec. 13.06.088 Charges for commercial roll-off containers

(a) Deposits for commercial compacted roll-off containers will be quoted on an individual basis.

(b) Deposits for commercial roll-off containers are established as follows.

Cubic Yards	Deposit
20	\$300.00
30	\$350.00
40	\$400.00

(c) Deposits for commercial roll-off containers containing non-compactable waste are established as follows:

Cubic Yards	Deposit
20	\$575.00
30	\$650.00

(d) Service charges for commercial roll-off containers are established as follows:

Open Top Container Size in Cubic Yards	Pull Charge
20	\$205.00 225.00
30	268.00 295.00
40	325.00 360.00
30 yard recycle	105.00 115.00
Compacted Container Size in Cubic Yards	Pull Charge
20	\$225.00 250.00
30	295.00 325.00
35	332.00 365.00
40	365.00 400.00

30 OCC recycle receiver ~~145.00~~
160.00

40 OCC recycle receiver ~~175.00~~
195.00

(e) Additional charges for commercial roll-off containers are established as follows:

- | | | |
|-----|--|----------------|
| (1) | Open top container rental | \$50/month |
| (2) | Container delivery charge | \$35/container |
| (3) | 40 yard receiver rental | \$75/month |
| (4) | After hours pull charges (5 p.m. – 7 a.m. Monday–Friday; Saturday; Sunday) | \$75/pull |
| (5) | Self-contained compactor rental | |
| | 30 Yard | \$100/month |
| | 35 Yard | \$115/month |
- (6) Special Waste. Charge will include the appropriate container pull charge as shown in the above tables, plus any additional disposal fees assessed by the landfill, and any additional hauling or documentation fees required to properly dispose of the material.
- (7) Container reset fee (due to delinquent account): \$35/occurrence.

SECTION 5. That it is the intention of the City Council of the City of Sherman, Texas, that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Sherman, Texas, and that sections of this ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 6. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 7. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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

INTRODUCED on this the _____ day of _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. B.4

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5565

Repealing Ordinance No. 5408 and Amending Chapter 13 of the Code of Ordinances, entitled “Utilities”, at Article 13.08, entitled “Utility Billing”, adding Sections 13.08.005, “Water Rates”, and 13.08.006, “Sewer Charges”

Issue

Increase water and sewer rates effective October 1, 2008

Background

As part of the budget development process for fiscal year (FY) 2009, the Council directed the staff to increase water and sewer rates by about 4%. This increase was needed to cover increased costs in operations related to fuel, energy, healthcare, retirement, and biosolids disposal costs. Further, by design, this increase does not provide for a balanced operating budget in the Utility Fund. Staff is evaluating various alternatives for biosolids disposal, costs of which will have an impact on future sewer rate increases, if any. Additionally, the water and sewer rates have historically been approved by ordinance, with the rates not being codified in the Code of Ordinances. This agenda item codifies the rates as part of the Code of Ordinances.

Origination

City Council

Financial Consideration

The overall effect of this rate increase is to generate about \$600,000 in revenue annually. Water rates are proposed to increase by about 4.3% and sewer rates by 4.0%.

Staff Recommendation

Staff recommends adoption of the ordinance.

Alternatives

None recommended

Attachments

Ordinance No. 5565

Prepared by:
Robby Hefton, Asst. City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5565

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING ORDINANCE NO. 5408 AND AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITLED "UTILITIES", AT ARTICLE 13.08, ENTITLED "UTILITY BILLING", ADDING SECTIONS 13.08.005, "WATER RATES", AND 13.08.006, "SEWER CHARGES"; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That Ordinance No. 5408 of the City of Sherman, Texas, be and is hereby repealed in its entirety.

SECTION 2. That Chapter 13, Article 13.08 of the Code of Ordinances of the City of Sherman, Texas, entitled "Utility Billing", be amended to add section 13.08.005, said section to read as follows:

Sec. 13.08.005 Water Rates.

(a) Water furnished by the city to a customer, other than any customer who dwells or resides in a multiunit dwelling within the city limits shall be charged for at the following rates for the fiscal year beginning October 1, 2008 for the first fifteen hundred (1,500) gallons of water used according to meter size and unit of measurement of the meter register:

<u>Meter Sizes (in inches)</u>	<u>Monthly Amount</u>
	<u>Oct. 1, 2008</u>
5/8 or 3/4	\$ 18.21
1	\$ 35.88
1 ½	\$ 72.12
2	\$122.87
3	\$267.85
4	\$470.83
6	\$1,050.77
8	\$1,862.69
10	\$2,906.59

(b) Volume charge. Except as noted below, the charge for all water consumed in excess of the minimum fifteen hundred (1,500) gallons shall be billed at a rate of two dollars and sixty cents (\$2.60) per one thousand (1,000) gallons of water used for the rates beginning October 1, 2008. Water meters utilized for lawn sprinkling systems shall be charged according

to meter size plus the consumption rate of two dollars and sixty cents (\$2.60) per one thousand (1,000) gallons of water used in excess of the minimum fifteen hundred (1,500) gallons during months of July through October, beginning October 1, 2008. During the billing months of November through June of any fiscal year, such water sprinkler meters shall be billed a minimum monthly charge as would be billed to a 5/8-inch or 3/4-inch meter.

(c) All multiunit dwellings within the city shall be charged for water consumption and availability utilizing the following formula:

Gallons Calculation Beginning October 1, 2008:

$$\begin{aligned} & (\text{number of units} \times \$18.21) + \\ & \frac{(\text{gallons of water used}) - (\text{number of units} \times 1,500 \text{ gallons})}{1,000} \\ & \$2.60 = \text{Billing} \end{aligned}$$

(d) All customers whose combined average daily use for the past twelve (12) months exceeds 700,000 gallons per day shall be charged for water consumption at the same rates as stated in the above subsections. The customers who qualify for this subsection shall receive a rebate, to be paid annually, calculated as follows:

Water Rebate = Total annual water revenues for previous twelve (12) months X .05.

SECTION 3. That Chapter 13, Article 13.08 of the Code of Ordinances of the City of Sherman, Texas, entitled "Utility Billing", be amended to add section 13.08.006, said section to read as follows:

Sec. 13.08.006 Sewer Charges.

(a) All persons using the sanitary sewer system and lines of the City of Sherman shall be charged as follows:

(1) Sewage Charges. The sewage charge will be based upon the amount of water used. Each sanitary sewer system customer, except multiunit dwelling complexes, shall be charged for sewage at the following rates:

<u>Amount</u>	<u>Minimum Charge, whether 1,500 gallons of water are used</u>
	<u>Oct. 1, 2008</u>
First 1,500 gallons of water used	\$6.53

Additional charges shall be two dollars and seventy-nine cents (\$2.79) for each one thousand (1,000) gallons used above the fifteen hundred (1,500) gallons minimum charge for fiscal year beginning October 1, 2008. For residential living units, the maximum sewer charge

will be twenty-seven dollars and forty-four cents (\$27.44) per residential living unit for fiscal year beginning October 1, 2008.

(b) For multiunit dwelling complexes, the total sewage charge will be based on the amount of water used and will be the lower figure calculated from either of the two (2) following formulas:

Gallons Calculation Beginning October 1, 2008:

$$(number\ of\ dwelling\ units\ X\ \$6.53) + \frac{(gallons\ of\ water\ used) - (number\ of\ units\ X\ 1,500\ gallons)}{1,000} X \$2.79$$

or

$$number\ of\ dwelling\ units\ X\ 27.44$$

(c) Industrial Surcharge. An additional surcharge is to be added to the above charge for the total sewage charge whenever the customer's sewage exceeds that of normal domestic wastewater, as defined in Article 13.07, Water, Sewers and Sewage Disposal, Sec. 13.07.141. The industrial waste surcharge represents an apportionment of the cost of handling the excess load imposed on the sewage treatment plant by wastes stronger than "normal domestic wastewater". The amount of surcharge shall reflect the cost incurred by the city in removing the excess BOD and TSS, as determined by regularly monitored effluent.

$$Cu - Vu[B(Bu - 250\ mg/l) + S(Su - 250\ mg/l)]$$

Where:

Cu is the surcharge for users *X*;

Vu is the billing volume for user *X* per 1,000 gallons;

Bu is the tested BOD levels for user *X* or 250 mg/l, whichever is greater;

B is the unit cost factor for treating one (1) unit of BOD per 1,000 gallons (\$0.003035 beginning October 1, 2008)

Su is the tested TSS level for user *X* or 250 mg/l, whichever is greater;

S is the unit cost factor for treating one (1) unit of TSS per 1,000 gallons (\$0.002231 beginning October 1, 2008).

SECTION 4. That it is the intention of the City Council of the City of Sherman, Texas, that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Sherman, Texas, and that sections of this ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 5. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 6. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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

INTRODUCED on this the _____ day of _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. B.5

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5566

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Donna Reast (Owner), Bryan Luckett (Prospective Buyer), and Sartin & Associates (Surveyors) to Allow a Construction, Equipment Sales, Service, Rental and Repair Shop and Yard (Crane Service) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District at 3111 U.S. Highway 75 South, being 2.7 Acres in the Preston Kitchen Survey, Abstract No. 667; Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

Issue

To consider granting a Specific Use Permit to Donna Reast (Owner), Bryan Luckett (Prospective Buyer), and Sartin & Associates (Surveyors) to allow a construction, equipment sales, service, rental and repair shop and yard (crane service) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District

Background

The property is located at 3111 U.S. Highway 75 South. The building on the tract was previously occupied by Air Liquide. The applicant would like to operate a crane service to store/lease cranes at this location.

Origination

Donna Reast (Owner), Bryan Luckett (Prospective Buyer), and Sartin & Associates (Surveyors)

Board Recommendation

At the September 16, 2008 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the Specific Use Permit be approved subject to the staff review letter.

Attachments

Ordinance No. 5566; Location Map; Photograph; Site Plan; Letters; P&Z Communication Form; Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager

ORDINANCE NO. 5566

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO DONNA REAST (OWNER), BRYAN LUCKETT (PROSPECTIVE BUYER), AND SARTIN & ASSOCIATES (SURVEYORS) TO ALLOW A CONSTRUCTION, EQUIPMENT SALES, SERVICE, RENTAL AND REPAIR SHOP AND YARD (CRANE SERVICE) IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1.2 (SAM RAYBURN) OVERLAY DISTRICT AT 3111 U.S. HIGHWAY 75 SOUTH, BEING 2.7 ACRES IN THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

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

SECTION 1. That from and after the passage of this ordinance, Donna Reast (Owner), Bryan Luckett (Prospective Buyer), and Sartin & Associates (Surveyors) are granted a Specific Use Permit to allow a construction, equipment sales, service, rental and repair shop and yard (crane service) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District at 3111 U.S. Highway 75 South, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the City of Sherman, County of Grayson, State of Texas, being a part of the Preston Kitchen Survey, Abstract No. 667, being the same 2.709 acre tract of land conveyed by Nell M. Johnston, et al to Kenneth Reast by deed dated November 7, 1979, recorded in Volume 1498, Page 115, Deed Records, Grayson

County, Texas, and being more particularly described by metes and bounds as follows to-wit:

BEGINNING at a found concrete right-of-way monument on the East right-of-way line of U.S. Highway No. 75 and on the East side of a 24 foot wide asphalt frontage road known as Travis Street, said monument maintaining the Northwest corner of said 2.709 acre tract, the Southwest corner of a 2.923 acre tract of land described in Tract One in deed from Eunice Marie Kalb to R.J. Kalb, dated September 9, 1985, recorded in Volume 1773, page 788, Deed Records, Grayson County, Texas;

THENCE North 76 deg. 38 min. 45 sec. East, with the South line of said 2.923 acre tract, at a distance of 464.78 feet passing a found ½ inch capped rebar stamped SARTIN-3694 and continuing for a total distance of 531.70 feet to a found ½ inch capped rebar stamped SARTIN-3694 maintaining the Southeast corner of said 2.923 acre tract, on the most Westerly West line of a 221.867 acre tract of land conveyed by Stephen B. Gremmels to Pylon Farms, Inc. by deed dated October 11, 1965, recorded in Volume 1040, Page 518, Deed Records, Grayson County, Texas on the West line of Constitution Village Addition, Section Two to the City of Sherman, Texas as shown by plat of record in Volume 4, Page 22, Plat Records, Grayson County, Texas;

THENCE South 13 deg. 54 min. 48 sec. East, with the most Westerly West line of said 221.867 acre tract, the West line of said Block Two, a distance of 216.49 feet to a set ½ inch capped rebar stamped SARTIN-3694 for the Northeast corner of a 2 acre tract of land conveyed by John Wharton Ellis, Jr., Executor of the Estate of Myrtle G. Wible to Barbara Wible Powell, and Margaret Wible Briggs by deed dated November 9, 2005, recorded in Volume 3960, Page 876, Official Public Records, Grayson County, Texas, from which a found ½ inch capped rebar stamped SARTIN-3694 maintaining the Southwest corner of Lot Eight (8), the Northwest corner of Lot Seven (7) in said Block Two bears South 13 deg. 54 min. 48 sec. East, a distance of 6.65 feet;

THENCE South 76 deg. 50 min. 52 sec. West, with the North line of said Briggs 2 acre tract, at a distance of 339.19 feet passing 1.7 feet North of a chain link fence corner post, at a distance of 530.81 feet passing 1.6 feet North of a chain link fence corner post and continuing for a total distance of 562.45 feet to a set ½ inch capped rebar stamped SARTIN-3694 for the Northwest corner of said 2 acre tract, on the East right-of-way line of said U.S. Highway No 75, from which a found concrete right-of-way monument bears South 05 deg. 45 min. 00 sec. East, a distance of 3.86 feet;

THENCE North 05 deg. 45 min. 00 sec. West, with the East right-of-way line of said U.S. Highway No. 75, a distance of 216.40 feet to the **PLACE OF BEGINNING** and containing **2.71 ACRES OF LAND** more or less.....

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

Zoning:

1. All aspects of the C-2 (General Commercial) District, the O-1.2 (Sam Rayburn) Overlay District and the Commercial Tree and Landscaping Ordinance must be followed.
2. Screening shall be provided adjacent to Residential Districts.
3. Fire lanes and codes shall be coordinated with the Fire Marshal, (903.892.7267)

Engineering

4. Any drive approaches shall conform to TxDOT and City of Sherman standards and a permit is required from the City of Sherman Engineering Department.
5. Detention in accordance with City criteria will be required if the impervious area is increased.

Planning & Zoning Commission

6. No cranes shall be stored in an elevated position.

SECTION 3. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

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

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

INTRODUCED on this the _____ day of _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

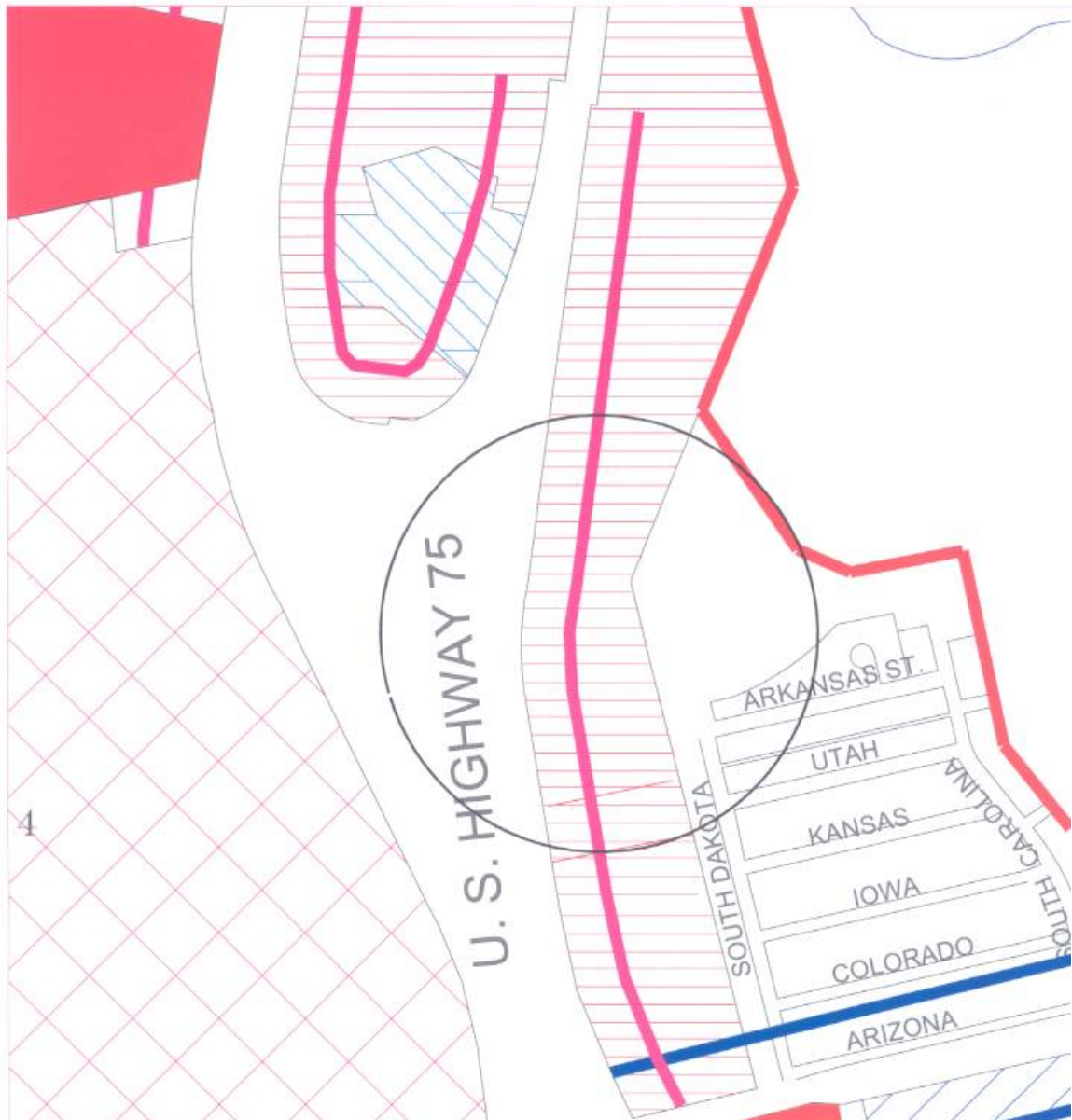
EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

LINDA ASHBY, CITY CLERK



LEGEND

R-A	SINGLE FAMILY AGRICULTURAL DISTRICT	M-2	HEAVY MANUFACTURING DISTRICT
SF-1	SINGLE FAMILY RESIDENTIAL DISTRICT	M-H	MANUFACTURED HOUSING DISTRICT
R-1	ONE AND TWO FAMILY RESIDENTIAL DISTRICT		BLALOCK INDUSTRIAL PARK
R-2	MULTI-FAMILY RESIDENTIAL DISTRICT	O-1	OVERLAY DISTRICT - 75 & 82
C-1	RETAIL BUSINESS DISTRICT	O-1.1	OVERLAY DISTRICT - 1417
C-2	GENERAL COMMERCIAL DISTRICT	O-1.2	OVERLAY DISTRICT - SAM RAYBURN FREEWAY
CO	OFFICE DISTRICT	CPO	COLLEGE PARK OVERLAY
M-1	LIGHT MANUFACTURING DISTRICT	A&C	ARTS & CULTURAL OVERLAY DISTRICT
M-1.5	MEDIUM MANUFACTURING DISTRICT	CBD	CENTRAL BUSINESS DISTRICT



3111 U.S. HWY 75 SOUTH
SPECIFIC USE PERMIT

ENGINEERING DEPARTMENT





3111 Hwy 75 S.



City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
September 16, 2008
Jason Sofey, Chairman

Jim Jacobs, Vice Chairman
Robin Atherton, Commissioner
Lawrence Davis, Commissioner
Brad Morgan, Commissioner

John Nix, Commissioner
Steve Jones, Commissioner
David Plyler, Commissioner
Darren Tankersley, Commissioner

3111 U.S. Highway 75 South
Being 2.7 acres in the Preston Kitchen Survey, Abstract No. 667
Specific Use Permit & Site Plan

Requested Action/Proposed Use:

Specific Use Permit and Site Plan Approval to allow a construction, equipment sales, service, rental and repair shop and yard (crane service) in a C-2 (General Commercial) District and O-1.2 (Sam Rayburn) Overlay District.

Background

The property is located at 3111 U.S. Highway 75 South; the building on the tract was previously occupied by Air Liquide. The applicant would like to operate a crane service to store/lease cranes at this location.

Adjacent Zoning:

C-2 (General Commercial) District

Origination:

Donna Reast (Owner), Bryan Luckett (Prospective Buyer) and Sartin & Associates (Surveyors)

Master Plan Designation:

Retail/Commercial

Number of notices mailed:

9

Objections Received:

0

Attachments:

Location map, Photographs, Site Plan, Staff Review

Prepared by:
Patsy Reeves,
Development Services Secretary

Approved by:
Scott Shadden,
Director of Development Services

STAFF REVIEW LETTER

September 10, 2008

Donna Reast
3866 Echo Brook Lane
Dallas, TX 75229

Bryan Luckett
4375 CR 40400
Commerce, TX 75428

Dear Applicants,

Your request for a Specific Use Permit and site plan approval to allow a construction, equipment sales, service, rental and repair shop and yard (crane service) in a C-2 (General Commercial) District and O-1.2 (Sam Rayburn) Overlay District located at 3111 U.S. Highway 75 South has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, September 16, 2008 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the C-2 (General Commercial) District, the O-1.2 (Sam Rayburn) Overlay District and the Commercial Tree and Landscaping Ordinance must be followed.
2. Screening shall be provided adjacent to Residential Districts.
3. Fire lanes and codes shall be coordinated with the Fire Marshal, (903.892.7267)

Engineering

4. Any drive approaches shall conform to TxDOT and City of Sherman standards and a permit is required from the City of Sherman Engineering Department.
5. Detention in accordance with City criteria will be required if the impervious area is increased.

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

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

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

Respectfully,

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

CC:	George Olson, City Manager	Danny Fuller, Fire Marshal
	Mark Gibson, Director Utilities & Engineering Services	Jeff Miller, Director of Public Works
	Doreen E. McGookey, City Attorney	
	Rita Gaither, Development Coordinator	



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. B.6

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5567

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to TX SW1 LP, C/O Levcor (Owners) and Joe Oblas (Tenant) to Allow a Commercial Amusement Center (Baseball Academy) in a C-2 (General Commercial) District and the O-1 (75 & 82) Overlay District at 2711 U.S. Highway 75 North, being Lot 5, Block 1 of Texoma Crossing Addition, Replat of Lots 5 & 5A; Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

Issue

To consider granting a Specific Use Permit to TX SW1 LP, C/O Levcor (Owners) and Joe Oblas (Tenant) to allow a Commercial Amusement Center (Baseball Academy) in a C-2 (General Commercial) District and the O-1 (75 & 82) Overlay District

Background

The property is located at 2711 U.S. Highway 75 North in the same shopping center as Gander Mountain and West Asset Management. The applicant would like to renovate the lease space for an indoor baseball academy.

Origination

TX SW1 LP, C/O Levcor (Owners) and Joe Oblas (Tenant)

Board Recommendation

At the September 16, 2008 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the Specific Use Permit be approved subject to the staff review letter.

Attachments

Ordinance No. 5567; Location Map; Photograph; Site Plan; Letters; P&Z Communication Form; Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager

ORDINANCE NO. 5567

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO TX SW1 LP, C/O LEVCOR (OWNERS) AND JOE OBLAS (TENANT) TO ALLOW A COMMERCIAL AMUSEMENT CENTER (BASEBALL ACADEMY) IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1 (75 & 82) OVERLAY DISTRICT AT 2711 U.S. HIGHWAY 75 NORTH, BEING LOT 5, BLOCK 1 OF TEXOMA CROSSING ADDITION, REPLAT OF LOTS 5 & 5A; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

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

SECTION 1. That from and after the passage of this ordinance, TX SW1 LP, C/O Levcor (Owners) and Joe Oblas (Tenant) are granted a Specific Use Permit to allow a Commercial Amusement Center (Baseball Academy) in a C-2 (General Commercial) District and the O-1 (75 & 82) Overlay District at 2711 U.S. Highway 75 North, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

Being Lot 5, Block 1 of Texoma Crossing Addition, Replat Lots 5 & 5A.

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

1. All aspects of the C-2 (General Commercial) District and the O-1 (75 & 82) Overlay District must be followed.
2. Fire lanes and codes shall be coordinated with the Fire Marshal (903.892.7267).

