

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, OCTOBER 3, 2022
5:00 P.M.**

- A. 1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A. 2. PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER JOSH STEVENSON**
- A. 3. INVOCATION BY COUNCIL MEMBER JOSH STEVENSON**
- A. 4. APPROVE MINUTES OF THE CALLED JOINT CITY COUNCIL MEETING WITH THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION OF SEPTEMBER 13, 2022, AND THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 19, 2022.**

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**
Proposed Agreement with Broadstone HHH Texas LLC for the Abatement of Ad Valorem Property Taxes for Improvements within Industrial Reinvestment Zone Number Thirteen (#13), City of Sherman, Texas
- D. 2. PUBLIC HEARING**
Proposed Agreement with Sunny Delight Beverages Company for the Abatement of Ad Valorem Property Taxes for Tangible Personal Property within Industrial Reinvestment Zone Number Thirteen (#13), City of Sherman, Texas

Close Public Hearing

Resolutions

E. 1. RESOLUTION NO. 6960

Authorizing Execution of an Agreement with Broadstone HHH Texas LLC for the Abatement of Ad Valorem Property Taxes for Improvements within the City of Sherman Industrial Reinvestment Zone Number Thirteen (#13)

E. 2. RESOLUTION NO. 6961

Authorizing Execution of an Agreement with Sunny Delight Beverages Company for the Abatement of Ad Valorem Property Taxes for Tangible Personal Property within City of Sherman Industrial Reinvestment Zone, Number Thirteen (#13)

E. 3. * RESOLUTION NO. 6962

Finding that Oncor Electric Delivery Company LLC's ("Oncor" or "Company") Application to Change Electric Transmission and Distribution Rates within the City Should Be Denied; Authorizing Participation with Oncor Cities Steering Committee; Authorizing the Hiring of Legal Counsel and Consulting Services; Finding that the City's Reasonable Rate Case Expenses Shall Be Reimbursed by the Company; Requiring Notice of this Resolution to the Company and Legal Counsel

E. 4. * RESOLUTION NO. 6963

Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the Redevelopment of Technically Based Local Limits.

E. 5. * RESOLUTION NO. 6964

Authorizing Approval and Execution of an Agreement Through the TIPS-USA Cooperative Purchasing Program with Archer Construction & Design for the Installation of a 2 Inch Force-Main System to Service the New Sherman Police Headquarters.

Change Orders

F. 1. CHANGE ORDER NO. 3

Lamberth Road Drainage Improvements Project; Lynn Vessels Construction, LLC; \$272,706.44 increase

Payment Approvals

G. 1. *PAYMENT APPROVAL

Authorizing Payment of \$120,446.94 for Microsoft Enterprise Agreement Annual Billing Year 2 under Texas DIR Contract DIR-TSO-4061.

Other Business

H. 1. OTHER BUSINESS

Consider Approval of the Annexation Scheduling Plan for Annexation of Approximately 20.435 acres of land located North of Kreager Road and West of N. Travis Street adjacent to the Sherman City Limits and in the City of Sherman's Extraterritorial 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

H. 2. OTHER BUSINESS

Receive Presentation from Police Sergeant Brett Mullen on the Police Department's Annual Halloween Event, "Fright Fest"

I. COUNCIL COMMENTS

Executive Session

J. 1. 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) Fire Chief (b) Assistant Fire Chief
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.

The Council reconvenes into General Session

K. 1. OPEN MEETING

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

L. 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 September 30, 2022 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 30th day of September, 2022.
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

Pamela L. Howeth

Council Members

Henry Marroquin, Council-At-Large, PL #1

Juston Dobbs, 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: 10/03/2022

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE CALLED JOINT CITY COUNCIL MEETING WITH THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION OF SEPTEMBER 13, 2022, AND THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 19, 2022.

Attachments

September 13, 2022 - Joint Meeting with SEDCO

SEDCO PowerPoint

September 19, 2022

STATE OF TEXAS

§

September 13, 2022

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 13, 2022.

COUNCIL MEMBERS PRESENT: Mayor David Plyler; Deputy Mayor Pam Howeth.
Council Members Dobbs, Holland, Marroquin, Stevenson,
Teamann.

COUNCIL MEMBERS ABSENT: None.

SEDCO MEMBERS PRESENT: Gail Utter, Vice-Chairman; Scott Bandemir, Secretary; Jason Brumm; Dr. Al Hambrick; David Plyler (Ex-Officio); Shawn Teamann (Ex-Officio); Juston Dobbs (Ex-Officio); Robby Hefton (Ex-Officio); Dr. Tyson Bennett (Ex-Officio); Jeff Moore, Attorney.

SEDCO MEMBERS ABSENT: Janie Bates, Chairman.

CITY STAFF PRESENT: Robby Hefton, City Manager; Terrence Steele, Assistant City Manager; Clint Philpott, Assistant City Manager; Rob Rae, Director of Development Services; Bruce Dawsey, Assistant Police Chief; Mary Lawrence, Director of Finance; Wayne Lee, Director of Engineering; Nate Strauch, Community and Support Services Manager; Tom Pruitt, Utility Engineer; Jana Walker, Controller; Moises Duran, Emergency Management Coordinator; Junior Jaimes, Computer Support Technician; Teri Fine, Assistant to the City Manager; 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, Administrative Assistant.

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

Pledge of Allegiance and Invocation by Mayor David Plyler

CITIZEN'S COMMENTS

SEDCO WORK PROGRAM 2021-2022

SEDCO's Presentation of the 2021-2022 Work Program Results

SEDCO WORK PROGRAM 2022-2023

SEDCO's Presentation of the 2022-2023 Work Program

SEDCO WORK PROGRAM 2022-2023

City Council to Discuss and Consider Approval of the SEDCO Work Program 2022-2023

SEDCO BUDGET 2022-2023

SEDCO's Presentation of the SEDCO Budget 2022-2023

SEDCO BUDGET 2022-2023

SEDCO Board to Discuss and Consider 2022-2023 Budget

SEDCO BUDGET 2022-2023

City Council to Discuss and Consider Approval of the 2022-2023 SEDCO Budget

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

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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

COUNCIL MINUTES -- SEPTEMBER 13, 2022

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

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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 12:01 p.m., declared a quorum present, and opened the City Council Meeting. Gail Utter, Sherman Economic Development Corporation Vice-Chairman, called their meeting to order and declared a quorum present.

PLEDGE OF ALLEGIANCE AND INVOCATION BY MAYOR DAVID PLYLER

Kent Sharp, President, Sherman Economic Development Corporation, gave the invocation.

CITIZEN COMMENTS

There were no citizen's comments.

SEDCO WORK PROGRAM 2021-2022

SEDCO'S PRESENTATION OF THE 2021-2022 WORK PROGRAM RESULTS

Mr. Sharp presented the results of the Program of Work for 2021-2022. Of their six goals, he said they spend 80% of their time working with existing industries. Because of COVID, they lost 1.5 years of visiting the larger industries. They are getting back now to visiting with the plant managers and understanding their needs, for the next 12 to 24 months.

He outlined their biggest projects, of which the largest is Texas Instruments. Phase 1 and 2 of their \$30 billion project will bring 3,200 jobs to Sherman. In November 2021, II-VI (Coherent) approved a \$53 million project, which will bring 119 new jobs. SEDCO approved a 5% incentive of \$2.7 million, which will be paid out over a five-year period. If they expend another \$10 million in the next couple of years, the incentive will be paid out over a three-year period. He said they are currently at about 570 employees, up from 400 when they started.

Mr. Sharp said a project with Tyson was approved a couple of months ago for \$32 million in capital expenditure, with 1,700 retained jobs. SEDCO approved a 3% incentive with Tyson, for \$960,000. Sunny Delight has a \$30 million capital expenditure project, with 74 new jobs. SEDCO's incentive for Sunny Delight was 3% for \$901,800. Starr Aircraft just installed a tornado shelter for their employees with a \$50,000 Small Business Grant from SEDCO. This project resulted in 100 retained jobs.

Mr. Sharp said, following the Texas Instruments, GlobalWafers, II-VI announcements, and after examination of future SEDCO cash flow, the Board reduced the capital expenditure grant from 5% to 3% for projects with a capital expenditure of \$1 million or more. Since Sherman is getting such large

COUNCIL MINUTES -- SEPTEMBER 13, 2022

capital expenditure projects, they needed to preserve the cash flow, at least for now, until they see how the sales tax revenue will perform.

Robby Hefton, City Manager, said the City's stance over the last 12 months has been similar, and they have modified their matrix percentages too. In addition, the City previously offered property tax abatements on the full tax rate, both the interest and sinking, and the M&O rates. Unless the project is very large, the City now looks at abating only on the M&O portion, which is now about 35% to 40% of the total tax rate.

Mr. Sharp listed the Performance Agreements that SEDCO has paid out. PDQ actually purchased an existing business, brought their business to Sherman, and combined the two. They earned a \$67,469 incentive for a \$1.3 million capital expenditure, and brought in 18 new jobs.

Quality Ingredients is a small company that moved out of the Metroplex. They spent \$182,000 in capital expenditures, and created six new jobs. SEDCO gave them a \$50,000 Small Business Grant.

Commissary Express has been in Sherman for "a number of years," and services jails in Texas, Oklahoma, and Arkansas. They added on to their building with a \$155,000 capital expenditure project, which was actually closer to \$200,000, and retained 23 jobs. They received a \$50,000 Small Business Grant, from SEDCO.

Mr. Sharp said Eternity Technologies came in, in 2019 for a Performance Agreement, and then COVID hit. Their equipment was coming from Germany, and was drastically affected by the pandemic. Their Performance Agreement was extended through 2022, which allowed them another 12 months to meet the terms of their agreement.

In addition, Mr. Sharp said SEDCO did 14 business retention and expansion visits, two plant manager and safety leader forums, and two leadership breakfasts.

Another goal was to recruit targeted primary employers and allies. He explained that GlobalWafters USA was counted under this goal because, even though GlobiTech was already located in Sherman, this project was not coming to the United States. Originally GlobiTech was talking about expanding in Sherman and they would mention how their project would relate to the wafer project in Korea. It was a longshot because of the expense of that type of manufacturing in the United States, but Sherman finally got to vie for the project.

Sherman actually secured the project, which is \$5 billion in capital expenditures, 1,500 new jobs, and a \$20 million incentive over 10 years. The 144 acre facility will be located in Progress Park I, at \$1 per acre.

Trinity Tape & Marketing was originally located in Melissa, Texas, and will relocate to Sherman. Their \$4.6 million capital expenditure project will bring 18 new jobs to Sherman for a \$234,000 incentive.

Mr. Sharp said SEDCO also has signed letters of intent for Projects Wrap and EZ on Progress Park VI. Project Wrap is a company out of California and Project EZ is a company in Florida. Both projects will be located in Progress Park VI. SEDCO has also worked 19 new projects and hosted 14 site visits/prospect meetings.

He also said SEDCO staff provided outreach by attending conferences and tradeshow with partners such as Team Texas and Oncor. They distributed quarterly reports and released the 25th Anniversary Mini-Documentary, and revamped their website and social media outlets.

COUNCIL MINUTES -- SEPTEMBER 13, 2022

Mr. Sharp said workforce is a big goal for SEDCO and is a priority as they work with the Sherman Independent School District, Grayson College, and Austin College, to prepare for jobs coming up in 2024 and 2025. They have instigated workforce development programs to encourage and prepare students to consider manufacturing and industrial jobs as a viable option for their future.

A fourth goal for SEDCO is the management and marketing of their real estate to attract industrial investments to the community. They have purchased property for several industrial parks and for a buffer around other industrial development. He updated the Council on the status of several of those real estate investments.

SEDCO also sponsors a RISE competition, Raising Innovative Sherman Entrepreneurs, and one of those applicants was Arctic Bracing. They were awarded \$100,000 in the competition, for the manufacturing of bracing that can be used after hip surgery and molded to the person. They are purchasing property from SEDCO for their plant.

SEDCO will be partnering with the City to extend Flanary Road from Progress Drive to Shepherd Road. They will make a \$225,000 reimbursement to the City for a contract between the City and Pacheco Koch Consulting Engineers for the project.

They have also worked with BNSF and Via Rail to provide rail-served sites in Progress Park. He said the three projects that are coming into Progress Park VI, will be rail-served. They are collaborating with the owners of the former CertainTeed building, which is a 500,000 square foot facility that will be available in October 2022. Currently, a project, with a \$130,000 capital expenditure and 260 new jobs, is looking at the space.

The final goal for SEDCO is to cultivate and fund the entrepreneurial program, RISE. He mentioned two of the three winners in the program. SEDCO presented a \$50,000 grant to The Charlotte Letter for their \$128,000 capital expenditure project, which includes 17 jobs. The company manufactures adaptive apparel for children with special medical needs. They are located in downtown Sherman.

The other winner was Arctic Bracing, which was presented with a \$100,000 grant for their \$1 million capital expenditure project, which includes 38 jobs. They manufacture orthopedic braces with a patented custom mold system.

Mr. Sharp said SEDCO welcomed a new partner for the 2023 Challenge. PQD Design and Manufacturing will select a winner to assist with product research and development. They are a Taiwanese company with a large manufacturing presence in Taiwan. The son and daughter wanted to move the manufacturing part to the United States. They purchased a manufacturing business on Fallon Drive, renovated the business, and brought in their technology. They have a huge engineering presence, both here and in Taiwan.

Participants in RISE have great ideas, but they don't know how to design a prototype or how to get it to work. PQD will help by donating time and money for some of these innovative ideas.

SEDCO is working to promote and encourage local minority and women-owned businesses. They have currently collected 242 contacts for these types of businesses in Grayson County. The database has been updated to SEDCO's website.

Mr. Sharp mentioned a few items of recognition that SEDCO has recently received, including being recognized by Governor Greg Abbott for receiving the 2021 Technology Award, being ranked #1 on the North Texas Economic Development Agencies list from the Dallas Business Journal, and being awarded the 2021 Economic Excellence Recognition by the Texas Economic Development Council.

COUNCIL MINUTES -- SEPTEMBER 13, 2022

Ashton Bellows, Chief Administrative Officer, SEDCO, explained how they are using the various social media platforms and the increase they are seeing from the various followers. She also mentioned the 25th Anniversary video that SEDCO put together, which highlights the history of industry in Sherman and SEDCO's part in that history.

Shannon Blake, Economic Development Specialist, SEDCO, is the employee dedicated to the social media uses and she discussed some of the numbers that they have realized through the different platforms. Mr. Sharp said they have spent less than \$10,000 on social media to get the outstanding results they have had.

SEDCO WORK PROGRAM 2022-2023

SEDCO'S PRESENTATION OF THE 2022-2023 WORK PROGRAM

Mr. Sharp briefly discussed the proposed Program of Work for 2022-2023, adding that they are not changing much. He listed action items for the new Program of Work, saying they want to include a couple of headquarter visits for some of the existing industries that are in Sherman, including possibly Taiwan. Two companies in Sherman have headquarters in Taiwan, GlobalWafers and PQD.

They also plan to work with multiple partners to develop a talented workforce pipeline for all industries. Sherman is always competing with these other markets for a workforce. The expanded companies that are coming to Sherman will need a lot of employees, including Texas Instruments, GlobalWafers, Sunny Delight, Tyson, and II-VI.

Another action item is real estate, and Mr. Sharp said with Texas Instruments and GlobalWafers, things have definitely changed. The Council and SEDCO want to get the "highest and best use" out of the limited acreage that is left. He said they really don't know what will be coming 12 months from now, or 24 months from now, when Texas Instruments comes.

They also want to continue to promote the RISE program and "grow" the applicant pool, as well as pushing the women-owned, minority-owned database.

SEDCO WORK PROGRAM 2022-2023

CITY COUNCIL TO DISCUSS AND CONSIDER APPROVAL OF THE SEDCO WORK PROGRAM 2022-2023

Mayor Plyler asked for a vote on SEDCO's Work Program for 2022-2023.

ACTION TAKEN.

Motion by Deputy Mayor Howeth to approve the SEDCO Work Program for FY 2022-2023, as presented. Second by Council Member Holland.

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

VOTING NAY: None.

MOTION CARRIED.

SEDCO BUDGET 2022-2023

SEDCO'S PRESENTATION OF THE SEDCO BUDGET 2022-2023

Mr. Sharp presented SEDCO's proposed Budget for 2022-2023. He said the SEDCO Board approved "a version" of this proposed Budget last month. However, it has been updated again. They have updated the sales tax revenue and the revenue from interest. He said interest rates are up, so they doubled the amount of interest they expect. As for sales tax, he said the September numbers came in 30% over last September. He said they really didn't know what would happen with the new industries, but this was a "wild guess" and he felt they would probably see more revenue than this.

COUNCIL MINUTES – SEPTEMBER 13, 2022

There was also a change on one expense item. They recently found out that Texas Instruments would be applying for some workforce funds, a \$300,000 grant. He added that EDCs match half of that grant and the State workforce board matches half. Because of that, they are adding another \$150,000 in the 8500 series line item.

He said they are asking the SEDCO Board to approve the updated Budget and then asking the City Council to approve it.

SEDCO BUDGET 2022-2023

SEDCO BOARD TO DISCUSS AND CONSIDER 2022-2023 BUDGET

Ms. Utter asked for a motion from the SEDCO Board on the updated 2022-2023 SEDCO Budget.

ACTION TAKEN.

Motion by Dr. Hambrick to approve SEDCO's Updated Budget for FY 2022-2023, as presented. Second by Mr. Bandemir.

VOTING AYE: Gail Utter, Scott Bandemir, Jason Brumm; Dr. Al Hambrick.

VOTING NAY: None.

MOTION CARRIED.

SEDCO BUDGET 2022-2023

CITY COUNCIL TO DISCUSS AND CONSIDER APPROVAL OF THE 2022-2023 SEDCO BUDGET

Mayor Plyler asked for a vote on SEDCO's Budget for 2022-2023.

ACTION TAKEN.

Motion by Council Member Teaman to approve the SEDCO Budget for FY 2022-2023, as presented. Second by Council Member Stevenson.

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

VOTING NAY: None.

MOTION CARRIED.

COUNCIL COMMENTS

There were no Council comments.

EXECUTIVE SESSION

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COUNCIL MINUTES – SEPTEMBER 13, 2022

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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 12:42 p.m.

MAYOR

ATTEST

CITY CLERK



1

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 2021-2022

2

A. Retain & expand existing primary employers

- **Texas Instruments:** \$30B CAPEX, 3,200 jobs
- **II-VI (Coherent):** \$53M CAPEX, 119 new jobs. 5% incentive = \$2,701,500
- **Tyson:** \$32M CAPEX, 1,700 retained jobs. 3%* = \$960,000
- **Sunny Delight:** \$30M CAPEX, 74 new jobs. 3%* incentive = \$901,800
- **Starr Aircraft:** \$50K Small Business Grant, 100 retained jobs

**Following the TI/GlobalWafers/II-VI announcements and after examination of future SEDCO cash flow, the SEDCO Board reduced the CAPEX grant from 5% to 3% for projects with a CAPEX of \$1M+.*



II-VI

Tyson

Sunny Delight
Beverages Co.

