

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, OCTOBER 4, 2021
5:00 P.M.**

- A. 1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A. 2. PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER WILLIE STEELE**
- A. 3. INVOCATION BY COUNCIL MEMBER WILLIE STEELE**
- A. 4. APPROVE MINUTES OF THE CALLED JOINT MEETING WITH THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION OF SEPTEMBER 14, 2021, AND THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 20, 2021.**

Citizen Comments

B. 1. CITIZEN COMMENTS

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

Consent Agenda

C. 1. CONSENT AGENDA

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

Public Hearing

D. 1. PUBLIC HEARING

Appeal for a Variance to Allow Beer and Wine Sales within 300 Feet of a School (Crutchfield Elementary); Ty Osmani, Owner, Lucky Stop #1, located at 415 South Dewey Avenue

D. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6417

Designating City of Sherman Industrial Reinvestment Zone No. 11; Providing Eligibility of the Zone for Commercial-Industrial Tax Abatement; Containing Findings that the Area Described Qualifies for Designation as a Tax Abatement Reinvestment Zone Pursuant to Chapter 312 of the Texas Tax Code and that the Improvements Proposed by the Land's Owner, Texas Instruments Incorporated, are Feasible and Practicable and of Benefit to the Land and the City; Authorizing the City Manager to Negotiate Written Agreements with the Owners of any Taxable Real and Tangible Personal Property Located within the Designated Zone; Authorizing the City Manager to Take All Other Actions Necessary to Effectuate the Same

Close Public Hearing and Consider Adoption of Ordinances

D. 3. ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Number 6471

Resolutions

- E. 1. **RESOLUTION NO. 6780**
Authorizing Execution of an Economic Development Program Agreement with Super Shack, LLC for the Grant of Incentives Pursuant to Chapter 380 of the Texas Government Code
- E. 2. **RESOLUTION NO. 6781**
Authorizing Execution of a Professional Engineering Design Services Agreement with CP&Y, Inc. for the design of Moore Street from Park Avenue to Center Street
- E. 3. **RESOLUTION NO. 6782**
Authorizing Execution of a Professional Design Services Agreement with Kimley-Horn and Associates, Inc. for the Design of Shepherd Drive from US 75 to Farmington Road
- E. 4. **RESOLUTION NO. 6783**
Authorizing the Purchase of a 2022 Armored Vehicle for the Sherman Police Department from The Armored Group through the Texas Local Government Purchasing Cooperative (BuyBoard).
- E. 5. ***RESOLUTION NO. 6784**
Authorizing the Purchase of Office365 Implementation for Exchange and Teams Deployment Services through the Texas Department of Information Resources - Contract DIR-TSO-4061

Requests to Advertise

- F. 1. ***REQUEST TO ADVERTISE**
Water Treatment Plant Sludge Removal Project

Other Business

- G. 1. **OTHER BUSINESS**
Consider the Appeal for a Variance to Allow Beer and Wine Sales within 300 feet of a School (Crutchfield Elementary); Ty Osmani, Owner, Lucky Stop #1, located at 415 South Dewey Avenue
- G. 2. **OTHER BUSINESS**
Consider Approval of the Annexation Scheduling Plan for Adoption of Approximately 142.223 acres of land located North of FM 1417 (Vietnam Veterans Parkway), East of U.S. Highway 75 and South of Post Oak Creek, adjacent to the Sherman City Limits and in the City of Sherman's Extra Territorial Jurisdiction; and Directing the Department of Engineering Services to Develop a Service Plan for the Area to be Annexed Upon Approval of the Annexation Scheduling Plan
- G. 3. **OTHER BUSINESS**
Consider possible changes to Chapter 3, Building Regulations regarding requirements for engineered framing plans to be submitted to the City for new residential and commercial buildings.
- G. 4. **OTHER BUSINESS**
Receive Presentation from Police Sergeant Brett Mullen on the Police Department's Annual Halloween Event, "Fright Fest"

G. 5. OTHER BUSINESS

Receive an Update on the City of Sherman's Ongoing Projects

G. 6. *OTHER BUSINESS

Consider Request of St. Mary's Catholic School to Temporarily Close Certain Streets for the "Run Run Rudolph 5K and Family Fun Run/Walk" on Saturday, December 4, 2021

Consider Board/Commission Appointments

H. 1. APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Animal Control Advisory Committee (1)

I. MEDIA QUESTIONS

J. COUNCIL COMMENTS

Executive Session

EXECUTIVE SESSION

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

Tex. Gov't Code § 551.071	Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.
Tex. Gov't Code § 551.072	Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.073	Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.074	Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. (a) Annual Performance Evaluation of City Manager
Tex. Gov't Code § 551.076	Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit.

Tex. Gov't Code §
551.087

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

- (a) Sherman Hospital Update
- (b) Shepherd Place
- (c) Project Mammoth

Tex. Gov't Code §
551.089

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

The Council reconvenes into General Session

L. 1. OPEN MEETING

Reconvene into Open Meeting and Consider Action, if any, on items discussed in Executive Session

M. ADJOURNMENT

COUNCIL CALENDAR

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Friday, October 1, 2021 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 1st day of October, 2021.
City of Sherman, Texas

City Clerk

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time.

All agenda items are subject to final action by the City Council.

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

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

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

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

Mayor

David Plyler

Deputy Mayor

Daron Holland

Council Members

Willie Steele, Council-At-Large, PL #1

Sandra Melton, Council-At-Large, PL #2

Shawn C. Teamann, Council – District #1

Josh Stevenson, Council – District #2

Pamela L. Howeth, Council – District #3

Daron Holland, Council – District #4



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

A. 4.

Meeting Date: 10/04/2021

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE CALLED JOINT MEETING WITH THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION OF SEPTEMBER 14, 2021, AND THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 20, 2021.

Attachments

September 14, 2021 - Called Meeting - Joint with SEDCO

SEDCO PowerPoint

September 20, 2021

STATE OF TEXAS

§

September 14, 2021

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 14, 2021.

COUNCIL MEMBERS PRESENT: Mayor David Plyler; Deputy Mayor Daron Holland.
Council Members Howeth, Melton, Steele, Teamann.

COUNCIL MEMBERS ABSENT: Council Member Stevenson.

SEDCO MEMBERS PRESENT: Janie Bates, Chairman; Gail Utter, Vice-Chairman; Scott Bandemir, Secretary; Daniel Worrell; Jason Brumm; David Plyler (Ex-Officio); Shawn Teamann (Ex-Officio); Jeff Moore, Attorney.

SEDCO MEMBERS ABSENT: Robby Hefton (Ex-Officio); Dr. David Hicks (Ex-Officio).

CITY STAFF PRESENT: Terrence Steele, Assistant City Manager; Clint Philpott, Assistant City Manager; Rob Rae, Director of Development Services; Mary Lawrence, Director of Finance; Wayne Lee, Director of Engineering; Tammy Davis, Controller; Tom Pruitt, Utility Engineer; Jim Cross, Water Systems Manager; Moises Duran, Emergency Management Coordinator; Linda Ashby, City Clerk.

CITY ATTORNEY: Ryan Pittman, Abernathy, Roeder, Boyd, Hullett

SEDCO STAFF PRESENT: Kent Sharp, President; Ashton Bellows, Chief Administrative Officer; Shannon Blake, Economic Development Specialist; Brandy Washington, Assistant.

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

Pledge of Allegiance and Invocation by Council Member Pam Howeth

CITIZEN'S COMMENTS

SEDCO WORK PROGRAM 2020-2021

SEDCO's Presentation of the 2020-2021 Work Program Results

SEDCO WORK PROGRAM 2021-2022

SEDCO's Presentation of the 2021-2022 Work Program

SEDCO WORK PROGRAM 2021-2022

City Council to Discuss and Consider Approval of the SEDCO Work Program 2021-2022

SEDCO BUDGET 2021-2022

SEDCO's Presentation of the SEDCO Budget 2021-2022

COUNCIL MINUTES -- SEPTEMBER 14, 2021

SEDCO BUDGET 2021-2022

City Council to Discuss and Consider Approval of the 2021-2022 SEDCO Budget

MEDIA QUESTIONS

COUNCIL COMMENTS

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.

TEX. GOV'T CODE § 551.071 --

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

TEX. GOV'T CODE § 551.072 --

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

TEX. GOV'T CODE § 551.073 --

Deliberating A Negotiated Contract For A Prospective Gift Or Donation To The City If Deliberation In An Open Meeting Would Have A Detrimental Effect On The Position Of The City In Negotiations With A Third Person

TEX. GOV'T CODE § 551.074 --

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

TEX. GOV'T CODE § 551.076 --

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

TEX. GOV'T CODE § 551.087 --

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

COUNCIL MINUTES -- SEPTEMBER 14, 2021

TEX. GOV'T CODE § 551.089 --

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

OPEN MEETING

Reconvene into Open Meeting and Consider Action, if any, on items discussed in Executive Session

ADJOURNMENT

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

Mayor Plyler called the meeting to order at 12:04 p.m., declared a quorum present, and opened the City Council Meeting.

PLEDGE OF ALLEGIANCE AND INVOCATION BY COUNCIL MEMBER PAM HOWETH

Council Member Pam Howeth led the Pledge of Allegiance and gave the invocation.

CITIZEN COMMENTS

There were no citizen's comments.

SEDCO WORK PROGRAM 2020-2021

SEDCO'S PRESENTATION OF THE 2020-2021 WORK PROGRAM RESULTS

Janie Bates, Sherman Economic Development Corporation Chairman, called the SEDCO Meeting to order at 12:05 p.m. The SEDCO Board considered and approved the minutes of their August 10, 2021 Meeting.

Kent Sharp, SEDCO President, introduced Shannon Blake, SEDCO's new Economic Development Specialist. He also presented a brief report on their financials for July 2021. The SEDCO Board considered and approved the Financial Report for July 2021.

Mr. Sharp introduced the six goals of the 2020-2021 Work Program, saying generally, these goals don't change. Last year they did add a goal to encourage minority-owned and women-owned businesses.

For the goal to "retain and expand existing primary employers", he presented five performance agreements that were approved. These include:

- **Elevate Recoveries** – third incentive payment of \$48,000; 13 jobs created (50 total new)
- **Eternity Technologies** – first incentive payment of \$90,163; \$1.8 million CAPEX invested
- **Eaton** – approved incentive up to \$67,200; estimated \$672,000 CAPEX
- **Emerson Automation Solutions** – first incentive payment of \$115,322; 23 jobs created; \$6,440 invested locally; (includes "Buy Local")
- **903 Brewers** – approved for a performance agreement conveying five acres in Progress Park I

SEDCO recruited a new company, P.Q.D. International, which purchased a business that was going out of business, and kept their six or eight employees. They are also adding additional employees to the payroll.

COUNCIL MINUTES -- SEPTEMBER 14, 2021

They also worked on 28 new projects and performed 11 site visits for companies actually coming to Sherman. Mr. Sharp said they targeted 50 California companies and distributed quarterly reports to more than 1,200 contacts. He visited the California headquarters of one business, "Project Wrap." The 28 companies include equipment, food, and high-tech manufacturers.

SEDCO has also worked to support workforce development and employment programs. They continue to work with students to encourage skills for employment in local industries and with many industrial partners.

At the request from some companies, they also partnered with the Center for Workplace Learning to offer free training in "soft skills," such as safety, health, and OSHA type issues. SEDCO allowed some of the money that was approved for their other programs to be used for this needed training. They also sponsored three job fairs with Workforce Solutions Texoma.

Another goal is the management and marketing of real estate to attract industrial investments. They have purchased or are purchasing the tracts, including 10.3 acres at the southeast corner of Dorset and Howe Drives; 115 acres south and southeast of Emerson, off of Hwy 75 in Progress Park VIII; and are trying to purchase another 71 acres. They also sold 10 acres in Progress Park I to the City for the new Police Headquarters. SEDCO approved a contract with an architect for plans and pricing on a 78,000 square foot spec building, with expansion capabilities, in Progress Park V.

The goal to cultivate and fund an entrepreneurial program resulted in RISE, the "Raising Innovative Sherman Entrepreneurs" program. The program offered \$250,000 in potential grants to fledgling businesses in the area to help foster growth.

They only had two applications, that were reviewed by the program partners, and disqualified based on Type A eligibility. Retail and commercial don't qualify for the Type A employment, which is basically manufacturing and other businesses that primarily sell outside the community. Mr. Sharp said they did major advertising, but are now working with the partners to brainstorm ideas on how to improve the challenge.

The last goal was added last year and was to encourage minority-owned and women-owned businesses. They have formed a committee and scheduled a meeting to try and get ideas on ways to encourage and promote minority and women-owned businesses. It's a worthy goal and he hoped the committee would think of ways to promote these businesses.

Ashton Bellows, SEDCO Chief Administrative Officer, briefed the City Council on SEDCO's use of social media. They are using FaceBook, Twitter, Instagram, and LinkedIn.

SEDCO WORK PROGRAM 2021-2022

SEDCO'S PRESENTATION OF THE 2021-2022 WORK PROGRAM

Mr. Sharp presented SEDCO's Work Program for FY 2021-2022, adding that it included the same goals as this year's program. He said he would rather do a few things really good, instead of many things, not as good.

He did outline some new actions for each goal:

- **Goal A (Retention)**
 - Land the Texas Instruments project for Sherman
 - Continue to target other existing industry opportunities like TI
- **Goal B (Attraction)**
 - Highly target campaigns with Advanced Mfg, Food, and High-Tech using Gazelle AI and referral system

COUNCIL MINUTES -- SEPTEMBER 14, 2021

- **Goal C (Workforce)**
Evaluate AMP and IMT Programs with the goal of improving participation
- **Goal D (Real Estate)**
Determine highest and best uses for SEDCO R/E portfolio
- **Goal E (RISE)**
Kick off the 2022 RISE Challenge
- **Goal F (Minority and Women-Owned Businesses)**
Increase awareness and opportunities for Sherman minority-owned and women-owned businesses

Council Member Howeth said it looked like SEDCO was predominately targeting the west coast, and asked why not the east coast. Mr. Sharp said California is a “hot spot” and 275 companies have moved from California to Texas in the last couple of years. They are trying to exploit the “out-migration” from California. But he said they can shift those campaigns to all parts of the country. Some campaigns will be geographically based on location, but others will be based on type of manufacturing, such as food manufacturers.

Council Member Howeth said many of the local employers still need staff. Several years ago, she thought that the east was a target area because of the number of layoffs they had. Ms. Bates said they were targeting areas with higher unemployment because of the layoffs. However, one problem was that those people didn’t want to relocate.

Mr. Sharp said on workforce recruitment, they find more success by staying within approximately 60 miles of Sherman. Their staff has looked at the Dallas area, for people to commute.

Council Member Teamann asked if adding multi-family projects in Sherman makes it easier for companies. Mr. Sharp said he asked six of the larger employers recently, and they said housing and housing prices are one of the top issues. They need more houses in the \$200,000 to \$250,000 price range for first-time homebuyers.

Deputy Mayor Holland said he appreciated SEDCO’s effort on working with the minority-owned businesses.

SEDCO WORK PROGRAM 2021-2022

CITY COUNCIL TO DISCUSS AND CONSIDER APPROVAL OF THE SEDCO WORK PROGRAM 2021-2022

Mayor Plyler asked for a vote on SEDCO’s Work Program for 2021-2022.

ACTION TAKEN.

Motion by Council Member Howeth to approve the SEDCO Work Program for FY 2021-2022, as presented. Second by Council Member Melton.

VOTING AYE: Holland, Howeth, Melton, Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

SEDCO BUDGET 2021-2022

SEDCO’S PRESENTATION OF THE SEDCO BUDGET 2021-2022

Mr. Sharp presented the report on SEDCO’s proposed Budget for 2021-2022 with the Executive Summary. There are three revenue line items, Sales Tax (4A), Interest Earned, and Miscellaneous Revenue, with a projected total revenue for FY 2021-2022 of \$4,558,500. They just completed this fiscal year with \$4.8 million.

COUNCIL MINUTES – SEPTEMBER 14, 2021

He referenced two large expense items, “Contractual or Sundry Services” and “Capital Expenses”. Contractual Services can fluctuate because that’s where the incentives are included. Currently there are \$1,091, 827 known incentive commitments, but that doesn’t include any new incentives that might be approved. He said there is a “real possibility” that number will change.

The \$7,000,000 in Capital Expenses is the spec building. That number also assumes that SEDCO is not borrowing any of that amount, and that it will all be paid for in cash. He said that has not been discussed with the SEDCO Board, so that could change, and is really just an estimate.

With those numbers, Mr. Sharp said the total expenses would be approximately \$9.2 million, leaving a deficit of \$4.6 million, which would be funded out of reserves. This means, this fiscal year would end with an ending balance of \$13.6 million and FY 2022 would end with a balance of about \$9 million.

Mr. Sharp said usually, their incentive numbers are not fluctuating as much as they are this year, but there are a couple of projects they’re working on.

SEDCO BUDGET 2021-2022

CITY COUNCIL TO DISCUSS AND CONSIDER APPROVAL OF THE 2021-2022 SEDCO BUDGET

Mayor Plyler asked for a vote on SEDCO’s Budget for 2021-2022.

ACTION TAKEN.

Motion by Council Member Melton to approve the SEDCO Budget for FY 2021-2022, as presented. Second by Deputy Mayor Holland.

VOTING AYE: Holland, Howeth, Melton, Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

MEDIA QUESTIONS

There were no media questions.

COUNCIL COMMENTS

There were no Council comments.

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.

TEX. GOV’T CODE § 551.071 --

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

TEX. GOV’T CODE § 551.072 --

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

TEX. GOV’T CODE § 551.073 --

Deliberating A Negotiated Contract For A Prospective Gift Or Donation To The City If

COUNCIL MINUTES – SEPTEMBER 14, 2021

Deliberation In An Open Meeting Would Have A Detrimental Effect On The Position Of The City In Negotiations With A Third Person

TEX. GOV'T CODE § 551.074 --

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

TEX. GOV'T CODE § 551.076 –

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

TEX. GOV'T CODE § 551.087 –

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

TEX. GOV'T CODE § 551.089 --

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

Council Members determined there was no need for an Executive Session.

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 12:38 p.m.

MAYOR

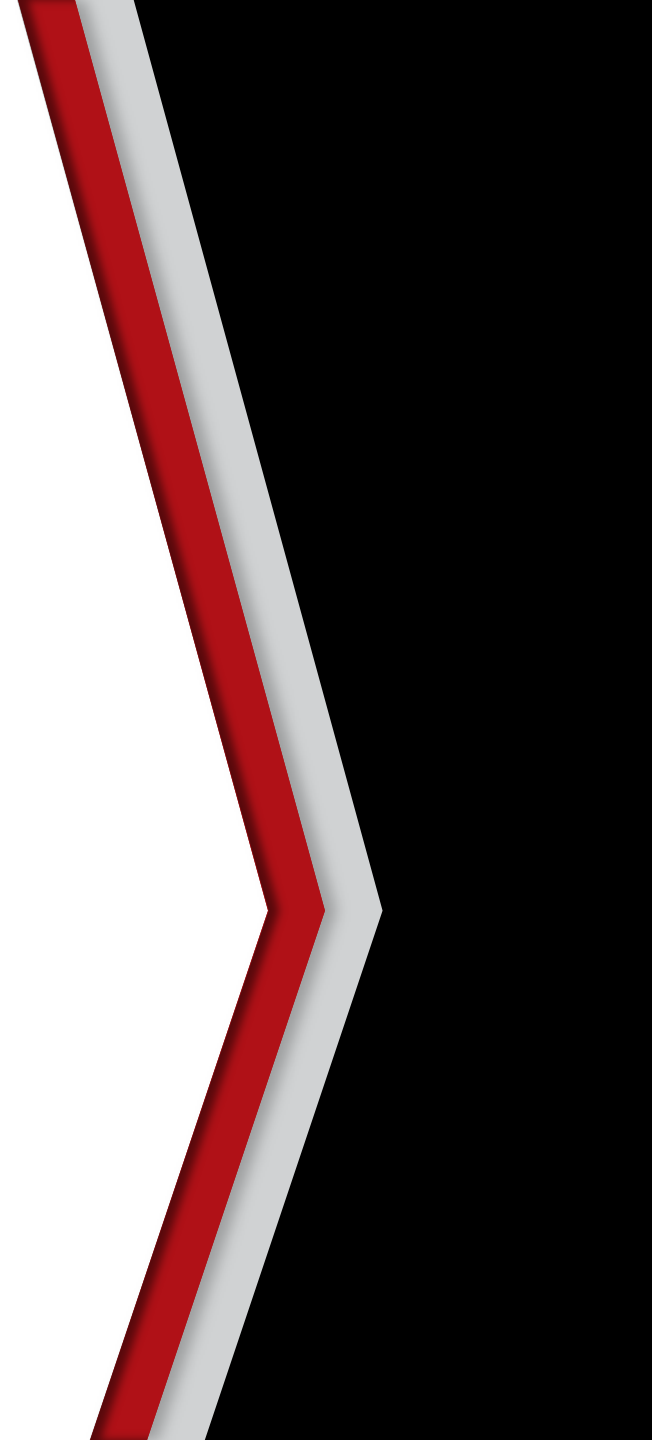
ATTEST

CITY CLERK

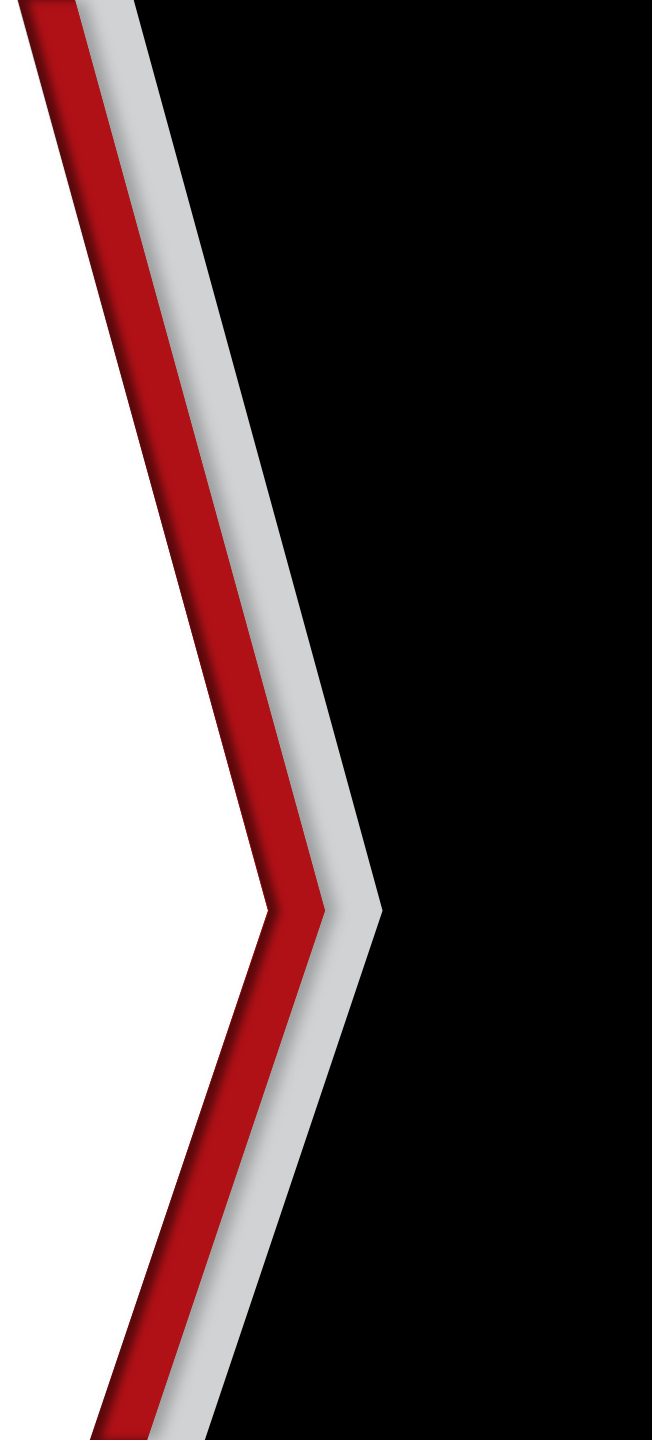
Sept. 14, 2021
Joint Meeting



SEDCO Board to Discuss and
Consider Approval of the
August 10, 2021 Regular Scheduled
Meeting Minutes

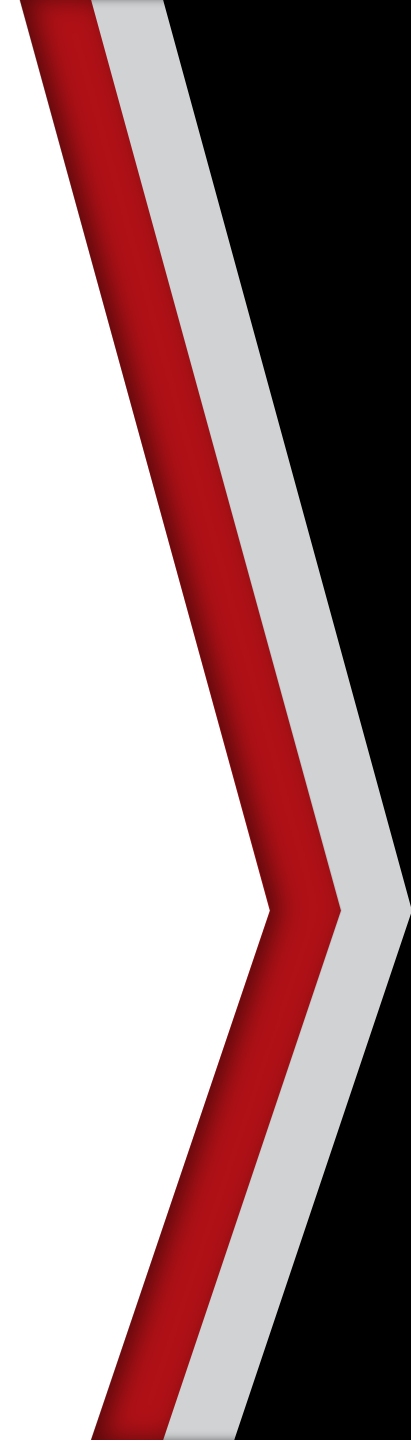


SEDCO Board to Discuss and
Consider Approval of the
July 2021 Financial Reports



Goals to Promote Capital Investment and Jobs:

- A. Retain and expand existing primary employers**
- B. Recruit targeted primary employers and allies**
- C. Support workforce development and employment programs**
- D. Manage and market SEDCO real estate to attract industrial real estate investments**
- E. Cultivate and fund an Entrepreneurial Program**
- F. Encourage Sherman minority-owned and women-owned businesses**



**Program of Work
Results
2020-2021**

A. Retain & expand existing primary employers



- Performance Agreement Updates:
 - **Elevate Recoveries** - Third incentive payment of \$48,000 presented; 13 jobs created (50 total new)
 - **Eternity Technologies** - First incentive payment of \$90,163 presented; \$1.8M CAPEX invested
 - **Eaton** – Resolution approved for an incentive up to \$67,200; est. \$672,000 CAPEX
 - **Emerson Automation Solutions** – First incentive payment of \$115,322 presented (incl. “Buy Local”); 23 jobs created, \$6,440 invested locally
 - **903 Brewers** – Resolution approved for a performance agreement conveying 5 acres in Progress Park I.
- 12 BRE visits



B. Recruit targeted primary employers & allies



- **New Company Performance Agreement:**
 - P.Q.D. International: Resolution approved for an incentive up to \$70,000 towards a proposed \$1.4M CAPEX, 2 new jobs, 6 retained jobs
- Worked on 28 new projects
- 11 site visits
 - Incl. Kent's HQ visit to Project Wrap in California
 - Equipment, food, and high-tech manufacturers
- Targeted 50 California companies using Gazelle AI and LinkedIn
- Distributed quarterly reports to 1,200+ contacts
- 25th anniversary logo and video



C. Support workforce development & employment programs

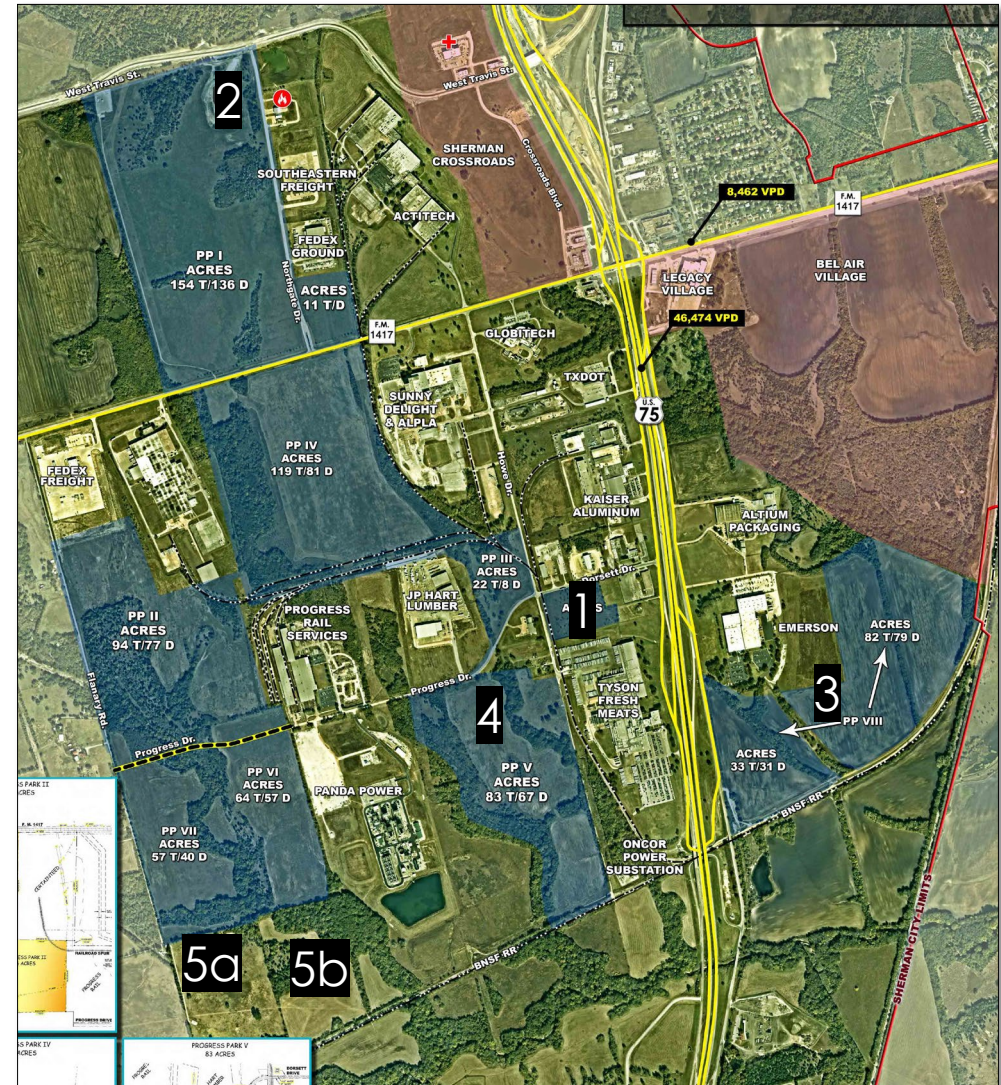


- Matched grant funds with WST and DDA for two Career Education Specialists positions to assist with student recruitment and retention and to educate teachers and counselors on targeted jobs in the region
- Mailed AMP flyers to parents of 7th-9th graders at Sherman, Pottsboro, Whitesboro, and S&S
- Visited high schools to talk to AMP students as a retention effort
- Placed shopping cart ads and TV commercials to promote AMP
- Co-sponsored AMP luncheons & celebrations
- 2020-2021 academic year:
 - 2 Advanced Manufacturing Certificates
 - 7 IMT Certificates
 - 10 PLC Certificates
- Partnered with the CWL to offer free training to full-time employees of Sherman-based, Type A businesses (soft skills/safety/health)
- Co-sponsored 3 job fairs with WST
- Maintained ShermanTXJobs.com and promoted listings on social media



D. Manage & market SEDCO real estate to attract industrial real estate investments

- 1. Purchased the 10.33 acres on the SE corner of Dorset & Howe**
- 2. Sold 10 acres in Park I to the City for the new law enforcement center**
- 3. Purchased approx. 115 acres south and SE of Emerson off Hwy 75 (Progress Park VIII)**
- 4. Approved resolutions for contracts with Alliance Architects and Strategic Construction for plans on a 78,750 SF spec building with expansion capability of 22,680 SF in Park V**
- 5. Approved resolutions for real estate sales contracts for (a) approx. 71 acres south of Park VII and (b) approx. 49 acres south of Park VI**
- Completed Phase 1 ESAs for Parks I-V, VIII, and the 71-acre site**
- Sponsored social media ads to promote the available sites in Progress Park**
- Maintained property listings on ShermanSites.com**



E. Cultivate & fund an entrepreneurial program



- Worked with AC and the Grayson SBDC to design RISE
- Assisted AC in creating RiseInSherman.com and selecting the judges
- Hosted 2 Public Interest Meetings
- Promoted RISE through press releases, radio & social media
- Launched the RISE Challenge with the goal to develop young, entrepreneurial companies by awarding a total of \$250,000 to qualified applicants
- Received 2 applications that were reviewed by the program partners and disqualified based on Type A eligibility
- Met with the program partners and judges to brainstorm ideas on how to improve the challenge
- Assisted in updating the RISE website and collateral
- Created a new marketing plan for the 2022 Challenge



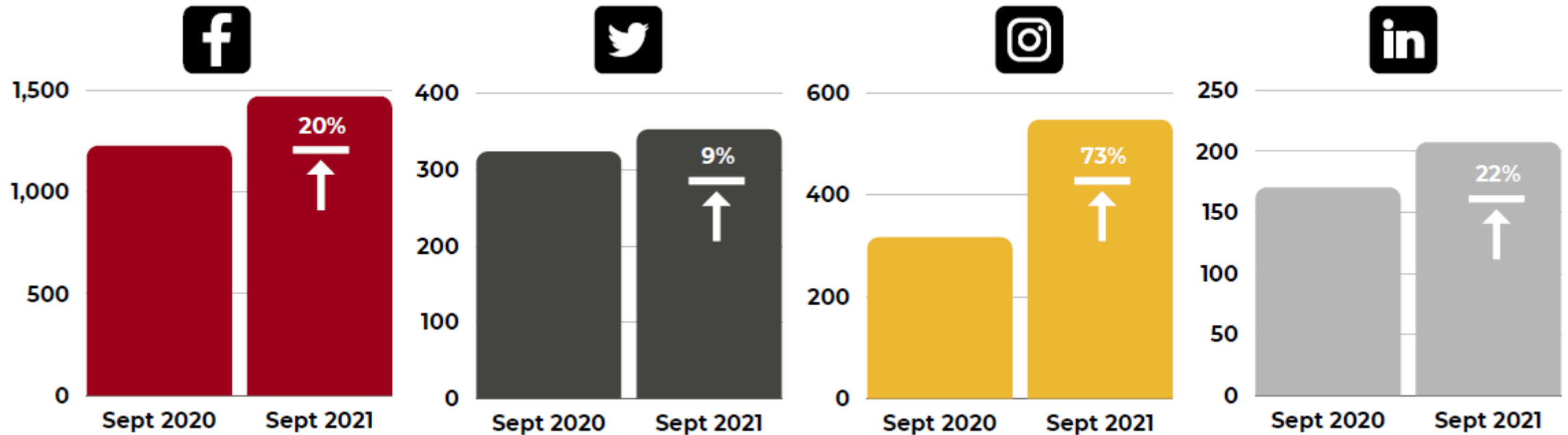
E. Encourage Sherman minority- & women-owned businesses



- Researched similar programs in other Texas communities to brainstorm ideas on how to structure the program.
- Hosting the first committee meeting tomorrow to introduce the program, explain the legal constraints SEDCO operates under as a Type A EDC, and solicit their ideas on how SEDCO can assist minority- and women-owned businesses.
- Started collecting a contact database of minority- and women-owned businesses in Grayson County.



Social Media Follower Growth

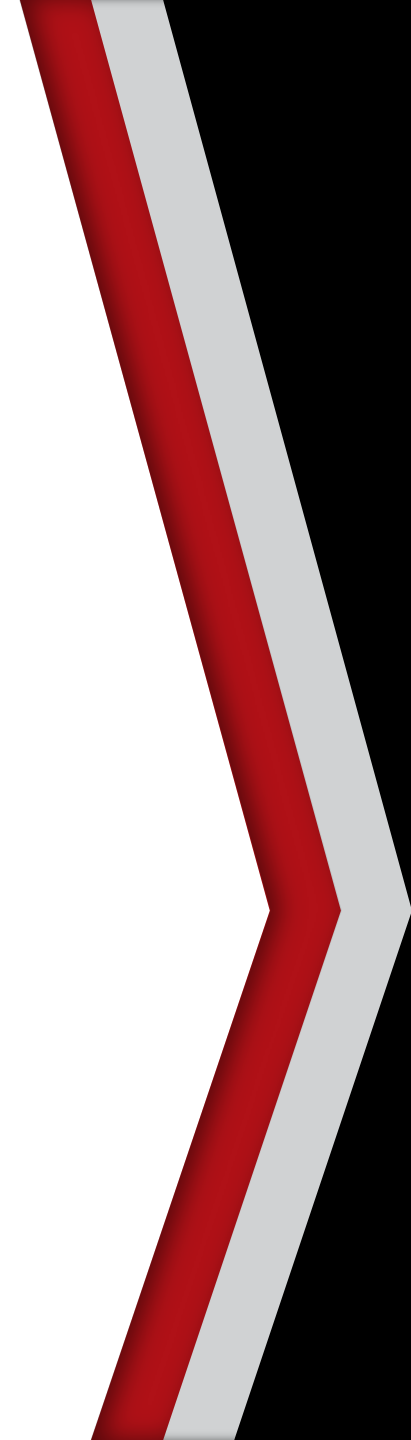


Social Media Ad Results:

	f & 		in
	Campaigns	31	26
	Impressions	277,406	66,880
	Engagement	10,016	2,183
	Video Plays	44,482	5,786
	Clicks	10,064	698

Goals to Promote Capital Investment and Jobs:

- A. Retain and expand existing primary employers**
- B. Recruit targeted primary employers and allies**
- C. Support workforce development and employment programs**
- D. Manage and market SEDCO real estate to attract industrial real estate investments**
- E. Cultivate and fund an Entrepreneurial Program**
- F. Encourage Sherman minority-owned and women-owned businesses**



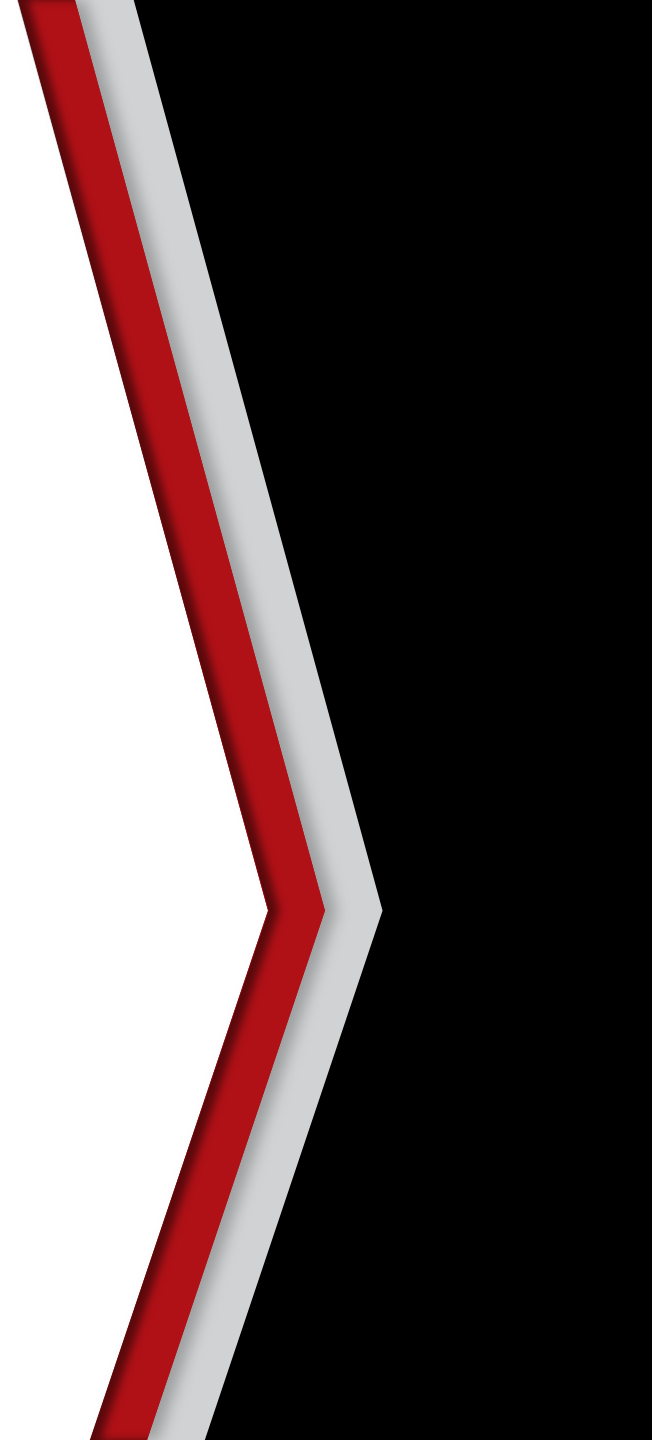
**Proposed
Program of Work
2021-2022**

New Actions for 2021-2022



- **Goal A (Retention)**
 - Land the Texas Instruments project for Sherman
 - Continue to target other existing industry opportunities like TI
- **Goal B (Attraction)**
 - Highly target campaigns with Adv. Mfg., Food, and High-Tech using Gazelle AI and referral system
- **Goal C (Workforce)**
 - Evaluate AMP & IMT Programs with the goal of improving participation
- **Goal D (Real Estate)**
 - Determine highest and best users for SEDCO R/E portfolio
- **Goal E (RISE)**
 - Kick off the 2022 RISE Challenge
- **Goal F (Minority- and Women-Owned Businesses)**
 - Increase awareness and opportunities for Sherman minority-owned and women-owned businesses

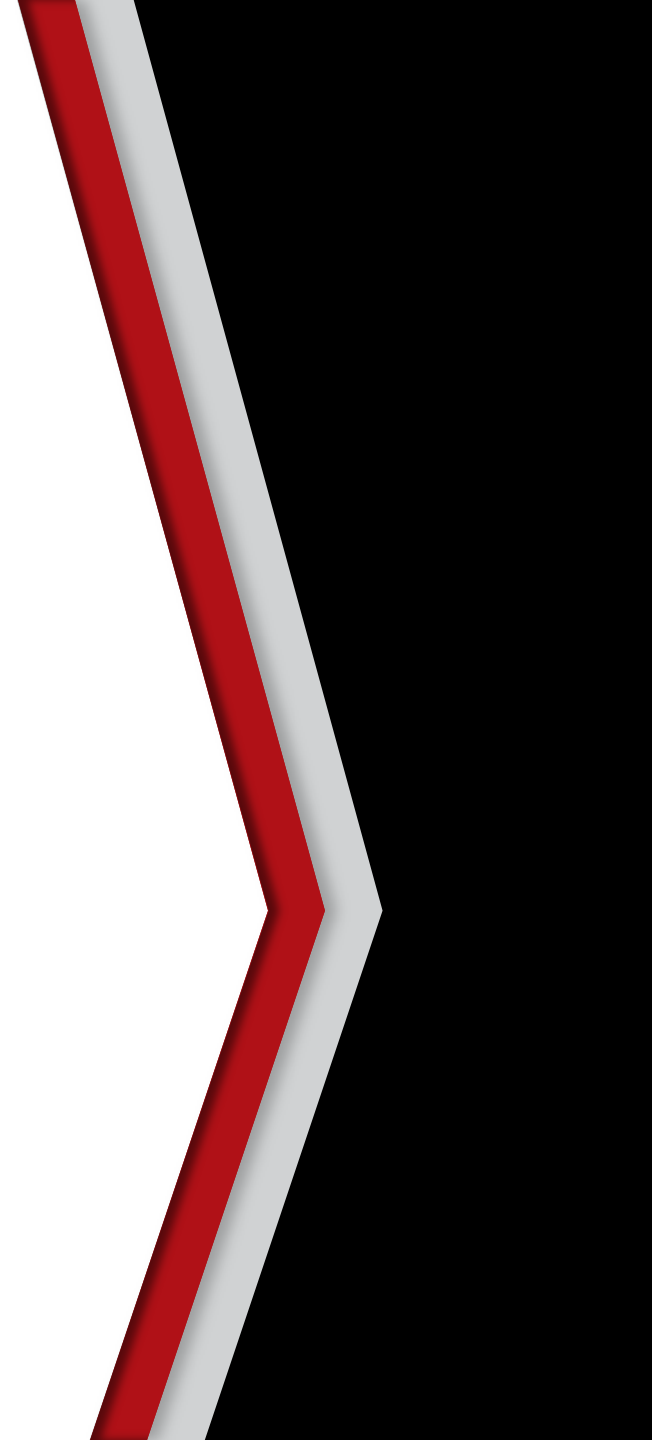
City Council to Discuss and Consider
Approval of the FY 2021-2022 SEDCO
Program of Work



Proposed 2021-2022 Budget

			ACTUAL	APPROVED	CURRENT ACTUAL (Oct-Mar)	PROPOSED ACTUAL (Oct-Sept)	VARIANCE PROPOSED TO APPROVED FY20	PROPOSED FY 21-22	FY21 VARIANCE TO APPROVED FY20
			FY 19-20	FY 20-21	FY 20-21	FY 20-21			
SUMMARY									
Revenues									
Sales Tax 4A - SEDCO	60204		\$ 4,267,922	\$ 4,055,000	\$ 2,334,175	\$ 4,665,104	\$ 610,104	\$ 4,500,000	\$ 445,000
Interest Earned	66001		\$ 147,271	\$ 167,444	\$ 24,546	\$ 49,092	\$ (118,352)	\$ 58,500	\$ (108,944)
Miscellaneous Revenue	68010		\$ -	\$ -	\$ 695,810	\$ 695,810	\$ 695,810	\$ -	\$ -
TOTAL REVENUES			\$ 4,415,192	\$ 4,222,444	\$ 3,054,531	\$ 5,410,006	\$ 1,187,562	\$ 4,558,500	\$ 336,056
Expenses									
	81000								
Personnel Expenses TOTAL			\$ 398,957	\$ 365,320	\$ 184,210	\$ 370,904	\$ 5,584	\$ 460,738	\$ 95,418
Supplies TOTAL	82000		\$ 9,436	\$ 18,650	\$ 4,880	\$ 6,391	\$ (12,259)	\$ 13,800	\$ (4,850)
Maintenance and Repairs TOTAL	83000		\$ 3,600	\$ 6,600	\$ 2,940	\$ 360	\$ (6,240)	\$ 5,940	\$ (660)
Utilities and Communications TOTAL	84000		\$ 10,536	\$ 13,037	\$ 8,134	\$ 12,764	\$ (273)	\$ 13,037	\$ -
★ Contractual or Sundry Services TOTAL	85000		\$ 1,009,701	\$ 3,297,385	\$ 467,853	\$ 671,177	\$ (2,626,208)	\$ 1,091,827	\$ (2,205,558)
Debt Service TOTAL	86000		\$ 651,137	\$ 655,027	\$ 327,513	\$ 655,027	\$ -	\$ 602,892	\$ (52,135)
★ Capital Expenses TOTAL	88000		\$ 1,665,315	\$ 1,760,000	\$ 2,635,170	\$ 2,215,970	\$ 455,970	\$ 7,000,000	\$ 5,240,000
TOTAL EXPENSES			\$ 3,748,682	\$ 6,116,019	\$ 3,630,701	\$ 3,932,593	\$ (2,183,426)	\$ 9,188,234	\$ 3,072,215
NET INCOME (LOSS)			\$ 666,510	\$ (1,893,575)	\$ (576,170)	\$ 1,477,413	\$ 3,370,988	\$ (4,629,734)	Surplus or (Deficit) Amount
CASH & INVESTMENTS ENDING BALANCE			\$12,157,228	\$10,263,654	\$ 11,581,059	\$ 13,634,641	\$ 13,634,641	\$ 9,004,907	

City Council to Discuss and Consider Approval of the FY 2021-2022 SEDCO Budget



September 20, 2021

**MEMBERS PRESENT: MAYOR DAVID PLYLER; DEPUTY MAYOR DARON HOLLAND.
COUNCIL MEMBERS MELTON, STEVENSON, TEAMANN.**

CALL TO ORDER

CALL TO ORDER

The Council reviewed the Minutes of the Called City Council Meeting of September 7, 2021. Council Member Melton moved to approve the Minutes, as presented; Second by Deputy Mayor Holland; All present voted AYE.

MOTION CARRIED.

APPROVE MINUTES

There were no citizen's comments.

CITIZEN'S COMMENTS

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

CONSENT AGENDA

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

Mayor Plyler introduced Ordinance No. 6414 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ESTABLISHING MAXIMUM, REASONABLE AND PRUDENT RATES OF SPEED ALONG THE SOUTH BOUND FRONTAGE ROAD OF US 75 FROM STONE CREEK DRIVE TO FM 1417 IN THE CORPORATE LIMITS OF SHERMAN, GRAYSON COUNTY, TEXAS; FIXING PENALTIES FOR VIOLATION THEREOF; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 6414
SPEED LIMIT
(HWY 75 FRONTAGE
RD)

Wayne Lee, Director of Engineering, said this was a request of the Texas Department of Transportation to reduce the speed limit on the southbound service road from Stone Creek Drive to FM 1417.

They are planning a change in configuration, and to make that area safe, they are requesting that the speed limit be reduced. The change will only apply to the service road.

COUNCIL MINUTES – SEPTEMBER 20, 2021

No citizens appeared before the City Council to discuss Ordinance No. 6414.

Mayor Plyler introduced Ordinance No. 6415 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITLED “UTILITIES”, ARTICLE 13.08, ENTITLED “UTILITY BILLING”, AT SECTIONS 13.08.005 AND 13.08.006, REVISING RATES FOR WATER AND SEWER SERVICES; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

**ORD 6415
WATER &
SEWER RATES**

Mary Lawrence, Director of Finance, said at the July 19, 2021 Council Meeting, the Council instructed the staff to implement the Water & Wastewater Rate Plan as presented by Willdan. The Plan is a five-year Rate Plan.

The proposed ordinance sets the rates for the first year, with the average consumer seeing about a 4.2% increase.

No citizens appeared before the City Council to discuss Ordinance No. 6415.

Mayor Plyler introduced Ordinance No. 6416 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 2 (ANIMAL SERVICES) OF THE CODE OF ORDINANCES, CITY OF SHERMAN, TEXAS; PRESCRIBING REGULATIONS TO ENSURE THE HEALTH AND HUMANE TREATMENT OF ANIMALS AND THE PUBLIC; DEFINING TERMS; ESTABLISHING REGULATIONS ON ANIMALS, DOGS AND CATS, DANGEROUS DOGS AND RABIES CONTROL; PROVIDING FOR AN ANIMAL SHELTER ADVISORY BOARD; REGULATING PET SHOPS AND THE RETAIL SALE OF ANIMALS; PROVIDING A REPEALING CLAUSE AND SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED \$500.00.

**ORD 6416
ANIMAL SERVICES**

Zach Flores, Police Chief, presented an overview of the proposed ordinance saying one of the first things they did in working with the Advisory Committee was to review the City’s ordinance. A major reference for the ordinance was the City of Irving’s ordinance. He said the result was a progressive ordinance that would take care of the animal’s needs and the needs of the citizens.

No citizens appeared before the City Council to discuss Ordinance No. 6416.

The Public Hearing was closed.

ADOPTION OF ORDINANCES

Ordinance 6414

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ESTABLISHING MAXIMUM, REASONABLE AND PRUDENT RATES OF SPEED ALONG THE SOUTH BOUND FRONTAGE ROAD OF US 75 FROM STONE CREEK DRIVE TO FM

**ORD 6414
SPEED LIMIT
(HWY 75 FRONTAGE
RD)**

1417 IN THE CORPORATE LIMITS OF SHERMAN, GRAYSON COUNTY, TEXAS; FIXING PENALTIES FOR VIOLATION THEREOF; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

Ordinance 6415

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITLED “UTILITIES”, ARTICLE 13.08, ENTITLED “UTILITY BILLING”, AT SECTIONS 13.08.005 AND 13.08.006, REVISING RATES FOR WATER AND SEWER SERVICES; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 6415
WATER &
SEWER RATES

Robby Hefton, City Manager, said the action tonight on this ordinance, would be to set the rates for now, not for years to come. However, the study that was completed does line out a schedule for the next five years, subject to future Council approval.

He said it did not get into the ordinance, but he felt it would be good to include a provision that there would be an annual review. He asked that, whoever made the motion, make it subject to adding language to the ordinance, that requires annual review of the rates.

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Ordinance No. 6415, subject to the addition of language that requires an annual review of the water and sewer rates by the City Council. Second by Council Member Melton.

VOTING AYE: Holland, Melton, Stevenson.

VOTING NAY: Teamann.

MOTION CARRIED.

Ordinance 6416

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 2 (ANIMAL SERVICES) OF THE CODE OF ORDINANCES, CITY OF SHERMAN, TEXAS; PRESCRIBING REGULATIONS TO ENSURE THE HEALTH AND HUMANE TREATMENT OF ANIMALS AND THE PUBLIC; DEFINING TERMS; ESTABLISHING REGULATIONS ON ANIMALS, DOGS AND CATS, DANGEROUS DOGS AND RABIES CONTROL; PROVIDING FOR AN ANIMAL SHELTER ADVISORY BOARD; REGULATING PET SHOPS AND THE RETAIL SALE OF ANIMALS; PROVIDING A REPEALING CLAUSE AND SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED \$500.00.

ORD 6416
ANIMAL SERVICES

Council Member Melton asked how the ordinance would affect the new retail sales in the area. Chief Flores said they would be grandfathered for now, and the new ones that would like to come in will have a process for vetting. They will be reviewed on an “as-needed” basis. He said there are businesses that can operate efficiently and effectively, and still pursue the humane treatment of animals.

Council Member Melton verified that the City can make inspections. Chief Flores said they intend to “keep an eye on the situation.”

COUNCIL MINUTES – SEPTEMBER 20, 2021

Council Member Teamann said there are restrictions for housing breeding dogs in the City limits. He asked what the procedures would be for the person wishing to purchase a specialty breed or a dog that is licensed as a show dog.

He said they could make those purchases. The regulation doesn't deal with actually running a business in breeding. There is also a stipulation that allows a citizen to make an application to be allowed to do that. The ordinance would allow them to be cognizant of those doing that, so it wouldn't be a "puppy mill."

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Ordinance Nos. 6414 and 6416, as presented. Second by Council Member Melton.

VOTING AYE: Holland, Melton, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6774 – AMENDING THE 2020-2021 BUDGET OF THE CITY OF SHERMAN, TEXAS, APPROPRIATING AND ALLOCATING ADDITIONAL FUNDS FOR THE PERIOD OF OCTOBER 1, 2020 THROUGH SEPTEMBER 30, 2021

**RES 6774
BUDGET AMENDMENT**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE 2020-2021 BUDGET OF THE CITY OF SHERMAN, TEXAS, APPROPRIATING AND ALLOCATING ADDITIONAL FUNDS FOR THE PERIOD OF OCTOBER 1, 2020, THROUGH SEPTEMBER 30, 2021.

Ms. Lawrence said Council asked staff for a "budget cleanup" at the end of the year, to reflect what's going on during the year. This amendment primarily increases the sales tax revenue. There are also expenses related to the CARES Act and the revenue that goes with that. There was some money that was transferred from the General Fund to the Utility Fund, to help "prop" it up, and for some expenses in fleet.

Council Member Melton asked that on budget transfers in and out, that additional explanation be presented to the Council.

Council Member Teamann said the budget ended up with a positive amount of about \$2 million, primarily from sales tax. He confirmed that it would help prop up the days of reserves in the General Fund. Ms. Lawrence said it also helped out the Utility Fund and an additional commercial solid waste truck was purchased for the Solid Waste Fund. They also preordered some trucks for 2022 in 2021 to help cut the lead time, because that has been extended.

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Resolution No. 6774, as presented. Second by Council Member Melton.

VOTING AYE: Holland, Melton, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6775 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH SOUTHERN TIRE MART, LLC FOR AN ANNUAL SUPPLY OF LIGHT TRUCK, PASSENGER, AND OTR/COMMERCIAL TIRES

RES 6775
ANNUAL TIRE
CONTRACT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH SOUTHERN TIRE MART, LLC, FOR AN ANNUAL SUPPLY OF LIGHT TRUCK, PASSENGER, AND OTR/COMMERCIAL TIRES.
CONSENT AGENDA.