SECTION 3. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

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

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

INTRODUCED on this the _____ day of _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

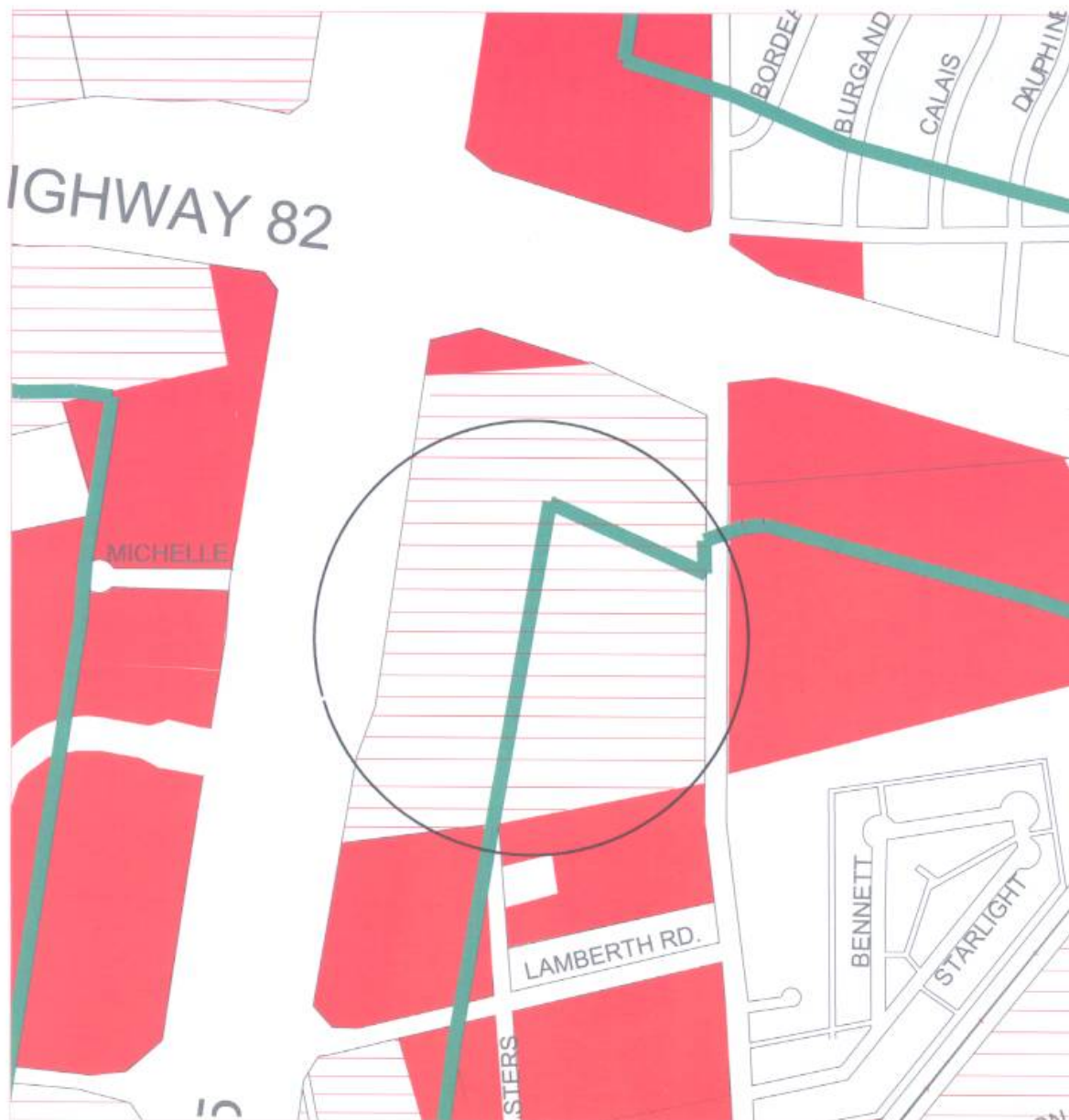
EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK



LEGEND

R-A	SINGLE FAMILY AGRICULTURAL DISTRICT	M-2	HEAVY MANUFACTURING DISTRICT
SF-1	SINGLE FAMILY RESIDENTIAL DISTRICT	M-H	MANUFACTURED HOUSING DISTRICT
R-1	ONE AND TWO FAMILY RESIDENTIAL DISTRICT	BLA	BLALOCK INDUSTRIAL PARK
R-2	MULTI-FAMILY RESIDENTIAL DISTRICT	O-1	OVERLAY DISTRICT - 75 & 82
C-1	RETAIL BUSINESS DISTRICT	O-1.1	OVERLAY DISTRICT - 1417
C-2	GENERAL COMMERCIAL DISTRICT	O-1.2	OVERLAY DISTRICT - SAM RAYBURN FREEWAY
CO	OFFICE DISTRICT	CPO	COLLEGE PARK OVERLAY
M-1	LIGHT MANUFACTURING DISTRICT	A&C	ARTS & CULTURAL OVERLAY DISTRICT
M-1.5	MEDIUM MANUFACTURING DISTRICT	CBD	CENTRAL BUSINESS DISTRICT



2711 U.S. HWY 75
SPECIFIC USE PERMIT

ENGINEERING DEPARTMENT





2711 Hwy 75 N.



DEVELOPMENT SYNOPSIS

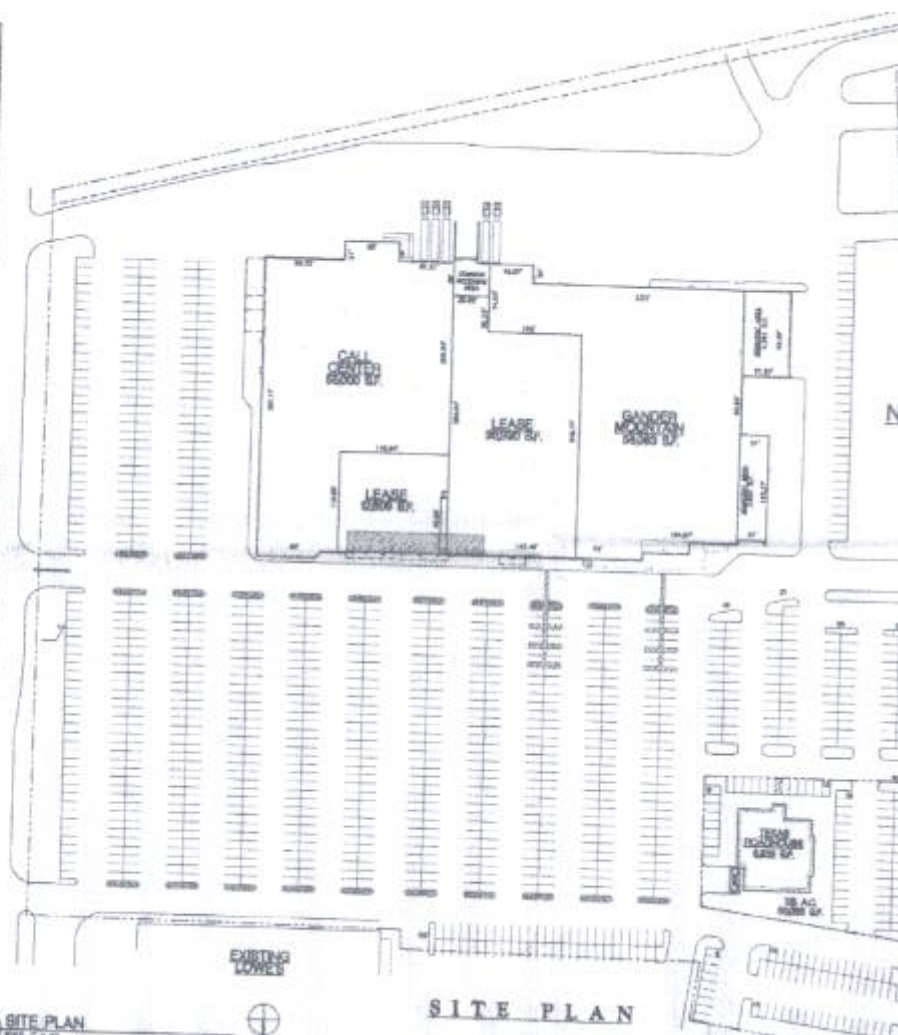
LAND AREA (A23.84 AC.) 1,026,877 S.F.
 BUILDING AREA 156,828 S.F.
 E. S. 2.5/1,000 S.F. 13,080 S.F. 136 SPACES
 10/1,000 S.F. 4,840 S.F. 48 SPACES
 5/1,000 S.F. 154,880 S.F. 504 SPACES

PAVING REQUIRED 731 SPACES
 PAVING REQUIRED 1,332 SPACES
 E. S. 2.5/1,000 S.F. 4.4 /1,000
 E. S. 5/1,000 S.F. 7.4 /1,000
 16.7 E

94-07-02 24181.000

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LOY LAKE ROAD



SITE PLAN

SITE PLAN

City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
September 16, 2008
Jason Sofey, Chairman

Jim Jacobs, Vice Chairman
Robin Atherton, Commissioner
Lawrence Davis, Commissioner
Brad Morgan, Commissioner

John Nix, Commissioner
Steve Jones, Commissioner
David Plyler, Commissioner
Darren Tankersley, Commissioner

2711 U.S. Highway 75 North
Being Lot 5, Block 1 of Texoma Crossing Addition, Replat Lots 5 & 5A
Specific Use Permit & Site Plan

Requested Action/Proposed Use:

Specific Use Permit and Site Plan Approval to allow a Commercial Amusement Center (Baseball Academy) in a C-2 (General Commercial) District and the O-1 (75 & 82) Overlay District.

Background

The property is located at 2711 U.S. Highway 75 North in the same shopping center as Gander Mountain and West Asset Management. The applicant would like to renovate the lease space for an indoor baseball academy.

Adjacent Zoning:

C-2 (General Commercial) District

Origination:

TX SW1 LP, C/O Levcor (Owners) and Joe Oblas (Tenant)

Master Plan Designation:

Retail/Commercial

Number of notices mailed:

15

Objections Received:

0

Attachments:

Location map, Photographs, Site Plan, Staff Review

Prepared by:
Patsy Reeves,
Development Services Secretary

Approved by:
Scott Shadden,
Director of Development Services

STAFF REVIEW LETTER

September 11, 2008

TX SW1 LP
C/O Levcor
9660 Old Katy Road
Houston, TX 77055

Joe Oblas
4200 Quail Run Road
Sherman, Texas 75092
Dear Applicants,

Your request for a Specific Use Permit and site plan approval to allow a Commercial Amusement Center (Baseball Academy) in a C-2 (General Commercial) District and the O-1 (75 & 82) District located at 2711 U.S. Highway 75 North has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, September 16, 2008 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the C-2 (General Commercial) District and the O-1 (75 & 82) Overlay District must be followed.
2. Fire lanes and codes shall be coordinated with the Fire Marshal, (903.892.7267)

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

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

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

Respectfully,

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

CC: George Olson, City Manager
 Mark Gibson, Director Utilities & Engineering Services
 Doreen E. McGookey, City Attorney
 Rita Gaither, Development Coordinator

 Danny Fuller, Fire Marshal
 Jeff Miller, Director of Public Works



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. B.7

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers: 5562, 5563, 5564, 5565, 5566 and 5567

B.1 SECOND READING, PUBLIC HEARING AND FINAL VOTE ON ORDINANCE NO. 5562

Granting to Atmos Energy Corporation, Mid-Tex Division, a Texas and Virginia Corporation, its Successors and Assigns, a Franchise to Furnish, Transport and Supply Gas to the General Public in the City of Sherman, Grayson County, Texas, for the Transporting, Delivery, Sale, and Distribution of Gas in, Out of, and Through Said Municipality for all Purposes; Providing for the Payment of a Fee or Charge for the Use of the Public Rights-of-Way; Providing That it Shall be in Lieu of Other Fees and Charges, Excepting Ad Valorem Taxes; Repealing all Previous Atmos Energy Gas Franchise Ordinances; Prescribing the Terms, Conditions, Obligations and Limitations Under Which Such Franchise Shall be Exercised; Providing a Most Favored Nations Clause; Providing for an Effective Date

B.2 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5563

Approving an Electric Power Contract with Cities Aggregation Power Project, Inc. ("CAPP") for Electric Capacity and Energy, Providing Capacity Payments as Public Property Finance Contractual Obligations of the City, Pledging and Levying an Ad Valorem Tax To Such Payments, Providing for Energy Payments for Electric Energy Subject to Annual Appropriation by the City, Providing for the Assignment of Such Capacity Payments to Support Debt Issued by CAPP Incurred to Acquire Electric Capacity Rights from Luminant Generation Company and Related Entities Pursuant to a 24-Year Power Purchase Agreement ("PPA"); Authorizing the City Manager or Other Appropriate City Officer or Employee to Execute and Deliver the Member Contract; Further Authorizing the City Manager or Other Appropriate City Officer or City Employee to Sign Additional Agreements Arranged by CAPP for Electric Power Needed by the City in the Period 2009-2011 in Excess of the Amount Obtained Under the Member Contract; Acknowledging, Authorizing and Directing the City Manager or Appropriate City Officer or City Employee to Sign and Return CAPP's Disclosure Letter; Further Authorizing the City Manager or Appropriate City Officer or Other City Employee to Accept Conforming Changes to the Member Contract Dependent on the Final Terms of the CAPP PPA; Providing for Validity and Sufficiency of City Employee's or City Officer's Signature if the Officer or Employee Leaves Office or Employment Prior to the Delivery of the Member Contract

B.3 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5564

Amending Chapter 13 of the Code of Ordinances, entitled “Utilities”, at Article 13.06, entitled “Solid Waste”, at Sections 13.06.005, 13.06.086, 13.06.087, and 13.06.088 to Increase Certain Solid Waste Fees

B.4 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5565

Repealing Ordinance No. 5408 and Amending Chapter 13 of the Code of Ordinances, entitled “Utilities”, at Article 13.08, entitled “Utility Billing”, adding Sections 13.08.005, “Water Rates”, and 13.08.006, “Sewer Charges”

B.5 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5566

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Donna Reast (Owner), Bryan Luckett (Prospective Buyer), and Sartin & Associates (Surveyors) to Allow a Construction, Equipment Sales, Service, Rental and Repair Shop and Yard (Crane Service) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District at 3111 U.S. Highway 75 South, being 2.7 Acres in the Preston Kitchen Survey, Abstract No. 667; Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

B.6 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5567

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to TX SW1 LP, C/O Levcor (Owners) and Joe Oblas (Tenant) to Allow a Commercial Amusement Center (Baseball Academy) in a C-2 (General Commercial) District and the O-1 (75 & 82) Overlay District at 2711 U.S. Highway 75 North, being Lot 5, Block 1 of Texoma Crossing Addition, Replat of Lots 5 & 5A; Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. B.8

CONSENT AGENDA

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

C.2 * RESOLUTION NO. 5270

Authorizing Execution of a Deed Without Warranty to Harry Reynolds and Alera Reynolds for the Conveyance of a Portion of a 15-foot Alley in Block 22 of the College Park Addition, with Utility Easement, Bounded by the 400 Blocks of North Grand Avenue and North Lee Street and the Railroad Right-of-Way

C.4 * RESOLUTION NO. 5272

Authorizing Execution of a Child Care Local Match Contribution Agreement with Workforce Solutions Texoma for the Period of October 1, 2008 through December 31, 2008

C.5 * RESOLUTION NO. 5273

Authorizing the City Manager to Execute Contracts with the Sherman Council for the Arts & Humanities, Inc. and the Friends of the Red River Historical Museum (aka Red River Historical Museum)

C.6 * RESOLUTION NO. 5274

Appointing and Authorizing the Execution of an Agreement with Pattillo, Brown & Hill, L.L.P. to Perform the Fiscal Year 2008 Audit

C.7 * RESOLUTION NO. 5275

Authorizing Execution of an Agreement with John Robert Hooker, individually and d/b/a J & S Aviation, for the Operation of an Aircraft Maintenance Shop and the Provision of Customer Service Assistance at the Sherman Municipal Airport

C.8 * RESOLUTION NO. 5276

Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 616 East Sycamore Street

C.9 * RESOLUTION NO. 5277

Authorizing Execution of an Agreement with Terry Peterson for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1302 South Elm Street

C.10 * RESOLUTION NO. 5278

Authorizing the Purchase of a 2009 Ford F-450 Frazer Ambulance for the Sherman Fire Department through the Houston-Galveston Area Council of Governments (H-GAC)

C.11 * RESOLUTION NO. 5279

Authorizing the Purchase of a 2009 Pierce Fire Engine for the Sherman Fire Department through the Texas Local Government Purchasing Cooperative (BuyBoard)

D.2 * OTHER BUSINESS

Final Plat Approval of the Bryan Lockett Addition; Donna Reast, Owner; Bryan Lockett, Prospective Buyer (3111 U.S. Highway 75 South)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.1

RESOLUTION NO. 5269

Authorizing Execution of an Interlocal Agreement between the City of Sherman and Grayson County for Emergency Management and Related Homeland Security Services

Issue

Consideration of an Interlocal Agreement for the City's participation in a Grayson County Regional Emergency Operating Center (EOC) to be staffed by a regional Emergency Management Coordinator (EMC)

Background

At the December 17, 2007 meeting, the City Council discussed the City's participation in a proposed Grayson County Regional EOC and directed the staff to return with an Interlocal Agreement for their consideration.

This issue has been under discussion for several months. Sherman has its own EOC; and the Fire Chief serves as our EMC. Participation in the County's regional EOC and EMC would reduce any duplication of efforts, decrease costs to our taxpayers, and improve emergency management services to all.

Origination

Grayson County Judge Drue Bynum

Financial Consideration

Judge Bynum is seeking an annual contribution of \$20,000.00.

Staff Recommendation

It is the staff's recommendation that the Council approve the Interlocal Agreement and the City's participation in the Grayson County Regional EOC.

Alternatives

As the Council directs

Attachments

Judge Bynum's letter of December 7, 2007
Resolution No. 5269
Interlocal Agreement

Prepared by:
Jeffrey J. Jones, Fire Chief

Approved by:
George Olson, City Manager



Drue Bynum
Grayson County Judge

December 7, 2007

City of Sherman
Mayor Bill Magers
Box 1006
Sherman, Tx 75091-1106

Dear Mayor Magers,

For the past several months, the Cities of Denison and Sherman have been working together on a plan that will provide for a Grayson County regional Emergency Operating Center (EOC) to be staffed by a regional Emergency Management Coordinator (EMC). In addition to serving Grayson County and the current signatory cities, the EOC and the EMC being proposed will serve the entire county including Sherman and Denison. The Cities of Denison and Sherman now have their own EOCs, EMCs and Emergency Management Plan. That obviously results in a duplication of effort between the three entities which increases the cost significantly without providing additional benefit to our county residents.

The County and the staffs of the Cities of Denison and Sherman feel that it is now appropriate to move forward with the funding of the single EMC for our county. We are asking the City of Sherman to contribute \$20,000 to the proposed consolidation of the three programs. This represents approximately a third of the expected personnel cost associated with the EMC. Grayson County will provide office space and clerical support to the position. Additionally, a board will be created to work with the EMC in an advisory capacity.

There are other funding sources being explored that will further improve emergency management services while further decreasing local costs.

It is important to note that this effort will not take away from any thing your city chooses to do relative to maintaining an EOC within your organization. What is being attempted here is to reduce the duplication of effort that goes into the planning and administrative area while improving services to all county residents.

Respectfully,

Drue Bynum
County Judge

cc: George Olson, City Manager

100 W. Houston, Suite 15 • Sherman, Texas 75090
Office: 903 813-4228 • Fax: 903 892-4085
Email: bynumd@co.grayson.tx.us

RESOLUTION NO. 5269

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND GRAYSON COUNTY FOR EMERGENCY MANAGEMENT AND RELATED HOMELAND SECURITY SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the Mayor be and is hereby authorized, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Interlocal Agreement with Grayson County, Texas, for Emergency Management and Related Homeland Security Services, in accordance with the terms and provisions of the contract document attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

INTERLOCAL AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

THIS AGREEMENT is entered into on this the _____ day of _____, 2008, by and between the City of Sherman, Texas ("City"), a home-rule municipal corporation situated in Grayson County, Texas, acting by and through its City Manager, and Grayson County, Texas ("County"), acting by and through its County Judge. (Sometimes City and County are referred to individually as an "Agency" or a "Party" and collectively as "Agencies" or "Parties".)

WITNESSETH:

WHEREAS, City and County are responsible for emergency management and disaster relief planning and education within the City's corporate limits and in the County's unincorporated areas, respectively; and

WHEREAS, City and County have, by action of their respective governing bodies, agreed to become an interjurisdictional agency for certain functions related to emergency management and disaster relief; and

WHEREAS, it is the desire of the Agencies to agree to the terms under which County will provide services relative to emergency management and disaster relief to the City; and

WHEREAS, this Agreement is made under the authority of the Interlocal Cooperation Act, Sections 791.001-791.033, Texas Government Code, which provides, in part, that a local government may contract with another local government to perform governmental functions and services as defined therein; and

WHEREAS, City and County find that the subject of this Agreement is necessary for the benefit of the public and that each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, City shall make payment for the performance of the governmental function or service that is the subject of this Agreement out of legally available current revenues; and

WHEREAS, the Agencies find that the performance of this Agreement is in their common interest and that the division of costs fairly compensates the performing Agency for the services or functions performed by it under this Agreement;

NOW, THEREFORE, the Agencies agree as follows:

1. **County Services.** County shall provide City the following services for emergency and disaster relief through its Emergency Management Coordinator:

-
- a. Coordinate the documentation for disaster relief recovery from all federal and state government sources on behalf of the City.
 - b. Submit quarterly reports to the City specifying all services delivered to City during the quarter.
 - c. If requested by the Sherman Emergency Management Coordinator, attend local, regional, state and national emergency management associations, coalitions, and working groups and brief the Sherman Emergency Management Coordinator regarding meetings attended by the County Representative.
 - d. Coordinate the development of grants or other types of available funding with the City. The County agrees to seek City approval before applying for any grants or other type of available funding on behalf of the City.
 - e. At any mutually agreeable time during normal business hours and as requested by the City, the County will make available to the City for examination all of its records with respect to all matters covered by this Agreement and will allow the City to review, examine, and to make copies of all documentation related to all matters covered by this Agreement.

2. **Payment.** As payment for services rendered under the terms of this Agreement, the City of Sherman shall pay County out of legally available current revenues the sum of \$20,000.00 on October 15, 2008. Subsequent annual payments of \$20,000.00 will be due October 15th of each fiscal year. The remaining costs for the services and functions provided herein shall be provided by county, federal and/or state matching funds.

3. **City Control.** The Sherman Emergency Management Coordinator will still remain the City's main representative in all emergency and homeland security matters. In any emergency or disaster relief situation or scenario, the Sherman Emergency Management Coordinator will retain primary control for all activities and responses within the City.

4. **Emergency Response.** All emergency response in all disaster or homeland security situations shall be governed by the terms of the Interjurisdictional Mutual Aid Agreement approved by the City in Resolution No. 4871. At no time will this Interlocal Agreement be deemed to modify the terms and responsibilities set forth in the Interjurisdictional Mutual Aid Agreement.

5. **Termination.** This Agreement shall remain in effect until terminated by either Party by giving to the other Party ninety (90) days written notice of its intent to terminate. Termination can be stopped by the terminating Party at any point within the ninety (90) day notice period by giving written notice of intent not to terminate.

6. **Budget Review.** County will prepare, and submit annually to an advisory board, consisting of the County Judge and the emergency management coordinators of the parties, a proposed budget as documentation of anticipated expenditures by May 1st of each year. The budget may be subject to revisions and recommendations by the advisory board.

7. **Notices.** All notices to be given pursuant to this Agreement shall be delivered by hand delivery or certified mail, return receipt requested, to:

County Judge	Mayor
100 West Houston, Ste. G-2	P. O. Box 1106
Sherman, TX 75090	Sherman, TX 75091

8. **Governing Law and Venue.** This Agreement is authorized under and governed by the laws of the State of Texas. Venue for any action arising under this Agreement shall lie in state district court, Grayson County, Texas.

9. **Liability.** Nothing in the performance of this Agreement shall impose any liability for claims against City or County, as the case may be, other than claims for which liability may be imposed by the Texas Tort Claims Act.

10. **No Rights for Third Parties.** The Agencies do not intend for any third party to obtain any rights, contractual or otherwise, by virtue of this Agreement.