STARR
AIRCRAFT

3

Goal A Continued

- Performance Agreement Updates:
 - **PQD:** \$67,469.83 incentive, \$1.3M CAPEX, 18 new jobs
 - **Quality Ingredients:** \$50K Small Business Grant, \$182K CAPEX, 6 new jobs
 - **Commissary Express:** \$50K Small Business Grant, \$155K CAPEX, 23 retained jobs
 - **Eternity Technologies:** Extended AFFA term through 12/31/22
- 14 Business Retention and Expansion (BRE) visits
- 2 Plant Manager and Safety Leader Forums
- 2 Leadership Breakfasts
- Appreciation lunches at Commissary Express, Eternity Technologies, Mueller Construction Company, Panda Power, and PQD International



PQD



Commissary Express



Quality Ingredients

4

B. Recruit targeted primary employers & allies



- **GlobalWafers USA:** \$5B CAPEX, 1,500 new jobs, \$20M incentive over 10 years, 144 acres in Progress Park I at \$1/acre
- **Trinity Tape & Marking:** \$4.6M CAPEX, 18 new jobs, \$234,000 incentive
- Letters of Intent for **Projects Wrap and EZ** on Progress Park VI
- Worked 19 new projects
- Hosted 14 site visits/prospect meetings



5

Goal B Continued

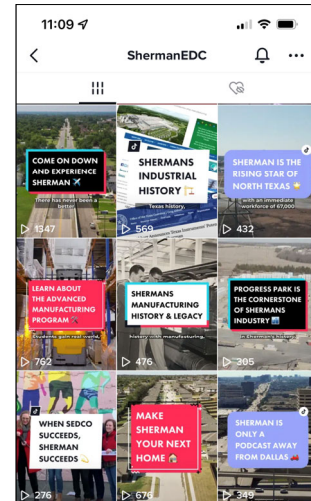
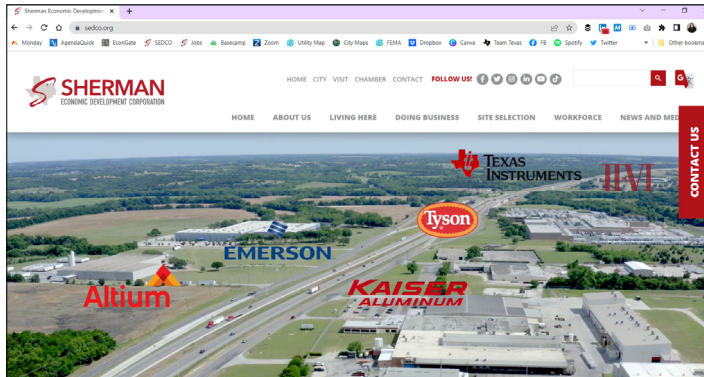
- California tradeshow with Team Texas & Oncor
- Distributed quarterly reports to 1,200+ contacts
- Released the 25th Anniversary Mini-Documentary



6

Goal B Continued

- Social media video series to recruit jobseekers & new companies.
- Launched the new sedco.org
- Created a SEDCO TikTok



7

C. Support workforce development & employment programs

- Matched grant funds with WST and DDA for 2 Career Education Specialists
- Co-sponsored AMP events
- 2021-2022 academic year:
 - 2 Advanced Manufacturing Certificates
 - 23 IMT Certificates
- Partnered with the CWL to offer free training to full-time employees of Sherman Type A businesses
- Co-sponsored 3 job fairs with WST
- Maintained ShermanTXJobs.com & promoted listings on social media
- Google/YouTube advertising to recruit jobseekers to Sherman
- Held meetings with education representatives to initiate a comprehensive plan to develop a talent pipeline for our high-tech industries



8

E. Cultivate & fund an entrepreneurial program



- Worked with AC and the Grayson SBDC to execute the 2022 RISE Challenge to develop young, entrepreneurial companies by awarding up to \$250,000 to qualified applicants
 - Oct-Nov: Banker luncheon & marketing
 - Dec: 2 Public Interest Meetings
 - Jan: App portal opened
 - Feb: App portal closed with 5 apps, 4 advanced to the orientation, SBDC training & initial pitch.
 - Mar: 3 advanced to business plans & site visits with judges
 - Apr: Final presentation & Awards Celebration
- Presented a **\$50K grant to The Charlotte Letter** (\$128K CAPEX, 17 jobs). Manufactures adaptive apparel for children with special medical needs
- Presented a **\$100K grant to Arctic Bracing** (\$1M CAPEX, 38 jobs). Manufactures orthopedic braces with a patented custom mold system
- Welcomed a new partner for the 2023 Challenge – PQD Design and Manufacturing. PQD will select a winner(s) to assist with product research & development



11

E. Encourage Sherman minority- & women-owned businesses



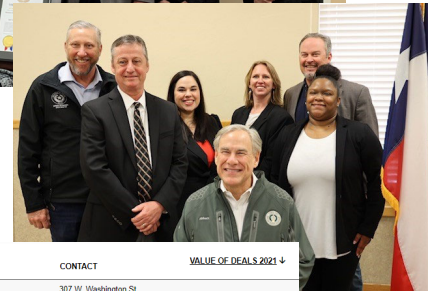
- Hosted the second Sherman WOMO meeting to discuss branding, provide an update on the database, and brainstorm ideas for workshops/masterclasses moving forward.
- Finalized the logo and branding for the WOMO program.
- Collected **242 contacts** for the minority-owned and women-owned businesses in Grayson County and uploaded them to a database on the new sedco.org.



12

Recognition of Results

- Recognized by Gov. Abbott for receiving the **2021 Technology Award**.
- Ranked **#1 on the North Texas Economic Development Agencies list** from the Dallas Business Journal.
- Awarded the **2021 Economic Excellence Recognition** by TEDC.
- Kent and TI's Virginia Schaefer were invited to visit the Governor's Mansion to celebrate Texas winning its 10th consecutive Governor's Cup.
- Kent was asked to testify before the House Committee on the International Relations and Economic Development on the Interim Charges of Economic Development incentives and semiconductor investment.

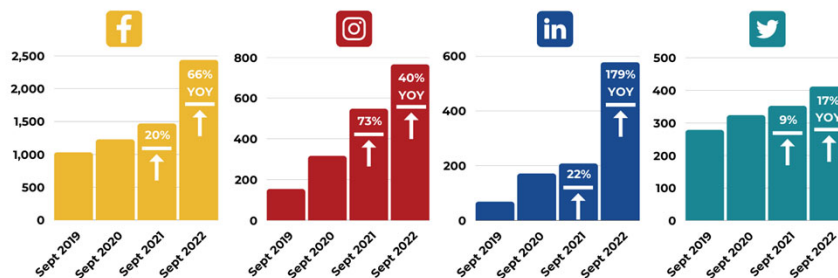


	AGENCY WEBSITE	CONTACT	VALUE OF DEALS 2021 +
1	SHERMAN ECONOMIC DEVELOPMENT CORPORATION sedco.org	307 W. Washington St. #102 Sherman, TX 75090 903-868-2566	\$30.07 billion
2	CITY OF FORT WORTH fortworthtexas.gov	200 Texas St. Fort Worth, TX 76102 817-352-1234	\$569 million
3	CITY OF MESQUITE ECONOMIC DEVELOPMENT mesquiteecodev.com	1515 N. Galloway Dr. 2nd Fl Mesquite, TX 75149 972-216-6340	\$451 million

13

SOCIAL MEDIA ANALYTICS

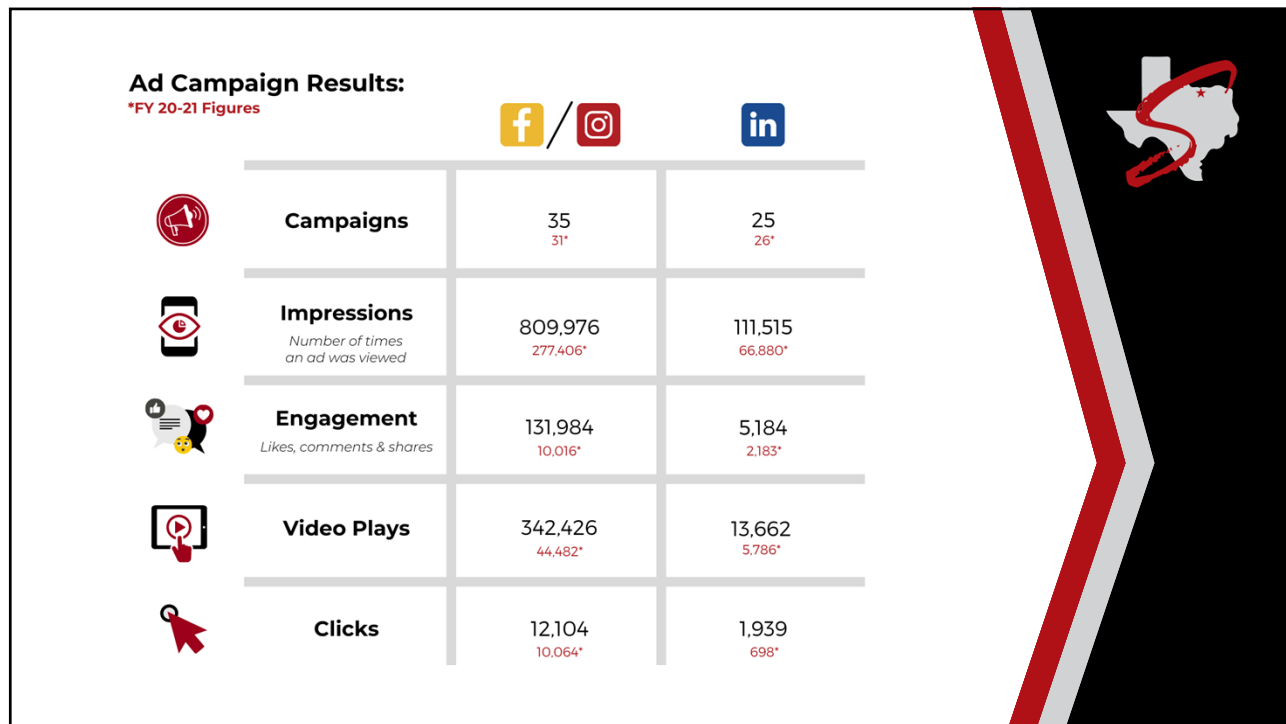
Follower Growth Rate:



NEW! 42 Followers - Sept 2022



14



15

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. Continue the Raising Innovative Sherman Entrepreneurs (RISE) Program
- F. Educate and promote Sherman women-owned and minority-owned (WOMO) businesses



**Proposed
Program of Work
2022-2023**

16

New Actions for 2022-2023



- **Goal A (Retention)**
 - HQ visits for a couple existing industries (could include Taiwan)
- **Goal B (Attraction)**
 - Narrow our target industries to Advanced Manufacturing (specifically semiconductors), Industrial R&D, and HQs
- **Goal C (Workforce)**
 - Working with multiple partners, using social media, conventional ads to attract and train talent pipeline for all industries
 - Matching workforce grant for TI (\$150,000)
- **Goal D (Real Estate)**
 - Focusing on high-value deals for Progress Parks (highest and best use for SEDCO-owned land)
- **Goal E (RISE)**
 - Continue to promote to grow the applicant pool
- **Goal F (WOMO)**
 - Pushing WOMO database to our existing industries to encourage vendor relationships
 - Spotlight some of the WOMO businesses in a video series on social media and sedco.org

17

City Council to Discuss and Consider
Approval of SEDCO's FY 2022-2023
Program of Work



18

Proposed 2022-2023 Budget

	ACCOUNT	ACTUAL	APPROVED	CURRENT ACTUAL (thru June-July)	PROPOSED ACTUAL (thru fiscal year end)	VARIANCE PROPOSED TO	PROPOSED	FY21 VARIANCE TO
	850-9850-	FY 20-21	FY 21-22	FY 21-22	FY 21-22	APPROVED FY21	FY 22-23	APPROVED FY21
SUMMARY								
Revenues								
Sales Tax 4A - SEDCO	60204	\$ 4,854,860	\$ 4,500,000	\$ 5,509,654	\$ 5,509,654	\$ 1,009,654	\$ 5,509,654	\$ 1,009,654
Interest Earned	66001	\$ 42,752	\$ 58,500	\$ 33,491	\$ 44,654	\$ (13,846)	\$ 150,000	\$ 91,500
Miscellaneous Revenue	68010	\$ 695,810	\$ -	\$ -	\$ 851,700	\$ 851,700	\$ 954,818	\$ 954,818
TOTAL REVENUES		\$ 5,593,422	\$ 4,558,500	\$ 5,543,145	\$ 6,406,008	\$ 1,847,508	\$ 6,614,472	\$ 2,055,972
Expenses								
Personnel Expenses TOTAL	81000	\$ 385,952	\$ 460,738	\$ 350,712	\$ 516,408	\$ 55,670	\$ 578,800	\$ 118,062
Supplies TOTAL	82000	\$ 6,355	\$ 13,800	\$ 25,293	\$ 23,688	\$ 9,888	\$ 13,500	\$ (300)
Maintenance and Repairs TOTAL	83000	\$ 3,600	\$ 5,940	\$ 4,800	\$ 5,640	\$ (300)	\$ 8,580	\$ 2,640
Utilities and Communications TOTAL	84000	\$ 12,527	\$ 13,037	\$ 10,343	\$ 12,286	\$ (751)	\$ 10,400	\$ (2,637)
Contractual or Sundry Services TOTAL	85000	\$ 650,308	\$ 1,091,827	\$ 592,621	\$ 2,044,477	\$ 952,650	\$ 3,607,924	\$ 2,516,097
Debt Service TOTAL	86000	\$ 655,027	\$ 602,892	\$ 452,169	\$ 904,339	\$ 301,446	\$ 566,056	\$ (36,836)
Capital Expenses TOTAL	88000	\$ 2,175,171	\$ 7,000,000	\$ 1,113,238	\$ 1,183,238	\$ (5,816,762)	\$ 1,000,000	\$ (6,000,000)
TOTAL EXPENSES		\$ 3,888,939	\$ 9,188,234	\$ 2,549,176	\$ 4,690,076	\$ (4,498,159)	\$ 5,785,260	\$ (3,402,974)
NET INCOME (LOSS)								
		\$ 1,704,482	\$ (4,629,734)	\$ 2,993,969	\$ 1,715,932	\$ 6,345,666	\$ 829,212	Surplus or (Deficit) Amount
CASH & INVESTMENTS ENDING BALANCE								
		\$ 13,855,745	\$ 9,226,011	\$ 16,849,714	\$ 15,571,677		\$ 14,684,957	

19

- SEDCO Board to Discuss and Consider Approval of the FY 2022-2023 SEDCO Budget
- City Council to Discuss and Consider Approval of the FY 2022-2023 SEDCO Budget



20

September 19, 2022

**MEMBERS PRESENT: MAYOR DAVID PLYLER; DEPUTY MAYOR PAM HOWETH.
COUNCIL MEMBERS MARROQUIN, STEVENSON, TEAMANN.**

CALL TO ORDER

CALL TO ORDER

APPROVE MINUTES

CITIZEN'S COMMENTS

CONSENT AGENDA

**ORD 6527
WATER, SEWER,
SEWAGE DISPOSAL
RATE INCREASE**

Mary Lawrence, Director of Finance, said this ordinance adopts the rates that were approved by the Council during the budget process. They are also the same rates that were in the Rate Study that was approved by the Council last year.

COUNCIL MINUTES – SEPTEMBER 19, 2022

The rates will increase about 4.6% overall, and will generate \$900,000 for the Utility Fund.

No citizens appeared before the City Council to discuss Ordinance No. 6527.

Mayor Plyler introduced Ordinance No. 6528 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY’S 2022 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHMENT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; REQUIRING THE COMPANY TO REIMBURSE ACSC’S REASONABLE RATEMAKING EXPENSES; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE ACSC’S LEGAL COUNSEL.

**ORD 6528
ATMOS RATE
INCREASE**

Ryan Pittman, City Attorney, explained that this relates to the annual review of the negotiated rate case with Atmos Energy. The City is a member of the Atmos Steering Committee, which represents Sherman and other cities, to negotiate the settlement with Atmos Energy.

It includes a rate increase of approximately \$4.60 for the average customer, which represents about a 6.71% increase.

Andrie Krah, Public Affairs Manager, Atmos Energy, was in attendance to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6528.

The Public Hearing was closed.

ADOPTION OF ORDINANCES

Ordinance No. 6527

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; AND ARTICLE 13.07, ENTITLED “WATER, SEWERS AND SEWAGE DISPOSAL”, AT SECTION 13.07.072, REVISING ALLOWANCES FOR INACCURATE METERS; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

**ORD 6527
WATER, SEWER,
SEWAGE DISPOSAL
RATE INCREASE**

Ordinance 6528

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY’S 2022 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHMENT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; REQUIRING THE COMPANY TO REIMBURSE ACSC’S REASONABLE RATEMAKING EXPENSES; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE ACSC’S LEGAL COUNSEL.

ORD 6528
ATMOS RATE
INCREASE

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Ordinance Nos. 6527 and 6528, as presented. Second by Deputy Mayor Howeth.

VOTING AYE: Howeth, Marroquin, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6957 – AMENDING THE 2021-2022 BUDGET OF THE CITY OF SHERMAN, TEXAS, APPROPRIATING AND ALLOCATING ADDITIONAL FUNDS FOR THE PERIOD OF OCTOBER 1, 2021 THROUGH SEPTEMBER 30, 2022

RES 6957
BUDGET
AMENDMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE 2021-2022 BUDGET OF THE CITY OF SHERMAN, TEXAS, APPROPRIATING AND ALLOCATING ADDITIONAL FUNDS FOR THE PERIOD OF OCTOBER 1, 2021, THROUGH SEPTEMBER 30, 2022.

Ms. Lawrence said the budget amendment reconciles the budgeted amounts with what was projected for year-end revenue and expenses. Revenue increased through “really great” sales tax performance, of almost \$2.4 million.

The budget is also being amended for the American Rescue Plan Act Grant that was received and spent on Premium Pay and the land purchase at the Water Treatment Plant.

The expenditures are amended to include the expenditure side of the grant, and other significant amendments are mostly development related. She said the amendment is “pretty widespread” because of the growth in the City.

Council Member Teamann said it appeared that the Utility Fund was going to be negative \$3.5 million over the expected budget. He asked where that money would come from.

COUNCIL MINUTES – SEPTEMBER 19, 2022

Ms. Lawrence said the Utility Fund beginning projected was quite a bit more than what the budget was and that makes up a lot of the revenue. The Utility Fund amendment has to do with balancing for the internal service fund.

Council Member Teamann said he was looking at the amended version of the projected. He said the Utility Fund is being adjusted by \$102,000.

He said the Utility Fund had a difference of \$3.7 million from what was budgeted to what was actually projected for this year. Ms. Lawrence said that was the Utility Improvement Fund. She said a lot of that included GTUA projects, which will be paid for by GTUA instead of the City of Sherman. He confirmed that those amounts are “project costs,” not City costs.

ACTION TAKEN.

Motion by Council Member Teamann to approve Resolution No. 6957, as presented. Second by Council Member Stevenson.

VOTING AYE: Howeth, Marroquin, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6958 – AUTHORIZING SUBMISSION OF AN APPLICATION FOR A GRANT AWARDED BY THE TEXAS DEPARTMENT OF TRANSPORTATION UNDER THE ROUTINE AIRPORT MAINTENANCE PROGRAM TO FUND IMPROVEMENTS AS 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 6958
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. 6959 – 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 6959
SHERMAN MUSEUM
FUNDING

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.

OTHER BUSINESS

CONSIDER REQUEST OF ST. MARY'S CATHOLIC SCHOOL TO TEMPORARILY CLOSE CERTAIN STREETS FOR THE “RUN RUN

CLOSE STREETS
RUN RUN RUDOLPH

**RUDOLPH 5K AND FAMILY FUN RUN/WALK” ON SATURDAY,
DECEMBER 3, 2022**

**5K & FUN RUN
(DEC. 3, 2022)**

The City Council approved the request of St. Mary’s Catholic School to temporarily close certain streets for the “Run Run Rudolph 5K and Family Fun Run/Walk” on December 3, 2022.

The event will require barricade placement and removal, as well as police officers to maintain safety at certain points along the route.
CONSENT AGENDA.

COUNCIL COMMENTS

ARTS FEST

ARTS FEST

Deputy Mayor Howeth said the Arts Fest, this past weekend, was “wonderful,” and lots of people attended.

ARTS FEST AND HISPANIC FESTIVAL

**ARTS FEST &
HISPANIC FESTIVAL**

Council Member Teamann said both the Arts Fest and the Hispanic Festival were incredible.

HISPANIC FESTIVAL

HISPANIC FESTIVAL

Council Member Marroquin joked about the “many bilingual people” that were on the Council.

HISPANIC FESTIVAL

HISPANIC FESTIVAL

Mayor Plyler said the Hispanic Heritage Festival was a lot of fun.

SOCCER LEAGUE

SOCCER LEAGUE

Council Member Marroquin asked the staff to consider the creation of a Sherman Youth Soccer League.

ANNOUNCEMENTS

ANNOUNCEMENTS

Mayor Plyler announced the following:

- The Mayor’s Economic Roundtable will be held September 20, 2022, at 9:00 a.m., in the Municipal Ballroom. Participants will hear from local business leaders about the future of Sherman’s economy.
- The bonus Hot Summer Nights concert will be held on September 29, 2022, at 7:00 p.m. on the Municipal Grounds. Jo Dee Messina will be the featured guest.
- Downtown Sherman NOW will host their annual Stroll on the Square on October 1, 2022. It’s a great chance to support the local business owners.

**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

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

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

No Executive Session was needed.

COUNCIL MINUTES – SEPTEMBER 19, 2022

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 5:12 p.m.

ADJOURNMENT

MAYOR

CITY CLERK



City Council Regular Meeting

C. 1.

Meeting Date: 10/03/2022

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. 3. * RESOLUTION NO. 6962

Finding that Oncor Electric Delivery Company LLC's ("Oncor" or "Company") Application to Change Electric Transmission and Distribution Rates within the City Should Be Denied; Authorizing Participation with Oncor Cities Steering Committee; Authorizing the Hiring of Legal Counsel and Consulting Services; Finding that the City's Reasonable Rate Case Expenses Shall Be Reimbursed by the Company; Requiring Notice of this Resolution to the Company and Legal Counsel

E. 4. * RESOLUTION NO. 6963

Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the Redevelopment of Technically Based Local Limits.

E. 5. * RESOLUTION NO. 6964

Authorizing Approval and Execution of an Agreement Through the TIPS-USA Cooperative Purchasing Program with Archer Construction & Design for the Installation of a 2 Inch Force-Main System to Service the New Sherman Police Headquarters

G. 1. * PAYMENT APPROVAL

Authorizing Payment of \$120,446.94 for Microsoft Enterprise Agreement Annual Billing Year 2 under Texas DIR Contract DIR-TSO-4061.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

D. 1.

Meeting Date: 10/03/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

PUBLIC HEARING

Proposed Agreement with Broadstone HHH Texas LLC for the Abatement of Ad Valorem Property Taxes for Improvements within Industrial Reinvestment Zone Number Thirteen (#13), City of Sherman, Texas

Issue:

Holding a public hearing on a proposed tax abatement agreement with Broadstone HHH Texas LLC for improvements within City of Sherman Industrial Reinvestment Zone Number Thirteen (#13)

Background:

On Monday, August 22, 2022, The Tax Reinvestment Committees of the City of Sherman and Grayson County ("Committee") met to consider a request from Broadstone HHH Texas LLC for a tax abatement involving a project by Sunny Delight Beverages Company ("SDBC") to invest \$14 million in its current facility located at 300 W FM 1417 in Sherman and leased from Broadstone HHH Texas LLC. SDBC's plan is to install two new product lines that will make Juicy Juice tetra products. The taxable value of the current property is about \$33 million with this project adding about \$14 million in additional taxable value. The project is scheduled to begin by the end of the year and be fully operational by the fall of 2023. SDBC currently has 114 employees working at the facility. The expansion will allow the Company to add 74 new full-time jobs over the next two years and invest approximately \$30 million in both building improvements and equipment. This agreement only covers improvements to the building. A separate agreement will be considered for the abatement of ad valorem taxes for the equipment. The Committee voted to recommend an abatement to the City Council and Grayson County.