RESOLUTION NO. 6776 – AUTHORIZING EXECUTION OF AN EASEMENT AND AN EASEMENT FOR TEMPORARY WORKING SPACE TO ONCOR ELECTRIC DELIVERY COMPANY, LLC FOR THE RELOCATION OF OVERHEAD ELECTRIC SUPPLY ALONG THE LAMBERTH ROAD IN THE CITY OF SHERMAN, TEXAS

RES 6776
EASEMENT FOR
ONCOR
(LAMBERTH RD)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN EASEMENT AND AN EASEMENT FOR TEMPORARY WORKING SPACE TO ONCOR ELECTRIC DELIVERY COMPANY, LLC FOR THE RELOCATION OF OVERHEAD ELECTRIC SUPPLY ALONG THE LAMBERTH ROAD IN THE CITY OF SHERMAN, TEXAS.
CONSENT AGENDA.

RESOLUTION NO. 6777 – REPEALING AND REPLACING RESOLUTION NO. 6675; ESTABLISHING SALARY STRUCTURES AND INCENTIVE/CERTIFICATION PAY SCHEDULES FOR FIREFIGHTERS AND POLICE OFFICERS; ESTABLISHING SPECIAL LONGEVITY PAY SCHEDULES FOR NEWLY HIRED FIREFIGHTERS AND POLICE OFFICERS; PROVIDING FOR AN EFFECTIVE DATE

RES 6777
POLICE & FIRE
PAY SCHEDULES
& INCENTIVE PAY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING AND REPLACING RESOLUTION NO. 6675; ESTABLISHING SALARY STRUCTURES AND INCENTIVE/CERTIFICATION PAY SCHEDULES FOR FIREFIGHTERS AND POLICE OFFICERS; ESTABLISHING SPECIAL LONGEVITY PAY SCHEDULES FOR NEWLY HIRED FIREFIGHTERS AND POLICE OFFICERS; PROVIDING FOR AN EFFECTIVE DATE.
CONSENT AGENDA.

RESOLUTION NO. 6778 – AUTHORIZING SUBMISSION OF AN APPLICATION FOR A GRANT AWARDED BY THE TEXAS DEPARTMENT OF TRANSPORTATION UNDER THE ROUTINE AIRPORT MAINTENANCE PROGRAM TO FUND IMPROVEMENTS AT THE SHERMAN MUNICIPAL AIRPORT; DESIGNATING THE CITY MANAGER AS THE AUTHORIZED OFFICIAL TO ACCEPT, REJECT, ALTER OR TERMINATE THE GRANT ON BEHALF OF THE CITY

RES 6778
RAMP GRANT FOR
MUNICIPAL AIRPORT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING SUBMISSION OF AN APPLICATION FOR A GRANT AWARDED BY THE TEXAS DEPARTMENT OF TRANSPORTATION UNDER THE ROUTINE AIRPORT MAINTENANCE PROGRAM TO FUND IMPROVEMENTS AT THE SHERMAN MUNICIPAL AIRPORT; DESIGNATING THE CITY MANAGER AS THE AUTHORIZED OFFICIAL TO ACCEPT, REJECT, ALTER OR TERMINATE THE GRANT ON BEHALF OF THE CITY.
CONSENT AGENDA.

RESOLUTION NO. 6779 – AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE SHERMAN MUSEUM FOR EXPENDITURE OF A PORTION OF THE FUNDS COLLECTED BY THE CITY OF THE HOTEL-MOTEL OCCUPANCY TAX

**RES 6779
SHERMAN MUSEUM
CONTRACT**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE SHERMAN MUSEUM FOR EXPENDITURE OF A PORTION OF THE FUNDS COLLECTED BY THE CITY OF THE HOTEL-MOTEL OCCUPANCY TAX.
CONSENT AGENDA.

MEDIA QUESTIONS

MEDIA QUESTIONS

There were no media questions.

COUNCIL COMMENTS

WATER RATE INCREASE

**WATER RATE
INCREASE**

Council Member Melton said it's not always good to increase water rates, but it has been a long time since there has been an increase, and "we don't want to fall behind."

ANIMAL SHELTER

ANIMAL SHELTER

Council Member Melton said she was glad they took the time to get the updates on the Animal Shelter in place.

POLICE K-9

POLICE K-9

Council Member Teamann recognized Sherman Police Department K9 Officer Jaeger and his handler Officer Breggoree Anderson, and their performance on A&E's "America's Top Dog." Mayor Plyler said the "finals" are Saturday, September 25, 2021, at 2:00 p.m.

Council Member Teamann said he won the competition for "sniffing out drugs" and \$5,000 was donated to a non-profit for animals.

ANNOUNCEMENTS

ANNOUNCEMENTS

Mayor Plyler announced the following:

- Thanks to Sarah McRae, Michelle Adams, and Albert Garza, of the City's Tourism Department, and the rest of the City crew for all the work they did on the Arts Fest last weekend. It was the 40th anniversary of the event, and thousands of people attended.
- The Sherman Celtic Festival will be held September 25 and 26, 2021, at Pecan Grove Park. There will be fun for the whole family, including Highland Games, bagpipe competition, live music on two stages, and a Viking Village.
- The next Coffee with the Mayor will be held on October 1, 2021, at 8:00 a.m. at Grayson Hall, and will include a drone update.
- Downtown Sherman NOW's Wine Stroll will be held on October 2, 2021. Support the small business community downtown, try some local wines, and sample food from the area's best restaurants.

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

EXECUTIVE SESSION

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.

TEX. GOV'T CODE § 551.071 --

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

- (A) RECEIVE LEGAL ADVICE FROM CITY ATTORNEY REGARDING PENDING LITIGATION OF DRAINAGE THRU CARRIAGE ESTATES

TEX. GOV'T CODE § 551.072 --

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

TEX. GOV'T CODE § 551.073 --

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

TEX. GOV'T CODE § 551.074 --

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

- (A) ANNUAL PERFORMANCE EVALUATION OF CITY MANAGER
- (B) PLANNING AND ZONING COMMISSION (1)

TEX. GOV'T CODE § 551.076 --

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

TEX. GOV'T CODE § 551.087 --

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

- (A) ECONOMIC DEVELOPMENT PROSPECTS

TEX. GOV'T CODE § 551.089 --

DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS
RELATING TO INFORMATION RESOURCES TECHNOLOGY,
NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR
SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY
PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY
DEVICES

On Motion duly made and carried, the Open Meeting recessed and
reconvened in Executive Session at 5:15 p.m.

On Motion duly made and carried, the Executive Session recessed
at 5:31 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

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS
AND COMMISSIONS

PLANNING AND ZONING COMMISSION (1)

ACTION TAKEN.

Motion by Council Member Melton to reappoint Clay Mahone to
the Planning and Zoning Commission, for a term from
September 22, 2021 to September 22, 2024, as presented.

Second by Council Member Teamann.

VOTING AYE: Holland, Melton, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

PLANNING &
ZONING COMMISSION

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at
5:32 p.m.

ADJOURNMENT

MAYOR

CITY CLERK



City Council Regular Meeting

C. 1.

Meeting Date: 10/04/2021

Approved By: Robby Hefton, City Manager

Caption:

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

Issue:

E. 5. * RESOLUTION NO. 6784

Authorizing the Purchase of Office365 Implementation for Exchange and Teams Deployment Services through the Texas Department of Information Resources - Contract DIR-TSO-4061

F. 1. *REQUEST TO ADVERTISE

Water Treatment Plant Sludge Removal Project

G. 6. * OTHER BUSINESS

Consider Request of St. Mary's Catholic School to Temporarily Close Certain Streets for the "Run Run Rudolph 5K and Family Fun Run/Walk" on Saturday, December 4, 2021



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

D. 1.

Meeting Date: 10/04/2021

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

PUBLIC HEARING

Appeal for a Variance to Allow Beer and Wine Sales within 300 Feet of a School (Crutchfield Elementary); Ty Osmani, Owner, Lucky Stop #1, located at 415 South Dewey Avenue

Issue:

To consider the appeal of Lucky Stop #1 concerning the property located at 415 South Dewey Avenue to allow beer and wine sales within 300 feet of a school (Crutchfield Elementary)

Background:

Representatives for Lucky Stop #1 recently applied for a Beer Retail Dealer's Off-Premise License and a Wine Only Package Store Permit for their store located at 415 South Dewey Avenue. Upon inspection, it was determined that the property line for the store is located within 300 feet from the Crutchfield Elementary School property line.

According to Section 4.14.035 of the City's Code of Ordinances, entitled "Development Standards," the sale of beer and wine for off-premises consumption is not permitted within 300 feet of a public or private school or a day care center. This measurement of distance is provided for in State law and is measured from "property line to property line and in a direct line across intersections."

Origination:

The request for a variance originated with Ty Osmani, owner of Lucky Stop #1.

Financial Consideration:

There is no direct cost to the City of Sherman.

Staff Recommendation:

It is the recommendation of the staff that the City Council consider the appeal.

Alternatives:

The Council could choose not to consider the appeal.

Attachments

Application for BF-Q Permit

Letter of Denial

Letter of Appeal

Development Standards

Location Map



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Texans Helping Businesses & Protecting Communities

OFF-PREMISE PREQUALIFICATION PACKET

L-OFF (5/2021)

Submit this packet to the proper governmental entities to obtain certification for the type of license/permit for which you are applying as required by Sections 11.37, 11.39, 11.46(b), 61.37, 61.38, 61.42 and Rule §33.13

All statutory and rule references mentioned in this application refer to and can be found in the Texas Alcoholic Beverage Code or Rules located on our website. www.tabc.texas.gov/laws/code_and_rules.asp

LOCATION INFORMATION

1. Application for: ☒ Original			
☐ Reinstatement	☐ Reinstatement and Change of Trade Name	License/Permit Number <u>N/A</u>	
☐ Change of Location	☐ Change of Location and Trade Name	License/Permit Number _____	
2. Type of Off-Premise License/Permit			
☐ BQ Wine and Beer Retailer's Off-Premise Permit	☐ LP Local Distributor's Permit		
☒ BF Beer Retail Dealer's Off-Premise License	☐ E Local Cartage Permit		
☐ P Package Store Permit	☐ ET Local Cartage Transfer Permit		
☒ Q Wine Only Package Store Permit	☐ PS Package Store Tasting Permit		
3. Indicate Primary Business at this Location			
☐ Grocery/Market	☐ Convenience Store without Gas		
☐ Liquor Store	☐ Miscellaneous _____		
☒ Convenience Store with Gas			
4. Trade Name of Location (Name of store, business, etc.) <u>Lucky Stop #1</u>			
5. Location Address <u>415 S Dewey Ave.</u>			
City <u>Sherman</u>		County <u>Grayson</u>	State <u>TX</u>
Zip Code <u>75090-6617</u>			
6. Mailing Address <u>4805 Bello Vista Ct</u>		City <u>Sherman</u>	State <u>TX</u>
Zip Code <u>75090-9235</u>			
7. Business Phone No. <u>pending approval</u>	Alternate Phone No. <u>903-624-9701</u>	E-mail Address <u>ty@luckyoilandgas.net</u>	

OWNER INFORMATION

8. Type of Owner		
☒ Individual	☐ Corporation	☐ City/County/University
☐ Partnership	☐ Limited Liability Company	☐ Other _____
☐ Limited Partnership	☐ Joint Venture	
☐ Limited Liability Partnership	☐ Trust	
9. Owner of Business /Applicant (Name of Corporation, LLC, etc.) <u>Ty Osmani</u>		

PRIMARY CONTACT PERSON

The primary contact person should be a person who can answer questions TABC may have about the application. The contact phone and email are mandatory and must be active and updated regularly. If additional information is needed, it will be requested from this contact person. Delays in responding to requests may delay the processing and approval of your permit/license.

10. Contact Person: <u>Edgar Korzeniowski</u>	Relation to Business: <u>Attorney</u>
Phone (mandatory): <u>(817) 562-7266</u>	Email (mandatory): <u>ekorzeniowski@griffithhughes.com</u>

TABC DATESTAMP

11. Is the applicant, a veteran-owned business?		☐ Yes ☒ No	
12. Is the applicant, a Historically Underutilized Business (HUB)?		☐ Yes ☒ No	
13. As indicated on the chart, enter the individuals that pertain to your business type: (For additional space, use Form L-OIC)			
Individual/Individual Owner		Limited Liability Company/All Officers or Managers	
Partnership/All Partners		Joint Venture/Venturers	
Limited Partnership/All General Partners		Trust/Trustee(s)	
Corporation/All Officers		City, County, University/Official	
Last Name Osmani	First Name Ty	MI	Title Individual Owner
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title

MEASUREMENT INFORMATION

Section 109.31 et. seq.

14. Will your business be located within 300 feet of a church or public hospital?		☐ Yes ☒ No
NOTE: For churches or public hospitals measure from front door to front door, along the property lines of the street fronts and in a direct line across intersections.		
15. Will your business be located within 300 feet of any private/public school?		☒ Yes ☐ No
NOTE: For private/public schools measure in a direct line from the nearest property line of the school to the nearest property line of the place of business, and in a direct line across intersections.		
NOTE: If located on or above the fifth story of a multistory building: measure in a direct line from the property line of the private/public school to property line of your place of business in a direct line across intersections vertically up the building at the property line to the base of the floor on which your business is located.		
16. Will your business be located within 1,000 feet of a private school?		☒ Yes ☐ No
17. Will your business be located within 1,000 feet of a public school?		☒ Yes ☐ No

PACKAGE STORE ACQUISITIONS ONLY

18. Has the business being acquired been in operation in the same county for more than one year before the acquisition?		☐ Yes ☐ No
If Yes , provide permit number for existing package store: _____		
If No , this does not qualify as an acquisition, and will be considered a new location.		

ALL APPLICANTS

19. CHECK HERE IF NOT IN CITY LIMITS ☐	
I, the applicant, have confirmed the location is not located within city limits, therefore city certifications are not required.	

COMPLETE THE FOLLOWING CHECKLIST BEFORE SUBMITTING YOUR APPLICATION

Per Sec. 102.01, a tied house is defined as any overlapping ownership between those engaged in the alcoholic beverage industry at different levels of the three-tier system. No person having an interest in a permit issued by TABC may secure or hold, directly or indirectly, an ownership interest in a business on a different level.

All required forms have been completed. I have reviewed all forms to ensure they are complete. I have obtained all required local and state certifications (pages 3-4). All application packets have been notarized. Phone numbers and email address for Contact Person are up to date. All additional documentation as required by the application packets is attached If required, out of state criminal history checks are attached (PHS #7). Certification of publication in local newspaper has been completed (page 5). A copy of the newspaper publication is attached (page 5).	<table style="width: 100%;"> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No ☐ N/A</td></tr> <tr><td>☐ Yes ☐ No ☐ N/A</td></tr> <tr><td>☐ Yes ☐ No ☐ N/A</td></tr> </table>	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A	☐ Yes ☐ No ☐ N/A	☐ Yes ☐ No ☐ N/A
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No ☐ N/A											
☐ Yes ☐ No ☐ N/A											
☐ Yes ☐ No ☐ N/A											

WARNING AND SIGNATURE

If Applicant Is/ Must Sign

Individual/Individual Owner

Corporation/Officer

Partnership/Partner

Limited Liability Company/ Officer or Manager

Limited Partnership/General Partner

WARNING: Section 101.69 of the Texas Alcoholic Beverage Code states: "...a person who knowingly makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the Commission and required to be sworn commits an offense punishable by imprisonment in the Texas Department of Criminal Justice for not less than 2 nor more than 10 years."

BY SIGNING YOU ARE SWEARING TO ALL INFORMATION AND ATTACHMENTS TO THIS PACKET.

PRINT
NAME

Ty Osmani

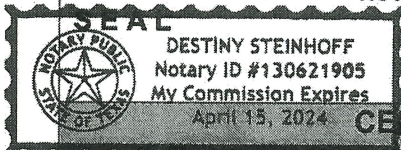
SIGN
HERE

TITLE Individual Owner

Before me, the undersigned authority, on this 17th day of July, 2021, the person whose name is signed to the foregoing application personally appeared and, duly sworn by me, states under oath that he or she has read the said application and that all the facts therein set forth are true and correct.

SIGN
HERE

NOTARY PUBLIC



CERTIFICATE OF CITY SECRETARY FOR P, Q, BF & BQ

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the city secretary or clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by ordinance.

I hereby certify on this _____ day of _____, 20____, that the location for which the license/permit is sought is inside the boundaries of this city or town, in a "wet" area for such license/permit, and not prohibited by charter or ordinance in reference to the sale of such alcoholic beverages.

OR

☐ I hereby refuse on this _____ day of _____, 20____ to certify this location.

SIGN
HERE

City Secretary/Clerk

City

TEXAS

SEAL

CERTIFICATE OF COUNTY CLERK FOR P, Q & BF

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the county clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by order.

I hereby certify on this _____ day of _____, 20____, that the location for which the license/permit is sought is in a "wet" area for such license/permit, and is not prohibited by any valid order of the Commissioner's Court.

OR

☐ I hereby refuse on this _____ day of _____, 20____ to certify this location.

SIGN
HERE

County Clerk

COUNTY

SEAL

CERTIFICATE OF COUNTY CLERK FOR BQ

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the county clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by order.

I hereby certify on this _____ day of _____, 20____, that the location for which the license/permit is sought as the place of business is in a "wet" area and is not prohibited by any valid order of the Commissioner's Court for a Wine and Beer Retailer's Off-Premise Permit.

Most current election for given location was held for:

- ☐ legal sale of all alcoholic beverages for off-premise consumption
- ☐ legal sale of all alcoholic beverages
- ☐ legal sale of all alcoholic beverages except mixed beverages
- ☐ legal sale of all alcoholic beverages including mixed beverages
- ☐ legal sale of mixed beverages
- ☐ legal sale of mixed beverages in restaurants by food and beverage certificate holders
- ☐ legal sale of wine on the premises of a holder of a winery permit
- ☐ legal sale of beer/wine (17%) on-premise or beer/wine off-premise **AFTER** Sept. 1, 1999
- ☐ legal sale of beer/wine (14%) on-premise or beer/wine off-premise **BEFORE** Sept. 1, 1999

OR

☐ I hereby refuse on this _____ day of _____, 20____ to certify this location.

SIGN
HERE _____ COUNTY
County Clerk

S E A L

COMPTROLLER OF PUBLIC ACCOUNTS CERTIFICATE

Sections 11.46(b) & 61.42(b)

This is to certify on this _____ day of _____, 20____, the applicant holds or has applied for and satisfies all legal requirements for the issuance of a Sales Tax Permit under the Limited Sales, Excise and Use Tax Act or the applicant as of this date is not required to hold a Sales Tax Permit and that none of the persons making this application are indebted to the State of Texas.

Sales Tax Permit Number _____ Outlet Number _____

Print Name of Comptroller Employee _____

Print Title of Comptroller Employee _____

SIGN
HERE _____ FIELD OFFICE _____

S E A L

PUBLISHER'S AFFIDAVIT (FOR BQ, BF, P & Q)

Sections 11.39 & 61.38

Name of newspaper		ATTACH PRINTED COPY OF THE NOTICE HERE
City, County		
Dates notice published in daily/weekly newspaper (MM/DD/YYYY)		
<i>Publisher or designee certifies attached notice was published in newspaper stated on dates shown.</i>		
Signature of publisher or designee		
Sworn to and subscribed before me on this date		
Signature of Notary Public		<u>Click here to see example of newspaper publication</u>
SEAL		



**TEXAS ALCOHOLIC
BEVERAGE COMMISSION**
Texans Helping Businesses & Protecting Communities

OWNERSHIP INFORMATION
Continued for Prequalification Packet

L-OIC
(5/2021)

LOCATION INFORMATION

1. Trade Name of Location

Lucky Stop # 1

2. Location Address

415 S Dewey Ave.

City Sherman	County Grayson	State TX	Zip Code 75090-6617
-----------------	-------------------	-------------	------------------------

OWNER INFORMATION

3. Type of Owner

- | | | |
|--|--|---|
| ☒ Individual | ☐ Corporation | ☐ City/County/University |
| ☐ Partnership | ☐ Limited Liability Company | ☐ Other _____ |
| ☐ Limited Partnership | ☐ Joint Venture | |
| ☐ Limited Liability Partnership | ☐ Trust | |

Last Name Osmani	First Name Ty	MI	Title Individual Owner
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title

PUBLIC RECORDS DEPARTMENT

Phone No. (903) 892-7204

Fax No. (903) 892-7394

July 20, 2021

Lucky Stop #1
Attn: Ty Osmani
4805 Bello Vista Ct
Sherman, Texas 75090

**RE: Lucky Stop #1
415 S. Dewey Ave**

Dear Mr. Osmani:

I am in receipt of your application for a "Beer Retail Dealer's Off-Premise License" and a "Wine Only Package Store Permit" at the above referenced location. Upon inspection, it was found that your business is within 300 feet of a public school, and therefore the sale of alcoholic beverages, for which the license or permit is sought is prohibited by ordinance.

Section 4.14.035 of the City Code of Ordinance, states that the minimum distance between retail stores that offer the sale of beer and wine for off-premise consumption, and public or private schools or day care facilities, is 300 feet. Measurements are made from property line to property line and in a direct line across intersections.

The store must also be 300 feet from churches and hospitals. This measurement is made along the property lines of the street fronts and from front door to front door, in a direct line across intersections. I have included a copy of Article 4.14 from the City Code of Ordinances, for your information.

Sincerely,



Linda Ashby
City Clerk

cc: Ryan Pittman, Attorney, Abernathy, Roeder, Boyd, Hullett
Rob Rae, Director of Development Services

GRIFFITH & HUGHES PLLC
ATTORNEYS AT LAW
ARLINGTON DOWNS TOWER
2225 E RANDOL MILL ROAD, SUITE 106
ARLINGTON, TX 76011

September 7, 2021

Linda Ashby
City Clerk's Office
P.O. Box 1106
Sherman, TX 75091-1106

VIA E-MAIL
lindaa@cityofsherman.com

Re: Tex. Alco. Bev. Code § 109.33(e) Alcohol Variance Request for 415 S. Dewey Ave., Sherman, TX 75090.

Dear Ms. Ashby,

On behalf of Ty Osmani (Owner), Griffith and Hughes PLLC (Representative), requests an alcohol variance under Tex. Alco. Bev. Code § 109.33(e), concerning the property located at 415 S. Dewey Ave., Sherman, TX 75090, to allow the sale of alcohol of alcohol within 300' of Crutchfield Elementary School (Public School) located at 521 Dewey Ave., Sherman, TX 75090.

Mr. Osmani intends to apply for a Wine Only Package Store (P), and Beer Retailer's Off-Premise License (BF) for the 415 S. Dewey Ave property. His mailing address for purposes of the TABC application would be 4805 Bello Vista Ct., Sherman, TX 75090.

Mr. Osmani does not dispute the City's determination that the property is located within 300' of a public school, per the July 20, 2021 letter from your office. Instead, Mr. Osmani believes that "enforcement of [Sherman, Tex, Code of Ordinances, art. 4.14 in this] particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, [and] creates an undue hardship on an applicant for a license or permit" per Tex. Alco. Bev. Code § 109.33(e).

Undue Hardship

Mr. Osmani is a long-time resident of Sherman Texas, and a small business owner. He has over 32 years of experience owning and operating convenience store and convenience store gas stations (“c-stores”). Mr. Osmani owns and operates six TABC licensed c-stores in Grayson County, two of which are located in this city, and the remaining in Dennison. He has good history with TABC regarding operation of the same.

On or about December 7, 2018, Mr. Osmani purchased 415 S. Dewey property for \$375,000, and the adjacent residence located at 405 S. Dewey Ave. for \$125,000 on or about June 28, 2019, with the intention of redeveloping the same¹, to comply with the 300’ buffer. Mr. Osmani secured the purchase of the properties through a personal line of credit at 5.75% interest.

Plans for redevelopment came to a halt, when our client discovered a sewer line would have to be moved at his own expense. The cost is prohibitive² and would exceed his allowable budget of \$400,000. Mr. Osmani was not aware of this hidden condition at the time of the purchase of any of these properties, and would have no reason to.

Should an alcohol variance be granted, Mr. Osmani would be able to fully renovate the existing location, and not have to move the sewer line. Otherwise, Mr. Osmani will suffer an undue hardship.

Mr. Osmani continues to pay several thousand dollars a month in loans³ for both properties, in addition to paying several thousand per year in property taxes⁴ for both properties.

The undue hardship will not be resolved, if he reopens the location without a TABC permit. Net profit margins for the average c-store are about 2%, and

¹ Mr. Osmani intended to diminish the foot print of the retail structure of the 415 S. Dewey location, or in the alternative raze the existing structure on 405 S. Dewey, and build a new retail structure in its place, to comply with the 300’ buffer.

² Mr. Osmani has been quoted \$50,000.00

³ Mr. Osmani pays \$2,925 a month for the 415 S. Dewey Ave property, and \$975 a month for the 405 S. Dewey Ave. property.

⁴ Mr. Osmani pays \$4,000 a year in property tax for the 415 S. Dewey Property, and \$1,200 a year in property tax for the 405 S. Dewey Ave. property

whereas other retailers is about 7%.⁵ This is because profit margins of costs of goods sold are razor thin and operating costs are very high. Capital expenses which have to be recouped, such as improvements to the building and land are also very high, and further lower net profit margins. Food and alcohol combined offer more opportunity for higher profit margins, which are necessary to offset low profit margin categories such as fuel or tobacco, which are generally sold at or slightly above cost. However, food sales alone are not enough.

The success or failure of a c-store business is dependent upon the draw of customers coming inside the retail location to make a purchase. The convenience feature of paying at the pump dissuades customers from coming inside a c-store and making a purchase. Unless the location has something else a customer wants (such as food and alcohol, which have higher profit margins), business is doomed. The 415 S. Dewey location is no exception. There is a reason why the prior business failed.

The 415 S. Dewey location cannot effectively compete with the Exxon station several blocks away (201 S. Dewey). The Exxon station holds TABC liquor license.

If the 415 S. Dewey Ave is not issued a liquor license, Mr. Osmani has no choice but to cut his losses, and put the property up for sale. The property as-is, is unmarketable as a c-store and will likely have to be sold at a substantial loss. Furthermore, it may have to be on the market for several years before a buyer is found.

Waste or Inefficient Use of Land

The 415 S. Dewey location has been unused well before Mr. Osmani's purchase. Vacant and unused property may contribute to urban blight, and public safety issues to residents including young school aged children.

Should an alcohol variance be granted, Mr. Osmani intends to operate a c-store at the location. He anticipates investing several hundred thousand in renovations to the property. This includes gutting and rebuilding the interior, and a new façade for the exterior. Mr. Osmani and his employees will work with the local police department to make sure that vagrants are trespassed from the location.

⁵ <https://www.convenience.org/Media/Daily/ND0806141>

Enforcement of art. 4.14 is not in the Best Interests of the Public

Waste or inefficient use of land is not in the best interests of the public. It is likely to continue in the long term unless Mr. Osmani is able to recoup his losses. The alternative is to issue an alcohol variance.

An alcohol variance benefits the sustainability and long-term viability of the neighborhood by reducing blight, discouraging vagrancy, adding jobs to the local economy, and improving public safety.

As indicated earlier, Ms. Osmani intends to spend several hundred thousand in capital expenses to improve the property. This will enhance the aesthetics of the neighborhood.

Mr. Osmani intends to hire six to ten employees, five of which would be full-time positions. He also intends to hire a part-time security guard for the first few months of operation. Any person who loiters or peddles at the location will be criminally trespassed.

Conclusion

Mr. Osmani respectfully requests that the foregoing variance request be placed on the next available City Council meeting. Although the open meetings act only requires 3 days' notice, *see* Tex. Gov't Code § 551.043, we would respectfully ask for 10 days, *compare* Tex. Alco. Bev. Code § 11.63 (Notice of Hearing), so we have sufficient notice to prepare and make arrangements to attend the same.

We would be available either in-person, or remotely, e.g. Zoom, Microsoft Teams, GoogleMeet, etc.

If any members of the City Council's Office would like to meet with Mr. Osmani prior to the vote, or have specific questions answered at vote, please let us know.

Sincerely,

/s/ Edgar M. Korzeniowski

Edgar M. Korzeniowski

Ryan S. Hughes

Office: (817) 562-9648

Direct: (817) 562-7266

ekorzeniowski@griffithhughes.com

rhughes@griffithhughes.com

cc: Ryan Pittman, City Attorney, VIA E-MAIL rpittman@abernathy-law.com

Sec. 4.14.035 Development standards

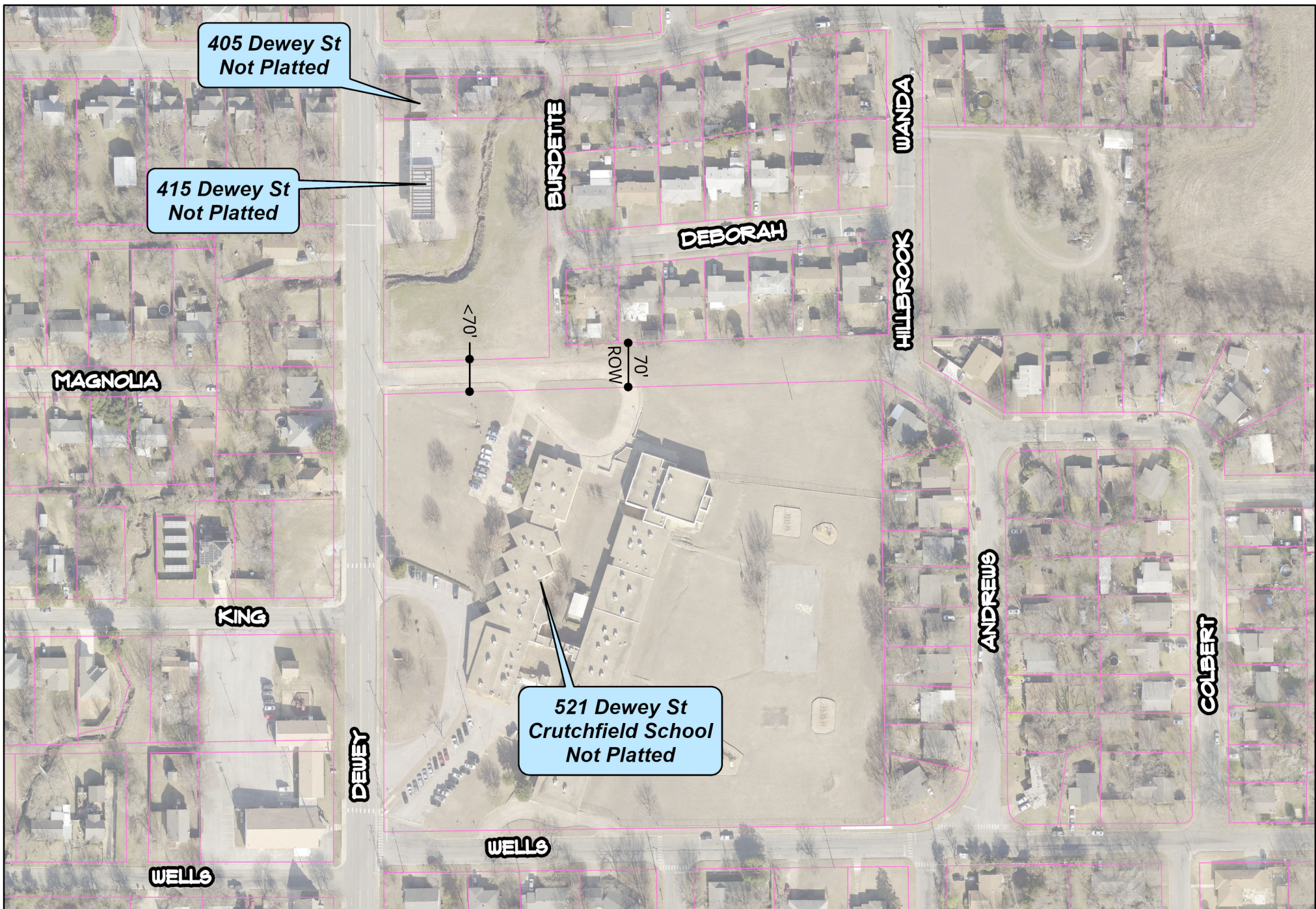
(a) Alcoholic beverages for off-premises consumption only. The sale of alcoholic beverages is permitted only in a zoning district where retail sales are allowed. The minimum distance between retail stores that offer the sale of alcoholic beverages for off-premises consumption and the following uses are:

(1) Schools (public and private) and day care centers: 300 feet. As allowed by state law, a school may petition for 1,000 feet. All measurements of distances are as provided for in state law (property line to property line and in a direct line across intersections).

(2) Churches: 300 feet. All measurements of distances are as provided for in state law (along the property lines of the street fronts and from front door to front door, and in a direct line across intersections).

(3) Hospitals: 300 feet. All measurements of distances are as provided for in state law (along the property lines of the street fronts and from front door to front door, and in a direct line across intersections).

(b) Mixed beverages in a restaurant by food and beverage certificate holders only. The sale of mixed beverages in a restaurant by food and beverage certificate holders is allowed in any zoning district where restaurants are allowed. The holder of a permit under this subsection shall be required to meet distance requirements as set forth in subsection (a), above.





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

D. 2.

Meeting Date: 10/04/2021

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6417

Designating City of Sherman Industrial Reinvestment Zone No. 11; Providing Eligibility of the Zone for Commercial-Industrial Tax Abatement; Containing Findings that the Area Described Qualifies for Designation as a Tax Abatement Reinvestment Zone Pursuant to Chapter 312 of the Texas Tax Code and that the Improvements Proposed by the Land's Owner, Texas Instruments Incorporated, are Feasible and Practicable and of Benefit to the Land and the City; Authorizing the City Manager to Negotiate Written Agreements with the Owners of any Taxable Real and Tangible Personal Property Located within the Designated Zone; Authorizing the City Manager to Take All Other Actions Necessary to Effectuate the Same

Issue:

The creation of a new industrial reinvestment zone in response to a tax abatement requested by Texas Instruments, Inc. (TI).

Background:

On Wednesday, September 29, 2021, the Tax Reinvestment Committees of the City of Sherman, the Sherman Independent School District, Grayson County, and Grayson College (the "Committee") met to consider a request from Texas instruments Inc. for a tax abatement involving a project to invest about \$29.4 billion in a facility and manufacturing equipment in Sherman. The City is a finalist in the site selection process by TI. The project is planned in four phases, and if Sherman is selected, the first phase of the project could be initiated within the next year at a value of \$6.5 billion.

The Committee voted to recommend an abatement and the creation of the Zone to the City Council and other taxing entities. The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. The attached ordinance is the first step in accomplishing the creation of a new commercial/industrial reinvestment zone, which would cover only Texas Instrument's property. Prior to its adoption, a public hearing must be held to allow for interested parties to speak to the issue. Notice of the intent to establish the reinvestment zone was provided in accordance with state law. The Tax Abatement Agreements will be addressed at the City Council's regular meeting on Monday, October 18, 2021 in the form of a resolution.

Origination:

Texas Instruments, Inc., Applicant

Financial Consideration:

There is no direct cost to creating Industrial Reinvestment Zone, Number Eleven (#11) and providing the medium for granting tax abatement agreements within the designated zone.

Staff Recommendation:

The staff recommends that the City Council introduce and hold the public hearing on the ordinance and consider its adoption.

Alternatives:

No alternatives are recommended.

Attachments

Ordinance No. 6417

ORDINANCE NO. 6417

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NO. 11; PROVIDING ELIGIBILITY OF THE ZONE FOR COMMERCIAL-INDUSTRIAL TAX ABATEMENT; CONTAINING FINDINGS THAT THE AREA DESCRIBED QUALIFIES FOR DESIGNATION AS A TAX ABATEMENT REINVESTMENT ZONE PURSUANT TO CHAPTER 312 OF THE TEXAS TAX CODE AND THAT THE IMPROVEMENTS PROPOSED BY THE LAND'S OWNER, TEXAS INSTRUMENTS INCORPORATED, ARE FEASIBLE AND PRACTICABLE AND OF BENEFIT TO THE LAND AND THE CITY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE WRITTEN AGREEMENTS WITH THE OWNERS OF ANY TAXABLE REAL AND TANGIBLE PERSONAL PROPERTY LOCATED WITHIN THE DESIGNATED ZONE; AUTHORIZING THE CITY MANAGER TO TAKE ALL OTHER ACTIONS NECESSARY TO EFFECTUATE THE SAME; PROVIDING A REPEALING CLAUSE AND SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, Texas Instruments Incorporated ("Texas Instruments") is the sole owner of approximately 559.77± acres of land in the City of Sherman, Grayson County, Texas, as more particularly described and depicted in Exhibit A, attached hereto (the "Land");

WHEREAS, Texas Instruments is considering constructing and developing a major semiconductor wafer manufacturing facility on the Land in multiple phases along with other ancillary facilities such as required parking and landscaping (collectively, the "Improvements");

WHEREAS, Texas Instruments has represented that Phase I of the Improvements and tangible personal property would constitute an approximate investment of \$6.5 Billion by Texas Instruments over a multi-year period and that, when fully operational, the Improvements would be expected to bring new employment to the City of Sherman, Texas ("City"), with Phase I employment totaling approximately 800 full-time jobs;

WHEREAS, Texas Instruments has represented that Phase I of the Improvements would consist of a manufacturing building containing approximately 1,036,000± square feet, two operations support buildings containing approximately 240,000± and 100,000± square feet, respectively, and other ancillary facilities and would be used to produce semiconductor wafers for use in industrial, automotive, communications and personal electronics products;

WHEREAS, Texas Instruments has applied for a tax abatement pursuant to Chapter 312 of the Texas Tax Code from multiple taxing units, including the City, for the project, which requires the Land to be located within a tax abatement reinvestment zone established pursuant to Chapter 312 of the Texas Tax Code;

WHEREAS, Texas Instruments also has applied for an economic incentive pursuant to Chapter 313 of the Texas Tax Code from the Sherman Independent School District for the project, which requires the Land to be located within a tax abatement reinvestment zone established pursuant to Chapter 312 of the Texas Tax Code;

WHEREAS, Texas Instruments has requested, and the City desires, to establish a new tax abatement reinvestment zone to facilitate the applications of Texas Instruments pursuant to Chapters 312 and 313 of the Texas Tax Code;

WHEREAS, the City has established guidelines and criteria governing tax abatement agreements by the City and has previously adopted a resolution stating that the City elects to become eligible to participate in tax abatement;

WHEREAS, the Sherman City Council has caused notice to be published in a newspaper having general circulation in the City and has delivered such notice to the presiding officer of the governing body of each taxing unit that includes in its boundaries the Land described herein;

WHEREAS, the City Council has conducted a public hearing on the designation of the Land described herein as a reinvestment zone and has complied with all other requirements imposed by law;

WHEREAS, the City Council finds that it is in the best interest of the City and its citizens to designate the City of Sherman Industrial Reinvestment Zone No. 11, as described herein.

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

SECTION 1. That the Sherman City Council finds that the Land described in Exhibit A, attached hereto, if designated as a tax abatement reinvestment zone, will be reasonably likely to contribute to the retention or expansion of primary employment, or to attract major investment in the area of the zone that will be of benefit to the property and contribute to the economic development of the City. The City Council further finds that the Improvements sought are feasible and practicable and would be of benefit to the Land to be included in the zone and to the City after the expiration of a tax abatement agreement.

SECTION 2. That pursuant to Section 312.201 of the Texas Tax Code, the Land described in Exhibit A, attached hereto, is hereby designated as a reinvestment zone and for identification shall be known as the "City of Sherman Industrial Reinvestment Zone No. 11."

SECTION 3. That the property within the City of Sherman Industrial Reinvestment Zone No. 11 is eligible for commercial-industrial tax abatement.

SECTION 4. That the City Council hereby authorizes tax abatement agreements with the owners of taxable real and tangible personal property located within the City of Sherman Industrial Reinvestment Zone No. 11, subject to the guidelines and criteria governing tax

abatement, heretofore adopted by the City Council, and subject to compliance with the applicable requirements set forth in Section 312.205 of the Texas Tax Code. The City Manager, or his designee, is hereby authorized to negotiate tax abatement agreements, and any instruments or amendments related thereto, with the owners of any taxable real and tangible personal property located within the reinvestment zone designated herein in accordance with this Ordinance. The City Manager, or his designee, is further authorized to negotiate economic development incentive agreements pursuant to Chapter 380 of the Texas Local Government Code with the owners of any taxable real and tangible personal property located within the reinvestment zone designated herein in accordance with this Ordinance. The City Manager, or his designee, is further authorized to take any and all actions necessary to effectuate the provision of this Ordinance.

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

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

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

SECTION 8. That this Ordinance shall become effective from and after its adoption.

[The remainder of this page intentionally left blank.]

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
SHERMAN, TEXAS on this ____ day of _____, 2021.**

DAVID PLYLER, MAYOR

ATTEST:

LINDA ASHBY, CITY CLERK

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

RYAN D. PITTMAN, CITY ATTORNEY

Exhibit A

LEGAL DESCRIPTION

SITUATED in the City of Sherman, Texas, in the William Martin Survey, Abstract No. 765, the James A. Foster Survey, Abstract No. 418, the M.G. Fellers Survey, Abstract No. 427, the C.S. Dale Survey, Abstract No. 356, the Heirs of Sherrod Dunman Survey, Abstract No. 329 and the John Chronister Survey, Abstract No. 248 of Grayson County, Texas and being: all of that certain called 136.869 acre tract of land described in a deed to Texas Instruments Incorporated, dated June 29, 2011, recorded in Volume 4981, Page 253, Deed Records, Grayson County, Texas (D.R.G.C.T.); part of that certain called 470.340 acre tract of land described in a deed to Texas Instruments Incorporated, dated September 1, 1965 and recorded in Volume 1036, Page 247, D.R.G.C.T.; Part of that certain called 66.912 acre tract of land described in a deed to Texas Instruments Incorporated, dated September 1, 1965 and recorded in Volume 1036, Page 242, D.R.G.C.T.; all of that certain called 71.578 acre tract of land described in a deed to Texas Instruments Incorporated, dated September 1, 1965 and recorded in Volume 1036, Page 239, D.R.G.C.T.; all of that certain called 3.250 acre tract of land described in a deed to Texas Instruments Incorporated, dated September 1, 1965 and recorded in Volume 1038, Page 40, D.R.G.C.T. and all of that certain called 5.450 acre tract of land described in a deed to Texas Instruments Incorporated, dated September 1, 1965 and recorded in Volume 1038, Page 49, D.R.G.C.T. and all of that certain called 21.006 acre tract of land described in a deed to Texas Instruments Incorporated (hereinafter referred to as "TI"), dated September 23, 2002 and recorded in Volume 3317, Page 177, D.R.G.C.T. and being more particularly described by metes & bounds as follows:

BEGINNING at 1/2 inch iron rod, topped with a yellow plastic cap, stamped "January Consultants", found on the west right-of-way line of U.S. Highway No. 75 (variable width right-of-way) and the east line of the above described 470.340 acre TI tract and same being the southeast corner of the above described 136.869 acre TI tract;

THENCE: South 10 deg. 13 min. 46 sec. West, along the east line of said 470.340 acre TI tract and the west right-of-way line of said U.S. Highway No. 75, at a distance of 615.10 feet, passing the northeast corner of the above described 66.912 acre tract and continuing on for a total distance of 1,231.50 feet to a 1/2 inch iron rod, topped with a red plastic cap, stamped "RPLS 4701", found for the northeast corner of MEMC Southwest Addition, an addition to the City of Sherman, according to the plat thereof, recorded in Volume 11, Page 1, Plat Records, Grayson County, Texas;

THENCE: South 89 deg. 03 min. 25 sec. West, departing from said U.S. Highway 75, along the north line of said MEMC Southwest Addition, a distance of 1,943.83 feet to a 1/2 inch iron rod, topped with a red plastic cap, stamped "RPLS 4701", found for the northwest corner of said addition;

THENCE: South 00 deg. 47 min. 01 sec. East, along the west line of said MEMC Southwest Addition, at a distance of 1,943.52 feet, passing the southwest corner of said addition at the northwest corner of the dedicated right-of-way and continuing for a total distance of 1,993.52

feet to a point for corner in the center of Shepherd Drive, on the south line of said 66.912 acre tract;

THENCE: South 88 deg. 31 min. 40 sec. West. Along the south line of the above described 470.340 acre tract and along the center of said Shepherd Drive, a distance of 882.62 feet to a mag nail with a steel washer, stamped "J.E. SMITH 3700", found for an angle corner;

THENCE: South 89 deg. 10 min. 27 sec. West, continuing along the south line of said 470.340 acre tract and the center of said Shepherd Drive, a distance of 28.25 feet to the southeast corner of that certain called 0.922 acre tract described in a deed to City of Sherman, Texas, recorded in Volume 2450, Page 274, D.R.G.C.T.;

THENCE: North 00 deg. 49 min. 33 sec. West, departing from said Shepherd Drive, along the east line of said City of Sherman tract, a distance of 251.00 feet to a 1/2 inch iron rod found for the northeast corner of said City of Sherman tract;

THENCE: South 89 deg. 10 min. 27 sec. West, along the north line of said City of Sherman tract, a distance of 160.00 feet to a 1/2 inch iron rod found for the northwest corner of said City of Sherman tract;

THENCE: South 00 deg. 49 min. 33 sec. East, along the west line of said City of Sherman tract, a distance of 251.00 feet to a mag nail with a steel washer, stamped "J.E. SMITH 3700", found for the southwest corner of said City of Sherman tract, in the center of Shepherd Drive and same being on the south line of said 470.340 acre TI tract;

THENCE: South 89 deg. 04 min. 26 sec. West, along the south line of said 470.340 acre TI tract and the center of said Shepherd Drive, a distance of 1,058.91 feet to a mag nail with a steel washer, stamped "J.E. SMITH 3700", found for an angle corner;

THENCE: North 73 deg. 45 min. 44 sec. West, continuing along the south line of said 470.340 acre TI tract and the center of said Shepherd Drive, a distance of 280.48 feet to a point for the southwest corner of said 470.340 acre TI tract, on the easterly line of that certain called 117.20 acre tract described in a deed to Sherman 179 Shepard Partnership, recorded in Volume 3933, Page 844, D.R.G.C.T. and same being the easterly right-of-way line of the old Texas Traction Company's Interurban Railway;

THENCE: North 01 deg. 55 min. 56 sec. West, departing from said Shepherd Drive, along the common line of the old Interurban Railway, the 470.340 acre TI tract and said Sherman 179 tract, a distance of 998.90 feet to a 5/8 inch iron rod, topped with a yellow plastic cap, stamped "J.E. Smith RPLS 3700", found for an inside ell corner of said railway and 117.20 acre Sherman 179 tract;

THENCE: North 88 deg. 20 min. 15 sec. East, continuing along said common line, a distance of 14.48 feet to a 5/8 inch iron rod, topped with a yellow plastic cap, stamped "J.E. Smith RPLS 3700", found for an inside ell corner of said 470.340 acre TI tract;

THENCE: North 01 deg. 06 min. 57 sec. West, continuing along said common line, a distance of 504.19 feet to a 5/8 inch iron rod, topped with a yellow plastic cap, stamped "J.E. Smith RPLS 3700", found for an inside ell corner of said railway and 117.20 acre Sherman 179 tract, on the south line of the above described 71.578 acre TI tract and said William Martin Survey;

THENCE: South 75 deg. 52 min. 25 sec. West, along the common line of the old Interurban Railway, the 71.578 acre TI tract and said 117.20 acre Sherman 179 tract, a distance of 19.78 feet to a 5/8 inch iron rod, topped with a yellow plastic cap, stamped "J.E. Smith RPLS 3700", found for the southwest corner of said 71.578 acre TI tract and an inside ell corner of said railway and Sherman 179 tract;

THENCE: North 01 deg. 51 min. 13 sec. West, along the common line of the old Interurban Railway, the 71.578 acre TI tract and said Sherman 179 tract, a distance of 95.70 feet to a 5/8 inch iron rod, topped with a yellow plastic cap, stamped "J.E. Smith RPLS 3700", found for the beginning of a curve to the right, having a radius of 2,292.00 feet, a central angle of 14 deg. 07 min. 55 sec. and a chord that bears North 05 deg. 12 min. 37 sec. East - 563.89 feet;

THENCE: Continuing along said common line and along said curve to the right, an arc distance of 565.32 feet to a 5/8 inch iron rod found at the end of said curve;

THENCE: North 12 deg. 16 min. 34 sec. East, continuing along said common line, at a distance of 920.86 feet, passing a 1/2 inch iron rod found for the northwest corner of said 71.578 acre TI tract and the northwesterly outside ell corner of said 470.340 acre TI tract and continuing along the common line of the old Interurban Railway, the 470.340 acre TI tract and said Sherman 179 tract for a total distance of 1,720.86 feet to a 5/8 inch iron rod, topped with a yellow plastic cap, stamped "J.E. Smith RPLS 3700", found for corner at the beginning of a curve to the left, having a radius of 2,166.14 feet, a central angle of 23 deg. 07 min. 10 sec. and a chord that bears North 00 deg. 42 min. 59 sec. East - 868.15 feet;

THENCE: Continuing along said common line and said curve to the left, at an arc distance of 702.50 feet, passing a 5/8 inch iron rod found for the northeast corner of said Sherman 179 tract and the most westerly northwest corner of said 470.340 acre TI tract and said point also being the southwest corner of the above described 3.250 acre TI tract and the southeast corner of that certain called 27.928 acre tract of land described as "Tract 2" in a deed to Janet Anderson, recorded in Document No. 2015-22641, D.R.G.C.T. and continuing along the common line of said 3.250 acre TI tract, said Anderson tract and said Interurban Railway and along said curve to the left for a total arc distance of 874.06 feet to a point for corner at the end of said curve;

THENCE: North 10 deg. 50 min. 22 sec. West, continuing along the common line of said 3.250 acre TI tract, said Anderson tract and said Interurban railway, a distance of 364.85 feet to a point in the centerline of Choctaw Creek for the northwest corner of said 3.250 acre TI tract and this tract;

THENCE: Departing from said Interurban Railway and continuing along the common line of said 3.250 acre TI tract and Anderson tract and the centerline of said Choctaw Creek as follows:

North 78 deg. 51 min. 48 sec. East, a distance of 124.33 feet to a point for corner;
North 36 deg. 12 min. 09 sec. East, a distance of 71.81 feet to a point for corner;
North 04 deg. 48 min. 13 sec. West, a distance of 136.66 feet to a point for corner;
North 13 deg. 20 min. 12 sec. East, a distance of 65.70 feet to a point for corner;
North 26 deg. 04 min. 57 sec. West, a distance of 113.79 feet to a point for corner;
North 32 deg. 53 min. 38 sec. East, at a distance of 62.36 feet, passing the northeast corner of said 3.250 acre TI tract, the most easterly southeast corner of said Anderson tract, the most northerly northwest corner of said 470.340 acre TI tract and the southwest corner of that certain called 14.270 acre tract of land described as "Tract 2" in a deed to Judy Moore, recorded in Volume 2669, Page 747 and Volume 2438, Page 278, D.R.G.C.T., and continuing along said creek for a total distance of 148.33 feet to a point for corner;

THENCE: Continuing along the centerline of said Choctaw Creek, with the common line of said 470.340 acre TI tract and said Moore tract as follows:

North 64 deg. 22 min. 54 sec. East, a distance of 99.64 feet to a point for corner;
South 66 deg. 40 min. 08 sec. East, a distance of 164.37 feet to a point for corner;
North 76 deg. 03 min. 41 sec. East, a distance of 174.19 feet to a point for corner;
North 63 deg. 01 min. 43 sec. East, a distance of 123.40 feet to a point for corner;
South 48 deg. 11 min. 20 sec. East, a distance of 61.20 feet to a point for corner;
South 00 deg. 07 min. 58 sec. East, a distance of 123.37 feet to a point for corner;
South 16 deg. 00 min. 31 sec. East, a distance of 100.28 feet to a point for corner;
South 66 deg. 49 min. 55 sec. East, a distance of 143.71 feet to a point for corner;
North 79 deg. 36 min. 56 sec. East, a distance of 95.84 feet to a point for corner;
North 10 deg. 55 min. 06 sec. West, a distance of 97.70 feet to a point for corner;
North 16 deg. 11 min. 47 sec. East, a distance of 120.11 feet to a point for corner;
North 82 deg. 33 min. 43 sec. East, a distance of 151.46 feet to a point for the southeast corner of said Moore tract and an inside ell corner of said 470.340 acre TI tract;

THENCE: North 16 deg. 06 min. 35 sec. West, departing from the centerline of said creek, along the common line of said TI and Moore tracts, a distance of 46.01 feet to a point on the north bank of said Choctaw Creek for the southwest corner of that certain called 60.85 acre tract of land described as "Tract II" in a deed to Panda Sherman Power, LLC, recorded in Volume 5132, Page 123, D.R.G.C.T.;

THENCE: Along the north bank of Choctaw Creek and the common line of said 470.340 acre TI tract and Panda Sherman tract as follows:

North 67 deg. 26 min. 14 sec. East, a distance of 67.60 feet to a point for corner;
North 35 deg. 12 min. 36 sec. East, a distance of 177.55 feet to a point for corner;
North 66 deg. 05 min. 55 sec. East, a distance of 76.50 feet to a point for corner;
South 51 deg. 47 min. 35 sec. East, a distance of 119.72 feet to a point for corner;
South 58 deg. 54 min. 31 sec. East, a distance of 75.25 feet to a point for corner;
North 57 deg. 10 min. 55 sec. East, a distance of 143.66 feet to a point for corner;
North 27 deg. 07 min. 41 sec. East, a distance of 74.40 feet to a point for corner;
North 41 deg. 18 min. 39 sec. East, a distance of 245.64 feet to a point for corner;

North 37 deg. 37 min. 13 sec. East, a distance of 134.41 feet to a point for corner;
North 84 deg. 41 min. 55 sec. East, a distance of 132.97 feet to a point for corner;
North 65 deg. 15 min. 19 sec. East, a distance of 69.31 feet to a point for corner;
North 84 deg. 58 min. 04 sec. East, a distance of 34.55 feet to a point for corner;
South 74 deg. 50 min. 25 sec. East, a distance of 94.21 feet to a point for corner;
South 64 deg. 53 min. 16 sec. East, a distance of 89.81 feet to a point for corner;
South 46 deg. 49 min. 23 sec. East, a distance of 71.47 feet to a point for corner;
South 84 deg. 10 min. 37 sec. East, a distance of 173.17 feet to a point for corner;
North 53 deg. 21 min. 32 sec. East, a distance of 279.39 feet to a point for corner;
North 78 deg. 02 min. 48 sec. East, a distance of 242.38 feet to a point for corner;
North 28 deg. 48 min. 50 sec. East, a distance of 60.92 feet to a point for corner;
North 07 deg. 31 min. 00 sec. East, a distance of 447.48 feet to a point for corner;
North 82 deg. 02 min. 55 sec. East, a distance of 199.24 feet to a point for corner;
South 76 deg. 32 min. 41 sec. East, a distance of 305.86 feet to a point for corner;
North 43 deg. 40 min. 40 sec. East, a distance of 143.38 feet to a point for corner;
South 65 deg. 28 min. 50 sec. East, a distance of 213.45 feet to a point for corner;
North 61 deg. 52 min. 37 sec. East, a distance of 129.18 feet to a point for corner;
South 89 deg. 05 min. 36 sec. East, a distance of 69.52 feet to a point for the southeast corner of said 60.85 acre Panda Sherman tract and the most northerly northeast corner of said 470.340 acre TI tract, on the west line of the above described 21.006 acre TI tract;

THENCE: North 15 deg. 25 min. 15 sec. West, departing from the bank of Choctaw Creek, along the common line of said 21.006 acre TI tract and said 60.85 acre Panda Sherman tract, a distance of 1,041.64 feet to the northwest corner of said 21.006 acre TI tract on the southerly right-of-way line of the St. Louis, San Francisco & Texas Railroad (100' wide right-of-way);

THENCE: North 63 deg. 22 min. 03 sec. East, along the north line of said 21.006 acre TI tract and said railroad, a distance of 944.50 feet to a point for the northeast corner of said 21.006 acre TI tract at the intersection of the southerly right-of-way line of said railroad and the westerly right-of-way line of the above described U.S. Highway No. 75 (variable width right-of-way);

THENCE: South 07 deg. 38 min. 59 sec. East, along the common line of said 21.006 acre TI tract and U.S. Highway No. 75, a distance of 653.71 feet to a point for corner at the beginning of a non-tangent curve to the right, having a radius of 5,529.58 feet, a central angle of 17 deg. 14 min. 57 sec. and a chord that bears South 01 deg. 36 min. 18 sec. West – 1,658.44 feet;

THENCE: Along the west right-of-way line of said U.S. Highway No. 75 and with said curve to the right, at an arc distance of 571.89 feet, passing the southeast corner of said 21.006 acre TI tract, the northeast corner of the above described 5.450 acre TI tract, continuing along the west right-of-way line of said U. S. Highway No. 75, at an arc distance of 879.37 feet, passing a 1/2 inch iron rod, topped with a yellow plastic cap, stamped "January Consultants", found for the northeast corner of the above described 136.869 acre TI tract and continuing for a total arc distance of 1664.71 feet to a 1/2 inch iron rod, found for corner at the end of said curve;

THENCE: South 10 deg. 13 min. 44 sec. West, continuing along the west right-of-way line of said U.S. Highway 75, a distance of 2,772.22 feet to the POINT OF BEGINNING and containing 559.77 acres of land, more or less.