11. **Force Majeure.** If, by reason of Force Majeure as hereinafter defined, either Agency shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such Agency shall give written notice of the particulars of such Force Majeure to the other Agency within a reasonable time after the occurrence thereof. The obligations of the Agency giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and such Agency shall, in good faith, exercise its best efforts to remove and overcome such inability. The term "Force Majeure" as utilized in this Agreement shall mean and refer to acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, or other natural disasters; arrest; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not necessarily within the control of the Agency claiming such inability.

12. **Governing Laws.** This Agreement is subject to all applicable federal, state and local laws, ordinances, rules and regulations, including but not limited to all provisions of the City's Charter and ordinances, as amended.

13. **No Waiver of Performance.** The failure of either Agency to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Agency's right to insist upon appropriate performance or to assert any such right on any future occasion.

14. **No Waiver of Governmental Immunity.** It is expressly understood and agreed that, in the execution of this Agreement, neither Agency waives, nor shall hereby be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising during the exercise of governmental powers and functions.

EXECUTED in multiple originals this the 8 day of SEPT, 2008.

GRAYSON COUNTY

ATTEST:

Wilma Bush
Wilma Bush, County Clerk

BY: Drue Bynum
Drue Bynum, County Judge

APPROVED AS TO FORM:

Van Price
Van Price, Assistant District Attorney

DATE: Sept 8, 2008

CITY OF SHERMAN

ATTEST:

Linda Ashby
Linda Ashby, City Clerk

BY: Bill Magers
Bill Magers, Mayor

APPROVED AS TO FORM:

Doreen E. McGookey
Doreen E. McGookey, City Attorney

DATE: _____



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-06-2008

Subject: Agenda Item No. C.2

*** RESOLUTION NO. 5270**

**Authorizing Execution of a Deed Without Warranty to Harry Reynolds
and Alera Reynolds for the Conveyance of a Portion of a 15-foot Alley in Block 22 of the
College Park Addition, with Utility Easement, Bounded by the 400 Blocks of North Grand
Avenue and North Lee Street and the Railroad Right-of-Way**

Issue

Proposed sale with easement of the above described property located in the 400 blocks of North Grand Avenue and North Lee Street, between Mulberry Street and the Railroad Right-of-Way, to Harry and Alera Reynolds.

Background

Mr. Reynolds has requested to purchase the last 55 feet of the dead end alley that is adjacent to his properties at 420 North Grand Avenue and 421 North Lee Street, in Block 22 of the College Park Addition. Due to a gas line and a sewer line in the alley, a utility easement will remain. The total area Mr. Reynolds is requesting to purchase is approximately 825 square feet.

Origination

Harry and Alera Reynolds
Public Works Department

Financial Consideration

A cost of \$346.50 has been calculated as the fair market value of the property (based upon previous bids).

Staff Recommendation

The staff recommends selling the last 55 feet of this alley, retaining the utility easement, to Harry and Alera Reynolds for \$346.50.

Alternatives

The City Council could reject the request and retain the property.

Attachments

Resolution No. 5270; Deed Without Warranty; Correspondence with Mr. Reynolds; Location Map

Prepared by:
Jeff Miller, Public Works Director

Approved by:
George Olson, City Manager

RESOLUTION NO. 5270

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEED WITHOUT WARRANTY TO HARRY REYNOLDS AND ALERA REYNOLDS FOR THE CONVEYANCE OF A PORTION OF A 15-FOOT ALLEY IN BLOCK 22 OF THE COLLEGE PARK ADDITION, WITH UTILITY EASEMENT, BOUNDED BY THE 400 BLOCKS OF NORTH GRAND AVENUE AND NORTH LEE STREET AND THE RAILROAD RIGHT-OF-WAY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the Mayor be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form by the City Attorney, to execute a Deed Without Warranty to Harry Reynolds and Alera Reynolds for the conveyance of the property, a 15-foot alley in Block 22 of the College Park Addition, with utility easement, bounded by the 400 blocks of North Grand Avenue and North Lee Street and the Railroad Right-of-Way, within the City of Sherman, Grayson County, Texas, in accordance with the documents attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

DEED WITHOUT WARRANTY

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

That the **CITY OF SHERMAN**, a municipal corporation of the State of Texas, hereinafter called "Grantor", acting by and through its duly authorized Mayor, for and in consideration of the sum of Three Hundred Forty-Six Dollars and Fifty Cents (\$346.50) by **HARRY REYNOLDS and ALERA REYNOLDS**, hereinafter called "Grantee", the receipt of which is hereby acknowledged, through the process of public auction, hereby grants, sells, releases, and forever conveys unto **HARRY REYNOLDS and ALERA REYNOLDS** all of Grantor's right, title and interest in and to the following described real property, to-wit:

**15 FOOT ALLEY
THROUGH BLOCK 22 OF COLLEGE PARK ADDITION**

SITUATED in the City of Sherman, the County of Grayson, and the state of Texas, being a portion of the fifteen (15) foot wide alley in Block Twenty-Two (22) of College Park Addition of the City of Sherman, Texas as shown by plat of record recorded in volume 81 and page 438 and being more particularly described as follows:

BEGINNING at the northeast corner of Lot One (1) in said Block Twenty-Two (22), on the South line of the T&P Rail Road Right of Way;

THENCE, East fifteen (15) feet, with the South line of T&P Rail Road Right of Way, to the Northwest corner of Lot Seven (7) in said Block Twenty-Two (22);

THENCE, South fifty-five (55) feet, with the West line of Lot Seven (7) in said Block Twenty-Two (22), a distance of fifty-five (55) feet to the Southwest corner of said Lot Seven (7) in Block Twenty-Two (22);

THENCE, West fifteen (15) feet, crossing said alley, to the Southeast corner of Lot One (1) of said Block Twenty-Two (22);

THENCE, North fifty-five (55) feet, with the East line of Lot One (1) in said Block Twenty-Two (22), a distance of fifty-five (55) feet to the Northeast corner of said Lot One (1) in Block Twenty-Two (22) to the **PLACE OF BEGINNING**, and containing 825 square feet of land, more or less.....

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the above described property and premises unto the said Grantees, their heirs, successors and assigns forever, without express or implied warranty, so that neither Grantor nor Grantor's successors,

legal representatives or assigns shall have, claim or demand any right or title to the aforesaid property, premises or appurtenances or any part thereof,

SAVE AND EXCEPT that any easements are reserved for any and all existing utilities as may be now located in said above described property, with the right of ingress and egress to same for the purpose of operation, construction, repair, reconstruction, improvement, maintenance, or removal of such utilities until such shall be abandoned or relocated. All warranties that might arise by common law as well as the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded.

This conveyance is made and accepted subject to any and all conditions and restrictions, if any, relating to the hereinabove described property, shown of record in the office of the County Clerk of Grayson County, Texas.

Release. In accepting the conveyance of this property, Grantees expressly accept the property in its "as is" condition, with all of its faults and encumbrances, if any. GRANTEES RELEASE AND FOREVER DISCHARGE THE GRANTOR, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL RIGHTS, CLAIMS, DEMANDS, OR CAUSES OF ACTION, AT LAW OR IN EQUITY, GRANTEES PRESENTLY HAVE, OR EVEN CAN, SHALL, OR MAY HAVE IN THE FUTURE IN CONNECTION WITH THIS TRANSACTION, INCLUDING HAZARDOUS MATERIALS OR ENVIRONMENTAL ISSUES IN, ON OR UPON THE PROPERTY, IF ANY. GRANTEES STATE THAT THEY ARE NOT RELYING UPON ANY REPRESENTATIONS OR DISCLOSURES BY THE GRANTOR AND NONE HAVE BEEN MADE IN CONNECTION WITH THE ACQUISITION OF THIS PROPERTY. This release shall be binding upon Grantees' heirs, assigns and successors in interest.

TO HAVE AND TO HOLD all of its right, title and interest in and to the above described property and premises subject to the aforesaid, unto the said Grantees, their heirs, successors and assigns forever, so that the Grantor, its legal representatives, successors and assigns shall not have, claim or demand any right, title or interest to the aforesaid property, premises or appurtenances or any part thereof.

Grantor acknowledges and confesses that this conveyance is made pursuant to the authority of Resolution No. 5270 of the City of Sherman, Texas, passed and approved on the 6th day of October, 2008.

IN WITNESS WHEREOF, the City of Sherman, Texas, a municipal corporation of Grayson County, Texas, has caused this instrument to be executed by its Mayor, on the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ACKNOWLEDGMENT

THE STATE OF TEXAS

§

§

COUNTY OF GRAYSON

§

BEFORE ME, the undersigned authority, in and for the State of Texas, on this day personally appeared Bill Magers, Mayor, 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 City of Sherman, a municipal corporation of the State of Texas, and that he executed the same as the act of such corporation for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2008.

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

January 12, 2006

Mr. Jeff Miller
Director of Public Works
City of Sherman
P. O. Box 1106
Sherman, TX 75090

Dear Mr. Miller:

We own the property at 420 N. Grand Avenue and 421 N. Lee Street. Both properties are on the south boundary of the Texas and Northeastern RR property. I am enclosing a property map of the area.

We would like to ask that the city abandon the last 55' of the alley between these two pieces of property as marked on the attached map. If you have any further questions concerning this matter, please feel free to contact me at any time.

Thank you for your assistance in this matter.

Sincerely,


Harry Reynolds

Enc.

SHERMAN



September 2, 2008

Mr. Harry Reynolds
1100 Patricia Dr.
Sherman, TX 75090

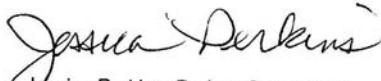
Mr. Reynolds,

The City of Sherman would like to move forward with your request to close the last 55' of the alley that runs between your property at 420 N. Grand and 421 N. Lee Street. All utility companies were contacted; the City of Sherman and Atmos Energy require an easement to remain due to a gas line and a sewer line in or near the area in question. However, despite the easement the property will become yours should the City Council agree to the closure and sale. You would then be able to obtain a permit to build a fence which you stated was your desire.

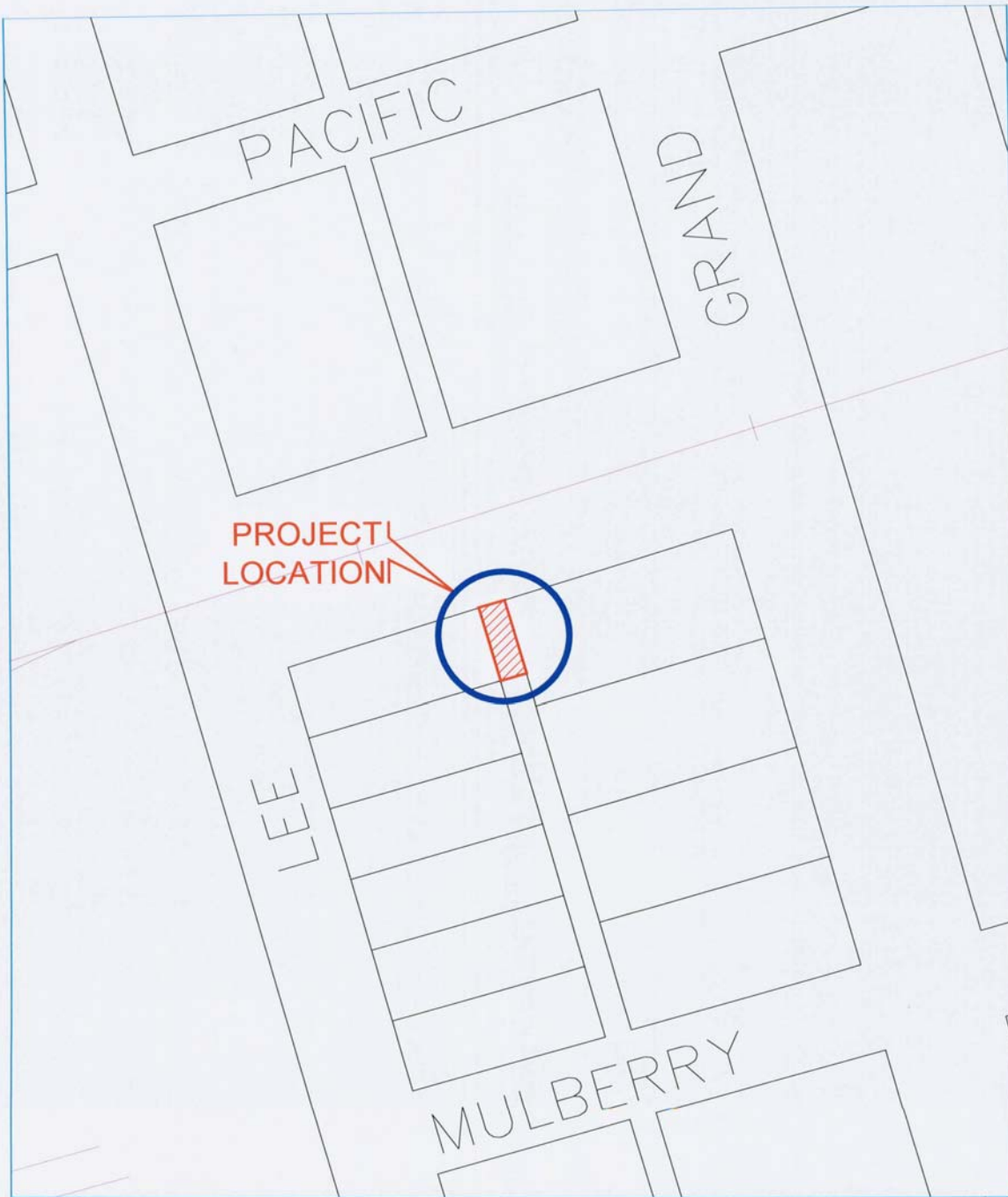
In order to move forward and bring your request before the City Council, the City requires payment in advance for the property. It has been determined that the fair market value for the property is forty-two cents (\$0.42) per square foot. The total area you have requested is approximately eight hundred and twenty-five (825) square feet. Therefore, please provide the City of Sherman a check for three hundred forty-six dollars and fifty cents (\$346.50). Your check will be held until official approval by the City Council.

If you have questions you can reach me at 903-813-8866.

Sincerely,


Jessica Perkins, Project Coordinator

Enclosure: Legal Description
Alley Closing Procedure



City of Sherman, Texas

ALLEY SALE

PROJECT LOCATION MAP





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.3

RESOLUTION NO. 5271

Authorizing the Lease of Certain City-Owned Property located at 1003 North East Street to Recreational Council - Jack and Jill Day Care Center, Inc.

Issue

To consider a Lease Agreement with Recreational Council - Jack and Jill Day Care Center, Inc. (Jack and Jill) for the City-owned day care facility at 1003 North East Street

Background

During the budget process, staff was given approval to phase-out the Sherman daycare operations. The staff solicited input from other non-profit daycares in the area regarding their interest in using the City's existing daycare facilities for use in their respective operations. There were no responses from Sherman non-profit daycare centers, so the staff agreed to consider the request of another non-profit daycare center currently operating in Denison, Jack and Jill, for the lease of these facilities. In an effort to support the mission of Jack and Jill to provide daycare services to low income and economically disadvantaged families, the staff is proposing to lease the daycare facility at 1003 North East Street, along with the contents, for \$1 per year. The terms of the agreement call for automatic annual renewals, for a total term of up to ten years.

Origination

City Council

Financial Consideration

Jack and Jill will be responsible for the costs of operating the facilities, including routine maintenance and upkeep, at their expense. The cost to the City will be "in-kind", providing water, sewer, and solid waste services at no charge.

Council Action Requested

Approve the resolution and agreement with Recreational Council - Jack and Jill Day Care Center, Inc. for lease of the City-owned property at 1003 North East Street.

Alternatives

- The Council could make other arrangements with the Jack and Jill Day Care Center
- The Council could opt to use the City-owned Day Care facility for other City-related purposes.

Attachments

Resolution No. 5271; Lease Agreement; Location Map and Aerial

Prepared by:

Robby Hefton, Assistant City Manager/CFO

Approved by:

George Olson, City Manager

RESOLUTION NO. 5271

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE LEASE OF CERTAIN CITY-OWNED PROPERTY LOCATED AT 1003 NORTH EAST STREET TO RECREATIONAL COUNCIL - JACK AND JILL DAY CARE CENTER, INC.; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas, has determined that it is desirable to lease the City-owned property located at 1003 North East Street, Sherman, Texas; and

WHEREAS, Recreational Council - Jack and Jill Day Care Center, Inc., a Texas Nonprofit Corporation, wishes to enter into a lease agreement for a period of up to ten years, ending on December 31, 2018, as provided in the attached lease agreement;

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

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

SECTION 2. That the City Manager be and is hereby authorized, subject to all documents being properly completed and approved as to form and content by the City Attorney, to execute a lease of the City-owned property located at 1003 North East Street to Recreational Council - Jack and Jill Day Care Center, Inc., in accordance with the terms and provisions of the lease agreement attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
BILL MAGERS, MAYOR

LEASE AGREEMENT

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF GRAYSON §

THIS AGREEMENT is between the **CITY OF SHERMAN, TEXAS**, hereinafter called "Lessor or City", acting by and through its City Manager, and **RECREATIONAL COUNCIL - JACK AND JILL DAY CARE CENTER, INC.** a Texas Nonprofit Corporation, as that term is defined in Section 252.001 of the Texas Business Organization Code, that will be located at 1003 North East Street, Sherman Texas, hereinafter called "Lessee".

WHEREAS, the City formally engaged in the public service of providing daycare services at a reduced rate for qualifying families, but can no longer sustain the daycare services on the City's budget; and

WHEREAS, this lease agreement is to provide a means by which the Lessee can continue promoting the public purpose of the City by providing low-cost childcare services to members of the community who qualify for such services under guidelines substantially similar to those currently used by the City.

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein and the benefits to be realized by each party, and in further consideration of the benefit to the general public by the use of the facility as a daycare center, the parties hereto agree as follows:

That the said Lessor does by these presents lease and demise unto the said Lessee the property known as 1003 North East Street (hereinafter "leased premises") and also described as follows:

The building located at 1003 North East Street including the premises and appurtenances contained within the fenced area at that location, and contained within:

Veal and Alfords Addition, Blocks 2 and 3

TERMS OF LEASEHOLD

Lessor gives to Lessee a lease for the Leased Premises commencing on January 1, 2009 and terminating on December 31, 2009. The lease shall be renewable annually on January 1 of each year, for up to nine additional years, ending on December 31, 2018. Such request for renewal shall be made in writing no less than thirty (30) days prior to the expiration of the lease. Leased premises shall include the furnishings existing in the facility as of the date of commencement.

RENTALS AND FEES

As consideration for this lease, Lessee covenants and agrees to pay in advance yearly in the office of the City Manager of the City of Sherman, the sum of One Dollar (\$1.00) as rent per year. Each payment shall be made on or before the anniversary date of this agreement.

GENERAL PROVISIONS

1. **No use as a nuisance.** Lessee agrees that the leased premises shall not be used for any purpose that constitutes a nuisance or may be objectionable to the operational use of any adjoining land.
2. **Maintenance of leased premises.** Except as provided in Paragraph 9 of the General Provisions, Lessee agrees and covenants that Lessee will, at Lessee's own expense, maintain the leased premises, including lawn maintenance, and to keep such premises in good order and condition, except for reasonable wear and tear, and to make all repairs necessary to keep the land and structures from deteriorating in value or condition. Lessee also understands that if any of the operating systems require maintenance, repair, or replacement during the term of this Lease, Lessee agrees to conduct such maintenance, repair, or replacement at Lessee's expense. Prior to the commencement date, Lessor shall provide a maintenance report to the Lessee indicating the current condition of the operating systems of the premises, as well as an overall assessment of the property condition. This report shall be based on inspection by Lessor's personnel and on any other source that Lessor deems appropriate. Lessor makes no warranties of the condition of the premises and Lessee takes possession of the premises as-is.

-
3. **Utilities.** Lessee shall pay all charges for gas, electricity, telephone and other services and utilities used by Lessee on the leased premises during the term of this Lease except for water, sewer and solid waste services, which will be provided by the City. In the event that any utility or service provided to the leased premises is not separately metered, the City shall pay the amount due and separately invoice Lessee for Lessee's pro rata share of the charges. Lessee shall pay such all such utility charges prior to the due date. Lessee acknowledges that the leased premises are designed to provide standard building use electrical facilities and standard building lighting. Lessee shall not use any equipment or devices that utilizes excessive electrical energy or which may, in City's reasonable opinion, over load the wiring or otherwise interfere with electrical services.
 4. **No sublease.** Lessee specifically agrees not to assign or sublet the leased premises.
 5. **Breach of Lease.** Lessee agrees and covenants that, in the event of a breach by Lessee of any of the covenants contained herein, the Lessor may, at its option, declare this lease forfeited and terminated as to the balance of the terms thereof. Upon any such declaration, forfeiture or termination of this lease by Lessor, the Lessee agrees and covenants to give and declare immediate possession of the demised leased premises to the Lessor. Lessee further agrees and covenants that Lessee will, at the termination of this lease, peacefully deliver up to the Lessor the demised leased premises and appurtenances or additions thereto in as good condition and state of repair as same are now in, fair wear and tear only excepted, and vacate encumbered and in good tenantable order.
 6. **No illegal uses.** Lessee agrees and covenants that Lessee will not make or suffer any unlawful, improper, illegal or offensive use of the demised leased premises or any part thereof.
 7. **INDEMNIFICATION.** LESSEE COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND LESSOR, ITS OFFICERS, COUNCILMEMBERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS FOR DAMAGE OR INJURIES TO PERSONS OR PROPERTY ARISING OUT OF OR INCIDENTAL TO THE LEASING OF OR THE USE AND OCCUPANCY OF THE LEASED PREMISES BY LESSEE, AND LESSEE HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR INJURIES,

CLAIMS OR SUITS FOR DAMAGES TO PERSONS OR PROPERTY OF WHATEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, OCCURRING DURING THE TERM OF THIS LEASE BY REASON OF THE USE OR OCCUPANCY OF LEASED PREMISES BY LESSEE, ITS AGENTS, SERVANTS OR EMPLOYEES, CONTRACTORS OR SUB-CONTRACTORS.

8. Insurance. Lessee shall maintain the following insurance during the term of this Lease:

- a. Workers' Compensation as required by law.
- b. Comprehensive General Liability and Property Damage Insurance with minimum limits of \$2,000,000 for injury or death of any one person, \$2,000,000 for each occurrence, and \$2,000,000 for each occurrence of damage to or destruction of property, and \$4,000,000 aggregate coverage..
- c. Lessee shall obtain and remain in effect during the term of this lease, or any extension thereof, fire, property, and casualty insurance covering the leased premises and its contents to its full market value.
- d. Comprehensive Automobile and Truck Liability Insurance covering owned, hired, and non-owned vehicles, with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for property damage.

Lessee shall maintain said insurance with insurance underwriters licensed to do business in the State of Texas and approved by the Lessor. The insurance shall include coverage for any injuries associated with premise defects. Lessee shall furnish Lessor with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this lease, with the City of Sherman named as an additional insured, and shall deposit with Lessor copies of said policies. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policies by the insurer shall be delivered to Lessor thirty (30) days in advance of the effective date thereof.

9. **Inspection.** Lessee acknowledges that it has inspected the leased premises and accepts the same in its present condition WITH NO IMPLIED OR EXPRESS WARRANTIES AS TO ITS FITNESS.

10. **Easements and use of parking lot.** Lessee agrees and covenants that Lessor retains the use and enjoyment of all easements of whatsoever nature in and about or in whatever manner located on the above described demised premises. Specifically, but not withstanding the foregoing, Lessee understands that the

parking lot located on the leased premises will be used by patrons of the adjoining park and that Lessee will not enjoy exclusive use of the parking lot on the leased premises. In exchange for the mutual use of the parking lot by the parties, the City will maintain the parking lot located on the leased premises based solely on the City's discretion that the parking lot is in need of repair and that the necessary funds are available to repair the parking lot on the leased premises.

11. **Lessee's Alterations.** Lessee shall have the right, at its sole expense, from time to time, to redecorate the leased premises and to make such non-structural alterations and changes in such parts thereof as Lessee shall deem expedient or necessary for its purposes; provided, however, that such alterations and changes shall not be made until the City Manager or his designee has given prior written approval. Such alterations shall neither impair the structural soundness nor diminish the value of the leased premises. Lessee may not make structural alterations and additions to the leased premises.
12. **Exterior Signs.** Lessee shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect and thereafter, to repair or replace, if it shall so elect signs on any portion of the leased premises, providing that Lessee shall remove any such signs upon termination of this lease, and repair all damage occasioned thereby to the leased premises.
13. **Notice.** Any notice permitted or required under this Lease shall be given in writing and delivered by U.S. Certified Mail, Return Receipt Requested, postage prepaid, addressed to the party for whom it is intended as follows:

Notice to City:	City Manager
	City of Sherman
	220 W. Mulberry St.
	Sherman, TX 75090

Notice to Lessee:

Or to such other address as either such party may, by written notice, direct from time to time.