The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. Ordinance No. 6525 creating Industrial Reinvestment Zone Number Thirteen (#13), was adopted following public hearing at the September 6, 2022, City Council meeting.

The proposed tax abatement agreement calls for an eight (8) year tax abatement of 34%, 34%, 34%, 28%, 28%, 28%, 28%, 14%, in accordance with the City's current tax abatement matrix and after excluding the debt portion of the tax rate from the abatement. As is the case with all tax abatements, none of the proposed property considered under this agreement is currently on the tax rolls, so the benefit from this abatement is that the City will see a net increase in property tax revenues.

Origination:

Broadstone HHH Texas LLC, Applicant
Tax Reinvestment Committee

Financial Consideration:

At the estimated initial taxable value of \$14 million for improvements to the property, this part of the project would generate an estimated \$318,000 in property tax revenues for the City and provide an estimated \$131,000 to the taxpayer over the eight (8) years.

Staff Recommendation:

The staff recommends that the City Council hold a public hearing on the proposed tax abatement agreement.

Alternatives:

The City Council could deny the tax abatement agreement.

Attachments

Resolution No. 6960

Ordinance 6525 Creation IRZ #13

Tax Abatement Agreement-Broadstone (SunnyD)

RESOLUTION NO. 6960

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH BROADSTONE HHH TEXAS LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR IMPROVEMENTS WITHIN THE CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NUMBER THIRTEEN (#13); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from Broadstone HHH Texas LLC, and all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an agreement with Broadstone HHH Texas LLC for the abatement of ad valorem property taxes for a period of eight (8) years, for improvements within the City of Sherman Industrial Reinvestment Zone Number Thirteen (#13), consisting of approximately \$14 million of real property improvements in connection with a beverage manufacturing facility, in the same or substantially same form as the 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 3rd day of October, 2022.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

**BY: _____
LINDA ASHBY, CITY CLERK**

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

**BY: _____
RYAN PITTMAN, CITY ATTORNEY**

ORDINANCE NO. 6525

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NO. 13; 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, BROADSTONE HHH TEXAS LLC, 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, Broadstone HHH Texas LLC is the sole owner of approximately 64± acres of land in the City of Sherman, Grayson County, Texas, as more particularly described in Exhibit A, attached hereto (the "Land");

WHEREAS, Harvest Hill Holdings, Inc. through its affiliate, Sunny Delight Beverages Company, leases the Land;

WHEREAS, Harvest Hill Holdings, Inc. is considering constructing new real property improvements at its current facility on the Land (collectively, the "Improvements"), and Sunny Delight Beverages Company is considering equipping the Improvements with new tangible personal property equipment;

WHEREAS, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have represented that the Improvements and tangible personal property would constitute an approximate investment of \$30 Million and that, when fully operational, the Improvements and tangible personal property would be expected to retain significant existing employment and bring new employment to the City of Sherman, Texas ("City");

WHEREAS, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have represented that the Improvements and tangible personal property would be made to the current facility and used to produce juice beverages;

WHEREAS, Broadstone HHH Texas LLC, through its lessee, Harvest Hill Holdings, Inc., and Sunny Delight Beverages Company have applied for tax abatements pursuant to

Chapter 312 of the Texas Tax Code from the City and from Grayson County, 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, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have requested, and the City desires, to establish a new tax abatement reinvestment zone to facilitate the applications of Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company pursuant to Chapter 312 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. 13, 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. 13."

SECTION 3. That the property within the City of Sherman Industrial Reinvestment Zone No. 13 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. 13, 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 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.]

INTRODUCED on this the 6th day of September, 2022.

ADOPTED on this the 6th day of September, 2022.

EFFECTIVE DATE on this the 6th day of September, 2022.

CITY OF SHERMAN, TEXAS

BY: 

DAVID PLYLER, MAYOR

ATTEST:



LINDA ASHBY, CITY CLERK

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



RYAND D. PITTMAN, CITY ATTORNEY

Exhibit A

DESCRIPTION OF A 64.401 ACRE TRACT SITUATED IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND CONVEYED TO AGNL BEVERAGES (TX), L.P. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 5732, PAGE 308, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; SAID 64.401 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY MEETS AND BOUNDS AS FOLLOWS:

BEGINNING, AT A "X" CUT IN CONCRETE FOUND MARKING THE NORTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417 (VARIABLE WIDTH) WITH THE CENTER OF A PUBLIC ROAD TO THE SOUTH LOCALLY KNOWN AS HOWE DRIVE RUNNING ALONG OR NEAR THE EAST LINE OF THE SAID MARTIN SURVEY;

THENCE, SOUTH 14 DEGREES 08 MINUTES 48 SECONDS EAST, WITH SAID CENTER OF HOWE DRIVE, A DISTANCE OF 2433.63 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AND THE NORTHEAST CORNER OF SHERMAN INDUSTRIAL DEVELOPMENT ADDITION TO SAID CITY OF SHERMAN, TEXAS ACCORDING TO THE PLAT OF RECORD IN VOLUME 24, PAGE 40, PLAT RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 74 DEGREES 48 MINUTES 39 SECONDS WEST, WITH THE SOUTH LINE OF THE SAID 64.401 ACRE TRACT, PASSING AT A DISTANCE OF 40.00 FEET THE NORTHEAST CORNER OF LOT 3, BLOCK 1 OF SAID SHERMAN INDUSTRIAL DEVELOPMENT ADDITION, CONTINUING, IN ALL, A TOTAL DISTANCE OF 527.51 FEET TO A POINT MARKING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION BY DEED RECORDED IN VOLUME 4895, PAGE 876, OFFICIAL PUBLIC RECORDS; SAID POINT ALSO BEING AT THE INTERSECTION OF SAID SOUTH LINE OF THE SAID 64.401 ACRE TRACT WITH THE EAST RIGHT-OF-WAY LINE OF THE EASEMENT CONVEYED TO THE ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY RECORDED IN VOLUME 945, PAGE 490, DEED RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 64.401 ACRE TRACT AND SAID RIGHT-OF-WAY LINE, THE FOLLOWING METES AND BOUNDS;

NORTH 59 DEGREES 06 MINUTES 38 SECONDS WEST, A DISTANCE OF 331.98 FEET TO A POINT MARKING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1885.08 FEET;

NORTHWESTERLY, WITH SAID CURVE TO THE RIGHT, (CHORD BEARS NORTH 36 DEGREES 28 MINUTES 48 SECONDS WEST, 1450.72 FEET), AN ARC DISTANCE OF 1409.13 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND MARKING AN "L" CORNER;

NORTH 76 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD FOUND MARKING ANOTHER "L" CORNER;

NORTHWESTERLY, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 1860.08 FEET, (CHORD BEARS NORTH 11 DEGREES 46 MINUTES 26 SECONDS WEST, 134.73 FEET), AN ARC DISTANCE OF 134.76 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND THE END OF SAID CURVE;

NORTH 09 DEGREES 41 MINUTES 54 SECONDS WEST, A DISTANCE OF 743.13 FEET TO A POINT MARKING THE NORTHWEST CORNER OF SAID 64.401 ACRE TRACT; SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SAID SHERMAN ECONOMIC DEVELOPMENT CORPORATION TRACT; SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE F.M. HIGHWAY NO. 1417;

THENCE, WITH THE SAID SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417, THE FOLLOWING METES AND BOUNDS;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 1057.58 FEET TO A POINT FOR ANGLE AT THE WEST BASE OF A DISTURBED CONCRETE MONUMENT FOUND;

SOUTH 87 DEGREES 28 MINUTES 00 SECONDS EAST, A DISTANCE OF 156.68 FEET TO A "X" CUT IN CONCRETE FOUND AT AN ANGLE POINT;

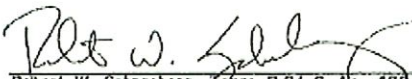
NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2,805,290 SQUARE FEET OR 64.401 ACRES OF LAND.

SURVEYOR'S CERTIFICATION

To: BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders, its successors and/or assigns, CF Alpha & Golf Prepco LLC, a Delaware limited liability company, its successors and assigns; Broadstone HHI Texas, LLC; First American Title Insurance Company; Pletcher, Nichols & Meeks LLP; and The Matthews Company, Inc.

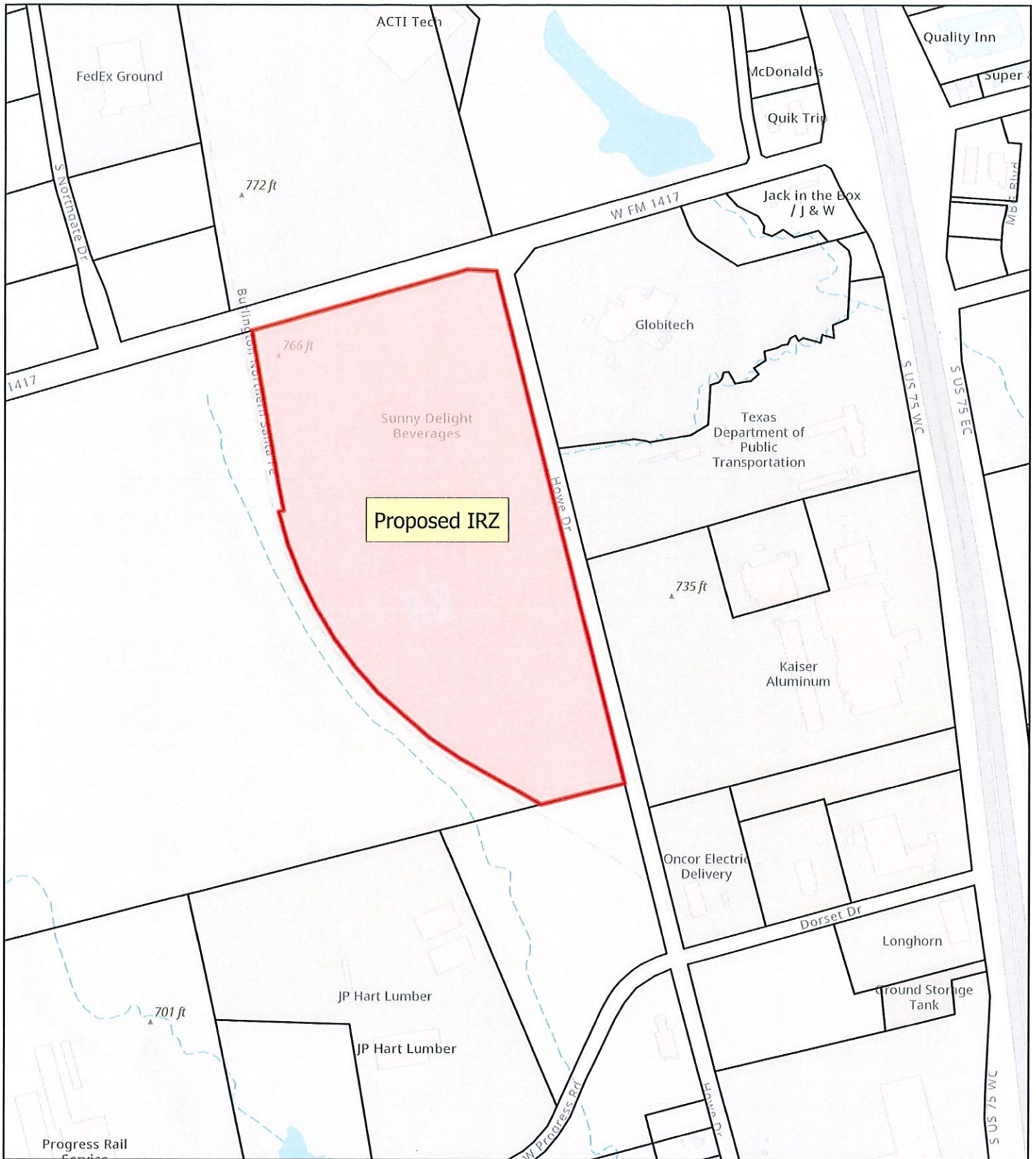
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(i), 7(c), 8, 9, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The fieldwork was completed on May 29, 2019.

Date of Plot or Map: May 30, 2019


Robert W. Schnaeberg, Texas R.P.L.S. No. 4804
Gonzalez & Schnaeberg, Engineers & Surveyors, Inc.
2100 Lakeside Boulevard, Suite 200
Richardson, Texas 75082
Phone (972) 516-8855
email: robert.schnaeberg@gs-engineers.com
USES 6891-19-05-04
Date: May 30, 2019
Date of Last Revision: August 14, 2019



The property described and shown hereon is the same property described in First American Title Insurance Company Title Commitment GF No. 3020-958726TX31, effective date May 3, 2019.



diagrame H:\ENGINEERING\GIS\ArcGIS Pro Projects\Finance\TIRZ Maps.aprx



CITY OF SHERMAN (Proposed) IRZ 13

8/22/2022



THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

**AD VALOREM TAX ABATEMENT AGREEMENT – REAL PROPERTY
IMPROVEMENTS**

This AD VALOREM TAX ABATEMENT AGREEMENT – REAL PROPERTY IMPROVEMENTS (“**Agreement**”) is made and entered into by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality (“**City**”), and BROADSTONE HHH TEXAS LLC, a New York limited liability company (“**Owner**”).

WHEREAS, Section 312.002 of the Texas Tax Code requires the City to adopt a resolution indicating the City’s desire to become eligible to participate in tax abatement agreements; and

WHEREAS, the City Council of the City (the “**City Council**”) previously has adopted a resolution stating that the City elected to be eligible to participate in tax abatements; and

WHEREAS, on May 16, 2016, the City Council adopted Guidelines and Criteria for the Industrial Tax Abatement Program (“**Guidelines**”) through the adoption of Resolution No. 6080, pursuant to Section 312.002 of the Tax Code; and

WHEREAS, the Guidelines constitute appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Tax Code; and

WHEREAS, on September 6, 2022, the City Council of the City (“**City Council**”) adopted Ordinance No. 6525 (“**Ordinance**”), establishing Industrial Reinvestment Zone Number 13, City of Sherman, Texas, for commercial-industrial tax abatement, as authorized by Chapter 312 of the Texas Tax Code, on approximately 64.4 acres of land (“**Zone**”); and

WHEREAS, Owner owns approximately 64.4 acres of land more particularly described in Exhibit A attached hereto (the “**Land**”), which is the subject of the establishment of the Zone on said property; and

WHEREAS, Owner proposes to expand production at the current manufacturing facility on the Land (the “**Premises**”) including equipping two additional production lines with new machinery, equipment, furniture, fixtures and inventory for the production of Juicy Juice tetra box products, to be placed in service on or after the Effective Date of this Agreement, and other ancillary facilities more fully described in the submittals filed by Owner with the City, from time to time, in order to obtain a building permit(s) (collectively, the “**Property Improvements**”). The Property Improvements and use of the Land are expected to significantly enhance the economic base of the City; and

WHEREAS, Owner represents that the Property Improvements will constitute an approximate investment of \$14 million by Owner, and that when fully operational, the Property Improvements are expected to retain significant existing employment and bring new employment

to the City, with expected new employment totaling 188 Employment Positions, as hereinafter defined, in each such phase; and

WHEREAS, Owner's selection of the City as the location for the Property Improvements is the result of collaboration among Owner, the City and other units of local government and economic development entities; and

WHEREAS, the City Council finds that the Property Improvements sought are feasible and practicable and would be of benefit to the land to be included in the Zone and the City after expiration of this Agreement; and

WHEREAS, the City Council has concluded that the Property Improvements and operations proposed by Owner within the Zone and described in this Agreement and the terms of this Agreement are consistent with the requirements of Chapter 312 of the Tax Code and the Guidelines, or to the extent of any inconsistency with the Guidelines, the City Council has determined, in its discretion and in accordance with Section 312.002(d) of the Tax Code, that this Agreement should be entered into notwithstanding such inconsistency; and

WHEREAS, the City desires to enter into an Agreement with Owner for the abatement of taxes assessed against a portion of the Property Improvements located on the Land as further set forth herein pursuant to the Tax Code.

NOW, THEREFORE, in consideration of the mutual benefits and promises for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the expansion of primary employment, the attraction of major investment in the Zone which contributes to the economic development of the City and the enhancement of the tax base in the City, the parties agree as follows:

I. DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

- A. "Affiliate" shall mean any person, directly or indirectly controlling, controlled by, or under common control with Owner. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.
- B. "Base Year" means the calendar year beginning January 1, 2022.
- C. "Capital Investment" means the total capitalized cost invested by Owner for the Property Improvements that are the subject of the Tax Abatements granted by this Agreement.

- D. “Certificate of Occupancy” means the final certificate of occupancy issued by the City with respect to any Property Improvements allowing for the entrance and operation within such improvements.
- E. “Commencement Date” means January 1 of the calendar year that Owner elects to begin the Tax Abatement by providing written notice to the City and Grayson County Appraisal District.
- F. “Commencement of Construction” means the date that: (1) the plans for the Property Improvements have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; and (2) all necessary permits for construction of the Property Improvements pursuant to the respective plans therefore have been issued by all applicable governmental authorities.
- G. “Completion of Construction” means a final Certificate of Occupancy has been issued by the City with respect to the Property Improvements.
- H. “Delinquent Ad Valorem Taxes” means any validly imposed Texas local or state ad valorem taxes that Owner does not remit by the lawful due date, but does not include any such taxes that are assessed against Owner as the result of a tax audit or other similar notice of assessment by any taxing authority unless Owner fails to timely appeal such audit or notice of assessment. If Owner subsequently loses the appeal of the ad valorem tax audit or other notice of assessment, or fails to timely appeal the audit or notice of assessment, the taxes assessed pursuant to the audit will be considered “delinquent” the day after the date specified by the final order on appeal as the due date for payment or the day after the due date for a timely appeal if no appeal is taken or filed by Owner.
- I. “Effective Date” means the last date of acknowledgment of the signatures set forth on the signature page below.
- J. “Employment Positions” means non-temporary full time employment positions of Owner or an Owner Affiliate at the Premises, including employees of contractors assigned to the Premises as shown on Owner’s internal management systems. Two (2) or more part-time employees, totaling thirty (30) hours or more per week may be substituted for one (1) full time employee.
- K. “Event of Bankruptcy or Insolvency” means the dissolution or termination of Owner’s existence as a going business, insolvency, appointment of receiver for any significant part of Owner’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.
- L. “Force Majeure” means any delay caused by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor, supplies or materials

(including but not limited to circumstances related to declared national emergencies such as but not limited to COVID-19) or other circumstances which are beyond the reasonable control and are without the fault or negligence of the obligated party, regardless of whether any such circumstance is similar to any of those enumerated or not. The obligated party shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement and any applicable completion deadline shall be extended for a period of time equal to the period the obligated party was delayed, provided that the party claiming delay as a result of any of the foregoing Force Majeure events shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a Force Majeure event causing such delay, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection. Force Majeure will not mean nor include delays caused by Owner's lack of, or inability to obtain, funding.

- M. "Land" shall mean the real property described in Exhibit A, attached hereto.
- N. "Person" shall mean an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.
- O. "Property Improvements" collectively means all of the improvements that Owner develops and constructs on the Premises after the Effective Date of this Agreement, which include, without limitation, the improvements described in Exhibit B. The term does not include any tangible personal property.
- P. "Tax Abatement" shall have the same meaning set forth in Article IV herein.
- Q. "Taxable Value" means the appraised value as certified by the Grayson County Appraisal District as of January 1 of a given year.

II. GENERAL PROVISIONS

- A. Owner represents that it has the right to locate, operate and maintain the Property Improvements on the Land and the Premises and contemplates locating the Property Improvements on the Premises.
- B. The Premises are not an improvement project financed by tax increment bonds.
- C. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City; provided, however, that this section shall not be construed to create a security interest in the Land or Property Improvements in favor of such holders of outstanding bonds of the City.