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

The bearings shown hereon are Geodetic and referenced to the Texas State Plane Coordinate System, NAD-83, Texas North Central Zone (4202).



City Council Regular Meeting

D. 3.

Meeting Date: 10/04/2021

Approved By: Robby Hefton, City Manager

Caption:

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Number 6471

Issue:

D. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6417

Designating City of Sherman Industrial Reinvestment Zone No. 11; Providing Eligibility of the Zone for Commercial-Industrial Tax Abatement; Containing Findings that the Area Described Qualifies for Designation as a Tax Abatement Reinvestment Zone Pursuant to Chapter 312 of the Texas Tax Code and that the Improvements Proposed by the Land's Owner, Texas Instruments Incorporated, are Feasible and Practicable and of Benefit to the Land and the City; Authorizing the City Manager to Negotiate Written Agreements with the Owners of any Taxable Real and Tangible Personal Property Located within the Designated Zone; Authorizing the City Manager to Take All Other Actions Necessary to Effectuate the Same



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 1.

Meeting Date: 10/04/2021

Prepared By: Terrence Steele, Assistant City Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6780

Authorizing Execution of an Economic Development Program Agreement with Super Shack, LLC for the Grant of Incentives Pursuant to Chapter 380 of the Texas Government Code

Issue:

Approving an Economic Development Program Agreement with Super Shack for incentives authorized under Chapter 380 (380 Agreement) of the Texas Local Government Code

Background:

Chapter 380 of the Texas Government Code, "Miscellaneous Provisions Relating to Municipal Planning and Development", permits the City to establish and administer one or more programs to promote state or local economic development and to stimulate business and commercial activity within its city limits. At the March 4, 2019 meeting, the City Council adopted Resolution No. 6460 and approved a new Retail Recruitment Program Procedures Manual and Application, which is intended to promote broad-based, high quality development to enhance the quality of life for our citizens and other stakeholders. The program provides for a cash grant in the form of local sales tax rebates to qualifying businesses. Applicants must bring a new business to Sherman.

City staff has reached an agreement with Super Shack to provide incentives for the conversion of the former Applebee's Restaurant at 4817 Texoma Parkway into a Super Shack. This development is expected to employ 30 full-time and part-time individuals, with all 30 positions expected to be filled locally. This project will put a previously vacant building back to use on Texoma Parkway, an important economic driver for the City.

This agreement lays out the incentives offered to these developers via a Chapter 380 Agreement, which involves a cash grant equivalent to fifty percent (50%) of the City's portion of sales taxes collected from the business over a two-year period. The Sherman Economic Development Corporation is not a party to this agreement, so their portion of local sales taxes (3/8 of one cent) is excluded from this grant incentive.

Origination:

Gabriella Perez, Super Shack, LLC
Terrence Steele, Assistant City Manager
Mayor and City Council Members

Financial Consideration:

This agreement will provide a cash grant equal to 50% of the sales taxes generated within the development. This agreement expires after two (2) years.

Staff Recommendation:

It is recommended that the City Council approve the proposed incentive agreement.

Alternatives:

The City Council could deny the agreement.

Attachments

Resolution No. 6780
Retail Recruitment Program Application
Grant Agreement - Super Shack
Resolution No. 6460 with Retail Recruitment Program
Aerial Location Map

RESOLUTION NO. 6780

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH SUPER SHACK, LLC FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE; 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 380 of the Texas Tax Code, “Miscellaneous Provisions Relating to Municipal Planning and Development”, permits the City to establish and administer one or more programs to promote state or local economic development and to stimulate business and commercial activity within its city limits; and

WHEREAS, at the March 4, 2019 meeting, the City Council of the City of Sherman, Texas approved Resolution No. 6460, declaring its eligibility and intent to participate in a Retail Recruitment Program to promote development/redevelopment in certain areas of the City; and

WHEREAS, the application received from Super Shack, LLC, a Texas limited liability company (“Super Shack”) meets the guidelines and criteria adopted for the City’s Retail Recruitment Program;

NOW, THEREFORE, 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 receipt of a fully-executed agreement from Super Shack and subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Economic Development Program and Agreement with Super Shack for the grant of incentives pursuant to Chapter 380 of the Texas Local Government Code, for the development and operation of a restaurant, along with other possible improvements, at 4817 Texoma Parkway in the City of Sherman, Texas, in the same or substantially same form as the contract documents to be attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the ____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN PITTMAN, CITY ATTORNEY

**RETAIL RECRUITMENT PROGRAM
PROCEDURES MANUAL
AND
APPLICATION**



SHERMAN, TEXAS

TABLE OF CONTENTS

General Purpose and Program Description.....	3
Evaluation and Approval Process.....	4
Criteria.....	5
Retail Recruitment Program Application.....	6-7

GENERAL PURPOSE AND PROGRAM DESCRIPTION

The City of Sherman desires to promote broad-based, high quality development that will enhance the quality of life for citizens and other stakeholders. These goals are accomplished through the City's ability to promote a healthy economy in the area of private capital investment and generation of local sales tax revenues. As such, the City of Sherman will, on a case-by-case basis, consider providing a cash grant in the form of local sales tax rebates to qualifying businesses under Chapter 380 of the Texas Local Government Code. In order to qualify, the applicant must propose to locate a new business to Sherman. Relocation of an existing business to a new location would not qualify under this program. The City is under no obligation to provide this benefit to any applicant; and this program may be terminated at the City's sole discretion.

EVALUATION AND APPROVAL PROCESS

Applicant shall submit an application (provided herein) in conformance with the guidelines established by this program. All applications for incentives will be reviewed by the City Manager or his designee. Applicant may be requested to meet with City staff to discuss the details of the proposed project. The application will be evaluated on the basis of the projects' overall economic benefit to the City, project timing and duration, project conformance with desired location and enhancement of surrounding development, and job creation. Staff will make a recommendation to the City Council, who shall consider the matter in a public meeting. Any action taken by Council will be considered final and shall only be modified by further action of the Council, unless otherwise specified. Upon approval by City Council, applicant will be required to execute a performance agreement.

The City will be responsible for drafting the performance agreement, the agreement of which will contain the terms and conditions under which the applicant must abide. The agreement shall only be modified upon approval of the City Council in accordance with applicable local and State guidelines.

CRITERIA

Employment Impact

How many jobs will be brought to Sherman?

What types of jobs will be created (e.g., part-time, full-time, hourly, salaried, etc.)?

List the number of jobs by class that will be created and the wage range of each class of job.

What will the estimated total annual payroll be? Include current and increase factors.

Expectation for jobs filled by transfers from other company locations vs. locally-filled jobs.

Fiscal Impact

How much real and personal property will be added to the tax rolls, in square footage and in estimated value?

What is the estimated annual local sales tax generated (at 2%)?

If applicant is leasing or proposing to lease the facilities and/or the ground, what are the terms of the lease(s)?

What is the total annual operating budget of this facility projected to be? (For expansion, state current and projected increase.)

RETAIL RECRUITMENT PROGRAM APPLICATION

SECTION I

1. Property Owner: Lucinda Glossop
Mailing Address: 9201 Cedar Trails Lane, Valley Center, CA 92082
Telephone Numbers: 909-268-1323
2. Property Owner's Representative: Geoff Glossop
Mailing Address: 9201 Cedar Trails Lane, Valley Center, CA 92082
Telephone Numbers: 909-268-1323
3. Physical Property Address: 4817 Texoma Parkway, Sherman, TX 75090
4. Property Legal Description (include as an attachment with metes and bounds)
5. Description of Project: Complete remodel of leased building
6. Date of projected occupation of project/initiation of operations: 7/1/2021
7. Narrative response to criteria questions in Section II of application?
(Yes or No, and include attachment)

SECTION II

Employment Impact

How many jobs will be brought to Sherman?

What types of jobs will be created (e.g., part-time, full-time, hourly, salaried, etc.)?

List the number of jobs by class that will be created and the wage range of each class of job.

What will the estimated total annual payroll be? Include current and increase factors.

Expectation for jobs filled by transfers from other company locations vs. locally-filled jobs.

Fiscal Impact

How much real and personal property will be added to the tax rolls, in square footage and in estimated value?

What is the estimated annual local sales tax generated (at 2%)?

If applicant is leasing or proposing to lease the facilities and/or the ground, what are the terms of the lease(s)?

What is the total annual operating budget of this facility projected to be? (For expansion, state current and projected increase.)

Section II

Employment Impact

How many jobs will be brought to Sherman?

Approximately 30 jobs will be brought to Sherman.

What types of jobs will be created (e.g., part-time, full-time, hourly, salaried, etc.)?

A variety of jobs will be created including part-time, full-time, and hourly positions. These include: Line Cooks, Prep, Dishwashers, Managers, Cashiers, Bartenders, Bussers, and Servers.

List the number of jobs by class that will be created and the wage range of each class of job.

-Managers: 2 wages between \$16-\$18

-Cooks: 8 wages between \$14-\$23

-Dishwasher: 2 wages between \$11-\$15

-Cashiers: 6 wages between \$12-\$18

-Bartenders: 2 wages between \$14-\$18

-Bussers: 2 wages between \$10-\$14

-Servers: 8 wages between \$11-\$16

What will the estimated total annual payroll be? Include current and increase factors.

The estimated total annual payroll will be \$780,000.

Expectation for jobs filled by transfers from other company locations vs. locally-filled jobs.

We hope to hire as many local personnel as possible. We would like to get support from the community while also supporting them. We do expect to fill some jobs from personnel transfers from our other location to ensure proper staffing for the opening. We would like our transfers to help train and be a support system while the locally filled positions become adjusted.

Fiscal Impact

How much real and personal property will be added to the tax rolls, in square footage and in estimated value?

We are currently not adding real or personal property to the tax rolls. The renovations and construction being done pertain to the property that was already there prior to our lease agreement.

What is the estimated annual local sales tax generated (at 2%)?

$\$1,500,000 \times 2\% = \$30,000$

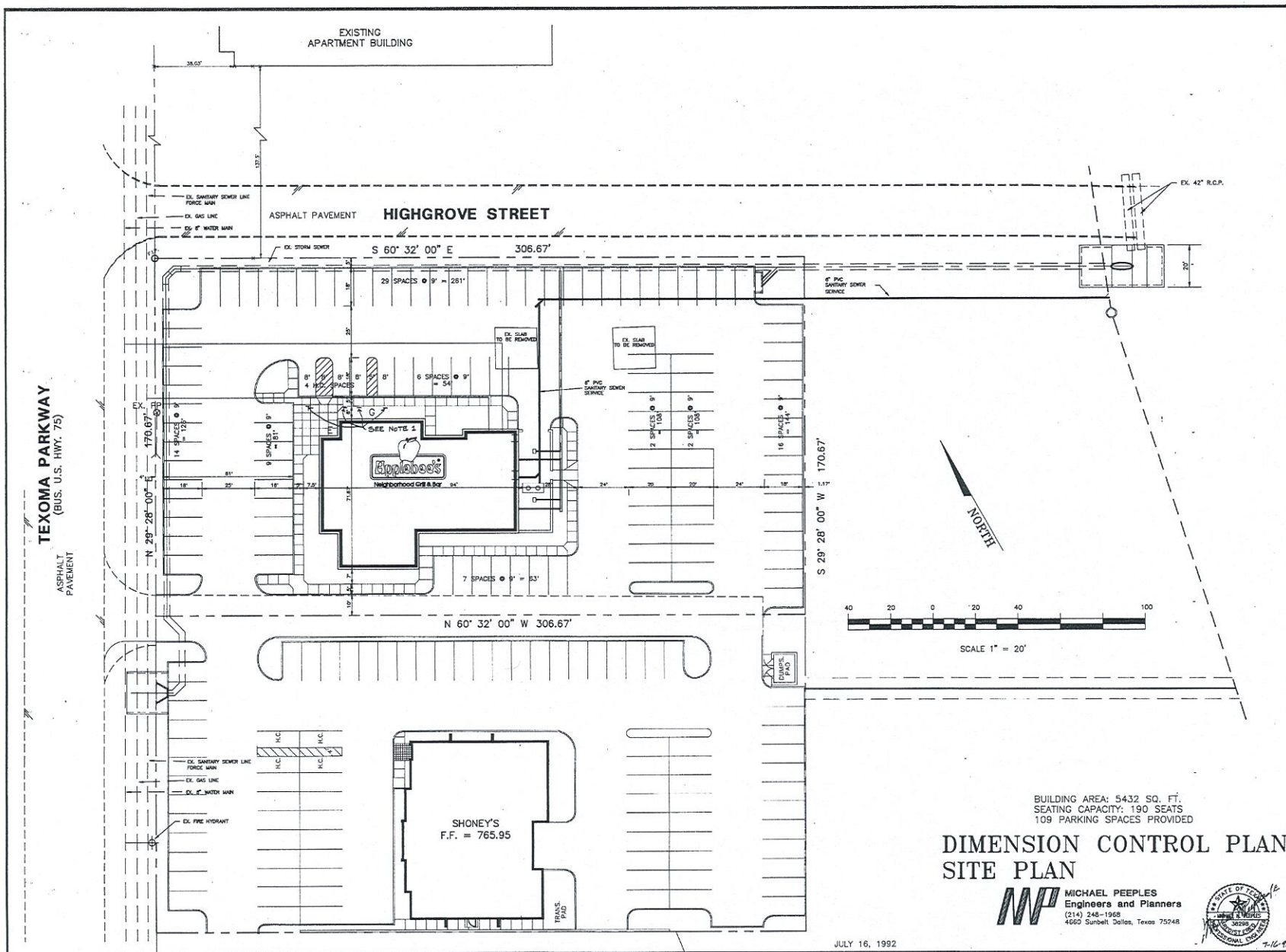
If applicant is leasing or proposing to lease the facilities and/or the ground, what are the terms of the lease(s)?

We are currently leasing the facility. Here are the terms:

- 10 year lease*
- Aside from rent, we are required to pay for operating costs as well.*
- We can purchase the property in the first 24 months of our lease term.*
- Landlord paid for three new HVAC systems.*

What is the total annual operating budget of this facility projected to be? (For expansion, state current and projected increase.)

Currently, we project the annual revenue to be \$1.5 million and expenses around \$600,000.



CHAPTER 380 GRANT AGREEMENT FOR SUPER SHACK RESTAURANT

This CHAPTER 380 GRANT AGREEMENT ("Agreement") is entered into by and between SUPER SHACK, LLC, a Texas limited liability company ("Company"), and the CITY OF SHERMAN, TEXAS ("City"), a home-rule municipality. City and Company are each referred to herein as a "party" or collectively as the "parties."

WHEREAS, the City Council of the City of Sherman, Texas ("City Council") approved Resolution No. 6460, declaring its intent to participate in a Retail Recruitment Program to promote development/redevelopment in certain areas in of the City;

WHEREAS, the Retail Recruitment Program is a program for making loans and grants of public money to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380 of the Texas Local Government Code, as amended ("Chapter 380");

WHEREAS, the Company proposes to: (a) lease that certain parcel of land containing 1.2015± acres and generally located at 4817 Texoma Parkway, in the City of Sherman, Grayson County, Texas, as more particularly described in Exhibit A, attached hereto and incorporated herein for all purposes (the "Property"); and (b) open and operate on the Property a Super Shack restaurant facility containing at least 5,000± gross square feet of space and related facilities (collectively, the "Facilities"), according to plans and specifications complying with this Agreement and applicable ordinances of the City and as approved by the City;

WHEREAS, the City Council has investigated and determined that the Company meets the criteria for providing the Grant (hereinafter defined), pursuant to Chapter 380, based on, among other things, the Company: (a) operating and improving the Facilities on the Property in the City; (b) adding or improving taxable improvements to real property in the City; and (c) creating employment opportunities for the citizens of Sherman;

WHEREAS, the Company agrees that the City's obligation to perform or take any action under this Agreement is strictly contingent on the Company's compliance with this Agreement, including completion of the Performance Requirements as defined in this Agreement;

WHEREAS, the City is willing to provide the Company with economic assistance on the terms and subject to the conditions as stated herein, and the Company is willing to accept the same subject to all terms and conditions contained in this Agreement;

WHEREAS, the City Council finds that this Agreement substantially advances a legitimate interest of the City by promoting economic development, attracting new consumers to the City, expanding the sales tax base of the City, increasing employment and generating new tax revenue for jurisdictions in Grayson County, which will help stimulate the overall local economy.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the City and the Company agree as follows:

1. Findings Incorporated. The findings set forth above are made a part of this Agreement as if set forth herein verbatim.
2. Chapter 380 Grant; Grant Term. Subject to the terms of this Agreement and provided that the Company has complied and continues to comply with all of the Performance Requirements set forth in Section 3 below, the City will, pursuant to Chapter 380, provide to the Company an economic development grant as follows:
 - a. City Sales Tax Grant. Reimbursement payable to the Company each quarter of an amount equal to five-tenths (0.5%) of the one percent of sales tax actually collected and received by the City on sales generated in or by the Facilities located on the Property that are taxable by the City for a two (2) year period commencing on the date a Certificate of Occupancy is obtained for the Facilities or October 31, 2022, whichever occurs first (the "Grant").
 - b. The term of this Agreement shall commence on the Effective Date of this Agreement (hereinafter defined) and expire on the earlier of: (a) the Company's satisfaction of the Performance Requirements and the City's payment of the Grant; (b) the earlier termination of this Agreement as provided in Section 6(c); or (c) October 31, 2024 (the "Grant Term"). In the event the Company does not receive the maximum amount of the Grant provided herein during the Grant Term, the City shall have no obligation to pay to the Company any portion of the Grant after the Grant Term has expired.
 - c. If, after all of the Performance Requirements set forth below have been initially satisfied, any of the Performance Requirements set forth below are thereafter not satisfied during any period of time for which a Grant is calculated, then if such failure of a condition is not cured within thirty (30) days after written notice from the City to the Company of such failure, the City, in addition to any other remedies, will be relieved of its obligation to pay the portion of the Grant related to such calendar quarter and the City shall also have the right to give the Company a notice that this Agreement shall immediately terminate without further action by either party.
 - d. The Company acknowledges and agrees that the City is not certifying or otherwise encumbering any funds for the payment of the Grant due under this Agreement and does not have any monies budgeted for the same. The Company agrees not to make any claims against the City for any monies other than those from the sales tax revenues from the Property, and nothing in this Agreement shall require City to make payment from revenue sources other than the same. The basis for any Grant due to the Company under this Agreement shall never include any monies the Company pays or owes to the State of Texas or the City

for any penalties for late payments, failures to report in a timely manner, and the like, related to the sales taxes due on the Property.

3. Performance Requirements. The following conditions must be satisfied by the Company during the Grant Term in order for the Company to qualify for the Grant (collectively, the “Performance Requirements”):
- a. The Company shall obtain or cause to be obtained a permanent Certificate of Occupancy from the City for the Facilities on or before October 31, 2022, and shall thereafter make continuous efforts to maintain full occupancy of the Facilities throughout the period of the Grant Term; and
 - b. The Company shall utilize, or cause its contractors to utilize, Separated Building Materials and Labor Contracts for all taxable building material contracts related to the Facility in the amount of One Hundred Thousand Dollars (\$100,000.00) or more, to site payment of the sales tax on building materials for the Facilities to the Property; and
 - c. No later than thirty (30) days after the close of each quarter during the term of this Agreement, the Company shall provide the City with a copy of the Texas Sales and Use Tax Return that the Company submits to the Comptroller of the State of Texas relating to the Company’s remission of City Sales and Use Tax Collected on the Property as a result of the operation of the Facilities (“Sales Tax Report”). In the event the City is unable to obtain the necessary sales tax information from the Sales Tax Report or in the event the City is unable to obtain the Sales Tax Report for any period of time during the Grant Term, the Company, in order to obtain payment of the Grant, shall have the obligation to provide, or cause to be provided, to the City a current list of each person doing business within the Property together with a waiver of confidentiality and permission to obtain tax information from the State Comptroller relating to such person (collectively, the “Personal Information”) in such form as is required by the Texas Comptroller in order to release the tax information, an example of which is attached hereto as Exhibit B (the “Waiver of Sales Tax Confidentiality”) relating to such person to the City. The Company’s failure to provide the City with the Personal Information shall not constitute a default under this Agreement but shall relieve the City permanently of the obligation to pay that portion of the Grant that relates to such person prior to the date that the Personal Information is provided to the City. Subject to the terms and conditions of this Agreement, the City will pay the Grant to the Company on a quarterly basis beginning on the earlier of the months of February, May, August and November following the date the Company first meets the qualifications set forth in Section 2 above and, if applicable, within sixty (60) days after the Company provides the City the Personal Information set forth in this Section 3, and continuing each quarter thereafter on the months set forth above, provided that the Company each quarter meets the qualifications set forth in Section 2 above, until the earlier of (i) the end of the Grant Term; (ii) the Grant is paid in full; or (iii) this Agreement is terminated. The City and the

Company designate this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax Revenue information from the State Comptroller pursuant to Section 321.3022 of the Texas Tax Code, as amended; and

- d. The Company shall continuously comply with this Agreement during the Grant Term.

The Company shall provide to the City documentation satisfactory to the City that the Company has satisfied all of the Performance Requirements set forth above.

4. Confidentiality. The City acknowledges that the Company contends that the information regarding sales taxes generated by the Facilities is commercial or financial information which is proprietary and confidential, the disclosure of which could cause competitive harm to the Company and the owners, tenants and/or occupants of the Facilities. To the extent permitted by law, and subject to the requirements of the Texas Public Information Act, the City shall maintain the confidentiality of the Personal Information and the information contained in the Comptroller's Sales Tax Reports obtained by the City (collectively, the "Sales Information"), but shall be permitted to disclose the Sales Information to such City employees and consultants as the City, in its reasonable discretion, deems appropriate in furtherance of the purposes herein set forth.
5. The Company Representations. The Company makes the following representations and warranties to the City, and agrees to timely and fully perform the following obligations and duties:
 - a. The Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the term of this Agreement. As used herein, the term "good standing" means the status of the Company with the Comptroller of the State of Texas shall be "Active."
 - b. No litigation or governmental proceeding is pending or, to the knowledge of the Company, threatened against or affecting the Company that may result in any material adverse change in the Company's business or operation.
 - c. No bankruptcy proceedings or other similar proceedings are currently pending or contemplated against the Company, and the Company has not been informed of any potential involuntary bankruptcy proceedings against the Company.
 - d. The Company shall remain current and in good standing with all sales taxes, ad valorem taxes, fees and other recurring charges of the City, the State of Texas and Grayson County taxing jurisdictions throughout the term of this Agreement.
 - e. The Company represents and certifies that the Company does not and will not knowingly employ any undocumented worker at the Facilities or on the Property who is not lawfully admitted for permanent residence to the United States or

authorized under law to be employed in the United States. If, after receiving any public subsidy from the City under this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a(f), the Company shall repay to the City an amount equal to all Grant payments tendered to the Company under this Agreement and any other funds received by the Company from the City under this Agreement plus interest, at the rate of four percent (4%), not later than the 120th day after the date the public agency, state or local taxing jurisdiction notifies the Company of the violation.

6. Default.

- a. The following shall constitute an “Event of Default” under this Agreement:
 - (i) Upon the expiration of the notice and cure period set forth in the first sentence of Section 6(b) below, the City’s failure to process any portion of the Grant payments owing to the Company in accordance with this Agreement.
 - (ii) Upon the expiration of the notice and cure period set forth in the first sentence of Section 6(b) below, a failure of the Company to comply with and satisfy the Performance Requirements set forth in Section 4 of this Agreement.
 - (iii) A breach of a representation under this Agreement by Company.
- b. In the event of the occurrence of an Event of Default described under Section 6(a) above, the non-defaulting party may give written notice to the other party of such Event of Default, and the defaulting party shall have thirty (30) days thereafter to cure said Event of Default. Should said Event of Default remain uncured after such cure period and the non-defaulting party is not otherwise in default hereunder, then the non-defaulting party shall have the right to give the defaulting party a notice that this Agreement shall immediately terminate without further action by either party. In addition and without terminating this Agreement, the Company shall further have the power to enforce specific performance or bring an action to collect amounts owing upon an Event of Default by the City. No action shall lie for damages against the City beyond the foregoing amounts owed by the City arising from an Event of Default by the City, and no party shall seek or be entitled to recover punitive, special or consequential damages arising out of, or relating to, any Event of Default under this Agreement.
- c. This Agreement shall terminate upon the occurrence of any one of the following:
 - (i) the execution by both parties of a written agreement terminating this Agreement;
 - (ii) the expiration of the Grant Term; or

- (iii) at the option of the non-defaulting party (subject to the notice and cure and other provisions of Section 6(b) above), after an Event of Default.
 - d. The prevailing party in any action to enforce this Agreement shall be entitled to receive reasonable attorneys' fees from the non-prevailing party.
 - e. The Company's sole and exclusive remedies for a breach by the City under this Agreement shall be those expressly provided for in this Section 6, and the Company hereby waives any other remedies under law or in equity.
7. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:
- If to the City: City of Sherman
 220 W. Mulberry
 Sherman, Texas 75090
 Attn: City Manager
- With a copy to: Abernathy, Roeder, Boyd & Hullett, P.C.
 1700 Redbud Blvd., Suite 300
 McKinney, Texas 75069
 Attn: Ryan D. Pittman
- If to the Company: Super Shack, LLC
 2091 S. Central Expressway
 McKinney, TX 75070
 Attn: Gabriella Perez
8. Verification and Compliance. The Company shall allow the City to audit all of the Company's records (other than individual employee files), documents, agreements and other instruments in furtherance of the following purposes: (a) to ensure the Company's compliance with the affirmative covenants set forth in this Agreement; (b) to determine the existence of an event of default under the terms of this Agreement; and (c) to ensure compliance with any other terms and conditions set forth herein or any related documents, including, but not limited to, either of the Performance Agreements. The City will provide the Company with written notice of any request for an audit and shall cooperate with the Company to schedule audit activities during the Company's normal business hours so as to minimize disruption to the Company's normal business operations.

9. Miscellaneous.

- a. Binding Agreement. This Agreement shall constitute a valid and binding agreement by and between the City and the Company.
- b. Savings/Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances, or affect any other provision hereof. It is the intention and agreement of the parties to this Agreement that each such illegal, invalid or unenforceable provision shall be amended by the parties hereto to the extent necessary to make it legal, valid and enforceable while achieving the same objective of such provision, or, if that is not possible, by substituting therefore another provision that is legal, valid and enforceable and achieves the same objectives (or, if such provision cannot be amended or a provision substituted therefore in a manner that is legal, valid and enforceable and achieves the same objectives, then such provision shall be amended or a new provision substituted therefore that achieves as closely as possible the same objectives or economic position as the illegal, invalid or unenforceable provision, irrespective of whether such amendment or substituted provision is materially different than the illegal, invalid or unenforceable provision).
- c. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- d. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- e. Vested Rights/Chapter 245 Waiver. This Agreement shall confer no vested rights on the Property, or any portion thereof. In addition, nothing contained in this Agreement shall constitute a “permit” as defined in Chapter 245 of the Texas Local Government Code, as amended, and nothing in this Agreement provides City with fair notice of any project of the Company. The Company waives any statutory claim under Chapter 245 of the Texas Local Government Code, as amended, arising out of any acts or omissions under this Agreement. This section shall survive the termination of this Agreement.
- f. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

- g. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- h. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- i. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date of this Agreement.
- j. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- k. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.
- l. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- m. Immunity. It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

- n. Assignment. This Agreement or any part thereof shall not be assigned or transferred by any party without the prior written consent of the other party, which may be withheld in the other party's sole discretion.

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

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____

Robby Hefton, City Manager

Date executed: _____

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021, personally appeared Robby Hefton, City Manager and duly authorized representative for the CITY OF SHERMAN, TEXAS, known to me to be one of the persons whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf thereof.

Notary Public, State of Texas

SUPER SHACK, LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date executed: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021, personally appeared _____, as _____ and duly authorized representative of SUPER SHACK, LLC, a Texas limited liability company, known to me to be one of the persons whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf thereof.

Notary Public, State of _____

Exhibit A
Legal Description of the Property

Property ID: 154502
Legal Description: CATES FIRST ADDN, BLOCK 1, LOT 1
Geographic ID: S004 2423001
Agent: P E PENNINGTON & COMPANY INC (125)
Type: Real
Location
Address: 4817 TEXOMA PKWY SHERMAN, TX
Map ID: S004
Neighborhood CD: 321
Owner
Owner ID: 445196
Name: GLOSSOP LUCINDA &
Mailing Address: PUCKETT FAMILY TRUST
9201 CEDAR TRAILS LN
VALLEY CENTER, CA 92082
% Ownership: 100.0%

Exhibit B
Waiver of Sales Tax Confidentiality

Date: _____

I authorize the Comptroller of Public Accounts to release sales and use tax information pertaining to the taxpayer indicated below to the City of Sherman. I understand that this waiver applies only to our retail store located in the _____.

Please print or type the following information as shown on your Texas Sales and Use Tax permit:

Name of Taxpayer Listed on Texas Sales Tax Permit

Name under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax in Sherman, Texas

Texas Taxpayer ID Number

Authorized Signature*

Printed Name of Authorized Signature

Position of Authorized Signature

Phone Number of Authorized Signature

*The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at 1 (800) 531-5441.

RESOLUTION NO. 6460

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DECLARING THE CITY OF SHERMAN'S ELIGIBILITY AND INTENTION TO PARTICIPATE IN A RETAIL RECRUITMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN CERTAIN AREAS OF THE CITY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman declares its eligibility and intention to participate in a Retail Recruitment Program to promote development/redevelopment in certain areas of the City and wishes to adopt Guidelines and Criteria for use in the City's Retail Recruitment Program; and

WHEREAS, the City of Sherman will be required to renew the guidelines and criteria adopted for this program every two years;

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

SECTION 1. That the City Council of the City of Sherman, Texas, hereby approves and adopts the following Guidelines and Criteria for use in the City's Retail Recruitment Program, as required by law:

**CITY OF SHERMAN'S
RETAIL RECRUITMENT PROGRAM
GUIDELINES AND CRITERIA**

1. A performance incentive agreement must be reasonably likely to contribute to the development of new retail enterprises that generate local sales tax for the City of Sherman.
2. A performance incentive agreement will not be entered into where a company is only changing its location within Sherman.
3. The City Council of the City of Sherman will approve or deny an incentive request based upon the subjective evaluation of the following guidelines and criteria. The Council may consider any advisory recommendations received from the City Manager as it may choose:

- **Employment Impact**

How many jobs will be brought to Sherman?

What types of jobs will be created (e.g., part-time, full-time, hourly, salaried, etc.)?

List the number of jobs by class that will be created and the wage range of each class of job.

What will the estimated total annual payroll be? Include current and increase factors.

Expectation for jobs filled by transfers from other company locations vs. locally-filled jobs.

- **Fiscal Impact**

How much real and personal property will be added to the tax rolls, in square footage and in estimated value?

What is the estimated annual local sales tax generated (at 2%)?

If applicant is leasing or proposing to lease the facilities and/or the ground, what are the terms of the lease(s)?

What is the total annual operating budget of this facility projected to be? (For expansion, state current and projected increase.)

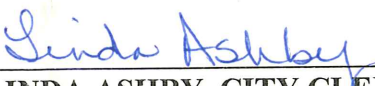
SECTION 2. That these Retail Recruitment Program Guidelines and Criteria shall be effective immediately upon the passage of this resolution.

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 4th day of March, 2019.

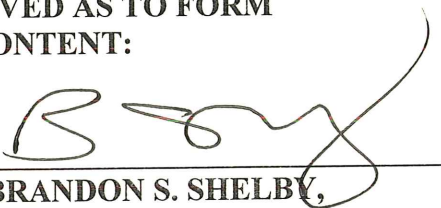
CITY OF SHERMAN, TEXAS

ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

BY: 
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: 
BRANDON S. SHELBY,
CITY ATTORNEY

**RETAIL RECRUITMENT PROGRAM
PROCEDURES MANUAL
AND
APPLICATION**



SHERMAN, TEXAS

TABLE OF CONTENTS

General Purpose and Program Description..... 3

Evaluation and Approval Process..... 4

Criteria..... 5

Retail Recruitment Program Application.....6-7

GENERAL PURPOSE AND PROGRAM DESCRIPTION

The City of Sherman desires to promote broad-based, high quality development that will enhance the quality of life for citizens and other stakeholders. These goals are accomplished through the City's ability to promote a healthy economy in the area of private capital investment and generation of local sales tax revenues. As such, the City of Sherman will, on a case-by-case basis, consider providing a cash grant in the form of local sales tax rebates to qualifying businesses under Chapter 380 of the Texas Local Government Code. In order to qualify, the applicant must propose to locate a new business to Sherman. Relocation of an existing business to a new location would not qualify under this program. The City is under no obligation to provide this benefit to any applicant; and this program may be terminated at the City's sole discretion.

EVALUATION AND APPROVAL PROCESS

Applicant shall submit an application (provided herein) in conformance with the guidelines established by this program. All applications for incentives will be reviewed by the City Manager or his designee. Applicant may be requested to meet with City staff to discuss the details of the proposed project. The application will be evaluated on the basis of the projects' overall economic benefit to the City, project timing and duration, project conformance with desired location and enhancement of surrounding development, and job creation. Staff will make a recommendation to the City Council, who shall consider the matter in a public meeting. Any action taken by Council will be considered final and shall only be modified by further action of the Council, unless otherwise specified. Upon approval by City Council, applicant will be required to execute a performance agreement.

The City will be responsible for drafting the performance agreement, the agreement of which will contain the terms and conditions under which the applicant must abide. The agreement shall only be modified upon approval of the City Council in accordance with applicable local and State guidelines.

CRITERIA

Employment Impact

How many jobs will be brought to Sherman?

What types of jobs will be created (e.g., part-time, full-time, hourly, salaried, etc.)?

List the number of jobs by class that will be created and the wage range of each class of job.

What will the estimated total annual payroll be? Include current and increase factors.

Expectation for jobs filled by transfers from other company locations vs. locally-filled jobs.

Fiscal Impact

How much real and personal property will be added to the tax rolls, in square footage and in estimated value?

What is the estimated annual local sales tax generated (at 2%)?

If applicant is leasing or proposing to lease the facilities and/or the ground, what are the terms of the lease(s)?

What is the total annual operating budget of this facility projected to be? (For expansion, state current and projected increase.)

RETAIL RECRUITMENT PROGRAM APPLICATION

SECTION I

1. Property Owner: _____
Mailing Address: _____
Telephone Numbers: _____
2. Property Owner's Representative: _____
Mailing Address: _____
Telephone Numbers: _____
3. Physical Property Address: _____
4. Property Legal Description (include as an attachment with metes and bounds)
5. Description of Project: _____

6. Date of projected occupation of project/initiation of operations: _____
7. Narrative response to criteria questions in Section II of application? _____
(Yes or No, and include attachment)

SECTION II

Employment Impact

How many jobs will be brought to Sherman?

What types of jobs will be created (e.g., part-time, full-time, hourly, salaried, etc.)?

List the number of jobs by class that will be created and the wage range of each class of job.

What will the estimated total annual payroll be? Include current and increase factors.

Expectation for jobs filled by transfers from other company locations vs. locally-filled jobs.

Fiscal Impact

How much real and personal property will be added to the tax rolls, in square footage and in estimated value?

What is the estimated annual local sales tax generated (at 2%)?

If applicant is leasing or proposing to lease the facilities and/or the ground, what are the terms of the lease(s)?

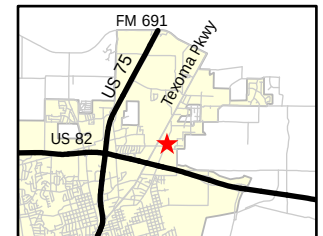
What is the total annual operating budget of this facility projected to be? (For expansion, state current and projected increase.)

diagram H:\ENGINEERING\GIS\GIS Pro Projects\Administration\Administration.aprx



CITY OF SHERMAN
4817 Texoma Parkway
(Super Shack)

9/14/2021





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 2.

Meeting Date: 10/04/2021

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6781

Authorizing Execution of a Professional Engineering Design Services Agreement with CP&Y, Inc. for the design of Moore Street from Park Avenue to Center Street

Issue:

To consider a contract for professional engineering design services with CP&Y, Inc. for the design of Moore Street from Park Avenue to Center Street

Background:

Moore Street is part of the City's Master Thoroughfare plan and is ultimately to be a four lane divided arterial roadway from Park Avenue to Center Street. This engineering design services contract will provide an alignment study, design for a four lane divided roadway, and construction drawings for half of the roadway and a water main from The Grove Subdivision to Center Street.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this contract is \$520,000.00. This will be funded by the Street Bond Funds.

Staff Recommendation:

CP&Y, Inc. is fully qualified to perform these services and staff has negotiated a reasonable fee for these services. It is recommended that the contract for professional engineering design services with CP&Y, Inc. for the design of Moore Street from Park Avenue to Center Street be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6781
Agreement
Location Map

RESOLUTION NO. 6781

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL ENGINEERING DESIGN SERVICES AGREEMENT WITH CP&Y, INC. FOR THE DESIGN OF MOORE STREET FROM PARK AVENUE TO CENTER 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 all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Engineering Design Services Agreement with CP&Y, Inc. for the Design of Moore Street from Park Avenue to Center Street, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
RYAN PITTMAN, CITY ATTORNEY

AGREEMENT FOR PROFESSIONAL ENGINEERING DESIGN SERVICES

This AGREEMENT or CONTRACT is made and entered into this ____ day of October, 2021, by and between the City of Sherman, Texas hereinafter called the OWNER, and CP&Y, Inc., hereinafter called the ENGINEER.

RECITALS

WHEREAS, the OWNER intends to construct Moore Street Reconstruction (Park Ave to Center St), hereinafter referred to as the PROJECT; and

WHEREAS, the OWNER desires to obtain engineering services in connection with the PROJECT and set forth in the Scope of Services attached hereto as Exhibit "A"; and

WHEREAS, the ENGINEER is acceptable to the OWNER, and is willing to enter into an Agreement with the OWNER to perform such services; and

NOW, in consideration of the premises and mutual covenants contained herein, the OWNER and the ENGINEER agree as follows:

CONTRACTUAL UNDERTAKINGS

SECTION I EMPLOYMENT OF ENGINEER

The OWNER agrees to employ the ENGINEER and the ENGINEER agrees to furnish engineering design services in connection with the PROJECT as stated in Section II, and for having rendered such services, the OWNER agrees to pay to the ENGINEER compensation as stated in Section VI.

ENGINEER agrees to furnish engineering design services in accordance with the terms and conditions of this AGREEMENT (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

SECTION II CHARACTER AND EXTENT OF SERVICES

The Basic Engineering Services to be rendered by ENGINEER are to be considered distinguishable from other services and shall be performed as required during the following phases of the PROJECT:

- A. PRELIMINARY ENGINEERING STUDY
- B. PRELIMINARY DESIGN PHASE
- C. INTERMEDIATE DESIGN PHASE
- D. FINAL DESIGN PHASE
- E. CONSTRUCTION PHASE

In addition to the Basic Services, other services related to the PROJECT that may be included by specific authorization are identified herein as "F. SPECIAL SERVICES."

These various services that ENGINEER will perform are more fully described as follows:

A. PRELIMINARY ENGINEERING STUDY

1. If the OWNER determines that a preliminary engineering study is needed, the ENGINEER will attend a conference with OWNER regarding the scope and requirements of the study needed for the PROJECT.
2. Prepare a preliminary engineering study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the OWNER, to include preliminary layouts, a right-of-way map, sketches, and cost estimates for the PROJECT, and to set forth clearly the ENGINEER's recommendations. Such estimates for probable costs shall be made on the basis of ENGINEER's knowledge, experience and qualifications and represent ENGINEER's judgment as an experienced professional engineer. ENGINEER does not guarantee that proposals, bids, or actual total project costs or total construction costs will not vary from the opinions provided by Consultant.
3. Furnish the OWNER all necessary copies of the preliminary engineering report, including preliminary layouts, a right-of-way map, sketches, and cost estimates. All reports in excess of ten (10) copies are to be paid for separately as provided hereinafter.

B. PRELIMINARY DESIGN PHASE

1. ENGINEER will attend a conference with OWNER regarding the scope and requirements for the PROJECT.
2. Prepare preliminary engineering review drawings to include preliminary horizontal and vertical alignments of all proposed improvements with minimal construction-related notes. Cross-sections at least every fifty (50) feet will be required for paving-related or channel-related projects. If necessary, report in sufficient detail to indicate clearly any of the problems involved and provide alternate solutions available to the OWNER. Include preliminary layouts, a right-of-way map, sketches, and cost estimates for the PROJECT and set forth clearly the ENGINEER's recommendations for any alternate designs.

3. Furnish the OWNER all necessary copies of the preliminary construction drawings and cost estimates. All reports in excess of ten (10) copies are to be paid for separately as provided hereinafter.
4. Water, sanitary sewer, and storm drains will be shown on the plans based on field information and surveys collected by the ENGINEER and from existing "Record Drawings" provided by the City of Sherman. Other utilities should be shown on the plans based on field information and surveys collected by the ENGINEER, utility locates requested by the ENGINEER, and any available "Record Drawings" that the ENGINEER can obtain from other utilities.
5. Depending on comments received from the OWNER's review and field investigations, another set of preliminary phase construction drawings may be required.
6. The ENGINEER will attend one (1) review meeting with the OWNER. The ENGINEER will be responsible for compiling all the comments from this review to create a list of all comments to be addressed by the next submittal.
7. Upon completion of the Preliminary Design Phase, the ENGINEER will advise the OWNER of any geotechnical, soil, foundation, or other subsurface investigations or any special surveys or special testing which, in the opinion of the ENGINEER, may be required for the proper execution of the PROJECT, and assist the OWNER in arranging for the conduct of such investigations and tests. The performance of geotechnical investigations and tests will not be a part of the ENGINEER's Basic Engineering Services and will not be included unless specifically authorized in writing under "F. SPECIAL SERVICES."
8. Upon completion of the Preliminary Design Phase, the ENGINEER will advise the OWNER of any Subsurface Utility Engineering that will require the exact vertical and horizontal identification of any public utility that may be in conflict with the proposed design. Exposure of any buried utilities will be performed by the Engineer as a SPECIAL SERVICE upon authorization of the OWNER. Information from said exposure shall be depicted on the construction plans.

C. INTERMEDIATE DESIGN PHASE

1. Prepare intermediate engineering review drawings that address all comments from the preliminary engineering review, including detailed construction-related notes. Cross-sections at least every fifty (50) feet will be required for paving-related or channel-related projects. Driveway profiles will be required for paving-related projects. A general notes sheet(s), coordinate control sheet(s), proposed traffic control narrative sheet(s), proposed erosion control plan sheet(s), and detail sheet(s) will be required for all projects. Drainage-related projects will require all pertinent information showing calculations for drainage areas, inlet capacity, spread of flow and depth in street, and hydraulic grade line.

2. Furnish the OWNER all necessary copies of the intermediate engineering review drawings and updated cost estimates. All reports in excess of ten (10) copies are to be paid for separately as provided hereinafter.
3. Prepare detailed cost estimates based on current unit prices from the proposal of authorized construction, which shall include summaries of bid items and quantities on the unit price system of bidding, wherever practical. The ENGINEER shall not be required to guarantee the accuracy of these estimates.
4. Develop the project design combining the application of sound engineering principles and economy which shall be manifested by completed Construction Contract Documents, (Plans, Specifications, etc.) and assist OWNER with submittal of such Documents to local, state, and federal agencies for approval as may be applicable.
5. Submit three (3) copies each of any necessary right-of-way or easement documents.
6. The ENGINEER will attend one (1) review meeting with the OWNER. The ENGINEER will be responsible for compiling all the comments from this review to create a list of all comments to be addressed by the next submittal.

D. FINAL DESIGN PHASE

1. Prepare final engineering review drawings that address all comments from the intermediate review.
2. Furnish the OWNER all necessary copies of the final engineering review drawings and updated cost estimates. All reports in excess of ten (10) copies are to be paid for separately as provided hereinafter.
3. Prepare detailed cost estimates based on current unit prices from the proposal of authorized construction, which shall include summaries of bid items and quantities on the unit price system of bidding, wherever practical. The ENGINEER shall not be required to guarantee the accuracy of these estimates, but may be required to provide additional services at no cost to the OWNER if bids for the PROJECT exceed the fixed budget limit for the Construction Cost as provided in Section VI.
4. Submit three (3) final sealed copies each of any necessary right-of-way or easement documents.
5. The ENGINEER will attend one (1) review meeting with the OWNER. The ENGINEER will be responsible for compiling all the comments from this review to create a list of all comments to be addressed by the next submittal.
6. When required by the nature of the PROJECT, the ENGINEER shall provide necessary exhibits and attend a public meeting with the OWNER.

7. Upon completion of the final design review, the ENGINEER shall furnish to the OWNER up to ten (10) additional copies of the construction drawings to be forwarded to the utility companies.
8. Upon completion of the final design review, the ENGINEER shall furnish to the OWNER, where required by the circumstances of the assignment, the engineering data, construction plans, completed forms, and reports necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid or for planning advances not included in Basic Engineering Services).

E. CONSTRUCTION PHASE

1. Attend a preconstruction meeting conducted by the OWNER.
2. Provide engineering surveys to refresh and re-establish benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the PROJECT, one time only. This does not include construction staking.
3. Represent the OWNER in the non-resident administration of the PROJECT. In this capacity, the ENGINEER shall have the authority to exercise whatever rights the OWNER may have to disapprove work and materials that fail to conform to the Construction Contract Documents when such failures are brought to the ENGINEER's attention. (This function of ENGINEER shall not be construed as supervision of the PROJECT and does not include on-site activities other than occasional site visits to observe overall PROJECT conditions as desired by the ENGINEER, or when specifically requested by OWNER to visit on-site for a particular matter. It particularly does not involve exhaustive or continuous on-site inspections to check quality or quantity of the work or material; nor does it place any responsibility on ENGINEER for the techniques and sequences of construction except as noted in the plans and specifications or the safety precautions incident thereto, and ENGINEER will not be responsible or liable in any degree for the Contractor's failure to perform the construction work in accordance with the Construction Contract Documents).
4. Consult and advise the OWNER and issue such instructions to the Contractor as in the judgment of the ENGINEER are necessary.
5. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment, and other data which the Contractor is required to submit, only for conformance with the design concept of the PROJECT and compliance with the information given by the Construction Contract Documents, and assemble written guarantees which are required by the Construction Contract Documents.
6. Revise contract drawings ("Record Drawings") with the assistance of the OWNER and contractor mark ups to reflect available information as to how the work was constructed. Furnish a bound set of these revised drawings to the OWNER and provide an electronic

copy of the drawing in PDF format, and AutoCAD (.DWG) format or in Drawing Exchange Format (.DXF). Retainage in the amount of ten percent (10%) of the Construction Phase fee will be withheld subject to submittal of "Record Drawings".

7. ENGINEER shall perform such services expeditiously and shall return the "Record Drawings" documents within fifteen (15) calendar days of being authorized to proceed by OWNER. This time frame shall not, except for cause of force majeure, be exceeded by ENGINEER.
8. ENGINEER shall not be responsible for supervising, directing, controlling, or otherwise being in charge of the construction activities, means, or methods at the project site; or supervising, directing, controlling, or otherwise being in charge of the actual work of the Contractor, its subcontractors, or other materialmen or service providers not engaged by ENGINEER.

F. SPECIAL SERVICES

Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by A., B., C., D., and E. preceding, which may be performed or arranged for separately by OWNER, or may be added to the ENGINEER's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following:

1. Field surveys to collect information required for design, including photogrammetry, and related office computations and drafting. All surveys and coordinate information shall be based on the NAD 83 CORS Grid Coordinate System utilizing control monuments established within the City of Sherman.
2. Land surveys, establishment of boundaries and monuments, and related office computations and drafting.
3. Staking of the centerline of the proposed PROJECT for utility coordination. The ENGINEER or its surveyor shall stake the centerline throughout the extent of the PROJECT. The beginning and the end of the PROJECT shall be designated. The points of intersection, points of curvature, and points of tangency of all horizontal curves shall be designated. Stations and half-stations (50-foot and 100-foot) shall be designated throughout the entire PROJECT, on tangential and curvilinear portions. Said centerline control is to be established in a timely fashion as directed by City staff. Said centerline control markings are to be a one-time event and shall be of a nature to last a minimum of eight months.
4. Furnish descriptive instruments related to the acquisition of easements and/or rights-of-way. The description of these parcels should be rotated to match the bearings of the individual deeds. The payment for these instruments will be made on a per parcel basis unless otherwise indicated in Section VI. C. As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the

acquisition after construction is complete. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.

5. Appearances before regulatory agencies.
6. Assistance to the OWNER as an expert witness in any litigation or claim, arising from, or in connection with, the PROJECT.
7. Special investigations involving detailed consideration of operation, maintenance, and overhead expense; preparation of rate schedules; preparation of special reports and an engineer's certificate as required for marketing bonds; earnings and expense statements; preparation of assessment rolls; special feasibility studies; appraisals; valuations; and material audits or inventories required for certification of force account construction performed by the OWNER.
8. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
9. Assist the OWNER in obtaining the services of a qualified geotechnical engineering laboratory to conduct soil and foundation investigations, including test borings, soil tests, and analyses of test results.
10. Travel required of the ENGINEER to perform these Special Services in connection with the PROJECT.
11. Additional reports and Contract Documents in excess of fifteen (15) copies as required for the initiation, bidding, and administration of the PROJECT.
12. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
13. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
14. Revision of reports and Construction Contract Documents after specific approval by OWNER, as provided in Section VII.
15. Subsurface Utility Engineering that involves level "A" identification of a utility will be paid per each utility location identified.
16. Subsurface Utility Engineering that involves level "B" identification of a utility will be paid per linear foot.
17. Provide engineering surveys to refresh and re-establish benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. This does not include construction staking.

18. Project Bidding

- a. Prepare bid set drawings and specifications that address all comments from the final design review and additional information provided by utility relocations and right-of-way negotiations.
- b. Furnish to the OWNER all necessary copies of approved Construction Contract Documents needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of Construction Contract Documents in excess of fifteen (15) copies are to be paid for separately as provided hereinafter.
- c. ENGINEER will submit the project plans to the State of Texas for the TAS/ADA review, if required for the PROJECT. ENGINEER will prepare the application and make the submittal. The OWNER will provide a check for the fee based on the construction cost of pedestrian improvements per the submittal requirements. ENGINEER will address comments from the review and revise plans if necessary.
- d. Assist the OWNER in the advertisement of the PROJECT for competitive bids.
- e. Assist the OWNER with any Pre-Bidders meetings.
- f. Assist the OWNER in the opening and tabulation of bids for construction of the PROJECT and recommend to the OWNER as to the proper action on all proposals received.
- g. Assist in the preparation of formal Construction Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.

**SECTION III
AUTHORIZATION OF SERVICES**

No professional services of any nature shall be undertaken by the ENGINEER under this agreement without written authorization from the OWNER.

**SECTION IV
PERIOD OF SERVICE**

This AGREEMENT shall be effective upon execution by the OWNER and the ENGINEER and shall remain in force until terminated under the provisions hereinafter provided in Section IX.

**SECTION V
COORDINATION WITH THE OWNER**

The ENGINEER shall hold periodic conferences with the OWNER, or its representatives, to the end that the PROJECT, as perfected, shall have full benefit of the OWNER's experience and knowledge of existing needs and facilities and be consistent with its current policies and construction standards. To implement this coordination, the OWNER shall make available to the ENGINEER for use in planning the PROJECT, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and to the PROJECT.

SECTION VI THE ENGINEER'S COMPENSATION

For and in consideration of the services to be rendered by the ENGINEER, the OWNER shall pay and the ENGINEER shall receive the compensation hereinafter set forth for the PREPLIMINARY ENGINEERING STUDY, and PRELIMINARY DESIGN, INTERMEDIATE DESIGN, FINAL DESIGN, and CONSTRUCTION PHASES of the work and additionally for SPECIAL SERVICES that are in addition to the Basic Engineering Services. All remittances by OWNER of such compensation shall either be mailed or delivered to the ENGINEER's home office as identified in the work authorization.

"Construction Cost" as used herein is defined as the authorized total or estimated PROJECT cost to the OWNER for the execution of the work and handled in each separate phase of engineering services, excluding fees or other cost for engineering and legal services, the cost of land, rights-of-way, legal, and administrative expenses; but including the direct cost to the OWNER of all construction contracts, items of construction, including labor, materials, and equipment required for the completed work (including extras), and the total value of PROJECT of all labor, materials, and equipment purchased or furnished directly by the OWNER for the PROJECT.

If a fixed budget limit for the Construction Cost has been established, the ENGINEER shall be permitted to make reasonable adjustments in the scope of the PROJECT and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in the following paragraph. All adjustments in the scope of the PROJECT shall be approved by the OWNER and documented in writing.

Should the lowest bona fide bid for construction of the PROJECT be in excess of 130% of \$4,700,000.00 due to the negligence of the ENGINEER, the OWNER may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the PROJECT, (3) terminate the PROJECT and this Agreement in accordance herewith, or (4), require that the ENGINEER adjust the PROJECT scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the ENGINEER, without additional charge to the OWNER, shall consult with the OWNER and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the PROJECT into multiple Construction Phases that will fall within budget constraints. The ENGINEER shall provide the services defined in Sections II.D. and II.E., as required, for each of the new phases created by splitting the PROJECT. Absent negligence on the part of the ENGINEER in making its estimates of probable Construction Cost, providing services as defined in Sections II.D. and II.E. shall be the limit of the ENGINEER's liability arising from the establishment of such fixed limitation of Construction Costs. The ENGINEER shall be entitled to compensation for all other services performed in accordance with this Agreement.

"Salary Cost" used herein is defined as the cost of salaries of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for time directly chargeable to the PROJECT plus social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

- A. Payment for a PRELIMINARY ENGINEERING STUDY shall be due within thirty (30) days after submission and acceptance by the OWNER of the PRELIMINARY STUDY and any applicable reports, sketches, estimates, opinions, etc. This fee shall be the only amount due from OWNER, and ENGINEER shall not be reimbursed for expenses in addition to this fee.

Compensation for the Basic Engineering Services (PRELIMINARY DESIGN, INTERMEDIATE DESIGN, FINAL DESIGN, and CONSTRUCTION PHASES) on the work covered by the PROJECT shall not be increased without City Council approved resolution. This fee shall be the only amount due for Basic Engineering Services from OWNER, and ENGINEER shall not be reimbursed for expenses in addition to the fee.

The PRELIMINARY DESIGN PHASE shall be computed at forty percent (40%) of the portion of the Basic Engineering Services; the INTERMEDIATE DESIGN PHASE shall be computed at thirty percent (30%) of the portion of the Basic Engineering Services, the FINAL DESIGN PHASE shall be computed at twenty percent (20%) of the portion of the Basic Engineering Services; and the CONSTRUCTION PHASE shall be computed at ten percent (10%) of the portion of the Basic Engineering Services.

Payment for the PRELIMINARY DESIGN PHASE portion of the Basic Engineering Services shall be due within thirty (30) days after submission and acceptance by the OWNER of the Preliminary Design drawings.

Payment for the INTERMEDIATE DESIGN PHASE portion of the Basic Engineering Services shall be due within thirty (30) days after submission and acceptance by the OWNER of the Intermediate Design drawings.

Payment for the FINAL DESIGN PHASE portion of the Basic Engineering Services shall be due within thirty (30) days after submission and acceptance by the OWNER of the Final Design drawings.

Payment for the CONSTRUCTION PHASE of the Basic Services shall be due in monthly installments in proportion to the construction work completed on the basis of the Contractor's monthly payment estimates plus the actual value of all materials and equipment purchased or furnished directly by the OWNER for the PROJECT. Upon completion of all work authorized in the CONSTRUCTION PHASE, the ENGINEER will be paid the remainder of the charge for this phase.

- B. Compensation for SPECIAL SERVICES not covered by the PRELIMINARY ENGINEERING STUDY, and PRELIMINARY DESIGN, INTERMEDIATE DESIGN,

FINAL DESIGN and CONSTRUCTION PHASES of Basic Engineering Services provided hereinabove shall be as follows:

For all of ENGINEER's personnel time applied to the SPECIAL SERVICES, on an hourly basis, shall be per Engineer's established hourly rates included as Exhibit "B" to this AGREEMENT.

For all direct non-labor and/or subcontract expense, including mileage, travel and living expenses, invoice or internal office cost plus a ten percent (10%) service charge, provided that all reimbursable expenses are pre-authorized by the OWNER.

Payments to the ENGINEER for authorized SPECIAL SERVICES will be due monthly, upon presentation of monthly statements by the ENGINEER for such services.

- C. It is agreed by both the OWNER and the ENGINEER that the total fees paid under this "Agreement for Professional Engineering Design Services" shall not exceed the following budgeted total without OWNER approval. This fee shall be the only amounts due from OWNER, and ENGINEER shall not be reimbursed for expenses in addition to the fee.