14. **Waiver of Charitable Immunity or Exemption.** If Lessee has or claims an immunity or exemption from and against liability for damages or injury to property or persons as a charitable association, corporation, entity, or individual enterprise, LESSEE HEREBY EXPRESSLY INTENTIONALLY AND KNOWINGLY WAIVES ITS RIGHTS TO PLEAD SUCH IMMUNITY OR EXEMPTION AGAINST LESSOR.

15. **Statement of Value.** Prior to the commencement date, Lessee shall provide to Lessor an appraisal indicating the annual market value of the lease agreement, the statement of which shall be prepared by a certified appraiser. Where applicable and at the discretion of the Lessor, this appraisal may be used as in-kind match in order to secure federal or state funding for the operation of childcare facilities within the City of Sherman.

TERMINATION OF SAID LEASE

1. **CANCELLATION BY LESSOR.** The lease shall be subject to cancellation by Lessor in the event Lessee shall:

- a. File a voluntary petition in bankruptcy;
- b. Abandon the leased premises;
- c. Make voluntary assignments for the benefit of creditors;
- d. Be in arrears in payment of the whole or any part of rent thirty (30) days after the time such payments become due and payable to Lessor;
- e. Default in the performance of any covenants and conditions required herein to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice by Lessee from Lessor of said default;
- f. Fail to operate the facilities in a manner consistent with the public purpose of the City, as described in the General Provisions.

Failure of the Lessor to declare this lease terminated upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of the Lessor to cancel this lease by reason of any subsequent violations of the terms hereunder.

All the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto, except to the extent that such assignments are forbidden by this lease.

By their signatures below, the individuals represent that they have reviewed this Lease Agreement with their attorney and that the individuals have the express authority from their organizations to enter into this Lease.

Section or other headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

This lease agreement shall be construed in accordance with the laws of the State of Texas, and shall be deemed performable and enforceable in the State of Texas, with venue in Grayson County, Texas.

IN WITNESS WHEREOF, the parties have hereunto set their hands at Sherman, Grayson County, Texas, effective this the ____ day of _____, 2009.

LESSOR:

CITY OF SHERMAN, TEXAS

BY:

George Olson, City Manager

Attest:

Linda Ashby, City Clerk

Approved as to form only:

Doreen E. McGookey
City Attorney

LESSEE:

RECREATIONAL COUNCIL - JACK
AND JILL DAY CARE CENTER, INC. a
Texas Nonprofit Corporation

BY:

Title:

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared _____, 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 RECREATIONAL COUNCIL - JACK AND JILL DAY CARE CENTER, INC. a Texas Nonprofit Corporation, and that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and can bind such Unincorporated Nonprofit Association to this Lease Agreement.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2008.

NOTARY PUBLIC, STATE OF TEXAS



SHERMAN DAY CARE FACILITY
1003 NORTH EAST STREET



Scale: 1 inch = 1000 feet



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.4

*** RESOLUTION NO. 5272**

Authorizing Execution of a Child Care Local Match Contribution Agreement with Workforce Solutions Texoma for the Period of October 1, 2008 through December 31, 2008

Issue

To consider approval of the Local Match Contribution Agreement between Workforce Solutions Texoma and the City of Sherman through the end of the 2008 calendar year

Background

The City of Sherman has participated in various state and federal agreements since the 1970's to provide matching funds to support the City's Day Care Program. Since 1996, the City of Sherman has had an agreement with our local Workforce Solutions Texoma to access federal funding through the Texas Workforce Commission in order to provide day care assistance to low-income working or training families while delivering a strong developmental pre-school program. Workforce Solutions Texoma is requesting that the City certify as match \$50,000.00 that will bring in \$42,130.00 federal dollars to be used to pay for child care at the City of Sherman Day Care Center and an additional \$58,870.00 federal dollars for direct child care services for other children residing in Sherman. This grant will only run through December 31, 2008, the date on which the City will cease daycare operations.

Origination

Workforce Solutions Texoma

Financial Consideration

This year's match is \$50,000.00 and has been allocated in the City's FY 2008-2009 budget accordingly.

Staff Recommendation

It is recommended that the Sherman City Council approve the resolution authorizing the City Manager to execute this agreement with Workforce Solutions Texoma.

Alternatives

Deny the request for matching funds

Attachments

Resolution No. 5272

Child Care Local Match Contribution Agreement

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5272

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CHILD CARE LOCAL MATCH CONTRIBUTION AGREEMENT WITH WORKFORCE SOLUTIONS TEXOMA FOR THE PERIOD OF OCTOBER 1, 2008 THROUGH DECEMBER 31, 2008; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute the Child Care Local Match Contribution Agreement with Workforce Solutions Texoma, certifying that local matching dollars are budgeted and designated solely for day care services for children of low income families of the City of Sherman, a copy of which is attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**Child Care Local Match Contribution Agreement
Local Workforce Development Board**

NAME OF CONTRIBUTOR	City of Sherman
PLEDGED LOCAL MATCH AMOUNT	
DONATION	
TRANSFER	
CERTIFICATION OF EXPENDITURES	\$50,000

The contributor identified above pledges the local funds as indicated in order for the Texas Workforce Commission (Commission) to draw down additional federal funds. Both the local and matched federal funds will be used for the provision of allowable child care services or activities in the Workforce Solutions Texoma (name of local workforce development area (workforce area)).

All parties understand and agree that (1) the appropriate Federal Medical Assistance Percentage for Texas will be used to determine the amount of federal funds matched as a result of this local contribution; and (2) this agreement is contingent upon acceptance of this agreement in an open meeting by a majority of the Commission.

SIGNATURES: The person signing this agreement on behalf of the contributor or the Board hereby warrants that he or she has been fully authorized to:

- execute this agreement on behalf of his or her organization; and
- validly and legally bind his or her organization to all the terms, performances, and provisions of this agreement.

For the faithful performance of this agreement as delineated, the parties below affix their signatures and bind their agencies effective 10/1/08 and continuing through 12/31/08.

	<u>City of Sherman</u> CONTRIBUTOR	<u>WORKFORCE SOLUTIONS TEXOMA</u> LOCAL WORKFORCE DEVELOPMENT BOARD
Signature		
Printed Name	George Olson	Janie Bates
Title	City Manager	Executive Director
E-mail Address	georgo@ci.sherman.tx.us	Janie.bates@twc.state.tx.us

**Child Care Local Match Contribution Agreement
GENERAL AGREEMENT TERMS**

SECTION 1: Legal Authority

In the State of Texas, the Texas Workforce Commission (Commission) is designated as the lead agency for the administration of Child Care and Development Funds (CCDF) available under Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (42 U.S.C. §9801, et seq.).

Pursuant to federal regulations (45 Code of Federal Regulations §§ 98 and 99), the Commission is the CCDF Lead Agency for Texas and the entity designated to accept donated funds from any private entity or transferred funds from any public entity or certifications of expenditures from public entities that may be used as match for available federal funds. As such, the terms of this agreement are contingent upon the certification of private donations (if applicable) by the Commission and the final acceptance of this agreement in an open meeting by a majority of the Commission.

SECTION 2: The contributor, by executing this agreement, certifies that:

- a. It is not currently a party to an administrative proceeding pending before the Commission. If the contributor should become a party to an administrative proceeding before the Commission prior to acceptance of this agreement, this agreement shall be void.
- b. The contributor, if it is a for-profit entity, does not currently:
 - i) have a contractual relationship with the Commission for services or products of a value of \$50,000.00 or greater; or
 - ii) have a bid before the Commission for such a contract, except for a contract or bid that relates solely to providing child care services.
- c. Upon execution of this agreement, the contributor shall not enter into a contract with the Commission or submit a bid in response to a request for proposal issued by the Commission before the first anniversary of the date on which the Commission accepted a donation from the contributor unless the contract or bid relates only to providing child care services.

SECTION 3: The contributor agrees as follows:

- a. To remit to the Commission the pledged local share in accordance with Item E, Donation/Transfer Payment(s) and Public Entity Certification of Expenditures Schedule.
- b. For donations and transfers of funds, checks remitted by the contributor must be made payable to the **Texas Workforce Commission or to the Board and submitted to the Commission through the Board.**
- c. To keep, and make available to the Commission or the Board upon request, records adequate to show that the contributed funds put forth in this agreement are eligible for matching purposes.

-
- d. When certifying expenditures of public funds as the local match, to provide the Board and Commission with a statement that certifies the expenditures and includes information detailing services delivered and expenditures in the format and within the time frames prescribed by the Board.
 - e. To certify that the expenditures used as child care match are eligible for federal match, and were not used to match other federal funds.
 - f. Donations from private entities:
 - (i) are donated without any restriction that would require their use for a specific individual, organization, facility, or institution;
 - (ii) do not revert to the donor's facility or use;
 - (iii) are not used to match other Federal Funds;
 - (iv) shall be certified both by the donor and by the Commission;
 - (v) shall be subject to the audit requirements in 45 CFR §98.65; and
 - (vi) shall provide the Board and the Commission, upon request, data needed for federal reporting purposes.

SECTION 4: The Board agrees as follows:

- a. To use the funds donated or transferred by the contributor, and the resulting federal funds, for child care services within the workforce area consistent with the intent of this agreement.
- b. To ensure that child care services provided by funding made available through this agreement are only those provided in accordance with all applicable local, State, and federal laws and regulations.
- c. To ensure that certified public expenditures (if applicable) represent expenditures eligible for federal match; were not used to match other federal funds; and were not federal funds unless authorized by federal law to be used to match other federal funds.
- d. To ensure that donations from private entities:
 - (i) are donated without any restriction that would require their use for a specific individual, organization, facility, or institution;
 - (ii) do not revert to the donor's facility or use;
 - (iii) are not used to match other federal funds;
 - (iv) shall be certified both by the donor and by the Commission;
 - (v) shall be subject to the audit requirements in 45 CFR 98.65; and
 - (vi) shall provide the Commission, upon request, data needed for federal reporting purposes.
- e. To inform the contributor of the time frames and procedures for remitting payment of pledged funds or submitting reports delineating certification of expenditures during the contribution period.

SECTION 5: The Board and the contributor agree as follows:

- a. That performance under this agreement is contingent upon the certification of private donations (if applicable) and the final acceptance of this agreement in an open meeting by a majority of the Commission.
- b. "Child Care Local Match Contribution Information" is incorporated by reference.
- c. To comply with federal regulations in 45 CFR 98.53 relating to matching fund requirements and 98.54 relating to restrictions on the use of funds.
- d. To submit a certification of expenditures report, certifying that the child care related expenditures were incurred according to regulations and policies to draw down such federal matching funds, and have not already been used as match for any other federal matching program.
- e. Other agreed-upon local operating plans and procedures used to implement and carry out the terms and intent of this agreement must comply with Board policies and procedures.
- f. This agreement for the contributor to provide matching funds is contingent upon the availability and amount of unmatched federal Child Care and Development Fund appropriations. If such funds are otherwise unavailable or reduced, written notice of termination, payment suspension, or funding reduction will be given by any party.
- g. These terms and conditions may be amended by written agreement of all parties at any time prior to the current agreement end date, as indicated on page one of this agreement, contingent upon acceptance of the amended terms and conditions by all parties.
- h. If federal, State, or local laws or other requirements are amended or judicially interpreted so as to render continued fulfillment of this agreement, on the part of any of the parties, substantially unreasonable or impossible, and if the parties should be unable to agree upon any amendment that would therefore be needed to enable the substantial continuation of the services contemplated herein, the parties shall be discharged from any further obligations created under the terms of this agreement, except for the equitable settlement of the respective accrued interests or obligations incurred up to the date of termination.
- i. This agreement may be terminated by any party, for any reason, upon written notification to the other parties of at least 30 days in advance of such termination. Such written notification will be sent to the contributor's address as specified on Page 5 of this agreement.

CHILD CARE LOCAL MATCH CONTRIBUTION INFORMATION

A. BOARD INFORMATION:

Board Name: Workforce Solutions Texoma		
Board Address: 5904 Texoma Parkway, Sherman, TX 75090		
Board Staff – Contact Name: Rachel Mitchell	Phone: 903-957-7408	Fax: 903-957-7413
E-mail Address: rachel.mitchell@twc.state.tx.us		

B. CONTRIBUTOR INFORMATION:

Contributor Name: City of Sherman		
Contributor Address: P.O. Box 1106 Sherman, TX 75091		
Type of Entity: public		
Name of Fiscal Agent (if applicable):		N/A
Vendor ID Number or Federal Employer ID Number of Contributor or Contributor's Fiscal Agent:		756000669
Contributor Contact Name: Ruth Gray	Phone: 903-892-7251	Fax: 903-892-7018
E-mail Address: ruthg@ci.sherman.tx.us		

C. ORIGINATING AGREEMENT INFORMATION:

Type of Contribution: ☐ Donation (Private Entity) ☐ Transfer (Public Entity) ☒ Certification (Public Entity)
Pledged Local Match Amount: \$50,000
Program Number: 03111C02
Did a Board Member assist in securing this local match agreement? ☐ YES ☒ NO
• If YES, Name of Board Member:
• How did the Board Member assist?

D. UTILIZATION OF FUNDS DESCRIPTION:

The planned utilization of funds, including planned amounts, is described below. Utilization of funds must be in compliance with the State's Child Care and Development Fund Plan in effect for the contract period.

1. **Cash Contributions:** The description below addresses the Board's planned utilization of local and federal funds resulting from donation and transfer of funds agreements.

	Description	Planned Funding (Local and Federal)
Direct Child Care		\$
Child Care Quality Improvement	☐ Local-level support to promote consumer education provided by 2-1-1 Texas ☐ Activities to support school readiness, early learning and literacy ☐ Collaborative Reading Initiatives	\$

2. **Certification of Expenditures:** The descriptions below describe (1) the allowable child care services or activities that resulted in local certified expenditures, the source of the local funds and (2) the Board's planned utilization of the matched federal funds resulting from the certification of expenditures.

	Description	Funding
Direct Child Care	1. Expenditures certified by the contributor resulted from services provided at: City of Sherman Day Care Source of Local Funds: city tax dollars	Amount of funding: (Local Share) \$ 50,000
Direct Child Care	2. Board's planned use of federal funds: direct child care for children residing in Sherman. \$42,130 for the City of Sherman Day Care and \$58,870 to be used for families residing in Sherman needing child care assistance	Amount of funding: (Federal Share) \$ 100,000
Child Care Quality Improvement	1. Expenditures certified resulted from the following activities: ☐ Consumer Education ☐ Information and Referral Services ☐ Professional development activities (i.e. Training, education or technical assistance to providers, including resources) ☐ Improving salaries or other compensation for providers of CCDF-funded child care ☐ Activities to support early language, literacy and numeracy development ☐ Activities to support inclusive child care ☐ Collaborative Reading Initiatives ☐ Other – Describe in detail the activities: Source of Local Funds:	Amount of funding: (Local Share) \$
Child Care Quality Improvement	2. Board's planned use of federal funds: ☐ Local-level support to promote consumer education provided by 2-1-1 Texas ☐ Activities to support school readiness, early learning and literacy ☐ Collaborative Reading Initiatives	Amount of funding: (Federal Share) \$

E. DONATION/TRANSFER PAYMENT(S) AND CERTIFICATION OF EXPENDITURES SCHEDULE:

In compliance with Section 3 (a) of this agreement, the contributor will remit payment or reports of actual expenditures in accordance with the completed schedule below.

1. Donation/Transfer Payment(s) (Local Funds)

	Donation/Transfer Date	Actual Amount
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
TOTAL		

❖ Donation/Transfer Date must be within the contract begin and end dates.

2. Public Entity Certification of Expenditures (Local Funds):

	Certification Period	Reporting Date *	Planned Amount of Expenditures
1.	From 10/1/08 to 12/31/08	2/28/09	\$50,000
2.	From to		
3.	From to		
4.	From to		
5.	From to		
6.	From to		
7.	From to		
8.	From to		
9.	From to		
10.	From to		
11.	From to		
12.	From to		
TOTAL			\$50,000

❖ Certification period must be within the contract begin and end dates.

❖ Explanation is required below if reporting dates are outside the contract end date.

Completed original, signed forms must be sent to Contract Management, 101 East 15th Street, Room 424T, Austin, Texas 78778-0001. Please call TWC Contract Manager, if you have any questions. An individual may receive and review information that the Texas Workforce Commission collects, by sending an e-mail to open.records@twc.state.tx.us or writing to TWC Open Records Unit, 101 East 15th Street, Room 264, Austin, Texas 78778-0001.

**CERTIFICATION OF EXPENDITURES
BY A PUBLIC ENTITY**

Name of Contributing Public Entity: City of Sherman

The public entity named above certifies expenditures in the amount of \$50,000 to be used as state matching funds to draw down available federal matching funds as authorized in the Child Care and Development Fund regulations at 45 C.F.R. §98.53.

By signing below, the public entity named above certifies that the funds specified above:

- 1) are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds;
- 2) are not used to match other federal funds;
- 3) represent expenditures eligible for federal match; and
- 4) does not represent expenditures from local pre-kindergarten programs.

Signature of authorized agent: _____

Printed name of authorized agent: George Olson

Title of authorized agent: City Manager



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.5

*** RESOLUTION NO. 5273**

**Authorizing the City Manager to Execute Contracts with the Sherman Council
for the Arts & Humanities, Inc. and the Friends of the Red River Historical Museum
(aka Red River Historical Museum)**

Issue

To distribute a portion of the Hotel-Motel Occupancy Tax funds received by the City of Sherman among the Sherman Council for the Arts & Humanities, Inc. (SCAH) and the Friends of the Red River Historical Museum (aka Red River Historical Museum)

Background

At the 2008 Budget Workshop, the City Council allocated \$117,803.00 of the Hotel-Motel Occupancy Tax Fund dollars to be used to promote tourism through SCAH and the Museum, as follows:

- SCAH - \$35,303.00
- Red River Historical Museum - \$82,500.00

Origination

Mayor and City Council

Financial Consideration

The Council approved funding of \$117,803.00 for the fiscal year 2008-2009 budget, with funding provided from the Hotel-Motel Occupancy Tax Fund revenues.

Staff Recommendation

The staff recommends granting the City Manager authority to execute contracts with the two entities in the funding amounts established by the Council.

Alternatives

As directed by the City Council

Attachments

Resolution No. 5273

Contracts (2)

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5273

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS WITH THE SHERMAN COUNCIL FOR THE ARTS & HUMANITIES, INC. AND THE FRIENDS OF THE RED RIVER HISTORICAL MUSEUM (AKA RED RIVER HISTORICAL MUSEUM); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, Chapter 351 of the Texas Tax Code authorizes the City to collect and levy an occupancy tax on hotels and motels; and

WHEREAS, said chapter specifies the purposes for which such tax receipts may be utilized; and

WHEREAS, such stated purposes include the promotion of tourism, the advertisement of the City and its vicinity, and the promotion and improvement of the arts and humanities within the community.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the interim City Attorney and subject to budget approval, to execute contracts with the Sherman Council for the Arts & Humanities, Inc. and the Friends of the Red River Historical Museum (aka Red River Historical Museum).

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

CONTRACT FOR ARTS AND HUMANITIES

THIS CONTRACT is made and entered by and between the **CITY OF SHERMAN**, a municipal corporation of the State of Texas (hereinafter called "CITY") and the **SHERMAN COUNCIL FOR THE ARTS & HUMANITIES, INC.**, a non-profit corporation of the State of Texas (hereafter called "ARTS COUNCIL").

WHEREAS, Chapter 351 of the Texas Tax Code authorizes a city to levy and collect an occupancy tax on hotels and motels, and

WHEREAS, CITY levies and collects a tax equal to seven percent (7%) of the consideration paid by occupants of hotels and motels, and

WHEREAS, CITY and ARTS COUNCIL desire to promote the arts and humanities in City of Sherman and its vicinity;

NOW, THEREFORE, CITY and ARTS COUNCIL agree as follows:

I.

Amount Funded by the City

CITY agrees to reimburse ARTS COUNCIL not to exceed Thirty-Five Thousand, Three Hundred Three Dollars and No Cents (\$35,303.00) of actual expenditures used in the promotion of the arts and humanities in Sherman and its surrounding area. This amount shall be paid in four (4) installments on the final execution of this agreement, October 15, January 15, April 15, and June 15, 2009. The Thirty-Five Thousand, Three Hundred Three Dollars and No Cents (\$35,303.00) shall be collected under the Hotel/Motel Occupancy Tax of the CITY.

II.

Expenditure of Money

ARTS COUNCIL shall spend no money received by it pursuant to this agreement that does not strictly conform to the requirements, intent and purposes as set forth in the Texas Tax Code, Chapter 351, Section 351.101(a)(1)-(7), as amended, and such statutorily authorized administrative expenses, together with the Texas Attorney General opinions interpreting Section 351.101 of the Texas Tax Code. Specifically, ARTS COUNCIL agrees to use such hotel tax revenues solely for the purposes promoting Tourism and the convention and hotel industry and

will use the revenues solely for the permissible uses listed in section 351.101(a) of the Texas Tax Code.

III.

Budget

ARTS COUNCIL shall prepare a budget pertaining to the funds to be administered under this contract and shall provide said budget to CITY. The detailed budget shall be presented to the Sherman City Council no later than the 30th day of September, 2008. The budget shall individually list each and every item, event, activity or program for which any part of the revenues from the hotel tax are to be spent, as required in Section 351.108 of the Texas Tax Code, as amended. No hotel tax revenue expenditures shall occur prior to it being properly identified in the budget. Any changes, amendments, additions or deletions to this budget shall be approved by the Sherman City Council before such changes, amendments, additions or deletions shall take place.

Receipt or acceptance of ART COUNCIL'S budget, or any changes to it, by the Sherman City Council shall not act as or be deemed to be approval of the items listed by ARTS COUNCIL to receive hotel tax revenues or approval that such expenditures comply with Section 351.101 of the Texas Tax Code.

IV.

Quarterly Reports

ARTS COUNCIL shall furnish CITY quarterly financial reports on arts and humanities activities which show all actual expenditures whether those expenditures are budgeted or not from records maintained pursuant to Section 351.108(a) of the Texas Tax Code. The report shall compare actual expenditures to budgeted expenditures and to actual expenditures from the prior year. The report shall also provide an explanation of how the expenditure of such monies complied with Section 351.101 of the Texas Tax Code.

The ARTS COUNCIL shall also provide a quarterly report of activities in arts and humanities to CITY. Each quarterly financial report and each quarterly report of activities shall be presented to the office of the City Manager no later than the end of the month immediately

following each calendar quarter. Further, ARTS COUNCIL shall provide to CITY a copy of Form 990 submitted to the Internal Revenue Service.

V.

Term of Agreement

This agreement shall be for the term of one (1) year, beginning October 1, 2008 through September 30, 2009, unless the Hotel/Motel Occupancy Tax Ordinances of the City of Sherman are repealed or amended within such term, or the failure of ARTS COUNCIL to conditions herein.

VI.

Termination of Agreement

Notwithstanding the above, CITY and ARTS COUNCIL retain the right to cancel this agreement at any time, with or without cause and without liability or expense, by the giving of sixty (60) days notice of such intention to cancel. Notice to cancel by CITY shall be in writing, signed by the City Manager with prior City Council approval. Notice to cancel by ARTS COUNCIL shall be in writing, signed by the ARTS COUNCIL President with prior ARTS COUNCIL Board of Directors approval.

VII.

Renewal of Agreement

CITY and ARTS COUNCIL shall consider renewal of this agreement in subsequent years. ARTS COUNCIL agrees to provide a plan of work in conjunction with any request to renew this agreement.

VIII.

General Contract Terms

Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of the Agreement.

Construction of Agreement. This is a negotiated Agreement. If any part of this Agreement is in dispute, the parties stipulate that the Agreement shall not be construed more favorably for either party.

Amendments and Choice of Law/Venue. This agreement may not be changed, varied, or altered except by an instrument in writing and duly executed on behalf of CITY and by ARTS COUNCIL. This agreement shall be construed in accordance with the laws of the State of Texas, and shall be deemed performable and enforceable in the State of Texas, with venue in Grayson County, Texas.