- D. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of the City or any member of the governing body of any taxing unit joining in or adopting this Agreement.
- E. This Agreement is intended to comply with the requirements of Section 312.204 of the Code and is authorized by the Texas Property Redevelopment and Tax Abatement Act of the Texas Tax Code, Chapter 312, by the Guidelines and by resolution of the City Council authorizing execution of this Agreement.
- F. During the period of the Tax Abatement herein authorized, Owner shall be subject to all applicable taxation not specifically abated or exempted, including but not limited to sales tax and ad valorem taxation on land, inventory, and supplies.
- G. The Premises shall at all times be used in the manner (1) that complies with the City's Ordinances, regulations, and other laws, and (2) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone as set forth in the Guidelines as of the Effective Date.
- H. Owner acknowledges and agrees, beginning on a final Certificate of Occupancy is issued for Owner's occupancy of the Property Improvements and continuing during the term of this Agreement, that Owner or an Owner Affiliate shall, subject only to events of Force Majeure, continuously own and occupy the Premises, and shall continuously operate and maintain the Premises as a beverage manufacturing facility

III. PROPERTY IMPROVEMENTS

- A. Owner contemplates constructing or causing to be constructed on the Land the Property Improvements. Owner represents that the approximate cost of construction of the Property Improvements is \$14 million. In order to receive the Tax Abatement under this Agreement, Owner agrees, subject to events of Force Majeure, to cause Commencement of Construction of the Phase II-A Improvements to occur on or before December 31, 2023, and to cause Completion of Construction thereof on or before December 31, 2025. The location of the Phase II-A Improvements is to be shown on a site plan of the Premises submitted to, and approved by, the City. Nothing in this Agreement shall obligate Owner to construct the Property Improvements on the Premises, but said actions are conditions precedent to the Tax Abatement provided herein.
- B. As a condition precedent to the initiation of the Tax Abatement set forth in this Agreement, Owner will diligently and faithfully, in good and workmanlike manner, pursue the Completion of Construction of the Property Improvements in accordance with all applicable state and local laws, codes, and regulations.
- C. Owner shall maintain the Premises during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.
- D. The City, its agents and employees shall have the right of reasonable access to inspect the Property Improvements at reasonable times and with reasonable notice to Owner, and in

accordance with Owner's visitor access and security policies, to ensure that the operation of the Property Improvements is in accordance with this Agreement and all applicable state and local laws, codes, and regulations. After completion of construction of any of the Property Improvements, the City, its agents and employees shall have the continuing right to inspect the Property Improvements at reasonable times with reasonable notice to Owner, and in accordance with Owner's reasonable visitor access and security policies, to ensure that the Property Improvements are thereafter maintained and operated in accordance with this Agreement during the term hereof.

IV. TAX ABATEMENT

- A. Subject to the terms and conditions of this Agreement, and to the extent authorized by the Texas Constitution and the Tax Code, the City grants Owner the Tax Abatement set forth in this Article IV. The Tax Abatement is subject to and conditioned on the Completion of Construction within the timeframe set forth in Article III above. Subject to the notice and cure provisions set forth in this Agreement, this Agreement shall automatically terminate without notice to any party if the Completion of Construction does not occur within the timeframe set forth in Article III above unless such delay is caused by events of Force Majeure.
- B. Subject to the conditions set forth herein, Owner shall receive an abatement of the City's property tax rate according to the percentages in the table below, based on the year of the abatement, applied against the product of (i) the Taxable Value of all of the Property Improvements and Land, less (ii) \$18,103.981 (the agreed Taxable Value for the Base Year of the Land and real property improvements and tangible personal property located on the Land). The Tax Abatement shall commence on the Commencement Date and shall continue for a period of eight (8) consecutive calendar years thereafter; provided, however, no Property Improvements shall be eligible for the Tax Abatement after eight (8) calendar years from the Commencement Date, regardless of circumstance or the date of completion of construction of the Property Improvements. Provided that the requirements set forth in this Agreement are satisfied in connection with minimum capital investment requirements, minimum Employment Positions and Completion of Construction, the Tax Abatement shall apply to any Property Improvements constructed during the term of the Tax Abatement.

<i>Year</i>	<i>Percentage of Property Taxes Abated</i>
1	34%
2	34%
3	34%
4	28%

5	28%
6	28%
7	28%
8	14%

V. CAPITAL INVESTMENT; INVESTMENT REPORTS

Owner covenants and agrees that the Capital Investment in Property Improvements shall meet or exceed the aggregate amount of \$14 million as of the Completion of Construction. Owner shall provide the City with reports in a form reasonably acceptable to the City certifying Owner's compliance with the minimum Capital Investment set forth herein (the "**Investment Reports**"). The Investment Reports shall be prepared and maintained in accordance with generally accepted accounting principles and shall include information on the extent and the amount of Owner's investments in the Property Improvements. Owner agrees to submit the Investment Reports no later than thirty (30) days following the start of the Commencement Date and on or before January 31 of each successive calendar year during the term of this Agreement. The City shall have the right to inspect Owner's books and records relating to the acquisition, location and maintenance of the Property Improvements on the Premises, subject to Owner's reasonable security and confidentiality requirements.

VI. EMPLOYMENT COMMITMENTS; EMPLOYMENT REPORTS

Owner covenants and agrees to employ and maintain no fewer than 188 Employment Positions at the Premises beginning on the Commencement Date and throughout the term of this Agreement. Within thirty (30) days following the Commencement Date and then as part of its Certification of Compliance each successive year thereafter during the term of this Agreement, Owner agrees to provide the City with reports in a form reasonably acceptable to the City certifying Owner's compliance with the above commitment to Employment Positions and shall include information on the number of Employment Positions created, filled or contracted for at the Improvements (the "**Employment Reports**"). The City shall have the right to inspect Owner's payroll and other employment records, including Owner's management system assigned to the Premises, relating to the Employment Positions on the Premises, subject to Owner's reasonable security and confidentiality requirements.

VII. DEFAULT

- A. The following shall constitute an "Event of Default" hereunder: (1) Owner's failure to cause Commencement of Construction or Completion of Construction of the Property

Improvements in accordance with this Agreement; (2) Owner's failure to pay any Delinquent Ad Valorem Taxes owed to the City or any other taxing authority; (3) Owner's failure to make the Capital Investment; (4) Owner's failure to meet the employment commitments described herein; (5) Owner suffering an Event of Bankruptcy or Insolvency; or (6) Owner breaching any of the terms and conditions of this Agreement, including without limitation, the other conditions to the Tax Abatements set forth herein.

- B. Upon breach by Owner of any obligations under this Agreement, the City shall notify Owner in writing. Owner shall have ninety (90) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within a ninety (90) day period, other than a monetary default, and Owner has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the City shall extend the period in which the default must be cured for an additional sixty (60) days.
- C. Upon the occurrence and during the continuance of an Event of Default, the City shall have all remedies available to it at law or in equity, including without limitation, termination of this Agreement. Upon an Event of Default, the City shall have the right hereunder to enforce specific performance of amounts owed to the City or to bring an action to collect such amounts. The City also will have the right to pursue legal action against Owner to recapture the total amount of Tax Abatements granted to Owner during the term of this Agreement. Upon the occurrence of an Event of Default there will be a stay of Tax Abatements and the City will be relieved of its obligations herein until such Event of Default is cured within the applicable cure period described.
- D. Periods described above for curing a delinquency or violation hereunder shall toll, and shall not be considered for any purpose as having run, beginning on the day Owner files a petition in district court in Grayson County, Texas to determine whether a delinquency or violation has in fact occurred under this Agreement and/or to determine whether any attempt to cure has been sufficient, and ending upon the issuance of a final court decision or other final resolution of such court proceeding.
- E. Upon any termination of this Agreement by the City, all tax abated as a result of this Agreement shall become a debt of Owner to the City as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is delivered to Owner. Owner agrees that the City shall have all remedies for the collection of this debt as provided generally in the Tax Code for the collection of delinquent property tax. The City, at its sole discretion, has the option to provide a repayment schedule. The computation of tax abated for the purposes of the Agreement shall, with respect to any tax year in which an abatement was granted, be based upon the portion of the Taxable Values of any Property Improvements which received abatement in such year, multiplied by the City's tax rate applicable in such year, as calculated each year by the Tax Assessor-Collector for the City, as the case may be.

VIII. ANNUAL APPLICATION FOR TAX EXEMPTION

It shall be the responsibility of Owner, pursuant to the Tax Code, to file an annual exemption application form with the chief appraiser for the Grayson County Appraisal District and any other appraisal district in which the eligible taxable property has situs. A copy of the exemption application shall be submitted to the City contemporaneously therewith.

IX. ANNUAL RENDITION

Owner shall annually render the value of the Property Improvements eligible for the Tax Abatement, being the subject of the abatement provided herein, to the Grayson County Appraisal District and any other appraisal district in which the eligible taxable property has situs and provide a copy of the same to the City simultaneously therewith.

X. EFFECT OF SALE, ASSIGNMENT OR LEASE OF PROPERTY

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may not be assigned without the written consent of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, so long as no Event of Default of Owner under this Agreement exists and remains uncured, Owner may, without the prior written consent of the City, (1) assign its rights and obligations under this Agreement to an Affiliate of Owner, so long as such Affiliate continues to be wholly-owned, directly or indirectly, by Owner or one of its constituent parties and Owner notifies the City in advance of such assignment and provides evidence reasonably satisfactory to the City that such assignee is an Affiliate, or (2) make a collateral assignment of the Agreement solely for the benefit of a creditor providing financing for Property Improvements. In the event the City consents to an assignment of this Agreement by Owner, no further assignment shall be made without the express consent in writing of the City, unless such assignment may otherwise be made without such consent pursuant to the terms of this Agreement. Except as otherwise set forth herein, an assignment by Owner of its interest in this Agreement shall not relieve Owner from its obligations under this Agreement unless approved by the City.

XI. NOTICE

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

If to the City:

City of Sherman, Texas
220 W. Mulberry Street
Sherman, Texas 75090
Attn: City Manager

With required copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069

Attn: Ryan D. Pittman

If to Owner:

Harvest Hill Beverages Company
1 High Ridge Park
Stamford, CT 06905
Attn: Tim Voelkerding

With required copy to:

Seth Milligan
One Stamford Plaza
236 Tresser Blvd, Suite 1400
Stamford, CT 06901

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

XII. TERM

The term of this Agreement shall begin on the Effective Date and shall continue during the period set forth in Article IV hereof, unless sooner terminated. Time is of the essence in this Agreement.

XIII. AUTHORIZATIONS

The City Council has authorized the City Manager to execute this Agreement on the City's behalf. This Agreement was entered into by Owner pursuant to authority granted by one or more of its officers to execute this Agreement on behalf of Owner.

XIV. SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase, or word herein is held invalid, illegal, or unconstitutional, the balance of this Agreement, shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word. If any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal, the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.

XV. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be in the State District Court of Grayson County, Texas. The parties consent to venue and to the jurisdiction of the State District Court of Grayson County, Texas.

XVI. INDEMNIFICATION

- A. IN ADDITION TO THE OTHER REMEDIES AFFORDED TO THE CITY IN THIS AGREEMENT, OWNER SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, ATTORNEYS, CONTRACTORS, OR AGENTS (HEREINAFTER “CITY’S INDEMNIFIED PARTY”) FOR, FROM AND AGAINST ANY AND ALL LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS’ FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART) OWNER’S PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.
- B. Notice of Indemnified Loss. The City’s Indemnified Party shall promptly notify Owner of any indemnified Losses or Claim for indemnified Losses in respect of which the City’s Indemnified Party may be entitled to indemnification under this Article XVI. Such notice shall be given as soon as reasonably practicable after the City’s Indemnified Party becomes aware of the Loss or Claim for Losses.
- C. Defense of Third Party Claims. In the event any action or proceeding shall be brought against the City’s Indemnified Party by reason of any matter for which the City’s Indemnified Party is indemnified hereunder, Owner shall, upon notice from the City’s Indemnified Party or its authorized agents or representatives, at Owner’s sole cost and expense, resist and defend the same with legal counsel selected by City. Owner’s obligation to defend shall apply regardless of whether the City’s Indemnified Party is solely or concurrently negligent. Nothing herein shall be deemed to prevent the City’s Indemnified Party at its election and at its own expense from participating in the defense of any litigation with their own counsel. If Owner fails to retain defense counsel within seven (7) business days after receipt of City’s Indemnified Party written notice that the City’s Indemnified Party is invoking its right to indemnification under this Agreement, the City’s Indemnified Party shall have the right to retain defense counsel on their own behalf, and Owner shall be liable for all usual and customary defense costs incurred by the City’s Indemnified Party.

XVII. ENTIRE AGREEMENT

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

XVIII. RECORDATION OF AGREEMENT

A certified copy of this Agreement in recordable form shall be recorded in the real property records of Grayson County, Texas.

XIX.
INCORPORATION OF RECITALS; EXHIBITS

The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

XX.
CERTIFICATIONS REQUIRED BY TEXAS LAW

- A. Pursuant to Section 2271.002, Texas Government Code, Owner hereby represents that neither Owner, nor any wholly owned subsidiary, majority-owned subsidiary, parent, owner or affiliate of Owner “boycotts Israel”, and subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, Owner agrees it will not boycott Israel during the term of this Agreement. As used in the immediately preceding sentence, “boycott Israel” shall have the meaning given such term in Section 2271.001, Texas Government Code.
- B. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Owner certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.
- C. Pursuant to Chapter 2274, Texas Government Code, Owner verifies that (i) it does not boycott energy companies and will not boycott energy companies during the term of this Agreement and (ii) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.
- D. Pursuant to Chapter 2264, Texas Government Code, Owner represents and certifies that is does not and will not knowingly employ any undocumented worker at the Premises or on the Land 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, Owner is convicted of a violation under 8 U.S.C. § 1342a(f), Owner shall repay to the City an amount equal to all Grant payments tendered to Owner under this Agreement plus interest at the annual rate of four percent (4%) not later than the 120th day after the date the public agency, state or local taxing jurisdiction notifies Owner of such violation.

XX.
NO VESTED RIGHTS

Nothing in this Agreement shall be interpreted or implied to vest any rights in the parties. In addition, nothing in this Agreement constitutes a “permit” as defined in Chapter 245, Texas Local Government Code. OWNER WAIVES ANY CLAIM THAT THIS AGREEMENT ESTABLISHES VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL

GOVERNMENT CODE OR OTHER LAW. THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**XXII.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. The parties acknowledge the inherent unpredictability of the global semiconductor industry and the possibility that schedules for investment and job creation and other provisions may require adjustment over the terms of this Agreement, subject to the mutual written asset of all parties.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the Effective Date.

CITY OF SHERMAN, TEXAS,
a Texas home rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

ATTEST:

By: _____
Linda Ashby, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan D. Pittman, City Attorney

BROADSTONE HHH TEXAS LLC,
a New York limited liability company

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT A

Legal Description of the Land

MEASURED DESCRIPTION

DESCRIPTION OF A 64.401 ACRE TRACT SITUATED IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND CONVEYED TO AGNL BEVERAGES (TX), L.P. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 5732, PAGE 308, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; SAID 64.401 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY MEETS AND BOUNDS AS FOLLOWS:

BEGINNING, AT A "X" CUT IN CONCRETE FOUND MARKING THE NORTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417 (VARIABLE WIDTH) WITH THE CENTER OF A PUBLIC ROAD TO THE SOUTH LOCALLY KNOWN AS HOWE DRIVE RUNNING ALONG OR NEAR THE EAST LINE OF THE SAID MARTIN SURVEY;

THENCE, SOUTH 14 DEGREES 08 MINUTES 48 SECONDS EAST, WITH SAID CENTER OF HOWE DRIVE, A DISTANCE OF 2433.63 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AND THE NORTHEAST CORNER OF SHERMAN INDUSTRIAL DEVELOPMENT ADDITION TO SAID CITY OF SHERMAN, TEXAS ACCORDING TO THE PLAT OF RECORD IN VOLUME 24, PAGE 40, PLAT RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 74 DEGREES 48 MINUTES 39 SECONDS WEST, WITH THE SOUTH LINE OF THE SAID 64.401 ACRE TRACT, PASSING AT A DISTANCE OF 40.00 FEET THE NORTHEAST CORNER OF LOT 3, BLOCK 1 OF SAID SHERMAN INDUSTRIAL DEVELOPMENT ADDITION; CONTINUING, IN ALL, A TOTAL DISTANCE OF 527.51 FEET TO A POINT MARKING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION BY DEED RECORDED IN VOLUME 4895, PAGE 876, OFFICIAL PUBLIC RECORDS; SAID POINT ALSO BEING AT THE INTERSECTION OF SAID SOUTH LINE OF THE SAID 64.401 ACRE TRACT WITH THE EAST RIGHT-OF-WAY LINE OF THE EASEMENT CONVEYED TO THE ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY RECORDED IN VOLUME 945, PAGE 490, DEED RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 64.401 ACRE TRACT AND SAID RIGHT-OF-WAY LINE, THE FOLLOWING METES AND BOUNDS;

NORTH 59 DEGREES 06 MINUTES 38 SECONDS WEST, A DISTANCE OF 331.98 FEET TO A POINT MARKING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1885.08 FEET;

NORTHWESTERLY, WITH SAID CURVE TO THE RIGHT, (CHORD BEARS NORTH 36 DEGREES 28 MINUTES 48 SECONDS WEST, 1450.72 FEET), AN ARC DISTANCE OF 1489.13 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND MARKING AN "L" CORNER;

NORTH 76 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD FOUND MARKING ANOTHER "L" CORNER;

NORTHWESTERLY, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 1860.08 FEET, (CHORD BEARS NORTH 11 DEGREES 46 MINUTES 26 SECONDS WEST, 134.73 FEET), AN ARC DISTANCE OF 134.76 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND THE END OF SAID CURVE;

NORTH 09 DEGREES 41 MINUTES 54 SECONDS WEST, A DISTANCE OF 743.13 FEET TO A POINT MARKING THE NORTHWEST CORNER OF SAID 64.401 ACRE TRACT; SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SAID SHERMAN ECONOMIC DEVELOPMENT CORPORATION TRACT; SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE F.M. HIGHWAY NO. 1417;

THENCE, WITH THE SAID SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417, THE FOLLOWING METES AND BOUNDS;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 1057.58 FEET TO A POINT FOR ANGLE AT THE WEST BASE OF A DISTURBED CONCRETE MONUMENT FOUND;

SOUTH 87 DEGREES 28 MINUTES 00 SECONDS EAST, A DISTANCE OF 156.68 FEET TO A "X" CUT IN CONCRETE FOUND AT AN ANGLE POINT;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2,805,290 SQUARE FEET OR 64.401 ACRES OF LAND.

SURVEYOR'S CERTIFICATION

To: BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders, its successors and/or assigns, CF Alpha & Golf Procco LLC, a Delaware limited liability company, its successors and assigns; Broadstone HHH Texas, LLC; First American Title Insurance Company; Pilcher, Nichols & Meeks LLP; and the Matthews Company, Inc.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(i), 7(c), 8, 9, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The fieldwork was completed on May 29, 2019.

Date of Plat or Map: May 30, 2019


Robert W. Schneeberg, Texas R.P.L.S. No. 4804
Gonzalez & Schneeberg, Engineers & Surveyors, Inc.
2100 Lakeside Boulevard, Suite 200
Richardson, Texas 75082
Phone (972) 516-8855
email: robert.schneeberg@gs-engineers.com
GSES 6891-19-05-04
Date: May 30, 2019
Date of Last Revision: August 14, 2019



The property described and shown hereon is the same property described in First American Title Insurance Company Title Commitment GF No. 3020-958726TX3, effective date May 3, 2019.

EXHIBIT B
Description of the Property Improvements

Approximately \$14 million in real property improvements, consisting of:

1. Building renovation
2. Utilities upgrade
3. Batching and processing equipment
4. Packaging equipment
5. Mechanical and electrical installation
6. Engineering and other miscellaneous costs



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

D. 2.

Meeting Date: 10/03/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

PUBLIC HEARING

Proposed Agreement with Sunny Delight Beverages Company for the Abatement of Ad Valorem Property Taxes for Tangible Personal Property within Industrial Reinvestment Zone Number Thirteen (#13), City of Sherman, Texas

Issue:

Holding a public hearing on a proposed tax abatement agreement with Sunny Delight Beverages Company for improvements within City of Sherman Industrial Reinvestment Zone Number Thirteen (#13)

Background:

On Monday, August 22, 2022, The Tax Reinvestment Committees of the City of Sherman and Grayson County ("Committee") met to consider a request from Broadstone HHH Texas LLC for a tax abatement involving a project by Sunny Delight Beverages Company ("SDBC") to invest \$14 million in its current facility located at 300 W FM 1417 in Sherman and leased from Broadstone HHH Texas LLC. SDBC's plan is to install two new product lines that will make Juicy Juice tetra products. The taxable value of the current property is about \$33 million with this project adding about \$14 million in additional taxable value. The project is scheduled to begin by the end of the year and be fully operational by the fall of 2023. SDBC currently has 114 employees working at the facility. The expansion will allow the Company to add 74 new full-time jobs over the next two years and invest approximately \$30 million in both building improvements and equipment. This agreement only covers improvements to the building. A separate agreement will be considered for the abatement of ad valorem taxes for the equipment. The Committee voted to recommend an abatement to the City Council and Grayson County.

The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. Ordinance No. 6525 creating Industrial Reinvestment Zone Number Thirteen (#13), was adopted following public hearing at the September 6, 2022, City Council meeting.

The proposed tax abatement agreement calls for an eight (8) year tax abatement of 34%, 34%, 34%, 28%, 28%, 28%, 28%, 14%, in accordance with the City's current tax abatement matrix and after excluding the debt portion of the tax rate from the abatement. As is the case with all tax abatements, none of the proposed property considered under this agreement is currently on the tax rolls, so the benefit from this abatement is that the City will see a net increase in property tax revenues.

Origination:

Sunny Delight Beverages Company, Applicant
Tax Reinvestment Committee

Financial Consideration:

At the estimated initial taxable value of \$16 million for the equipment, this part of the project would generate an estimated \$325,000 in property tax revenues for the City and provide an estimated \$140,000 to the taxpayer over the eight (8) years.

Staff Recommendation:

The staff recommends that the City Council hold a public hearing on the proposed tax abatement agreement with Sunny Delight Beverages Company.

Alternatives:

As may be directed by the Council.