ENGINEERING FEES:

Preliminary Engineering Study: \$ 36,500.00

Basic Engineering Services:

Preliminary Design Phase \$ 132,000.00

Intermediate Design Phase \$ 99,000.00

Final Design Phase \$ 66,000.00

Construction Phase \$ 33,000.00

Total Basic Engineering Services Fee: \$ 330,000.00

Authorized Special Services:

Descriptive instruments for 8 parcels: \$ 23,500.00

Design Surveying \$ 91,500.00

Stake Centerline for Utility Coordination \$ 3,450.00

Project Bidding \$ 13,550.00

Level "A" Subsurface Utility Engineering
Identification for 4 utilities at \$1,700 each: \$ 6,800.00

Level "B" Subsurface Utility Engineering
Identifications for 1,000 linear feet at \$4.50/LF: \$ 4,500.00

Geotechnical Investigation & Report: \$ 10,200.00

Total Authorized Special Services \$ 153,500.00

BUDGETED TOTAL: \$ 520,000.00

The BUDGETED TOTAL (including Preliminary Engineering Study, Basic Engineering Services, and Special Services) is a maximum of \$520,000.00 and shall not be exceeded without OWNER approval.

SECTION VII REVISION OF REPORTS, PLANS, SPECIFICATIONS AND OTHER DOCUMENTS

The revision and rework of reports, plans, specifications, and other documents during the formative stages as an orderly process in the development of the PROJECT to meet the needs of the OWNER shall be considered as part of the Basic Engineering Services. After a definite plan has been approved by the OWNER, if a decision is subsequently made by the OWNER, which, for its proper execution involves extra services and expenses for changes in, or additions to the drawings, specifications or other documents, or if the ENGINEER is put to labor or expense by delays imposed on him from causes not within its control, such as, but not limited to the re-advertisement of bids or by the delinquency or insolvency of Contractors, the ENGINEER shall be compensated for such extra expense which shall be considered as Special Services, unless the revisions were required due to bids for construction of the PROJECT exceeding the fixed budget limit for the Construction Cost per Section VI.

SECTION VIII OWNERSHIP OF DOCUMENTS

The OWNER shall have unlimited right for the benefit of the OWNER for use in future projects to all drawings, designs, specifications, ENGINEER's designs and structures, notes and other pertinent consultant-engineer work procured in the performance of this AGREEMENT or in contemplation thereof, and all "Record Drawings" produced after completion of the PROJECT work, if any, including the right to use same on any other OWNER work without additional cost to the OWNER. Any use of the aforementioned documents for future projects shall be without use of ENGINEER's name or registration seal and without any liability to the ENGINEER, its agents, employees, subcontractors and consultants. In the event this PROJECT is terminated at any point, plans, drawings, structural designs, specifications and other pertinent consultant-engineer work shall become the property of the OWNER.

SECTION IX TERMINATION

Either party to this AGREEMENT may terminate the AGREEMENT by giving to the other party thirty (30) days notice in writing. Upon delivery of such notice by the OWNER to the ENGINEER, the ENGINEER shall discontinue all services in connection with the performance of the AGREEMENT and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the AGREEMENT. As soon as practicable after receipt of notice of termination, the ENGINEER shall submit a statement, showing in detail the services performed under the AGREEMENT less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, plans and reports prepared under this AGREEMENT shall be delivered to the OWNER when and if this AGREEMENT is terminated, but subject to the restrictions as to their use, as set forth in Section VIII.

If the AGREEMENT is terminated because of a material breach of this AGREEMENT by the ENGINEER, the OWNER may have the remaining work and services to be performed by the ENGINEER performed by another, and the ENGINEER shall be liable to the OWNER for any additional costs over the contract amount accrued by the OWNER associated with the breach of AGREEMENT.

SECTION X SUCCESSORS AND ASSIGNMENTS

The OWNER and the ENGINEER each binds itself and its successors, executors, administrators and assigns to any other party of the AGREEMENT and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this AGREEMENT. Except as noted above, neither the OWNER nor the ENGINEER shall assign, sublet or transfer its interest in this AGREEMENT without the written consent of the other. Nothing herein shall be constituted as creating any personal liability on the part of any officer or agent of any public body which may be a party thereto.

SECTION XI SPECIAL CONDITIONS

SPECIAL CONDITIONS CONTAINED IN "AUTHORIZATION OF SERVICES" ISSUED BY OWNER AND ACCEPTED BY ENGINEER WITH SPECIFIC REFERENCE TO THIS AGREEMENT SHALL BECOME A PART HEREOF:

1. SPECIAL SERVICES shall be authorized only by the City Engineer or his duly authorized designee for this AGREEMENT.
2. The total budgeted fee shall not be exceeded without specific written authorization by the City.

SECTION XII TIME OF COMPLETION

The prompt completion of this PROJECT is critical and time is of the essence. Unnecessary delays to the PROJECT shall be grounds for dismissal of the ENGINEER and the termination of this contract without any or further liability to the OWNER other than a prorated payment for necessary and timely work done on the PROJECT to the time of termination. ENGINEER proposes to complete the PRELIMINARY ENGINEERING STUDY if required, PRELIMINARY DESIGN PHASE, INTERMEDIATE DESIGN PHASE, and FINAL DESIGN PHASE for the entire PROJECT within 390 calendar days of the date of the City Council resolution approving the AGREEMENT. This time frame, shall not, except for cause, be exceeded by ENGINEER.

SECTION XIII PROFESSIONAL LIABILITY INSURANCE

Prior to the commencement of design under this AGREEMENT, ENGINEER shall obtain standard comprehensive professional liability insurance coverage in an amount of at least \$2,000,000.00 per occurrence with a \$2,000,000.00 aggregate policy limit per year, covering the services provided under this AGREEMENT, including contractual liability under this AGREEMENT. A "claims made" policy is acceptable subject to coverage being maintained during the course of the PROJECT and up to two (2) years after completion and acceptance of PROJECT by the City. ENGINEER shall maintain such coverage during all phases of engineering services and for two (2) years after substantial completion of the PROJECT. The OWNER shall be supplied with a certificate of such coverage which shall provide for a thirty (30) day notice of cancellation, non-renewal, or change in limits by endorsement, to the OWNER by certified mail.

SECTION XIV OWNER INDEMNIFIED

The ENGINEER shall hold harmless and indemnify the OWNER from all claims and liability for damage arising out of or in connection with this CONTRACT to the extent that the damage is caused by or results from an error, omission or for failure by the ENGINEER or the ENGINEER's agent, consultant under contract, or another entity over which the ENGINEER exercises control to perform services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer, or that results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the ENGINEER or the ENGINEER's agent, consultant under contract, or another entity over which the ENGINEER exercises control. The ENGINEER shall also save harmless the OWNER from any and all expenses, including attorney fees which might be incurred by the OWNER in litigation or otherwise resisting said claim or liabilities, which might be imposed on the OWNER as the result of such negligent acts or omissions by the ENGINEER in proportion to the ENGINEER's liability.

SECTION XV GENERAL INSURANCE

The ENGINEER shall have \$1,000,000.00 CSL of Automobile Liability Insurance coverage; Statutory Workers' Compensation as required by the Texas Labor Code; \$100,000 per accident, \$300,000 per disease, and \$100,000 per occupational disease per employee of Employer's Liability Insurance; and \$2,000,000 per occurrence with a \$2,000,000.00 aggregate policy limit per PROJECT of Commercial General Liability Insurance with a CG2503. In lieu of

the \$2,000,000.00 Commercial General Liability Insurance and the CG2503, the ENGINEER and OWNER may mutually agree to OWNER's and Contractor's Protective Liability Coverage.

The OWNER, City of Sherman, including its officers, officials, employees, Boards and Commissions, and volunteers shall be named as an additional insured by endorsement to the professional and general insurance coverage listed in this CONTRACT, excluding Workers' Compensation and Employers' Liability (for which a waiver of subrogation is required to be issued in favor of the OWNER), with regard to the ENGINEER's activities as required by this CONTRACT. The coverage shall contain no special limitations on the scope of protection afforded to the OWNER, and all premiums arising from the coverage herein shall be the responsibility of the ENGINEER.

SECTION XVI ENGINEER'S SEAL

The ENGINEER shall place a Texas Professional Engineer's seal of endorsement on documents and engineering data furnished by ENGINEER to the OWNER as required by the Board of Professional Engineers rules.

SECTION XVII VENUE

Venue for all purposes shall be exclusively in Grayson County, Texas.

SECTION XVIII CHOICE OF STATE

This AGREEMENT shall be governed by the law of the State of Texas.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK.]

EXECUTED in three (3) counterparts (each of which is an original) on behalf of ENGINEER shown below, and on behalf of the OWNER this _____ day of _____, 20____.

OWNER:
CITY OF SHERMAN, TEXAS

ENGINEER:
CP&Y, INC.

Robby Hefton, City Manager



Robin Handel, P.E., Senior Vice President

ATTEST:

ATTEST:

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



BY: _____
NAME: _____
CITY ATTORNEY

EXHIBIT A

SCOPE OF SERVICES

FOR

MOORE STREET RECONSTRUCTION (PARK AVE TO CENTER STREET) SHERMAN, TEXAS

The scope of work for services provided by CP&Y, Inc. (the "Engineer") includes field surveying, engineering design, preparation of plans and specifications, computing of construction quantities, preparation of an opinion of probable cost, and preparation of construction bid documents. The standard drawings and specifications from the City of Sherman ("City") will be utilized on the project and supplemented where necessary by standard drawings and specifications from the Texas Department of Transportation ("TxDOT").

The project involves improvements to Moore Street from Park Avenue to Center Street. The project will improve Moore Street to be a Minor Arterial (4 Lanes Divided) and extend it to Center Street. The extension up to Center Street will utilize Holly Avenue. The portion of Moore Street between Holly Avenue and S. Bryant Avenue will remain; however, it will be reconnected to Moore Street via a 'T' intersection. This particular project will only construct lanes 1 & 2 of the 4-lane divided section; however, design will take into account lanes 3 & 4 so that they can be designed and provided with a future project. In addition to the roadway improvements, an 8" waterline will be provided connecting the North boundary of The Grove Addition to Center Street. These systems are on separate pressure planes and will be designed accordingly to handle the pressure difference.

It is the intent of the City is to improve Moore Street and extend it to Center Street, utilizing the Holly Avenue alignment to do so. The improvements will require additional ROW in various locations, specifically along Holly Avenue to provide the adequate ROW. In addition, the entrance to the Center Street Sport Complex will be reconfigured as necessary to help provide a 4-way intersection at Center Street with Moore Street.

Consultant services for this project shall include all aspects of the work as set forth in the following Scope of Services (Exhibit A). Any of the items identified herein that are specifically excluded from this scope of work, items not listed below that are desired by the City to be included in the scope of work may be added at any time via a duly executed Amendment defining the scope of those items and the related adjustment to the agreed upon fee.

The parameters for the design of the improvements shall include the following:

- A topographical and boundary survey of the project area will be performed to establish existing conditions, topography of the project site, and existing right-of-way limits. A separate 'kmz' file has been provided to the City to delineate limits of the topographic survey.
- A geotechnical investigation will be provided to help determine if the City's Minor Arterial pavement section is acceptable. The geotech report is further detailed in Appendix A-1 (Prepared by D&S Engineering Labs).
- Drainage areas will be delineated and a storm drain system will be designed. The storm drain will be designed in accordance with the City's requirements. Inlet capacities will be analyzed to provide proper sizing and placement. Storm outfall locations will utilize existing low point/outfall locations and/or connect to existing storm drain systems where applicable. For lanes 3 & 4 that will be built at a later date, a ditch/swale will be designed with wye inlets connecting to the main trunk lines. The design and placement of the wye inlets will be placed so that they can be improved with a future project to become curb inlets when Lanes 3 & 4 are constructed.
- Improvements to Moore Street will include removal of the existing asphalt roadway and construction of a new curb and gutter concrete section, following the Minor Arterial standard detail. Only lanes 1 & 2 will be constructed at this time, however the ROW will be designed so that lanes 3 & 4 can be added with a future project. Improvements will also provide new driveway connection to all locations along the project limits,

reconnection of intersection streets, and reconnection of Moore Street (Holly Ave to Bryant Ave).

- A 6-foot-wide sidewalk and Barrier Free Ramps (BFR) will be provided along the project limits to provide connectivity from Park Ave to Center St and connect to any existing sidewalks along intersecting streets.
- An 8-inch waterline will be designed along a portion of the project, approximately 4500 LF, in accordance with City and State design requirements. Design will include plan view only. The interconnection between the two pressure planes will be a closed boundary valve type connection for use in emergencies only. Pressure reducing valve design is not a part of this scope of work.
- Signage and Striping will be provided to handle all intersection connection. Signing and Striping will be provided along the entire project limit. Signal work is not anticipated with this contract and is excluded from the scope.
- Erosion control plans for use during construction and post construction. Erosion control to include inlet protection, rock filter dams, sediment control fencing, sodding/seeding and/or hydro mulch will be utilized to reestablish vegetation. No landscape planning is anticipated and is excluded from the scope.
- Submittals to the City of work-in-progress shall be made at 30%, 60%, 90% and 100% stages of completion. A conceptual layout will be provided prior to 30% for review and coordination with the City prior to the 30% deliverable.
- All plan sheets for review and construction shall be printed on 11"x17" bond paper and provided electronically in PDF format if requested.
- All design work shall be prepared in CAD with electronic files in MicroStation V8i and/or AutoCAD format. File can be provided to the City upon completion of the record drawings if necessary.
- Standard details will be included in the final plans and specifications. City of Sherman Standard details will be utilized and supplemented with TxDOT, as necessary. Special details not available as a City standard drawing or TxDOT will be prepared, as necessary.
- The Engineer will perform the necessary engineering and technical services for the Design, Bid, and Construction Phases, including any Additional Services for the development of this project in accordance with the following sections of this agreement.

TASK 01 PRELIMINARY ENGINEERING STUDY PHASE

1. Project Management, Administration and Coordination

The Engineer will establish and maintain project schedules and budgets, develop monthly progress reports, prepare invoices, and attend no more than two (2) meetings with the City and/or other entities during this phase of the project. It is assumed the meetings under this task will include (1) with the City to kick off the project and (1) with the City to review/discuss the preliminary engineering study submittal.

2. Site Visits/Field Investigations

Engineer will perform a predesign site visit to review the survey and become familiar with existing conditions.

3. Alignment Scroll Plots

Engineer will develop up to two (2) alignment alternatives and typical sections for Moore Street (Park Ave to Cener St). Alignment alternatives will be provided on scroll plots at a scale no less than 1"=40'. Alignment scrolls will include topographic information, roadway baselines, pavement edges, limits of sidewalks, contours where necessary, existing right-of-way and easements, proposed right-of-way and easements, water line alignment, and other information necessary to accurately show the needs and impacts associated with each alignment alternative. Profiles will be developed to identify any needs/impacts; however, they will be omitted from the scroll plots unless specifically requested by the City Engineer.

4. Alignment Alternative Memorandum

Engineer will develop a Technical Memorandum discussing the alignment alternatives to better assist with selection. Technical memorandum will provide pros and cons of each alignment and any significant needs/impacts.

5. Engineers Opinion of Probable Construction Cost

Engineer will develop an Opinion of Probable Construction Cost (OPCC) for the alignment alternatives to help with alignment selection. OPCC will be based off of unit pricing from prior City projects and Engineer's judgement.

TASK 02 PRELIMINARY DESIGN PHASE

Development of Task 02 will be based on the preferred alignment identified from Task 01. The following will be provided with Task 02:

1. Project Management, Administration and Coordination

The Engineer will establish and maintain project schedules and budgets, develop monthly progress reports, prepare invoices, and attend one (1) meeting with the City and/or other entities during this project task. It is assumed the one (1) meeting under this task will be the milestone review meeting.

2. Title Sheet

A project title sheet will be prepared as required for use in the construction plans. A detailed index of sheets that shows each sheet's location in the plan set as well as the corresponding sheet number.

3. Quantity Summary Sheets

Quantity summary sheets will be prepared with all necessary bid items listed for the project. Items will follow City bid items (if applicable) and will provide a breakout for roadway, drainage and water items to help with project budget and funding.

4. Existing and Proposed Typical Sections

Typical sections for all proposed and existing roadways will be provided. Typical sections will include, at a minimum, width of travel lanes, shoulders, border widths, curb offsets, ROW, baselines, pavement design, joints, side slopes, sodding/seeding, sidewalks, and station limits (if applicable).

5. Control Data Sheets

Control Data sheets will be provided to show project control and benchmarks for construction. Horizontal alignment data will be provided to establish a baseline for the project.

6. Roadway Plan & Profile

Horizontal & Vertical alignments will be displayed on, plan sheets. These plan sheets will be a minimum of 1"=40' half-size (11"x17") and contain topographic information, roadway baselines, pavement edges, roadway pavement contours where necessary, limits of structures, limits of retaining walls, drainage structures excluding pipes, limits of sidewalks, limits of barriers and any other information necessary for pavement construction. On approval of the preliminary vertical alignments, profile sheets will be prepared to depict these alignments. These profiles will contain existing ground lines at the proposed profile grade line, limits of structures, and proposed elevations at a minimum of 50-foot intervals.

7. Cross Sections

The Engineer will prepare cross sections of the project during the design phase to facilitate the development of the appropriate vertical profile of the roadway. These cross sections will be developed to a sufficient level to aid the Engineer in this effort and to approximate the cut/fill quantities required for the project. The Engineer will prepare cross section sheets which include proposed top of ground (top of pavement), existing ground, and right-of-way limits. The cross sections will also display the future lanes 3 & 4 and will provide guidance on ditch/swale grading slopes.

8. Drainage Area Maps

Drainage area maps will be prepared at a minimum scale of 1"=100' (11"x17"), using available contour maps. Inlets will be located, and sub-drainage areas determined. The runoff to each inlet will be calculated in accordance with the City's hydraulic design criteria.

9. Drainage Computations

In accordance with standard practice, sheets will be prepared for Runoff and Inlet Computations, Storm Sewer Computations and Lateral Computations. These sheets will tabulate all relevant data used in design for easy verification of the design methods and for future improvements to be coordinated with this project. Calculations from adjacent development projects will be reviewed and updated if necessary to provide a consistent set of hydrology for the basin.

10. Drainage Plan & Profile

Plan/Profile sheets will be prepared at a minimum 1"=40' horizontal and 1"=5' vertical (11"x17"). These sheets will show the location of inlets, manholes, storm sewers, slotted drains, culverts, and headwalls in relation to the project. Drainage profile will be prepared which show profile information for the proposed storm sewer trunk lines, proposed ground above the storm sewers, existing ground above the storm sewers, and locations of lateral junctions.

The location where lanes 3 & 4 will be constructed, with a future project, will be designed as a ditch/swale and will have wye inlets to help capture drainage. The ditch/swale profile will be provided on separate profile sheets and will link with the proposed storm drain plan and profile sheets.

11. Water Plans

Preliminary waterline plans (Scale 1"=20') will be prepared and will include the following:

- Proposed horizontal waterline location

- Existing utility locations
- Existing surveyed features (right-of-way, easements, pavement, curbs, walls, fences, fire hydrants, trees, sidewalks, water meters, valves, utility boxes, manholes, inlets and all other visible surface features).

Prepare an estimate of construction quantities and develop the conceptual statement of probable construction cost.

12. Estimate of Construction Cost

Project quantities will be calculated and tabulated in a bid schedule. The pay items will be in accordance with previous City projects and supplemented where necessary with special specifications prepared by the Engineer. The bid schedule will be included in the Bid Documents and may be reproduced in the plan set.

An Engineer's Opinion of Probable Construction Cost will be prepared for the project using current unit cost data from the City, TxDOT, and recent bid information.

13. Engineers internal QA and QC markup set.

TASK 03 INTERMEDIATE DESIGN PHASE

All items provided at the Task 02 milestone with revisions incorporated based off of the Task 02 deliverable comments from the City. In addition, the following will be provided:

1. Removal Plans

These plan sheets will be a minimum of 1"=100' half-size (11"x17") and contain major bid items that are to be removed from the project site. Examples include but are not limited to the following: pavement, driveways, sidewalks, trees, storm inlets, etc.

2. Signing and Striping Plans

The Engineer will prepare Signing and Striping plans at a scale similar to the roadway paving sheets. The plans will be in accordance with the Texas Manual on Uniform Traffic Control Devices (TxMUTCD).

3. Erosion Control Plans

Erosion Control Plans will be prepared and will illustrate the implementation of elements to be used to reduce the pollutants to storm water discharges associated with the construction site. The intent of these plans will be to show the ultimate configuration of these elements, not the intermediate phasing of the necessary elements.

4. Water Plans

Plan development of the Intermediate waterline plans will include revisions based on City comments from Task 02 and further development of the alignment. Plans will be annotated for connection to existing, isolation valves, fire hydrants at required spacing, service connections, and any stub-outs for future development.

Coordinate with City on affected utilities such as gas, telephone, cable TV, and electric to obtain accurate information for the location of their facilities.

Preparation of specification table of contents and outline of any special technical specifications need for the project (if any).

5. Technical Specifications

A list of specifications necessary for construction of the various elements designed on the project will be compiled by the Engineer. Special specifications will also be provided.

6. Assemble and Incorporate Standard Drawings

The Engineer shall assemble, collect, and incorporate the necessary standard drawings needed for the plan set.

TASK 04 FINAL DESIGN PHASE

All items provided at the Task 03 milestone with revisions incorporated based off of the Task 03 deliverable comments from the City. In addition, the following items will be provided:

1. Project Management, Administration and Coordination

The Engineer will establish and maintain project schedules and budgets, develop monthly progress reports, prepare invoices, and attend one (1) meeting with the City and/or other entities during this project task. It is assumed the one (1) meeting under this task will be the milestone review meeting.

2. Site Visits/Field Investigations

Engineer will perform a final site visit to verify design and address any outstanding issues/concerns prior to final submittal.

3. Final Construction Plans

4. Final Construction Cost Estimate

TASK 05 CONSTRUCTION PHASE

1. Attend a pre-construction meeting conducted by the City.

2. Reestablish Survey Control

Engineer will reestablish survey control on site to be utilized by the Contractor and/or City during the construction phase.

3. Construction Administration

Engineer will provide support to the Owner during the construction phase of the project as per the Professional Engineering Services Agreement.

4. Construction Contract Documents (Conformed Set)

After the project is awarded to a contractor, the Engineer will revise the plans to include any addenda published prior to award and update the project specifications documents to reflect the bid information as

awarded. These revisions will constitute the final construction documents and will be provided to the City for execution by the contractor and City.

5. Record Drawings (As-Built Drawings)

The Engineer will prepare a reproducible complete set of As-Built drawings based on any field changes made during construction and any field notes or marked up plans provided by the contractor/City upon completion of construction.

Field engineering, change orders, pay requests, or any other construction related service not listed under this phase will be handled by the City, unless requested by the City to be added to the scope by an amendment to this contract.

TASK 06 PARCEL DOCUMENT PREPARATION

Engineer will provide the City with the necessary documents for any Right-of-Way (ROW) and or Easement (ESMT) needs for this project. The City will be responsible for any coordination, negotiation, and acquisition of the ROW and/or ESMT.

It is assumed that one (16) ROW/ESMT document will be provided, however if it is not necessary the Engineer will not charge the City for this effort. If additional ROW/ESMT documents are needed beyond what is included in this scope, the City can have those included by an amendment to the project scope.

TASK 07 DESIGN SURVEY

Prepare and execute topographical and boundary surveys for the design and construction of the project.

- a. Engineer will prepare and distribute Right-of-Entry (ROE) letters to affected property owners within the project limits requesting entry onto private property. The City of Sherman will provide assistance if necessary.
- b. Recover and or establish horizontal and vertical control based on City of Sherman or other applicable datum approved by the City.
- c. Establish the horizontal and vertical project control per City of Sherman, locate existing utilities, obtain cross section data and locate other topographical features in the project necessary for design. The general field surveying requirements are as follows:
 - (i) Establish the horizontal control points using any City control points if readily available. The project base line will be coincidental with or parallel to the stationed design baseline. The ROW will be established by using existing property corners found and tied. If insufficient or conflicting property data is found, a right-of-way survey shall be prepared as an additional service as directed by City. Any traverse related to the project will be performed with appropriate modified second order procedures by closed loop into the project control. Closures will be one part in 20,000 or better.
 - (ii) The vertical control survey shall include ties into any readily available City benchmark for correlation. A City approved benchmark will be established at the limits of the project and tied to the project baseline. Benchmarks shall be located outside of the anticipated construction area, so they are not disturbed during construction.
 - (iii) Provide drawing of all trees greater than 4" in caliper, paving, and all surface and overhead features within the project limits including: all visible surface appurtenances such as power poles, guy anchors, overhead electric line crossings, telephone pedestals and cabinets, pipeline signs and

vents, valves, manholes, roadway signs (size and photographs), mailboxes, private driveways, turnouts, fences. All existing drainage structures will be shown, to include: Flow line, riprap, headwall and wingwall elevations for drainage structures. The culvert dimensions, number of barrels, material type and photographs shall be noted for each drainage structure.

d. Information Submittal

All fieldwork will be documented and made available to City for review if requested. Format of field data submittals will be a computer output listing of data collector information which includes x, y, & z coordinates and a description of each point; coordinate geometry computer output of traverses and level loops; field books if produced; or other acceptable formats. Survey files will be provided in ASCII format where applicable. A Digital Terrain Model shall be created and the MicroStation 3-D file including, but not limited to, break lines, elevation points, triangles and contours, on separate levels. Field Survey Data Collection.

TASK 08 STAKING CENTERLINE (UTILITY COORDINATION)

Engineer will provide construction staking of the proposed roadway centerline, if necessary, for use by the City with Utility Coordination efforts. The centerline will be provided for the ultimate road build out (four lane divided section).

Utility coordination, other than those items covered under the Subsurface Utility Engineering phase, is excluded from this scope.

TASK 09 PROJECT BIDDING

1. Conforming Construction Plans

Engineer will develop and provide the City with conforming construction plans. This will include any changes and or revisions that may become necessary during the letting process. The plans will be issued as 'ready for construction' plans for use by the City and Contractor.

2. Construction Documents

Engineer will assist the City in preparation of construction documentation. This includes the development of the project bid manual.

3. TDLR Review and Inspection

Engineer will submit the final signed/sealed plan set to registered TAS inspection/reviewer. Engineer will coordinate inspection and obtain approval on the City's behalf. Engineer will also assist with scheduling of final inspection, upon completion of the project.

4. Project Letting Services

Engineer will assist the City in the Letting services for the project. These services include advertisement, pre bidders meeting, bid opening, bid tabulation, and recommendation of the lowest responsible bidder.

TASK 10 & 11 SUBSURFACE UTILITY ENGINEERING (SUE)

Engineer will provide Level C/D Subsurface Utility Engineering services to locate existing utilities within the project limits. Level A/B SUE services are to be provided as-needed at the rates specified under Special Services.

SUE includes utility investigations above ground and subsurface prepared in accordance with AASHTO standards [ASCE C-1 38-02] and Utility Qualifications Levels:

- Quality Level D – Existing Records; Utilities are plotted from review of available records.
- Quality Level C – Surface Visible Feature Survey; Quality level 'D' information from existing records is correlated with surveyed surface-visible features. Includes Quality Level D information. If there are variances in the designated work area of Level D, a new schematic or plan layout will be necessary to identify the limits of the proposed project and the limits of the work are required for the work authorization.
- Quality Level B – Designate two-dimensional horizontal mapping. This information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. Utility indications are referenced to established survey control. Incorporates quality levels C and D, a new schematic or plan layout will be necessary to identify the limits the proposed project and the limits of the work area required for the work authorization.

Level B is only anticipated at the intersection of Park Ave & Moore St and Center St & Holly Ave.

- Quality Level A – Locate (Test Hole) Three-dimensional mapping and other characterization data. This information is obtained through exposing utility facilities through test holes and measuring and recording (to appropriate survey control) utility/environment data. Incorporates quality level B, C, and D information to produce Quality Level A.

Level A is only anticipated at the intersection of Park Ave & Moore St and Center St & Holly Ave.

Any utilities discovered through field investigative efforts by the Engineer, but no plan records or ownership data can be identified will be referred to as 'unknown' utilities.

Engineer will request utility records on all crossing utilities from the Client, Public Utilities and Private Utilities who provide service within the project area, as well as other sources, in an effort to develop a comprehensive inventory of utility systems likely to be encountered. This includes create and call in locate tickets with Texas811 for the project limits to be coordinated with survey.

Deliverable will consist of a Quality Level C Microstation (DGN) 2D file depicting all sub-surface utilities found from record drawings, research, and above ground investigations in accordance with TxDOT requirements. These files can be provided in AutoCAD format (DWG) as well if necessary.

TASK 12 GEOTECHNICAL INVESTIGATION & REPORT

The scope for the geotechnical investigation and report prepared by D&S Engineering Labs is provided in Appendix A-1.

ITEMS NOT IN SCOPE

The items listed below are not included in this scope of work. Should any of these items of work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

- a. Utility Coordination (This will be handled by the City if necessary)
- b. Level A/B Subsurface Utility Engineering (other than is noted in the scope)
- c. Traffic Analysis
- d. Traffic Control Plan
- e. Irrigation Design
- f. Landscape Design
- g. Aerial Survey
- h. Utility Design (other than is noted in this scope)
- i. Construction Inspection/Administration (other than is noted in this scope)
- j. Permitting
- k. Schematics & Environmental
- l. Wastewater Design
- m. Water and/or Wastewater Modeling

ADDITIONAL SERVICES

1. Engineering Redesign

At various points during the design phase, the Engineer will submit work in progress plan sets for review by the City. Such sets should receive a thorough review by the City for compliance with the City's expectations for the Project. (Note: the City is not required to review such plan sets for design conformance, code compliance, or other requirements deemed to be the responsibility of the Engineer). Once these plans are reviewed and returned to the Engineer, they shall be considered accepted by the City except as noted in the review comments. **Subsequent changes requested by the City shall constitute Additional Services outside of the scope of this agreement. In such cases, the Engineer shall be granted a Supplemental Agreement for additional compensation in an amount sufficient to cover any and all costs incurred by the Engineer while completing the redesign effort.**

2. TDLR Review

A TDLR review is anticipated on this project based on the amount of applicable improvements. CP&Y will submit a final set of plans to a local TDLR review firm for review. Review fees are based on the construction cost of the project. CP&Y will submit an invoice to the City for the cost of the review. This fee is not included in the Fee Summary attached (Exhibit D). This work will be considered an expense item.

SERVICES TO BE PROVIDED BY THE CITY

The City will provide the following to the Engineer in the performance of the Project upon request:

- A. Provide any existing data the City has on file concerning the Project.
- B. Provide any available as-built plans for the existing facilities in and around the project site.
- C. Provide any available as-built plans for City owned utility lines along and/or below the existing and proposed facility.
- D. Provide any plats and/or development plans for adjacent properties.
- E. Provide City preferred project specifications and construction administration documents in electronic format or an example specification package from a prior project as a go-by.
- F. Assist the Engineer, as necessary, in obtaining any required data and information from the State, County, neighboring cities and/or other franchise utility companies.
- G. Assist the Engineer by requiring appropriate utility companies to expose underground utilities within the right-of-way, when required.
- H. Give prompt written notice to Engineer whenever the City observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services.
- I. Provide Engineer with any design criteria, standards, specifications, or go-by plans that may assist the engineer in their document preparation and design.

LIST OF SUBMITTALS
FOR
MOORE STREET RECONSTRUCTION (PARK AVE TO CENTER STREET)
SHERMAN, TEXAS

During the course of this project the Engineer will make submittals to the City for review and input. The timing of such submittals will be determined by the flow of work and responsiveness of the City in reviewing previously submitted information. Below is a list of the expected submittals for this project and the approximate preparation time required for each submittal.

- A. Preliminary Engineering Study — to be submitted on scroll plots (24") or 11"x17" pages, suitable for reproduction. The plan set will be provided in electronic format as PDF files. The review sets of plans will include:
 - 1. Alignment Alternative Scroll Plots
 - 2. Alignment Alternative Tech Memo
 - 3. Engineers Opinion of Probably Construction Cost (OPCC)
- B. Preliminary Design Plans — to be submitted in sheet format on 11"x17" pages, suitable for reproduction. The plan set will be provided in electronic format as PDF files. These review sets of plans will be based on the preferred alignment selected during the Preliminary Engineering Study and include the following:
 - 1. Title Sheet
 - 2. Quantity Summary
 - 3. Typical Sections
 - 4. Survey Control Sheets
 - 5. Roadway Plan/Profiles
 - 6. Roadway Cross Sections
 - 7. Drainage Area Maps
 - 8. Drainage Calculations
 - 9. Drainage Plan/Profiles
 - 10. Water Plans
 - 11. Engineers OPCC
- C. Intermediate Design Plans — to be submitted in sheet format on 11"x17" pages, suitable for reproduction. The plan set will be provided in electronic format as PDF files. These review sets of plans will include all items submitted at the Preliminary Design stage with the addition of the following:
 - 1. Removal Sheets
 - 2. Erosion Control Sheets
 - 3. Technical Specifications (if needed)
 - 4. Standard Drawings
 - 5. Engineers OPCC
- D. Final Design Plans — to be submitted in sheet format on 11"x17" pages, suitable for reproduction. The final draft of the project specifications will be included with the plans. These final documents will be copies of the signed and sealed engineering plans to be used for the bidding the project. The plan set will be provided in electronic format as PDF files.
- E. Construction Phase – plans and specifications revised after award to reflect changes made by addenda and update information supplied by the successful bidder. Engineer will provide the City with five (5) half-size (11"x17") plan sets, one (1) full-size (22"x34") plan sets and five (5) project specification books for execution. The executed plan set will also be provided in electronic format as PDF files.
- F. As-Built Plans - to be submitted in electronic format as PDF files. These plans will reflect any design changes made during construction. All electronic project design files will be submitted in MicroStation/AutoCAD and PDF.
- G. Construction Cost Analysis — at all design milestone stages the Engineer will submit an updated Opinion of Probable Construction Cost for review by the City. This cost analysis will be based on updated estimates of material quantities and unit cost data from recent bid openings within the project area. This information is provided to the City for informational

purposes. The Engineer does not guarantee that the information provided in such analysis will reflect actual construction bid price or the final cost of the project.

- H. Permanent Right-of-Way Exhibits and Metes and Bounds Description for up to 16 Parcels. If more become necessary, they will be added by the City via an amendment to the scope.

Exhibit A-1



May 28, 2021
Proposal No.: GP21-2126

Michael Chisholm, P.E.
CP&Y
5208 Tennyson Pkwy, Suite 110
Plano, TX 75024

**Subject: Proposed Geotechnical Investigation
Moore Street Expansion
Sherman, Texas**

Mr. Chisholm:

We are pleased to submit this proposal for subsurface exploration and geotechnical engineering services for the referenced project. The project site is located along the existing Moore Street and Holly Ave in Sherman, Texas.

PROJECT DESCRIPTION

We understand that the project consists of the construction of a two-lane concrete minor arterial road along the existing Moore Street and Holly Avenue alignments, extending from the intersection of Park Avenue and Moore Street north to the intersection of Holly Avenue and Center Street.

SCOPE OF SERVICES

The object of this geotechnical investigation will be to obtain subsurface data and to develop recommendations for pavement sections and pavement subgrade preparation. All services provided will be performed in accordance with and limited to those generally accepted engineering standards prevailing at the time and in the area that the work is performed.

Field Services

As requested, a total of eight (8) borings will be advanced along the proposed alignment to depths of about 10 feet. The borings will be drilled and sampled using a truck-mounted drilling rig. Conventional tube or split-barrel (standard penetration test) samples will be collected as appropriate for the soils encountered. Bedrock strata, if encountered, will be tested in-place using the Texas Cone Penetration Test. The recovered subsurface samples will be preserved and labeled as to the appropriate boring number and depth in the field. These materials will later be described in further detail in the laboratory by a staff geologist or engineer. Groundwater, if observed, will be recorded during and at the completion of drilling. After final groundwater observations, the borings will be backfilled with the excavated cuttings.

14805 Trinity Blvd., Fort Worth, Texas 76155
Phone: 817.529.8464 • Fax: 817.952.3582 • www.dsenglabs.com
Texas Engineer Firm Registration # F-12796
Oklahoma Engineering Firm Certificate of Authorization CA 7181

Laboratory Services

Selected laboratory testing of the recovered samples will be performed to evaluate soil index, volume change, strength, and chemical properties of the subsurface materials, and to provide data for analysis. These tests may include but may not be limited to the following:

- Moisture content
- Atterberg limits
- Percent passing No. 200 mesh sieve
- Soluble sulfates
- Unconfined compression tests (soil)

D&S Engineering will retain recovered samples for 30 days after submission of the geotechnical report unless other arrangements are made by the client.

Engineering Analysis and Report

Data obtained from the field investigation, laboratory tests and past experience will be used in the engineering analysis and development of recommendations. Information to be provided is as follows:

- A plan sheet indicating the approximate location of each boring
- A log of each boring with the boring number, depth of each stratum, material description, soil classification with laboratory test results, and groundwater information
- A discussion of subsurface soil and groundwater conditions
- A brief discussion of the site geology
- Estimates of soil movement related to settlement and expansive soils
- Earthwork recommendations, including material type(s), compaction, and backfill requirements
- Recommendations for pavement sections and pavement subgrade preparation
- Electronic copy of the report

CONDITIONS

We respectfully request that the Owner provide the following:

- Landowner permission, right(s) of entry, permits, easements or other access authorization required to perform our proposed services.
- D&S will contact DigTess/Texas One Call for general subsurface utility clearing within the easements. Locating and marking any private non-franchise subsurface utilities or other structures or items which might be damaged during the field exploration program is not part of this scope. The client must provide

these services before drilling can proceed; however, these services can be provided by third-party vendor to D&S for an additional fee. **D&S will not be responsible for damage utilities that are not clearly marked.**

SCHEDULE

Our current drilling backlog should allow us to commence drilling operations, weather permitting, within about 2 to 3 weeks of receipt of a signed agreement or official notice-to-proceed. The final report will be provided about 2 weeks after completion of drilling.

COMPENSATION

D&S Engineering proposes to perform the requested scope of services for a **lump sum of \$7,600**. Traffic control may be necessary for this project and will be charged as an additional \$2,600 per day (1 day anticipated). These amounts will not be exceeded without prior approval. Should subsurface conditions be encountered which warrant significant revisions in this scope of services, we will contact you prior to initiating any new work. If additional services are desired, they may subsequently be agreed upon in writing and rendered under this agreement for additional, negotiated compensation.

Please indicate your approval of this proposal and the D&S Engineering Terms & Conditions by signing below. After you have signed, please email a copy of the entire document and retain the original for your records. Any modifications of the language must be accepted by both parties.

We appreciate the opportunity to provide you with our services. If you have any questions or wish to discuss any aspect of the project, please call us. Following your authorization, we are ready to begin work and look forward to a successful project.

Sincerely,

D&S Engineering Labs, LLC



Douglas Greenwood, P.E.
Senior Geotechnical Engineer



Moore Street Expansion
Sherman, Texas

**D&S ENGINEERING LABS TERMS AND CONDITIONS FOR
GEOTECHNICAL CONSULTING SERVICES**

1. SCOPE OF SERVICES:

- a. **Services Provided:** D&S Engineering Labs, LLC (D&S) will provide geotechnical engineering, drilling and testing services as set forth in the Agreement, including all services described in the Scope of Services. D&S will perform its Services under this Agreement as in independent contractor. This agreement constitutes the entire agreements between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between the, whether written or oral, relating to this subject matter. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
- b. **Excluded Services:** D&S services under this Agreement include only those Services specified in the attached agreement. Client expressly waives any claim against Consultant resulting from its failure to perform recommended additional Services that Client has not authorized D&S to perform, and any claim that D&S failed to perform services that Client instructs D&S not to perform. The scope of services does not include any structural / civil site design or survey services.

2. BILLING/PAYMENTS

- a. **Basic Services:** D&S will perform services as set forth in the attached Agreement for the amount(s) set forth therein.
- b. **Additional Services:** Any Services performed under this Agreement, except those Services expressly identified otherwise in the attached agreement, will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties.
- c. **Billing/Payments:** D&S will submit Invoices for services either upon completion of such services or on a monthly basis. The Client, as indicated as the undersigned, is responsible for the due payment of all invoices. Invoices shall be payable upon receipt. If the invoice is not paid within 30 days, D&S may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service.
- d. **Billing Disputes:** The Client must identify any disputes with the invoice within ten (10) days of receipt or shall be presumed to be in agreement with all portions of the invoice. In the event of a dispute, the Client shall make prompt payment of all undisputed portions.
- e. **Late Payments:** Any amounts unpaid 60 days after the invoice date are subject to a late payment charge at 10% per month or the maximum legal rate, whichever is higher. The failure by the Client to pay D&S for service rendered in a timely manner will constitute a failure of the Client to perform under this Agreement. Client will be required to reimburse D&S for time spent and expenses (including fees of any attorney, collection agency, and/or court costs) incurred in connection with the collecting delinquent payments.

3. PERFORMANCE STANDARD OF CARE

The standard of care for all professional engineering and related services performed or furnished by D&S and its representatives under this Agreement will be the care and skill ordinarily used by other professionals practicing under similar circumstances at the same time and in the same locality. No other representation, express or implied, and no warranty or guarantee is included or intended by this Agreement or any report, opinion, document, or other instrument of service.

4. CLIENT'S RESPONSIBILITIES

- a. **Rights of Entry:** Provide access to and/or obtain permission for D&S to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. D&S will operate with reasonable care to minimize damage to the Project Site(s). However, Client recognizes that Consultant's operations and the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). The cost of repairing such damage will be borne by Client and is not included in the fee unless otherwise stated.
- b. **Information:** Supply to D&S all information and documents in Client's possession or knowledge which are relevant to the Services. D&S may rely upon such information without independently verifying its accuracy.
- c. **Subsurface Structures:** Client shall provide D&S the location of all subsurface structures, such as pipes, tanks, cables and utilities within the property line of the Project Site(s) and be responsible for any damage inadvertently caused by Consultant to any such structure or utility not designated. D&S is not liable to Client for any losses, damages or claims arising from damage to subterranean structures or utilities that were not correct designed by Client to D&S.

5. CHANGED CONDITIONS

If Consultant discovers conditions or circumstances that it had no contemplated at the commencement of this agreement ("Changed Conditions"), Consultant will notify Client in writing of the Changed Conditions. Client and Consultant agree to that they will then renegotiate in good faith the terms and conditions of this Agreement. If Consultant and Client cannot agree upon amended terms and conditions within 30 days after notice, Consultant may terminate the Agreement and compensated for services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project.



*Moore Street Expansion
Sherman, Texas*

6. CERTIFICATIONS

Client will not require D&S to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the Firm cannot ascertain, or that contains any certification, guarantee or warranty broader than the professional standard of care.

7. ALLOCATION OF RISK

- a. **Limitation on Liability:** Notwithstanding any other article of this agreement, the total liability of the firm and its partners, officers, directors, employees and agents to client and any one claiming by, through or under client for any and all injuries, claims, losses, expenses and damages whatsoever arising out of, or in any way related to, the services of this agreement from any cause or causes whatsoever including, but not limited to, negligence, errors, omissions, strict liability or breach of contract shall not exceed one hundred thousand dollars (\$100,000.00).
- b. **Indemnification:** The Client shall, to the fullest extent permitted by law, indemnify and hold harmless the Firm, and its officers, members, managers, employees, agents and sub consultants from and against all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the parties above named of the services under this agreement, excepting only those damages, liabilities or costs attributable to the gross negligence or willful misconduct of the Firm.
- c. **Consequential Damages:** In no event shall the Firm be liable to Client or the Client to the Firm for consequential, special or indirect damages, including but not limited to, loss of profits or revenue, loss of use of equipment, loss of production, additional expenses incurred in the use of the equipment and facilities and claims of customers of the Client. This disclaimer shall apply to consequential damages based upon any cause of action whatsoever asserted including, but not limited to, ones arising out of any breach of warranty, guarantee, products liability, negligence, tort, strict liability, or any other cause arising out of the performance or non-performance of the contract by Client or the Firm.

8. INSURANCE

D&S maintains a complete package, including workman's compensation, commercial general liability, and professional liability insurance. Certificates of insurance shall be provided upon request. Should Client or Owner request the Firm provide additional insurance coverage, increase limits, or revise deductibles that are different than that specified on the certificate issued, compensation to the Firm will be responsibility of Client and or Owner. This agreement will be amended to incorporate such requested requirements. The Client and or Owner understands that this provision does not guarantee coverage.

9. OWNERSHIP AND USE OF DOCUMENTS

- a. **Consultant's Documents:** Unless otherwise agreed in writing, all documents and information prepared by Consultant or obtained by Consultant from any third party in connection with the performance of Services, including, but not limited to, Consultants reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents are the property of Consultant. Consultant has the right, in its sole discretion, to dispose of or retain the documents.
- b. **Use of Documents:** All Documents prepared by Consultant are solely for use by Client and will not be provided by either party to any other person or entity without Consultant's prior written notice.
- c. **Unauthorized Reuse:** No party other than Client may rely, and Client will not represent to any other party that it may rely on Documents without Consultant's express prior written consent and receipt of additional compensation. Client waives any and all claims against Consultant resulting in any way from the unauthorized reuse or alteration of Documents by itself or anyone obtaining them through Client. Client will defend, indemnify and hold harmless Consultant from and against any claim, action or proceeding brought by any party claiming to rely upon information or options contained in Documents provided to such person or entity, published, disclosed or referred to without Consultant's prior written consent.

10. DISPUTE RESOLUTION:

Any claims or disputes between the Client and Firm shall be submitted to non-binding mediation. Client and Firm agree to include a similar mediation agreement with all contractors, subcontractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth above.

**EXHIBIT B
RATE SCHEDULE**

CP&Y Hourly Rates

Project Manager	\$230.00
Quality Manager	\$230.00
Senior Engineer, P.E.	\$210.00
Design Engineer, P.E.	\$160.00
Engineer in Training (EIT) / Technician	\$125.00
CADD / Technician	\$110.00
Administration / Clerical	\$105.00
RPLS Task Lead	\$155.00
Senior Survey Tech	\$120.00
2-Person Survey Crew	\$165.00
SUE Project Manager	\$140.00
Technician (Utility/CADD)	\$110.00

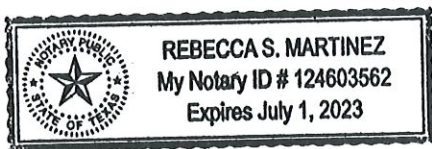
CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF Dallas §

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

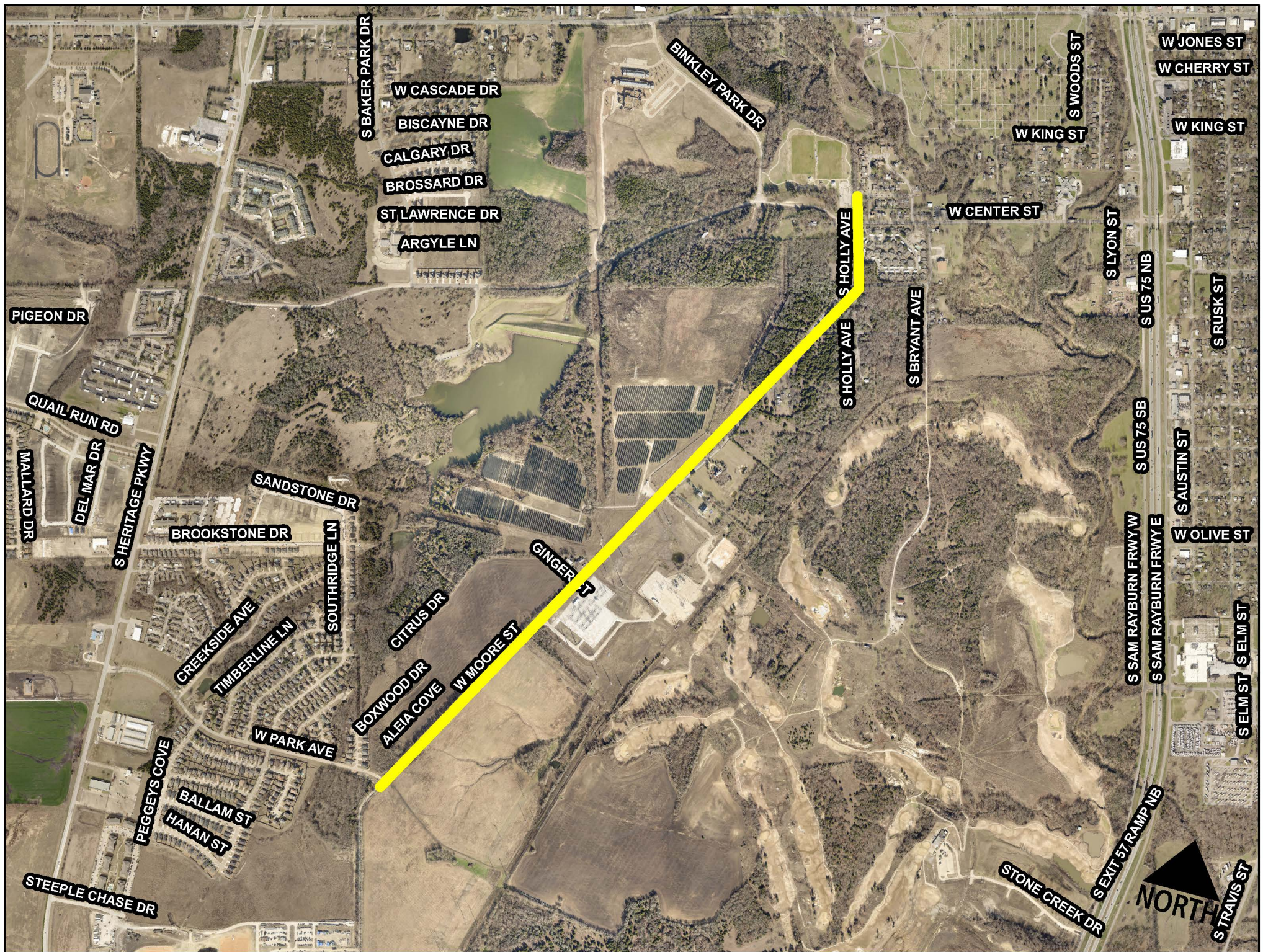
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 28th day of September, A.D. 2021.



Rebecca S. Martinez
Notary Public In and For Dallas County, Texas

My Commission Expires:

July 1, 2023



S BAKER PARK DR

W CASCADE DR
BISCAYNE DR
CALGARY DR
BROSSARD DR
ST LAWRENCE DR
ARGYLE LN

BINKLEY PARK DR

W KING ST
S WOODS ST

W JONES ST
W CHERRY ST
W KING ST

PIGEON DR

QUAIL RUN RD

MALLARD DR

DEL MAR DR

S HERITAGE PKWY

SANDSTONE DR

BROOKSTONE DR

SOUTHRIDGE LN

CREEKSIDE AVE
TIMBERLINE LN

PEGGEYS COVE

BALLAM ST
HANAN ST

STEEPLE CHASE DR

W PARK AVE

CITRUS DR
BOXWOOD DR
ALEIA COVE
W MOORE ST

GINGER ST

S HOLLY AVE

S BRYANT AVE

W CENTER ST

S LYON ST

S US 75 NB

S RUSK ST

S US 75 SB

SAUSTIN ST

W OLIVE ST

S SAM RAYBURN FRWY W

S SAM RAYBURN FRWY E

SELM ST
SELM ST

S EXIT 57 RAMP NB

STONE CREEK DR

NORTH
S TRAVIS ST



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 3.

Meeting Date: 10/04/2021

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6782

Authorizing Execution of a Professional Design Services Agreement with Kimley-Horn and Associates, Inc. for the Design of Shepherd Drive from US 75 to Farmington Road

Issue:

To consider a contract for professional engineering design services with Kimley-Horn and Associates, Inc. for the design of Shepherd Drive from US 75 to Farmington Road.

Background:

Shepherd Drive is part of the City's Master Thoroughfare plan and is ultimately to be a six lane divided arterial roadway. This engineering design services contract will provide an alignment study for approximately 11,200 feet of Shepherd Drive from US 75 to Farmington Road, and 30% design for approximately 5,800 feet of a six lane divided roadway from US 75 to the western edge of Shepherd Place PD. This will assist with setting the right-of-way requirements needed from Shepherd Place PD, how the vertical alignment interacts with Shepherd Place PD, and set the horizontal alignment for future right-of-way requirements between Shepherd Place PD and Farmington Road.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this contract is \$369,700.00. This will be funded by Street Bond Funds.

Staff Recommendation:

Kimley-Horn and Associates, Inc. is fully qualified to perform these services and staff has negotiated a reasonable fee for these services. It is recommended that the contract for professional engineering design services with Kimley-Horn Associates, Inc. for the design of Shepherd Drive from US 75 to Farmington Road be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6782

Agreement

Location Map

RESOLUTION NO. 6782

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL DESIGN SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE DESIGN OF SHEPHERD DRIVE FROM US 75 TO FARMINGTON ROAD; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Design Services Agreement with Kimley-Horn and Associates Inc. for the Design of Shepherd Drive from US 75 to Farmington Road, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
RYAN PITTMAN, CITY ATTORNEY

Professional Services/Consultant Agreement

ENGINEERING SERVICES AGREEMENT

This AGREEMENT or CONTRACT is made and entered into this ____ day of _____ 2021, by and between the City of Sherman, Texas hereinafter also called the OWNER or City, and Kimley-Horn and Associates, Inc., a North Carolina corporation hereinafter called the ENGINEER or Consultant. On consideration of the mutual agreements herein and subject to the following terms and conditions, the parties mutually agree as follows:

ARTICLE I. SERVICES TO BE PROVIDED

ENGINEER agrees to furnish professional engineering services in accordance with the terms and conditions of this AGREEMENT (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

ENGINEER shall conduct professional engineering services generally described as follows:

Shepherd Drive from US 75 to Farmington Road

ARTICLE II. SCOPE OF WORK

During the term of this AGREEMENT, ENGINEER shall perform at the request and satisfaction of the Engineering Department of the City of Sherman, the stated services and the indicated fee schedule attached as **EXHIBIT A**.

ARTICLE III. TERM

The contract term shall commence on the date of this AGREEMENT and be completed by July 2022. The contract term may be extended by mutual AGREEMENT of the parties.

ARTICLE IV. PROJECT INITIATION

Prior to the OWNER issuing a work order to proceed with any assessments, surveys, or other related work, ENGINEER shall provide OWNER with a written proposal detailing the scope of services and providing a fee estimate for proposed work. Said costs are to be based on the attached fee schedule. Final cost, excluding an approved change order, may not exceed the cost estimate by more than 10 percent without written approval of the OWNER.

ARTICLE V. FEES

Fees for services performed under this AGREEMENT shall be based on an hourly rate for personnel, equipment, and related services as detailed on the fee schedule attached as **EXHIBIT A** to this AGREEMENT. Subcontract services such as consulting with other engineers, as well as other services not specifically listed on the fee schedule, will be performed by subconsultants who operate under a subcontract agreement with ENGINEER. Fees shall be payable from the currently available funds. In the event funds are not available, ENGINEER shall not be obligated to perform the work.

ARTICLE VI. PAYMENT TERMS

ENGINEER will invoice OWNER for work performed on a monthly basis. In the case of short duration projects, invoicing will be upon project completion, with the invoice issued upon delivery of appropriate proposals or documents. Alternative invoicing methods may be acceptable provided they are agreed to prior to the work being undertaken.

ARTICLE VII. INSURANCE

Prior to the commencement of services under this AGREEMENT, ENGINEER shall obtain standard comprehensive professional liability insurance coverage in an amount of at least \$1,000,000.00 per claim with a \$2,000,000.00 aggregate policy limit per year, covering the services provided under this AGREEMENT. A "claims made" policy is acceptable subject to coverage being maintained during the course of the PROJECT and up to two (2) years after completion and acceptance of PROJECT by the City. ENGINEER shall maintain such coverage during all phases of engineering services and for two (2) years after substantial completion of the PROJECT. The OWNER shall be supplied with a certificate of such coverage which shall provide for a thirty (30) day notice of cancellation, non-renewal, or change in limits by endorsement, to the OWNER by certified mail.

ENGINEER will maintain general insurance coverage as follows:

- A. Worker's Compensation Insurance – Statutory as required by the Texas Labor Code.
- B. Employer's Liability Insurance - \$100,000 per accident; \$300,000 per disease; \$100,000 occupational disease per employee.
- C. Commercial General Liability Insurance - \$2,000,000 per occurrence; \$2,000,000 aggregate policy limit applies per project.
- D. Automobile Liability Insurance - \$1,000,000 CSL
- E. Professional Liability - \$1,000,000 per occurrence; \$2,000,000 aggregate policy limit. A "claims made" policy is acceptable subject to coverage being maintained during the course of the project and up to two (2) years after completion and acceptance of the project by the City.

ENGINEER shall maintain such coverage during all phases of engineering services and for two (2) years after substantial completion of the PROJECT. The OWNER shall be supplied with a certificate of such coverage which shall provide for a thirty (30) day notice of cancellation, non-renewal, or change in limits by endorsement, to the OWNER by certified mail.