IN TESTIMONY WHEREOF, this instrument, in duplicate originals of equal force, has been executed on behalf of the Sherman Council for the Arts & Humanities, Inc. and on behalf of the City of Sherman, by its City Manager and attested by its City Clerk, effective the 1st day of October, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
GEORGE OLSON, CITY MANAGER

DATE: _____

ATTEST:

LINDA ASHBY, CITY CLERK



**SHERMAN COUNCIL FOR THE
ARTS & HUMANITIES, INC.**

APPROVED:

DATE: 9/30/2008

ATTEST:

Interim City Attorney

BY: _____

TITLE: _____

**CONTRACT WITH THE FRIENDS OF THE RED RIVER HISTORICAL
MUSEUM**

**THE STATE OF TEXAS §
COUNTY OF GRAYSON § **KNOW ALL MEN BY THESE PRESENTS:**
CITY OF SHERMAN §**

THIS AGREEMENT is made and entered by and between the CITY OF SHERMAN, a municipal corporation of the State of Texas (hereinafter called "CITY"), and the FRIENDS OF THE RED RIVER HISTORICAL MUSEUM (aka RED RIVER HISTORICAL MUSEUM) a non-profit corporation of the State of Texas (hereinafter called "MUSEUM") for the limited purpose of providing funds to the MUSEUM for a twelve (12) month period;

WHEREAS, Chapter 351 of the Texas Property Tax Code authorizes a city to levy and collect an occupancy tax on hotels and motels; and

WHEREAS, CITY levies and collects a tax equal to seven percent (7%) of the consideration paid by occupants of hotels and motels; and

WHEREAS, CITY desires to promote tourism, advertise the city and its vicinity, and promote and improve the arts within the community by participating and assisting in the operation of the Red River Historical Museum; and

WHEREAS, MUSEUM shall consist of the property located at 315 South Walnut Street in the City of Sherman, Grayson County, Texas;

NOW, THEREFORE, in consideration of the mutual covenants and the payments herein, the CITY and MUSEUM agree as follows:

I.

During the period of October 1, 2008, through September 30, 2009, the CITY agrees to pay to MUSEUM Eighty-two Thousand and Five Hundred Dollars and No Cents (\$82,500.00) collected under the Hotel/Motel Occupancy Tax of the CITY, and MUSEUM agrees that all funds are to be used entirely for the operation and maintenance of the MUSEUM. The Eighty-two Thousand and Five Hundred Dollars and No Cents (\$82,500.00) paid to the MUSEUM for the time period of October 1, 2008, through September 30, 2009, represents the entire amount budgeted for this purpose by the CITY for the fiscal year of 2008-2009. The Eighty-two Thousand and Five Hundred Dollars

and No Cents (\$82,500.00) shall be paid in four (4) installments on the final execution of this agreement on October 15, 2008, January 15, April 15, and June 15 of 2009. Payments will be based on actual operation and maintenance expenditures and made strictly on a reimbursement basis. Reimbursement will be based on copies of actual invoices or other proof of payment as requested by the City. At that time, the MUSEUM shall also provide an explanation of how the expenditure of such monies complied with Section 351.101 of the Texas Tax Code.

Operations of the MUSEUM are to include the administration of all personnel associated with the MUSEUM, the management of all fund-raising activities in connection with the MUSEUM, the selection, preparation, and display of exhibits of artifacts, the interface with members of the general public concerning all matters related to the MUSEUM, and any other duties that could reasonably be construed as the operation of the MUSEUM.

II.

MUSEUM agrees that any money received under this contract will only be used for purposes specified in Chapter 351 of the Texas and will not use any money received in this contract in any manner that does not strictly comply with the requirements, intent and purposes as set forth in the Texas Tax Code, Chapter 351, Section 351.101(a)(1)-(7), as amended, and such statutorily authorized administrative expenses, together with the Texas Attorney General opinions interpreting Section 351.101 of the Texas Tax Code. A copy of Section 351.101 of the Texas Tax Code is attached as Exhibit A and incorporated into this Contract for all purposes. Specifically, MUSEUM agrees to use such hotel tax revenues solely for the purposes promoting tourism and the convention and hotel industry and will use the revenues solely for the permissible uses listed in section 351.101(a) of the Texas Tax Code.

III.

MUSEUM represents that it has prepared a proposed budget to be administered under this Contract to the Sherman City Council for the fiscal year of 2008-2009.

IV.

It is understood and agreed that this agreement is intended for the purpose of providing an agency for the administration of funds collected by the CITY under the

provisions of the Hotel-Motel Occupancy Tax Ordinance of said CITY, and that CITY retains its legislative prerogative to alter, repeal, or otherwise amend such ordinance at any time.

V.

MUSEUM agrees and covenants that, in the event of a breach by MUSEUM of any of the covenants contained herein as determined by CITY in its sole discretion, CITY may, at its option, declare this agreement immediately forfeited and terminated as to the balance of the terms thereof.

VI.

The parties agree that the term of this Contract is for October 1, 2008, to September 30, 2009.

VII.

Notwithstanding the above, CITY and MUSEUM retain the right to cancel this agreement at any time, with or without cause and without liability or expense, by the giving of twenty (20) days notice of such intention to cancel. Notice to cancel by CITY shall be in writing, signed by the City Manager with prior City Council approval. Notice to cancel by MUSEUM shall be in writing, signed by the MUSEUM President with prior MUSEUM Board of Directors approval.

VIII.

This is a negotiated Agreement. If any part of this Agreement is in dispute, the parties stipulate that the Agreement shall not be construed more favorably for either party.

This agreement may not be changed, varied, or altered except by an instrument in writing and duly executed on behalf of CITY and by MUSEUM. Every obligation arising from this agreement shall be performable in Grayson County, Texas. Venue for any legal disputes arising from this Contract shall be Grayson County, Texas and governed by the laws of the State of Texas.

IN TESTIMONY WHEREOF, this instrument, in duplicate originals of equal force, has been executed on behalf of the Friends of the Red River Historical Museum of

Sherman (aka Red River Historical Museum) and on behalf of the City of Sherman by its
City Manager and attested by its City Clerk, effective on the ____ day of October, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
George Olson City Manager

ATTEST:

Linda Ashby, City Clerk

APPROVED:

Interim City Attorney

**FRIENDS OF THE RED RIVER
HISTORICAL MUSEUM
(aka RED RIVER HISTORICAL MUSEUM)
a NON-PROFIT CORPORATION**

(CORPORATE SEAL)

BY: _____

TITLE: _____



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.6

*** RESOLUTION NO. 5274**

**Appointing and Authorizing the Execution of an Agreement with
Pattillo, Brown & Hill, L.L.P. to Perform the Fiscal Year 2008 Audit**

Issue

Appointment of Pattillo, Brown & Hill, L.L.P. (PBH) of Waco, Texas to perform the annual audit for the fiscal year (FY) ending September 30, 2008

Background

Last year, the Council approved the appointment of PBH as the City's independent auditors. This agreement allowed for up to four (4) automatic renewals of the agreement for these services. The staff and audit committee were pleased with the performance of the firm last year and are recommending re-appointment of PBH for the FY 2008 audit.

Origination

Council Audit Committee

Robby Hefton, Assistant City Manager/CFO

Financial Consideration

The fee estimate for these services is \$41,500, with SEDCO paying \$2,500 and the City paying \$39,000. Funds have been allocated in the 2008-2009 budget for this expenditure.

Staff Recommendation

The staff recommends the City Council accept the recommendation of the Council Audit Committee to appoint Pattillo, Brown & Hill, L.L.P. to perform the annual audit for the fiscal year ending September 30, 2008.

Alternatives

The City Council could instruct the staff to select another firm that provided a proposal.

Attachments

Resolution No. 5274

Memo to Audit Committee

Engagement Letter

Prepared by:

Robby Hefton, Assistant City Manager/CFO

Approved by:

George Olson, City Manager

RESOLUTION NO. 5274

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPOINTING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH PATTILLO, BROWN & HILL, L.L.P. TO PERFORM THE FISCAL YEAR 2008 AUDIT; 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 Council appoints Pattillo, Brown & Hill, L.L.P. to perform the annual audit for the City of Sherman for fiscal year ending September 30, 2008.

SECTION 2. That the City Manager be and is hereby authorized and directed, subject to all agreement documents being properly completed and approved as to form and content by the City Attorney, to execute a contract with Pattillo, Brown & Hill, L.L.P. to perform the annual audit for the City of Sherman for fiscal year ending September 30, 2008.

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

memorandum

DATE: Thursday, October 2, 2008

TO: The Council Audit Committee
The Honorable Cary Wacker, Deputy Mayor
The Honorable Chip Adami, Council Member
The Honorable Joe Smith, Council Member

MC: The Honorable Mayor Bill Magers and Members of the Sherman City Council
George Olson, City Manager

FROM: Robby Hefton, Assistant City Manager/Chief Financial Officer 

SUBJECT: Appointment of Independent Auditor
for Fiscal Year Ended September 30, 2008 Audit

Last year, at the recommendation of the staff, the audit committee appointed Pattillo, Brown, & Hill, LLP (Pattillo), located in Waco, Texas to perform independent audit for the year ended September 30, 2007. As part of this contract, the City is allowed to automatically renew these services annually for up to four (4) renewals.

The staff was pleased with the work product and working relationship with Patillo last year and is recommending their reappointment for the audit of the City and SEDCO for the year ended September 30, 2008. The fee estimate for these services totals \$41,500, including the audit of SEDCO. This represents a 3.75% increase over the prior year fee of \$40,000, the percentage increase of which is substantially less than the Dallas-Fort Worth inflation index of nearly 6%.

Audit field work is expected to begin in November and the audit is expected to be completed and the report draft received by January 31, 2009. Re-appointment of Pattillo is scheduled for the October 6th Council meeting. If you have any questions prior to the Council meeting, please let me know.

RH:pc



PBH
PATTILLO, BROWN & HILL, L.L.P.
CERTIFIED PUBLIC ACCOUNTANTS ■ BUSINESS CONSULTANTS

July 29, 2008

City of Sherman
Attention: Mary Lawrence, Controller
405 North Rusk Street
Sherman, Texas 75091-1106

Ladies and Gentlemen:

We are pleased to confirm our understanding of the services we are to provide the City of Sherman for the year ended September 30, 2008. We will audit the financial statements of the governmental activities, the business-type activities, the discretely presented component unit (Sherman Economic Development Corporation), each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements, of the City of Sherman as of and for the year ended September 30, 2008. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany the City of Sherman's basic financial statements. As part of our engagement, we will apply certain limited procedures to the City of Sherman's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1) Management's Discussion and Analysis.

Supplementary information other than RSI also accompanies the City of Sherman's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on it in relation to the basic financial statements:

1) Schedule of expenditures of federal awards.

2) Combining fund financial statements.

The following additional information accompanying the basic financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will disclaim an opinion.

1) Statistical data.

Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. The objective also includes reporting on—

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

The reports on internal control and compliance will each include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within the entity specific legislative or regulatory bodies, federal awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Our audit will be conducted in accordance with generally accepted auditing standards established by the Auditing Standards Board (United States); the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, and will include tests of accounting records, a determination of major program(s) in accordance with OMB Circular A-133, and other procedures we consider necessary to enable us to express such opinions and to render the required reports. If our opinions on the financial statements or the Single Audit compliance opinions are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audit, we will prepare a draft of your financial statements, schedule of expenditures of federal awards, and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements, schedule of expenditures of federal awards, and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any non-audit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the discretely presented component unit (Sherman Economic Development Corporation), each major fund, and the aggregate remaining fund information of the City of Sherman and the respective changes in financial position and, where applicable, cash flows in conformity with U.S. generally accepted accounting principles; and for federal award program compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us, including identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous audits or other engagements or studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits or other engagements or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors' is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Controls

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by OMB Circular A-133, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and OMB Circular A-133.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City of Sherman's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

OMB Circular A-133 requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Circular A-133 Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City of Sherman's major programs. The purpose of these procedures will be to express an opinion on the City of Sherman's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to OMB Circular A-133.

Audit Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of and sign the Data Collection Form that summarizes our audit findings. We will provide copies of our reports to the City; however, it is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the designated federal clearinghouse and, if appropriate, to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audits. At the conclusion of the engagement, we will provide information to management as to where the reporting packages should be submitted and the number to submit.

The audit documentation for this engagement is the property of Pattillo, Brown & Hill, L.L.P. and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to a federal agency providing direct or indirect funding or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Pattillo, Brown & Hill, L.L.P. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

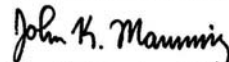
The audit documentation for this engagement will be retained for a minimum of five years after the report release or for any additional period requested. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

John K. Manning is the engagement partner and is responsible for supervising the engagement and signing the report. Our fee for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.) except that we agree that our gross fee, including expenses, will not exceed \$39,000. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report(s). You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our 2007 peer review letter of comment accompanies this letter.

We appreciate the opportunity to be of service to the City of Sherman and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,
Pattillo, Brown & Hill, L.L.P.


John K. Manning, CPA

JKM/ar

RESPONSE:

This letter correctly sets forth the understanding of the City of Sherman.

By: _____

Title: _____

Date: _____



EUBANK & BETTS

A Professional Limited Liability Company

CERTIFIED PUBLIC ACCOUNTANTS

3820 I-55 North, Suite 100 (39211) P.O. Box 16090

Jackson, Mississippi 39236-6090

Telephone 601-987-4300 Fax 601-987-4314

E-mail: firm@eubankbetts.com

Website: www.eubankbetts.com

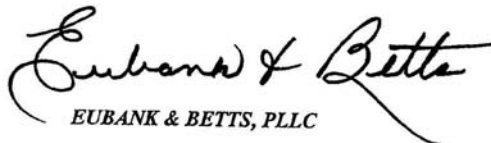
November 15, 2007

*To the Partners of
Pattillo, Brown & Hill, LLP
and the Center for Public Company Audit Firms Peer Review Committee*

We have reviewed the system of quality control for the accounting and auditing practice of **Pattillo, Brown & Hill, LLP** (the firm) applicable to non-SEC issuers in effect for the year ended May 31, 2007. The firm's accounting and auditing practice applicable to SEC issuers was not reviewed by us since the Public Company Accounting Oversight Board (PCAOB) is responsible for inspecting that portion of the firm's accounting and auditing practice in accordance with PCAOB requirements. A system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide it with reasonable assurance of complying with professional standards. The elements of quality control are described in the Statements on Quality Control Standards issued by the American Institute of Certified Public Accountants (the AICPA). The design of the system, and compliance with it, are the responsibilities of the firm. Our responsibility is to express an opinion on the design of the system, and the firm's compliance with that system based on our review.

Our review was conducted in accordance with standards established by the Peer Review Committee of the Center for Public Company Audit Firms and included procedures to plan and perform the review that are summarized in the attached description of the peer review process. Our review would not necessarily disclose all weaknesses in the system of quality control or all instances of lack of compliance with it since it was based on selective tests. Because there are inherent limitations in the effectiveness of any system of quality control, departures from the system may occur and not be detected. Also, projection of any evaluation of a system of quality control to future periods is subject to the risk that the system of quality control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the system of quality control for the accounting and auditing practice applicable to the non-SEC issuers of **Pattillo, Brown & Hill, LLP**, in effect for the year ended May 31, 2007, has been designed to meet the requirements of the quality control standards for an accounting and auditing practice established by the AICPA, and was complied with during the year then ended to provide the firm with reasonable assurance of complying with applicable professional standards.


EUBANK & BETTS, PLLC

CPA Associates International, Inc.,
A Worldwide Network of Accounting Firms

American Institute of Certified Public Accountants
Mississippi Society of Certified Public Accountants

AICPA Tax Division
AICPA Center for Public Company Audit Firms



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.7

*** RESOLUTION NO. 5275**

Authorizing Execution of an Agreement with John Robert Hooker, individually and d/b/a J & S Aviation, for the Operation of an Aircraft Maintenance Shop and the Provision of Customer Service Assistance at the Sherman Municipal Airport

Issue

To consider execution of a agreement with J & S Aviation of Sherman, Texas, for the operation of an aircraft maintenance shop and to provide customer service assistance at the Sherman Municipal Airport

Background

J & S Aviation rents the City's large aircraft hanger at the Sherman Municipal Airport and has operated a successful aircraft maintenance business for the past seven years. As a part of the current contract, J & S Aviation provides the City with airport attendant services, including oversight of the buildings, runway and taxiways, liaison with mowing contractors, customer service, and operation and maintenance of the fueling system. The services provided by J & S allow the City to operate the airport without having an on-site employee; and their maintenance business attracts aircraft fueling business for the City. The City and Airport Board are very happy with the performance of J & S Aviation.

Origination

Public Works Department

Financial Consideration

Under this annual agreement, J & S Aviation pays the City for the rent of the large hanger and, in consideration for their customer service/caretaker role, the City will compensate J&S \$1,760.00 per month during the next fiscal year. The agreement includes two, one-year renewal options. Funds are available in the Airport budget to pay for these services.

Staff Recommendation

Authorize the City Manager to execute an agreement renewal with J & S Aviation

Alternatives

Those as may be directed by the City Council

Attachments

Resolution No. 5275

Agreement

Prepared by:
Jeff Miller, Director of Public Works

Approved by:
George Olson, City Manager

RESOLUTION NO. 5275

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH JOHN ROBERT HOOKER, INDIVIDUALLY AND D/B/A J & S AVIATION, FOR THE OPERATION OF AN AIRCRAFT MAINTENANCE SHOP AND THE PROVISION OF CUSTOMER SERVICE ASSISTANCE AT THE SHERMAN MUNICIPAL AIRPORT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute an agreement with John Robert Hooker, individually and d/b/a J & S Aviation of Sherman, Texas, in accordance with the contract documents attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

AGREEMENT BETWEEN THE CITY OF SHERMAN AND J & S AVIATION

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

THIS AGREEMENT is entered into between the City of Sherman, Texas, a municipal corporation of the State of Texas, hereinafter referred to as "City," and Mr. John Robert Hooker, individually and doing business as J & S Aviation, hereinafter collectively referred to as "J&S", under the following terms and conditions.

I.

TERM

The term of this contract shall be for one (1) year and shall commence on November 1, 2008, and end on October 31, 2009, with two (2) one-year renewal options.

II.

PRIOR LEASES, RULES AND REGULATIONS

This agreement shall replace and terminate any existing leases, contracts or agreements between John Robert Hooker, individually, or J&S Aviation with the City of Sherman, Texas. The parties hereto agree to be bound by the terms and conditions as stated herein, existing Airport Rules and Regulations and Standards of Operation, and such future Airport Rules and Regulations and Standards of Operation as the City may from time to time adopt.

III.

DUTIES AND COOPERATION

J&S agrees to perform the duties, as provided for in the Bid Requirements, in a professional, competent and courteous manner at all times. J&S shall manage the aviation shop no less than Monday through Friday of each week during the term of this agreement, from 8:00 a.m. until 5:00 p.m. of each day. J&S will provide an attendant for the Municipal Airport Eight (8) hours per day, Seven (7) days per week and assure that the doors are unlocked and the Airport is open for business from at least 8:00 a.m. to 5:00 p.m. Further, J&S shall perform the general duties as contained in Exhibit "A", attached hereto and incorporated herein for all purposes. J&S agrees to pay the City the hangar lease rate of Five Hundred and Seventy-five Dollars and No Cents per month (\$575.00) for the duration of this agreement. While performing

all duties required herein, J&S agrees that it will not, nor shall any employee, be under the influence of or use drugs or alcohol or profane or vulgar language while on airport property.

In consideration of the Airport Attendant Services authorized hereby, City shall pay J&S the sum of One Thousand Seven Hundred Sixty Dollars and No Cents (\$1,760.00) monthly upon completion of the prior month's services for the contract period of November 1, 2008, through October 31, 2009. For the subsequent years, the monthly rate shall increase by Three Percent (3%) or the North Texas CPI, whichever is greater. Further, during the contract period of November 1, 2008, through October 31, 2009, the monthly rate shall increase by an additional Three Percent (3%) or the North Texas CPI, whichever is greater.

IV.

INDEMNIFICATION AND HOLD HARMLESS

TO THE MAXIMUM EXTENT PERMITTED BY LAW, J&S AGREES TO FULLY INDEMNIFY AND SAVE HARMLESS THE CITY OF SHERMAN, TEXAS, ITS MAYOR, CITY COUNCIL AND EMPLOYEES, FROM ALL SUITS, ACTIONS, CLAIMS OR DEMANDS AND FROM ALL LIABILITY, DAMAGES, EXPENSES, ATTORNEY FEES, PRE-JUDGMENT AND POST JUDGMENT INTEREST FOR ANY AND ALL INJURIES (INCLUDING DEATH) OR DAMAGES, NOT CAUSED BY THE NEGLIGENCE OF J&S, SUSTAINED BY ANY PERSON OR PROPERTY IN FURTHERANCE OF THIS AGREEMENT BY J&S, ITS SUBCONTRACTORS, AGENTS AND EMPLOYEES AND FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERED UNDER THE TEXAS WORKER'S COMPENSATION LAWS; THE TEXAS TORT CLAIMS ACT; CHAPTER 101, TEXAS CIVIL PRACTICE AND REMEDIES CODE; OR ANY OTHER APPLICABLE LAWS OR REGULATIONS, ALL AS FROM TIME TO TIME MAY BE AMENDED. IN ADDITION, THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY.

V.

INSURANCE

Additionally, J&S shall acquire and maintain the following insurance during the term of this Agreement:

- a. Workers' Compensation as required by law.
- b. Comprehensive General Liability and Property Damage Insurance with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence of damage to or destruction of property, and \$2,000,000 aggregate coverage..

- c. J&S shall obtain and remain in effect during the term of this lease, or any extension thereof, fire, property, and casualty insurance covering the premises and its contents to its full market value.
- d. Comprehensive Automobile and Truck Liability Insurance covering owned, hired, and non-owned vehicles, with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for property damage.

J&S shall maintain said insurance with insurance underwriters licensed to do business in the State of Texas and approved by the City. The insurance shall include coverage for any injuries associated with premise defects. J&S shall furnish the City with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this lease, with the City of Sherman named as an additional insured, and shall deposit with the City copies of said policies. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policies by the insurer shall be delivered to the City thirty (30) days in advance of the effective date thereof.

VI.

TERMINATION

This agreement may be terminated by the parties hereto for any reason or for no reason and without any liability of any kind whatsoever to the other parties upon sixty (60) days prior written notice to that effect. This agreement may not be changed, varied or altered except by an instrument in writing, duly executed on behalf of J&S and City.

VII.

OTHER CONTRACT TERMS

Assignment. No assignment by a party hereto of any rights under or interests in the agreement will be binding on another party hereto without the written consent of both the parties to this agreement 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 this agreement.

Successors and Assigns. All the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto, except to the extent that such assignments are forbidden by this lease.

Authority to Sign. By their signatures below, the individuals represent that they have reviewed this agreement with their attorney and that the individuals have the express authority from their organizations to enter into this agreement.

Headings. Section or other headings contained in this agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this agreement.

Venue and Governing Law. This agreement shall be construed in accordance with the laws of the State of Texas, and shall be deemed performable and enforceable in the State of Texas, with venue in Grayson County, Texas.

VIII.

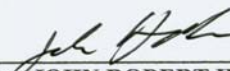
EFFECTIVE DATE

IN TESTIMONY WHEREOF, this instrument, in duplicate originals, has been executed on behalf of **J & S AVIATION** and on behalf of City of Sherman, Texas, by its City Manager, and attested by its City Clerk, effective the 6th day of October, 2008.

CITY OF SHERMAN, TEXAS

J & S AVIATION

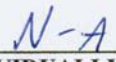
BY: _____
NAME: **GEORGE OLSON**
TITLE: **CITY MANAGER**

BY: 
NAME: **JOHN ROBERT HOOKER**
TITLE: **OWNER**

ATTEST:

JOHN ROBERT HOOKER

BY: _____
LINDA ASHBY
CITY CLERK


INDIVIDUALLY

APPROVED:

INTERIM CITY ATTORNEY



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.8

*** RESOLUTION NO. 5276**

Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 616 East Sycamore Street

Issue

This item is to consider property tax abatement for the construction of a new single-family residence at 616 East Sycamore Street.

Background

Several years ago, the City Council began a residential tax abatement program to encourage the redevelopment of older sections of town. This application is for the construction of a new single-family residence at this location. This lot is in the designated zone for residential tax abatements.

Origination

Barton Capital, LTD, Applicant

Financial Consideration

A \$75.00 application fee has been received for this residential lot. If granted, the initial abatement for this lot will be approximately \$240.00 annually.

Staff Recommendation

The staff recommends approval of this abatement since it meets the requirements of the process.

Alternatives

The City Council could decide against granting this abatement.