Attachments

Resolution No. 6961

Ordinance 6525 Creation IRZ #13

Tax Abatement Agreement-Sunny Delight

RESOLUTION NO. 6961

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH SUNNY DELIGHT BEVERAGES COMPANY FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR TANGIBLE PERSONAL PROPERTY WITHIN THE CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NUMBER THIRTEEN (#13); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from Sunny Delight Beverages Company, and all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an agreement with Sunny Delight Beverages Company for the abatement of ad valorem property taxes for a period of eight (8) years, for machinery and equipment within the City of Sherman Industrial Reinvestment Zone Number Thirteen (#13), consisting of approximately \$16 million of tangible personal property in connection with a beverage manufacturing facility, in the same or substantially same form as the 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 3rd day of October, 2022.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

**BY: _____
LINDA ASHBY, CITY CLERK**

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

**BY: _____
RYAN D. PITTMAN, CITY ATTORNEY**

ORDINANCE NO. 6525

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NO. 13; 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, BROADSTONE HHH TEXAS LLC, 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, Broadstone HHH Texas LLC is the sole owner of approximately 64± acres of land in the City of Sherman, Grayson County, Texas, as more particularly described in Exhibit A, attached hereto (the "Land");

WHEREAS, Harvest Hill Holdings, Inc. through its affiliate, Sunny Delight Beverages Company, leases the Land;

WHEREAS, Harvest Hill Holdings, Inc. is considering constructing new real property improvements at its current facility on the Land (collectively, the "Improvements"), and Sunny Delight Beverages Company is considering equipping the Improvements with new tangible personal property equipment;

WHEREAS, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have represented that the Improvements and tangible personal property would constitute an approximate investment of \$30 Million and that, when fully operational, the Improvements and tangible personal property would be expected to retain significant existing employment and bring new employment to the City of Sherman, Texas ("City");

WHEREAS, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have represented that the Improvements and tangible personal property would be made to the current facility and used to produce juice beverages;

WHEREAS, Broadstone HHH Texas LLC, through its lessee, Harvest Hill Holdings, Inc., and Sunny Delight Beverages Company have applied for tax abatements pursuant to

Chapter 312 of the Texas Tax Code from the City and from Grayson County, 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, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have requested, and the City desires, to establish a new tax abatement reinvestment zone to facilitate the applications of Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company pursuant to Chapter 312 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. 13, 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. 13."

SECTION 3. That the property within the City of Sherman Industrial Reinvestment Zone No. 13 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. 13, 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 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.]

INTRODUCED on this the 6th day of September, 2022.

ADOPTED on this the 6th day of September, 2022.

EFFECTIVE DATE on this the 6th day of September, 2022.

CITY OF SHERMAN, TEXAS

BY: 

DAVID PLYLER, MAYOR

ATTEST:



LINDA ASHBY, CITY CLERK

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



RYAND D. PITTMAN, CITY ATTORNEY

Exhibit A

DESCRIPTION OF A 64.401 ACRE TRACT SITUATED IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND CONVEYED TO AGNL BEVERAGES (TX), L.P. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 5732, PAGE 308, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; SAID 64.401 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY MEETS AND BOUNDS AS FOLLOWS:

BEGINNING, AT A "X" CUT IN CONCRETE FOUND MARKING THE NORTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417 (VARIABLE WIDTH) WITH THE CENTER OF A PUBLIC ROAD TO THE SOUTH LOCALLY KNOWN AS HOWE DRIVE RUNNING ALONG OR NEAR THE EAST LINE OF THE SAID MARTIN SURVEY;

THENCE, SOUTH 14 DEGREES 08 MINUTES 48 SECONDS EAST, WITH SAID CENTER OF HOWE DRIVE, A DISTANCE OF 2433.63 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AND THE NORTHEAST CORNER OF SHERMAN INDUSTRIAL DEVELOPMENT ADDITION TO SAID CITY OF SHERMAN, TEXAS ACCORDING TO THE PLAT OF RECORD IN VOLUME 24, PAGE 40, PLAT RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 74 DEGREES 48 MINUTES 39 SECONDS WEST, WITH THE SOUTH LINE OF THE SAID 64.401 ACRE TRACT, PASSING AT A DISTANCE OF 40.00 FEET THE NORTHEAST CORNER OF LOT 3, BLOCK 1 OF SAID SHERMAN INDUSTRIAL DEVELOPMENT ADDITION, CONTINUING, IN ALL, A TOTAL DISTANCE OF 527.51 FEET TO A POINT MARKING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION BY DEED RECORDED IN VOLUME 4895, PAGE 876, OFFICIAL PUBLIC RECORDS; SAID POINT ALSO BEING AT THE INTERSECTION OF SAID SOUTH LINE OF THE SAID 64.401 ACRE TRACT WITH THE EAST RIGHT-OF-WAY LINE OF THE EASEMENT CONVEYED TO THE ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY RECORDED IN VOLUME 945, PAGE 490, DEED RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 64.401 ACRE TRACT AND SAID RIGHT-OF-WAY LINE, THE FOLLOWING METES AND BOUNDS;

NORTH 59 DEGREES 06 MINUTES 38 SECONDS WEST, A DISTANCE OF 331.98 FEET TO A POINT MARKING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1885.08 FEET;

NORTHWESTERLY, WITH SAID CURVE TO THE RIGHT, [CHORD BEARS NORTH 36 DEGREES 28 MINUTES 48 SECONDS WEST, 1450.72 FEET], AN ARC DISTANCE OF 1409.13 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND MARKING AN "L" CORNER;

NORTH 76 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD FOUND MARKING ANOTHER "L" CORNER;

NORTHWESTERLY, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 1860.08 FEET, [CHORD BEARS NORTH 11 DEGREES 46 MINUTES 26 SECONDS WEST, 134.73 FEET], AN ARC DISTANCE OF 134.76 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND THE END OF SAID CURVE;

NORTH 09 DEGREES 41 MINUTES 54 SECONDS WEST, A DISTANCE OF 743.13 FEET TO A POINT MARKING THE NORTHWEST CORNER OF SAID 64.401 ACRE TRACT; SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SAID SHERMAN ECONOMIC DEVELOPMENT CORPORATION TRACT; SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE F.M. HIGHWAY NO. 1417;

THENCE, WITH THE SAID SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417, THE FOLLOWING METES AND BOUNDS;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 1057.58 FEET TO A POINT FOR ANGLE AT THE WEST BASE OF A DISTURBED CONCRETE MONUMENT FOUND;

SOUTH 87 DEGREES 28 MINUTES 00 SECONDS EAST, A DISTANCE OF 156.68 FEET TO A "X" CUT IN CONCRETE FOUND AT AN ANGLE POINT;

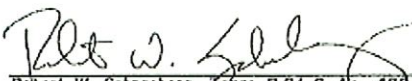
NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2,805,290 SQUARE FEET OR 64.401 ACRES OF LAND.

SURVEYOR'S CERTIFICATION

To: BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders, its successors and/or assigns, CF Alpha & Golf Prepco LLC, a Delaware limited liability company, its successors and assigns; Broadstone HHI Texas, LLC; First American Title Insurance Company; Pletcher, Nichols & Meeks LLP; and The Matthews Company, Inc.

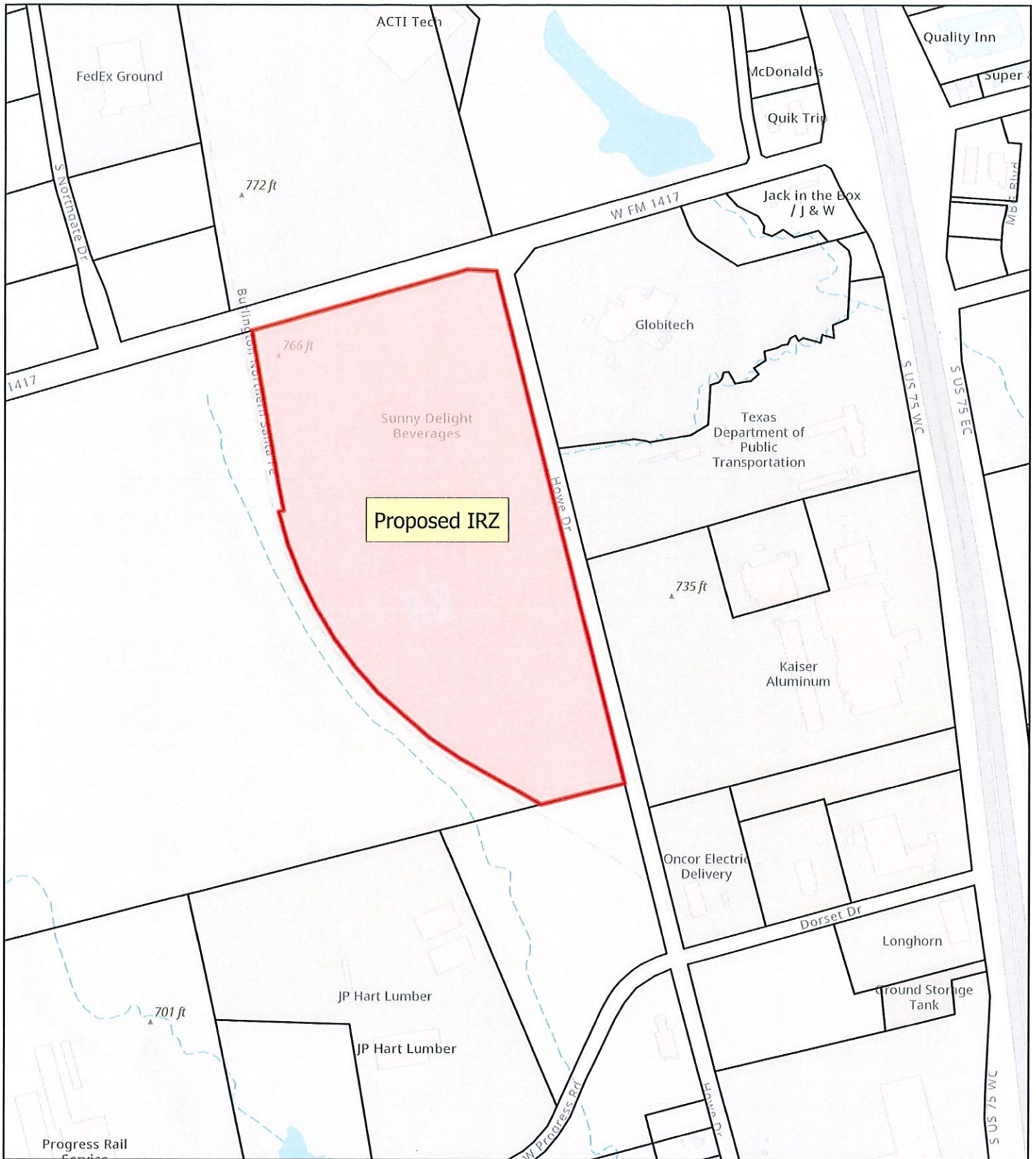
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(i), 7(c), 8, 9, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The fieldwork was completed on May 29, 2019.

Date of Plat or Map: May 30, 2019


Robert W. Schnaeberg, Texas R.P.L.S. No. 4804
Gonzalez & Schnaeberg, Engineers & Surveyors, Inc.
2100 Lakeside Boulevard, Suite 200
Richardson, Texas 75082
Phone (972) 516-8855
email: robert.schnaeberg@gs-engineers.com
USES 6891-19-05-04
Date: May 30, 2019
Date of Last Revision: August 14, 2019



The property described and shown hereon is the same property described in First American Title Insurance Company Title Commitment GF No. 3020-958726TX31, effective date May 3, 2019.



diagnose H:\ENGINEERING\GIS\ArcGIS Pro Projects\Finance\TIRZ Maps.aprx



CITY OF SHERMAN (Proposed) IRZ 13



8/22/2022

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

**AD VALOREM TAX ABATEMENT AGREEMENT – TANGIBLE PERSONAL
PROPERTY**

This AD VALOREM TAX ABATEMENT AGREEMENT – TANGIBLE PERSONAL PROPERTY (“**Agreement**”) is made and entered into by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality (“**City**”), and SUNNY DELIGHT BEVERAGES COMPANY, a Florida corporation (“**Sunny Delight**”).

WHEREAS, Section 312.002 of the Texas Tax Code requires the City to adopt a resolution indicating the City’s desire to become eligible to participate in tax abatement agreements; and

WHEREAS, the City Council of the City (the “**City Council**”) previously has adopted a resolution stating that the City elected to be eligible to participate in tax abatements; and

WHEREAS, on May 16, 2016, the City Council adopted Guidelines and Criteria for the Industrial Tax Abatement Program (“**Guidelines**”) through the adoption of Resolution No. 6080, pursuant to Section 312.002 of the Tax Code; and

WHEREAS, the Guidelines constitute appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Tax Code; and

WHEREAS, on September 6, 2022, the City Council of the City (“**City Council**”) adopted Ordinance No. 6525 (“**Ordinance**”), establishing Industrial Reinvestment Zone Number 13, City of Sherman, Texas, for commercial-industrial tax abatement, as authorized by Chapter 312 of the Texas Tax Code, on approximately 64.4 acres of land (“**Zone**”); and

WHEREAS, Sunny Delight owns machinery, equipment, furniture, fixtures and inventory that are located on real property more particularly described in Exhibit A attached hereto (the “**Land**”), which is the subject of the establishment of the Zone on said property; and

WHEREAS, Sunny Delight proposes to expand production at its current manufacturing facility on the Land (the “**Premises**”) including equipping two additional production lines with new machinery, equipment, furniture, fixtures and inventory for the production of Juicy Juice tetra box products, to be placed in service on or after the Effective Date of this Agreement (collectively, the “**Tangible Personal Property**”). The Tangible Personal Property is expected to significantly enhance the economic base of the City; and

WHEREAS, Sunny Delight represents that the Tangible Personal Property, as hereinafter defined, will constitute an approximate investment of \$16 million by Sunny Delight, and that when fully operational, the Tangible Personal Property is expected to retain significant existing employment and bring new employment to the City, with expected new employment totaling 188 Employment Positions, as hereinafter defined, in each such phase; and

WHEREAS, Sunny Delight's selection of the City as the location for the Tangible Personal Property is the result of collaboration among Sunny Delight, the City and other units of local government and economic development entities; and

WHEREAS, the City Council finds that the additional production capacity realized from the Tangible Personal Property is feasible and practicable and would be of benefit to the land to be included in the Zone and the City after expiration of this Agreement; and

WHEREAS, the City Council has concluded that the Tangible Personal Property and operations proposed by Sunny Delight within the Zone and described in this Agreement and the terms of this Agreement are consistent with the requirements of Chapter 312 of the Tax Code and the Guidelines, or to the extent of any inconsistency with the Guidelines, the City Council has determined, in its discretion and in accordance with Section 312.002(d) of the Tax Code, that this Agreement should be entered into notwithstanding such inconsistency; and

WHEREAS, the City desires to enter into an Agreement with Sunny Delight for the abatement of taxes assessed against a portion of the Tangible Personal Property located on the Land as further set forth herein pursuant to the Tax Code.

NOW, THEREFORE, in consideration of the mutual benefits and promises for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the expansion of primary employment, the attraction of major investment in the Zone which contributes to the economic development of the City and the enhancement of the tax base in the City, the parties agree as follows:

I. DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

- A. "Affiliate" shall mean any person, directly or indirectly controlling, controlled by, or under common control with Sunny Delight. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.
- B. "Base Year" means the calendar year beginning January 1, 2022.
- C. "Capital Investment" means the total capitalized cost invested by Owner for the Property Improvements that are the subject of the Tax Abatements granted by this Agreement.
- D. "Commencement Date" means January 1 of the calendar year that Sunny Delight elects to begin the Tax Abatement by providing written notice to the City and Grayson County Appraisal District

- E. “Delinquent Ad Valorem Taxes” means any validly imposed Texas local or state ad valorem taxes that Sunny Delight does not remit by the lawful due date, but does not include any such taxes that are assessed against Sunny Delight as the result of a tax audit or other similar notice of assessment by any taxing authority unless Sunny Delight fails to timely appeal such audit or notice of assessment. If Sunny Delight subsequently loses the appeal of the ad valorem tax audit or other notice of assessment, or fails to timely appeal the audit or notice of assessment, the taxes assessed pursuant to the audit will be considered “delinquent” the day after the date specified by the final order on appeal as the due date for payment or the day after the due date for a timely appeal if no appeal is taken or filed by Sunny Delight.
- F. “Effective Date” means the last date of acknowledgment of the signatures set forth on the signature page below.
- G. “Employment Positions” means non-temporary full time employment positions of Sunny Delight or a Sunny Delight Affiliate at the Premises, including employees of contractors assigned to the Premises as shown on Sunny Delight’s internal management systems. Two (2) or more part-time employees, totaling thirty (30) hours or more per week may be substituted for one (1) full time employee.
- H. “Event of Bankruptcy or Insolvency” means the dissolution or termination of Sunny Delight’s existence as a going business, insolvency, appointment of receiver for any significant part of Sunny Delight’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Sunny Delight and such proceeding is not dismissed within ninety (90) days after the filing thereof.
- I. “Force Majeure” means any delay caused by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor, supplies or materials (including but not limited to circumstances related to declared national emergencies such as but not limited to COVID-19) or other circumstances which are beyond the reasonable control and are without the fault or negligence of the obligated party, regardless of whether any such circumstance is similar to any of those enumerated or not. The obligated party shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement and any applicable completion deadline shall be extended for a period of time equal to the period the obligated party was delayed, provided that the party claiming delay as a result of any of the foregoing Force Majeure events shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a Force Majeure event causing such delay, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection. Force Majeure will not mean nor include delays caused by Sunny Delight’s lack of, or inability to obtain, funding.

- J. “Land” shall mean the real property described in Exhibit A, attached hereto.
- K. “Person” shall mean an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.
- L. “Project Commencement” means the date on which all necessary permits for installation and operation of the first set of Tangible Personal Property pursuant to the respective plans therefore have been issued by all applicable governmental authorities.
- M. “Project Completion” means the date the first set of Tangible Personal Property has been placed in service.
- N. “Tangible Personal Property” means all tangible personal property, including, without limitation, equipment, machinery and fixtures, inventory and supplies owned by Sunny Delight that are located on the Premises and placed in service on or after the Effective Date of this Agreement.
- O. “Tax Abatement” shall have the same meaning set forth in Article IV herein.
- P. “Taxable Value” means the appraised value as certified by the Grayson County Appraisal District as of January 1 of a given year.

II. GENERAL PROVISIONS

- A. Sunny Delight represents that it has the right to locate, operate and maintain the Tangible Personal Property on the Land and the Premises and contemplates locating the Tangible Personal Property on the Premises.
- B. The Premises are not an improvement project financed by tax increment bonds.
- C. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City; provided, however, that this section shall not be construed to create a security interest in the Land or Tangible Personal Property in favor of such holders of outstanding bonds of the City.
- D. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of the City or any member of the governing body of any taxing unit joining in or adopting this Agreement.
- E. This Agreement is intended to comply with the requirements of Section 312.204 of the Code and is authorized by the Texas Property Redevelopment and Tax Abatement Act of the Texas Tax Code, Chapter 312, by the Guidelines and by resolution of the City Council authorizing execution of this Agreement.

- F. During the period of the Tax Abatement herein authorized, Sunny Delight shall be subject to all applicable taxation not specifically abated or exempted, including but not limited to sales tax and ad valorem taxation on land, inventory, and supplies.
- G. The Premises shall at all times be used in the manner (1) that complies with the City's Ordinances, regulations, and other laws, and (2) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone as set forth in the Guidelines as of the Effective Date.
- H. Sunny Delight acknowledges and agrees, beginning on the date the first element of Tangible Personal Property is placed in service, that Sunny Delight or a Sunny Delight Affiliate shall, subject only to events of Force Majeure, continuously own and operate the Tangible Personal Property on the Premises, and shall continuously operate and maintain the Premises as a beverage manufacturing facility.

III. TANGIBLE PERSONAL PROPERTY

- A. Sunny Delight contemplates equipping two additional production lines for the manufacture of juice beverages. Sunny Delight represents that the value of the Tangible Personal Property is \$16 million. In order to receive the Tax Abatement under this Agreement, Sunny Delight agrees, subject to events of Force Majeure, to cause Project Commencement to occur on or before December 31, 2022, and to cause Project Completion thereof on or before December 31, 2023. Nothing in this Agreement shall obligate Sunny Delight to purchase or place in service and/or to locate and maintain Tangible Personal Property on the Premises, but said actions are conditions precedent to the Tax Abatement provided herein.
- B. As a condition precedent to the initiation of the Tax Abatement set forth in this Agreement, Sunny Delight will diligently and faithfully, in good and workmanlike manner, pursue the Project Completion in accordance with all applicable state and local laws, codes, and regulations.
- C. Sunny Delight shall maintain the Tangible Personal Property during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.
- D. The City, its agents and employees shall have the right of reasonable access to inspect the Tangible Personal Property at reasonable times and with reasonable notice to Sunny Delight, and in accordance with Sunny Delight's visitor access and security policies, to ensure that the operation of the Tangible Personal Property is in accordance with this Agreement and all applicable state and local laws, codes, and regulations. After Project Completion the City, its agents and employees shall have the continuing right to inspect the Tangible Personal Property at reasonable times with reasonable notice to Sunny Delight, and in accordance with Sunny Delight's reasonable visitor access and security policies, to ensure that the Tangible Personal is thereafter maintained and operated in accordance with this Agreement during the term hereof.

IV.