The OWNER, City of Sherman, including its officers, officials, employees, Boards and Commissions, and volunteers shall be named as an additional insured by endorsement to the general insurance coverage listed in this AGREEMENT, excluding Workers' Compensation, Employers' Liability, and Professional Liability (for which a waiver of subrogation is required to be issued in favor of the OWNER), with regard to the ENGINEER'S activities as required by this CONTRACT. The coverage shall contain no

special limitations on the scope of protection afforded to the OWNER, and all premiums arising from the coverage herein shall be the responsibility of the ENGINEER.

ARTICLE VIII. INDEMNIFICATION

The ENGINEER shall hold harmless and indemnify the OWNER from all claims and liability for damage arising out of or in connection with this CONTRACT to the extent that the damage is caused by or results from failure by the ENGINEER or the ENGINEER'S agent, consultant under contract, or another entity over which the ENGINEER exercises control to perform services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer, or that results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the ENGINEER or the ENGINEER'S agent, consultant under contract, or another entity over which the ENGINEER exercises control. The ENGINEER shall also save harmless the OWNER from any and all expenses, including attorney fees which might be incurred by the OWNER in litigation or otherwise resisting said claim or liabilities, which might be imposed on the OWNER as the result of such negligent acts or omissions by the ENGINEER in proportion to the ENGINEER'S liability.

ENGINEER further agrees that during the course and scope of this AGREEMENT, except with OWNER'S knowledge and consent, ENGINEER shall not represent any third party against the OWNER in any claim, litigation, or other matter, or be retained to act as an expert witness for any third party in any claim, litigation, or any other matter that is, or may be, adversarial to the OWNER, as determined by the OWNER.

Acceptance by the OWNER of the ENGINEER'S work shall not constitute nor be deemed a release of the responsibility and liability of ENGINEER, its employees, subcontractors, agents, or consultants for the accuracy and competency of ENGINEER'S work; nor shall such acceptance be deemed to be an assumption of such responsibility by the OWNER for any defect, error, or omission in the ENGINEER'S work, its employees, subcontractors, agents, and consultants. ENGINEER, shall without additional costs or fee, correct or revise any errors or deficiencies in his performance.

The parties hereby acknowledge and agree that OWNER is entering into this AGREEMENT pursuant to its governmental functions and that nothing contained in the AGREEMENT shall be construed as constituting a waiver of the OWNER'S governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law. Notwithstanding anything to the contrary herein, the parties hereby acknowledge and agree that to the extent this AGREEMENT is subject to the provisions of Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the OWNER'S immunity from suit is waived only as set forth in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE. Further, the parties agree that this AGREEMENT is made subject to all applicable provisions of the Texas Civil Practices and Remedies Code ("CPRC"), including but not limited to all defenses, limitations, and exceptions to the limited waiver of immunity from liability provided in Chapter 101 and Chapter 75.

ARTICLE IX. COMPLIANCE WITH LAWS

The ENGINEER, its consultants, agents, employees and subcontractors shall comply with all applicable Federal and State laws, charter and ordinances of the City of Sherman, as amended, and all other applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. ENGINEER shall complete only the professional engineering services as required in the performance of the services contracted for herein.

ARTICLE X. OWNER'S RIGHTS AND OWNERSHIP OR DOCUMENTS

All ENGINEER'S designs and work products under this AGREEMENT including, but not limited to, tracings, drawings, plans, specifications, studies and other documents completed or partially completed, shall be the property of the City, to be used as the City desires, without restriction. ENGINEER specifically waives and releases any proprietary rights or ownership claims herein.

ARTICLE XI. SUCCESSORS AND ASSIGNS

The City and the ENGINEER each bind himself, his partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this AGREEMENT. The ENGINEER shall not assign, sublet or transfer its interest in this AGREEMENT without the written consent of the City.

ARTICLE XII. PROVISION FOR TERMINATION/INTERRUPTION

The City may terminate or suspend the ENGINEER'S services under this AGREEMENT at any time upon paying all sums due the ENGINEER for work to time of termination and after giving the ENGINEER seven (7) calendar days prior written notice by certified mail, stating the reason for such termination or suspension.

In the event of termination or abandonment of the ENGINEER'S services under this AGREEMENT, payment shall be made to the ENGINEER for all services performed to the date of same.

Upon payment in the event of termination or abandonment, all documents prepared by the ENGINEER shall become the property of the City.

If this AGREEMENT is terminated because of material breach of this AGREEMENT by the ENGINEER, the City may have the remaining work and services to be performed by the ENGINEER performed by another engineer, and the ENGINEER shall be liable to the City for any excess costs accrued by the City thereof.

**ARTICLE XIII.
CONFIDENTIALITY**

ENGINEER will maintain as confidential any documents or information provided by OWNER and will not release or publish same to any third party without prior permission from OWNER, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to OWNER.

**ARTICLE XIV.
GOVERNING LAW**

This AGREEMENT shall be governed in all respects by the laws of the State of Texas. Venue for this AGREEMENT shall be exclusively in Grayson County, Texas.

**ARTICLE XV.
SURVIVAL**

All provisions of this AGREEMENT for indemnity or allocation of responsibility or liability between OWNER and ENGINEER shall survive the completion of the services and the termination of the AGREEMENT.

**ARTICLE XVI.
SEVERABILITY**

In the event that any provision of the AGREEMENT is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.

**ARTICLE XVII.
ENGINEERS SEAL**

The ENGINEER shall place a Texas Professional Engineer's seal of endorsement on all documents and engineering data furnished by ENGINEER to the Owner.

**ARTICLE XVIII.
PUBLIC FUNDING**

This Contract is subject to the appropriation of public funds by the City in its budget adopted for any fiscal year for the specific purpose of making payments pursuant to this Contract for that fiscal year. The obligation of the City pursuant to this Contract in any fiscal year for which this Contract is in effect shall constitute a current expense of the City for that fiscal year only, and shall not constitute an indebtedness of the City of any monies other than those lawfully appropriated in any fiscal year. In the event of non-appropriation of funds in any fiscal year to make payments pursuant to this Contract, this Contract may be terminated without any liability to either party.

**ARTICLE XIX.
EXTENT OF AGREEMENT**

This AGREEMENT represents the entire and integrated AGREEMENT between the City and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral.

EXECUTED in three (3) counterparts (each of which is an original) on behalf of ENGINEER shown below, and on behalf of the OWNER this ____ day of _____, 2021.

OWNER:
CITY OF SHERMAN, TEXAS

ENGINEER:
KIMLEY-HORN AND ASSOCIATES, INC.

Robby Hefton, City Manager

L. Nathan Ante, Senior Vice President

ATTEST:

ATTEST:

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

BY: _____

NAME: _____
CITY ATTORNEY

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared **L. Nathan Ante, P.E. of Kimley-Horn** 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 **Kimley-Horn**, a corporation, that (s)he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, A.D. 2021.

Notary Public In and For _____ County, Texas

My Commission Expires:

EXHIBIT A

Scope of Services Shepherd Drive Project September 2, 2021

Project Understanding

The project includes the preliminary design of Shepherd Drive (ultimate 6-lane divided roadway) from 1,000-linear feet west of the Choctaw Creek tributaries to Southbound U.S. Highway 75 (approximately 6,300-linear feet), referred to as Segment 1. The project will also identify the future Shepherd Drive right-of-way and easement needs, size the Choctaw Creek tributaries bridges, identify environmental impact and permitting requirements along the alignment in addition to the Choctaw Creek tributaries crossings, and establish planning-level opinion of probable construction costs.

The project also includes preparation of an alignment study of Shepherd Drive (ultimate 6-lane divided roadway) from Farmington Road to 1,000-linear feet west of the Choctaw Creek tributaries (approximately 5,100-linear feet), referred to as Segment 2. The project will also identify the future Shepherd Drive curb lanes, right-of-way needs, and establish planning-level opinion of probable construction costs.

In addition, the scope also includes property research, topographic survey (as needed), Choctaw Creek tributaries hydraulic analyses, environmental services, and franchise utility coordination.

Scope of Services

1. Survey

This task is intended to provide additional data collection to supplement information acquired under a previous contract dated June 2021 between City and Dunaway DBI Consultants for proposed 18" surface water line (for Farmington Road and Shepherd Drive), prepared under a separate agreement. In addition, the Engineer will compile LiDAR 2-ft contours and incorporate into the base map to assist in determining adjacent impacts not defined in information provided by the City. Engineer is entitled to rely upon the topographic information provided by the City and LiDAR for the design of improvements as described herein and may supplement such information as needed for this design. Supplemental data collection may include the following.

1.1. Property Research

- 1.1.1 Collect property owner and record information.
- 1.1.2 Gather existing plat information.
- 1.1.3 Gather existing right-of-way and easement information. Identify easements available through typical research methodologies (i.e. plats, court house filings, etc.). Undocumented easements may not be identified.

1.2. Design Survey

- 1.2.1 The limits of the survey may be from Farmington Road to Southbound U.S. Highway 75 (approximately 11,400-linear feet). The survey will follow the conceptual alignment selected as part of Task 4 (approx. 110' wide) plus an additional 50' outside of the right-of-way lines. The following areas will also be surveyed:

- 500' upstream and downstream of the proposed bridge crossing location along Choctaw Creek tributaries crossing;
 - 150' north and south of the proposed intersection of Farmington Road, future Flanary Road, and Southbound U.S. Highway 75.
- 1.2.2 Survey will identify and locate existing topographic elements within the corridor including, but not limited to the following:
- Property corner monumentation;
 - Existing pavement, curbs, driveways, sidewalks, barrier free ramps, etc.;
 - Existing storm sewer inlets, manholes, junction boxes (including culvert sizes and invert elevations);
 - Existing driveway culverts and swales;
 - Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities;
 - Traffic signal poles, cabinets, and other signal equipment;
 - Signs (excluding temporary signs);
 - Trees and landscaping, including species and caliper (for 6" caliper and up) (Dense stands of trees can be generally described by their limits);
 - Permanent structures;
 - Retaining walls;
 - Mailboxes;
 - Fence limits and material types (excluding temporary fences).
- 1.2.3 Coordinate with Texas811 to locate and mark existing franchise and public utilities prior to performing the field survey.
- 1.2.4 Establish horizontal (NAD 83) and vertical (NAVD 88) control points. City to provide established monument information for the area.
- 1.2.5 City will arrange and make all provisions for access to perform the services specified within this scope. The surveyor will provide the City with the name and address of the property owners.
- 1.2.6 Prepare a right-of-way strip map on standard size plan sheet (22"x34"), identifying future right-of-way needs by parcel:
- 1.2.7 Prepare a final topographic drawing in digital format (including contours and breaklines) showing the features located in the field as well as right-of-way strip map information, an ASCII coordinate file of the points located in the field, and a hard copy of the coordinates and feature descriptions.

2. Choctaw Creek Tributaries Crossing Hydraulic Analyses

This task includes work associated with hydraulic evaluation of Choctaw Creek tributaries at the proposed bridge crossings. Work associated with storm drainage design for Shepherd Drive is included in task 4. The following will be performed as part of this task:

- 2.1. Size Proposed Bridge for Choctaw Creek Tributaries Drainage Crossings
- 2.1.1 Collect relevant data pertaining to the crossings from the City and FEMA. This information may include creek information/studies, models, record drawings, GIS file, aerials, contour/LiDAR information, etc.
- 2.1.2 Evaluate one (1) proposed alternative configuration for the proposed bridge crossing at each location. Detailed design will not be performed under this task.
- 2.1.3 Obtain FEMA hydraulic models and update using topographic survey data and develop additional cross sections as needed to perform evaluation.

- 2.1.4 Evaluate the hydraulics of the proposed alternatives using HEC-RAS modeling. The design will accommodate 100-year ultimate flows with at least one foot of freeboard.
- 2.1.5 Prepare Preliminary Hydraulic Memorandum.

3. Environmental Services

Task 3.1 – Aquatic Resources Delineation

- 3.1.1 Kimley-Horn will perform an Aquatic Resources Delineation for route in general accordance with the U.S. Army Corps of Engineers (USACE) 1987 Wetlands Delineation Manual and appropriate USACE Regional Supplement as detailed below.
 - 3.1.2 Kimley-Horn will locate readily available resource documents which may include aerial photographs, historic topographic maps, soil surveys, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, National Hydrography Dataset (NHD), Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), historic aerial photographs, and other related data for a desktop review of site conditions.
 - 3.1.3 Kimley-Horn will perform a site visit to evaluate the existence and approximate locations of aquatic resources on the site generally following the USACE 1987 Wetlands Delineation Manual and the applicable USACE Regional Supplement. Completion of USACE wetland determination data forms will be completed if necessary. The ordinary high-water mark (OHWM) for waterbodies will be identified in the field. Following the site visit, Kimley-Horn will prepare exhibits showing the boundaries (polygons) and acreage and/or linear footage (if applicable) of aquatic resources identified onsite during the site visit as collected utilizing a GPS with sub-meter accuracy. Kimley-Horn will provide the Client with PDF and AutoCAD versions of the aquatic resources files in the correct coordinate system.
 - 3.1.4 Kimley-Horn will perform a preliminary jurisdictional analysis of identified aquatic features onsite (if any) to evaluate the potential for the USACE to regulate identified aquatic features. Kimley-Horn will provide a summary email with an aquatic features map for review.
 - 3.1.5 It is important for the Client to understand that the Environmental Protection Agency (EPA) and the USACE occasionally issue guidance concerning what they intend to assert jurisdiction over. Changes that impact our strategy or scope will cause additional work and will be addressed as an additional service amendment to this agreement. Observations will be made under the applicable regulatory guidance at the time of the observations. Official authority to make a determination defining applicable jurisdictional limits rests with the EPA; however, authority has been delegated to the USACE. Jurisdictional determinations are made by the USACE, upon specific written request, on a case-by-case basis and may make use of certain information at its disposal (such as other permits in the local area) that may not be readily available to the public. The Aquatic Resources Delineation should not be considered authoritative, and it may not wholly eliminate uncertainty regarding the USACE's jurisdictional limits.
- 3.2. Task 3.2 – USACE Nationwide Permit Non-Notifying Memo
- 3.2.1 This task assumes that formal USACE notification and authorization will not be required; however, it will be based upon review of project plans, construction

- details, and/or specifications and potential impacts to jurisdictional waters. Kimley-Horn will document this information specific to the project and how to use the perceived applicable Nationwide Permit (NWP). This letter report will include regulatory language for the applicable NWP with discussion of selected noteworthy General Conditions.
- 3.2.2 Though no coordination with the USACE is proposed as part of this Task, the use of the applicable NWP constitutes compliance with appropriate Federal regulations. All NWP General and Regional Conditions and NWP terms must be met by the Client.
- 3.2.3 Based on project details provided to Kimley-Horn by the Client, it appears that a NWP 14 for Linear Transportation Projects would authorize the proposed project activities. Further, it is assumed that triggers for notification to the USACE under NWP 14 are met; Therefore, the preparation of a Pre-Construction Notification (PCN) to be submitted to the USACE Tulsa District is not included as part of this agreement. For reference, the submittal of a PCN may be required if:
- The NWP General or Regional Conditions can't be met;
 - Specific triggers for notification to the USACE are met within the NWP;
 - The impacts thresholds for the Nationwide Permit program are exceeded (greater than 0.10-acres and less than 0.50-acres at each separate, single and complete crossing); or
 - Client requests verification from the USACE.
- 3.2.4 This task does not include consultation with the USACE; however, this can be performed if warranted under a separate Agreement.
- 3.3. Task 3.3 – Desktop Cultural Resources Review
- 3.3.1 Kimley-Horn will engage a professional cultural resources management consultant to perform a desktop cultural resources review. The purpose of the desktop review is to identify and describe existing documented cultural resources in the project area, discuss the potential for discovering previously unknown cultural resources, and make recommendations about the need for further archaeological work so that the project can proceed.
- 3.3.2 The archeologist will compile information from records/databases, including (as necessary):
- Texas Archeological Sites Atlas (TASA);
 - National Register of Historic Places (NRHP);
 - Additional records at the Texas Archeological Research Laboratory (TARL);
 - Natural Resources Conservation Service (NRCS) soil maps;
 - City, state, or county planning documents (when available);
 - USGS topographic maps;
 - Records available at City and county historical societies; and
 - Published local histories.
- 3.3.3 A letter report that details the results of the records search and presents a review of the natural environment and cultural history of the project area, along with conclusions and recommendations of findings will be prepared. This letter will include a discussion of the potential for the proposed project to affect known archaeological sites, State Antiquities Landmarks (SALs), or sites listed or potentially eligible for listing on the NRHP. In addition to this discussion, the letter will also address the likelihood that the proposed project will encounter areas with a high potential for containing cultural resources. The report will be submitted to the Client for review.
- 3.3.4 It should be known that if a federal nexus is not identified for the project, consultation with the THC under Section 106 of the National Historic

Preservation Act (NHPA) is not required. Additionally, if the project is located entirely on private land, consultation with the THC under the Antiquities Code of Texas is not required.

- 3.3.5 Kimley-Horn will submit the letter report to the THC for review.
- 3.4. Task 3.4 – Cultural Resources Survey (if needed)
 - 3.4.1 Prepare and submit an Antiquities Permit application to the THC for review and approval. Field survey work cannot occur until a permit is issued by the THC.
 - 3.4.2 Conduct a Phase I pedestrian survey. Survey standards will meet the minimum requirements accepted by the THC (n.d.), as set forth in Chapter 26 of the Texas Administrative Code (TAC). The purpose of a Phase I investigation is to identify cultural resources in the project area and make recommendations about their significance. This scope of work does not include Phase II testing or Phase III mitigation tasks or costs, but these may be necessary to satisfy the THC if sites are found and cannot be avoided.
 - If present, standing structures that are at least 45 years old within the area of potential effect (APE) will be photographed and recorded. Based on the age and condition of the structure, an architectural historian may be consulted (at an additional cost, unless otherwise specified in the Cost section below) to determine the structure's eligibility for listing on the NRHP or as a SAL.
 - The boundaries of archaeological sites found during the survey will be defined in the horizontal and vertical plane based on surface artifacts, shovel testing, and possibly trenching. These methods comply with standards referenced in 13 TAC 26.20. This scope of work includes the cost of recording one (1) archaeological site. To fulfill the permit requirements laid out in the TAC, we must record archaeological sites found in the proposed survey area. Due to the nature of archaeological work, we can only estimate the number of subsurface site deposits or standing structures that will be found during the survey. Sites and standing structures that are found more than the number listed above may incur additional costs.
 - If a recommendation for NRHP eligibility cannot be made at a site during Phase I pedestrian survey, Phase II testing may be recommended and subsequently required by the THC.
 - 3.4.3 If artifacts are found during the survey, they will be analyzed, either in the field or in the lab. The results of this analysis will be used to support the overall and site-specific recommendations in the technical report.
 - 3.4.4 Prepare a draft technical report. This report will meet the standards for cultural resource reports adopted by the THC (Council of Texas Archeologists n.d.). The report will describe the natural and cultural history of the project area, present a research design and methodology, then the results of the survey. It will conclude with recommendations about site eligibility (if applicable) and whether further archaeological work should be conducted in the project area. These recommendations will include appropriate justifications based on the requirements of 13 TAC 26.5 and 13 TAC 26.20.
 - 3.4.5 The draft report will be submitted to City and subsequently to the THC for review and comments.
 - 3.4.6 Once approved, the final report will be printed, and the necessary copies will be submitted to City and the THC.
 - 3.4.7 Records will be prepared for curation at an approved facility. The cost of records curation is included in the proposed cost. If artifacts are collected, their preparation and the cost of perpetual curation (as required) will be negotiated

with the curation facility and will be an additional cost. If the project is on private land, artifacts will be returned to the landowners.

- 3.4.8 The THC may determine that deep testing is required for the project. Deep testing is excluded from this scope of services. If deep testing is required by the THC, this would be considered an additional service.

4. Preliminary Design (30%)

Engineer will prepare preliminary roadway design of Shepherd Drive from 1,000-linear feet west of the Choctaw Creek tributaries to Southbound U.S. Highway 75 (Segment 1), and alignment study of Shepherd Drive from Farmington Road to 1,000-linear feet west of the Choctaw Creek tributaries (Segment 2).

4.1. Project Meetings, Coordination, and Correspondence (Segment 1 and 2)

- 4.1.1 Develop project production plan, including documenting design criteria, project schedule, and milestones.
- 4.1.2 Conduct progress meetings with City staff and other stakeholders.
- 4.1.3 Coordinate with subconsultants.
- 4.1.4 Prepare and e-mail monthly progress reports to the project team (City and Engineer).
- 4.1.5 Project administration, including preparation of project correspondence and invoicing documents.
- 4.1.6 Project site visits.
- 4.1.7 Develop and implement QA/QC protocol during preliminary design task.

4.2. Data Collection (Segment 1 and 2) (City to provide hard copy and electronic format if available)

- 4.2.1 Design criteria, standard details, and technical specifications for roadway, drainage, utilities, and streetscape elements.
- 4.2.2 Applicable master plan documents and Ordinances.
- 4.2.3 Record drawings for existing roadway and infrastructure, and adjacent developments.
- 4.2.4 Proposed / existing development plats and traffic impact analysis reports for properties adjacent to the project.

4.3. Alignment Study (Segment 2 Only)

- 4.3.1 Prepare preliminary roadway alignment from Farmington Road to 1,000-linear feet west of the Choctaw Creek tributaries for City review.
- 4.3.2 Upon City concurrence of preferred roadway alignment, evaluate the horizontal location of the ultimate roadway along the corridor.
- 4.3.3 Prepare high-level roadway profile to determine approximate future grading impacts to adjacent properties.
- 4.3.4 Identify areas where ultimate right-of-way will need to be acquired or dedicated. Easement will only be identified for Segment 1.
- 4.3.5 Proposed roadway alignment, curb lines, right-of-way, and profile to be shown on overall Project preliminary roll plot.

4.4. Roadway (Segment 1 Only)

- 4.4.1 Prepare preliminary roadway alignment from 1,000-linear feet west of the Choctaw Creek tributaries to Southbound U.S. Highway 75 for City review.
- 4.4.2 Upon City concurrence of preferred roadway alignment, Engineer will proceed with developing the following:
 - Prepare existing and proposed typical sections.

- Prepare preliminary plan and profile. Items to be included:
 - Plan
 - Control Data;
 - Existing right-of-way and easements;
 - Existing topography;
 - Existing pavement;
 - Existing trees to remain (where possible);
 - Existing trees to be removed;
 - Existing storm drain locations;
 - Existing water line locations;
 - Existing sanitary sewer line locations;
 - Existing franchise utility locations including Oncor poles (relying upon information provided by franchise utilities);
 - Proposed centerline alignment and horizontal curve data;
 - Proposed face of curb;
 - Proposed medians;
 - Proposed intersection improvements at Southbound U.S. Highway 75;
 - Proposed future intersection improvements at Flanary Road;
 - Proposed driveways;
 - Proposed sidewalks, if applicable;
 - Proposed bridge layout at Choctaw Creek tributaries crossing;
 - Proposed storm sewer;
 - Proposed wall locations in lieu of grading outside ROW, if desired;
 - Proposed limits of constructions.
 - Profile
 - Existing Ground Profile and Proposed Vertical Alignment;
 - Superelevation Data (if applicable).
- Prepare preliminary right-of-way map showing the existing right-of-way and easements in addition to the proposed right-of-way, easements, and improvements.

4.5. Drainage (Segment 1 Only)

4.5.1 Compile the hydrological and hydraulic data.

4.5.2 Develop the project drainage area map.

- Determine conveyance paths, channel slopes, time of concentration, and runoff coefficients to calculate design-year flows;
- Subdivide the overall drainage areas into sub-areas and calculate the discharge at each inlet. Analyze inlet capacities and adjust inlet locations and sub-areas as needed to meet City design criteria.

4.5.3 Analyze drainage improvements to accommodate the new roadway. Evaluate the need for any offsite drainage improvements and report to the City (the need for offsite improvements is not anticipated). The design of any offsite drainage improvements will be considered as *Additional Services*.

4.5.4 Identify the need for additional drainage easements to accommodate the proposed offsite drainage improvements.

4.6. Bridge (Segment 1 Only)

Engineer anticipates a total of two (2) crossings at Choctaw Creek tributaries will be required. Engineer will provide the following:

4.6.1 Conceptual bridge layouts – Plan and Profile.

4.6.2 Consider up to two (2) embankment alternatives.

4.6.3 Conceptual bridge layout will include:

- Plan View;
 - Vertical Profile;
 - Typical Section;
 - Channel Grading;
 - Limits of proposed erosion control alternative selected as part of task 3.1;
 - Low Chord;
 - 100-year water surface elevation;
 - Bent locations;
 - Abutment locations.
- 4.6.4 Construction staging areas will be considered.
- 4.6.5 Prepare plan and profile of proposed bridge improvements along Shepherd Drive at Choctaw Creek tributaries.
- 4.6.6 Preliminary constructability review.
- 4.7. City Utilities (Segment 1 and 2)
- 4.7.1 Establish the location of existing City utilities based upon information provided by the City and field survey information.
- 4.8. Traffic (Segment 1 Only)
- 4.8.1 Prepare City standard Pavement Markers, Markings plans.
- 4.8.2 Signing plan is excluded from this scope of service but may be performed as part of *Additional Services*.
- 4.9. Compile and prepare a preliminary opinion of probable construction cost for the entire project using recent average unit bid prices which are representative of similar types of construction in the local area.
- 4.10. Preliminary design submittal (30%)
- 4.10.1 Submit up to three (3) hardcopies to the City for review and comment, including .pdf and incorporate one (1) round of review comments.
- Preliminary roll plot;
 - Preliminary right of way map;
 - Preliminary drainage area map;
 - Preliminary opinion of probable construction cost.

5. Franchise Utility Coordination

This Task shall be used on an as-needed basis, at the discretion of the City. Tasks may include:

- 5.1. Coordinate with franchise utility companies.
- 5.2. Attend group and/or individual franchise utility meetings.
- 5.3. Provide design data to franchise utility companies.
- 5.4. Identify potential franchise utility conflicts and possible relocation requirements.
- 5.5. Notify the City if any relocations may be required.

The budgeted fee for this Task is based upon approximately 100 hours. We will not proceed with performance of services beyond the hours budgeted, without written authorization by the City.

6. Additional Services

Services not specifically identified in the Scope of Services above shall be considered additional and shall be performed on an individual basis only upon authorization by the City. Such services shall include, but are not limited to, the following:

- 6.1. Construction Staking;
- 6.2. Geotechnical Services;
- 6.3. Title Research;
- 6.4. Traffic Simulations;
- 6.5. Sanitary Sewer and/or water line design or evaluation;
- 6.6. Renderings or sketches;
- 6.7. Coordination and/or permitting with USACE;
- 6.8. Design of any offsite improvements beyond the improvements identified in the scope;
- 6.9. Preparation for and attendance at public meetings;
- 6.10. Right-of-Way / Easement Instruments of Conveyance;
- 6.11. Development of hydrologic models for Choctaw Creek Tributaries;
- 6.12. Development of hydraulic models or HEC-2 to HEC-RAS conversion for Choctaw Creek Tributaries;
- 6.13. Scour analysis;
- 6.14. Additional Channel Permitting:
 - Conditional Letter of Map Revision (CLOMR);
 - Letter of Map Revision (LOMR);
 - Floodplain development permit.
- 6.15. Furnish additional copies of review documents and/or bid documents in excess of the number of the same identified above;
- 6.16. Bidding or Construction Phase Services;
- 6.17. Assist the City as an expert witness in litigation in connection with the project or in hearings before approving and regulatory agencies;
- 6.18. Redesign to reflect project scope changes requested by the City, required to address changed conditions or change in direction previously approved by the City, mandated by changing governmental laws, or necessitated by the City's acceptance of substitutions proposed by the contractor.

FEE AND BILLING

Engineer will perform the services identified in the Scope of Services on an Hourly/Reimbursable (CP) basis in accordance with the following tasks:

<u>Hourly/Reimbursable (CP)</u>	<u>Task Fee (estimated)</u>
Task 1 – Survey	\$ 25,000
Task 2 – Choctaw Creek Tributaries Hydraulic Analyses	\$ 49,700
Task 3 – Environmental Services	\$ 40,000
Task 4 – Preliminary Design	\$ 235,000
Task 5 – Franchise Utility Coordination	\$ 20,000
TOTAL:	\$ 369,700

Engineer will perform **Hourly/Reimbursable Tasks** identified in the Scope of Services on a labor fee plus expense (reimbursable) basis. For your budgeting purposes, we recommend allocating **\$369,700.00** for these tasks (not-to-exceed). The fee breakdowns above are provided for budgeting purposes only and not intended to represent the maximum budgets for each task. KHA reserves the right to reallocate the budgets as necessary. Direct reimbursable expenses (subconsultant fees, out-of-house printing, courier services, etc.) will be billed at a rate of 1.10 times cost. Labor fee will be billed on an hourly basis per the current hourly rates, which is subject to annual adjustment. A percentage of labor fee (6%) will be added to each invoice to cover certain other expenses such as telecommunications, printing, in-house reproduction, postage, computer expenses, supplies, and local mileage. All permitting, application, and similar project fees will be paid directly by the City.

RATE SCHEDULE

Kimley-Horn and Associates, Inc.

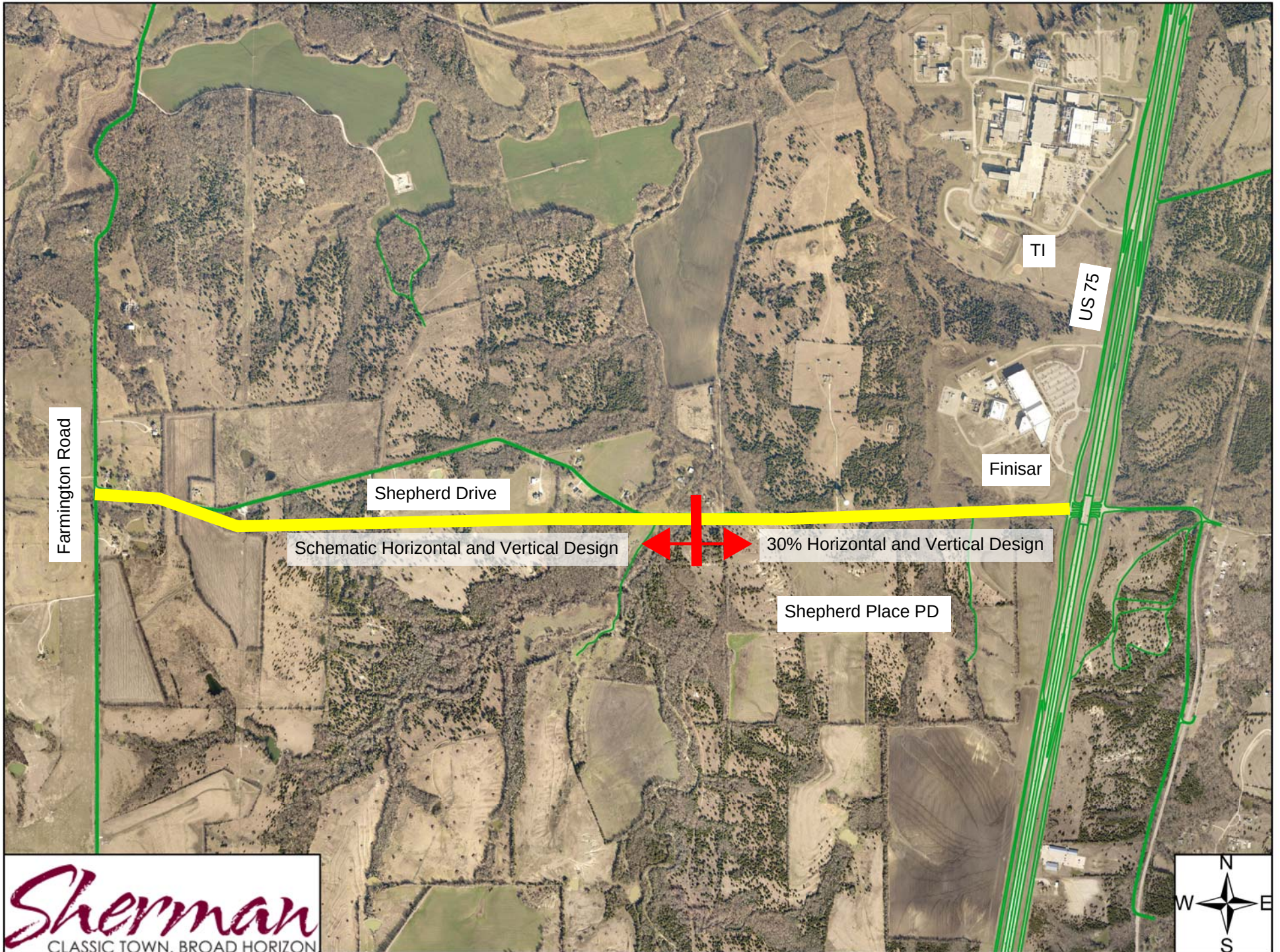
Standard Rate Schedule

(Hourly Rate)

Analyst	\$120 - \$200
Professional	\$180 - \$230
Senior Professional I	\$220 - \$285
Senior Professional II	\$265 - \$300
Senior Technical Support	\$145 - \$210
Support Staff	\$90 - \$130
Technical Support	\$90 - \$135

Effective through June 30, 2022

Subject to periodic adjustment thereafter





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 4.

Meeting Date: 10/04/2021

Prepared By: Bruce Dawsey, Assistant Chief

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6783

Authorizing the Purchase of a 2022 Armored Vehicle for the Sherman Police Department from The Armored Group through the Texas Local Government Purchasing Cooperative (BuyBoard).

Issue:

To consider the purchase of an Armored Vehicle for the Sherman Police Department

Background:

The Sherman Police Department Special Response Team (SRT) responds to high-risk situations in which suspects are presumed to be armed. The purchase of the Armored Vehicle will provide SRT with additional ballistic protection to approach barricaded suspects. The Armored Vehicle can also be used to safely rescue injured officers and civilians during active shooter situations.

A quote amount of \$279,800 for the armored vehicle was received from The Armored Group for the B.A.T.T.-X (Ballistic Armored Tactical Transport). This vehicle meets the desired ballistic protection and vehicle configuration meets the functionality requirements to safely and adequately deploy the team.

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.

See attachment for additional information.

Origination:

Sherman Police Department

Financial Consideration:

A quote was received from The Armored Group for the purchase of a 2022 B.A.T.T.-X in the amount of \$280,200.00. This price includes the \$400 BuyBoard administrative fee. Funds for the purchase and fee were appropriated in the fiscal year 2021-2022 budget.

Staff Recommendation:

The staff recommends the City Council authorize the purchase of the armored vehicle for the Sherman Police Department through the BuyBoard.

Alternatives:

As directed by the City Council

Attachments

Resolution No. 6783

Quote

RESOLUTION NO. 6783

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 2022 ARMORED VEHICLE FOR THE SHERMAN POLICE DEPARTMENT FROM THE ARMORED GROUP 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 The Armored Group, through the Texas Local Government Purchasing Cooperative (BuyBoard), a Ballistic Armored Tactical Transport (B.A.T.T.-X) for the Sherman Police Department at a total price of Two Hundred Seventy-Nine Thousand Eight Hundred Dollars and No Cents (\$279,800.00), in accordance with the provisions of the BuyBoard proposal and terms and conditions of the The Armored Group. Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2021-2022 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
RYAN PITTMAN, CITY ATTORNEY

B.A.T.T. – X



2727 S. BEECH DALY

DEARBORN HEIGHTS, MI 48125

CONTACT: JEREMY JOHNSON

OFFICE: 602-840-2271 CELL: 817-291-4956 FAX: 817-394-2499

EMAIL: JEREMY@ARMOREDCARS.COM



(LUFKIN PD BATT – X EXAMPLE SHOWN WITH ADDED OPTIONS)

CUSTOMER:

Sherman Police Department

Assistant Chief Bruce Dawsey

220 W. Mulberry Street

Sherman, TX 75090

Email: bruced@cityofsherman.com

Phone: 903-892-7249

B.A.T.T. – X

A. Ballistic Performance Data – including NIJ IV and Multi Hit +.50 CAL BALL AMMO

<u>Weapons Caliber Type</u>	<u>Weight & Velocity</u>	<u>Hits & Spacing</u>
M2 .50 Caliber Ball Ammo		3 hit, 120mm triangle (Steel)
M2 .50 Caliber Ball Ammo		1 hit (Glass)
M2 .30 – 06 M2 AP	166 grain @ 2800 – 2900	1 hit, 2"
M60/M14 7.62 x 51 M80	149 grain @ 2693-2753 fps	3 hits, 120mm triangle
M16 5.56 x 45 M855/SS109	63 grain @ 3087-3147 fps	3 hits, 120mm triangle
AK-74 5.45 x 39 Ball Type PS/7N6	53 grain @ 2956-3016 fps	3 hits, 120mm triangle
AK-47 7.62 x 39 M1943/PS Ball	123 grain @ 2300-2360 fps	3 hits, 120mm triangle

B. Underbody Blast Protection

The underbody armoring provides protection from the blast and fragmentation resulting from the detonation of two (2) simultaneously detonated DM51 hand grenades placed on the ground at any location under the vehicle. The characteristics of the DM51 hand grenade are as follows: **DM51**

Fragmentation Grenade

Diameter: 57 mm

Weight: 425 grams

Explosive Weight: 60 grams

CHASSIS & MAINTENANCE SPECIFICATIONS

- Ford F-550 Super Duty Commercial Chassis
- 6.7L Diesel Engine
- Heavy Duty Steel Rims
- 4-wheel drive (4X4)
 - Shift on the Fly
- Automatic transmission with overdrive
- OEM in dash air conditioning, heating and defrost
- Mono-beam leaf spring suspension with rear stabilizer bar
- Am-Fm Stereo Radio with clock
- Sealed halogen headlamps
- Tilt wheel
- 4.88 LTD Slip Rears
- TAG Installed Heated and Power Mirrors
- TAG Installed LED High Intensity Headlights
- TAG Installed LED High Intensity Driving Lights
- Drains, Filler Plugs, Grease Fittings, hydraulic lines, bleeders and check points for all components located so are readily accessible; Do not require special tools for servicing.
- Extreme care is taken to insure components are easy to access for maintenance and inspection.

ARMOR LEVEL

- NIJ IV +.50 Cal Ball Ammo Package
- Mil Spec Steel

FLOOR

- Floor is armored with a blast mitigating mil spec floor to stop minimum of 2 DM51 Hand Grenades set off simultaneously

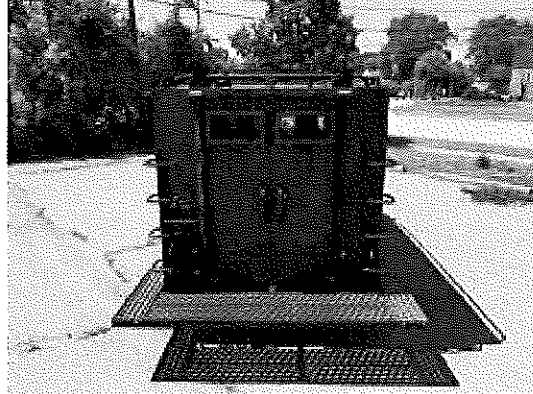
WINDOWS

- Bullet resistant glass-clad polycarbonate with-Low Spall Liner to NIJ IV+ and .50 Cal Ball Ammo Protection
 - Two piece windshield
 - (2) Front door windows
 - (2) Side Door windows
 - (4) Horizontal windows in side walls (2 Each Side)
 - Two (2) Rear windows (1 Each Rear Door)

B.A.T.T. – X

(6) DOOR DESIGN

- (2) Door Design for Cabin Entry
- (2) Additional Side Entry Doors
- Double Rear Doors
- Front Cabin Doors offer 90° & 45° Lock Outs
- Rear Doors Lock out at 90°
- TAG Exclusive Exterior Door Gap Protection at all doors



ENGINE BAY ARMOR PROTECTION PACKAGE

- Full Hood Armor
- TAG exclusive Flip Forward Package
 - Allows easier access for maintenance and repair
 - Hood opens traditionally or can be fully opened with tilt forward feature



FIREWALL ARMOR PROTECTION PACKAGE

- Complete firewall protection against shots or blast fragmentation



B.A.T.T. – X

DOOR GAP ARMOR PROTECTION

- TAG exclusive Door Gap Armor Protection
- Covers gaps when doors are locked open

FUEL TANK ARMOR

- Fuel tanks include locking armored door
- Armored vertical protection and skid plate on both tank

TOW HOOKS

- (2) on front of BATT; (2) on rear of BATT
- Hooks installed on Roof

HEAVY DUTY RUNNING BOARDS AND REAR PLATFORM

- Heavy Duty Side Running Boards
- Heavy Duty Rear Step/Platform
- Includes additional rear bumper light so officers can see while deploying in high operations;

GRAB HANDLES & REAR ROOF ACCESS

- Interior steel grab handles for stabilization inside cabin and rear officer's area
- Exterior steel grab handles for riding on running boards
 - Grab handles all around roof, on A Pillar, Inside front cabin doors
- Non Slip Surface on Roof and Hood
 - Additional roof mounted grab/assist handles on rear of truck
- Roof Access steps on rear of unit

OPTIC PORT (GUN PORTS) PACKAGE

- Optic Ready Gun Ports Each Side Front Door
- Optic Ready Gun Port in each Rear Door
- Optic Ready Gun Port Turret Lid
- (3) Optic Ready Gun Ports in each Side Wall of BATT X aft of side doors
- (13) Total Gun Ports – All Optic Ready

EXTERIOR STORAGE IN REAR WHEEL WELLS

- (4) Storage areas designed into rear wheel wells
- (2) on each side that are lockable



FRONT SEATS

- (2) Front seats
- Driver's seat is high back adjustable
- Passenger seat is high back adjustable

B.A.T.T. – X

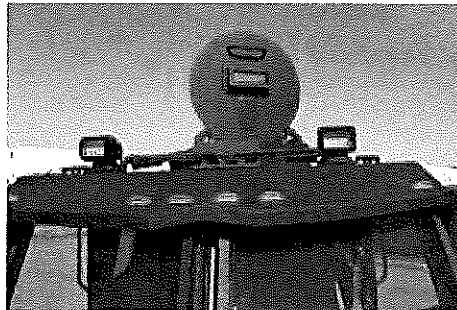
REAR SEATING

- Rear Seating for 8 Officers
- (2) Rear Facing Flip Up Seats
- Bench seating for 6 Officer
 - Enclosed under seat storage
 - Seats are padded and have padded back rests
 - Cut Outs for back board slats



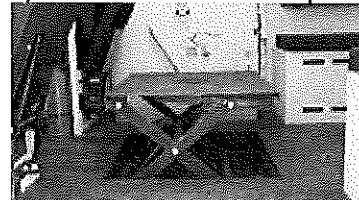
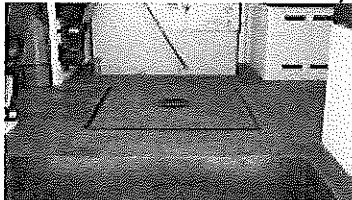
ROTATING ROOF HATCH

- 360° Rotation with multiple locking positions
- Counterbalanced Roof Hatch Lid for 1 Hand Operation
- View Window in Turret Lid
- Optic View Port



ROOF HATCH STEP

- Stored Flat in Floor when not in use to allow for easy entry and exit from rear and passenger side door



EMERGENCY LIGHTING & SIREN/PA PACKAGE

- LED Flashing Lights front and Rear (Red and Blue, Or Customer Choice)
- Wig Wags front and back
- Siren & PA System
- Stealth Switch to kill brake lights, reverse lights, running lights, etc

INTERNAL LIGHTING

- Red/White Internal ceiling mounted lights
 - Allows for either White or Red or Both; Master switch in cabin; Also can control light from seat

B.A.T.T. – X

HIGH INTENSITY DRIVING LIGHTS AND HEADLIGHTS

- LED High Intensity driving lights installed in front bumper
- LED High Intensity Head Lights

CONTROL SYSTEM

- All Switches have Backlit Control Panel for ease of reading at night
- Easy to read and use by both driver and passenger
- All wiring performed to work in high heat, dusty, and sandy environments

HVAC SYSTEM

- Large Additional rear Air Conditioning and Heating unit mounted in rear officer's area for additional cooling and heating; includes second condenser

INSULATION PACKAGE

- BATT X includes upgraded insulation package

EXHAUST FANS

- Two exhaust fans installed in rear compartment

BATT V OFF ROAD UPGRADE PACKAGE

Suspension System

- Heavy Duty Off Road Shocks
 - Installed on Front and Rear of BATT; Increases stability and ruggedness
 - Outback Armour Systems Off Road Package
- Front Coils
 - Replaced with Heavy Duty Capacity Coils
- Rear Suspension
 - Additional OEM Leafs Installed for support
- HD Bump Stops at all Wheel Positions (Front & Rear)
- Heavy Duty Sway Bars Added

335/80R20 TIRE/RIM PACKAGE UPGRADE

- Includes Conversion to Single Rear Wheel 20" Rim and Tires (385/80R20 Off Road Tires)
- Upgraded Suspension to improve handling and maneuverability
 - Includes upgraded steering stabilizer, sway bars, shocks, springs
- Upgraded Tires and Rims improves ground clearance and performance

RUN FLAT TIRE PACKAGE

- Includes addition of 4 Hutchinson static mounted run flats
- Rated for Km/h for distance of 50 km, if tire is punctured

BACK UP CAMERA

- Color Back Up Camera with Cabin Mounted Color Monitor

RADIO PREP PACKAGE

- Install customer supplied radio/antenna or pre wire for customer to install

REMOTE CONTROL SPOT LIGHTS & SCENE LIGHTS

- (2) Remote Control Pan/Tilt Spot Lights; Locations TBD
- (2) Pre Cut Locations for Remote Control Pan/Tilt Spot Lights on Rear Corners
- Pre Cut for Flood Lights

TAG BASE RAM

- TAG Base Ram Package
- Posts mount on side of BATT
- Base plate incorporates hooking system for curtains and blinds

B.A.T.T. – X

PRE CUT FOR POWER INVERTER

- Power Inverter location pre cut to allow for installation at a later date
 - (2) Plug In Strips; One in front towards A/C and other on rear wall
- Pre Cut Kussmaul Charger Location on Driver's side
 - Allows for easy installation of Kussmaul Auto Charger at later date

WINCH

- 16,500lbs Electric Winch System
- Remote Capability

PAINT

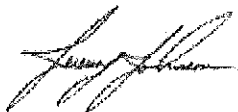
- Exterior
 - 1 Color to be Determined
- Interior
 - Gray Paint
 - Velcro Carpet Available Option

B.A.T.T.® X PRICING:

\$279,800.00

***Pricing Does Not Include Any Applicable Sales Tax, Duties, Clearing Fees, etc.**

***Freight Not Included**



September 10, 2021

Jeremy Johnson
Global Fleet Manager
The Armored Group, LLC

_____, 2021
Authorized Signature
Sherman Police Department

WARRANTY INFORMATION

ARMOR WARRANTY

Armor Basic 24 Months/Unlimited Miles

CHASSIS WARRANTY

Basic 36 Months/36,000 miles

B.A.T.T. – X

Powertrain	60 Months/60,000 miles
Corrosion Perforation	60 Months/unlimited mileage
Roadside Assistance	60 Months/60,000 miles
Diesel Engine	60 Months/100,000 miles



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 5.

Meeting Date: 10/04/2021

Prepared By: Shawn Hackworth, IT Manager

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6784**

Authorizing the Purchase of Office365 Implementation for Exchange and Teams Deployment Services through the Texas Department of Information Resources - Contract DIR-TSO-4061

Issue:

To consider approval of a resolution to purchase the engagement of technical resources to assist in the implementation of Office365 services for Exchange and Teams for use by the City of Sherman.

Background:

The requested purchase will allow the city needed technical advisors and assistance in migrating mailboxes to Microsoft government cloud, integrating the City of Sherman Active Directory services, and deployment of Teams collaboration services.

Origination:

Information Technology Department

Financial Consideration:

The implementation services will be purchased from SoftwareOne for \$66,830.00 through the Texas DIR contract DIR-TSO-4061. Funding for this purchase was appropriated in the fiscal year 2021-2022 Information Technology Department budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the Office365 implementation for Exchange and Teams deployment services through the Texas DIR Contract DIR-TSO-4061.

Alternatives:

As may be recommended by the City Council.

Attachments

Resolution No. 6784

Contract DIR TSO 4061

Appendix A - Standard Terms and Conditions

Appendix B - HUB Subcontracting Plan

Appendix C - DIR Pricing

SoftwareOne SOW

RESOLUTION NO. 6784

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF OFFICE365 IMPLEMENTATION FOR EXCHANGE AND TEAMS DEPLOYMENT SERVICES THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES – CONTRACT DIR-TSO-4061; 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 SoftwareOne, Inc. through the Texas Department of Information Resources Office365 Implementation for Exchange and Teams Development a total price of Sixty Six Thousand Eight Hundred Thirty Dollars (\$66,830.00).

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF SHERMAN, TEXAS on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____

DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN PITTMAN, CITY ATTORNEY

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES**

SOFTWARE ONE, INC.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Software One, Inc. (hereinafter “Vendor”), with its principal place of business at 20875 Crossroads Circle, Suite 1, Waukesha, Wisconsin 53186-4093.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-404, on June 8, 2017, for Value Added Software Reseller Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-404 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Value Added Service Level Agreement, Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-404, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-404, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, than Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, the contract will renew automatically in two year increments for two additional years, for a total of six years (6), under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to products specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to services specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Software One, Inc.

Jasha Beck Walter, Legal Counsel

20875 Crossroads Circle, Suite 1

Waukesha, Wisconsin 53186

Phone: (262)317-5589

Email: jascha.walter@softwareone.com**7. Software License Agreements****A. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

B. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections

of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. Contract, Section 3, Definitions, B) Compliance Check is hereby restated in its entirety as follows:

B) Compliance Check – an audit to the extent reasonably necessary to verify performance hereunder. Vendor’s may be performed by, but not limited to, a third-party auditor, DIR Internal Audit department, DIR contract management staff or their designees.

B. Contract, Section 5, Intellectual Property Matters, Section A Definitions, Item 1, Work Product is hereby restated in its entirety as follows:

1)“ Work Product” means any and all tangible and intangible output of Vendor’s Services produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed for Customer, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, flow charts, notes, writings, data, information, multimedia files, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) any copies, and similar or derivative works to any of the foregoing, (iii) documentation and materials, and (iv) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer’s benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

C. Contract, Section 5, Intellectual Property Matters, A Definitions, Item 2) “Intellectual Property Rights” is hereby restated in its entirety as follows:

2) “Intellectual Property Rights” means the worldwide legal rights or interests evidenced by or embodied in: (i) any compilations, diagrams, layouts, mask works, idea, design, concept, personality right, method, process, formula, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how, show-how, research and development; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any software (including routines and sub routines, trademark, service mark, logo, Confidential Information, pre-existing and independently developed materials, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

D. Contract, Section 5, Intellectual Property Matters, A Definitions, Item 5)
“Vendor IP” is hereby restated in its entirety as follows:

5) “Vendor IP” shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things do not include (i) any Confidential Information of Customer; or (ii) any ideas, concepts, know-how, skills, methodologies, or techniques which (A) are developed solely by Customer, or (B) are unique to Customer or its applications and are developed for inclusion in the Work Product.

E. Contract, Section 5, Intellectual Property Matters, B Ownership is hereby restated in its entirety as follows:

Vendor owns all right, title, and interest the Vendor IP. As between Vendor and Customer, and upon payment by Customer, of any undisputed invoice of vendor directly related to a specific element of work product, that absent of the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. Subject to Vendor’s confidentiality obligations to customer; Nothing in this Contract precludes Vendor from providing services similar to those described in this Contract or any Statement of Work to any other customers. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all necessary and relevant Vendor materials, premises and computer files containing the Work Product Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license

or other right is granted hereunder to any Third-Party IP, except as may be incorporated in the Work Product by Vendor.

F. Contract, Section 5, Intellectual Property Matters, G) Return of Materials Pertaining to Work Product is hereby restated in its entirety as follows:

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things necessary to the understanding and operation of the work product and all things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

G. Contract, Section 5, Intellectual Property Matters, K) License to Customer is hereby restated in its entirety as follows:

If Vendor includes any Vendor IP, then Vendor grants to Customer, a limited, perpetual, irrevocable, royalty free, non-exclusive, license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP, solely to the extent such Vendor IP is necessary to use the Work Product, embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

H. Contract, Section 5, Intellectual Property Matters, L) Vendor Development Rights is hereby restated in its entirety as follows:

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such. Customer shall not and shall not permit any affiliates or third party to translate, reverse engineer, decompile, recompile, update, or modify any Vendor IP. If Customer provides any input, comments or suggestions regarding the Services, Vendor IP, or Vendor's business or technology plans, including comments or suggestions regarding the possible creation, development, modification, correction, improvement or enhancement of the Services or Vendor IP (collectively "Feedback"), then Customer shall grant and hereby grants Vendor a perpetual, nonexclusive, world-wide, royalty free, license to use such Feedback without restriction.

I. Contract, Section 10, Vendors Responsibility, A Indemnification, Item 3 Infringements is hereby restated in its entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any direct damages arising from all third party claims that the Work Product involve infringement of any United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, (v) Customer's combination or use of the Work Product or Service with software, services, or products developed by Customer or third parties or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing, or (iii) replace the Work Product or Services at no cost to Customer with non-infringing substitutes provided that the substitutes do not entail a material diminution in function in Customer's reasonable estimation.

(Remainder of page intentionally left blank)

Vendor Contract No. _____

This Contract is executed to be effective as of the date of last signature.

SOFTWAREONE, INC.

Authorized By: ____Signature on File____

Name: __ William Quinn _____

Title: _ General Manager State and Local Goverment ____

Date: _ 11/20/2017 _____

The State of Texas, acting by and through the Department of Information Resources

Authorized By:____Signature on File_____

Name: _ Hershel Becker _____

Title: __ Chief Procurement Officer _____

Date: ____ 11/21/2017 _____

Office of General Counsel: _Signature on File____ Date: ____ 11/21/2017 _____

Appendix A
Standard Terms and Conditions for Product and Services Contracts

Table of Contents

1.	Contract Scope	1
2.	No Quantity Guarantees.	1
3.	Definitions	1
4.	General Provisions.	2
	A. Entire Agreement	2
	B. Modification of Contract Terms and/or Amendments	2
	C. Invalid Term or Condition.....	3
	D. Assignment	3
	E. Survival	3
	F. Choice of Law	4
	G. Limitation of Authority	4
	H. Proof of Financial Stability.....	4
	I. Data Location.....	4
5.	Intellectual Property Matters.....	4
	A. Definitions	4
	B. Ownership.	5
	C. Further Actions.	6
	D. Waiver of Moral Rights.....	6
	E. Confidentiality.	6
	F. Injunctive Relief.....	7
	G. Return of Materials Pertaining to Work Product.	7
	H. Vendor License to Use.....	7
	I. Third-Party Underlying and Derivative Works.	7
	J. Agreement with Subcontracts.....	7
	K. License to Customer.	8
	L. Vendor Development Rights.	8
6.	Product Terms and Conditions.....	8
	A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards.....	8
	B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)	9
7.	Contract Fulfillment and Promotion	9
	A. Service, Sales and Support of the Contract.....	10
	B. Use of Order Fulfillers and Resellers	10
	1) Designation of Order Fulfillers and Resellers.....	10
	2) Changes in Order Fulfiller and Reseller List	10

Appendix A
Standard Terms and Conditions for Product and Services Contracts

3)	Order Fulfller and Reseller Pricing to Customer	10
C.	Product Warranty and Return Policies.....	11
D.	Customer Site Preparation	11
E.	Internet Access to Contract and Pricing Information.....	11
1)	Vendor Webpage	11
2)	Accurate and Timely Contract Information	12
3)	Webpage Compliance Checks.....	12
4)	Webpage Changes	12
5)	Use of Access Data Prohibited	12
6)	Responsibility for Content	12
F.	DIR Logo.....	12
G.	Vendor and Order Fulfller and Reseller Logo	12
H.	Trade Show Participation	13
I.	Orientation Meeting.....	13
J.	Performance Review Meetings	13
K.	DIR Cost Avoidance	13
8.	Pricing, Purchase Orders, Invoices, and Payments	13
A.	Manufacturer’s Suggested Retail Price (MSRP) or List Price.....	13
B.	Customer Discount	14
C.	Customer Price	14
D.	Shipping and Handling Fees	14
E.	Tax-Exempt.....	14
F.	Travel Expense Reimbursement.....	14
G.	Changes to Prices	15
H.	Purchase Orders	15
I.	Invoices.....	15
J.	Payments.....	16
9.	Contract Administration.....	16
A.	Contract Managers.....	16
1)	State Contract Manager.....	16
2)	Vendor Contract Manager	16
B.	Reporting and Administrative Fees	16
1)	Reporting Responsibility	16
2)	Detailed Monthly Report	16
3)	Historically Underutilized Businesses Subcontract Reports	17
4)	DIR Administrative Fee	17
5)	Accurate and Timely Submission of Reports	17
C.	Records and Audit	18
D.	Contract Administration Notification	19
10.	Vendor Responsibilities.....	19
A.	Indemnification	19
1)	INDEPENDENT CONTRACTOR	19
2)	ACTS OR OMISSIONS.....	19
3)	INFRINGEMENTS	20
4)	PROPERTY DAMAGE.....	20

Appendix A
Standard Terms and Conditions for Product and Services Contracts

B.	Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE	20
C.	Vendor Certifications.....	21
D.	Education Department General Administrative Regulations (EDGAR)	23
E.	Ability to Conduct Business in Texas	23
F.	Equal Opportunity Compliance	23
G.	Use of Subcontractors	24
H.	Responsibility for Actions	24
I.	Confidentiality	24
J.	Security of Premises, Equipment, Data and Personnel.....	24
K.	Background and/or Criminal History Investigation	25
L.	Limitation of Liability	25
M.	Overcharges.....	25
N.	Prohibited Conduct	25
O.	Required Insurance Coverage	26
P.	Use of State Property	27
Q.	Immigration	27
R.	Public Disclosure.....	28
S.	Product and/or Services Substitutions	28
T.	Secure Erasure of Hard Disk Products and/or Services.....	28
U.	Deceptive Trade Practices; Unfair Business Practices.....	28
V.	Drug Free Workplace Policy	28
W.	Accessibility of Public Information	28
X.	Vendor Reporting Requirements	29
Y.	Cybersecurity Training.....	29
11.	Contract Enforcement.....	29
A.	Enforcement of Contract and Dispute Resolution	29
B.	Termination	29
1)	Termination for Non-Appropriation	30
2)	Absolute Right.....	30
3)	Termination for Convenience	30
4)	Termination for Cause	31
5)	Immediate Termination or Suspension	31
6)	Customer Rights Under Termination.....	31
7)	Vendor or Order Fulfiller or Reseller Rights Under Termination.....	32
C.	Force Majeure	32
12.	Notification.....	32
A.	Notices.....	32
B.	Handling of Written Complaints.....	32
13.	Captions	33

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope .

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall provide the products and services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfillers and/or Reseller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees.

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and services will be procured through the Contract.

3. Definitions

A. **Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes

- used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

- B. **Compliance Check** – an audit of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. **Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. **CPA** – refers to the Texas Comptroller of Public Accounts.
- E. **Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. **Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. **Reseller** – any third party approved by Vendor to sell to eligible Customers under this Contract. Vendor will flow this Contract’s terms and conditions to its Resellers under his Contract, except that pricing shall be as follows: Vendor offers pricing to its Reseller(s) and such Resellers shall resell to the eligible Customers products under this Contract at or below the price(s) in Appendix C, Pricing Index, of this Contract. Resellers may receive Purchase Orders and fulfill them in their own name. All terms and conditions of this Contract shall apply to both Vendor and Reseller.
- H. **Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- I. **State** – refers to the State of Texas.

4. **General Provisions.**

A. **Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. **Modification of Contract Terms and/or Amendments**

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) DIR may amend the contract upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.
- 3) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller and Reseller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any

Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

4) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, price (subject to the maximum prices set forth in Appendix C), and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.

2) If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

D. Assignment

1) DIR may assign the Contract to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

2) Vendor may assign the Contract with prior written approval to a subsidiary, parent company, affiliate, or successor. Assignment of the Contract by vendor under the above terms shall require written notification by Vendor and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor or Order Filler or Reseller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

H. Proof of Financial Stability

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

I. Data Location

Regardless of any other provision of this Contract or its incorporated or referenced documents, all of the data for State of Texas Customers identified by the State as requiring their data to remain in the continental United States shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise. For all local governments and education customers within the State of Texas, as well as Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. NOTE: CLIENTS SHOULD CONSIDER WHETHER THEY REQUIRE CONTINENTAL US-ONLY DATA LOCATION AND HANDLING AND MAKE VENDOR AWARE OF THEIR REQUIREMENTS.

5. Intellectual Property Matters

A. Definitions

1) "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or

conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.

5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor

and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such

written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes [1 TAC 206](#), [1 TAC 213](#), and in the [Worldwide Web Consortium WCAG 2.0 AA](#) technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations.

1) Upon request, and prior to a DIR customer purchase, Vendors must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such competed ACRs already exist, and there have been no changes to the product / service since the time of the original document completion.

Vendors claiming that a proposed product or family of products is exempt from accessibility requirements must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.

2) Upon request, and prior to a DIR customer purchase for IT development services, Vendors must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Vendor's capability or ability to produce accessible electronic and information resources.

Additionally, vendors must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

3) Upon request, and prior to a DIR customer purchase for COTS products, or IT development services Vendors must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.

Also upon request, vendors must provide additional documentation that supports the information contained in the formentioned completed forms in #1,2,3. Examples may include but are not limited to executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

B. Use of Order Fulfillers and Resellers

DIR agrees to permit Vendor to utilize designated Order Fulfillers and Resellers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers and Resellers

a) Vendor may designate Order Fulfillers and Resellers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers and Resellers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiler and Reseller information: Order Fulfiler or Reseller name, Order Fulfiler or Reseller business address, Order Fulfiler or Reseller CPA Identification Number, Order Fulfiler or Reseller contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Fulfiler or Reseller participation or request that Vendor name additional Order Fulfillers and Resellers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' and Resellers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and Resellers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and Resellers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers and Resellers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Fulfiler or Reseller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiler and Reseller List

Vendor may add or delete Order Fulfillers and Resellers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers and Resellers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfillers and Reseller information listed in Section 7.B.1.a above.

3) Order Fulfiler and Reseller Pricing to Customer

Order Fulfiler and Reseller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as

set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall only be offered by Order Fulfillers and Resellers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiler and Reseller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiler or Reseller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. Vendor must use a web hosting service that provides a dedicated internet protocol (IP) address. Vendor's website must have a Secure Sockets Layer (SSL) certificate and customers must access Vendor's website using Hyper Text Transfer Protocol **Secure** (HTTPS) and it will encrypt all communication between customer browser and website. The webpage must include:

- a) the products and services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP;
- e) MSRP or DIR Customer price;
- f) designated Order Fulfillers and Resellers;
- g) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers and Resellers;
- h) instructions for obtaining quotes and placing Purchase Orders;
- i) warranty policies;
- j) return policies;
- k) links to manufacturer Voluntary Product Accessibility Template (VPAT) for applicable products awarded;
- l) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- m) a link to the DIR "Cooperative Contracts" webpage; and
- n) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Webpage Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's webpage will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this webpage is compliant with the pricing as stated in the Contract.

4) Webpage Changes

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Vendor and Order Fulfiller and Reseller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller or Reseller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller and Reseller Logo

If DIR receives Vendor's or Order Fulfiller's or Reseller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's and Reseller's name and logo in the promotion of the Contract to

communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's or Reseller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's or Reseller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller and Reseller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers and Resellers may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's and Reseller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers and Resellers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's and Reseller's booth.

I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers and Resellers will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include reporting requirements. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference or by webinar, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers and Resellers for attendance at the meeting.

J. Performance Review Meetings

DIR may require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract, at DIR's discretion. The meetings may be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1

1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not

exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller or Reseller. Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfillers or Reseller when accepted by Vendor or Order Fulfiller or Reseller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Invoices shall be submitted by the Vendor or Order Fulfiller or Reseller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Vendor or Order Fulfiller or Reseller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller or Reseller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

9. Contract Administration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller or Reseller and a Customer, and iii) advising DIR of Order Fulfillers or Resellers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Vendor and Order Fulfillers and Resellers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the

previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment.

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery

of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

C. Records and Audit

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller and/or Reseller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers or Resellers and the requirement to cooperate is included in any subcontract or Order Fulfillers or Reseller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers and Resellers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's or Reseller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers and/or Resellers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfiller and/or Resellers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers and/or Resellers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or

electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller and/or Reseller personnel familiar with the Vendor's and/or Order Fulfiller's and/or Reseller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller and/or Reseller shall provide adequate office space to DIR staff during the performance of Compliance Check. DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers or Resellers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

1) Prior to execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts Director contact information.

10. Vendor Responsibilities

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W

A. Indemnification

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers or Resellers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR

WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor certifies on behalf of Vendor and its designated Order Fulfillers or Resellers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

- (viii) as of the effective date of the Contract, are not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and

- (xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.
- (xx) represent and warrant with Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers and Resellers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

D. Education Department General Administrative Regulations (EDGAR)

The Education Department of General Administrative Regulations (EDGAR) are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014. EDGAR encourages the use of cooperative agreements for procurement or use of common or share goods and services in order to foster greater economy and efficiency. DIR uses an open market competitive procurement process to award contracts as required by Texas Government Code 2054 and 2157. If Vendor provides evidence of its EDGAR compliance that DIR to the best of information and belief, finds to be satisfactory, then DIR may identify Vendor as certifying that all or a portion of Vendor's listings are EDGAR eligible, and DIR may then permit Vendor to so identify all or part of its offerings on Vendor's DIR website. In such cases, upon request from eligible DIR customer, Vendor must complete EDGAR certification affirmation forms to satisfy customer requirement.

E. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Filler and Reseller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

F. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in

compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

G. Use of Subcontractors

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

H. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

I. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

J. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and/or Order Fulfiller and/or Reseller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller and/or Reseller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller and/or Reseller shall be responsible for damage to Customer's equipment,

workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller and/or Reseller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

K. Background and/or Criminal History Investigation

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's and/or Reseller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer.. Should any employee or subcontractor of the Vendor and/or Order Fulfiller and/or Reseller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

L. Limitation of Liability

For any claims or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

M. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

N. Prohibited Conduct

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller nor Reseller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, Reseller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

O. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer.

If Vendor's services contracted under this Contract will not require Vendor to perform work on Customer's premises, or to use employer vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Vendor may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing a *Certification of Off-Premise Customer Services*, which shall serve to meet the insurance requirements.

All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

P. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other resources of the Customer or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

Q. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Chapter 673 of Texas Government Code, Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and
- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

R. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

No public disclosures or news releases pertaining to this contract shall be made by Vendor without prior written approval of DIR.

S. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Substitutions are not permitted without the written permission of DIR or Customer.

T. Secure Erasure of Hard Disk Products and/or Services

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

U. Deceptive Trade Practices; Unfair Business Practices

1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

V. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

W. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

X. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

Y. Cybersecurity Training

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Vendor, or a subcontractor, officer, or employee of Vendor, will have access to a state computer system or database, then Vendor shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Vendor shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

In all instances of termination or expiration, Vendor shall be required to provide a list of all Purchase Orders, and Purchase Order detail that are open as of the date of termination or expiration. Further, Vendor shall continue to report sales and pay administrative fees for the duration of all such Purchase Orders.

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller and/or Reseller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller and/or Reseller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller or Reseller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller or Reseller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller or Reseller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

7) Vendor or Order Fulfiller or Reseller Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller or Reseller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller or Reseller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - ☐ Section 2 c. - Yes
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - ☐ Section 2 c. - No
 - ☐ Section 2 d. - Yes
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - ☐ Section 2 c. - No
 - ☐ Section 2 d. - No
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
 - ☒ Section 1 - Respondent and Requisition Information
 - ☒ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - ☒ Section 3 - Self Performing Justification
 - ☒ Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Software ONE, Inc. State of Texas VID #: 1-39-15-1504-700
 Point of Contact: Margarita Apodaca Phone #: 916-539-2241
 E-mail Address: margarita.apodaca@softwareone.com Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Requisition #: DIR-TSO-TMP-398 RFO#DIR-TSO-TMP-404 Bid Open Date: 7/11/2017
 (mm/dd/yyyy)

Enter your company's name here: Software ONE, Inc.Requisition #: DIR-TSO-TMP-404**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☒ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Software ONE, Inc.Requisition #: DIR-TSO-TMP-404**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Software ONE, Inc.Requisition #: DIR-TSO-TMP-404

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

For over 30 years, Software ONE has been providing software licensing and software related value added services as its core business. We have the tools, processes and people to fulfill the contract.

1. Software ONE, Inc. is an authorized Microsoft LSP buying direct from the publisher. Microsoft does not allow us to purchase the licenses from another LSP and then resale them to the customer. We have a direct relationship.
2. SoftwareONE will use its own employees to provide all the required sales, services and operational support for this contract. We staff buyers, account managers, insides sales, contracts manager, SLED general manager, back-end operational legal, finance and sales support.
3. Software ONE will utilize its own proprietary on-line catalog.
4. Software licenses are downloaded by the client directly from the publisher site. (no shipping required)
5. Value added services will be preformed by SoftwareONE account manager and or SoftwareONE Technical Services personnel.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature on File

Margarita Apodaca

Operations Analyst

6/29/2017

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

Rev. 10/16

Requisition #: DIR-TSO-TMP-404

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Item Number: _____ Description: _____

[illegible]

Page 1 of 1
(Attachment A)

HSP Good Faith Effort - Method B (Attachment B)

Rev. 10/16

Enter your company's name here: Software ONE, Inc.

Requisition #: DIR-TSO-TMP-404

IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If Yes, continue to SECTION B-4.)

☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.

b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No

c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev.10/16

Enter your company's name here: Software ONE, Inc.

Requisition #: DIR-TSO-TMP-404

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name:	Software ONE, Inc.	State of Texas VID #:	1-39-15-1504-700
Point-of-Contact:	Margarita Apodaca	Phone #:	916-539-2241
E-mail Address:	margarita.apodaca@softwareone.com	Fax #:	

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name:		Phone #:	
Point-of-Contact:		Bid Open Date:	7/11/2017
Requisition #:	DIR-TSO-TMP-404		(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____ .
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: ☐ - Not Applicable

4. Bonding/Insurance Requirements: ☐ - Not Applicable

5. Location to review plans/specifications: ☐ - Not Applicable

DIR-TSO-4061
SOFTWARE ONE, INC
APPENDIX C PRICING INDEX (per Amendment 1)

Publisher Category	Publisher Discount Level	DIR Customer Discount (from Publisher Discount Level)
Enterprise Agreement (comprised of subcategories as listed below)		18.21%
Office Professional/Standard	Level D less 7.5%	
Windows Pro Desktop Operating System	Level D less 7.5%	
Core CAL/Enterprise CAL Suite (to include stand alone components)	Level D less 6%	
All other or additional EA licensing	Level D	
Enterprise Subscription Agreement	Level D less 2%	18.21%
Select Plus Government	Level D	17.75%
Select Plus Academic	Level D	17.75%
This Contract covers the entire Microsoft Catalogue of products and Related Services plus any and all government and education volume licensing MSRP special Discount programs.		13.00% to 18.21% Depending on the Type of Software License negotiated
Software Related Services, such as installation, Configuration, training etc., will be provided upon request.		
Description	UNIT COST	DIR Customer Discount (from MSRP)
Project Manager	Hourly	15.00%
Senior Technical Lead	Hourly	15.00%
Technical Lead	Hourly	15.00%
Project Coordinator	Hourly	15.00%
Senior Delivery Lead	Hourly	15.00%

DIR-TSO-4061
SOFTWARE ONE, INC
APPENDIX C PRICING INDEX (per Amendment 1)

Description	UNIT COST	DIR Customer Discount (from MSRP)
Delivery Lead	Hourly	15.00%
Senior Project Coordinator	Hourly	15.00%
Information Security Specialist	Hourly	15.00%
Security Engineer	Hourly	15.00%
Delivery Architect	Hourly	15.00%
Delivery Manager	Hourly	15.00%
DevOps Engineer	Hourly	15.00%
Software Asset Management - Associate Delivery Role	Hourly	15.00%
Software Asset Management - Delivery Role	Hourly	15.00%
Software Asset Management - Senior Delivery Role	Hourly	15.00%
Software Asset Management - Project Coordinator	Hourly	15.00%
Software Asset Management - Practice Lead (Advisory Lead)	Hourly	15.00%
Software Asset Management - Team Lead	Hourly	15.00%



Statement of Work

Exchange and Teams Deployments

Prepared exclusively for:

City of Sherman
220 W Mulberry St.
Sherman, TX 75090
USA

By:

SoftwareONE
20875 Crossroads Cir #1
Waukesha, WI 53186
USA

9/26/2021

2.0

This Statement of Work is valid for 30 days from the date listed above.

Document History

Version

Name	Role	Review Date	Notes/Changes	Version
Mena Gawargi	SOW Author	9/14/2021	Creation	1.0
Mena Gawargi	SOW Author	9/26/2021	Milestone Edits	2.0

Contacts: City of Sherman

Name	Position	Contact Tel / Email
Shawn Hackworth	IT Manager	Tel: +1-903-892-7318 Email: ShawnH@cityofsherman.com

Contacts: SoftwareONE

Name	Position	Contact Tel / Email
Phil Bushman	Software Portfolio Advisor	Tel: +1-262-953-5243 Email: phillip.bushman@SoftwareONE.com
Mena Gawargi	Solution Specialist	Tel: +1-262-953-5245 Email: mena.gawargi@SoftwareONE.com

DISCLAIMER

This publication contains confidential and proprietary information that is protected by copyright. SoftwareONE reserves all rights thereto. SoftwareONE shall not be liable for obvious typing and arithmetic errors in any document provided by SoftwareONE. Liability for damages directly and indirectly associated with the supply or use of this document is limited in accordance with the supply or use of this document is excluded as far as legally permissible.

The SoftwareONE Services Statement of Work presented herein is intended exclusively as a guide to enable City of Sherman's representatives to evaluate the offering of SoftwareONE. It must not be copied, reproduced, passed to third parties or used for engineering purposes without the express permission of SoftwareONE.

Copyright © 2021 by SoftwareONE All rights reserved. SOFTWAREONE (or Software One, Inc. or SoftwareONE) is a registered trademark of SoftwareONE AG. All other trademarks, service marks or trade names appearing herein are the property of their respective owners.

Contents

1. Preface 4

2. Executive Summary 5

3. Scope of Work 7

4. Other Requirements 22

5. Specific Contract Details & Authorization 26

1. Preface

- a. This statement of work dated 9/26/2021 (hereinafter: "Statement of Work") governs duties and scope of the service engagement between City of Sherman and SoftwareONE ("SoftwareONE"). This Statement of Work is entered into under SoftwareONE's standard terms and conditions (the "T&Cs"), a copy of which are available at www.softwareone.com. The terms of the Services Agreement or the T&Cs, as applicable, shall govern this Statement of Work, along with any non-disclosure agreement in place between SoftwareONE and City of Sherman. In case of any inconsistencies between the relevant documents, the terms of the Services Agreement or the T&Cs will control, unless all of the following apply: (i) the Statement of Work clearly identifies the applicable section of the Services Agreement or T&Cs that is to be modified; and (ii) the Statement of Work clearly states that such provision supersedes the conflicting or inconsistent provision in the Services Agreement or T&C's.

2. Executive Summary

- a. This Statement of Work has been developed following the recent Office 365 strategy discussions as a solution to better manage City of Sherman's future workplace environment.
- b. City of Sherman has decided to adopt Office 365 to meet its business goals. This Statement of Work outlines out how SoftwareONE will design and build the ideal IT environment to help you meet business objectives.
- c. The following key elements have been highlighted as a priority by City of Sherman
 - i. Enable users to enjoy a single sign-on experience with existing network credentials when accessing Office 365 cloud applications
 - ii. Embrace a hybrid migration of email to the cloud to maintain functionality between on-premises and cloud users during the transition
 - iii. Deploy Core Teams functionality for IM, Presence, Chat, Conferencing, and Collaboration
 - iv. Office 365 transition for efficiency, usability, and reliability.
- d. SoftwareONE's Delivery Management will implement the program of recommended change across City of Sherman's business. SoftwareONE's project leadership team will explain and shape the delivery to meet City of Sherman timeline pressures.
- e. This Statement of Work details how SoftwareONE will provide City of Sherman with the following services through the migration to Office 365 Exchange Online:
 - i. Allow users to retain their current credentials to access all in scope cloud services, making the migration to Office 365 as seamless as possible for City of Sherman
 - ii. Recovered capacity from onsite hardware with mail/user files transferred to Office 365, dramatically reducing the costs of future hardware refreshes
 - iii. Reduced cost and complexity of delivering the mail services by consolidating email data onto Office 365, recovering the licensing and storage costs
- f. The SoftwareONE Microsoft Teams Business Productivity Advisory (BPA) engagement will demonstrate how City of Sherman can improve chat, collaboration, teamwork, voice, meetings, and video into the applications that are already being used for seamless communications:
 - i. The BPA will provide a clear and customized vision on how Microsoft Teams can improve productivity and make City of Sherman more effective, while freeing up valuable IT resources to focus on high-value business engagements
 - ii. SoftwareONE will help develop City of Sherman's business and IT priorities through workshops, aligning these priorities to produce City of Sherman's Unified Communications Vision Statement, a document is created via a consistent model focused on understanding and documenting specific business objectives
 - iii. Initially a business and IT focused workshop with the key stakeholders, to understand the following key elements, will be facilitated:
 - 1) Understand City of Sherman business and IT priorities to define the ideal environment
 - 2) Review City of Sherman's "As Is" Environment – understand the current technology footprint and business process
 - 3) Demonstrate new "Productivity and Collaboration Gains" possible with Microsoft Teams – whiteboard new business scenarios developing productivity enhancements across City of Sherman's organization

- 4) Architect City of Sherman's "To Be" environment with Microsoft Teams – whiteboard the specific solutions required from Office 365 to meet the productivity gains
- 5) Once the workshops are complete, the SoftwareONE Architect will then produce the Unified Communications Vision Statement document before presenting the findings to City of Sherman
- g. Following completion of the BPA, SoftwareONE will deploy Microsoft Teams for City of Sherman. Key features of this new solution will include:
 - i. Persistent, chat-based communications
 - ii. A centralized and customizable workplace for user collaboration
 - iii. Seamless integration with other Microsoft applications
 - iv. High-definition peer-to-peer Teams audio and video
 - v. Teams Meetings with dial-in conferencing capabilities
- h. The total cost for the engagement is \$66,830.00 (Contract DIR-TSO-4061), exclusive of travel costs using local Architect and Engineering resources coupled with global Project Management, Technical, and Delivery resources.

3. Scope of Work

3.1. Solution

- a. This Statement of Work outlines the requirements, scope of activities, timelines, and deployment team required to transition City of Sherman to Office 365 utilizing the Delivery Services of SoftwareONE. The following services are included for City of Sherman:
 - i. The scope of work for the Exchange Hybrid Configuration and Migration includes:
 - 1) Design and Planning
 - 2) Configure Office 365 Identity Management Solution
 - 3) Exchange Hybrid Pilot Setup and Transition
 - 4) Office 365 Transition
 - ii. The scope of work for the Microsoft Teams Advisory and Deployment includes:
 - 1) Microsoft Teams BPA Discovery workshops
 - 2) Preparation of City of Sherman Office 365 environment for Microsoft Teams
 - 3) Deployment and base configuration of Microsoft Teams
 - 4) Deployment and configuration of Microsoft Teams meetings
 - 5) Teams solution testing and remediation
 - 6) Deployment phase documentation and cutover
 - 7) Project Closure

3.2. Scope

- a. The following scope is defined for the engagement:

City of Sherman Variables	In Scope	Out of Scope
Location	220 W Mulberry St. Sherman, TX 75090 USA	Non City of Sherman offices
Organization(s)	City of Sherman	Anything else

3.2.2. In Scope

- a. The following table defines the scope for the project

Reference	Scope item	Owner
S001	a) SoftwareONE will design and implement Identity solution enabling: i. Credentials users currently use to access their devices to enable authentication to Office 365 work loads ii. Users to authenticate to Office 365 services using Seamless Single Sign-On	SoftwareONE
S002	a) Migrate up to ten (10) mailboxes in a pilot phase for testing and validation	SoftwareONE
S003	a) Design, implement and manage the migration of up to four hundred (400) mailboxes from current Exchange 2016 to Office 365 Exchange Online including - mail items, calendar items, contacts	SoftwareONE

	and notes including assisting City of Sherman as they develop end user communications (for example, SoftwareONE will provide recommendations on items to be included in an e-mail notification template)	
S004	a) SoftwareONE will conduct Unified Communications Business Productivity Advisory workshops, including: i. Microsoft Teams BPA Discovery workshop ii. Business Case workshop iii. Architecture Planning workshop iv. Network Workshop v. Security and Compliance Overview workshop vi. Teams Meetings/Conferencing workshop vii. Teams Enterprise Voice workshop viii. Teams Administration and Compliance workshop ix. Personas and End-User Adoption workshops x. Device Strategy workshop xi. Execution Planning workshop xii. Documentation and Discovery wrap-up b) BPA documentation and development of the Teams vision statement	SoftwareONE
S005	a) SoftwareONE will assist City of Sherman with core Microsoft Teams configurations, including: i. Validation of tenant access and required licensing ii. DNS entry requirements guidance iii. Firewall port requirements guidance iv. Configure Teams client policies (per tenant) v. Configure Teams tenant-wide settings vi. Apply required licensing for Teams users vii. Configure Guest Access b) Perform general Teams compliance and Office 365 settings	SoftwareONE
S006	a) SoftwareONE will assist City of Sherman with Teams collaborative Meetings configurations, including: i. Configure Teams Meetings Dial-in Settings ii. Customize Teams Meetings invite b) Configure existing Teams room system integration with Teams	SoftwareONE
S007	a) SoftwareONE will assist City of Sherman with transitioning users to Teams, including: i. System testing and validation ii. End user training iii. System administrator training b) Solution documentation	SoftwareONE & City of Sherman

S008	a) City of Sherman will complete the final transition to Teams, including: i. Creation and delivery of end-user communications b) Scheduling and coordinating attendance to user communications	City of Sherman
------	--	-----------------

3.2.3. Out of Scope

- a. The following is out of scope for the project:
 - i. Support of any workstations not running a supported version of Office
 - ii. .PST migration;
 - iii. Mail archive migration;
 - iv. Public Folder migration or co-existence;
 - v. Active Directory remediation;
 - vi. Exchange Unified Messaging in Office 365
 - vii. Migration of Google Drive, Hangouts, or other Google products to Office 365
 - viii. Deployment of Office 365 EMS features not noted herein;
 - ix. Intune configurations or deployments other than as noted;
 - x. Any third-party MDM configuration updates;
 - xi. SharePoint or OneDrive for Business configurations or migrations other than as noted;
 - xii. On-premises Exchange remediation;
 - xiii. Deployment of any Microsoft Office 365 (or other) technologies not noted in this Statement of Work
 - xiv. Deployment of Teams Enterprise Voice;
 - xv. Assistance with obtaining or configuring Microsoft Calling Plans;
 - xvi. Configuration of Teams Direct Routing;
 - xvii. Any on-premises integrations with Microsoft Teams (paging systems, legacy PBX, Analog, etc.);
 - xviii. Deployment of any Microsoft Office 365 (or other) technologies not noted in this Statement of Work;
 - xix. Office Pro Plus deployment
 - xx. Office Pro Plus deployment; and
 - xxi. All other actions not described in Section 3.2.2.

3.3. Work Plan

3.3.1. Exchange Online Activities

a. Design and Planning

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Project kick off meeting b) Project plan, RAID log, and management reporting structure c) Creation of design documentation d) Creation of testing plan e) Creation of Migration plan f) Creation of project communication plan
Exclusions	a) Procurement of hardware b) Procurement of software licenses c) Installation of operating system d) Integration or changes required to current monitoring and backup solutions e) Identification of user teams and working groups that need to be migrated together f) Distribution and formatting for communications to end users g) All other work not identified in Inclusions
Customer Dependencies	a) Availability of City of Sherman resource for workshops b) Creation of base built servers required for implementation of capability defined in design documents
Key Obligations, Information, & Assumption(s)	a) Design documents will be approved by City of Sherman within 5 days of submission, if no comments are received within 5 days then the documents will be automatically baselined
Deliverable(s)	a) Design Documentation b) Test plan c) Project plan d) RAID Log, as needed e) Migration plan f) Project Communication plan

b. Exchange Hybrid Pilot Setup and Transition

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Installation and configuration of Azure AD Connect with Seamless Single Sign-On b) Configure Exchange Hybrid using existing Exchange 2016 organization i. Configure Auto-Discover and Outlook Anywhere, as needed to support hybrid Exchange ii. Configure Exchange certificates, as needed to support hybrid Exchange iii. Configure Exchange Web Services, as needed to support hybrid Exchange iv. Enable Hybrid services within Azure AD Connect v. Run Hybrid Configuration wizard c) Validate Hybrid connectivity using up to two (2) test mailboxes d) Assist City of Sherman as they create pilot user communications (for example, provide recommendations on items to be included in an email notification template) e) Transition up to ten (10) pilot mailboxes to Office 365 f) Validate functionality against the testing plan g) Repurpose existing Exchange 2016 server instance for ongoing object management
Exclusions	a) Delivery of training to end users b) Any floor walking or desk side support required during deployment c) Management of first line calls from end users d) Decommission of legacy services e) All other work not identified in Inclusions
Customer Dependencies	a) Approved change controls to allow user data migration b) End user communication content and process agreed c) Office 365 Global Administrator account in destination tenant d) End user communications and training in-progress or complete by City of Sherman
Key Obligations, Information, & Assumption(s)	a) Configuration and User migration activities will occur during office hours b) Existing Exchange environment will be used for Hybrid, no new Exchange instances will be introduced c) Existing Exchange environment must be running current CU/UR or one version prior
Deliverable(s)	a) Complete migration plan with ten (10) users migrated to Office 365 from Exchange on-premises environment

c. Office 365 Transition

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Prepare and migrate up to four hundred (400) production mailboxes to Office 365 i. Migrate production mailboxes in accordance with the migration plan ii. Validate successful transition against the success criteria iii. Remediate any failed mailbox migrations
Exclusions	a) Any direct communications or notifications to production end users by SoftwareONE b) Any direct end user support required during deployment c) Determination of user transition batching based on delegated relationships d) Management of first line calls from end users e) Any formal administrator training f) Installation of operating system or setup of any physical/virtual servers g) All other work not identified in Inclusions
Customer Dependencies	a) Approved change controls to allow user data migration b) End user communications and training in-progress or complete by City of Sherman c) Office 365 Global Administrator account in destination tenant
Key Obligations, Information, & Assumption(s)	a) Configuration and User migration activities will occur during office hours
Deliverable(s)	a) Complete migration of up to four (400) users migrated to Office 365 from Exchange on-premises

3.3.2. Teams Advisory Activities

a) Microsoft Teams BPA Discovery workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Business Productivity session kickoff and introductions b) Review goals for the BPA session c) Perform discovery of City of Sherman's environment with respect to Teams deployment and supportability
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

b) Business Case workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Jointly define business cases for Teams at City of Sherman b) Devise appropriate feature set configurations for each business case
Exclusions	a) Any actual configuration work b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

c) Architecture Planning workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Review City of Sherman's current infrastructure with regard to supporting the deployment of Microsoft Teams b) Define going-forward architectural configuration to support the desired Teams feature set
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here

Dependencies	a) Availability of appropriate City of Sherman resources for the workshops b) Network maps, drawings, and other artifacts to assist with evaluating network supportability of Microsoft Teams
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

d) Network Workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Discuss network requirements for proper Teams functionality with City of Sherman network team b) Provide DNS and Firewall guidance
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops b) Network maps, drawings, and other artifacts to assist with evaluating network supportability of Microsoft Teams
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

e) Security and Compliance Overview workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Review Office 365 security and compliance capabilities with Teams b) Review licensing requirements for various security components c) Determine security and compliance settings which will be configured for Teams
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops b) Appropriate Office 365 licensing to support the desired security and compliance features
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

f) Teams Meetings/Conferencing workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Review Teams capabilities for collaborative meetings and dial-in conferencing b) Review the Teams roadmap for continued feature development c) Finalize Teams meetings configurations for the production rollout
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

g) Teams Enterprise Voice workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Review City of Sherman Enterprise Voice requirements b) Review Teams capabilities for Enterprise Voice c) Review PSTN (calling plan) options d) Review the Teams roadmap for continued feature development e) Determine final Enterprise Voice configuration for Teams deployment
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

h) Teams Administration and Compliance workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Review administrative options for management of Teams b) Discuss City of Sherman requirements for Teams management c) Develop strategy for ongoing administration and configuration needs

Exclusions	a) Tasks other than as noted under "Inclusions" here b) Detailed operations or support guides for City of Sherman management of Microsoft Teams
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

i) Personas and End-User Adoption workshops

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Review various personas (usage profiles) present in City of Sherman's environment and make joint determinations on Teams feature set to match needs b) Discuss best practices for user communications and training to drive adoption of Microsoft Teams
Exclusions	a) SoftwareONE development of user communications or training plans b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

j) Device Strategy workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Review City of Sherman device needs with Teams voice b) Review supported device options for use with Teams c) Discuss plans for device rollout and support
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here c) SoftwareONE will not provide devices as part of the Device Strategy Workshop
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state

Deliverable(s)	a) No deliverables specific to this phase of the engagement
-----------------------	---

k) Execution Planning workshop

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Discuss suggested rollout plans for the City of Sherman's production rollout of Teams b) Assist in City of Sherman's development of a long-term strategy for executing on the Teams deployment c) Development of deployment plan for Teams
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) The ability of City of Sherman resources to provide detailed information regarding the current environment as well as the desired Microsoft Teams end state
Deliverable(s)	a) No deliverables specific to this phase of the engagement

l) Teams Documentation and Discovery wrap-up

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) SoftwareONE will create formal documentation for the BPA engagement, including defining City of Sherman's vision statement for Microsoft Teams b) Town-hall type meeting (remote webinar) to discuss findings and ensure alignment on the deployment plan for Teams
Exclusions	a) Any actual configuration or remediation work b) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources for the workshops
Key Information / Assumption(s)	a) Successful completion of BPA workshops in order to gather appropriate information to craft findings and recommendations
Deliverable(s)	a) BPA documentation, including Teams vision statement, and joint review

3.3.3. Teams Deployment Activities

a) Preparation of City of Sherman Office 365 environment for Microsoft Teams

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
-----------------------------	---

Inclusions	a) Review and validate SSO configuration for Teams connectivity b) Validate Office 365 Tenant for Teams support c) Ensure appropriate licensing in place for Teams d) Ensure network configurations (firewall, etc.) completed by City of Sherman to support Teams connectivity
Exclusions	a) Any actual configurations of City of Sherman's network b) Procurement of Office 365 licensing c) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources b) Access City of Sherman's Office 365 tenant
Key Information / Assumption(s)	a) Properly defined configuration from BPA session for the Teams setup
Deliverable(s)	a) No deliverables specific to this phase of the engagement

b) Deployment and base configuration of Microsoft Teams

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Configure Teams in Office 365 b) Configure Teams client policies c) Configure tenant-wide settings for Teams d) Configure guest access to Teams e) Configure appropriate compliance settings for Teams
Exclusions	a) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources b) Access City of Sherman's Office 365 tenant
Key Information / Assumption(s)	a) Properly defined configuration from BPA session for the Teams setup
Deliverable(s)	a) Working Teams base configuration

c) Deployment and configuration of Microsoft Teams meetings

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Configure Teams meetings b) Configure settings for Teams meetings c) Configure dial-in access number for conferencing d) Modify, as appropriate, Teams meetings invite

Exclusions	a) Any custom Teams integrations with third party or Microsoft applications b) Any deployment of Teams Room Systems with Microsoft Teams for meetings c) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources b) Access City of Sherman's Office 365 tenant
Key Information / Assumption(s)	a) Properly defined configuration from BPA session for the Teams setup
Deliverable(s)	a) Working Teams Meetings configuration

d) Teams solution testing and remediation

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Validate test plan with City of Sherman b) Fully test all Teams functionality as per the jointly-defined scope and feature set c) Remediate, as applicable, features known to not be working correction
Exclusions	a) Tasks other than as noted under "Inclusions" here
Dependencies	a) Availability of appropriate City of Sherman resources b) Access to City of Sherman's Office 365 tenant
Key Information / Assumption(s)	a) Acceptance of SoftwareONE's Teams testing plan by City of Sherman
Deliverable(s)	a) Completed Teams test plan

e) Deployment phase documentation and cutover

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Complete solution documentation b) Provide up to two (2) hours of basic Administrator remote webinar training
Exclusions	a) Tasks other than as noted under "Inclusions" here b) Onsite training c) Onsite cutover support
Dependencies	a) Availability of appropriate City of Sherman resources b) Attendance to training sessions
Key Information / Assumption(s)	a) Acceptance of solution documentation
Deliverable(s)	a) Copies of webinar end-user training materials, if provided by SoftwareONE b) Solution documentation

f) Project Closure

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 220 W Mulberry St., Sherman, TX, 75090, USA
Inclusions	a) Project closure meeting i. Review project accomplishments ii. Review final updated project design document iii. Confirm completion of the project iv. Obtain sign-off
Deliverable(s)	a) Project Closure documentation

3.3.4. Known Risks and Issues

Ref	Owner	Risk	Impact	Severity
R001	City of Sherman	N/A	N/A	H/M/L

3.3.5. Milestone(s)

- a. The milestones below indicate the projected business days of completion from engagement commencement time (T)

Milestone Overview			
Milestone ID	Description	Payment	Projected Date of Completion
M01	40% of project services costs:	\$26,732.00	SOW Signature
M02	20% of project services costs:	\$13,366.00	Completion of Phase 3.3.1b "Exchange Hybrid Pilot Setup and Transition"
M03	20% of project services costs:	\$13,366.00	Completion of Phase 3.3.2I "Teams Documentation and Discovery wrap-up"
M04	final 20% of project services costs:	\$13,366.00	Upon project completion

3.4. Place of Performance

- a. This project will be performed as outlined in Section 3.3 by a SoftwareONE consultant. If no location is identified in this Statement of Work, then the project will be performed remotely. Any requested travel by SoftwareONE to City of Sherman's location will be subject to additional costs as detailed in Section 4.4 of this Statement of Work, and subject to the approval of SoftwareONE.
- b. The assigned resources will be available during the business hours of 9:00am to 5:00 pm EST with the exception of the holidays listed below in the company holiday schedule to perform the project. Any technical support request are subject to acknowledgement, acceptance and completion during the

business hours outlined above as it relates to the selected service level. In the event that the primary resource is out of the office for planned leave, a backup point of contact will be communicated to City of Sherman. The resource assignment will be communicated to City of Sherman during the initial project kick-off communication. Any planned departures from the SoftwareONE project team will be discussed with City of Sherman at least one (1) month in advance of the resource leaving the project whenever possible. SoftwareONE reserves the right to make these changes at any time and without agreement from City of Sherman.

SoftwareONE 2021 Holiday Schedule	
November 25 th	Thanksgiving Day
November 26 th	Day after Thanksgiving
December 24 th	Christmas Eve
December 25 th	Christmas Day

3.5. Acceptance Criteria

- a. SoftwareONE will provide a deliverable acceptance form that is to be completed by City of Sherman at the completion of the engagement. If the form is not received countersigned by SoftwareONE within ten (10) business days, then the deliverables will be deemed accepted.

4. Other Requirements

4.1. SoftwareONE Responsibilities

- a. SoftwareONE will assign a primary consultant to the engagement that will serve as the focal point for all communications relative to this engagement.
- b. SoftwareONE will make all reasonable efforts to communicate with City of Sherman to ensure the completion of engagement deliverables.
- c. SoftwareONE will make a reasonable good faith effort to ensure the accuracy of the data it reports to the City of Sherman based on industry standards.
- d. SoftwareONE will provide information needed by City of Sherman to complete the engagement. This information will be provided in accordance with the engagement timeline agreed upon by both parties.
- e. SoftwareONE shall ensure that City of Sherman is notified of any issues likely to impact this Statement of Work.
- f. SoftwareONE has provided an escalation path as outlined below starting with the primary contact (1st level) and moving up. This is the path that should be followed when escalating any issues with the engagement.

SoftwareONE Escalation Path			
Level	Name and position	Email address	Phone number
1	SoftwareONE Project Manager – TBD	TBD upon project commencement	TBD
2	Phil Bushman, Software Portfolio Advisor	phillip.bushman@SoftwareONE.com	+1-262-953-5243
3	Mena Gawargi, Solution Specialist	mena.gawargi@SoftwareONE.com	+1-262-953-5245
4	Khristy Young, Technology Services Practice Lead	khristy.young@softwareone.com	+1 (415) 510-6670

4.2. City of Sherman Responsibilities

- a. City of Sherman shall designate a representative to be City of Sherman's primary contact. This individual shall be the focal point for all communications relative to this engagement and shall have the authority to act on City of Sherman's behalf in matters regarding this engagement. City of Sherman shall ensure that this person has all necessary signing authority to approve milestones and deliverables. City of Sherman shall notify SoftwareONE of any change in this assignment.
- b. City of Sherman shall provide information needed by SoftwareONE to complete the engagement. This information will be provided in accordance with the engagement timeline agreed upon by both parties.
- c. SoftwareONE shall make reasonable efforts to schedule all training, consultant access, and other deliverables that involve City of Sherman participation. However, it is ultimately City of Sherman's responsibility to propose times and agree to a schedule. Non-use of those services does not entitle City of Sherman to a reduction in engagement costs.
- d. City of Sherman shall ensure that SoftwareONE is notified of any issues likely to impact this Statement of Work.

- e. City of Sherman has provided an escalation path as outlined below starting with the primary contact (1st level) and moving up. City of Sherman shall follow this path when escalating any issues with this Statement of Work or the engagement described herein.

City of Sherman Escalation Path			
Level	Name and position	Email address	Phone number
1	Shawn Hackworth, IT Manager	ShawnH@cityofsherman.com	+1 903-892-7318
2			
3			

4.3. Limitations, Exclusions & Assumptions

- SoftwareONE does not guarantee any cost savings or decrease in software spend as a direct result of this engagement.
- SoftwareONE does not guarantee compliance with Sarbanes-Oxley, HIPAA, or any other regulatory or industry documentation requirements.
- Any activities not documented in this Statement of Work are considered outside of scope for this Statement of Work and SoftwareONE will not have any obligation to provide any Services or create any deliverables except as provided herein.
- SoftwareONE will not be liable for failure or delay in delivering services or deliverables if such failure or delay arises from City of Sherman's failure to perform its responsibilities, City of Sherman providing inaccurate information or City of Sherman's inaction or delayed action. Delays caused by City of Sherman will not entitle City of Sherman to any change in the cost for this engagement.
- All work performed under this Statement of Work is limited in scope by the abilities of any 3rd party tool(s) utilized for this engagement by City of Sherman. Additionally, SoftwareONE does not guarantee the accuracy of data collected by a third party tool.
- EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THE SERVICES AGREEMENT, T&CS AND THIS STATEMENT OF WORK, SOFTWAREONE HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

4.4. Engagement Expense Overview

- a. SoftwareONE has proposed a Fixed Price approach to executing this engagement of work. City of Sherman agrees that the below totals represent SoftwareONE's commercially reasonable efforts to accurately determine the labor required to perform the defined engagement.

Engagement Services				
SKU	Description	Unit Cost	QTY	Ext. Cost
SWOTS	Exchange Online Hybrid Migration	\$39,908.00	1	\$39,908.00
SWOTS	Teams Advisory and Core Deployment	\$26,922.00	1	\$26,922.00
Total Cost:				US \$66,830.00 USD*

*Contract DIR-TSO-4061

4.5. Travel & Expenses

- a. City of Sherman will be charged for all travel and related expenses for any resources (not local) that are part of the SoftwareONE team delivering this project that are not explicitly listed as included in the scope of the engagement in Section 3.3. All travel will require pre-approval by both the City of Sherman and SoftwareONE. The charges will be calculated for each resource in accordance with SoftwareONE's travel policy, which is available upon request. City of Sherman will be billed no later than quarterly at the end of the current calendar quarter following the completion of the event and travel.

4.6. Billing & Invoicing

- a. The engagement will be billed in accordance with the engagement expense overview in Section 4.4 unless a specific payment schedule is defined. If any third party funding will be used in lieu of direct payment, City of Sherman agrees to work with SoftwareONE to fulfil any program requirements for payment, otherwise City of Sherman will be billed in accordance with the following:
 - i. City of Sherman will issue SoftwareONE a purchase order at execution of this Statement of Work that will be charged against in accordance with the payment schedule. No services shall be delivered prior to the acceptance of a proper payment promissory by SoftwareONE. In the case that City of Sherman's normal payment process does not require a purchase order, City of Sherman will provide SoftwareONE a written confirmation that a purchase order is not required and this Statement of Work shall serve as authorization.
 - ii. Costs incurred by delays caused by City of Sherman, or a request by City of Sherman's onsite staff to delay or change the scope of this engagement, will be billed on a time & material basis at the rate of \$2,080 per day.
 - iii. SoftwareONE's price does not include any federal, state, or local sales, use, or excise taxes. Appropriate taxes will be added to the price, as necessary, unless City of Sherman provides lawful evidence of exemption.

4.7. Provision for Change of Scope

- a. The costs outlined in this Statement of Work are based on SoftwareONE executing the required activities as listed. Any deviation from this scope or schedule may result in corresponding changes to the price, completion dates, responsibilities, or other provisions of the engagement. Changes must be agreed to by both parties and do not come into effect until a Change Request Form or a separate Statement of Work has been executed by City of Sherman and SoftwareONE.

4.8. Term & Termination

4.8.1. Term

- a. This Statement of Work will remain in effect in accordance with the term and any renewal terms as set out in the Services Agreement unless terminated earlier in accordance with the provisions set forth below.

4.8.2. Termination

- a. This Statement of Work may be terminated immediately upon written notice:
 - i. By either party if the other party commits a material breach or default of any obligation hereunder and fails to remedy such breach within thirty (30) days of receipt of a written notice by the other party which specifies the material breach;
 - ii. By either party, if a receiver, liquidator or trustee of the other party is appointed by court order or receivership, insolvency or bankruptcy proceedings are commenced or a petition is filed by or against the other party under any applicable liquidation, conservatorship, bankruptcy, moratorium,

insolvency, reorganization or similar laws or the other party makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts generally as they become due or otherwise takes any action or causes any action to be taken which the other party reasonably believes will cause the acting party to be unable to perform its financial obligations under the Statement of Work.

- iii. By SoftwareONE, if City of Sherman fails to pay any amount due hereunder and does not cure such default within fifteen (15) days of the date payment is due. SoftwareONE may suspend performance of services without prejudice to its right to terminate hereunder.
- iv. Upon termination of this Statement of Work in accordance with this section, City of Sherman will pay SoftwareONE for all services performed and any charges and expenses incurred by SoftwareONE up to the date of termination. Any rights or obligations of either party that have accrued prior to the termination shall not be affected by the termination of this Statement of Work. For the avoidance of doubt, termination of this Statement of Work may cause a termination of any licenses granted in association with this Statement of Work.

5. Specific Contract Details & Authorization

Between:	SoftwareONE 20875 Crossroads Cir #1 Waukesha, WI 53186 USA
And:	City of Sherman 220 W Mulberry St. Sherman, TX 75090 USA
Engagement Description	Exchange and Teams Deployments
Price:	\$66,830.00 USD

PO Number Issued, if applicable: _____

EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT AND AGREES THAT ITS TERMS AND CONDITIONS INCLUDING ALL SCHEDULES, ARE BOTH REASONABLE AND ESSENTIAL REQUIREMENTS OF THE RELATIONSHIP HEREIN ESTABLISHED.

City of Sherman	SoftwareONE
By (Authorized Signature):	By (Authorized Signature):
Print Name:	Print Name:
Title:	Title:
Date:	Date:



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F. 1.

Meeting Date: 10/04/2021

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

***REQUEST TO ADVERTISE**

Water Treatment Plant Sludge Removal Project

Issue:

Requesting permission to advertise for bids the construction of the Water Treatment Plant Sludge Removal Project

Background:

This project is to remove sludge that has been dredged and stockpiled on-site for removal to the landfill. As the Water Treatment Plant operates, it slowly fills with sludge that periodically must be removed. This project is planned maintenance.

Origination:

Engineering Department

Financial Consideration:

This project is estimated to cost approximately \$200,000.00; funding is available in the Water Production FY 2022 Contracted Projects Fund. The cost of advertising is expected to be less than \$500.00.

Staff Recommendation:

It is recommended that the City Council authorize the staff to advertise the project for bid.

Alternatives:

As may be directed by the City Council

Attachments

Location Map



Water Treatment
Plant Sludge
Removal from Site

La Cima Rd



0 150 300 600 Feet

Esri Community Maps Contributor
© OpenStreetMap contributors

Sherman
CLASSIC TOWN. BROAD HORIZON.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

G. 1.

Meeting Date: 10/04/2021

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider the Appeal for a Variance to Allow Beer and Wine Sales within 300 feet of a School (Crutchfield Elementary); Ty Osmani, Owner, Lucky Stop #1, located at 415 South Dewey Avenue

Issue:

To consider the appeal of Lucky Stop #1 concerning the property located at 415 South Dewey Avenue to allow beer and wine sales within 300 feet of a school (Crutchfield Elementary)

Background:

Representatives for Lucky Stop #1 recently applied for a Beer Retail Dealer's Off-Premise License and a Wine Only Package Store Permit for their store located at 415 South Dewey Avenue. Upon inspection, it was determined that the property line for the store is located within 300 feet of the Crutchfield Elementary School property line.

According to Section 4.14.035 of the City's Code of Ordinances, entitled "Development Standards," the sale of beer and wine for off-premises consumption is not permitted within 300 feet of a public or private school or a day care center. This measurement of distance is provided for in State law and is measured from "property line to property line and in a direct line across intersections."

Origination:

The request for a variance originated with Ty Osmani, owner for Lucky Stop #1.

Financial Consideration:

There is no direct cost to the City of Sherman.

Staff Recommendation:

It is the recommendation of the staff that the City Council consider the appeal.

Alternatives:

The Council could choose not to consider the appeal.

Attachments

Application for BF-Q Permit

Letter of Denial

Letter of Appeal

Development Standards

Location Map



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Texans Helping Businesses & Protecting Communities

OFF-PREMISE PREQUALIFICATION PACKET

L-OFF (5/2021)

Submit this packet to the proper governmental entities to obtain certification for the type of license/permit for which you are applying as required by Sections 11.37, 11.39, 11.46(b), 61.37, 61.38, 61.42 and Rule §33.13

All statutory and rule references mentioned in this application refer to and can be found in the Texas Alcoholic Beverage Code or Rules located on our website. www.tabc.texas.gov/laws/code_and_rules.asp

LOCATION INFORMATION

1. Application for: ☒ Original			
☐ Reinstatement	☐ Reinstatement and Change of Trade Name	License/Permit Number <u>N/A</u>	
☐ Change of Location	☐ Change of Location and Trade Name	License/Permit Number _____	
2. Type of Off-Premise License/Permit			
☐ BQ Wine and Beer Retailer's Off-Premise Permit	☐ LP Local Distributor's Permit		
☒ BF Beer Retail Dealer's Off-Premise License	☐ E Local Cartage Permit		
☐ P Package Store Permit	☐ ET Local Cartage Transfer Permit		
☒ Q Wine Only Package Store Permit	☐ PS Package Store Tasting Permit		
3. Indicate Primary Business at this Location			
☐ Grocery/Market	☐ Convenience Store without Gas		
☐ Liquor Store	☐ Miscellaneous _____		
☒ Convenience Store with Gas			
4. Trade Name of Location (Name of store, business, etc.) <u>Lucky Stop #1</u>			
5. Location Address <u>415 S Dewey Ave.</u>			
City <u>Sherman</u>		County <u>Grayson</u>	State <u>TX</u>
Zip Code <u>75090-6617</u>			
6. Mailing Address <u>4805 Bello Vista Ct</u>		City <u>Sherman</u>	State <u>TX</u>
Zip Code <u>75090-9235</u>			
7. Business Phone No. <u>pending approval</u>	Alternate Phone No. <u>903-624-9701</u>	E-mail Address <u>ty@luckyoilandgas.net</u>	

OWNER INFORMATION

8. Type of Owner		
☒ Individual	☐ Corporation	☐ City/County/University
☐ Partnership	☐ Limited Liability Company	☐ Other _____
☐ Limited Partnership	☐ Joint Venture	
☐ Limited Liability Partnership	☐ Trust	
9. Owner of Business /Applicant (Name of Corporation, LLC, etc.) <u>Ty Osmani</u>		

PRIMARY CONTACT PERSON

The primary contact person should be a person who can answer questions TABC may have about the application. The contact phone and email are mandatory and must be active and updated regularly. If additional information is needed, it will be requested from this contact person. Delays in responding to requests may delay the processing and approval of your permit/license.

10. Contact Person: <u>Edgar Korzeniowski</u>	Relation to Business: <u>Attorney</u>
Phone (mandatory): <u>(817) 562-7266</u>	Email (mandatory): <u>ekorzeniowski@griffithhughes.com</u>

TABC DATESTAMP

11. Is the applicant, a veteran-owned business?		☐ Yes ☒ No	
12. Is the applicant, a Historically Underutilized Business (HUB)?		☐ Yes ☒ No	
13. As indicated on the chart, enter the individuals that pertain to your business type: (For additional space, use Form L-OIC)			
Individual/Individual Owner		Limited Liability Company/All Officers or Managers	
Partnership/All Partners		Joint Venture/Venturers	
Limited Partnership/All General Partners		Trust/Trustee(s)	
Corporation/All Officers		City, County, University/Official	
Last Name Osmani	First Name Ty	MI	Title Individual Owner
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title

MEASUREMENT INFORMATION

Section 109.31 et. seq.

14. Will your business be located within 300 feet of a church or public hospital?		☐ Yes ☒ No
NOTE: For churches or public hospitals measure from front door to front door, along the property lines of the street fronts and in a direct line across intersections.		
15. Will your business be located within 300 feet of any private/public school?		☒ Yes ☐ No
NOTE: For private/public schools measure in a direct line from the nearest property line of the school to the nearest property line of the place of business, and in a direct line across intersections.		
NOTE: If located on or above the fifth story of a multistory building: measure in a direct line from the property line of the private/public school to property line of your place of business in a direct line across intersections vertically up the building at the property line to the base of the floor on which your business is located.		
16. Will your business be located within 1,000 feet of a private school?		☒ Yes ☐ No
17. Will your business be located within 1,000 feet of a public school?		☒ Yes ☐ No

PACKAGE STORE ACQUISITIONS ONLY

18. Has the business being acquired been in operation in the same county for more than one year before the acquisition?		☐ Yes ☐ No
If Yes , provide permit number for existing package store: _____		
If No , this does not qualify as an acquisition, and will be considered a new location.		

ALL APPLICANTS

19. CHECK HERE IF NOT IN CITY LIMITS ☐	
I, the applicant, have confirmed the location is not located within city limits, therefore city certifications are not required.	

COMPLETE THE FOLLOWING CHECKLIST BEFORE SUBMITTING YOUR APPLICATION

Per Sec. 102.01, a tied house is defined as any overlapping ownership between those engaged in the alcoholic beverage industry at different levels of the three-tier system. No person having an interest in a permit issued by TABC may secure or hold, directly or indirectly, an ownership interest in a business on a different level.

All required forms have been completed. I have reviewed all forms to ensure they are complete. I have obtained all required local and state certifications (pages 3-4). All application packets have been notarized. Phone numbers and email address for Contact Person are up to date. All additional documentation as required by the application packets is attached. If required, out of state criminal history checks are attached (PHS #7). Certification of publication in local newspaper has been completed (page 5). A copy of the newspaper publication is attached (page 5).	<table style="width: 100%;"> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No</td></tr> <tr><td>☐ Yes ☐ No ☐ N/A</td></tr> <tr><td>☐ Yes ☐ No ☐ N/A</td></tr> <tr><td>☐ Yes ☐ No ☐ N/A</td></tr> </table>	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A	☐ Yes ☐ No ☐ N/A	☐ Yes ☐ No ☐ N/A
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No											
☐ Yes ☐ No ☐ N/A											
☐ Yes ☐ No ☐ N/A											
☐ Yes ☐ No ☐ N/A											

WARNING AND SIGNATURE

If Applicant Is/Must Sign

Individual/Individual Owner

Corporation/Officer

Partnership/Partner

Limited Liability Company/ Officer or Manager

Limited Partnership/General Partner

WARNING: Section 101.69 of the Texas Alcoholic Beverage Code states: "...a person who knowingly makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the Commission and required to be sworn commits an offense punishable by imprisonment in the Texas Department of Criminal Justice for not less than 2 nor more than 10 years."

BY SIGNING YOU ARE SWEARING TO ALL INFORMATION AND ATTACHMENTS TO THIS PACKET.

PRINT
NAME

Ty Osmani

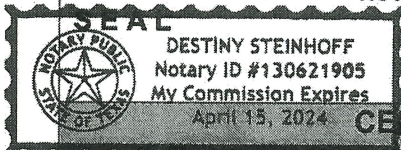
SIGN
HERE

TITLE Individual Owner

Before me, the undersigned authority, on this 17th day of July, 2021, the person whose name is signed to the foregoing application personally appeared and, duly sworn by me, states under oath that he or she has read the said application and that all the facts therein set forth are true and correct.

SIGN
HERE

NOTARY PUBLIC



CERTIFICATE OF CITY SECRETARY FOR P, Q, BF & BQ

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the city secretary or clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by ordinance.