Attachments

Resolution No. 5276
Residential Tax Abatement Agreement
Application
Building Permit Application
Survey
Location Map

Prepared by:
Scott Shadden, Director of Development Services

Approved by:
George Olson, City Manager

RESOLUTION NO. 5276

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 616 EAST SYCAMORE STREET; 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 receipt of a fully-executed agreement from Barton Capital, LTD and subject to all contract documents being properly completed and approved by the City Attorney, to execute an agreement with Barton Capital, LTD for the abatement of ad valorem property taxes for a period of ten (10) years, for the construction of one (1) new single-family residence at 616 East Sycamore Street, lying within the City of Sherman's Residential Tax Reinvestment Zone, in accordance with the City's policies and procedures established for this purpose.

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

PASSED AND APPROVED on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

AGREEMENT

THIS AGREEMENT, entered into by and between the **CITY OF SHERMAN, TEXAS**, a home rule city and municipal corporation of the State of Texas, duly acting herein by and through its City Manager, hereinafter referred to as CITY and **BARTON CAPITAL, LTD**, hereinafter referred to as OWNER.

WITNESSETH:

WHEREAS, on the 16th day of June, 2003, the City Council of Sherman, Texas, passed Ordinance No. 5136 establishing a reinvestment zone for residential tax abatement, as authorized by Chapter 312 of the Texas Tax Code, as amended, hereinafter referred to as CODE; and

WHEREAS, the CITY has adopted a resolution (Resolution No. 4685) stating that it elects to be eligible to participate in a residential tax abatement program; and

WHEREAS, the CITY desires to create the proper economic and social environment to induce the investment of private resources in real estate construction located in incorporated areas of the CITY; and

WHEREAS, the CITY hereby finds that it may effectively encourage and assist the creation of such an environment by participating in tax abatement pursuant to the CITY; and

WHEREAS, the CITY has created a reinvestment zone within its jurisdiction to induce the investment of private resources in real estate construction located in incorporated areas of the CITY, and OWNER has agreed to construct certain real property improvements; and

WHEREAS, OWNER is prepared to comply with the provisions of the CITY'S guidelines and criteria enacted the 16th day of June, 2003;

NOW, THEREFORE, WITNESS THIS TAX ABATEMENT AGREEMENT which provides as follows:

I.

1.01 To the extent authorized by the Texas Constitution and by the Tax Code, CITY hereby agrees to exempt from City of Sherman taxation a portion of the increase in value of taxable real property of OWNER in the CITY over the same real property and its value as calculated by the Grayson Appraisal District for ad valorem property tax purposes in accordance with the following schedule. Such tax exemption shall be in effect for tax years beginning January 1, 2008, and continuing for tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 with same constituting ten (10) tax years. However, nothing contained herein shall be construed to grant an abatement of taxes to be assessed based on the change of use of the property from an agricultural use

to another use, sometimes referred to as rollback taxes, penalties or interest. In the event rollback taxes are applicable for the real property utilized by OWNER, then such increase in value of taxable property resulting from such rollback shall be used as the tax value for such property for the tax year 2008, sometimes referred to herein as the Base Tax Year.

SCHEDULE OF TAXES ASSESSED

<u>TAX YEAR</u>	<u>ABATEMENT</u>
2008	100%
2009	100%
2010	100%
2011	100%
2012	100%
2013	100%
2014	80%
2015	60%
2016	40%
2017	20%

II.

2.01 OWNER warrants and represents that the real property upon which OWNER has constructed or will construct improvements is qualified property within the meaning of that Act, and that such has been and will remain eligible for tax abatement under the provisions of the Property Redevelopment and Tax Abatement Act, Sections 312.001, et seq., Texas Tax Code.

2.02 To continue to qualify for tax abatement under the terms of this Agreement, OWNER hereby warrants and represents that the improvements made by OWNER on the real property described herein are for residential use.

2.03 The tax abatement granted under the terms of the Agreement shall only be implemented if appraised value of all real property and improvements located thereon owned by OWNER and lying within designated zone exceeds the base year value. The OWNER agrees that Grayson Appraisal District shall, at reasonable times upon reasonable notice, have access to the property made the subject of this Agreement, and that the above set forth inspectors shall be able to inspect the property to insure that the improvements are being made in accordance with the terms and conditions hereof and utilized in accordance with this Agreement.

III.

3.01 The term of this Agreement shall be for tax years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016, and 2017 as indicated above in paragraph 1.01.

IV.

4.01 The kind, number and location of all proposed property improvements are set forth as follows:

Construction of one (1) new single-family residence at 616 East Sycamore Street, Sherman, Texas, and as more particularly describe by the following:

BEING Lot 1R, Block 8 of the Replat of Lots 9-15, Block 8 of W. P. Carter Addition.

V.

5.01 OWNER agrees that, should he fail to make improvements substantially as described or fail to perform any other term or covenant hereof, CITY shall have the right, after giving notice and opportunity to cure as hereinafter set out, to recapture all tax revenue on said property in the zone lost as a result of this Agreement for the entire term of the Agreement. Such recapture shall mean that all of such property shall be taxed at the full improved value as assessed by the Grayson Appraisal District for all years this Agreement has been in effect. The payment of such recaptured taxes minus any taxes paid by OWNER during the years this Agreement has been in force shall be due January 1 of the next following year and shall be delinquent if not paid on or prior to January 31st. Penalties and interest shall be calculated thereafter as if all taxes had become due in the same year. The CITY agrees prior to enforcement of the terms of this paragraph to give 120 days written notice to the address shown below of OWNER'S default in completing the improvements called for in this Agreement, and OWNER shall have the right to cure such default within the 120-day period.

VI.

6.01 This Agreement shall inure to the benefit of CITY and OWNER, and shall be binding upon them, their heirs, successors and assigns. It is specifically provided and agreed that the right to tax abatement shall inure to the benefit of subsequent owners so long as the term and conditions of this Agreement are in effect.

VII.

7.01 CITY agrees that this Agreement may be assigned and the improvements leased or sub-leased, without any further necessity for consent, by the OWNER to any person, firm or corporation.

VIII.

8.01 At any time before the expiration of the term hereof, this Agreement may be modified by the mutual action of the parties hereto to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. Such modification must be in writing and signed by all the parties hereto and made by the same procedure by which the original Agreement was approved and executed. In no event may the original Agreement be modified so as to extend the term beyond the original term of this Agreement.

IX.

9.01 This Agreement shall be construed subject to the laws of the State of Texas, and particularly to the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code.

9.02 All appraisal values for real property shall be made by the Grayson Appraisal District or such other entity as may succeed or replace such District.

9.03 OWNER is hereby notified that the Grayson Appraisal District may impose additional requirements which must be met in order for OWNER to realize the benefit of tax abatement and this Agreement. Contact should be made by OWNER with the District in person at 205 North Travis Street, Sherman, Texas, or by telephone at (903) 893-9673.

X.

10.01 This Agreement is subject to all provisions of all outstanding bond issues of CITY. To the extent that this Tax Abatement Agreement conflicts with any of the provisions of such bond issues, such bond issues and attendant documents thereto shall control.

XI.

11.01 This Tax Abatement Agreement is specifically subject to present laws of the State of Texas and any future laws enacted subsequent to the execution of this Agreement which may provide retroactively for a modification of Agreements of this type as a matter of law. Upon the effective date of any such law, then this Agreement shall automatically be so modified.

XII.

12.01 Notices required by this Agreement shall be mailed to the following addresses as same may be in the future changed by either party upon written notice to the other:

City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106
(903) 892-7200

Barton Capital, LTD
715 S. Sam Rayburn Frwy.
Sherman, Texas 75090
(903) 868-4201

Copy to: Grayson Appraisal District
 205 North Travis Street
 Sherman, Texas 75090
 (903) 893-9673

This Agreement is performable in Grayson County, Texas. Witness our hands on this the _____ day of _____, 2008.

CITY:
CITY OF SHERMAN, TEXAS

OWNER:
BARTON CAPITAL, LTD

BY: _____

GEORGE OLSON

CITY MANAGER

BY: _____

NAME: _____

TITLE: _____

ATTEST:

(CORPORATE SEAL)

BY: _____

LINDA ASHBY

CITY CLERK

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared Ron Barton, Barton Capital, LTD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein express.

GIVEN UNDER MY HAND and seal of office this ____ day of _____, 2008 A.D.

Tammy Biggar
Notary Public

CITY OF SHERMAN
APPLICATION FOR RESIDENTIAL TAX ABATEMENT

Property Owner:

Name: BARTON CAPITAL

Mailing Address: 715 S. HWY 75 SHERMAN, TX 75090

Telephone Number: 903-868-4201

Contact (if different than owner):

Name: Ron Barton

Mailing Address: SAME

Telephone Number: SAME

Property:

Physical Address: 616 E. SYCAMORE

Summary Legal Description: Lot: 1K Block: B Addition: W.P. CARTERS ADD

Full Legal Description: Include as an attachment a full legal description with metes and bounds.

Improvements:

Type of Improvements (please check one). New Construction: ☒ Remodeling: ☐

Estimated Value of Improvements: \$75,000

Estimated Date of Start of Construction: 9-10-08

Estimated Date of Completion of Project: 11-10-08

Description of Project: NEW SINGLE FAMILY DWELLING

Applicant(s): G. L. R. Date: 9-9-08

Grayson County
Wilma Blackshear Bush
County Clerk
Sherman, Texas 75090



70 2008 00003740

5081

Instrument Number: 2008-00003740

Recorded On: February 19, 2008

As
Recordings

Parties: JACKSON WILLIE EDWARD ETAL

To BARTON CAPITAL LTD

Billable Pages: 3

Number of Pages: 5

Comment: WD

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Recordings	24.00
Total Recording:	24.00

***** DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2008-00003740

Receipt Number: 260613

Recorded Date/Time: February 19, 2008 01:44:00P

Book-Vol/Pg: BK-OR VL-4405 PG-7

User / Station: G WHITE - Cashiering Station 1

Record and Return To:

RED RIVER TITLE CO

421 N. CROCKETT ST

SHERMAN TX 75090



THE STATE OF TEXAS
COUNTY OF GRAYSON
I hereby certify that this instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas.

Wilma Blackshear Bush

Wilma Blackshear Bush, Grayson County Clerk

WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GRAYSON

THAT **WILLIE EDWARD JACKSON and CELIA JACKSON, 319 N. Carr, Sherman, TX 75090**

(Hereinafter called "GRANTORS" whether one or more), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations cash in hand paid by **BARTON CAPTIAL, LTD**

whose address is 715 S. Hwy 75, Sherman, TX 75090,

(hereinafter called "GRANTEES" whether one or more), the receipt and sufficiency of which are hereby acknowledged and confessed.

Have GRANTED, SOLD and CONVEYED, and by these presents do GRANT, SELL and CONVEY unto the said Grantees herein, the following described property, together with all improvements thereon, to-wit:

TRACT ONE:

BEING A TRACT OF LAND SITUATED IN THE J.B. MCANAIR SURVEY, ABSTRACT NO. 763, SITUATED IN GRAYSON COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED ON THE ATTACHED EXHIBIT "A".

TRACT TWO:

BEING LOTS NINE (9), TEN (10), ELEVEN (11), TWELVE (12), THIRTEEN (13), FOURTEEN (14) AND FIFTEEN (15) IN BLOCK EIGHT (8) OF W.P. CARTER'S ADDITION, AN ADDITION TO THE CITY OF SHERMAN, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 25 AT PAGE 196 OF THE DEED RECORDS OF GRAYSON COUNTY, TEXAS, AND A TRACT ADJOINING IN PART ON THE WEST SIDE OF SAID LOTS AS FOLLOW;

TRACT THREE:

BEING A TRACT OF LAND SITUATED IN THE J.B. MCANAIR SURVEY, ABSTRACT NO. 763, SITUATED IN GRAYSON COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED ON THE ATTACHED EXHIBIT "A".

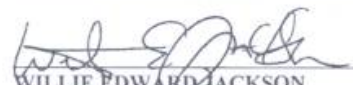
TO HAVE AND TO HOLD the above described premises, together with, all and singular, the rights and appurtenances thereto in any wise belonging, unto the said Grantees, their heirs and assigns forever. And Grantors do hereby bind themselves, their heirs, executors and administrators, to warrant and forever defend all and singular, the said premises unto the said Grantees, their heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Taxes for the current year have been prorated and are assumed by Grantee.

This conveyance is made and accepted subject to (i) any and all outstanding minerals, mineral leases, restrictions, covenants, conditions and easements, to the extent that they are in force and effect; (ii) all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, to the extent that they are applicable and enforceable; (iii) any and all easements, rights of way and encroachments that are apparent, including any utilities buried beneath the surface of the ground; and (iv) all rights of parties in possession of any part of the Property.

When this deed is executed by one person, or when the Grantee is one person, the instrument shall read as though pertinent verbs and pronouns were changed to correspond, and when executed by or to a corporation the words "heirs, executors or administrators" or "heirs and assigns" shall be construed to mean "Successors and assigns".

Bk Vol Pg
00003740 OR 4405

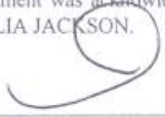
Executed on this the 15 day of February, 2008.

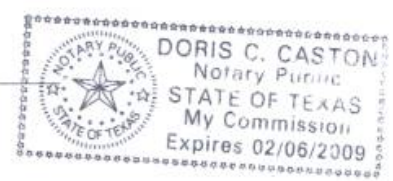

WILLIE EDWARD JACKSON


CELIA JACKSON

THE STATE OF TEXAS
COUNTY OF GRAYSON

This instrument was acknowledged before me this 15 day of February, 2008, by WILLIE EDWARD JACKSON and CELIA JACKSON.


NOTARY PUBLIC - STATE OF TEXAS



AFTER RECORDING RETURN TO:

RED RIVER TITLE COMPANY
421 N. Crockett St.
Sherman, Texas 75090

EXHIBIT A

Tract One:

BEING described as Lot, tract or parcel of land, lying and being situated in the County of Grayson, State of Texas, out of J. B. McANAIR SURVEY, and being the East 50 feet of the following described property,

Beginning at the NE corner of the tract of land described in deed from Nellie Overley et al to J C Swindle, et al dated February 1, 1936 and recorded in Vol. 386, page 58, Deed Records, Grayson County, Texas;

Thence, South Parallel with the East line of Broughton St. 100 FEET TO THE North line of a lot sold by F L O'Hanlon to C H Christiansen, being the S W corner of the tract of land described in the deed from Nellie Overley et al to J C Swindle et al, above mentioned;

Thence, West with the North line of said Christian lot 100 feet;

Thence, North parallel with the East line of Broughton St. 100 feet to the South line of Sycamore Street;

Thence, East 100 feet to the beginning, and containing 1 lot.

Known on the ground as 612 East Sycamore Street, Sherman, Texas.

Tract Two:

BEING Lots Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), and Fifteen (15) in Block Eight (8) of W. P. CARTER'S ADDITION, an Addition to the City of Sherman, Texas, according to the plat thereof recorded in Volume 25 at page 196 of the Deed Records of Grayson County, Texas, and a tract adjoining in part on the West side of said lots as follows:

Tract Three:

BEING the East Seventeen (E. 17') of the following described tract out of the J. B. SHANNON Tract 21 of the JOHN B. McANAIR SURVEY, ABSTRACT NO. 763, in the City of Sherman, Grayson County, Texas, more particularly described as follows:

BEGINNING on the East line of Broughton Street, at the N. W. corner of a lot deeded to J. W. Boyer;

THENCE North with the East line of said street about 97 feet to S. W. Corner of a lot deeded to Ara A. and William Turley;

THENCE East with the South line of the Turley lot and parallel with the North line of Bostwick 5 acres about 200 feet to the East line of said 5 acres;

THENCE South the said East line of said 5 acres about 97 feet to N. E. corner Boyer lot;

THENCE West with the North line of Boyer lot about 200 feet to the place of beginning.

00003740 OR 4405 10



REPLAT OF
 LOTS NINE THROUGH FIFTEEN, BLOCK EIGHT
 W. P. CARTER ADDITION
 to the
 CITY of SHERMAN, TEXAS



Owner & Developer
 Ron Barton
 715 S. Hwy 75
 Sherman, Texas 79088
 801-248-4261

SARTIN & ASSOCIATES, INC.
 Registered Professional Land Surveyors
 11911 Footh. & 11th Mar 1971 Sherman, Texas 79088-1942
 Ph. (800) 483-8001 Fax. (800) 842-2810

SHERMAN12.plt
 SHEET 1 OF 2



CITY OF SHERMAN
RESIDENTIAL BUILDING PERMIT

PERMIT #: 81659 SUBCONTRACTOR: RON BARTON DATE ISSUED: 9/09/2008

PROJECT ADDRESS:	616 E SYCAMORE ST	LOT #:	
PARCEL ID:		BLK #:	8
SUBDIVISION:	W P CARTER'S REPLAT	ZONE ORD:	
ISSUED TO:	RON BARTON	CONTRACTOR:	RON BARTON
ADDRESS:	2111 TURTLE CREEK CR	ADDRESS:	2111 TURTLE CREEK CR
CITY, ST ZIP:	SHERMAN TX 75092	CITY, ST ZIP:	SHERMAN TX 75092
PHONE:	903-868-4100	PHONE:	
PROP. USE:	RESIDENTIAL	SQ FT:	1,171.00
WORK:	CONSTRUCT SINGLE FAMILY	BEDROOMS:	3
VALUATION:	\$ 75,000.00	BATHROOMS:	2
OCCP TYPE:	RESIDENTIAL	STORIES:	1
CNST TYPE:	WOOD FRAME		

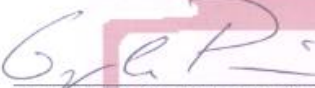
FEE CODE	DESCRIPTION	AMOUNT
BLD10	RESIDENTIAL STORMWATER MGMT	\$ 25.00
	TOTAL	\$ 25.00

NOTES:

NOTICE

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

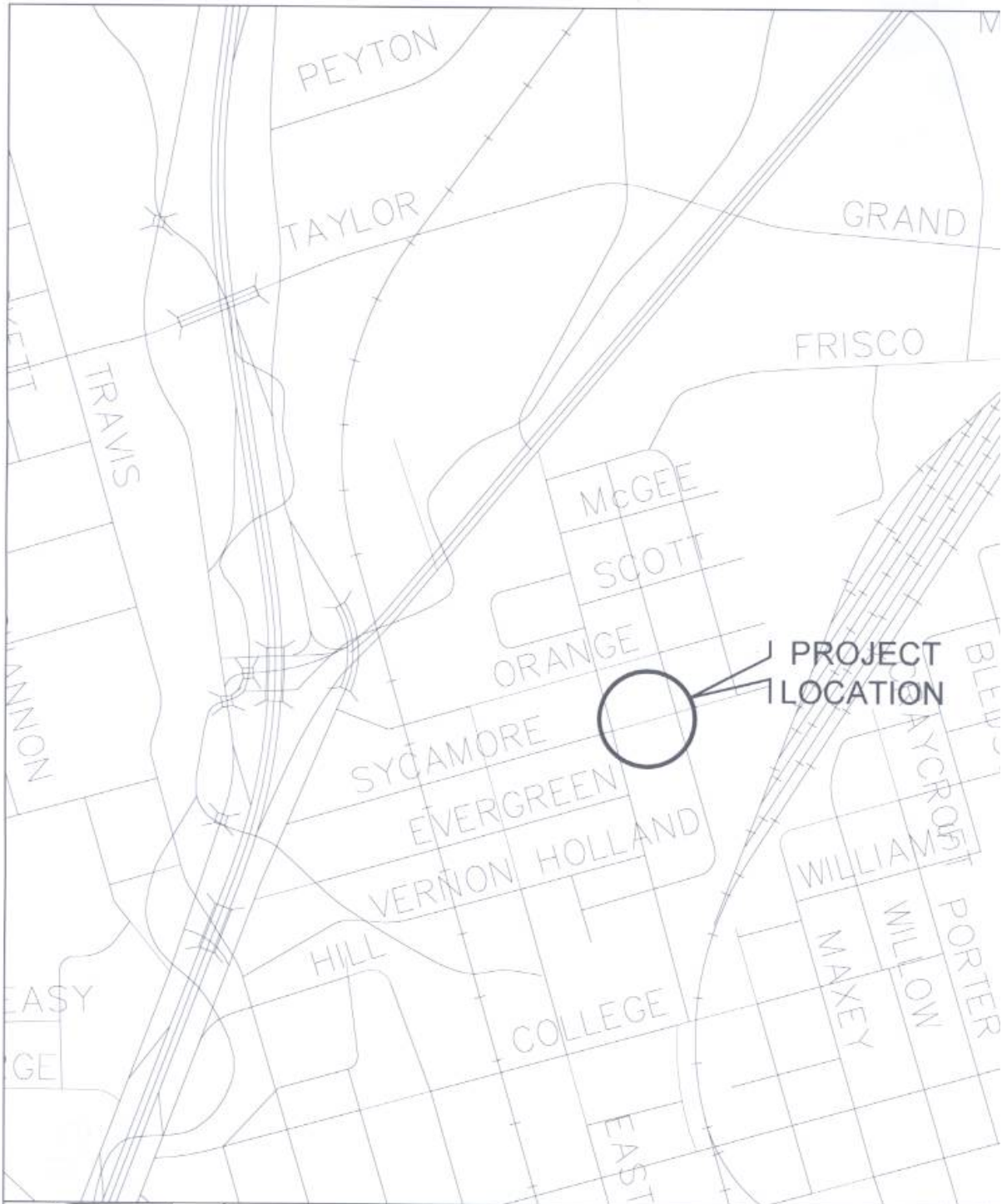
I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISION OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.


(SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT)

9/9/08
DATE

(APPROVED BY)

DATE



City of Sherman, Texas

616 EAST SYCAMORE

PROJECT LOCATION MAP



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.9

*** RESOLUTION NO. 5277**

**Authorizing Execution of an Agreement with Terry Peterson for the Abatement
of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence
at 1302 South Elm Street**

Issue

This item is to consider property tax abatement for the construction of a new single-family residence at 1302 South Elm Street.

Background

Several years ago, the City Council began a residential tax abatement program to encourage the redevelopment of older sections of town. This application is for the construction of a new single-family residence at this location. This lot is in the designated zone for residential tax abatements.

Origination

Terry Peterson, Applicant

Financial Consideration

A \$75.00 application fee has been received for this residential lot. If granted, the initial abatement for this lot will be approximately \$272.00 annually.

Staff Recommendation

The staff recommends approval of this abatement since it meets the requirements of the process.

Alternatives

The City Council could decide against granting this abatement.

Attachments

Resolution No. 5277
Residential Tax Abatement Agreement
Application
Building Permit Application
Survey
Location Map

Prepared by:
Scott Shadden, Director of Development Services

Approved by:
George Olson, City Manager

RESOLUTION NO. 5277

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH TERRY PETERSON FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1302 SOUTH ELM STREET; 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 receipt of a fully-executed agreement from Terry Peterson and subject to all contract documents being properly completed and approved by the City Attorney, to execute an agreement with Terry Peterson for the abatement of ad valorem property taxes for a period of ten (10) years, for the construction of one (1) new single-family residence at 1302 South Elm Street, lying within the City of Sherman's Residential Tax Reinvestment Zone, in accordance with the City's policies and procedures established for this purpose.

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

PASSED AND APPROVED on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

AGREEMENT

THIS AGREEMENT, entered into by and between the **CITY OF SHERMAN, TEXAS**, a home rule city and municipal corporation of the State of Texas, duly acting herein by and through its City Manager, hereinafter referred to as CITY and **TERRY PETERSON**, hereinafter referred to as OWNER.

WITNESSETH:

WHEREAS, on the 16th day of June, 2003, the City Council of Sherman, Texas, passed Ordinance No. 5136 establishing a reinvestment zone for residential tax abatement, as authorized by Chapter 312 of the Texas Tax Code, as amended, hereinafter referred to as CODE; and

WHEREAS, the CITY has adopted a resolution (Resolution No. 4685) stating that it elects to be eligible to participate in a residential tax abatement program; and

WHEREAS, the CITY desires to create the proper economic and social environment to induce the investment of private resources in real estate construction located in incorporated areas of the CITY; and

WHEREAS, the CITY hereby finds that it may effectively encourage and assist the creation of such an environment by participating in tax abatement pursuant to the CITY; and

WHEREAS, the CITY has created a reinvestment zone within its jurisdiction to induce the investment of private resources in real estate construction located in incorporated areas of the CITY, and OWNER has agreed to construct certain real property improvements; and

WHEREAS, OWNER is prepared to comply with the provisions of the CITY'S guidelines and criteria enacted the 16th day of June, 2003;

NOW, THEREFORE, WITNESS THIS TAX ABATEMENT AGREEMENT which provides as follows:

I.