TAX ABATEMENT

- A. Subject to the terms and conditions of this Agreement, and to the extent authorized by the Texas Constitution and the Tax Code, the City grants Sunny Delight the Tax Abatement set forth in this Article IV. The Tax Abatement is subject to and conditioned on the Project Completion within the timeframe set forth in Article III above. Subject to the notice and cure provisions set forth in this Agreement, this Agreement shall automatically terminate without notice to any party if the Project Completion does not occur within the timeframe set forth in Article III above unless such delay is caused by events of Force Majeure.
- B. Subject to the conditions set forth herein, Sunny Delight shall receive an abatement of the City's property tax rate according to the percentages in the table below, based on the year of the abatement, applied against the product of (i) the Taxable Value of all of the Tangible Personal Property, less (ii) \$0.00 (the agreed Taxable Value for the Base Year of Tangible Personal Property). The Tax Abatement shall commence on the Commencement Date and shall continue for a period of eight (8) consecutive calendar years thereafter; provided, however, no Tangible Personal Property shall be eligible for the Tax Abatement after eight (8) calendar years from the Commencement Date, regardless of circumstance or the date Sunny Delight obtains Project Completion or places the Tangible Personal Property into service. Provided that the requirements set forth in this Agreement are satisfied in connection with minimum capital investment requirements, minimum Employment Positions and Project Completion, the Tax Abatement shall apply to Tangible Personal Property placed into service during the term of the Tax Abatement.

<i>Year</i>	<i>Percentage of Property Taxes Abated</i>
1	34%
2	34%
3	34%
4	28%
5	28%
6	28%
7	28%
8	14%

V.

CAPITAL INVESTMENT; INVESTMENT REPORTS

Sunny Delight covenants and agrees that the Capital Investment in Tangible Personal shall meet or exceed the aggregate amount of \$16 million as of the Project Completion. Sunny Delight shall provide the City with reports in a form reasonably acceptable to the City certifying Sunny Delight's compliance with the minimum Capital Investment set forth herein (the **"Investment Reports"**). The Investment Reports shall be prepared and maintained in accordance with generally accepted accounting principles and shall include information on the extent and the amount of Sunny Delight's investments in the Tangible Personal Property. Sunny Delight agrees to submit the Investment Reports no later than thirty (30) days following the start of the Commencement Date and on or before January 31 of each successive calendar year during the term of this Agreement. The City shall have the right to inspect Sunny Delight's books and records relating to the acquisition, location and maintenance of the Tangible Personal Property on the Premises, subject to Sunny Delight's reasonable security and confidentiality requirements.

VI.

EMPLOYMENT COMMITMENTS; EMPLOYMENT REPORTS

Sunny Delight covenants and agrees to employ and maintain no fewer than 188 Employment Positions at the Premises beginning on the Commencement Date and throughout the term of this Agreement. Within thirty (30) days following the Commencement Date and then as part of its Certification of Compliance each successive year thereafter during the term of this Agreement, Sunny Delight agrees to provide the City with reports in a form reasonably acceptable to the City certifying Sunny Delight's compliance with the above commitment to Employment Positions and shall include information on the number of Employment Positions created, filled or contracted for at the Improvements (the **"Employment Reports"**). The City shall have the right to inspect Sunny Delight's payroll and other employment records, including Sunny Delight's management system assigned to the Premises, relating to the Employment Positions on the Premises, subject to Sunny Delight's reasonable security and confidentiality requirements.

VII.

DEFAULT

- A. The following shall constitute an "Event of Default" hereunder: (1) Sunny Delight's failure to cause Project Commencement or Project Completion in accordance with this Agreement; (2) Sunny Delight's failure to pay any Delinquent Ad Valorem Taxes owed to the City or any other taxing authority; (3) Sunny Delight's failure to make the Capital Investment; (4) Sunny Delight's failure to meet the employment commitments described herein; (5) Sunny Delight suffering an Event of Bankruptcy or Insolvency; or (6) Sunny Delight breaching any of the terms and conditions of this Agreement, including without limitation, the other conditions to the Tax Abatements set forth herein.
- B. Upon breach by Sunny Delight of any obligations under this Agreement, the City shall notify Sunny Delight in writing. Sunny Delight shall have ninety (90) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within a ninety (90) day period, other than a monetary default, and Sunny Delight has diligently pursued such remedies as shall be reasonably necessary to cure such default, then

the City shall extend the period in which the default must be cured for an additional sixty (60) days.

- C. Upon the occurrence and during the continuance of an Event of Default, the City shall have all remedies available to it at law or in equity, including without limitation, termination of this Agreement. Upon an Event of Default, the City shall have the right hereunder to enforce specific performance of amounts owed to the City or to bring an action to collect such amounts. The City also will have the right to pursue legal action against Sunny Delight to recapture the total amount of Tax Abatements granted to Sunny Delight during the term of this Agreement. Upon the occurrence of an Event of Default there will be a stay of Tax Abatements and the City will be relieved of its obligations herein until such Event of Default is cured within the applicable cure period described.
- D. Periods described above for curing a delinquency or violation hereunder shall toll, and shall not be considered for any purpose as having run, beginning on the day Sunny Delight files a petition in district court in Grayson County, Texas to determine whether a delinquency or violation has in fact occurred under this Agreement and/or to determine whether any attempt to cure has been sufficient, and ending upon the issuance of a final court decision or other final resolution of such court proceeding.
- E. Upon any termination of this Agreement by the City, all tax abated as a result of this Agreement shall become a debt of Sunny Delight to the City as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is delivered to Sunny Delight. Sunny Delight agrees that the City shall have all remedies for the collection of this debt as provided generally in the Tax Code for the collection of delinquent property tax. The City, at its sole discretion, has the option to provide a repayment schedule. The computation of tax abated for the purposes of the Agreement shall, with respect to any tax year in which an abatement was granted, be based upon the portion of the Taxable Values of any Tangible Personal Property which received abatement in such year, multiplied by the City's tax rate applicable in such year, as calculated each year by the Tax Assessor-Collector for the City, as the case may be.

VIII. ANNUAL APPLICATION FOR TAX EXEMPTION

It shall be the responsibility of Sunny Delight, pursuant to the Tax Code, to file an annual exemption application form with the chief appraiser for the Grayson County Appraisal District and any other appraisal district in which the eligible taxable property has situs. A copy of the exemption application shall be submitted to the City contemporaneously therewith.

IX. ANNUAL RENDITION

Sunny Delight shall annually render the value of the Tangible Personal Property eligible for the Tax Abatement, being the subject of the abatement provided herein, to the Grayson County Appraisal District and any other appraisal district in which the eligible taxable property has situs and provide a copy of the same to the City simultaneously therewith.

X.
EFFECT OF SALE, ASSIGNMENT OR LEASE OF PROPERTY

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may not be assigned without the written consent of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, so long as no Event of Default of Sunny Delight under this Agreement exists and remains uncured, Sunny Delight may, without the prior written consent of the City, (1) assign its rights and obligations under this Agreement to an Affiliate of Sunny Delight, so long as such Affiliate continues to be wholly-owned, directly or indirectly, by Sunny Delight or one of its constituent parties and Sunny Delight notifies the City in advance of such assignment and provides evidence reasonably satisfactory to the City that such assignee is an Affiliate, or (2) make a collateral assignment of the Agreement solely for the benefit of a creditor providing financing for Tangible Personal Property. In the event the City consents to an assignment of this Agreement by Sunny Delight, no further assignment shall be made without the express consent in writing of the City, unless such assignment may otherwise be made without such consent pursuant to the terms of this Agreement. Except as otherwise set forth herein, an assignment by Sunny Delight of its interest in this Agreement shall not relieve Sunny Delight from its obligations under this Agreement unless approved by the City.

XI.
NOTICE

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

If to the City:

City of Sherman, Texas
220 W. Mulberry Street
Sherman, Texas 75090
Attn: City Manager

With required copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Attn: Ryan D. Pittman

If to Sunny Delight:

Sunny Delight Beverages Co.
300 FM 1417 West
Sherman, Texas 75092
Attn: _____

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

XII.
TERM

The term of this Agreement shall begin on the Effective Date and shall continue during the period set forth in Article IV hereof, unless sooner terminated. Time is of the essence in this Agreement.

XIII. AUTHORIZATIONS

The City Council has authorized the City Manager to execute this Agreement on the City's behalf. This Agreement was entered into by Sunny Delight pursuant to authority granted by one or more of its officers to execute this Agreement on behalf of Sunny Delight.

XIV. SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase, or word herein is held invalid, illegal, or unconstitutional, the balance of this Agreement, shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word. If any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal, the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.

XV. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be in the State District Court of Grayson County, Texas. The parties consent to venue and to the jurisdiction of the State District Court of Grayson County, Texas.

XVI. INDEMNIFICATION

- A. IN ADDITION TO THE OTHER REMEDIES AFFORDED TO THE CITY IN THIS AGREEMENT, SUNNY DELIGHT SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, ATTORNEYS, CONTRACTORS, OR AGENTS (HEREINAFTER "CITY'S INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART) SUNNY DELIGHT'S PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.
- B. Notice of Indemnified Loss. The City's Indemnified Party shall promptly notify Sunny Delight of any indemnified Losses or Claim for indemnified Losses in respect of which the City's Indemnified Party may be entitled to indemnification under this Article XVI. Such

notice shall be given as soon as reasonably practicable after the City's Indemnified Party becomes aware of the Loss or Claim for Losses.

- C. Defense of Third Party Claims. In the event any action or proceeding shall be brought against the City's Indemnified Party by reason of any matter for which the City's Indemnified Party is indemnified hereunder, Sunny Delight shall, upon notice from the City's Indemnified Party or its authorized agents or representatives, at Sunny Delight's sole cost and expense, resist and defend the same with legal counsel selected by City. Sunny Delight's obligation to defend shall apply regardless of whether the City's Indemnified Party is solely or concurrently negligent. Nothing herein shall be deemed to prevent the City's Indemnified Party at its election and at its own expense from participating in the defense of any litigation with their own counsel. If Sunny Delight fails to retain defense counsel within seven (7) business days after receipt of City's Indemnified Party written notice that the City's Indemnified Party is invoking its right to indemnification under this Agreement, the City's Indemnified Party shall have the right to retain defense counsel on their own behalf, and Sunny Delight shall be liable for all usual and customary defense costs incurred by the City's Indemnified Party.

XVII. ENTIRE AGREEMENT

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

XVIII. RECORDATION OF AGREEMENT

A certified copy of this Agreement in recordable form shall be recorded in the real property records of Grayson County, Texas.

XIX. INCORPORATION OF RECITALS; EXHIBITS

The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

XX. CERTIFICATIONS REQUIRED BY TEXAS LAW

- A. Pursuant to Section 2271.002, Texas Government Code, Sunny Delight hereby represents that neither Sunny Delight, nor any wholly owned subsidiary, majority-owned subsidiary, parent, owner or affiliate of Sunny Delight "boycotts Israel", and subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, Sunny Delight agrees it will not boycott Israel during the term of this Agreement. As used

in the immediately preceding sentence, “boycott Israel” shall have the meaning given such term in Section 2271.001, Texas Government Code.

- B. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Sunny Delight certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.
- C. Pursuant to Chapter 2274, Texas Government Code, Sunny Delight verifies that (i) it does not boycott energy companies and will not boycott energy companies during the term of this Agreement and (ii) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.
- D. Pursuant to Chapter 2264, Texas Government Code, Sunny Delight represents and certifies that it does not and will not knowingly employ any undocumented worker at the Premises or on the Land 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, Sunny Delight is convicted of a violation under 8 U.S.C. § 1342a(f), Sunny Delight shall repay to the City an amount equal to all Grant payments tendered to Sunny Delight under this Agreement plus interest at the annual rate of four percent (4%) not later than the 120th day after the date the public agency, state or local taxing jurisdiction notifies Sunny Delight of such violation.

XX.

NO VESTED RIGHTS

Nothing in this Agreement shall be interpreted or implied to vest any rights in the parties. In addition, nothing in this Agreement constitutes a “permit” as defined in Chapter 245, Texas Local Government Code. SUNNY DELIGHT WAIVES ANY CLAIM THAT THIS AGREEMENT ESTABLISHES VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE OR OTHER LAW. THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

XXII.

COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. The parties acknowledge the inherent unpredictability of the global semiconductor industry and the possibility that schedules for investment and job creation and other provisions may require adjustment over the terms of this Agreement, subject to the mutual written asset of all parties.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the Effective Date.

CITY OF SHERMAN, TEXAS,
a Texas home rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

ATTEST:

By: _____
Linda Ashby, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan D. Pittman, City Attorney

**SUNNY DELIGHT BEVERAGES
COMPANY,**
a Florida corporation

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT A

Legal Description of the Land

MEASURED DESCRIPTION

DESCRIPTION OF A 64.401 ACRE TRACT SITUATED IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND CONVEYED TO AGNL BEVERAGES (TX), L.P. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 5732, PAGE 308, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; SAID 64.401 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY MEETS AND BOUNDS AS FOLLOWS:

BEGINNING, AT A "X" CUT IN CONCRETE FOUND MARKING THE NORTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417 (VARIABLE WIDTH) WITH THE CENTER OF A PUBLIC ROAD TO THE SOUTH LOCALLY KNOWN AS HOWE DRIVE RUNNING ALONG OR NEAR THE EAST LINE OF THE SAID MARTIN SURVEY;

THENCE, SOUTH 14 DEGREES 08 MINUTES 48 SECONDS EAST, WITH SAID CENTER OF HOWE DRIVE, A DISTANCE OF 2433.63 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AND THE NORTHEAST CORNER OF SHERMAN INDUSTRIAL DEVELOPMENT ADDITION TO SAID CITY OF SHERMAN, TEXAS ACCORDING TO THE PLAT OF RECORD IN VOLUME 24, PAGE 40, PLAT RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 74 DEGREES 48 MINUTES 39 SECONDS WEST, WITH THE SOUTH LINE OF THE SAID 64.401 ACRE TRACT, PASSING AT A DISTANCE OF 40.00 FEET THE NORTHEAST CORNER OF LOT 3, BLOCK 1 OF SAID SHERMAN INDUSTRIAL DEVELOPMENT ADDITION; CONTINUING, IN ALL, A TOTAL DISTANCE OF 527.51 FEET TO A POINT MARKING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION BY DEED RECORDED IN VOLUME 4895, PAGE 876, OFFICIAL PUBLIC RECORDS; SAID POINT ALSO BEING AT THE INTERSECTION OF SAID SOUTH LINE OF THE SAID 64.401 ACRE TRACT WITH THE EAST RIGHT-OF-WAY LINE OF THE EASEMENT CONVEYED TO THE ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY RECORDED IN VOLUME 945, PAGE 490, DEED RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 64.401 ACRE TRACT AND SAID RIGHT-OF-WAY LINE, THE FOLLOWING METES AND BOUNDS; NORTH 59 DEGREES 06 MINUTES 38 SECONDS WEST, A DISTANCE OF 331.98 FEET TO A POINT MARKING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1885.08 FEET;

NORTHWESTERLY, WITH SAID CURVE TO THE RIGHT, (CHORD BEARS NORTH 36 DEGREES 28 MINUTES 48 SECONDS WEST, 1450.72 FEET), AN ARC DISTANCE OF 1489.13 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND MARKING AN "L" CORNER;

NORTH 76 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD FOUND MARKING ANOTHER "L" CORNER;

NORTHWESTERLY, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 1860.08 FEET, (CHORD BEARS NORTH 11 DEGREES 46 MINUTES 26 SECONDS WEST, 134.73 FEET), AN ARC DISTANCE OF 134.76 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND THE END OF SAID CURVE;

NORTH 09 DEGREES 41 MINUTES 54 SECONDS WEST, A DISTANCE OF 743.13 FEET TO A POINT MARKING THE NORTHWEST CORNER OF SAID 64.401 ACRE TRACT; SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SAID SHERMAN ECONOMIC DEVELOPMENT CORPORATION TRACT; SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE F.M. HIGHWAY NO. 1417;

THENCE, WITH THE SAID SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417, THE FOLLOWING METES AND BOUNDS;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 1057.58 FEET TO A POINT FOR ANGLE AT THE WEST BASE OF A DISTURBED CONCRETE MONUMENT FOUND;

SOUTH 87 DEGREES 28 MINUTES 00 SECONDS EAST, A DISTANCE OF 156.68 FEET TO A "X" CUT IN CONCRETE FOUND AT AN ANGLE POINT;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2,805,290 SQUARE FEET OR 64.401 ACRES OF LAND.

SURVEYOR'S CERTIFICATION

To: BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders, its successors and/or assigns, CF Alpha & Golf Procco LLC, a Delaware limited liability company, its successors and assigns; Broadstone HHH Texas, LLC; First American Title Insurance Company; Pilcher, Nichols & Meeks LLP; and the Matthews Company, Inc.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(i), 7(c), 8, 9, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The fieldwork was completed on May 29, 2019.

Date of Plat or Map: May 30, 2019


Robert W. Schneeberg, Texas R.P.L.S. No. 4804
Gonzalez & Schneeberg, Engineers & Surveyors, Inc.
2100 Lakeside Boulevard, Suite 200
Richardson, Texas 75082
Phone (972) 516-8855
email: robert.schneeberg@gs-engineers.com
GSES 6891-19-05-04
Date: May 30, 2019
Date of Last Revision: August 14, 2019



The property described and shown hereon is the same property described in First American Title Insurance Company Title Commitment GF No. 3020-958726TX31, effective date May 3, 2019.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 1.

Meeting Date: 10/03/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6960

Authorizing Execution of an Agreement with Broadstone HHH Texas LLC for the Abatement of Ad Valorem Property Taxes for Improvements within the City of Sherman Industrial Reinvestment Zone Number Thirteen (#13)

Issue:

Approval of a proposed property tax abatement agreement between the City of Sherman and Broadstone HHH Texas LLC for improvements within City of Sherman Industrial Reinvestment Zone Number Thirteen (#13)

Background:

On Monday, August 22, 2022, The Tax Reinvestment Committees of the City of Sherman and Grayson County ("Committee") met to consider a request from Broadstone HHH Texas LLC for a tax abatement involving a project by Sunny Delight Beverages Company ("SDBC") to invest \$14 million in its current facility located at 300 W FM 1417 in Sherman and leased from Broadstone HHH Texas LLC. SDBC's plan is to install two new product lines that will make Juicy Juice tetra products. The taxable value of the current property is about \$33 million with this project adding about \$14 million in additional taxable value. The project is scheduled to begin by the end of the year and be fully operational by the fall of 2023. SDBC currently has 114 employees working at the facility. The expansion will allow the Company to add 74 new full-time jobs over the next two years and invest approximately \$30 million in both building improvements and equipment. This agreement only covers improvements to the building. A separate agreement will be considered for the abatement of ad valorem taxes for the equipment. The Committee voted to recommend an abatement to the City Council and Grayson County.

The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. Ordinance No. 6525 creating Industrial Reinvestment Zone Number Thirteen (#13), was adopted following public hearing at the September 6, 2022, City Council meeting.

The proposed tax abatement agreement calls for an eight (8) year tax abatement of 34%, 34%, 34%, 28%, 28%, 28%, 28%, 14%, in accordance with the City's current tax abatement matrix and after excluding the debt portion of the tax rate from the abatement. As is the case with all tax abatements, none of the proposed property considered under this agreement is currently on the tax rolls, so the benefit from this abatement is that the City will see a net increase in property tax revenues.

Origination:

Broadstone HHH Texas LLC, Applicant
Tax Reinvestment Committee

Financial Consideration:

At the estimated initial taxable value of \$14 million for improvements to the property, this part of the project would generate an estimated \$318,000 in property tax revenues for the City and provide an estimated \$131,000 to the taxpayer over the eight (8) years.

Staff Recommendation:

It is recommended that the City Council approve the proposed tax abatement agreement.

Alternatives:

The City Council could deny the tax abatement agreement.

Attachments

Resolution No. 6960

Tax Abatement Agreement-Broadstone (SunnyD)

Ordinance 6525 Creation IRZ #13

RESOLUTION NO. 6960

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH BROADSTONE HHH TEXAS LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR IMPROVEMENTS WITHIN THE CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NUMBER THIRTEEN (#13); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from Broadstone HHH Texas LLC, and all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an agreement with Broadstone HHH Texas LLC for the abatement of ad valorem property taxes for a period of eight (8) years, for improvements within the City of Sherman Industrial Reinvestment Zone Number Thirteen (#13), consisting of approximately \$14 million of real property improvements in connection with a beverage manufacturing facility, in the same or substantially same form as the 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 3rd day of October, 2022.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

**BY: _____
LINDA ASHBY, CITY CLERK**

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

**BY: _____
RYAN PITTMAN, CITY ATTORNEY**

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

**AD VALOREM TAX ABATEMENT AGREEMENT – REAL PROPERTY
IMPROVEMENTS**

This AD VALOREM TAX ABATEMENT AGREEMENT – REAL PROPERTY IMPROVEMENTS (“**Agreement**”) is made and entered into by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality (“**City**”), and BROADSTONE HHH TEXAS LLC, a New York limited liability company (“**Owner**”).