I hereby certify on this _____ day of _____, 20____, that the location for which the license/permit is sought is inside the boundaries of this city or town, in a "wet" area for such license/permit, and not prohibited by charter or ordinance in reference to the sale of such alcoholic beverages.

OR

☐ I hereby refuse on this _____ day of _____, 20____ to certify this location.

SIGN
HERE

City Secretary/Clerk

City

TEXAS

SEAL

CERTIFICATE OF COUNTY CLERK FOR P, Q & BF

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the county clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by order.

I hereby certify on this _____ day of _____, 20____, that the location for which the license/permit is sought is in a "wet" area for such license/permit, and is not prohibited by any valid order of the Commissioner's Court.

OR

☐ I hereby refuse on this _____ day of _____, 20____ to certify this location.

SIGN
HERE

County Clerk

COUNTY

SEAL

CERTIFICATE OF COUNTY CLERK FOR BQ

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the county clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by order.

I hereby certify on this _____ day of _____, 20____, that the location for which the license/permit is sought as the place of business is in a "wet" area and is not prohibited by any valid order of the Commissioner's Court for a Wine and Beer Retailer's Off-Premise Permit.

Most current election for given location was held for:

- ☐ legal sale of all alcoholic beverages for off-premise consumption
- ☐ legal sale of all alcoholic beverages
- ☐ legal sale of all alcoholic beverages except mixed beverages
- ☐ legal sale of all alcoholic beverages including mixed beverages
- ☐ legal sale of mixed beverages
- ☐ legal sale of mixed beverages in restaurants by food and beverage certificate holders
- ☐ legal sale of wine on the premises of a holder of a winery permit
- ☐ legal sale of beer/wine (17%) on-premise or beer/wine off-premise **AFTER** Sept. 1, 1999
- ☐ legal sale of beer/wine (14%) on-premise or beer/wine off-premise **BEFORE** Sept. 1, 1999

OR

☐ I hereby refuse on this _____ day of _____, 20____ to certify this location.

SIGN
HERE _____ COUNTY
County Clerk

S E A L

COMPTROLLER OF PUBLIC ACCOUNTS CERTIFICATE

Sections 11.46(b) & 61.42(b)

This is to certify on this _____ day of _____, 20____, the applicant holds or has applied for and satisfies all legal requirements for the issuance of a Sales Tax Permit under the Limited Sales, Excise and Use Tax Act or the applicant as of this date is not required to hold a Sales Tax Permit and that none of the persons making this application are indebted to the State of Texas.

Sales Tax Permit Number _____ Outlet Number _____

Print Name of Comptroller Employee _____

Print Title of Comptroller Employee _____

SIGN
HERE _____ FIELD OFFICE _____

S E A L

PUBLISHER'S AFFIDAVIT (FOR BQ, BF, P & Q)

Sections 11.39 & 61.38

Name of newspaper		ATTACH PRINTED COPY OF THE NOTICE HERE
City, County		
Dates notice published in daily/weekly newspaper (MM/DD/YYYY)		
<i>Publisher or designee certifies attached notice was published in newspaper stated on dates shown.</i>		
Signature of publisher or designee		
Sworn to and subscribed before me on this date		
Signature of Notary Public		<u>Click here to see example of newspaper publication</u>
SEAL		



**TEXAS ALCOHOLIC
BEVERAGE COMMISSION**
Texans Helping Businesses & Protecting Communities

OWNERSHIP INFORMATION
Continued for Prequalification Packet

L-OIC
(5/2021)

LOCATION INFORMATION

1. Trade Name of Location

Lucky Stop # 1

2. Location Address

415 S Dewey Ave.

City Sherman	County Grayson	State TX	Zip Code 75090-6617
-----------------	-------------------	-------------	------------------------

OWNER INFORMATION

3. Type of Owner

- | | | |
|--|--|---|
| ☒ Individual | ☐ Corporation | ☐ City/County/University |
| ☐ Partnership | ☐ Limited Liability Company | ☐ Other _____ |
| ☐ Limited Partnership | ☐ Joint Venture | |
| ☐ Limited Liability Partnership | ☐ Trust | |

Last Name Osmani	First Name Ty	MI	Title Individual Owner
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title

PUBLIC RECORDS DEPARTMENT

Phone No. (903) 892-7204

Fax No. (903) 892-7394

July 20, 2021

Lucky Stop #1
Attn: Ty Osmani
4805 Bello Vista Ct
Sherman, Texas 75090

**RE: Lucky Stop #1
415 S. Dewey Ave**

Dear Mr. Osmani:

I am in receipt of your application for a "Beer Retail Dealer's Off-Premise License" and a "Wine Only Package Store Permit" at the above referenced location. Upon inspection, it was found that your business is within 300 feet of a public school, and therefore the sale of alcoholic beverages, for which the license or permit is sought is prohibited by ordinance.

Section 4.14.035 of the City Code of Ordinance, states that the minimum distance between retail stores that offer the sale of beer and wine for off-premise consumption, and public or private schools or day care facilities, is 300 feet. Measurements are made from property line to property line and in a direct line across intersections.

The store must also be 300 feet from churches and hospitals. This measurement is made along the property lines of the street fronts and from front door to front door, in a direct line across intersections. I have included a copy of Article 4.14 from the City Code of Ordinances, for your information.

Sincerely,



Linda Ashby
City Clerk

cc: Ryan Pittman, Attorney, Abernathy, Roeder, Boyd, Hullett
Rob Rae, Director of Development Services

GRIFFITH & HUGHES PLLC
ATTORNEYS AT LAW
ARLINGTON DOWNS TOWER
2225 E RANDOL MILL ROAD, SUITE 106
ARLINGTON, TX 76011

September 7, 2021

Linda Ashby
City Clerk's Office
P.O. Box 1106
Sherman, TX 75091-1106

VIA E-MAIL
lindaa@cityofsherman.com

Re: Tex. Alco. Bev. Code § 109.33(e) Alcohol Variance Request for 415 S. Dewey Ave., Sherman, TX 75090.

Dear Ms. Ashby,

On behalf of Ty Osmani (Owner), Griffith and Hughes PLLC (Representative), requests an alcohol variance under Tex. Alco. Bev. Code § 109.33(e), concerning the property located at 415 S. Dewey Ave., Sherman, TX 75090, to allow the sale of alcohol of alcohol within 300' of Crutchfield Elementary School (Public School) located at 521 Dewey Ave., Sherman, TX 75090.

Mr. Osmani intends to apply for a Wine Only Package Store (P), and Beer Retailer's Off-Premise License (BF) for the 415 S. Dewey Ave property. His mailing address for purposes of the TABC application would be 4805 Bello Vista Ct., Sherman, TX 75090.

Mr. Osmani does not dispute the City's determination that the property is located within 300' of a public school, per the July 20, 2021 letter from your office. Instead, Mr. Osmani believes that "enforcement of [Sherman, Tex, Code of Ordinances, art. 4.14 in this] particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, [and] creates an undue hardship on an applicant for a license or permit" per Tex. Alco. Bev. Code § 109.33(e).

Undue Hardship

Mr. Osmani is a long-time resident of Sherman Texas, and a small business owner. He has over 32 years of experience owning and operating convenience store and convenience store gas stations (“c-stores”). Mr. Osmani owns and operates six TABC licensed c-stores in Grayson County, two of which are located in this city, and the remaining in Dennison. He has good history with TABC regarding operation of the same.

On or about December 7, 2018, Mr. Osmani purchased 415 S. Dewey property for \$375,000, and the adjacent residence located at 405 S. Dewey Ave. for \$125,000 on or about June 28, 2019, with the intention of redeveloping the same¹, to comply with the 300’ buffer. Mr. Osmani secured the purchase of the properties through a personal line of credit at 5.75% interest.

Plans for redevelopment came to a halt, when our client discovered a sewer line would have to be moved at his own expense. The cost is prohibitive² and would exceed his allowable budget of \$400,000. Mr. Osmani was not aware of this hidden condition at the time of the purchase of any of these properties, and would have no reason to.

Should an alcohol variance be granted, Mr. Osmani would be able to fully renovate the existing location, and not have to move the sewer line. Otherwise, Mr. Osmani will suffer an undue hardship.

Mr. Osmani continues to pay several thousand dollars a month in loans³ for both properties, in addition to paying several thousand per year in property taxes⁴ for both properties.

The undue hardship will not be resolved, if he reopens the location without a TABC permit. Net profit margins for the average c-store are about 2%, and

¹ Mr. Osmani intended to diminish the foot print of the retail structure of the 415 S. Dewey location, or in the alternative raze the existing structure on 405 S. Dewey, and build a new retail structure in its place, to comply with the 300’ buffer.

² Mr. Osmani has been quoted \$50,000.00

³ Mr. Osmani pays \$2,925 a month for the 415 S. Dewey Ave property, and \$975 a month for the 405 S. Dewey Ave. property.

⁴ Mr. Osmani pays \$4,000 a year in property tax for the 415 S. Dewey Property, and \$1,200 a year in property tax for the 405 S. Dewey Ave. property

whereas other retailers is about 7%.⁵ This is because profit margins of costs of goods sold are razor thin and operating costs are very high. Capital expenses which have to be recouped, such as improvements to the building and land are also very high, and further lower net profit margins. Food and alcohol combined offer more opportunity for higher profit margins, which are necessary to offset low profit margin categories such as fuel or tobacco, which are generally sold at or slightly above cost. However, food sales alone are not enough.

The success or failure of a c-store business is dependent upon the draw of customers coming inside the retail location to make a purchase. The convenience feature of paying at the pump dissuades customers from coming inside a c-store and making a purchase. Unless the location has something else a customer wants (such as food and alcohol, which have higher profit margins), business is doomed. The 415 S. Dewey location is no exception. There is a reason why the prior business failed.

The 415 S. Dewey location cannot effectively compete with the Exxon station several blocks away (201 S. Dewey). The Exxon station holds TABC liquor license.

If the 415 S. Dewey Ave is not issued a liquor license, Mr. Osmani has no choice but to cut his losses, and put the property up for sale. The property as-is, is unmarketable as a c-store and will likely have to be sold at a substantial loss. Furthermore, it may have to be on the market for several years before a buyer is found.

Waste or Inefficient Use of Land

The 415 S. Dewey location has been unused well before Mr. Osmani's purchase. Vacant and unused property may contribute to urban blight, and public safety issues to residents including young school aged children.

Should an alcohol variance be granted, Mr. Osmani intends to operate a c-store at the location. He anticipates investing several hundred thousand in renovations to the property. This includes gutting and rebuilding the interior, and a new façade for the exterior. Mr. Osmani and his employees will work with the local police department to make sure that vagrants are trespassed from the location.

⁵ <https://www.convenience.org/Media/Daily/ND0806141>

Enforcement of art. 4.14 is not in the Best Interests of the Public

Waste or inefficient use of land is not in the best interests of the public. It is likely to continue in the long term unless Mr. Osmani is able to recoup his losses. The alternative is to issue an alcohol variance.

An alcohol variance benefits the sustainability and long-term viability of the neighborhood by reducing blight, discouraging vagrancy, adding jobs to the local economy, and improving public safety.

As indicated earlier, Ms. Osmani intends to spend several hundred thousand in capital expenses to improve the property. This will enhance the aesthetics of the neighborhood.

Mr. Osmani intends to hire six to ten employees, five of which would be full-time positions. He also intends to hire a part-time security guard for the first few months of operation. Any person who loiters or peddles at the location will be criminally trespassed.

Conclusion

Mr. Osmani respectfully requests that the foregoing variance request be placed on the next available City Council meeting. Although the open meetings act only requires 3 days' notice, *see* Tex. Gov't Code § 551.043, we would respectfully ask for 10 days, *compare* Tex. Alco. Bev. Code § 11.63 (Notice of Hearing), so we have sufficient notice to prepare and make arrangements to attend the same.

We would be available either in-person, or remotely, e.g. Zoom, Microsoft Teams, GoogleMeet, etc.

If any members of the City Council's Office would like to meet with Mr. Osmani prior to the vote, or have specific questions answered at vote, please let us know.

Sincerely,

/s/ Edgar M. Korzeniowski

Edgar M. Korzeniowski

Ryan S. Hughes

Office: (817) 562-9648

Direct: (817) 562-7266

ekorzeniowski@griffithhughes.com

rhughes@griffithhughes.com

cc: Ryan Pittman, City Attorney, VIA E-MAIL rpittman@abernathy-law.com

Sec. 4.14.035 Development standards

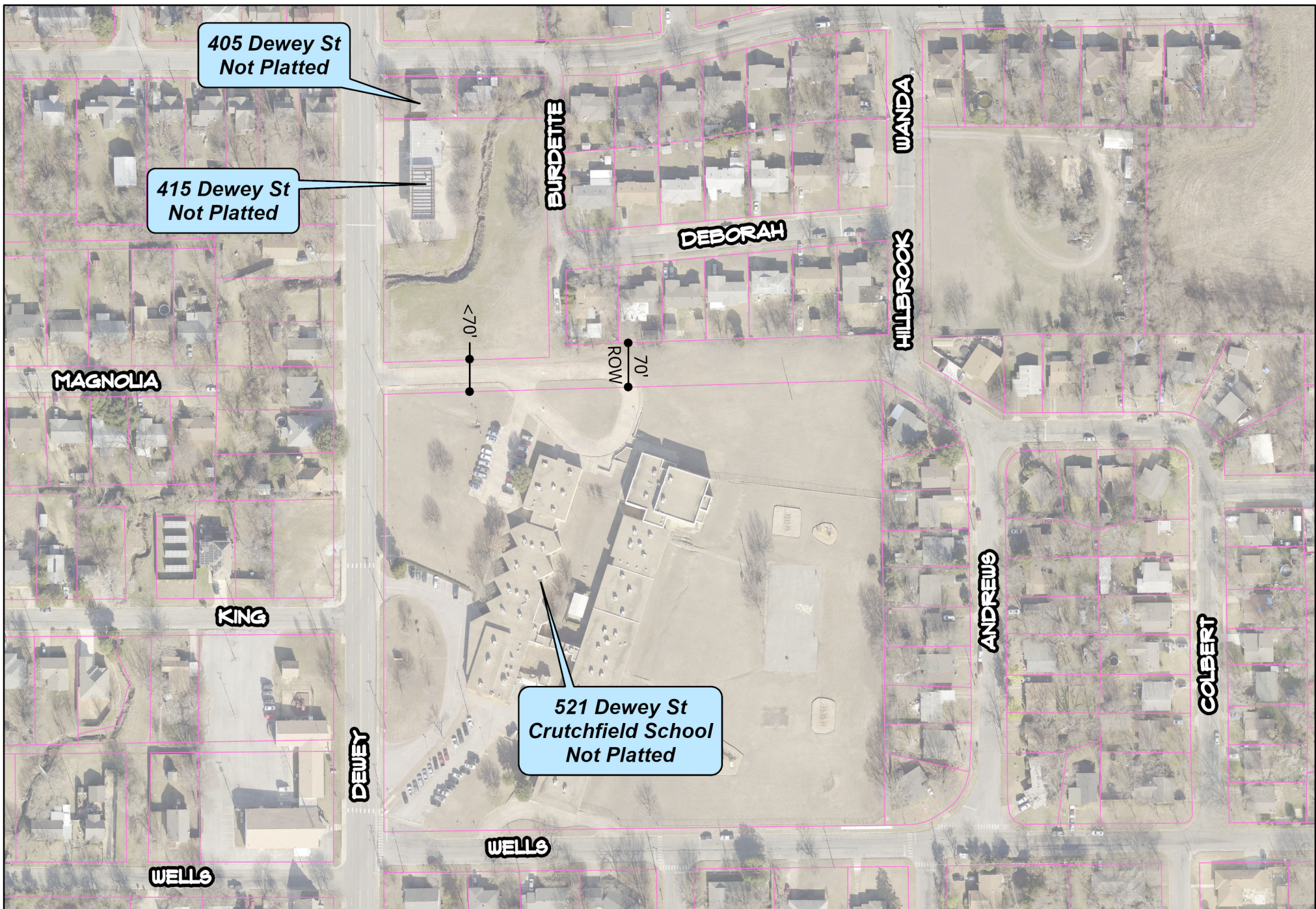
(a) Alcoholic beverages for off-premises consumption only. The sale of alcoholic beverages is permitted only in a zoning district where retail sales are allowed. The minimum distance between retail stores that offer the sale of alcoholic beverages for off-premises consumption and the following uses are:

(1) Schools (public and private) and day care centers: 300 feet. As allowed by state law, a school may petition for 1,000 feet. All measurements of distances are as provided for in state law (property line to property line and in a direct line across intersections).

(2) Churches: 300 feet. All measurements of distances are as provided for in state law (along the property lines of the street fronts and from front door to front door, and in a direct line across intersections).

(3) Hospitals: 300 feet. All measurements of distances are as provided for in state law (along the property lines of the street fronts and from front door to front door, and in a direct line across intersections).

(b) Mixed beverages in a restaurant by food and beverage certificate holders only. The sale of mixed beverages in a restaurant by food and beverage certificate holders is allowed in any zoning district where restaurants are allowed. The holder of a permit under this subsection shall be required to meet distance requirements as set forth in subsection (a), above.





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

G. 2.

Meeting Date: 10/04/2021

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider Approval of the Annexation Scheduling Plan for Adoption of Approximately 142.223 acres of land located North of FM 1417 (Vietnam Veterans Parkway), East of U.S. Highway 75 and South of Post Oak Creek, adjacent to the Sherman City Limits and in the City of Sherman's Extra Territorial Jurisdiction; and Directing the Department of Engineering Services to Develop a Service Plan for the Area to be Annexed Upon Approval of the Annexation Scheduling Plan

Issue:

To consider approval of the schedule for annexation of approximately 142.223 acres of land located North of FM 1417 (Vietnam Veterans Parkway), East of U.S. Highway 75 and South of Post Oak Creek, adjacent to the Sherman City Limits, and in the City's extra territorial jurisdiction (ETJ), in accordance with state law and the City Charter

Background:

The property owner, Pylon Trust, has requested annexation into the city limits of approximately 142.223 acres of land located North of FM 1417 (Vietnam Veterans Parkway), East of U.S. Highway 75 and South of Post Oak Creek, adjacent to the Sherman City Limits and in the City's ETJ. The Texas Local Government Code, Section 43.0673 provides the following:

- (a) The governing body of the municipality that elects to annex an area under this subchapter must first negotiate and enter into a written agreement with the owners of land in the area for the provision of services in the area.
- (b) The agreement must include:
 - (1) a list of each service the municipality will provide on the effective date of the annexation; and
 - (2) a schedule that includes the period within which the municipality will provide each service that is not provided on the effective date of the annexation.
- (c) The municipality is not required to provide a service that is not included in the agreement.

City staff recommends the public hearing on its intent to annex be held at the October 18th meeting and that action on the Annexation Ordinance be taken at the same meeting.

Origination:

Letter requesting annexation by Pylon Trust

Financial Consideration:

City accepts maintenance. A cost benefit analysis will be prepared prior to final action on this item.

Staff Recommendation:

City Staff recommends that the public hearing on the intent to annex be held at the October 18th called meeting and that action on the Annexation Ordinance be taken at the same meeting.

Alternatives:

None proposed

Attachments

Annexation Scheduling Plan - Travis Heights

Request for Annexation

Annexation Service Plan Agreement

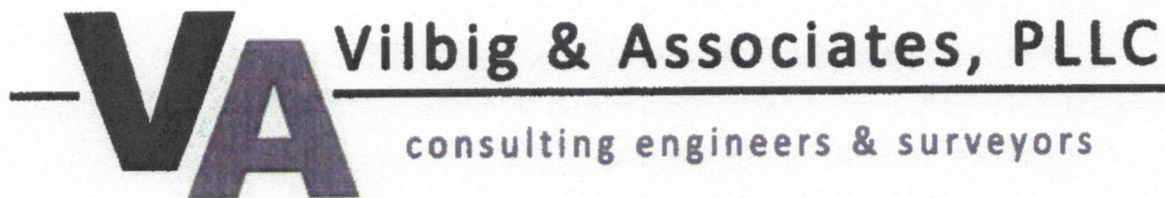
Exhibit A - Legal Description and Drawing

Aerial Location Map

ANNEXATION SCHEDULING PLAN

**Annexation of approximately 142.223 acres of land adjacent to the city limits,
located North of FM 1417 (Vietnam Veterans Parkway), East of U.S. Highway 75 and
South of Post Oak Creek,
being more specifically described as:
Travis Heights**

- Monday, October 4, 2021City Council sets public hearing date and accepts annexation application.
- Wednesday, October 6, 2021Send written notice via certified mail, RRR, to property owner(s) in area to be annexed, public or private entities that provide services in the area and any railroads that have ROW in the area to be annexed. Send written notice via certified mail, RRR, to each public school district in the area to be annexed. Such notices must contain the details described in Section 43.0561 of the Local Government Code. Provide draft of proposed annexation service plan agreement in accordance with Section 43.0672 of the Local Government Code.
- Friday, October 8, 2021.....Publish notice of public hearing in the City's official newspaper. Obtain required affidavit of publication from newspaper. Post notice of public hearing on City's website and keep posting up until the date of the hearing.
- Thursday, October 14, 2021.....Post notice of public hearing as required by Open Meetings Act.
- Monday, October 18, 2021Hold public hearing. (Regular Council Meeting)
- Monday, October 18, 2021Adopt ordinance. (Regular Council Meeting)



August 23, 2021

TO: City of Sherman

On Behalf of the owner Pylon Trust, Russel Spears, Trustee
and buyer Kingdom Road Equities

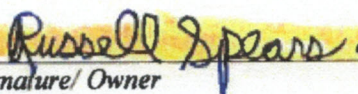
Current Owner
Pylon Trust
Russel Charles Spears, Trustee
4808 Park Vista Blvd.
Sherman, TX 75090

Buyer
KINGDOM ROAD EQUITIES, LLC
8650 Freeport Pkwy, Ste 100
Irving, TX 75063

Request annexation of the following into the City of Sherman

Situated in the City of Sherman, County of Grayson, State of Texas, being a part of the Preston Kitchen Survey, Abstract No. 667, and being a part of the 221.867 acre Tract 1 conveyed to Jerry L. Talley by deed of record in Volume 1768, Page 660, Deed Records, Grayson County, Texas, and being a part of the 3.00 acre Tract 2 conveyed to Pylon Farm Liquidating Trust by deed of record in Correction Warranty Deed Volume 2129, Page 394, Real Property Records, Grayson County, Texas and containing **142.223 acres** of land.:

Pylon Trust – Russel Spears, Trustee
Owner Name

 **-TRUSTEE**
Signature/ Owner

8-23-21
Date

Continuing the Tradition of the Vilbigs in Texas Business since 1888

517 W. Woodard | Denison, Texas 75020 | 214-352-7333

vilbig.com | Texas Engineer Firm F-5814 | Texas Survey Firm 10033000

ANNEXATION SERVICE PLAN AGREEMENT

This SERVICE PLAN AGREEMENT ("Agreement") is made and entered into by and among the CITY OF SHERMAN, TEXAS, a home-rule municipality ("Sherman"), and PYLON TRUST ("Landowner" or "Developer"). Sherman and Landowner or Developer are each referred to herein as a "party" or collectively as the "parties."

WHEREAS, Landowner is the sole owner of that certain tract of land consisting of 142.223± acres, situated in the Preston Kitchens Survey, Abstract No. 667, Grayson County, Texas, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein for all purposes (the "Property" or "Annexed Area"); and

WHEREAS, Landowner submitted to Sherman a voluntary request for annexation of the Property into the corporate limits of Sherman pursuant to Subchapter C-3 of Chapter 43 of the Texas Local Government Code; and

WHEREAS, Landowner acknowledges and agrees that in submitting the voluntary request for annexation of the Property, Landowner has fully investigated and is aware of the rights, duties and obligations that will apply to Landowner and its successors and assigns, as owner of the Property, in the event that the Sherman City Council adopts an ordinance annexing the Property into the corporate limits of Sherman (the "Annexation Ordinance"); and

WHEREAS, Landowner acknowledges and agrees that Sherman has complied or will comply with all requirements for the consideration of Landowner' request for annexation of the Property pursuant to Chapter 43 of the Texas Local Government Code, including holding a public hearing and providing the required public notices regarding the requested annexation; and

WHEREAS, Landowner acknowledges and agrees that the Property is eligible for annexation in all respects under Texas law; and

WHEREAS, the parties desire to enter into this Agreement pursuant to Section 43.0672 of the Texas Local Government Code to memorialize their agreement regarding the services Sherman will provide to the Property provided that the Sherman City Council adopts the Annexation Ordinance; and

WHEREAS, Landowner acknowledges and agrees that this Agreement fully complies with Section 43.0672 of the Texas Local Government Code; and

WHEREAS, Sherman has investigated and determined that it would be advantageous and beneficial to Sherman and its citizens to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Sherman and Landowner agree as follows:

1. **Incorporation of Recitals.** The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct, are incorporated into

the body of this Agreement and are adopted as findings of Sherman and Landowner.

2. **Land Subject to Agreement.** The land that is subject to this Agreement is the Property. Landowner represents that he is the sole owner of the Property.
3. **Agreement Conditioned on Annexation.** This Agreement and the rights, duties and obligations herein are subject to and conditioned on the Sherman City Council adopting the Annexation Ordinance within ninety (90) days after the Effective Date (hereinafter defined) of this Agreement. In the event that the Sherman City Council does not adopt the Annexation Ordinance within ninety (90) days after the Effective Date of this Agreement, this Agreement shall not be effective and neither party shall have any rights, duties or obligations of any kind under this Agreement. In the event Landowner argues or claims that a term, condition or provision of this Agreement or the Annexation Ordinance is invalid, illegal, void, unenforceable or unlawful, then Sherman has the option to terminate this Agreement, effective immediately.
4. **Agreed Service Plan.** Subject to the terms and conditions of this Agreement, the parties agree that Sherman shall furnish or provide for the following municipal services to the Property after annexation at the following levels and in accordance with the following schedule:
 - (a) Police Services.
 - (i) Patrolling, responses to calls and other routine police services, within the limits of existing personnel and equipment and in a manner consistent with the methods of Sherman, will be provided in the Annexed Area on the effective date of the Annexation Ordinance.
 - (ii) Upon ultimate development of the Annexed Area, the same level of police services will be provided to the Annexed Area as are furnished throughout Sherman at that time.
 - (b) Fire Services.
 - (i) Fire protection and emergency ambulance services and equipment, within the limits of existing personnel and equipment and the limits of available water and distances from existing fire stations and in a manner consistent with the methods of Sherman, will be provided to the Annexed Area upon the effective date of the Annexation Ordinance.
 - (ii) Upon ultimate development of the Annexed Area, the same level of fire and emergency ambulance services will be provided to the Annexed Area as are furnished throughout Sherman at that time.
 - (c) Environmental Health and Code Enforcement Services.
 - (i) Enforcement of Sherman's environmental health ordinances and

regulations, including but not limited to, weed and brush ordinances, junked and abandoned vehicle ordinances and animal control ordinances, shall be provided within the Annexed Area within sixty (60) days of the effective date of the Annexation Ordinance. Sherman's environmental health ordinances and regulations will be enforced through the use of existing personnel.

- (ii) As development and construction commence in the Annexed Area, sufficient personnel will be provided to furnish the Annexed Area with the same level of environmental health and code enforcement services as are furnished throughout Sherman at that time.

(d) Building Inspections.

- (i) Inspection services, including the review of building plans, the issuance of permits and the inspection of all buildings, plumbing, mechanical and electrical work to ensure compliance with Sherman's codes, regulations and ordinances will be provided within sixty (60) days of the effective date of the Annexation Ordinance. Existing personnel will be used to provide such services.
- (ii) All inspection services furnished by Sherman but not mentioned above will be provided to the Annexed Area beginning within sixty (60) days of the effective date of the Annexation Ordinance.

(e) Planning and Zoning Services.

- (i) The planning and zoning jurisdiction of Sherman will extend to the Annexed Area upon the effective date of the Annexation Ordinance. Sherman city planning will thereafter encompass the Annexed Area, and it shall be entitled to consideration for zoning in accordance with Sherman's Zoning Ordinance and Comprehensive Plan.
- (ii) Sherman's zoning, subdivision, sign and other ordinances shall be enforced in the Annexed Area beginning on the effective date of the Annexation Ordinance.

(f) Park and Recreation Services.

- (i) Inhabitants of the Annexed Area may utilize all existing park and recreational services, facilities and sites throughout Sherman beginning on the effective date of the Annexation Ordinance.
- (ii) Additional facilities and sites to serve the Annexed Area will be acquired, developed and maintained at locations and times provided by applicable plans, policies, programs and decisions of Sherman. The Annexed Area will

be included in all future plans for providing parks and recreation services to Sherman.

- (iii) Existing parks, playgrounds, swimming pools and other recreational facilities within the Annexed Area shall, upon dedication to and acceptance by Sherman, be maintained and operated by Sherman, but not otherwise.

(g) Solid Waste Collection Services.

- (i) Solid waste collection services shall be provided to the Annexed Area in accordance with Sherman's existing policies, beginning on the effective date of the Annexation Ordinance.
- (ii) As development and construction commence in the Annexed Area and population density increases in the Annexed Area, solid waste collection services shall be provided to the Annexed Area in accordance with Sherman's policies regarding frequency, changes and the like as are existing at that time.

(h) Streets.

- (i) Sherman's existing policies with regard to street maintenance, applicable throughout Sherman, shall apply to the Annexed Area beginning on the effective date of the Annexation Ordinance. Unless a street within the Annexed Area has been constructed or is improved to Sherman's standards and specifications, such street will not be maintained by Sherman. Notwithstanding anything to the contrary herein, private streets within the Annexed Area shall remain private streets after annexation and Sherman and the Landowner agree that Sherman shall have no obligation to maintain, repair or improve the private streets or to pay the costs thereof.
- (ii) As development, improvement or construction of streets to Sherman's standards commences within the Annexed Area, the policies of Sherman with regard to participation in the costs thereof, acceptance upon completion thereof and maintenance after completion thereof shall apply as such policies exist at that time.
- (iii) The same level of maintenance shall be provided to streets within the Annexed Area that are accepted by Sherman as is provided to streets throughout Sherman.
- (iv) Street lighting installed on streets improved to Sherman's standards and specifications shall be maintained by the appropriate franchise holder in accordance with existing Sherman policies.

(i) Water Services.

- (i) Connection to existing Sherman water mains for water service for domestic, commercial and industrial use within the Annexed Area will be provided in accordance with existing Sherman policies. Upon connection to existing mains, water will be provided at rates established by Sherman ordinances for such service throughout Sherman.
 - (ii) As development and construction commence on the Annexed Area, Sherman water mains will be extended in accordance with provisions of the Subdivision Ordinance and other applicable ordinances and regulations in effect at that time. Sherman's participation in the costs of such extensions shall be in accordance with the applicable Sherman ordinances and regulations in effect at that time. Such extensions will be commenced in accordance with state law.
 - (iii) Water mains installed or improved to Sherman's standards which are within the Annexed Area and are within dedicated easements shall be maintained by Sherman beginning on the effective date of the Annexation Ordinance.
 - (iv) Private water lines within the Annexed Area shall be maintained by their respective owners in accordance with existing policies applicable throughout Sherman.
- (j) Sanitary Sewer Services.
 - (i) Connections to existing Sherman sanitary sewer mains for sanitary sewer service in the Annexed Area will be provided in accordance with existing Sherman policies. Upon connection, sanitary sewer service will be provided at rates established by Sherman ordinances for such service throughout Sherman.
 - (ii) Sanitary sewer mains and/or lift stations installed or improved to Sherman's standards that are located in dedicated easements, are within the Annexed Area and are connected to Sherman mains will be maintained by Sherman beginning on the effective date of the Annexation Ordinance.
 - (iii) As development and construction commence in the Annexed Area, Sherman sanitary sewer services will be extended in accordance with provisions of the Subdivision Ordinance and other applicable Sherman ordinances and regulations in effect at that time. Sherman's participation in the costs of such extensions shall be in accordance with the applicable Sherman ordinances and regulations in effect at that time. Such extensions will be commenced in accordance with state law.
- (k) Miscellaneous.

- (i) General municipal administration and administrative services of Sherman shall be available to the Annexed Area beginning on the effective date of the Annexation Ordinance.
 - (ii) Notwithstanding anything set forth above, this Service Plan does not require all municipal services be provided as set forth above if different characteristics of topography, land use and population density are considered a sufficient basis for providing different levels of service.
- 5. **Default.** If Sherman fails to comply with the terms and conditions of this Agreement and such failure is not cured within a reasonable period of time after Sherman receives written notice of such failure from Landowner, then Landowner may seek disannexation pursuant to Section 43.141 of the Texas Local Government Code as its sole and exclusive remedy. In no event shall Sherman be liable to Landowner or any other owner or inhabitant of the Annexed Area for any direct, indirect, incidental, special or consequential damages arising out of this Agreement or for the cost of procurement of substitute services.
- 6. **Covenant Running with the Land.** This Agreement shall be a covenant running with the land and Property and shall be binding on Landowner and Landowner's successors and assigns.
- 7. **Limitations of Agreement.** Sherman ordinances covering property taxes, utility rates, permit fees, inspection fees, tree mitigation fees, impact fees, development fees, tap fees, pro-rata fees and the like are not affected by this Agreement. Further, this Agreement does not waive or limit any of the obligations of Landowner to Sherman under any ordinance, whether now existing or in the future arising.
- 8. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested; by facsimile; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Sherman, addressed to it at:

City of Sherman
Attn: Robby Hefton, City Manager
220 West Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7200
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

with a copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4044
Email: rpittman@abernathy-law.com

If to Landowner, addressed to him at:

PYLON TRUST
Attn: Russell Spears, Trustee
4808 Park Vista Blvd.
Sherman, Texas 75090
Telephone: (903) 818-0757
Email: rcspears@hotmail.com

10. **Release.** LANDOWNER HEREBY RELEASES, WAIVES AND HOLDS HARMLESS SHERMAN AND ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM ALL DAMAGES, INJURIES, CLAIMS, OBJECTIONS, LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS ARISING OUT OF OR RELATED TO SHERMAN'S ANNEXATION OF THE PROPERTY, SHERMAN'S CONSIDERATION OF ANNEXATION OF THE PROPERTY AND SHERMAN'S ADOPTION OF THE ANNEXATION ORDINANCE. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
11. **Vested Rights/Chapter 245 Waiver.** This Agreement shall confer no vested rights on the Property, or any portion thereof. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245 of the Texas Local Government Code, as amended, and nothing in this Agreement provides Sherman with fair notice of any project of Landowner. LANDOWNER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, UNDER THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
12. **Warranties/Representations.** All warranties, representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
13. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties.
14. **Governing Law; Venue.** The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law

principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.

15. **Consideration.** This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
16. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
17. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date (hereinafter defined). Landowner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and **Landowner covenants and agrees to indemnify, hold harmless, and defend Sherman and its Council members, officers, agents, representatives and employees against any and all claims asserted by any person claiming an ownership interest in the Property who has not signed the Agreement that arise in any way from Sherman's reliance on this Agreement.**
18. **Savings; Severability.** In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
19. **Representations.** Each party represents that it has carefully read this Agreement, knows the contents hereof, has consulted with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.
20. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
21. **Immunity.** It is expressly understood and agreed that, in the execution and performance of this Agreement, Sherman has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

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

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

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

Attested to by:

Linda Ashby, City Clerk

Approved as to Form and Content:
The Law Firm of Abernathy,
Roeder, Boyd & Hullett, P.C.

By: _____
Name: Ryan D. Pittman
Title: City Attorney

PYLON TRUST

By: _____
Printed Name: Russell Spears
Title: Trustee
Date: _____

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared **Robby Hefton**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the City Manager and duly authorized representative of the **CITY OF SHERMAN, TEXAS**, a home-rule municipality, and that he executed the same for the purposes and consideration therein stated and in the capacity therein stated as the act and deed of the City of Sherman, Texas.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this _____ day of _____, 2021.

Notary Public, State of Texas
My Commission Expires:_____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared **RUSSELL SPEARS**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me that he/she executed the same for the purposes and consideration therein stated and in the capacity therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this _____ day of _____, 2021.

Notary Public, State of Texas
My Commission Expires:_____

Exhibit A

Situated in the City of Sherman, County of Grayson, State of Texas, being a part of the Preston Kitchen Survey, Abstract No. 667, and being a part of the 221.867 acre Tract 1 conveyed to Jerry L. Talley by deed of record in Volume 1768, Page 660, Deed Records, Grayson County, Texas, and being a part of the 3.00 acre Tract 2 conveyed to Pylon Farm Liquidating Trust by deed of record in Correction Warranty Deed Volume 2129, Page 394, Real Property Records, Grayson County, Texas and being more particularly described by metes and bounds as follows:

Commencing at a 1/2" steel rod found in the north right-of-way line of E. FM Highway No. 1417 maintaining a point in the east line of said 221.867 acre Tract 1, the southwest corner of a 2.04 acre tract of land conveyed to the County of Grayson by deed of record in Volume 1660, Page 420 of said Deed Records and being the southeast corner of Lot 2, Block Eight of said Constitution Village Addition and the northeast corner of a 0.035 acre strip of land dedicated to the State of Texas by deed of record in Volume 1115, Page 500 of said Deed Records;

Thence **North 04°00'10" East**, along the east line of said 221.867 acre Tract 1 and the west line of said 2.04 acre tract, a distance of **317.85 feet** to a 1/2" steel rod found maintaining an angle point in the east line of said 221.867 acre Tract 1, the southwest corner of a 31.841 acre tract of land conveyed to Liberty Trust Co. LTD by deed of record in Volume 5645, Page 498 of said Official Public Records and the northwest corner of said 2.04 acre tract;

Thence **North 04°09'21" East**, continuing along the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract, a distance of **151.90 feet** to a point in the north line of the current Sherman City Limits for the **True-Point-of-Beginning**;

Thence **South 74°01'16" West**, along the north line of said Sherman City Limits, a distance of **319.18 feet** to a point in the east line of Constitution Village Addition to the City of Sherman, Texas as shown by plat of record in Volume 3, Page 73, Plat Records, Grayson County, Texas and being in an east line of said Sherman City Limits;

Thence northerly along the east line of said Constitution Village Addition and said Sherman City Limits the following calls and distances:

North 14°57'44" West, a distance of **42.55 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720;

North 68°02'16" East, a distance of **42.02 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720;

With a curve to the left having a **radius of 1,113.17 feet** (chord bears North 30°56'51" West, a distance of 352.23 feet) for an **arc length of 353.71 feet** to a 1/2" steel rod found with a cap marked RPLS 3694;

North 40°07'44" West, passing the northeast corner of said Constitution Village Addition and the southeast corner of Constitution Village Section Two to the City of Sherman, Texas as shown by plat of record in Volume 4, Page 22, of said Plat Records for a total distance of **379.31 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720 for an angle point in the east line of said Constitution Village Section Two;

Thence **North 14°57'44" West**, continuing along the east line of said Constitution Village Section Two and said Sherman City Limits passing a 5/8" steel rod found at a distance of 367.13 feet, a 1/2" steel rod found with a cap marked RPLS 3694 at a distance of 446.92 feet and a 1/2" steel rod found at a distance of 496.36 feet, passing a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720 for the southeast corner of said Lot 3, Block Nine

of Constitution Village Section Two at a distance of 657.15 feet and continuing for a total distance of **797.15 feet** to a point at the northeast corner of Replat of Constitution Village, Section Two, Block Five & Six to the City of Sherman, Texas as shown by plat of record in Volume 6, Page 31 of said Plat Records;

Thence westerly along the north line of said Replat of Constitution Village, Section Two, Block Five & Six and said Sherman City Limits the following calls and distances:

South 75°02'16" West, a distance of **322.37 feet** to a point;
with a curve to the right having a **radius of 380.00 feet** (chord bears North 71°33'43" West, a distance of 418.36 feet) an **arc length of 443.03 feet** to a point;
North 38°09'44" West, a distance of **152.87 feet** to a point;
South 51°50'16" West, a distance of **60.00 feet** to a point;

Thence over and across said 221.867 acre Tract 1 and said Sherman City Limits the following calls and distances:

North 38°09'44" West, a distance of **640.00 feet** to a point;
South 89°56'42" West, a distance of **299.67 feet** to a point in the east line of said 4.256 acre Tract 2 and the west line of said 221.867 acre Tract 1;
North 15°02'25" West, along the east line of said 4.256 acre Tract 2 and the west line of said 221.867 acre Tract 1, distance of **352.54 feet** to a point in the south line of a tract of land conveyed to Amy Shilling, and Marvin Shilling by deed of record in Volume 5735, Page 88 of said Official Public Records a 1/2" steel rod found maintaining the most northerly corner of said 4.256 acre Tract 2 and the southwest corner of said Shilling Tract bears South 75°05'42" West, a distance of 7.71 feet;

Thence **North 75°05'42" East**, along the south line of said Shilling Tract passing the southeast corner of said Shilling Tract continuing and the southwest corner of a 2.255 acre tract of land conveyed to Steven Wayne Culp by deed of record in Volume 5913, Page 152 of said Official Public Records and continuing for a total distance of **992.01 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720 for the southeast corner of said 2.255 acre tract;

Thence **North 14°52'37" West**, continuing along the west line of said 221.867 acre Tract 1 and the east line of said 2.255 acre tract passing a 1/2" steel rod found with a cap marked RPLS 4709 maintaining the northeast corner of said 2.255 acre tract at a distance of 159.75 feet and continuing along the east line of a 4.389 acre tract conveyed to Russell C. Spears by deed of record in Document No. 2017-15175 of said Official Public Records then passing a 1/2" steel rod found with a cap marked RPLS 4709 at the northeast corner of said 4.389 acre tract and the southeast corner of a 12.50 acre tract of land conveyed to Rene De Santiago by deed of record in Volume 5076, Page 887 of said Official Public Records, at a distance of 372.68 feet and continuing for a total distance of **1,157.21 feet** to a point in the center of Post Oak Creek being the most northerly northwest corner of said 221.867 acre Tract 1, the northeast corner of said 12.50 acre tract and a point in south line of a 3.0 acre Tract One conveyed to Reyna Fernando by deed of record in Volume 5898, Page 627, of said Official Public Records;

Thence **North 74°03'31" East**, along the north line of said 221.867 acre Tract 1, and the south line of said 3.0 acre Tract One passing the southeast corner of said 3.0 acre Tract One continuing along the south line of a 1.6407 acre Tract Two conveyed to Reyna Fernando by deed of record in Volume 5898, Page 627, of said Official Public Records, passing the southeast corner of said 1.6407 acre Tract Two and the southwest corner of a 3.5582 acre tract

of land conveyed to R.C. Slagle III and wife Susan Slagle by deed of record in Volume 3571, Page 371 of said Official Public Records and continuing for a total distance of **844.70 feet** to a point in the center of said Post Oak Creek;

Thence easterly along the center of said Post Oak Creek the following calls and distances:

South 26°50'20" East, a distance of 236.54 feet to a point;
South 31°43'13" West, a distance of 128.65 feet to a point;
South 78°41'02" West, a distance of 135.05 feet to a point;
South 12°01'22" West, a distance of 124.81 feet to a point;
South 47°42'33" East, a distance of 121.87 feet to a point;
South 71°31'59" East, a distance of 272.06 feet to a point;
North 21°46'48" East, a distance of 243.92 feet to a point;
North 84°04'45" East, a distance of 205.98 feet to a point;
South 74°42'47" East, a distance of 128.52 feet to a point;
North 52°36'44" East, a distance of 177.04 feet to a point;
South 73°20'47" East, a distance of 126.08 feet to a point;
South 11°46'47" West, a distance of 197.26 feet to a point;
South 20°08'20" East, a distance of 95.72 feet to a point;
South 49°13'56" East, a distance of 215.53 feet to a point;
South 59°15'06" East, a distance of 251.13 feet to a point;
South 82°28'14" East, a distance of 256.52 feet to a point;
South 46°37'56" East, a distance of 226.16 feet to a point;
South 49°30'43" East, for a distance of 38.27 feet to a point;

Thence southerly along a branch of said Post Oak Creek the following calls and distances:

South 40°54'19" West, a distance of 41.74 feet to a point;
South 77°28'21" West, a distance of 8.87 feet to a point;
North 59°14'50" West, a distance of 62.06 feet to a point;
South 84°25'20" West, a distance of 26.50 feet to a point;
South 33°43'57" West, a distance of 18.70 feet to a point;
South 39°49'26" East, a distance of 17.24 feet to a point;
South 78°39'39" East, a distance of 13.81 feet to a point;
South 40°25'46" East, a distance of 11.36 feet to a point;
South 03°24'14" East, a distance of 13.46 feet to a point;
South 05°34'34" East, a distance of 60.70 feet to a point;
North 52°54'03" East, a distance of 62.25 feet to a point;
South 70°33'10" East, a distance of 15.74 feet to a point;
South 46°00'46" East, a distance of 18.16 feet to a point;
South 01°00'05" West, a distance of 12.65 feet to a point;
South 32°54'58" West, a distance of 82.87 feet to a point;
South 55°54'22" East, a distance of 24.20 feet to a point;
North 67°06'01" East, a distance of 33.54 feet to a point;
South 47°04'59" East, a distance of 55.50 feet to a point;
South 30°14'14" East, a distance of 40.00 feet to a point;
South 23°04'00" West, a distance of 24.32 feet to a point;
South 58°42'08" West, a distance of 10.21 feet to a point;
North 37°44'17" West, a distance of 36.57 feet to a point;
South 67°01'45" West, a distance of 133.27 feet to a point;

South 34°21'02" West, a distance of 27.38 feet to a point;
South 01°06'27" West, a distance of 35.13 feet to a point;
South 54°24'14" West, a distance of 49.39 feet to a point;
South 24°11'47" East, a distance of 7.19 feet to a point;
South 56°45'30" East, a distance of 38.88 feet to a point;
South 07°16'52" East, a distance of 6.60 feet to a point;
South 22°03'34" West, a distance of 17.41 feet to a point;
South 59°10'35" West, a distance of 130.77 feet to a point;
South 03°41'52" East, a distance of 72.10 feet to a point;
South 02°27'22" West, a distance of 163.47 feet to a point;
South 36°57'14" West, a distance of 73.09 feet to a point;
South 03°35'32" East, a distance of 46.48 feet to a point;
South 05°20'31" East, a distance of 24.70 feet to a point;
South 25°06'40" West, a distance of 35.04 feet to a point;
South 14°58'36" East, a distance of 10.92 feet to a point;
South 54°08'00" East, a distance of 26.14 feet to a point;
South 36°53'42" West, a distance of 72.35 feet to a point;
South 15°23'35" West, a distance of 69.58 feet to a point;
South 31°35'48" East, a distance of 123.35 feet to a point;
South 23°02'12" East, a distance of 17.57 feet to a point;
South 17°19'47" West, a distance of 14.84 feet to a point;
South 87°52'48" West, a distance of 32.49 feet to a point;
South 15°56'20" East, a distance of 74.31 feet to a point;
South 54°26'51" West, a distance of 10.43 feet to a point;
North 82°03'22" West, a distance of 15.96 feet to a point;
South 75°15'02" West, a distance of 10.31 feet to a point;
South 22°07'36" West, a distance of 11.65 feet to a point;
South 18°17'39" East, a distance of 41.29 feet to a point;
South 08°48'06" West, a distance of 15.81 feet to a point;
South 67°56'55" West, a distance of 27.38 feet to a point;
North 71°33'42" West, a distance of 16.11 feet to a point;
South 37°46'50" West, a distance of 49.01 feet to a point;
South 13°05'02" East, a distance of 43.94 feet to a point;
South 32°46'54" West, a distance of 20.99 feet to a point;
South 85°13'05" West, a distance of 8.29 feet to a point;
North 42°28'19" West, a distance of 20.46 feet to a point;
South 79°20'07" West, a distance of 26.42 feet to a point;
South 02°59'09" East, a distance of 59.57 feet to a point;
South 43°11'04" East, a distance of 50.59 feet to a point;
South 02°50'53" West, a distance of 22.54 feet to a point;
South 23°48'48" West, a distance of 25.82 feet to a point;
South 46°03'06" West, a distance of 61.22 feet to a point;
South 07°31'26" East, a distance of 34.26 feet to a point;
South 32°39'07" East, a distance of 62.93 feet to a point;
South 05°49'38" East, a distance of 12.09 feet to a point;
South 44°00'25" West, a distance of 14.65 feet to a point;
South 79°00'52" West, a distance of 29.09 feet to a point;
South 48°40'58" West, a distance of 19.11 feet to a point;
South 14°40'38" West, a distance of 13.53 feet to a point;
South 27°44'31" East, a distance of 12.32 feet to a point;
North 69°19'32" East, a distance of 27.79 feet to a point;

South 72°08'51" East, a distance of **14.40 feet** to a point;
South 14°03'01" East, a distance of **12.93 feet** to a point;
South 39°56'47" West, a distance of **132.42 feet** to a point;
South 35°30'55" East, a distance of **64.43 feet** to a point;
South 48°42'35" East, a distance of **39.82 feet** to a point;
South 14°57'41" East, a distance of **20.51 feet** to a point;
South 09°40'31" West, a distance of **13.23 feet** to a point;
South 70°52'28" West, a distance of **12.64 feet** to a point;
North 59°26'01" West, a distance of **12.16 feet** to a point;
North 51°22'55" West, a distance of **13.51 feet** to a point;
South 36°53'35" West, a distance of **39.43 feet** to a point;
South 56°36'02" West, a distance of **29.30 feet** to a point;
South 05°02'57" East, a distance of **24.97 feet** to a point;
South 27°13'09" West, a distance of **81.25 feet** to a point;
South 01°52'23" West, a distance of **13.92 feet** to a point;
South 07°54'13" West, a distance of **89.12 feet** to a point;
South 50°06'24" West, a distance of **31.83 feet** to a point;
South 16°48'24" West, a distance of **24.43 feet** to a point;
South 26°50'30" West, a distance of **19.63 feet** to a point said point being in the east line of said 221.867 acre tract and the west line of a 31.841 acre tract of land conveyed to Liberty Trust Co. LTD by deed of record in Volume 5645, Page 498 of said Official Public Records;

Thence **South 18°58'03" East**, leaving said branch of Post Oak Creek and continuing along the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract, a distance of **24.78 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEYS RPLS 6720 for an angle point in the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract;

Thence **South 07°26'55" West**, continuing along the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract, a distance of **459.73 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEYS RPLS 6720 for an angle point;

Thence **South 04°09'21" West**, continuing along the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract, a distance of **29.77 feet** to the **Point-of-Beginning** and containing **142.223 acres** of land.