1.01 To the extent authorized by the Texas Constitution and by the Tax Code, CITY hereby agrees to exempt from City of Sherman taxation a portion of the increase in value of taxable real property of OWNER in the CITY over the same real property and its value as calculated by the Grayson Appraisal District for ad valorem property tax purposes in accordance with the following schedule. Such tax exemption shall be in effect for tax years beginning January 1, 2008, and continuing for tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 with same constituting ten (10) tax years. However, nothing contained herein shall be construed to grant an abatement of taxes to be assessed based on the change of use of the property from an agricultural use

to another use, sometimes referred to as rollback taxes, penalties or interest. In the event rollback taxes are applicable for the real property utilized by OWNER, then such increase in value of taxable property resulting from such rollback shall be used as the tax value for such property for the tax year 2008, sometimes referred to herein as the Base Tax Year.

SCHEDULE OF TAXES ASSESSED

<u>TAX YEAR</u>	<u>ABATEMENT</u>
2008	100%
2009	100%
2010	100%
2011	100%
2012	100%
2013	100%
2014	80%
2015	60%
2016	40%
2017	20%

II.

2.01 OWNER warrants and represents that the real property upon which OWNER has constructed or will construct improvements is qualified property within the meaning of that Act, and that such has been and will remain eligible for tax abatement under the provisions of the Property Redevelopment and Tax Abatement Act, Sections 312.001, et seq., Texas Tax Code.

2.02 To continue to qualify for tax abatement under the terms of this Agreement, OWNER hereby warrants and represents that the improvements made by OWNER on the real property described herein are for residential use.

2.03 The tax abatement granted under the terms of the Agreement shall only be implemented if appraised value of all real property and improvements located thereon owned by OWNER and lying within designated zone exceeds the base year value. The OWNER agrees that Grayson Appraisal District shall, at reasonable times upon reasonable notice, have access to the property made the subject of this Agreement, and that the above set forth inspectors shall be able to inspect the property to insure that the improvements are being made in accordance with the terms and conditions hereof and utilized in accordance with this Agreement.

III.

3.01 The term of this Agreement shall be for tax years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016, and 2017 as indicated above in paragraph 1.01.

IV.

4.01 The kind, number and location of all proposed property improvements are set forth as follows:

Construction of one (1) new single-family residence at 1302 South Elm Street, Sherman, Texas, and as more particularly describe by the following:

BEING Lot 4-A, Block 11 of the Replat of Lots 4, Block 11 of B. H. Moore's Heirs Addition.

V.

5.01 OWNER agrees that, should he fail to make improvements substantially as described or fail to perform any other term or covenant hereof, CITY shall have the right, after giving notice and opportunity to cure as hereinafter set out, to recapture all tax revenue on said property in the zone lost as a result of this Agreement for the entire term of the Agreement. Such recapture shall mean that all of such property shall be taxed at the full improved value as assessed by the Grayson Appraisal District for all years this Agreement has been in effect. The payment of such recaptured taxes minus any taxes paid by OWNER during the years this Agreement has been in force shall be due January 1 of the next following year and shall be delinquent if not paid on or prior to January 31st. Penalties and interest shall be calculated thereafter as if all taxes had become due in the same year. The CITY agrees prior to enforcement of the terms of this paragraph to give 120 days written notice to the address shown below of OWNER'S default in completing the improvements called for in this Agreement, and OWNER shall have the right to cure such default within the 120-day period.

VI.

6.01 This Agreement shall inure to the benefit of CITY and OWNER, and shall be binding upon them, their heirs, successors and assigns. It is specifically provided and agreed that the right to tax abatement shall inure to the benefit of subsequent owners so long as the term and conditions of this Agreement are in effect.

VII.

7.01 CITY agrees that this Agreement may be assigned and the improvements leased or sub-leased, without any further necessity for consent, by the OWNER to any person, firm or corporation.

VIII.

8.01 At any time before the expiration of the term hereof, this Agreement may be modified by the mutual action of the parties hereto to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. Such modification must be in writing and signed by all the parties hereto and made by the same procedure by which the original Agreement was approved and executed. In no event may the original Agreement be modified so as to extend the term beyond the original term of this Agreement.

IX.

9.01 This Agreement shall be construed subject to the laws of the State of Texas, and particularly to the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code.

9.02 All appraisal values for real property shall be made by the Grayson Appraisal District or such other entity as may succeed or replace such District.

9.03 OWNER is hereby notified that the Grayson Appraisal District may impose additional requirements which must be met in order for OWNER to realize the benefit of tax abatement and this Agreement. Contact should be made by OWNER with the District in person at 205 North Travis Street, Sherman, Texas, or by telephone at (903) 893-9673.

X.

10.01 This Agreement is subject to all provisions of all outstanding bond issues of CITY. To the extent that this Tax Abatement Agreement conflicts with any of the provisions of such bond issues, such bond issues and attendant documents thereto shall control.

XI.

11.01 This Tax Abatement Agreement is specifically subject to present laws of the State of Texas and any future laws enacted subsequent to the execution of this Agreement which may provide retroactively for a modification of Agreements of this type as a matter of law. Upon the effective date of any such law, then this Agreement shall automatically be so modified.

XII.

12.01 Notices required by this Agreement shall be mailed to the following addresses as same may be in the future changed by either party upon written notice to the other:

City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106
(903) 892-7200

Terry Peterson
712 S. Dewey
Sherman, Texas 75090
(903)821-0147

Copy to: Grayson Appraisal District
205 North Travis Street
Sherman, Texas 75090
(903) 893-9673

This Agreement is performable in Grayson County, Texas. Witness our hands on this the _____ day of _____, 2008.

CITY:
CITY OF SHERMAN, TEXAS

OWNER:
TERRY PETERSON

BY: _____

GEORGE OLSON

CITY MANAGER

BY: _____

NAME: _____

TITLE: _____

ATTEST:

(CORPORATE SEAL)

BY: _____

LINDA ASHBY

CITY CLERK

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared Terry Peterson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein express.

GIVEN UNDER MY HAND and seal of office this ____ day of _____, 2008 A.D.

Tammy Biggar
Notary Public

CITY OF SHERMAN
APPLICATION FOR RESIDENTIAL TAX ABATEMENT

Property Owner:

Name: Terry Peterson

Mailing Address: 712 S Dewey

Telephone Number: 903-821-0147

Contact (if different than owner):

Name: _____

Mailing Address: _____

Telephone Number: _____

Property:

Physical Address: 1302 S Elm

Summary Legal Description: Lot: 4 Block: 11 Addition: BH Moore Addition

Full Legal Description: Include as an attachment a full legal description with metes and bounds.

Improvements:

Type of Improvements (please check one): New Construction: ☒ Remodeling: ☐

Estimated Value of Improvements: 85,000.00

Estimated Date of Start of Construction: 9-15-08

Estimated Date of Completion of Project: Dec-15-08

Description of Project: New Frame House

Applicant(s): Terry Peterson Date: 9-8-08



70 2008 00008451

Wilma Blackshear Bush
County Clerk
Sherman, Texas 75090

5427

Instrument Number: 2008-00008451

As

Recorded On: April 16, 2008

Recordings

Parties: HOLT DAVID VANCE ETAL

Billable Pages: 1

To PETERSON TERRY

Number of Pages: 3

Comment: WD

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Recordings	16.00
Total Recording:	16.00

***** DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2008-00008451

Receipt Number: 264367

Recorded Date/Time: April 16, 2008 09:37:18A

Book-Vol/Pg: BK-OR VL-4435 PG-474

User / Station: G WHITE - Cashiering Station 1

Record and Return To:

RED RIVER TITLE CO

421 N. CROCKETT ST

SHERMAN TX 75090



THE STATE OF TEXAS
COUNTY OF GRAYSON
I hereby certify that this instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas.

Wilma Blackshear Bush

Wilma Blackshear Bush, Grayson County Clerk

105427

0000845 OR 4435

WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GRAYSON

THAT DAVID VANCE HOLT and SUSAN HOLT

(Hereinafter called "GRANTORS" whether one or more), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations cash in hand paid by TERRY PETERSON

whose address is 1236 Park Place, Sherman, TX 75092,

(hereinafter called "GRANTEES" whether one or more), the receipt and sufficiency of which are hereby acknowledged and confessed.

Have GRANTED, SOLD and CONVEYED, and by these presents do GRANT, SELL and CONVEY unto the said Grantees herein, the following described property, together with all improvements thereon, to-wit:

BEING LOT FOUR (4), BLOCK ELEVEN (11) OF THE B.H. MOORE HEIR'S ADDITION, AN ADDITION TO THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS.

TO HAVE AND TO HOLD the above described premises, together with, all and singular, the rights and appurtenances thereto in any wise belonging, unto the said Grantees, their heirs and assigns forever. And Grantors do hereby bind themselves, their heirs, executors and administrators, to warrant and forever defend all and singular, the said premises unto the said Grantees, their heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Taxes for the current year have been prorated and are assumed by Grantee.

This conveyance is made and accepted subject to (i) any and all outstanding minerals, mineral leases, restrictions, covenants, conditions and easements, to the extent that they are in force and effect; (ii) all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, to the extent that they are applicable and enforceable; (iii) any and all easements, rights of way and encroachments that are apparent, including any utilities buried beneath the surface of the ground; and (iv) all rights of parties in possession of any part of the Property.

When this deed is executed by one person, or when the Grantee is one person, the instrument shall read as though pertinent verbs and pronouns were changed to correspond, and when executed by or to a corporation the words "heirs, executors or administrators" or "heirs and assigns" shall be construed to mean "Successors and assigns".

Executed on this the 15 day of April, 2008.


DAVID VANCE HOLT

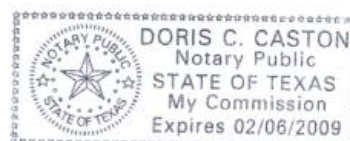

SUSAN HOLT

THE STATE OF TEXAS

COUNTY OF GRAYSON

This instrument was acknowledged before me this 15 day of April, 2008, by DAVID VANCE HOLT and SUSAN HOLT.


NOTARY PUBLIC - STATE OF TEXAS





NOTICE: Selling a portion of this addition by metes and bounds is a violation of city ordinance and state law and is subject to fines and withholding of utilities and building permits.

Replat of Lot 4, Block 11 **B. H. Moore's Heirs Addition** to the City of Sherman, Texas



CITY OF SHERMAN
RESIDENTIAL BUILDING PERMIT

PERMIT #: 81647 SUBCONTRACTOR: TERRY PETERSON DATE ISSUED: 9/08/2008

PROJECT ADDRESS: 1302 S ELM ST
PARCEL ID:
SUBDIVISION:

LOT #:
BLK #:
ZONE ORD:

ISSUED TO: TERRY PETERSON
ADDRESS: 1236 PARK PLACE
CITY, ST ZIP: SHERMAN TX 75092
PHONE: 903-813-8073

CONTRACTOR: PETERSON ENDLER
ADDRESS: 1236 PARK PLACE
CITY, ST ZIP: SHERMAN TX 75092
PHONE:

PROP. USE: RESIDENTIAL
WORK: CONSTRUCT SINGLE FAMILY
VALUATION: \$ 85,000.00
OCCP TYPE: RESIDENTIAL
CNST TYPE: WOOD FRAME

SQ FT: 1,814.00
BEDROOMS: 3
BATHROOMS: 2
STORIES: 1

FEE CODE
BLD10

DESCRIPTION
RESIDENTIAL STORMWATER MGMT

AMOUNT
\$ 25.00

TOTAL

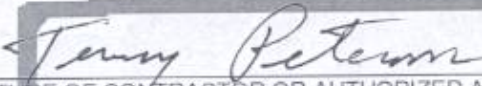
\$ 25.00

NOTES:

NOTICE

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISION OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.


(SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT)

9/8/08
DATE

(APPROVED BY)

DATE



City of Sherman, Texas

1302 SOUTH ELM

PROJECT LOCATION MAP





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.10

*** RESOLUTION NO. 5278**

Authorizing the Purchase of a 2009 Ford F-450 Frazer Ambulance for the Sherman Fire Department through the Houston-Galveston Area Council of Governments (H-GAC)

Issue

To consider approval of a resolution to purchase a new 2009 Ford F-450 Frazer Ambulance through the Houston-Galveston Area Council of Governments (H-GAC) for use within the Sherman Fire Department

Background

An ambulance in current use by the Sherman Fire Department is obsolete and must be replaced. Once the new ambulance is acquired from Frazer through the H-GAC, the obsolete model will be reassigned to reserve status or disposed of according to City policy. Through H-GAC, we obtained a quote of \$163,425.00 for a 2009 Ford F-450 6.4L XLT diesel chassis ambulance. The H-GAC conforms to the requirements of Texas statutes that are applicable to competitive bids and competitive proposals. No product or service is offered by H-GAC that has not been subjected to either competitive bid or competitive proposal process.

Origination

Sherman Fire Department

Financial Consideration

The unit will be purchased at a cost of \$162,425.00, plus H-GAC's cooperative fee of \$1,000.00, for a total expense of \$163,425.00. Funds for the purchase and fee were appropriated in the fiscal year 2008-2009 vehicle replacement budget.

Staff Recommendation

It is recommended that the staff be authorized to purchase the new ambulance through H-GAC.

Alternatives

No feasible alternatives exist.

Attachments

Resolution No. 5278

Frazer Quote

H-GAC Interlocal Agreement

Prepared by:
Jeffrey J. Jones, Fire Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5278

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 2009 FORD F-450 FRAZER AMBULANCE FOR THE SHERMAN FIRE DEPARTMENT THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase, through the Houston-Galveston Area Council of Governments (H-GAC), a new 2009 Ford F-450 Frazer Ambulance at the total purchase price of One Hundred Sixty-Three Thousand, Four Hundred Twenty-Five Dollars and No Cents (\$163,425.00), in accordance with the terms and conditions of the Interlocal Participation Agreement attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney.

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK



FRAZER

The Leader in Generator Powered EMS Modules

August 11, 2008

Mr. Chad Martin
Sherman Fire Department
Email: chadm@ci.sherman.tx.us

Quote #5571A

Mr. Martin,

Per your request we are quoting one (1) Frazer Type I 14' Generator Powered Module mounted on a 2009 Ford F-450 6.4L diesel chassis with an air suspension system. For your convenience all pricing has been itemized below.

Frazer Type I 14' GPM	\$ 77,500.00
2009 Ford F-450 6.4L diesel chassis w/ air suspension system	\$ 42,500.00
Module upgrade for diesel chassis	\$ 1,500.00
Energy/ fuel surcharge	\$ 2,500.00
Optional items (listed below)	\$ 38,425.00
HGAC Fee	\$ 1,000.00
Total	\$ 163,425.00

Optional items:

Federal Signal QuadraFlare LEDs	\$ N/C
Federal Signal PA300 siren in lieu of standard	\$ 50.00
*Zoll "E" series defibrillator monitor	\$ 25,000.00
Squad bench cabinet with additional padding around cabinet	\$ 600.00
EVS captain's chair w/ built-in child safety seat	\$ 700.00
Double locking drug box	\$ 250.00
2 high "D" cylinder holder	\$ 150.00
Blade pouch below action wall countertop	\$ 225.00
Oxygen regulator	\$ 150.00
Double blank insert on console	\$ 150.00
Engel 14 qt. refrigerator w/ 120VAC adapter and locking hasp	\$ 650.00
Special red & white paint scheme	\$ 4,200.00
SS wheel covers	\$ N/C
Running boards	\$ 450.00
Ferno 93-P PROFlexx "Electric blue" cot w/ shelf, 513-13 IV pole, 514 Oxy-Clip Oxygen Cylinder Holder, and antler & bar	\$ 5,850.00

*Pricing on the Zoll defibrillator may vary +/- once 2009 pricing becomes available.

Of course this module has standard Frazer features including all aluminum powder coated cabinets, seamless cushions, horizontally mounted oxygen cylinder, fluorescent lights, filtered air conditioning, 100% vinyl flooring, protective cot plates, all LED emergency lighting, LED clearance lights, IMPACT self-contained suction, on-board battery charger, and stainless steel grab handles, just to name a few. All pricing is F.O.B. Houston

Per TMVCC we are quoting this through our licensed franchise dealer, Freeway Ford.

Thank you for the opportunity to quote this job. If you have any questions please call me at 888-372-9371.

Best Regards,

A handwritten signature in black ink, appearing to read "Laura Richardson", with a stylized flourish at the end.

Laura Richardson
Frazer, Ltd.

LGR:KL.

THIS INTERLOCAL AGREEMENT ("Agreement"), made and entered into pursuant to the Interlocal Cooperation Act (Article 4413(32c) V.T.C.S.) by and between the Houston-Galveston Area Council, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 500, Houston, Texas 77027 and CITY OF SHERMAN, hereinafter referred to as the local government having its principal place of business at 400 N. RUSK, SHERMAN, TX 75090.

WITNESSETH:

WHEREAS, H-GAC is a regional planning commission created under Acts of the 59th Legislature, Regular Session, 1965, recodified as Chapter 391 Texas Local Government Code; and

WHEREAS, H-GAC has entered into an agreement with the local government on the 18TH day of MARCH, 1991 and

WHEREAS, the local government desires to purchase certain governmental administrative functions, goods or services; and

WHEREAS, H-GAC hereby agrees to perform the scope of services outlined in Article 5 as hereinafter specified in accordance with the Agreement, and

NOW, THEREFORE, H-GAC and the local government do hereby agree as follows:

ARTICLE 1 LEGAL AUTHORITY

The local government warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The local government's governing body has authorized the signatory official(s) to enter into this Agreement and bind the local government to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2 APPLICABLE LAWS

H-GAC and the local government agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, ordinances and laws in effect or promulgated during the term of this Agreement.

ARTICLE 3 WHOLE AGREEMENT

The Interlocal Agreement and Attachments, as provided herein, constitute the complete Agreement between the parties hereto, and supersedes any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

ARTICLE 4 PERFORMANCE PERIOD

The period of this Interlocal Agreement shall be for the (balance of) fiscal year of the local government which begins 10/31/90, 19 and ends 10/31/91, 19 . This contract shall thereafter automatically be renewed annually for each succeeding fiscal year, provided that such renewal shall not have the effect of extending the period in which the local government may make any payment due H-GAC beyond the fiscal year in which such obligation was incurred under this Agreement.

H-GAC or the local government may cancel this Agreement at any time upon 30 days written notice to the other party to this Agreement. The obligations of the local government, including its obligation to pay H-GAC for all costs incurred under this Agreement prior to such notice shall survive such cancellation, as well as any other obligation incurred under this Agreement, until performed or discharged by the local government.

ARTICLE 5 SCOPE OF SERVICES

The local government appoints H-GAC its true and lawful purchasing agent for the purchase of certain materials and services through the Council's Cooperative Purchasing Program, as enumerated through the submission of a duly executed purchase order, order form or resolution. All material purchased hereunder shall be in accordance with specifications established by H-GAC.

The materials and services shall be procured in accordance with procedures governing competitive bidding by H-GAC; and at the unit prices and administrative fee as indicated in the current H-GAC Order Form and Price Lists.

Ownership (title) of material purchased shall transfer directly from the vendor to the local government. The local government agrees to provide H-GAC with documentation of receipt and acceptance of material within five (5) days of acceptance of same.

ARTICLE 6 PAYMENTS

The local government agrees that, upon the presentation by H-GAC of a properly documented, verified proof of performance and a statement of costs H-GAC has incurred in accordance with the terms of this Agreement, it shall pay H-GAC, from current revenues available to the local government during the current fiscal year, on or before the date of the delivery of materials and services to be provided under this agreement.

ARTICLE 7 CHANGES AND AMENDMENTS

Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

H-GAC may, from time to time, require changes in the scope of the services offered through the H-GAC Cooperative Purchasing Program to be performed hereunder.

ARTICLE 8 TERMINATION PROCEDURES

Either H-GAC or the local government may cancel or terminate this Agreement upon thirty (30) days written notice by certified mail to the other party. In the event of such termination prior to completion of any purchase provided for herein, the local government agrees to pay for services on a prorated basis for materials and services actually provided and invoiced in accordance with the terms of this Agreement, including penalties, less payment of any compensation previously paid.

ARTICLE 9 SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not effect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 10 FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, judgement, act of God, or specific cause reasonably beyond the parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 11 VENUE

Venue and jurisdiction of any suit, or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas.

This instrument, in duplicate originals, has been executed by the parties hereto as follows:

CITY OF SHERMAN
Local Government
BY [Signature]
TAYLOR M. BUTE
CITY MANAGER
DATE 3/18/91
Name & Title of Signatory
(PLEASE TYPE)

HOUSTON-GALVESTON AREA COUNCIL
BY [Signature] Date 3/27/91
Manager of Cooperative Purchasing
BY [Signature] Date 3/5/91
Jack Steele
Executive Director



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. C.11

*** RESOLUTION NO. 5279**

Authorizing the Purchase of a 2009 Pierce Fire Engine for the Sherman Fire Department through the Texas Local Government Purchasing Cooperative (BuyBoard)

Issue

To consider the purchase of a 2009 Pierce Custom Contender CAFS Engine from Martin Apparatus, Inc. through the Texas Local Government Purchasing Cooperative (BuyBoard)

Background

A fire engine in current use by the Sherman Fire Department is obsolete and must be replaced. Once the new fire engine is acquired through BuyBoard, the obsolete model, a 1999 Freightliner E-One Pumper, will be placed in reserve or disposed of according to City policy. Through BuyBoard, we obtained a quote of \$367,837.00 for a new Pierce Custom Pumper. The Texas Local Government Purchasing Cooperative was created to increase the purchasing power of government entities and to simplify their purchasing by using a customized electronic purchasing system, called the BuyBoard.

Origination

Sherman Fire Department

Financial Consideration

The unit will be purchased at a cost of \$367,837.00. Funds for the purchase were appropriated in the fiscal year 2008-2009 vehicle replacement budget.

Staff Recommendation

It is recommended that the staff be authorized to purchase the Pierce Custom Contender CAFS Engine from Martin Apparatus, Inc. through the BuyBoard.

Alternatives

No feasible alternatives exist.

Attachments

Resolution No. 5279

Martin Apparatus/Pierce Quote

Texas Local Government Purchasing Cooperative Interlocal Participation Agreement

Prepared by:
Jeffrey J. Jones, Fire Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5279

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 2009 PIERCE FIRE ENGINE FOR THE SHERMAN FIRE DEPARTMENT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase from Martin Apparatus, Inc., through the Texas Local Government Purchasing Cooperative (BuyBoard), a new 2009 Pierce Fire Engine at the total purchase price of Three Hundred Sixty-Seven Thousand Eight Hundred Thirty-Seven Dollars and No Cents (\$367,837.00), in accordance with the terms and conditions of the Interlocal Participation Agreement attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney.

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

PASSED AND APPROVED on this the ____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

MARTIN APPARATUS, INC.

3500 Shelby Lane
Denton, TX 76207



October 1, 2008

City of Sherman FD
318 S. Travis
Sherman, TX 75091

Martin Apparatus is pleased to provide the following proposal for one (1) Pierce Custom Contender CAFS engine. The enclosed proposal pricing is based on the accompanying specifications, which have been tailored to meet your requirements. The proposal pricing includes the unit delivery cost from Bradenton, Florida, after final inspection. Travel expenses for 2 of your personnel for a final inspection trip are included in this proposal. The purchasing fees charged by Buyboard are included in the following proposal price. Delivery for the proposed unit will be within 6-8 months from the date of purchase order received at Martin Apparatus. This pricing is valid for **45** days from the above date. Payment is due to Martin Apparatus,

Martin Apparatus, Inc
P.O. Box 974615
Dallas, TX 75397-4615

upon acceptance of the apparatus at the factory. Any changes to the original specification will be invoiced or credited as a separate transaction from the original bid. A late fee of .033% per day will be charged for overdue payments for the first 30 days and a fee of .044% per day thereafter.

One (1) Pierce Custom Contender CAFS engine

\$367,837.00

Trade-In: \$16,000 for the 2000 Freightliner E-one Pumper upon delivery of the new engine, subject to our **review and acceptance**.
(This figure has **not** been deducted from our proposal shown above.)

Lease/Purchase information is included on separate enclosure.

Sincerely,

Russell Mabra
Sales Representative

RECEIVED JUL 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT
for the
Texas Local Government Purchasing Cooperative

RECEIVED JUL 15 2002

This Interlocal Participation Agreement ("Agreement") is made and entered into by and between the Texas Local Government Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the undersigned local government of the State of Texas ("Cooperative Member"). The purpose of this Agreement is to facilitate compliance with state bidding requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Cooperative Members.