WHEREAS, Section 312.002 of the Texas Tax Code requires the City to adopt a resolution indicating the City’s desire to become eligible to participate in tax abatement agreements; and

WHEREAS, the City Council of the City (the “**City Council**”) previously has adopted a resolution stating that the City elected to be eligible to participate in tax abatements; and

WHEREAS, on May 16, 2016, the City Council adopted Guidelines and Criteria for the Industrial Tax Abatement Program (“**Guidelines**”) through the adoption of Resolution No. 6080, pursuant to Section 312.002 of the Tax Code; and

WHEREAS, the Guidelines constitute appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Tax Code; and

WHEREAS, on September 6, 2022, the City Council of the City (“**City Council**”) adopted Ordinance No. 6525 (“**Ordinance**”), establishing Industrial Reinvestment Zone Number 13, City of Sherman, Texas, for commercial-industrial tax abatement, as authorized by Chapter 312 of the Texas Tax Code, on approximately 64.4 acres of land (“**Zone**”); and

WHEREAS, Owner owns approximately 64.4 acres of land more particularly described in Exhibit A attached hereto (the “**Land**”), which is the subject of the establishment of the Zone on said property; and

WHEREAS, Owner proposes to expand production at the current manufacturing facility on the Land (the “**Premises**”) including equipping two additional production lines with new machinery, equipment, furniture, fixtures and inventory for the production of Juicy Juice tetra box products, to be placed in service on or after the Effective Date of this Agreement, and other ancillary facilities more fully described in the submittals filed by Owner with the City, from time to time, in order to obtain a building permit(s) (collectively, the “**Property Improvements**”). The Property Improvements and use of the Land are expected to significantly enhance the economic base of the City; and

WHEREAS, Owner represents that the Property Improvements will constitute an approximate investment of \$14 million by Owner, and that when fully operational, the Property Improvements are expected to retain significant existing employment and bring new employment

to the City, with expected new employment totaling 188 Employment Positions, as hereinafter defined, in each such phase; and

WHEREAS, Owner's selection of the City as the location for the Property Improvements is the result of collaboration among Owner, the City and other units of local government and economic development entities; and

WHEREAS, the City Council finds that the Property Improvements sought are feasible and practicable and would be of benefit to the land to be included in the Zone and the City after expiration of this Agreement; and

WHEREAS, the City Council has concluded that the Property Improvements and operations proposed by Owner within the Zone and described in this Agreement and the terms of this Agreement are consistent with the requirements of Chapter 312 of the Tax Code and the Guidelines, or to the extent of any inconsistency with the Guidelines, the City Council has determined, in its discretion and in accordance with Section 312.002(d) of the Tax Code, that this Agreement should be entered into notwithstanding such inconsistency; and

WHEREAS, the City desires to enter into an Agreement with Owner for the abatement of taxes assessed against a portion of the Property Improvements located on the Land as further set forth herein pursuant to the Tax Code.

NOW, THEREFORE, in consideration of the mutual benefits and promises for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the expansion of primary employment, the attraction of major investment in the Zone which contributes to the economic development of the City and the enhancement of the tax base in the City, the parties agree as follows:

I. DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

- A. "Affiliate" shall mean any person, directly or indirectly controlling, controlled by, or under common control with Owner. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.
- B. "Base Year" means the calendar year beginning January 1, 2022.
- C. "Capital Investment" means the total capitalized cost invested by Owner for the Property Improvements that are the subject of the Tax Abatements granted by this Agreement.

- D. “Certificate of Occupancy” means the final certificate of occupancy issued by the City with respect to any Property Improvements allowing for the entrance and operation within such improvements.
- E. “Commencement Date” means January 1 of the calendar year that Owner elects to begin the Tax Abatement by providing written notice to the City and Grayson County Appraisal District.
- F. “Commencement of Construction” means the date that: (1) the plans for the Property Improvements have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; and (2) all necessary permits for construction of the Property Improvements pursuant to the respective plans therefore have been issued by all applicable governmental authorities.
- G. “Completion of Construction” means a final Certificate of Occupancy has been issued by the City with respect to the Property Improvements.
- H. “Delinquent Ad Valorem Taxes” means any validly imposed Texas local or state ad valorem taxes that Owner does not remit by the lawful due date, but does not include any such taxes that are assessed against Owner as the result of a tax audit or other similar notice of assessment by any taxing authority unless Owner fails to timely appeal such audit or notice of assessment. If Owner subsequently loses the appeal of the ad valorem tax audit or other notice of assessment, or fails to timely appeal the audit or notice of assessment, the taxes assessed pursuant to the audit will be considered “delinquent” the day after the date specified by the final order on appeal as the due date for payment or the day after the due date for a timely appeal if no appeal is taken or filed by Owner.
- I. “Effective Date” means the last date of acknowledgment of the signatures set forth on the signature page below.
- J. “Employment Positions” means non-temporary full time employment positions of Owner or an Owner Affiliate at the Premises, including employees of contractors assigned to the Premises as shown on Owner’s internal management systems. Two (2) or more part-time employees, totaling thirty (30) hours or more per week may be substituted for one (1) full time employee.
- K. “Event of Bankruptcy or Insolvency” means the dissolution or termination of Owner’s existence as a going business, insolvency, appointment of receiver for any significant part of Owner’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.
- L. “Force Majeure” means any delay caused by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor, supplies or materials

(including but not limited to circumstances related to declared national emergencies such as but not limited to COVID-19) or other circumstances which are beyond the reasonable control and are without the fault or negligence of the obligated party, regardless of whether any such circumstance is similar to any of those enumerated or not. The obligated party shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement and any applicable completion deadline shall be extended for a period of time equal to the period the obligated party was delayed, provided that the party claiming delay as a result of any of the foregoing Force Majeure events shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a Force Majeure event causing such delay, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection. Force Majeure will not mean nor include delays caused by Owner's lack of, or inability to obtain, funding.

- M. "Land" shall mean the real property described in Exhibit A, attached hereto.
- N. "Person" shall mean an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.
- O. "Property Improvements" collectively means all of the improvements that Owner develops and constructs on the Premises after the Effective Date of this Agreement, which include, without limitation, the improvements described in Exhibit B. The term does not include any tangible personal property.
- P. "Tax Abatement" shall have the same meaning set forth in Article IV herein.
- Q. "Taxable Value" means the appraised value as certified by the Grayson County Appraisal District as of January 1 of a given year.

II. GENERAL PROVISIONS

- A. Owner represents that it has the right to locate, operate and maintain the Property Improvements on the Land and the Premises and contemplates locating the Property Improvements on the Premises.
- B. The Premises are not an improvement project financed by tax increment bonds.
- C. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City; provided, however, that this section shall not be construed to create a security interest in the Land or Property Improvements in favor of such holders of outstanding bonds of the City.

- D. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of the City or any member of the governing body of any taxing unit joining in or adopting this Agreement.
- E. This Agreement is intended to comply with the requirements of Section 312.204 of the Code and is authorized by the Texas Property Redevelopment and Tax Abatement Act of the Texas Tax Code, Chapter 312, by the Guidelines and by resolution of the City Council authorizing execution of this Agreement.
- F. During the period of the Tax Abatement herein authorized, Owner shall be subject to all applicable taxation not specifically abated or exempted, including but not limited to sales tax and ad valorem taxation on land, inventory, and supplies.
- G. The Premises shall at all times be used in the manner (1) that complies with the City's Ordinances, regulations, and other laws, and (2) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone as set forth in the Guidelines as of the Effective Date.
- H. Owner acknowledges and agrees, beginning on a final Certificate of Occupancy is issued for Owner's occupancy of the Property Improvements and continuing during the term of this Agreement, that Owner or an Owner Affiliate shall, subject only to events of Force Majeure, continuously own and occupy the Premises, and shall continuously operate and maintain the Premises as a beverage manufacturing facility

III. PROPERTY IMPROVEMENTS

- A. Owner contemplates constructing or causing to be constructed on the Land the Property Improvements. Owner represents that the approximate cost of construction of the Property Improvements is \$14 million. In order to receive the Tax Abatement under this Agreement, Owner agrees, subject to events of Force Majeure, to cause Commencement of Construction of the Phase II-A Improvements to occur on or before December 31, 2023, and to cause Completion of Construction thereof on or before December 31, 2025. The location of the Phase II-A Improvements is to be shown on a site plan of the Premises submitted to, and approved by, the City. Nothing in this Agreement shall obligate Owner to construct the Property Improvements on the Premises, but said actions are conditions precedent to the Tax Abatement provided herein.
- B. As a condition precedent to the initiation of the Tax Abatement set forth in this Agreement, Owner will diligently and faithfully, in good and workmanlike manner, pursue the Completion of Construction of the Property Improvements in accordance with all applicable state and local laws, codes, and regulations.
- C. Owner shall maintain the Premises during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.
- D. The City, its agents and employees shall have the right of reasonable access to inspect the Property Improvements at reasonable times and with reasonable notice to Owner, and in

accordance with Owner's visitor access and security policies, to ensure that the operation of the Property Improvements is in accordance with this Agreement and all applicable state and local laws, codes, and regulations. After completion of construction of any of the Property Improvements, the City, its agents and employees shall have the continuing right to inspect the Property Improvements at reasonable times with reasonable notice to Owner, and in accordance with Owner's reasonable visitor access and security policies, to ensure that the Property Improvements are thereafter maintained and operated in accordance with this Agreement during the term hereof.

IV. TAX ABATEMENT

- A. Subject to the terms and conditions of this Agreement, and to the extent authorized by the Texas Constitution and the Tax Code, the City grants Owner the Tax Abatement set forth in this Article IV. The Tax Abatement is subject to and conditioned on the Completion of Construction within the timeframe set forth in Article III above. Subject to the notice and cure provisions set forth in this Agreement, this Agreement shall automatically terminate without notice to any party if the Completion of Construction does not occur within the timeframe set forth in Article III above unless such delay is caused by events of Force Majeure.
- B. Subject to the conditions set forth herein, Owner shall receive an abatement of the City's property tax rate according to the percentages in the table below, based on the year of the abatement, applied against the product of (i) the Taxable Value of all of the Property Improvements and Land, less (ii) \$18,103.981 (the agreed Taxable Value for the Base Year of the Land and real property improvements and tangible personal property located on the Land). The Tax Abatement shall commence on the Commencement Date and shall continue for a period of eight (8) consecutive calendar years thereafter; provided, however, no Property Improvements shall be eligible for the Tax Abatement after eight (8) calendar years from the Commencement Date, regardless of circumstance or the date of completion of construction of the Property Improvements. Provided that the requirements set forth in this Agreement are satisfied in connection with minimum capital investment requirements, minimum Employment Positions and Completion of Construction, the Tax Abatement shall apply to any Property Improvements constructed during the term of the Tax Abatement.

<i>Year</i>	<i>Percentage of Property Taxes Abated</i>
1	34%
2	34%
3	34%
4	28%

5	28%
6	28%
7	28%
8	14%

V. CAPITAL INVESTMENT; INVESTMENT REPORTS

Owner covenants and agrees that the Capital Investment in Property Improvements shall meet or exceed the aggregate amount of \$14 million as of the Completion of Construction. Owner shall provide the City with reports in a form reasonably acceptable to the City certifying Owner's compliance with the minimum Capital Investment set forth herein (the "**Investment Reports**"). The Investment Reports shall be prepared and maintained in accordance with generally accepted accounting principles and shall include information on the extent and the amount of Owner's investments in the Property Improvements. Owner agrees to submit the Investment Reports no later than thirty (30) days following the start of the Commencement Date and on or before January 31 of each successive calendar year during the term of this Agreement. The City shall have the right to inspect Owner's books and records relating to the acquisition, location and maintenance of the Property Improvements on the Premises, subject to Owner's reasonable security and confidentiality requirements.

VI. EMPLOYMENT COMMITMENTS; EMPLOYMENT REPORTS

Owner covenants and agrees to employ and maintain no fewer than 188 Employment Positions at the Premises beginning on the Commencement Date and throughout the term of this Agreement. Within thirty (30) days following the Commencement Date and then as part of its Certification of Compliance each successive year thereafter during the term of this Agreement, Owner agrees to provide the City with reports in a form reasonably acceptable to the City certifying Owner's compliance with the above commitment to Employment Positions and shall include information on the number of Employment Positions created, filled or contracted for at the Improvements (the "**Employment Reports**"). The City shall have the right to inspect Owner's payroll and other employment records, including Owner's management system assigned to the Premises, relating to the Employment Positions on the Premises, subject to Owner's reasonable security and confidentiality requirements.

VII. DEFAULT

- A. The following shall constitute an "Event of Default" hereunder: (1) Owner's failure to cause Commencement of Construction or Completion of Construction of the Property

Improvements in accordance with this Agreement; (2) Owner's failure to pay any Delinquent Ad Valorem Taxes owed to the City or any other taxing authority; (3) Owner's failure to make the Capital Investment; (4) Owner's failure to meet the employment commitments described herein; (5) Owner suffering an Event of Bankruptcy or Insolvency; or (6) Owner breaching any of the terms and conditions of this Agreement, including without limitation, the other conditions to the Tax Abatements set forth herein.

- B. Upon breach by Owner of any obligations under this Agreement, the City shall notify Owner in writing. Owner shall have ninety (90) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within a ninety (90) day period, other than a monetary default, and Owner has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the City shall extend the period in which the default must be cured for an additional sixty (60) days.
- C. Upon the occurrence and during the continuance of an Event of Default, the City shall have all remedies available to it at law or in equity, including without limitation, termination of this Agreement. Upon an Event of Default, the City shall have the right hereunder to enforce specific performance of amounts owed to the City or to bring an action to collect such amounts. The City also will have the right to pursue legal action against Owner to recapture the total amount of Tax Abatements granted to Owner during the term of this Agreement. Upon the occurrence of an Event of Default there will be a stay of Tax Abatements and the City will be relieved of its obligations herein until such Event of Default is cured within the applicable cure period described.
- D. Periods described above for curing a delinquency or violation hereunder shall toll, and shall not be considered for any purpose as having run, beginning on the day Owner files a petition in district court in Grayson County, Texas to determine whether a delinquency or violation has in fact occurred under this Agreement and/or to determine whether any attempt to cure has been sufficient, and ending upon the issuance of a final court decision or other final resolution of such court proceeding.
- E. Upon any termination of this Agreement by the City, all tax abated as a result of this Agreement shall become a debt of Owner to the City as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is delivered to Owner. Owner agrees that the City shall have all remedies for the collection of this debt as provided generally in the Tax Code for the collection of delinquent property tax. The City, at its sole discretion, has the option to provide a repayment schedule. The computation of tax abated for the purposes of the Agreement shall, with respect to any tax year in which an abatement was granted, be based upon the portion of the Taxable Values of any Property Improvements which received abatement in such year, multiplied by the City's tax rate applicable in such year, as calculated each year by the Tax Assessor-Collector for the City, as the case may be.

VIII. ANNUAL APPLICATION FOR TAX EXEMPTION

It shall be the responsibility of Owner, pursuant to the Tax Code, to file an annual exemption application form with the chief appraiser for the Grayson County Appraisal District and any other appraisal district in which the eligible taxable property has situs. A copy of the exemption application shall be submitted to the City contemporaneously therewith.

IX. ANNUAL RENDITION

Owner shall annually render the value of the Property Improvements eligible for the Tax Abatement, being the subject of the abatement provided herein, to the Grayson County Appraisal District and any other appraisal district in which the eligible taxable property has situs and provide a copy of the same to the City simultaneously therewith.

X. EFFECT OF SALE, ASSIGNMENT OR LEASE OF PROPERTY

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may not be assigned without the written consent of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, so long as no Event of Default of Owner under this Agreement exists and remains uncured, Owner may, without the prior written consent of the City, (1) assign its rights and obligations under this Agreement to an Affiliate of Owner, so long as such Affiliate continues to be wholly-owned, directly or indirectly, by Owner or one of its constituent parties and Owner notifies the City in advance of such assignment and provides evidence reasonably satisfactory to the City that such assignee is an Affiliate, or (2) make a collateral assignment of the Agreement solely for the benefit of a creditor providing financing for Property Improvements. In the event the City consents to an assignment of this Agreement by Owner, no further assignment shall be made without the express consent in writing of the City, unless such assignment may otherwise be made without such consent pursuant to the terms of this Agreement. Except as otherwise set forth herein, an assignment by Owner of its interest in this Agreement shall not relieve Owner from its obligations under this Agreement unless approved by the City.

XI. NOTICE

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

If to the City:

City of Sherman, Texas
220 W. Mulberry Street
Sherman, Texas 75090
Attn: City Manager

With required copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069

Attn: Ryan D. Pittman

If to Owner:

Harvest Hill Beverages Company
1 High Ridge Park
Stamford, CT 06905
Attn: Tim Voelkerding

With required copy to:

Seth Milligan
One Stamford Plaza
236 Tresser Blvd, Suite 1400
Stamford, CT 06901

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

XII. TERM

The term of this Agreement shall begin on the Effective Date and shall continue during the period set forth in Article IV hereof, unless sooner terminated. Time is of the essence in this Agreement.

XIII. AUTHORIZATIONS

The City Council has authorized the City Manager to execute this Agreement on the City's behalf. This Agreement was entered into by Owner pursuant to authority granted by one or more of its officers to execute this Agreement on behalf of Owner.

XIV. SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase, or word herein is held invalid, illegal, or unconstitutional, the balance of this Agreement, shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word. If any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal, the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.

XV. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be in the State District Court of Grayson County, Texas. The parties consent to venue and to the jurisdiction of the State District Court of Grayson County, Texas.

XVI. INDEMNIFICATION

- A. IN ADDITION TO THE OTHER REMEDIES AFFORDED TO THE CITY IN THIS AGREEMENT, OWNER SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, ATTORNEYS, CONTRACTORS, OR AGENTS (HEREINAFTER “CITY’S INDEMNIFIED PARTY”) FOR, FROM AND AGAINST ANY AND ALL LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS’ FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART) OWNER’S PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.
- B. Notice of Indemnified Loss. The City’s Indemnified Party shall promptly notify Owner of any indemnified Losses or Claim for indemnified Losses in respect of which the City’s Indemnified Party may be entitled to indemnification under this Article XVI. Such notice shall be given as soon as reasonably practicable after the City’s Indemnified Party becomes aware of the Loss or Claim for Losses.
- C. Defense of Third Party Claims. In the event any action or proceeding shall be brought against the City’s Indemnified Party by reason of any matter for which the City’s Indemnified Party is indemnified hereunder, Owner shall, upon notice from the City’s Indemnified Party or its authorized agents or representatives, at Owner’s sole cost and expense, resist and defend the same with legal counsel selected by City. Owner’s obligation to defend shall apply regardless of whether the City’s Indemnified Party is solely or concurrently negligent. Nothing herein shall be deemed to prevent the City’s Indemnified Party at its election and at its own expense from participating in the defense of any litigation with their own counsel. If Owner fails to retain defense counsel within seven (7) business days after receipt of City’s Indemnified Party written notice that the City’s Indemnified Party is invoking its right to indemnification under this Agreement, the City’s Indemnified Party shall have the right to retain defense counsel on their own behalf, and Owner shall be liable for all usual and customary defense costs incurred by the City’s Indemnified Party.

XVII. ENTIRE AGREEMENT

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

XVIII. RECORDATION OF AGREEMENT

A certified copy of this Agreement in recordable form shall be recorded in the real property records of Grayson County, Texas.

XIX.
INCORPORATION OF RECITALS; EXHIBITS

The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

XX.
CERTIFICATIONS REQUIRED BY TEXAS LAW

- A. Pursuant to Section 2271.002, Texas Government Code, Owner hereby represents that neither Owner, nor any wholly owned subsidiary, majority-owned subsidiary, parent, owner or affiliate of Owner “boycotts Israel”, and subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, Owner agrees it will not boycott Israel during the term of this Agreement. As used in the immediately preceding sentence, “boycott Israel” shall have the meaning given such term in Section 2271.001, Texas Government Code.
- B. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Owner certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.
- C. Pursuant to Chapter 2274, Texas Government Code, Owner verifies that (i) it does not boycott energy companies and will not boycott energy companies during the term of this Agreement and (ii) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.
- D. Pursuant to Chapter 2264, Texas Government Code, Owner represents and certifies that is does not and will not knowingly employ any undocumented worker at the Premises or on the Land 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, Owner is convicted of a violation under 8 U.S.C. § 1342a(f), Owner shall repay to the City an amount equal to all Grant payments tendered to Owner under this Agreement plus interest at the annual rate of four percent (4%) not later than the 120th day after the date the public agency, state or local taxing jurisdiction notifies Owner of such violation.

XX.
NO VESTED RIGHTS

Nothing in this Agreement shall be interpreted or implied to vest any rights in the parties. In addition, nothing in this Agreement constitutes a “permit” as defined in Chapter 245, Texas Local Government Code. OWNER WAIVES ANY CLAIM THAT THIS AGREEMENT ESTABLISHES VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL

GOVERNMENT CODE OR OTHER LAW. THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**XXII.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. The parties acknowledge the inherent unpredictability of the global semiconductor industry and the possibility that schedules for investment and job creation and other provisions may require adjustment over the terms of this Agreement, subject to the mutual written asset of all parties.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the Effective Date.