Copley Land Surveying



City Limit Annexation

Legal Description

CLS Job# 21040223

Situated in the City of Sherman, County of Grayson, State of Texas, being a part of the Preston Kitchen Survey, Abstract No. 667, and being a part of the 221.867 acre Tract 1 conveyed to Jerry L. Talley by deed of record in Volume 1768, Page 660, Deed Records, Grayson County, Texas, and being a part of the 3.00 acre Tract 2 conveyed to Pylon Farm Liquidating Trust by deed of record in Correction Warranty Deed Volume 2129, Page 394, Real Property Records, Grayson County, Texas and being more particularly described by metes and bounds as follows:

Commencing at a 1/2" steel rod found in the north right-of-way line of E. FM Highway No. 1417 maintaining a point in the east line of said 221.867 acre Tract 1, the southwest corner of a 2.04 acre tract of land conveyed to the County of Grayson by deed of record in Volume 1660, Page 420 of said Deed Records and being the southeast corner of Lot 2, Block Eight of said Constitution Village Addition and the northeast corner of a 0.035 acre strip of land dedicated to the State of Texas by deed of record in Volume 1115, Page 500 of said Deed Records;

Thence **North 04°00'10" East**, along the east line of said 221.867 acre Tract 1 and the west line of said 2.04 acre tract, a distance of **317.85 feet** to a 1/2" steel rod found maintaining an angle point in the east line of said 221.867 acre Tract 1, the southwest corner of a 31.841 acre tract of land conveyed to Liberty Trust Co. LTD by deed of record in Volume 5645, Page 498 of said Official Public Records and the northwest corner of said 2.04 acre tract;

Thence **North 04°09'21" East**, continuing along the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract, a distance of **151.90 feet** to a point in the north line of the current Sherman City Limits for the **True-Point-of-Beginning**;

Thence **South 74°01'16" West**, along the north line of said Sherman City Limits, a distance of **319.18 feet** to a point in the east line of Constitution Village Addition to the City of Sherman, Texas as shown by plat of record in Volume 3, Page 73, Plat Records, Grayson County, Texas and being in an east line of said Sherman City Limits;

Thence northerly along the east line of said Constitution Village Addition and said Sherman City Limits the following calls and distances:

North 14°57'44" West, a distance of **42.55 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720;

North 68°02'16" East, a distance of **42.02 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720;

With a curve to the left having a **radius of 1,113.17 feet** (chord bears North 30°56'51" West, a distance of 352.23 feet) for an **arc length of 353.71 feet** to a 1/2" steel rod found with a cap marked RPLS 3694;

North 40°07'44" West, passing the northeast corner of said Constitution Village Addition and the southeast corner of Constitution Village Section Two to the City of Sherman, Texas as shown by plat of record in Volume 4, Page 22, of said Plat Records for a total distance of **379.31 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720 for an angle point in the east line of said Constitution Village Section Two;

Copley Land Surveying



Thence **North 14°57'44" West**, continuing along the east line of said Constitution Village Section Two and said Sherman City Limits passing a 5/8" steel rod found at a distance of 367.13 feet, a 1/2" steel rod found with a cap marked RPLS 3694 at a distance of 446.92 feet and a 1/2" steel rod found at a distance of 496.36 feet, passing a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720 for the southeast corner of said Lot 3, Block Nine of Constitution Village Section Two at a distance of 657.15 feet and continuing for a total distance of **797.15 feet** to a point at the northeast corner of Replat of Constitution Village, Section Two, Block Five & Six to the City of Sherman, Texas as shown by plat of record in Volume 6, Page 31 of said Plat Records;

Thence westerly along the north line of said Replat of Constitution Village, Section Two, Block Five & Six and said Sherman City Limits the following calls and distances:

South 75°02'16" West, a distance of **322.37 feet** to a point;
with a curve to the right having a **radius of 380.00 feet** (chord bears North 71°33'43" West, a distance of 418.36 feet) an **arc length of 443.03 feet** to a point;
North 38°09'44" West, a distance of **152.87 feet** to a point;
South 51°50'16" West, a distance of **60.00 feet** to a point;

Thence over and across said 221.867 acre Tract 1 and said Sherman City Limits the following calls and distances:

North 38°09'44" West, a distance of **640.00 feet** to a point;
South 89°56'42" West, a distance of **299.67 feet** to a point in the east line of said 4.256 acre Tract 2 and the west line of said 221.867 acre Tract 1;
North 15°02'25" West, along the east line of said 4.256 acre Tract 2 and the west line of said 221.867 acre Tract 1, distance of **352.54 feet** to a point in the south line of a tract of land conveyed to Amy Shilling, and Marvin Shilling by deed of record in Volume 5735, Page 88 of said Official Public Records a 1/2" steel rod found maintaining the most northerly corner of said 4.256 acre Tract 2 and the southwest corner of said Shilling Tract bears South 75°05'42" West, a distance of 7.71 feet;

Thence **North 75°05'42" East**, along the south line of said Shilling Tract passing the southeast corner of said Shilling Tract continuing and the southwest corner of a 2.255 acre tract of land conveyed to Steven Wayne Culp by deed of record in Volume 5913, Page 152 of said Official Public Records and continuing for a total distance of **992.01 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720 for the southeast corner of said 2.255 acre tract;

Thence **North 14°52'37" West**, continuing along the west line of said 221.867 acre Tract 1 and the east line of said 2.255 acre tract passing a 1/2" steel rod found with a cap marked RPLS 4709 maintaining the northeast corner of said 2.255 acre tract at a distance of 159.75 feet and continuing along the east line of a 4.389 acre tract conveyed to Russell C. Spears by deed of record in Document No. 2017-15175 of said Official Public Records then passing a 1/2" steel rod found with a cap marked RPLS 4709 at the northeast corner of said 4.389 acre tract and the southeast corner of a 12.50 acre tract of land conveyed to Rene De Santiago by deed of record in Volume 5076, Page 887 of said Official Public Records, at a distance of 372.68 feet and continuing for a total distance of **1,157.21 feet** to a point in the center of Post Oak Creek being the most northerly northwest corner of said 221.867 acre Tract 1, the northeast corner of said 12.50 acre tract and a point in south line of a 3.0 acre Tract One conveyed to Reyna Fernando by deed of record in Volume 5898, Page 627, of said Official Public Records;

Copley Land Surveying



Thence **North 74°03'31" East**, along the north line of said 221.867 acre Tract 1, and the south line of said 3.0 acre Tract One passing the southeast corner of said 3.0 acre Tract One continuing along the south line of a 1.6407 acre Tract Two conveyed to Reyna Fernando by deed of record in Volume 5898, Page 627, of said Official Public Records, passing the southeast corner of said 1.6407 acre Tract Two and the southwest corner of a 3.5582 acre tract of land conveyed to R.C. Slagle III and wife Susan Slagle by deed of record in Volume 3571, Page 371 of said Official Public Records and continuing for a total distance of **844.70 feet** to a point in the center of said Post Oak Creek;

Thence easterly along the center of said Post Oak Creek the following calls and distances:

South 26°50'20" East, a distance of **236.54 feet** to a point;
South 31°43'13" West, a distance of **128.65 feet** to a point;
South 78°41'02" West, a distance of **135.05 feet** to a point;
South 12°01'22" West, a distance of **124.81 feet** to a point;
South 47°42'33" East, a distance of **121.87 feet** to a point;
South 71°31'59" East, a distance of **272.06 feet** to a point;
North 21°46'48" East, a distance of **243.92 feet** to a point;
North 84°04'45" East, a distance of **205.98 feet** to a point;
South 74°42'47" East, a distance of **128.52 feet** to a point;
North 52°36'44" East, a distance of **177.04 feet** to a point;
South 73°20'47" East, a distance of **126.08 feet** to a point;
South 11°46'47" West, a distance of **197.26 feet** to a point;
South 20°08'20" East, a distance of **95.72 feet** to a point;
South 49°13'56" East, a distance of **215.53 feet** to a point;
South 59°15'06" East, a distance of **251.13 feet** to a point;
South 82°28'14" East, a distance of **256.52 feet** to a point;
South 46°37'56" East, a distance of **226.16 feet** to a point;
South 49°30'43" East, for a distance of **38.27 feet** to a point;

Thence southerly along a branch of said Post Oak Creek the following calls and distances:

South 40°54'19" West, a distance of **41.74 feet** to a point;
South 77°28'21" West, a distance of **8.87 feet** to a point;
North 59°14'50" West, a distance of **62.06 feet** to a point;
South 84°25'20" West, a distance of **26.50 feet** to a point;
South 33°43'57" West, a distance of **18.70 feet** to a point;
South 39°49'26" East, a distance of **17.24 feet** to a point;
South 78°39'39" East, a distance of **13.81 feet** to a point;
South 40°25'46" East, a distance of **11.36 feet** to a point;
South 03°24'14" East, a distance of **13.46 feet** to a point;
South 05°34'34" East, a distance of **60.70 feet** to a point;
North 52°54'03" East, a distance of **62.25 feet** to a point;
South 70°33'10" East, a distance of **15.74 feet** to a point;
South 46°00'46" East, a distance of **18.16 feet** to a point;
South 01°00'05" West, a distance of **12.65 feet** to a point;
South 32°54'58" West, a distance of **82.87 feet** to a point;
South 55°54'22" East, a distance of **24.20 feet** to a point;

Copley Land Surveying



North 67°06'01" East, a distance of 33.54 feet to a point;
South 47°04'59" East, a distance of 55.50 feet to a point;
South 30°14'14" East, a distance of 40.00 feet to a point;
South 23°04'00" West, a distance of 24.32 feet to a point;
South 58°42'08" West, a distance of 10.21 feet to a point;
North 37°44'17" West, a distance of 36.57 feet to a point;
South 67°01'45" West, a distance of 133.27 feet to a point;
South 34°21'02" West, a distance of 27.38 feet to a point;
South 01°06'27" West, a distance of 35.13 feet to a point;
South 54°24'14" West, a distance of 49.39 feet to a point;
South 24°11'47" East, a distance of 7.19 feet to a point;
South 56°45'30" East, a distance of 38.88 feet to a point;
South 07°16'52" East, a distance of 6.60 feet to a point;
South 22°03'34" West, a distance of 17.41 feet to a point;
South 59°10'35" West, a distance of 130.77 feet to a point;
South 03°41'52" East, a distance of 72.10 feet to a point;
South 02°27'22" West, a distance of 163.47 feet to a point;
South 36°57'14" West, a distance of 73.09 feet to a point;
South 03°35'32" East, a distance of 46.48 feet to a point;
South 05°20'31" East, a distance of 24.70 feet to a point;
South 25°06'40" West, a distance of 35.04 feet to a point;
South 14°58'36" East, a distance of 10.92 feet to a point;
South 54°08'00" East, a distance of 26.14 feet to a point;
South 36°53'42" West, a distance of 72.35 feet to a point;
South 15°23'35" West, a distance of 69.58 feet to a point;
South 31°35'48" East, a distance of 123.35 feet to a point;
South 23°02'12" East, a distance of 17.57 feet to a point;
South 17°19'47" West, a distance of 14.84 feet to a point;
South 87°52'48" West, a distance of 32.49 feet to a point;
South 15°56'20" East, a distance of 74.31 feet to a point;
South 54°26'51" West, a distance of 10.43 feet to a point;
North 82°03'22" West, a distance of 15.96 feet to a point;
South 75°15'02" West, a distance of 10.31 feet to a point;
South 22°07'36" West, a distance of 11.65 feet to a point;
South 18°17'39" East, a distance of 41.29 feet to a point;
South 08°48'06" West, a distance of 15.81 feet to a point;
South 67°56'55" West, a distance of 27.38 feet to a point;
North 71°33'42" West, a distance of 16.11 feet to a point;
South 37°46'50" West, a distance of 49.01 feet to a point;
South 13°05'02" East, a distance of 43.94 feet to a point;
South 32°46'54" West, a distance of 20.99 feet to a point;
South 85°13'05" West, a distance of 8.29 feet to a point;
North 42°28'19" West, a distance of 20.46 feet to a point;
South 79°20'07" West, a distance of 26.42 feet to a point;
South 02°59'09" East, a distance of 59.57 feet to a point;
South 43°11'04" East, a distance of 50.59 feet to a point;
South 02°50'53" West, a distance of 22.54 feet to a point;
South 23°48'48" West, a distance of 25.82 feet to a point;
South 46°03'06" West, a distance of 61.22 feet to a point;
South 07°31'26" East, a distance of 34.26 feet to a point;

Copley Land Surveying



South 32°39'07" East, a distance of **62.93 feet** to a point;
South 05°49'38" East, a distance of **12.09 feet** to a point;
South 44°00'25" West, a distance of **14.65 feet** to a point;
South 79°00'52" West, a distance of **29.09 feet** to a point;
South 48°40'58" West, a distance of **19.11 feet** to a point;
South 14°40'38" West, a distance of **13.53 feet** to a point;
South 27°44'31" East, a distance of **12.32 feet** to a point;
North 69°19'32" East, a distance of **27.79 feet** to a point;
South 72°08'51" East, a distance of **14.40 feet** to a point;
South 14°03'01" East, a distance of **12.93 feet** to a point;
South 39°56'47" West, a distance of **132.42 feet** to a point;
South 35°30'55" East, a distance of **64.43 feet** to a point;
South 48°42'35" East, a distance of **39.82 feet** to a point;
South 14°57'41" East, a distance of **20.51 feet** to a point;
South 09°40'31" West, a distance of **13.23 feet** to a point;
South 70°52'28" West, a distance of **12.64 feet** to a point;
North 59°26'01" West, a distance of **12.16 feet** to a point;
North 51°22'55" West, a distance of **13.51 feet** to a point;
South 36°53'35" West, a distance of **39.43 feet** to a point;
South 56°36'02" West, a distance of **29.30 feet** to a point;
South 05°02'57" East, a distance of **24.97 feet** to a point;
South 27°13'09" West, a distance of **81.25 feet** to a point;
South 01°52'23" West, a distance of **13.92 feet** to a point;
South 07°54'13" West, a distance of **89.12 feet** to a point;
South 50°06'24" West, a distance of **31.83 feet** to a point;
South 16°48'24" West, a distance of **24.43 feet** to a point;
South 26°50'30" West, a distance of **19.63 feet** to a point said point being in the east line of said 221.867 acre tract and the west line of a 31.841 acre tract of land conveyed to Liberty Trust Co. LTD by deed of record in Volume 5645, Page 498 of said Official Public Records;

Thence **South 18°58'03" East**, leaving said branch of Post Oak Creek and continuing along the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract, a distance of **24.78 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720 for an angle point in the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract;

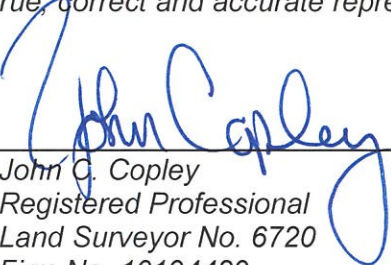
Thence **South 07°26'55" West**, continuing along the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract, a distance of **459.73 feet** to a 1/2" steel rod set with an aluminum cap marked COPLEY RPLS 6720 for an angle point;

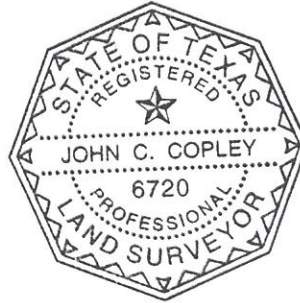
Thence **South 04°09'21" West**, continuing along the east line of said 221.867 acre Tract 1 and the west line of said 31.841 acre tract, a distance of **29.77 feet** to the **Point-of-Beginning** and containing **142.223 acres** of land.

Copley Land Surveying



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


John C. Copley
Registered Professional
Land Surveyor No. 6720
Firm No. 10194429





Line Table

LINE	BEARING	DISTANCE
L1	N 04°09'10" E	317.85'
L2	N 04°09'21" E	151.90'
L3	S 74°01'16" W	319.18'
L4	N 14°57'44" W	42.55'
L5	N 68°02'16" E	42.02'
L6	N 40°07'44" W	379.31'
L7	N 14°57'44" W	797.15'
L8	S 75°02'16" W	322.37'
L9	N 38°09'44" W	152.87'
L10	S 51°50'16" W	60.00'
L11	N 38°09'44" W	640.00'
L12	S 89°56'42" W	295.67'
L13	N 15°02'25" W	352.54'
L14	N 75°05'42" E	982.01'
L15	N 14°52'37" W	1157.21'
L16	N 74°03'31" E	644.10'
L17	S 26°50'20" E	236.54'
L18	S 31°43'13" W	128.65'
L19	S 78°41'02" W	155.05'
L20	S 12°01'22" W	124.81'
L21	S 47°42'33" E	121.87'
L22	S 71°11'59" E	272.36'
L23	N 21°46'48" E	243.92'
L24	N 84°04'45" E	205.98'
L25	S 74°42'47" E	128.52'
L26	N 52°36'44" E	177.04'
L27	S 73°20'47" E	128.08'
L28	S 11°46'47" W	197.39'
L29	N 52°08'20" E	95.72'
L30	S 49°13'56" E	215.53'
L31	S 59°15'06" E	353.13'
L32	S 82°28'14" E	256.52'
L33	S 46°37'56" E	226.18'
L34	S 49°30'43" E	35.21'
L35	S 40°54'19" W	41.74'
L36	S 77°28'21" W	8.87'
L37	N 59°14'50" W	62.06'
L38	S 84°25'20" W	26.50'
L39	S 33°43'57" W	18.70'
L40	S 39°49'26" E	17.24'
L41	S 78°39'39" E	13.81'
L42	S 40°25'46" E	11.38'
L43	S 03°24'14" E	13.46'
L44	S 05°34'34" E	60.70'
L45	N 52°54'03" E	62.25'
L46	S 70°33'10" E	15.74'
L47	S 48°00'46" E	18.16'
L48	S 01°00'05" W	12.68'
L49	S 32°54'58" W	82.87'
L50	N 55°54'22" E	24.20'
L51	N 67°06'01" E	35.44'
L52	S 47°04'59" E	55.50'
L53	S 30°14'14" E	40.00'
L54	S 23°04'00" W	24.32'
L55	S 58°42'08" W	10.21'
L56	N 37°44'17" W	35.37'
L57	S 67°01'45" W	133.27'
L58	S 34°21'02" W	27.38'
L59	S 01°06'27" W	35.13'
L60	S 54°24'14" W	48.39'
L61	S 24°11'47" E	7.19'
L62	S 56°45'00" E	38.89'
L63	S 07°16'52" E	6.60'
L64	S 22°03'34" W	17.41'
L65	S 59°10'55" W	130.17'
L66	S 03°41'52" E	72.10'
L67	S 02°27'22" W	163.47'
L68	S 36°27'14" W	73.09'
L69	S 03°35'32" E	46.48'
L70	S 05°20'31" E	24.70'
L71	S 25°06'40" W	35.04'
L72	S 14°58'36" E	10.92'
L73	S 54°08'00" E	28.14'
L74	S 36°53'42" W	72.35'
L75	S 15°23'35" W	68.58'
L76	S 31°35'48" E	123.35'
L77	S 23°02'12" E	17.57'

Annexation

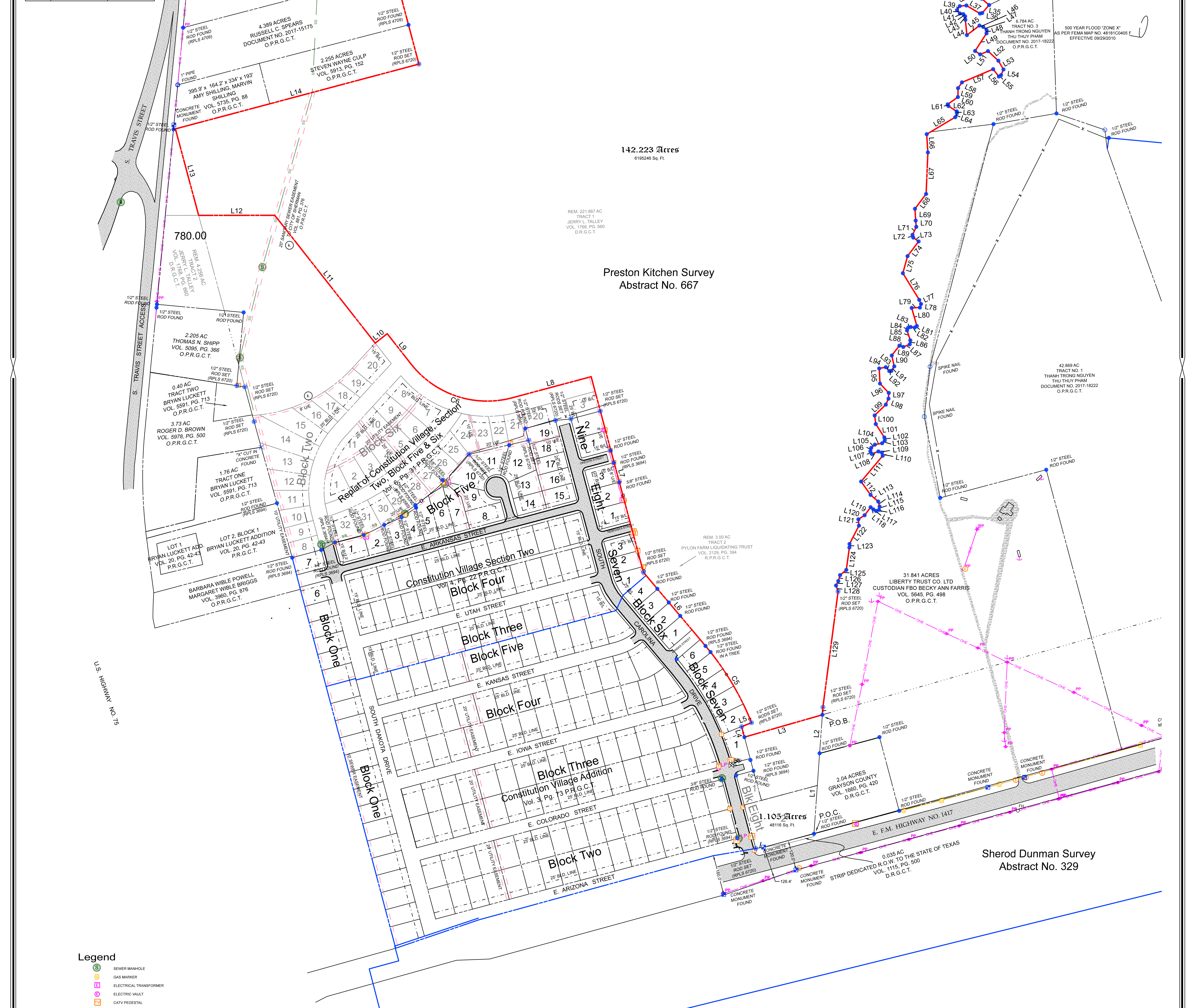
500 YEAR FLOOD "ZONE A"
AS PER FEMA MAP NO. 48181C0405 F
EFFECTIVE 09/29/2010

Curve Table

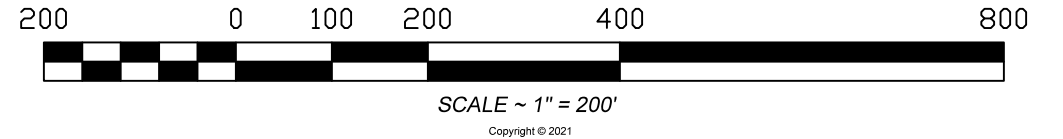
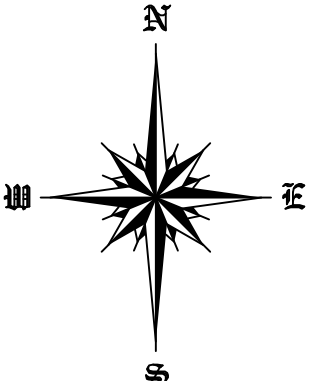
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C5	11113.17'	353.71'	352.23'	N 30°36'51" W
C6	380.00'	443.03'	415.36'	N 71°33'43" W

Line Table cont.

LINE	BEARING	DISTANCE
L78	S 17°18'41" W	14.94'
L79	S 57°52'48" W	32.49'
L80	S 15°56'20" E	74.31'
L81	S 34°36'51" W	10.43'
L82	N 62°03'22" W	15.96'
L83	S 75°15'02" W	10.31'
L84	S 27°07'36" W	11.65'
L85	S 18°17'39" E	41.29'
L86	S 08°48'06" W	15.81'
L87	S 67°46'55" W	27.38'
L88	N 71°33'42" W	16.11'
L89	S 37°46'50" W	49.01'
L90	S 13°05'02" E	43.94'
L91	S 32°46'54" W	20.99'
L92	S 85°13'05" W	6.24'
L93	N 42°28'18" W	20.46'
L94	S 79°20'07" W	26.42'
L95	S 02°28'18" W	59.75'
L96	S 43°11'04" E	50.59'
L97	S 02°50'53" W	22.54'
L98	S 39°48'48" W	25.92'
L99	S 46°03'06" W	61.22'
L100	S 07°31'26" E	34.26'
L101	S 32°30'07" E	62.83'
L102	S 05°48'38" E	12.09'
L103	S 44°00'25" W	14.65'
L104	S 70°05'52" W	29.09'
L105	S 48°40'58" W	19.11'
L106	S 14°40'38" W	13.53'
L107	S 77°44'31" E	12.92'
L108	N 69°19'32" E	27.79'
L109	S 72°06'51" E	14.40'
L110	S 14°03'51" W	12.93'
L111	S 39°56'47" W	132.42'
L112	S 35°30'55" E	64.43'
L113	S 49°42'35" E	39.82'
L114	S 14°57'41" E	20.51'
L115	S 08°40'31" W	13.23'
L116	S 05°52'28" W	12.64'
L117	N 59°26'01" W	12.16'
L118	N 12°22'55" W	13.51'
L119	S 36°53'35" W	38.43'
L120	S 56°36'02" W	29.30'
L121	S 05°02'57" E	24.87'
L122	S 27°13'09" W	81.25'
L123	S 01°52'23" W	13.92'
L124	S 07°56'15" W	89.12'
L125	S 50°06'24" W	31.83'
L126	S 16°48'24" W	24.43'
L127	S 49°43'30" W	19.63'
L128	S 18°58'03" E	24.78'
L129	S 07°26'55" W	459.73'



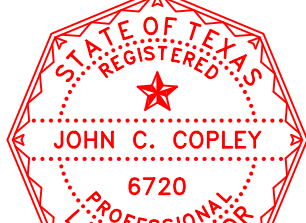
- Legend
- SEWER MANHOLE
 - GAS MARKER
 - ELECTRICAL TRANSFORMER
 - ELECTRIC MAST
 - CATV PEDESTAL
 - UNDERGROUND CABLE MARK
 - TELEPHONE PEDESTAL
 - FIRE HYDRANT
 - LIGHT POLE
 - POWER POLE
 - WATER VALVE
 - QUIP WIRE
 - STOP SIGN
 - FOUND ROD
 - 1/2" STEEL ROD SET (RPLS 6720)
 - CONCRETE MONUMENT
 - BOUNDARY LINE
 - PROPOSED LINE
 - OVERHEAD ELECTRICAL
 - UNDERGROUND GASLINE
 - SANITARY SEWER LINE
 - CHALKLINE FENCE
 - BARBED WIRE FENCE
 - ASPHALT
 - GRAVEL
 - CONCRETE



See Attached Legal Description

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

John C. Copley
John C. Copley
Registered Professional
Land Surveyor No. 6720
Firm No. 10194429
DATE OF SURVEY: 02/25/21

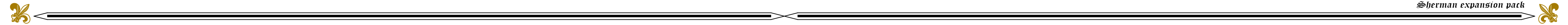


© John C. Copley 21040223
Sherman expansion pack

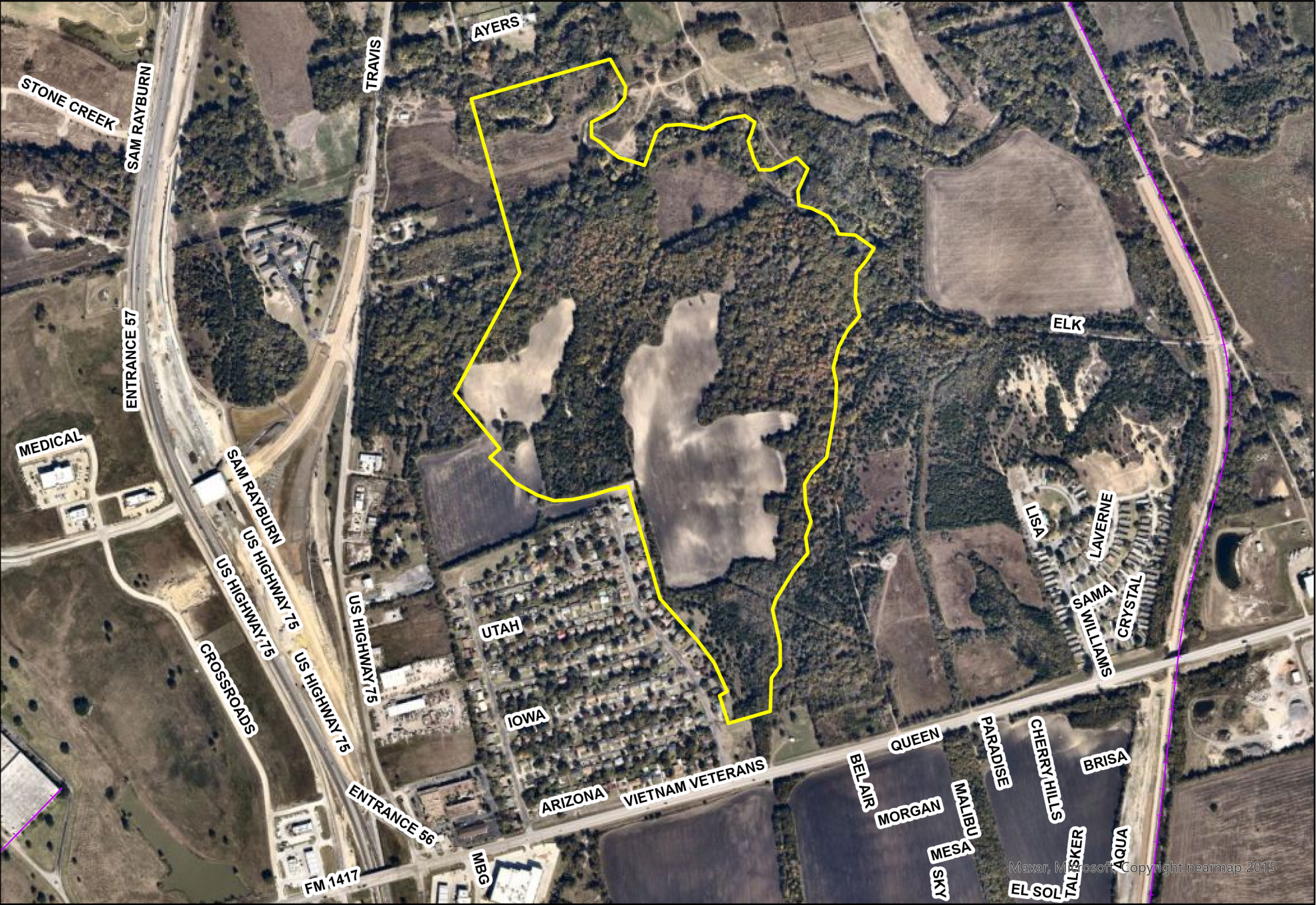
Copley Land Surveying
1702 Verd Ln., Sherman, Texas 75076
TX 003 415 0043, 08 560 960 0181
john@copleysurveying.com
TX Firm No. 10194429, 08 C.A. No. 5279

- BASIS OF BEARINGS -
GRID NORTH NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE (4202)

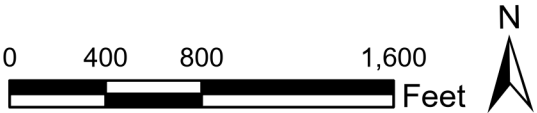
SCALE ~ 1" = 200'



Travis Heights Annexation



Maxar, Microsoft, Copyright nearmap 2015





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

G. 3.

Meeting Date: 10/04/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider possible changes to Chapter 3, Building Regulations regarding requirements for engineered framing plans to be submitted to the City for new residential and commercial buildings.

Issue:

Since updating our Building Regulations Ordinance to reflect most recent international building standards, the building department has been notified that many of our peer cities require engineered framing plans to be included in the building plan submittal for new residential and commercial buildings.

The City of Sherman's current International Residential Code (IRC 2018) requires wall bracing for all new homes built in the City of Sherman. The code does not require engineered plans to be submitted, however there are 16 different methods to accomplish the requirements for Wall Bracing. Some of our peer cities have begun requiring engineered plans to be submitted along with the building plan submittal.

The City of Sherman's current International Building Code (IBC 2018) requires shear walls to be constructed for all multi-family and commercial buildings. Shear walls are similar to wall bracing but the IRC and the IBC use these terms differently. The City of Sherman's Building Department requires engineered building plans for all multi-family and commercial buildings already. Any building over 5,000 square feet is required to be engineered.

Many homebuilders are already accustomed to building to these standards and currently submit engineered framing plans in other municipalities. This would help prevent homebuilders from building to a lower standard to their benefit and potentially at the detriment of Sherman homeowners.

Requiring the engineered framing plans will result in taking additional load off of the building inspectors and allows them to be more efficient with other inspections.

Background:

Chapter 3, Building Regulations was last updated on December 7, 2020 to reflect 2018 ICC building codes (Ordinance 6340).

Origination:

Development Services

Financial Consideration:

None

Staff Recommendation:

Staff recommends adopting these proposed changes by Ordinance at a future Council meeting, likely in October or November. Staff is seeking Council input on these proposed changes.

Alternatives:

None



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

G. 4.

Meeting Date: 10/04/2021

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Receive Presentation from Police Sergeant Brett Mullen on the Police Department's Annual Halloween Event, "Fright Fest"

Issue:

The Police Department's 20th annual Halloween "Fright Fest" on Friday, October 29, 2021 from 6:00 p.m. to 8:30 p.m.

Background:

"Fright Fest" is the non-profit Halloween event sponsored by the Police Department, offering children and parents a safe, controlled environment in which to trick-or-treat. The Police Department will again provide a live band, "Willie Kickit", who gave another excellent performance at last year's "Fright Fest".

There is no fee charged to the participants to set up; and they are allowed to advertise in any way they choose. They are only asked to show up and bring a lot of candy to give away. In the past, participants have set up booths ranging from a simple card table and chair to an elaborate haunted house, built on site. The "Cindy Carr Spooky Booth" trophy is awarded to the group with the best display.

Origination:

Police Department

Financial Consideration:

There is no financial impact to be considered.

Staff Recommendation:

The Council need take no action on this agenda item - informational only.

Attachments

2021 Fright Fest Announcement

FRI. OCTOBER 29



THE SHERMAN POLICE DEPARTMENT PRESENTS

FRIGHT FEST





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

G. 5.

Meeting Date: 10/04/2021

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Receive an Update on the City of Sherman's Ongoing Projects

Issue:

Staff seeks to provide periodic aerial updates to keep the Council abreast of the newest developments in City projects.

Background:

Using the City of Sherman's drone, City staff has cataloged several projects underway or contemplated around town, including:

- Highway 75 GAP Project
- FM 1417 Construction
- Hilre Drive
- Moore Street
- Washington Meadows
- Bel Air
- Park Street
- Travis Heights
- Pebblebrook Phase 4
- The Grove

Origination:

City Manager Robby Hefton

Financial Consideration:

None

Staff Recommendation:

The Council need take no action on this agenda item - for information purposes only.

Alternatives:

None



City Council Regular Meeting

G. 6.

Meeting Date: 10/04/2021

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Consider Request of St. Mary's Catholic School to Temporarily Close Certain Streets for the "Run Run Rudolph 5K and Family Fun Run/Walk" on Saturday, December 4, 2021

Issue:

St. Mary's Catholic School is planning to hold its 11th Annual "Run Run Rudolph 5K and Family Fun Run/Walk" on Saturday, December 4th as part of their fundraising campaign and is requesting the City of Sherman's assistance with traffic control along the route.

Background:

The event will begin with the Fun Run at 8:45 a.m. and the 5K to start at 9:15 a.m., and will follow the route outlined on the attached map. The event will require barricade placement and removal as well as police officers to maintain safety at certain points along the route.

Origination:

Melissa Sandoval, RRR5K Race Director, St. Mary's Catholic School

Financial Consideration:

Barricade placement and removal and police support provided by the City

Staff Recommendation:

It is recommended that the City Council approve this request and authorize the necessary assistance to accommodate the event.

Alternatives:

As directed by the Council

Attachments

Run Run Rudolph Request Letter 2021

Run Run Rudolph Map 2021

Run Run Rudolph Special Event Packet 2021



August 31, 2021

Robby Hefton
City of Sherman
220 West Mulberry Street
Sherman, TX 75090-5832

Dear Mr. Hefton,

We are requesting to hold the 11th Annual St. Mary's Run Run Rudolph 5K and Family Fun Run/Walk on Saturday, December 4, 2021. We are estimating 400 runners to participate and respectfully request traffic support along the 5K route. The Fun Run starts at 8:45 a.m. and the 5K starts at 9:15 a.m. and our route will begin and end at 713 South Travis at the St. Mary's Catholic School parking lot (course map attached).

We hold events such as these to help offset tuition costs so that we can offer an affordable Christian Education for all families who desire this for their children. I sincerely appreciate your consideration of this event. If you have any questions, please feel free to contact me at (903)421-6270.

Sincerely,

A handwritten signature in black ink that reads 'Melissa Sandoval'. The script is fluid and cursive, with the first letter 'M' being particularly large and stylized.

Melissa Sandoval
RRR5K Race Director
msandoval@stmarys-sch.org

S. Travis St.

St Mary's Parish Center

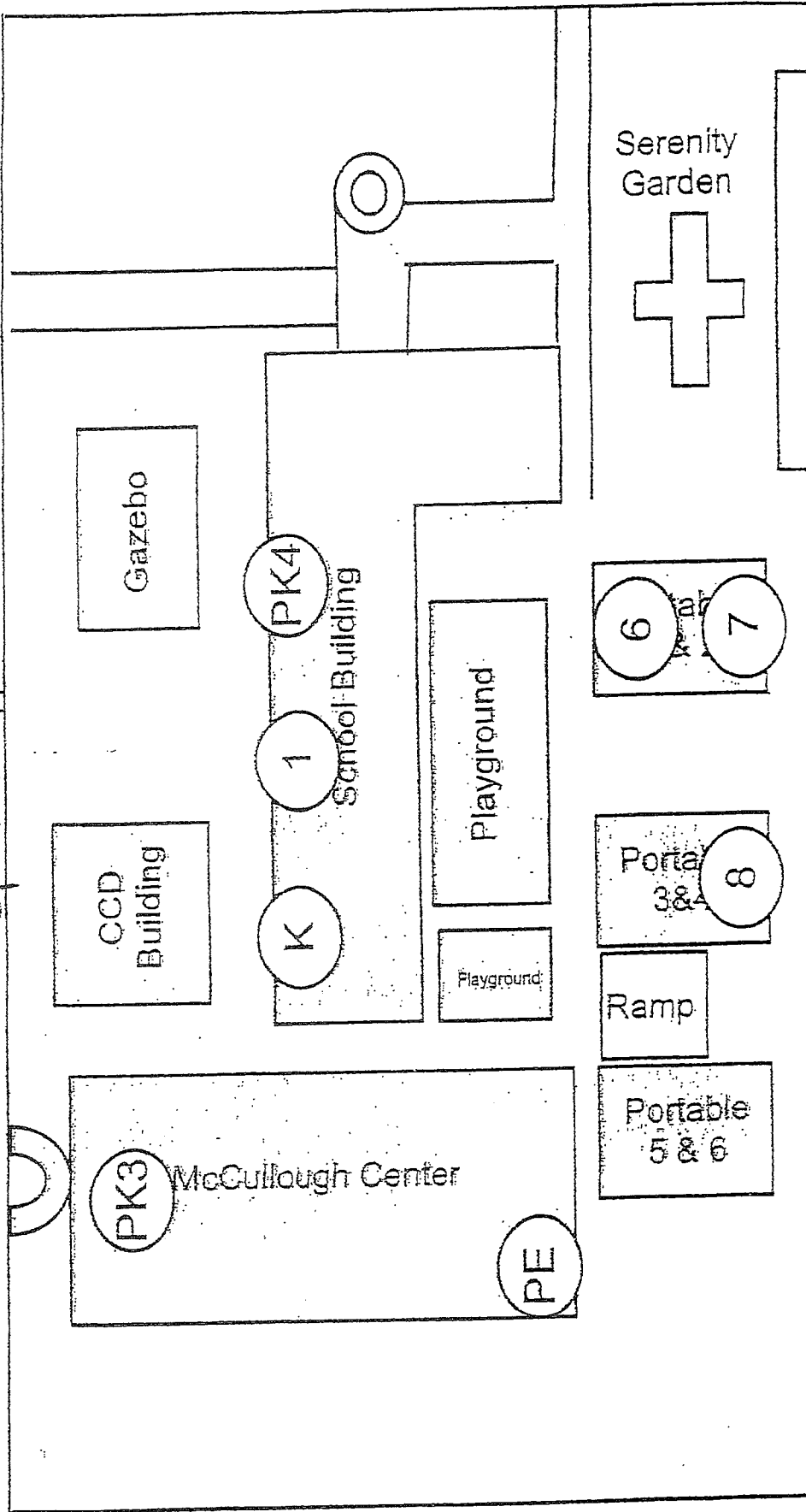
Start/Finish

SMS Parking Lot

Columbus

dumpster
portable
5 & 6

Sparrow Ln



Walnut Ln



Special Event Application

This agreement is between the City of Sherman, hereinafter referred to as City, and an event/event coordinator, hereinafter referred to as event, for the cooperation of planning and operating a Special Event.

City reserves the right to close down or cancel any Event that is in violation of any City Ordinance or deviation from this agreement. The City also reserves the right to close down or cancel the Event if public safety or affected department supervisors deem the event unsafe for public participation.

- Application must be submitted at least 60 days prior to the event date.
- The Event must carry property, bodily injury and municipal liability insurance of \$1,000,000.00 per occurrence. The City of Sherman must be shown as an additional named insured on the insurance declaration. One (1) original copy of insurance must be submitted 30 days prior to event date.
- Alcohol distribution or consumption in any City Park and/or street is prohibited, unless approval is granted by motion and order by the City Council. A special event permit for alcohol on private property in conjunction with a Sherman private club may be permitted with a T.A.B.C license. Certain city-owned properties may allow for the consumption of alcohol.
- Please provide all information pertaining to the event as accurately as possible.

General Event Information

Official Name of Event: St. Mary's Run Run Rudolph 5K & Family Fun Run

Type of Event: (i.e. Carnival, Circus, 1 Mile/5 K Run, etc.) 1 mile & 5K

Event Date: December 4, 2021 Event Times: 1 mile - 8:45am, 5K - 9:15am

Alternate Date: n/a Event Times: _____

*Alternate date required in case of weather delays We will not reschedule if event is cancelled due to weather.

Location of Event: St- Mary's Catholic School, 713 S. Travis St, Sherman
Event Contact Name: Melissa Sandoval
Event Contact Address: See above
Event Contact Phone: 903-421-6270
Event Contact Email: msandoval@stmarys-sch.org
Alternate Event Contact Name: Lena Kane
Alternate Event Contact Address: Same as above
Alternate Event Contact Phone: 903-893-2127
Alternate Event Contact Email: lkane@stmarys-sch.org
Event Day Emergency Contact: Danny Ledbetter Phone: 214-507-2825
Event Day Emergency Contact: Annabel Cardenas Phone: 903-487-9477
Estimated # of Participants: 400 Spectators: 100
Is Event Private or Open to the Public? ☐ Private Event ☒ Public Event

Description of Event

Include background/history of this event or type of event and a timeline of event. Maps and site plans are required; site plans should include location of concessions, port-a-lets and dumpsters; description of routes to be used, severe weather emergency plan, etc. Clean-up deposit may be required.

11th Annual

* See attached

Public Services

Will event take place at a public park/facility? ☐ Yes ☒ No

If yes, which park/facility? _____

*Park and/or facility reservation(s) required prior to completing this application.

Will you need any public street closures? ☒ Yes ☐ No

If Yes, which streets? Sparrow Lane

*Closure of TxDOT controlled streets will need prior approval by TxDOT.

*Police and Fire vehicles must have access through street closures if the need arises.

Street closure time: 7:45 am Time closure removed: 10:30 am

*Barricades will be provided by the City for the listed street closures. Fees may be required for additional barricade requests.

Where are the parking areas located: (Include on site plan) St. Anne's Catholic Church parking lot, 728 S. Travis St, Sherman, TX

Does your event require special/additional support? (Fee may be required)

☒ Police
(crowd control, traffic control, etc.)
If yes, contact Jarena Capps, Police
Department, 903-892-7397

☐ Fire Department
(EMT Support, etc.)
If yes, contact Chief Jones, Fire
Department, 903-892-7263

☐ Other
(provide detail)

If any special/additional support is checked above it is the responsibility of the event coordinator to contact the person listed above, prior to approval. If no contact is made by the event coordinator, the approval process for your special event will cease.

Number of trash containers and size requested over and above the current level: None

*Per city ordinance, all solid waste services must be provided by the city. Additional fees are possible for solid waste services.

Concessions

Will food concessions be present at the event? ____ Yes ☒ No

Name, Address & Phone Number for Food Vendors: N/A

*All food vendors are required to have the appropriate permits required by the city or the county.

Fire Prevention

Will you have any tents at the event? ____ Yes ☒ No

Will any tents be over 200sq. ft.? ____ Yes ☒ No

*No smoking signs and 5lb. ABC extinguishers are required in all tents over 200sq. ft.

Will any tents be enclosed? ____ Yes ☒ No

*A permit (\$50.00 fee) must be obtained from the Developmental Services Department for enclosed tents.

*A flame certificate for the tent and a site plan showing the setback from the property lines will be required to obtain this permit.

Will you have bounce houses? ____ Yes ☒ No Number: _____

Will you have other air supported structures? ☒ Yes ____ No finish line arch

Will there be fireworks? ____ Yes ☒ No

Will there be any temporary structures built or placed on site? ____ Yes ☒ No

If Yes, describe: N/A

Miscellaneous

Will you need the use of city water and/or electricity? ____ Yes ☒ No

*Additional fees will apply to the usage of city utilities

Where will restroom facilities be located? inside school and 2 Portalets
in school parking lot near start/finish line

*Depending on accessibility of restroom facilities, city may require portable toilets to be used

Will there be music or any other use of a loudspeaker? ☒ Yes ☐ No

If Yes, please fill out the following:

Type of loudspeakers: unknown How many: 2

Type of Amplifiers: N/A How many:

Type of electrical devices: N/A How many:

Date and time loudspeakers/amplifiers/electrical devices will be in use: 8:30 am - 10:30 am

*Loudspeakers/Amplifiers/Electrical Devices cannot be used during the hours of 9pm to 8am

Will you have any animals at the event? ☒ Yes ☐ No

If yes, are any prohibited/regulated animals? No

*All pet owners must abide by Grayson County leash law

Public Information

Describe signage that will be used for the event, to include placement of signs: Posters and brochures will be placed around town to promote the event. They will be placed in health clubs and other local businesses that allow advertising of local events.

Describe how you will notify residents affected by the event either living on the route/course or nearby. Banners at St. Mary's School promoting the event.

*Proof of notification may be required

Overnight Accommodation Needs

Will event produce overnight stays in Sherman hotels, motels or bed and breakfasts? If so, how many rooms potentially? N/A

* The Sherman Chamber of Commerce is available for assistance with hotel information and accommodation needs for the event.

Agreement:

Initial MS

I hereby attest that the information contained in this application is true and correct. I understand that this is only an application and not a guarantee that a permit will be issued. If a permit is issued, I agree that: (1) if any of the information contained in this application is found to be false: or (2) should my conduct, or the conduct of any participants or guests, not adhere to the Special Event Policies and Procedures: or (3) should any applicable city, county, state or federal rules, regulations, codes or laws be violated, any permit issued shall automatically become null and void and any activity associated with this permit will immediately cease.

Initial MS

Applicant agrees to assume the defense of and indemnify and save harmless the City, its council members, boards, commissions, officers, employees and agents, from all suits, actions, damages or claims to which the City may be subjected of any kind or nature whatsoever resulting from, caused by, arising out of or as a consequence of such temporary street closure and the activities permitted in connection therewith. The city may require, as a condition of issuance of a permit, that the applicant obtain insurance to serve this end, in such an amount and with such terms as the City determines to be appropriate under the circumstances. This shall be a continuing release and shall remain in effect until revoked in writing.

Initial MS

In case of emergency or for reasons beyond the City's control, the City reserves the right to cancel the permit prior to scheduled use without liability. Refunds will be made if cancellation by the City is necessary.

Initial MS

Alcohol must be confined to private property. Alcohol consumed on Public property is a violation of city Ordinance and is prohibited.

Signature:

I the undersigned representative have read the policies and procedures with reference to this application. The information contained herein is complete and accurate.

Melissa Sandoval
Signature

8/31/21
Date

For Office Use Only

DEPARTMENT APPROVALS

DEPARTMENT	DATE	SIGNATURE
City Council Approval		
Fire Department		
Police Department		
Public Works Department		
Solid Waste & Recycling Department		
Parks & Recreation Department		



**Special Event
Date Request Form**

Name of Event:	St. Mary's Run Run Rudolph 5K & Family Fun Run
Type of Event (i.e. Carnival, Circus, Festival, 1 Mile/5 K Run, etc.):	1 mile & 5K
Location of Event:	713 S Travis St, Sherman, TX 75090
Date of Event:	December 4, 2021
Event Contact Name:	Melissa Sandoval
Event Contact Address:	713 S Travis St., Sherman, TX 75090
Event Contact Phone:	903-421-6270
Event Contact Email:	msandoval@stmarys-sch.org

Completion and approval of the Special Event Date Request Form does not guarantee event approval. The Community and Support Services Department must receive the completed Special Event Application 60 days prior to the event date. If the application is not received the date will be released 60 days prior to the event.

Requester Signature:	Melissa Sandoval	Date:	8/31/21
----------------------	------------------	-------	---------

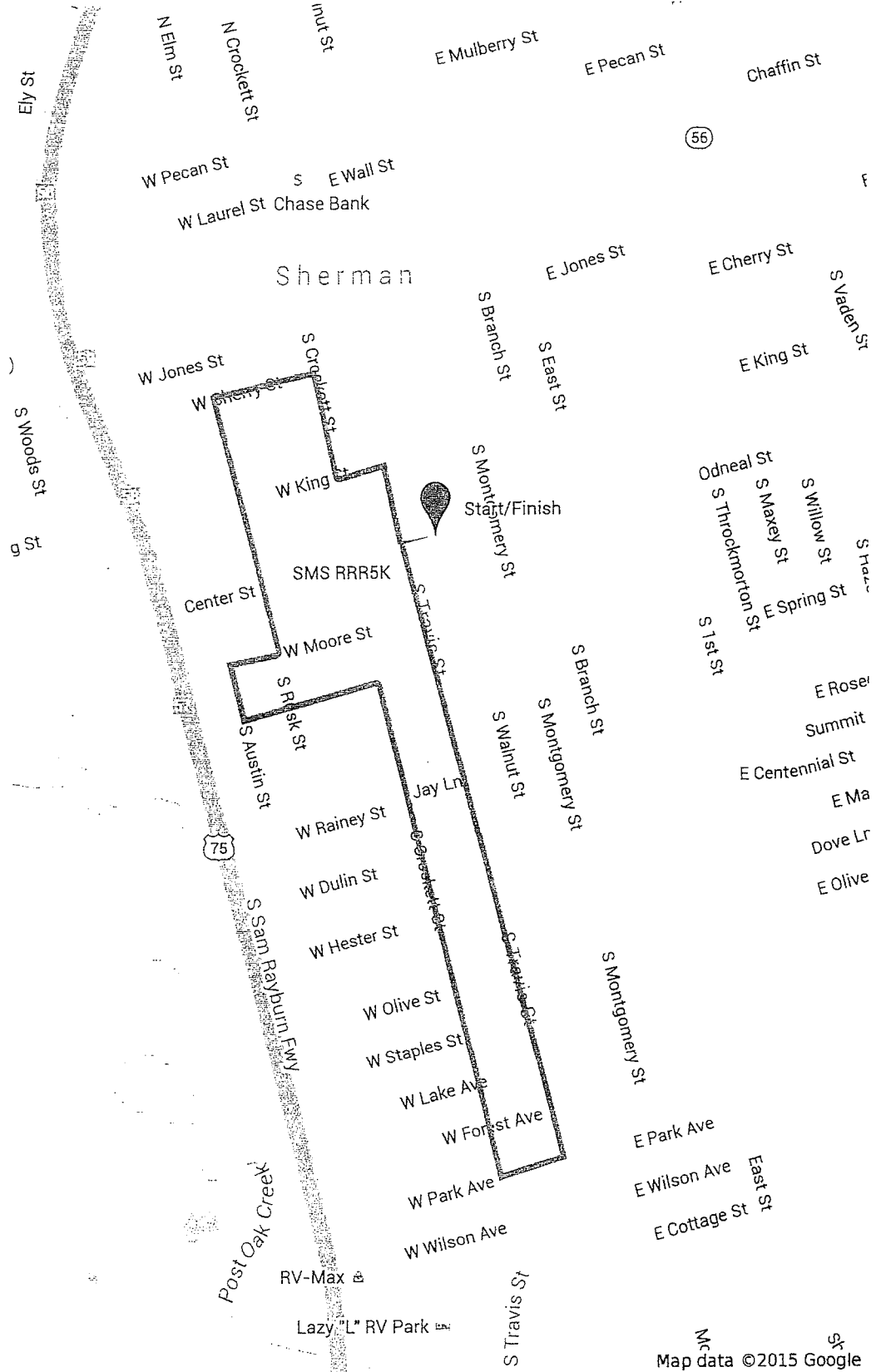
*Office Use Only
Date Request Received:
Event Date Hold Approved: YES NO
If NO, reason:
Date 60 Days Prior to the Event Date:
Date Special Event Application Received:
Requested Event Date Released: YES NO Date:
Community and Support Services Department Signature:

St. Mary's Run Run Rudolph 5K Course

St. Mary's Run Run Rudolph 5K

 SMS RRR5K

 Start/Finish



Map data ©2015 Google



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

H. 1.

Meeting Date: 10/04/2021

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Animal Control Advisory Committee (1)

Issue:

There is a vacancy on the Animal Control Advisory Committee. We have received an application from Aaron Jason Bucy for service on the Committee. There are no other applicants for this Committee.

Background:

The Texas Health and Safety Code, Section 823.005, requires that the City establish and maintain an Advisory Committee to assist the City's Animal Control Department in carrying out its duties. On February 12, 2020, the City Council approved Resolution No. 6593, creating the Animal Control Advisory Committee. The purpose of this Committee is to serve in an advisory capacity to assist the City's Animal Control Department in compliance with city and state regulations concerning the operation of the City's Animal Control facility; to assist the City in communicating awareness to the citizens of Sherman regarding the services, procedures, and compliance with state regulations concerning the operation of animal shelters and coordinating review of programs and services to make recommendations for improvements in those programs and services to better serve the community.

Origination:

This agenda item originated with the City Clerk's Office.

Financial Consideration:

There is no financial consideration to the City.

Staff Recommendation:

The staff's recommendation is to consider the appointment of Aaron Jason Bucy to the Animal Control Advisory Committee.

Alternatives:

No alternatives are recommended.

Attachments

Roster

Fact Sheet

Applicant List

Aaron Jason Bucy Application

MEMBERSHIP ROSTER

ANIMAL CONTROL ADVISORY COMMITTEE

LENGTH OF TERMS: 3 Years

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
Dr. Ken Lawrence		A 2/2/2021	2/2/2024		Licensed Veterinarian
Sandra Melton		A 3/17/2020	3/17/2023		Municipal Official
Morgan Simpson		A 3/17/2020	3/17/2023		Animal Services Supervisor
Stephanie Phillips	n/a	A 3/17/2020	3/17/2022	1	Animal Welfare Organization
Kyle Wiser	1	A 3/17/2020	3/17/2022	1	Sherman Citizen
Amber Doan	3	A 3/17/2020	3/17/2022	1	Sherman Citizen
Vacant					Sherman Citizen
Mignon Plyler	4	A 3/17/2020 R 3/17/2021	3/17/2021 3/17/2024	0 1	Sherman Citizen

NOTE:

Officers		Term Begins	Term Expires
Chairman	Kyle Wiser	3/17/2020	3/17/2022
Vice Chairman	Stephanie Phillips	3/17/2020	3/17/2022

FACT SHEET

ANIMAL CONTROL ADVISORY COMMITTEE

Established by RESOLUTION 6593 – FEBRUARY 12, 2020

1. Number of Members: EIGHT (8)
2. Term of Appointment: THREE (3) YEARS
3. Consecutive Term Rule: TWO FULL TERMS
4. Qualifications for Membership: COMPRISED OF 8 MEMBERS, AS FOLLOWS: 1 LICENSED VETERINARIAN; 1 MUNICIPAL OFFICIAL; 1 SHERMAN ANIMAL SERVICES SUPERVISOR; 1 REPRESENTATIVE FROM AN ANIMAL WELFARE ORGANIZATION; AND 4 SHERMAN CITIZENS
5. Appointed by: MAYOR AND CITY COUNCIL
6. Board Organization

CHAIRPERSON E VICE CHAIRPERSON E SECRETARY E

ELECTED APPOINTED
7. Departmental Responsibility: POLICE CHIEF
8. Meeting Date: ROUTINELY, BASED ON ADOPTED MEETING SCHEDULE, AT LEAST QUARTERLY
9. Attendance Requirements: IF A MEMBER IS ABSENT 33% OF THE REGULARLY SCHEDULED MEETING IN A CALENDAR YEAR, REGARDLESS OF EXCUSED OR NOT, (SPECIAL EXCEPTIONS MAY BE MADE – SEE BY-LAWS)

=====

PURPOSE:

Committee is a citizen's committee to the City Council, created to assist the City in communicating awareness to the citizens of Sherman, regarding the services, procedure, and compliance with State regulations concerning the operation of animal shelters and coordinating review of programs and services to better serve the community.

RESPONSIBILITIES:

- (1) Assist in the development of Animal Services' mission and policies;
- (2) Review and recommend long-range planning and budgeting for Animal Services;
- (3) Provide research, guidance, advice, sponsor reports and contribute information relevant to Animal Services program development, policies and procedures;
- (4) Serve as liaisons to the community, increasing support and awareness of Animal Services and assisting in the resolution of citizen concerns, issues, and grievances

APPLICANT LIST

Animal Control Advisory Committee

Positions Vacant 1

Applicant	Address	District	Qualifications
Aaron Jason Bucy	1917 Timberline Lane	4	Bucy Group of Companies

COMMENTS:



CITY OF SHERMAN APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP



Return completed application to:

City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: AARON JASON BUCY
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: ANIMAL SHELTER ADVISORY BOARD

☒ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information	Occupational Information
Home Address: <u>1917 TIMBERLINE LN</u>	Business Name: <u>BUCY GROUP OF COMPANIES</u>
Mailing Address: _____	Occupation: <u>ENTREPRENEUR</u>
Telephone: <u>903-744-5502</u> Fax: _____	Address: <u>111A N. TRAVIS ST., SUITE 3</u>
E-Mail: <u>OFFICERBUCY@GMAIL.COM</u>	Telephone: <u>903-351-8817</u> Fax: _____
Sherman Resident for <u>15</u> years County: <u>15</u>	E-Mail: <u>AARON@BUCYGROUP.COM</u>
Drivers License No.: <u>29452312 (TX)</u>	
Voter Registration No.: <u>1167099109</u> ✓	

Which Council District do you live in? (see attached map) DISTRICT 4 ✓

Prior work experience: (please include dates) SEE ATTACHED WORK HISTORY DOCUMENT

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 1995
Business College, Correspondence School, Adult Education, Other? YES - SEE ATTACHED EDUCATION DOCUMENT
Name of College/University: GRAYSON COLLEGE ☐ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: (please include dates)

MAKE-A-WISH FOUNDATION (2003-2009), TEXAS STATE GUARD (2004-2010)
CIVIL AIR PATROL (2019-PRESENT)

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☒ Yes ☐ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

"CLASS C" ISSUANCE OF BAD CHECK" (CONVICTION) DATE 1/2010 - PAID FINE
CASE NO: - SEE ATTACHED DOCKET SHEET
2003-2-395

Application held for 12 months from date received

Taxes- None

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? N/A

Why do you want to become a member of this particular board or commission (how would you use this experience to benefit the City)?

I AM A LIFE LONG ANIMAL OWNER. MOST OF THOSE HAVE COME FROM SHELTERS. I KNOW FROM MY LAW ENFORCEMENT EXPERIENCE THAT ANIMAL CONTROL ISSUES ARE ALWAYS ONGOING AND SEEM TO BE OVER EXTENDED ON RESOURCES.

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

- 1) OVERPOPULATION = WE NEED TO FIND A WAY TO EITHER A) REDUCE THE INTAKE RATE, OR B) ACCELERATE THE ADOPTION RATE. I THINK WE NEED TO LOOK AT THE SHELTER AS A RETAIL BUSINESS AND DEVELOP A STRATEGIC MARKETING PLAN AND PRESENT THE FACILITY AS A STORE.
- 2) VETERINARY CARE OF ANIMALS = SIMILAR TO THE SCENARIO WITH THE JAIL, I FEEL LIKE THERE COULD BE A SOLUTION TO VET CARE WITH A LOCAL FACILITY TO WORK IN CONCERT WITH.

3) PUBLIC EDUCATION OF SERVICE(S) = AS ABOVE, I BELIEVE A MARKETING CAMPAIGN TO PRESENT THE "FACILITY" AS A DESIRABLE DESTINATION WOULD INCREASE AWARENESS, ADOPTIONS, VOLUNTEERS AND LOCAL EDUCATION. IF WE TREAT THE FACILITY AS A DESIRABLE RETAIL DESTINATION, THE PERCEPTION SHOULD CREATE A POSITIVE PATIENCE.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

I HAVE BEEN A BUSINESS OWNER FOR 10 YEARS. I HAVE A BUSINESS ADMIN DEGREE. I AM AN ANIMAL LOVER. I HAVE EXPERIENCED ANIMAL CONTROL ISSUES AS A PATROL OFFICER.

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

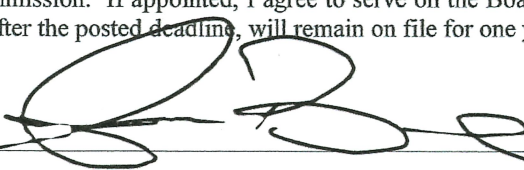
NONE

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☐ Yes ☒ No

Comments: THIS IS A NEWLY FORMED BOARD

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: 

Date: 9/29/2021

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.


CLASSIC TOWN. BROAD HORIZON.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Meeting Date: 10/04/2021

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Issue:

Attachments

2021 Council Calendar

2021 Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

March						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

April						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

June						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

July						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

August						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

September						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

November						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

December						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	City Council Called Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

CALLED MEETINGS	
1/19/2021	Rescheduled - Martin Luther King, Jr. Day
4/23/2021	Called Budget Planning Meeting
5/27/2021	Called Capital Improvement Program Work Session
7/6/2021	Rescheduled - Independence Day
9/7/2021	Rescheduled - Labor Day
9/14/2021	Called Joint Meeting w/SEDCO Board of Directors
10/25/2021	Called Joint Meeting w/SISD Board of Trustees