WITNESSETH:

WHEREAS, the Cooperative Members are authorized by Chapter 791, et seq., The Interlocal Cooperation Act of the Government Code ("the Act"), to agree with other local governments to form purchasing cooperatives; and

WHEREAS, the Cooperative is an administrative agency of local governments cooperating in the discharge of their governmental functions; and

WHEREAS, the Cooperative Member does hereby adopt the Organizational Interlocal Agreement, together with such amendments as may be made in the future, reflecting the evolving mission of the Cooperative and further agrees to become an additional party to that certain Organizational Interlocal Agreement promulgated on the 26th day of January, 1998.

NOW, THEREFORE, BE IT RESOLVED that the undersigned Cooperative Member in consideration of the agreement of the Cooperative and the Cooperative Members to provide services as detailed herein does agree to the following terms, conditions, and general provisions.

In return for the payment of the contributions and subject to all terms of this Agreement, the parties agree as follows:

TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The Cooperative Member by the adoption and execution of this Agreement hereby adopts and approves the Organizational Interlocal Agreement dated January 26, 1998, together with such amendments as may be made in the future and further agrees to become a Cooperative Member.
2. **Term.** The initial term of this Agreement shall commence at 12:01 a.m. on the date executed and signed and shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement. The terms, conditions, and general provisions set forth below shall apply to the initial term and all renewals.
3. **Termination.**
 - a. By the Cooperative Member. This Agreement may be terminated by the Cooperative Member at any time by thirty (30) days prior written notice to the Cooperative; provided all charges owed to the Cooperative and any vendor have been fully paid.
 - b. By the Cooperative. The Cooperative may terminate this Agreement by:
 1. Giving ten (10) days notice by certified mail to the Cooperative Member if the Cooperative Member fails or refuses to make the payments or contributions as herein provided; or
 2. Giving thirty (30) days notice by certified mail to the Cooperative Member.

- c. **Termination Procedure.** If the Cooperative Member terminates its participation during the term of this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the Cooperative Member under any provision of this Article, the Cooperative Member shall bear the full financial responsibility for any purchases occurring after the termination date, and for any unpaid charges accrued during its term of membership in the Cooperative. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. The Cooperative Member will not be entitled to a refund of membership dues paid.
4. **Payments.**
- a. The Cooperative Member agrees to pay membership fees based on a plan developed by the Cooperative. Membership fees are payable by Cooperative Member upon receipt of an invoice from the Cooperative, Cooperative Contractor or vendor. A late charge amounting to the maximum interest allowed by law, but not less than the rate of interest under Section 2251.021, et seq., Texas Government Code, shall begin to accrue daily on the 31st day following the due date and continue to accrue until the contribution and late charges are paid in full. The Cooperative reserves the right to collect all funds that are due to the Cooperative in the event of termination by Cooperative Member or breach of this Agreement by Cooperative Member.
 - b. The Cooperative Member will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the Invitation to Bid and related procurement documents. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring party shall be the exclusive obligation of the procuring Cooperative Member.
5. **Cooperative Reporting.** The Cooperative will provide periodic activity reports to the Cooperative Member. These reports may be modified from time to time as deemed appropriate by the Cooperative.
6. **Administration.** Cooperative Member will use the BuyBoard purchasing application in accordance with instruction from the Cooperative; discontinue use upon termination of participation; maintain confidentiality and prevent unauthorized use; maintain equipment, software and testing to operate the system at its own expense; report all purchase orders generated to Cooperative or its designee in accordance with instructions of the Cooperative; and make a final accounting to Cooperative upon termination of membership.
7. **Amendments.** The Board may amend this agreement, provided that notice is sent to each participant at least 60 days prior to the effective date of any change described in such amendment which, in the opinion of the Board, will have a material effect on the Cooperative Members participation in the Cooperative.

GENERAL PROVISIONS

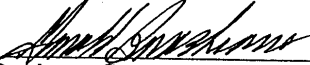
- 1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
- 2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable policies and procedures established by the Cooperative.
- 3. **Compensation.** The parties agree that the payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the Cooperative for the services or functions performed under the Agreement, and that the portion of gross sales paid by participating vendors enables the Cooperative to pay the necessary licensing fees, marketing costs, and related expenses required to operate a statewide system of electronic commerce for the local governments of Texas.
- 4. **Cooperation and Access.** The Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to audit the relevant records of any Cooperative Member. Any breach of this Article shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Cooperative Member.

5. **Coordinator.** The Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Cooperative Member, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Cooperative Member. The Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.
6. **Current Revenue.** The Cooperative Member hereby warrants that all payments, contributions, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.
7. **Defense and Prosecution of Claims.** The Cooperative Member authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative and/or any past or current Cooperative Member in any litigation, claim or dispute, and to engage counsel and appropriate experts, in the Cooperative's sole discretion, with respect to such litigation, claim or disputes. The Cooperative Member does hereby agree that any suit brought against the Cooperative or a Cooperative Member may be defended in the name of the Cooperative or the Member by the counsel selected by the Cooperative, in its sole discretion, or its designee, on behalf of and at the expense of the Cooperative as necessary for the prosecution or defense of any litigation. Full cooperation by the Cooperative Member shall be extended to supply any information needed or helpful in such prosecution or defense. Subject to specific revocation, the Cooperative Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.
8. **Governance.** The Board of Trustees (Board) will govern the Cooperative in accordance with the Bylaws. Travis County, Texas will be the location for filing any dispute, claim or lawsuit.
9. **Limitations of Liability.** COOPERATIVE, ITS ENDORSERS (TEXAS ASSOCIATION OF SCHOOL BOARDS, TEXAS ASSOCIATION OF COUNTIES, AND TEXAS MUNICIPAL LEAGUE) AND SERVICING CONTRACTOR (TEXAS ASSOCIATION OF SCHOOL BOARDS) DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. COOPERATIVE, ITS ENDORSERS AND SERVICING CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT IN REGARD TO ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, Organizational Interlocal Agreement, and Exhibits, represents the complete understanding of the Cooperative, and Cooperative Member electing to participate in the Cooperative.
11. **Notice.** Any written notice to the Cooperative shall be made by first class mail, postage prepaid, and delivered to the Associate Executive Director Financial Planning, Texas Association of School Boards, Inc., P.O. Box 400, Austin, Texas 78767-0400.
12. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas.
13. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the date indicated.

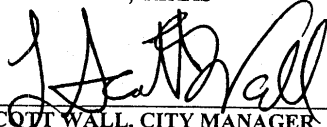
TO BE COMPLETED BY THE COOPERATIVE:

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE, as acting on behalf of all other Cooperative Members

By:  Date: 7-15-02
Gerald Brashears, Cooperative Administrator

TO BE COMPLETED BY COOPERATIVE MEMBER:

CITY OF SHERMAN, TEXAS

By:  Date: 5/28/2002
L. SCOTT WALL, CITY MANAGER

Coordinator for the Cooperative Member is:

Name: MARYANN WINKLER
Address: 405 N. RUSK STREET
SHERMAN, TEXAS 75090
Phone: (903) 892-7285
Fax: (903) 891-0255
Email: PURCH@TEXOMA.NET



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. D.1

OTHER BUSINESS

Consider Request of the Austin College Kappa Gamma Chi to Temporarily Close Certain Streets for the Homecoming 2008 'Roo Run and Joey Walk on Saturday, October 25, 2008

Issue

Austin College Kappa Gamma Chi has submitted a request to close certain streets surrounding the Austin College campus for the Homecoming 2008 'Roo Run and Joey Walk at 8:00 a.m. on Saturday, October 25, 2008

Background

The Austin College Kappa Gamma Chi is sponsoring the Annual 5K 'Roo Run and 1-mile Joey Walk, to be held in conjunction with the Austin College 2008 Homecoming on Saturday, October 25, 2008. The activities will begin at 8:00 a.m. and will follow the route outlined on the attached map. The event will require traffic control assistance, and barricades from the City of Sherman.

Origination

Taylor Woods, Austin College 'Roo Run Service Chair

Financial Consideration

Labor and equipment to provide traffic control assistance, implement barricade placement and removal.

Staff Recommendation

It is recommended that the City Council approve this request and authorize the necessary traffic support, control and assistance to accommodate the event.

Alternatives

Select another date, time or location for the proposed activities.

Attachments

Memo from Taylor Woods dated September 5, 2008

Map of Proposed Route

Prepared and Approved by:
George Olson, City Manager



M E M O R A N D U M

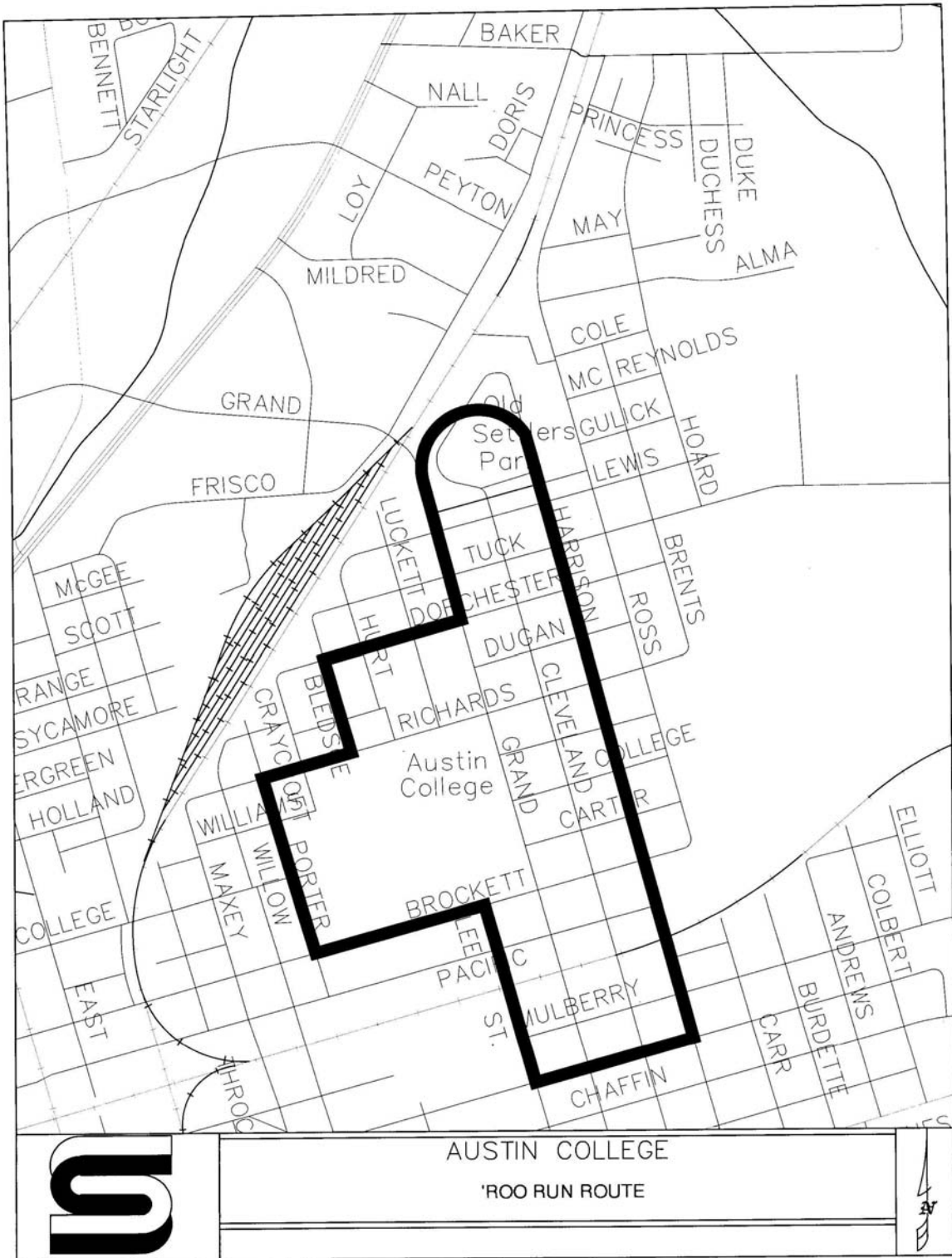
DATE: September 5, 2008
TO: City Manager
FROM: Taylor Woods
Austin College Kappa Gamma Chi 'Roo Run
Service Chair
RE: Homecoming 2008 'Roo Run

On Saturday, October 25, 2008 the Annual Kappa Gamma Chi 'Roo Run will be held in connection with Austin College 2008 Homecoming. The 5K 'Roo Run and 1-mile Joey Walk will begin at 8:00 a.m. on the steps of Ida Green Communications Center and then continue as shown on the attached map. Please allow the Austin College 'Roo Run permission to use Sherman city streets and traffic control assistance as in the past years.

Please contact me at 817.223.5053 you have questions or need additional information.

cc. Cindy Bean, Associate Director of Alumni and Parent Relations
Michael Deen, Associate Director of Student Life

Attachment: Roo Run Map





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. D.2

*** OTHER BUSINESS**

**Final Plat Approval of the Bryan Luckett Addition; Donna Reast, Owner;
Bryan Luckett, Prospective Buyer (3111 U.S. Highway 75 South)**

Issue

To consider Final Plat approval of the Bryan Luckett Addition

Background

The property is located at 3111 U.S. Highway 75 South. The building on the tract was previously occupied by Air Liquide. The applicant would like to operate a crane service to store/lease cranes at this location.

Origination

Donna Reast (Owner), Bryan Luckett (Prospective Buyer), and Sartin & Associates (Surveyors)

Board Recommendation

At the September 16, 2008 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Final Plat be approved.

Attachments

Location Map

Photos

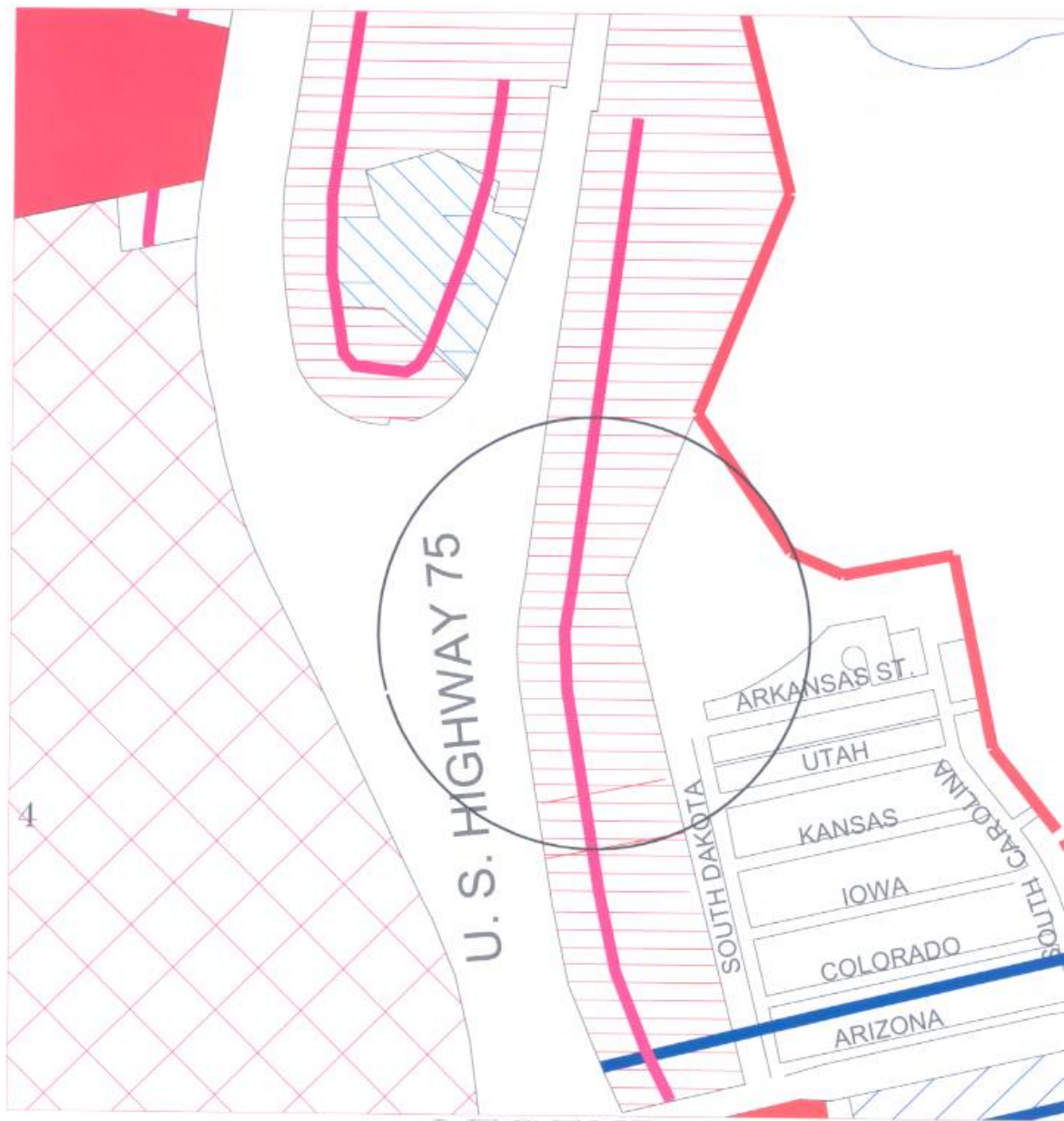
Plat

P&Z Communication

Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager



LEGEND

	R-A	SINGLE FAMILY AGRICULTURAL DISTRICT		M-2	HEAVY MANUFACTURING DISTRICT
	SF-1	SINGLE FAMILY RESIDENTIAL DISTRICT		M-H	MANUFACTURED HOUSING DISTRICT
	R-1	ONE AND TWO FAMILY RESIDENTIAL DISTRICT			BLALOCK INDUSTRIAL PARK
	R-2	MULTI-FAMILY RESIDENTIAL DISTRICT		O-1	OVERLAY DISTRICT - 75 & 82
	C-1	RETAIL BUSINESS DISTRICT		O-1.1	OVERLAY DISTRICT - 1417
	C-2	GENERAL COMMERCIAL DISTRICT		O-1.2	OVERLAY DISTRICT - SAM RAYBURN FREEWAY
	CO	OFFICE DISTRICT		CPO	COLLEGE PARK OVERLAY
	M-1	LIGHT MANUFACTURING DISTRICT		A&C	ARTS & CULTURAL OVERLAY DISTRICT
	M-1.5	MEDIUM MANUFACTURING DISTRICT		CBD	CENTRAL BUSINESS DISTRICT



3111 U.S. HWY 75 SOUTH
FINAL PLAT

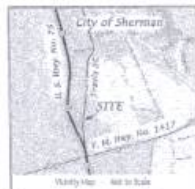
ENGINEERING DEPARTMENT







BRYAN LUCKETT ADDITION to the CITY of SHERMAN, TEXAS (being 2.71 Acres)



Owner & Developer
Bryan Luckett

BARTIN & ASSOCIATES, INC.
Registered Professional Land Surveyors
109 E. Travis, P.O. Box 1853 - Sherman, Texas 75091-1853
Ph: (817) 857-8003 Fax: (817) 848-7070

11134-1
SHEET 1

City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
September 16, 2008
Jason Sofey, Chairman

Jim Jacobs, Vice Chairman
Robin Atherton, Commissioner
Lawrence Davis, Commissioner
Brad Morgan, Commissioner
Commissioner

John Nix, Commissioner
Steve Jones, Commissioner
David Plyler, Commissioner
Darren Tankersley,

3111 U.S. Highway 75 South
Being 2.71 acres in the Preston Kitchen Survey, Abstract No. 667
Final Plat

Requested Action/Proposed Use:

Approval of Final Plat of the Bryan Luckett Addition.

Background

This is redevelopment of existing property that has never been platted.

Adjacent Zoning:

Retail/Commercial and Residential Districts

Origination:

Donna Reast (Owner), Bryan Luckett (Prospective Buyer) and Sartin & Associates (Surveyors).

Master Plan Designation:

Retail/Commercial District

Attachments:

Location map
Aerial
Final Plat
Staff Review

Prepared by:
Rita Gaither,
Planning & Development Coordinator

Approved by:
Scott Shadden,
Director of Development Services

STAFF REVIEW LETTER

September 9, 2008

Donna Reast
3866 Echo Brook Lane
Dallas, TX 75229

Bryan Lockett
4375 CR 40400
Commerce, TX 75428

Dear Applicants,

The request for approval of a Final Plat of the Bryan Lockett Addition concerning the property located at 3111 U.S. Highway 75 South has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, September 16, 2008 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

1. The title shall show this to be a Final Plat.
2. Chain link notations are to be removed from the plat.
3. Original tax certificates shall be furnished for the purpose of recording the plat.
4. Letters from the various utility providers are required verifying availability of service and when service will be available. (City will acquire)
5. The spelling of the owners name shall be corrected in four locations: below the subdivision title, in the owners' statement, below the signature line and in the notary statement.
6. Any other changes made to the plat prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Rita Gaither, Development Coordinator at 903-892-7212 prior to the meeting.

Respectfully,

Mark Gibson
Director of Utilities and Engineering

cc: George Olson, City Manager Jeff Miller, Director of Public Works
 Rita Gaither, Development Coordinator Danny Fuller, Fire Marshal
 Doreen E. McGookey, City Attorney
 Sartin & Associates Survey Company, P.O. Box 1843, Sherman, Texas 75090



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. D.3

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. D.4

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. D.5

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. E.1

EXECUTIVE SESSION

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

Section 551.074

Personnel Matters:

- (a) Consider the Qualifications, Appointment and Removal of Members to Boards and Commissions:**
 - (i) Sherman Higher Education Finance Corporation Board (7)**
 - (ii) Texoma Area Paratransit Systems (TAPS) Board of Directors (1)**
 - (iii) Tri-County Senior Nutrition Board of Directors (1)**
- (b) Consider the Qualifications, Appointment, Employment and Duties of a Public Officer or Employee:**
 - (i) Interim City Attorney**

Section 551.087

Deliberations Regarding Economic Development Negotiations:

- (a) Deliberate Regarding Commercial or Financial Information that the City has Received from Business Prospects and Deliberate any Offers or Incentives to the Business Prospects, including the following:**
 - (i) Panda Energy**

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. F.1

OPEN MEETING

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

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. G.1

RESOLUTION NO. 5280

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

Issue

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

Background

The staff and Council have been working with Panda on an agreement for the City to provide raw water to Panda for use in its industrial cooling process for its proposed power plant. Per the agreement, up to 4,500 acre feet per year of raw water will be delivered to Panda through the use of North Texas Municipal Water District's (NTMWD) raw water line. The sale of raw water is expected to initially generate over \$600,000 annually in net water revenue for the City. The term of the agreement is thirty (30) years.

Origination

Panda Sherman Power, LLC

Financial Consideration

The City will be responsible for the operating costs associated with providing this raw water, for example, pumping costs at the Lake Texoma Pump Station and line charges for leasing costs of a portion of the NTMWD line. These costs were counted in calculating the net effect of the water sales. All costs of infrastructure and lines will be paid by Panda.

Staff Recommendation

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

Alternatives

As the Council directs

Attachments

Resolution No. 5280

Location Map

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5280

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

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

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

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

PASSED AND APPROVED on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. H.1

ADJOURNMENT

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-6-2008

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2008
CITY COUNCIL MEETINGS

JANUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

FEBRUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	

MARCH

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

APRIL

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

MAY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

JUNE

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JULY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

AUGUST

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
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10	11	12	13	14	15	16
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24	25	26	27	28	29	30
31						

SEPTEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

OCTOBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
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19	20	21	22	23	24	25
26	27	28	29	30	31	

NOVEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

DECEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

01/21/08 - M.L.K., Jr. Birthday - Called Council Meeting on 01/22/08
02/29/08 - 12:00 Noon Called Meeting with Chamber Board
05/10/08 - City Council Election
05/13/08 - 12:00 Noon Called Meeting to Canvass Election Results
05/22/08 - 6:00 PM Called Meeting for Comprehensive Plan Community Forum
05/29/08 - 6:00 PM Called Meeting for Comprehensive Plan Community Forum
06/10/08 - 12:00 Noon Budget Planning Meeting in Council Chambers
07/17-18/08 - Budget Workshop in Council Chambers (adjourned on 07/17/08)
09/01/08 - Labor Day - Called Council Meeting on 09/02/08
09/18/08 - 12:00 Noon Joint Meeting with SEDCO Board