CITY OF SHERMAN, TEXAS,
a Texas home rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

ATTEST:

By: _____
Linda Ashby, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan D. Pittman, City Attorney

BROADSTONE HHH TEXAS LLC,
a New York limited liability company

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT A

Legal Description of the Land

MEASURED DESCRIPTION

DESCRIPTION OF A 64.401 ACRE TRACT SITUATED IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND CONVEYED TO AGNL BEVERAGES (TX), L.P. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 5732, PAGE 308, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; SAID 64.401 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY MEETS AND BOUNDS AS FOLLOWS:

BEGINNING, AT A "X" CUT IN CONCRETE FOUND MARKING THE NORTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417 (VARIABLE WIDTH) WITH THE CENTER OF A PUBLIC ROAD TO THE SOUTH LOCALLY KNOWN AS HOWE DRIVE RUNNING ALONG OR NEAR THE EAST LINE OF THE SAID MARTIN SURVEY;

THENCE, SOUTH 14 DEGREES 08 MINUTES 48 SECONDS EAST, WITH SAID CENTER OF HOWE DRIVE, A DISTANCE OF 2433.63 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AND THE NORTHEAST CORNER OF SHERMAN INDUSTRIAL DEVELOPMENT ADDITION TO SAID CITY OF SHERMAN, TEXAS ACCORDING TO THE PLAT OF RECORD IN VOLUME 24, PAGE 40, PLAT RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 74 DEGREES 48 MINUTES 39 SECONDS WEST, WITH THE SOUTH LINE OF THE SAID 64.401 ACRE TRACT, PASSING AT A DISTANCE OF 40.00 FEET THE NORTHEAST CORNER OF LOT 3, BLOCK 1 OF SAID SHERMAN INDUSTRIAL DEVELOPMENT ADDITION; CONTINUING, IN ALL, A TOTAL DISTANCE OF 527.51 FEET TO A POINT MARKING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION BY DEED RECORDED IN VOLUME 4895, PAGE 876, OFFICIAL PUBLIC RECORDS; SAID POINT ALSO BEING AT THE INTERSECTION OF SAID SOUTH LINE OF THE SAID 64.401 ACRE TRACT WITH THE EAST RIGHT-OF-WAY LINE OF THE EASEMENT CONVEYED TO THE ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY RECORDED IN VOLUME 945, PAGE 490, DEED RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 64.401 ACRE TRACT AND SAID RIGHT-OF-WAY LINE, THE FOLLOWING METES AND BOUNDS;

NORTH 59 DEGREES 06 MINUTES 38 SECONDS WEST, A DISTANCE OF 331.98 FEET TO A POINT MARKING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1885.08 FEET;

NORTHWESTERLY, WITH SAID CURVE TO THE RIGHT, (CHORD BEARS NORTH 36 DEGREES 28 MINUTES 48 SECONDS WEST, 1450.72 FEET), AN ARC DISTANCE OF 1489.13 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND MARKING AN "L" CORNER;

NORTH 76 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD FOUND MARKING ANOTHER "L" CORNER;

NORTHWESTERLY, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 1860.08 FEET, (CHORD BEARS NORTH 11 DEGREES 46 MINUTES 26 SECONDS WEST, 134.73 FEET), AN ARC DISTANCE OF 134.76 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND THE END OF SAID CURVE;

NORTH 09 DEGREES 41 MINUTES 54 SECONDS WEST, A DISTANCE OF 743.13 FEET TO A POINT MARKING THE NORTHWEST CORNER OF SAID 64.401 ACRE TRACT; SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SAID SHERMAN ECONOMIC DEVELOPMENT CORPORATION TRACT; SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE F.M. HIGHWAY NO. 1417;

THENCE, WITH THE SAID SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417, THE FOLLOWING METES AND BOUNDS;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 1057.58 FEET TO A POINT FOR ANGLE AT THE WEST BASE OF A DISTURBED CONCRETE MONUMENT FOUND;

SOUTH 87 DEGREES 28 MINUTES 00 SECONDS EAST, A DISTANCE OF 156.68 FEET TO A "X" CUT IN CONCRETE FOUND AT AN ANGLE POINT;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2,805,290 SQUARE FEET OR 64.401 ACRES OF LAND.

SURVEYOR'S CERTIFICATION

To: BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders, its successors and/or assigns, CF Alpha & Golf Propeco LLC, a Delaware limited liability company, its successors and assigns; Broadstone HHH Texas, LLC; First American Title Insurance Company; Pilcher, Nichols & Meeks LLP; and the Matthews Company, Inc.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(i), 7(c), 8, 9, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The fieldwork was completed on May 29, 2019.

Date of Plat or Map: May 30, 2019


Robert W. Schneeberg, Texas R.P.L.S. No. 4804
Gonzalez & Schneeberg, Engineers & Surveyors, Inc.
2100 Lakeside Boulevard, Suite 200
Richardson, Texas 75082
Phone (972) 516-8855
email: robert.schneeberg@gs-engineers.com
GSES 6891-19-05-04
Date: May 30, 2019
Date of Last Revision: August 14, 2019



The property described and shown hereon is the same property described in First American Title Insurance Company Title Commitment GF No. 3020-958726TX31, effective date May 3, 2019.

EXHIBIT B
Description of the Property Improvements

Approximately \$14 million in real property improvements, consisting of:

1. Building renovation
2. Utilities upgrade
3. Batching and processing equipment
4. Packaging equipment
5. Mechanical and electrical installation
6. Engineering and other miscellaneous costs

ORDINANCE NO. 6525

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NO. 13; 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, BROADSTONE HHH TEXAS LLC, 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, Broadstone HHH Texas LLC is the sole owner of approximately 64± acres of land in the City of Sherman, Grayson County, Texas, as more particularly described in Exhibit A, attached hereto (the "Land");

WHEREAS, Harvest Hill Holdings, Inc. through its affiliate, Sunny Delight Beverages Company, leases the Land;

WHEREAS, Harvest Hill Holdings, Inc. is considering constructing new real property improvements at its current facility on the Land (collectively, the "Improvements"), and Sunny Delight Beverages Company is considering equipping the Improvements with new tangible personal property equipment;

WHEREAS, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have represented that the Improvements and tangible personal property would constitute an approximate investment of \$30 Million and that, when fully operational, the Improvements and tangible personal property would be expected to retain significant existing employment and bring new employment to the City of Sherman, Texas ("City");

WHEREAS, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have represented that the Improvements and tangible personal property would be made to the current facility and used to produce juice beverages;

WHEREAS, Broadstone HHH Texas LLC, through its lessee, Harvest Hill Holdings, Inc., and Sunny Delight Beverages Company have applied for tax abatements pursuant to

Chapter 312 of the Texas Tax Code from the City and from Grayson County, 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, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have requested, and the City desires, to establish a new tax abatement reinvestment zone to facilitate the applications of Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company pursuant to Chapter 312 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. 13, 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. 13."

SECTION 3. That the property within the City of Sherman Industrial Reinvestment Zone No. 13 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. 13, 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 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.]

INTRODUCED on this the 6th day of September, 2022.

ADOPTED on this the 6th day of September, 2022.

EFFECTIVE DATE on this the 6th day of September, 2022.

CITY OF SHERMAN, TEXAS

BY: 

DAVID PLYLER, MAYOR

ATTEST:



LINDA ASHBY, CITY CLERK

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



RYAND D. PITTMAN, CITY ATTORNEY

Exhibit A

DESCRIPTION OF A 64.401 ACRE TRACT SITUATED IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND CONVEYED TO AGNL BEVERAGES (TX), L.P. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 5732, PAGE 308, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; SAID 64.401 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY MEETS AND BOUNDS AS FOLLOWS:

BEGINNING, AT A "X" CUT IN CONCRETE FOUND MARKING THE NORTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417 (VARIABLE WIDTH) WITH THE CENTER OF A PUBLIC ROAD TO THE SOUTH LOCALLY KNOWN AS HOWE DRIVE RUNNING ALONG OR NEAR THE EAST LINE OF THE SAID MARTIN SURVEY;

THENCE, SOUTH 14 DEGREES 08 MINUTES 48 SECONDS EAST, WITH SAID CENTER OF HOWE DRIVE, A DISTANCE OF 2433.63 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AND THE NORTHEAST CORNER OF SHERMAN INDUSTRIAL DEVELOPMENT ADDITION TO SAID CITY OF SHERMAN, TEXAS ACCORDING TO THE PLAT OF RECORD IN VOLUME 24, PAGE 40, PLAT RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 74 DEGREES 48 MINUTES 39 SECONDS WEST, WITH THE SOUTH LINE OF THE SAID 64.401 ACRE TRACT, PASSING AT A DISTANCE OF 40.00 FEET THE NORTHEAST CORNER OF LOT 3, BLOCK 1 OF SAID SHERMAN INDUSTRIAL DEVELOPMENT ADDITION, CONTINUING, IN ALL, A TOTAL DISTANCE OF 527.51 FEET TO A POINT MARKING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION BY DEED RECORDED IN VOLUME 4895, PAGE 876, OFFICIAL PUBLIC RECORDS; SAID POINT ALSO BEING AT THE INTERSECTION OF SAID SOUTH LINE OF THE SAID 64.401 ACRE TRACT WITH THE EAST RIGHT-OF-WAY LINE OF THE EASEMENT CONVEYED TO THE ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY RECORDED IN VOLUME 945, PAGE 490, DEED RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 64.401 ACRE TRACT AND SAID RIGHT-OF-WAY LINE, THE FOLLOWING METES AND BOUNDS;

NORTH 59 DEGREES 06 MINUTES 38 SECONDS WEST, A DISTANCE OF 331.98 FEET TO A POINT MARKING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1885.08 FEET;

NORTHWESTERLY, WITH SAID CURVE TO THE RIGHT, (CHORD BEARS NORTH 36 DEGREES 28 MINUTES 48 SECONDS WEST, 1450.72 FEET), AN ARC DISTANCE OF 1409.13 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND MARKING AN "L" CORNER;

NORTH 76 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD FOUND MARKING ANOTHER "L" CORNER;

NORTHWESTERLY, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 1860.08 FEET, (CHORD BEARS NORTH 11 DEGREES 46 MINUTES 26 SECONDS WEST, 134.73 FEET), AN ARC DISTANCE OF 134.76 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND THE END OF SAID CURVE;

NORTH 09 DEGREES 41 MINUTES 54 SECONDS WEST, A DISTANCE OF 743.13 FEET TO A POINT MARKING THE NORTHWEST CORNER OF SAID 64.401 ACRE TRACT; SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SAID SHERMAN ECONOMIC DEVELOPMENT CORPORATION TRACT; SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE F.M. HIGHWAY NO. 1417;

THENCE, WITH THE SAID SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417, THE FOLLOWING METES AND BOUNDS;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 1057.58 FEET TO A POINT FOR ANGLE AT THE WEST BASE OF A DISTURBED CONCRETE MONUMENT FOUND;

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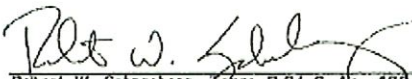
NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2,805,290 SQUARE FEET OR 64.401 ACRES OF LAND.

SURVEYOR'S CERTIFICATION

To: BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders, its successors and/or assigns, CF Alpha & Golf Prepco LLC, a Delaware limited liability company, its successors and assigns; Broadstone HHI Texas, LLC; First American Title Insurance Company; Pletcher, Nichols & Meeks LLP; and The Matthews Company, Inc.

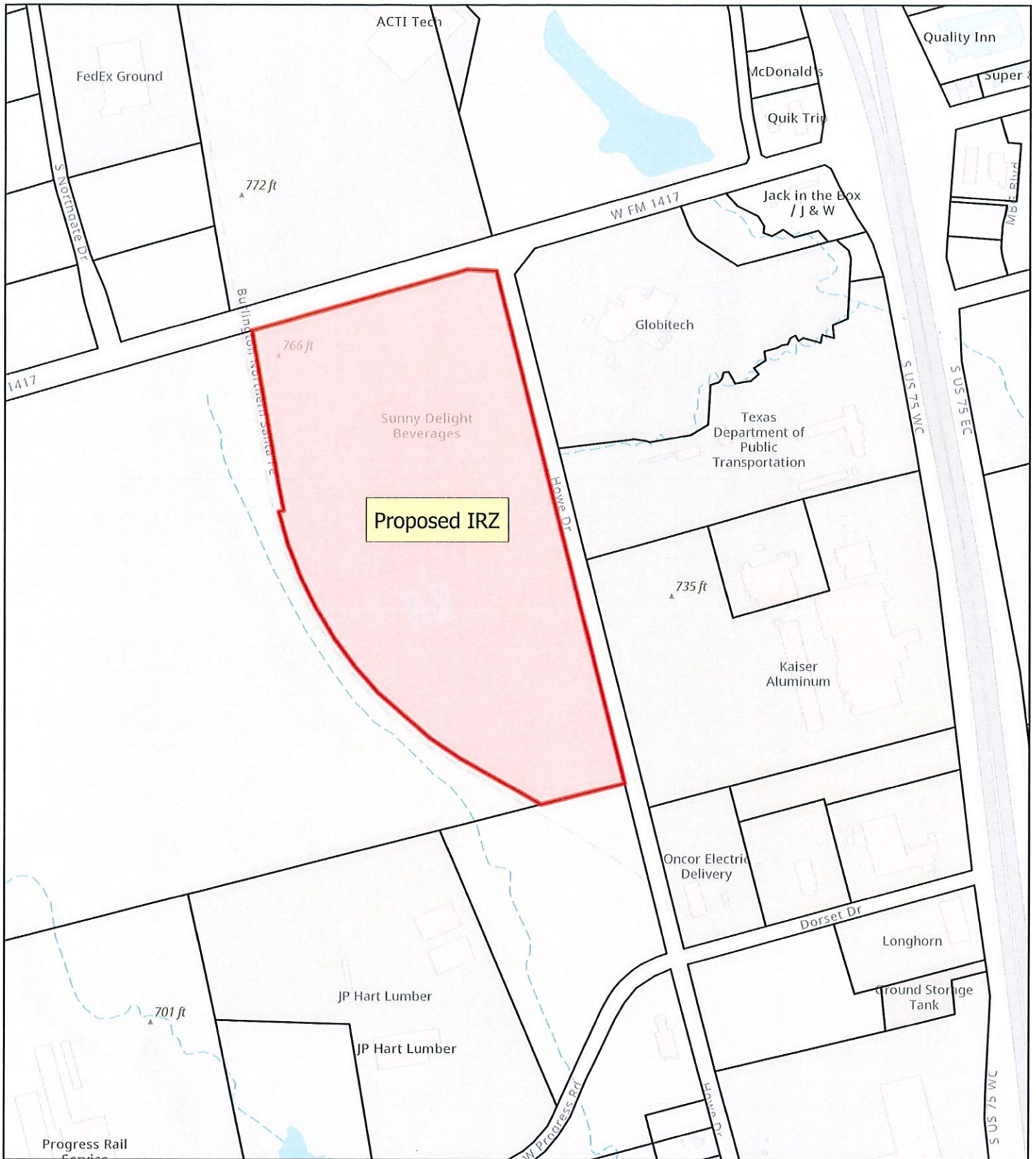
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(i), 7(c), 8, 9, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The fieldwork was completed on May 29, 2019.

Date of Plot or Map: May 30, 2019


Robert W. Schnaeberg, Texas R.P.L.S. No. 4804
Gonzalez & Schnaeberg, Engineers & Surveyors, Inc.
2100 Lakeside Boulevard, Suite 200
Richardson, Texas 75082
Phone (972) 516-8855
email: robert.schnaeberg@gs-engineers.com
USES 6891-19-05-04
Date: May 30, 2019
Date of Last Revision: August 14, 2019



The property described and shown hereon is the same property described in First American Title Insurance Company Title Commitment GF No. 3020-958726TX31, effective date May 3, 2019.



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CITY OF SHERMAN (Proposed) IRZ 13



8/22/2022



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 2.

Meeting Date: 10/03/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6961

Authorizing Execution of an Agreement with Sunny Delight Beverages Company for the Abatement of Ad Valorem Property Taxes for Tangible Personal Property within City of Sherman Industrial Reinvestment Zone, Number Thirteen (#13)

Issue:

Approval of a proposed property tax abatement agreement between the City of Sherman and Sunny Delight Beverages Company

Background:

On Monday, August 22, 2022, The Tax Reinvestment Committees of the City of Sherman and Grayson County ("Committee") met to consider a request from Sunny Delight Beverages Company ("SDBC") for a tax abatement involving a project to invest \$16 million in its current facility to install two new product lines that will make Juicy Juice tetra products. The taxable value of the current property totals about \$33 million with this project adding about \$16 million in additional personal property taxable value. The project is scheduled to begin by the end of the year and be fully operational by the fall of 2023. SDBC currently has 114 employees working at the facility. The expansion will allow the Company to add 74 new full-time jobs over the next two years and invest approximately \$30 million in both building improvements and equipment. This agreement only covers the equipment (personal property). A separate agreement will be considered for the abatement of ad valorem taxes for the building improvements. The Committee voted to recommend an abatement to the City Council and Grayson County.

The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. Ordinance No. 6525 creating Industrial Reinvestment Zone Number Thirteen (#13), was adopted following public hearing at the September 6, 2022, City Council meeting.

The proposed tax abatement agreement calls for an eight (8) year tax abatement of 34%, 34%, 34%, 28%, 28%, 28%, 28%, 14%, in accordance with the City's current tax abatement matrix and after excluding the debt portion of the tax rate from the abatement. As is the case with all tax abatements, none of the proposed property considered under this agreement is currently on the tax rolls, so the benefit from this abatement is that the City will see a net increase in property tax revenues.

Origination:

Sunny Delight Beverages Company, Applicant
Tax Reinvestment Committee

Financial Consideration:

At the estimated initial taxable value of \$16 million for the equipment, this part of the project would generate an estimated \$325,000 in property tax revenues for the City and provide an estimated \$140,000 to the taxpayer over the eight (8) years.

Staff Recommendation:

It is recommended that the City Council approve the proposed tax abatement agreement.

Alternatives:

The City Council could deny the tax abatement agreement.

Attachments

Resolution No. 6961
Ordinance 6525 Creation IRZ #13
Resolution-Tax Abatement Sunny Delight Personal Property

RESOLUTION NO. 6961

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH SUNNY DELIGHT BEVERAGES COMPANY FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR TANGIBLE PERSONAL PROPERTY WITHIN THE CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NUMBER THIRTEEN (#13); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from Sunny Delight Beverages Company, and all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an agreement with Sunny Delight Beverages Company for the abatement of ad valorem property taxes for a period of eight (8) years, for machinery and equipment within the City of Sherman Industrial Reinvestment Zone Number Thirteen (#13), consisting of approximately \$16 million of tangible personal property in connection with a beverage manufacturing facility, in the same or substantially same form as the 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 3rd day of October, 2022.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

**BY: _____
LINDA ASHBY, CITY CLERK**

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

**BY: _____
RYAN D. PITTMAN, CITY ATTORNEY**

ORDINANCE NO. 6525

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING CITY OF SHERMAN INDUSTRIAL REINVESTMENT ZONE NO. 13; 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, BROADSTONE HHH TEXAS LLC, 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, Broadstone HHH Texas LLC is the sole owner of approximately 64± acres of land in the City of Sherman, Grayson County, Texas, as more particularly described in Exhibit A, attached hereto (the "Land");

WHEREAS, Harvest Hill Holdings, Inc. through its affiliate, Sunny Delight Beverages Company, leases the Land;

WHEREAS, Harvest Hill Holdings, Inc. is considering constructing new real property improvements at its current facility on the Land (collectively, the "Improvements"), and Sunny Delight Beverages Company is considering equipping the Improvements with new tangible personal property equipment;

WHEREAS, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have represented that the Improvements and tangible personal property would constitute an approximate investment of \$30 Million and that, when fully operational, the Improvements and tangible personal property would be expected to retain significant existing employment and bring new employment to the City of Sherman, Texas ("City");

WHEREAS, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have represented that the Improvements and tangible personal property would be made to the current facility and used to produce juice beverages;

WHEREAS, Broadstone HHH Texas LLC, through its lessee, Harvest Hill Holdings, Inc., and Sunny Delight Beverages Company have applied for tax abatements pursuant to

Chapter 312 of the Texas Tax Code from the City and from Grayson County, 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, Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company have requested, and the City desires, to establish a new tax abatement reinvestment zone to facilitate the applications of Harvest Hill Holdings, Inc. and Sunny Delight Beverages Company pursuant to Chapter 312 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. 13, 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. 13."

SECTION 3. That the property within the City of Sherman Industrial Reinvestment Zone No. 13 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. 13, 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 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.]

INTRODUCED on this the 6th day of September, 2022.

ADOPTED on this the 6th day of September, 2022.

EFFECTIVE DATE on this the 6th day of September, 2022.

CITY OF SHERMAN, TEXAS

BY: 

DAVID PLYLER, MAYOR

ATTEST:



LINDA ASHBY, CITY CLERK

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



RYAND D. PITTMAN, CITY ATTORNEY

Exhibit A

DESCRIPTION OF A 64.401 ACRE TRACT SITUATED IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND CONVEYED TO AGNL BEVERAGES (TX), L.P. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 5732, PAGE 308, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; SAID 64.401 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY MEETS AND BOUNDS AS FOLLOWS:

BEGINNING, AT A "X" CUT IN CONCRETE FOUND MARKING THE NORTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417 (VARIABLE WIDTH) WITH THE CENTER OF A PUBLIC ROAD TO THE SOUTH LOCALLY KNOWN AS HOWE DRIVE RUNNING ALONG OR NEAR THE EAST LINE OF THE SAID MARTIN SURVEY;

THENCE, SOUTH 14 DEGREES 08 MINUTES 48 SECONDS EAST, WITH SAID CENTER OF HOWE DRIVE, A DISTANCE OF 2433.63 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AND THE NORTHEAST CORNER OF SHERMAN INDUSTRIAL DEVELOPMENT ADDITION TO SAID CITY OF SHERMAN, TEXAS ACCORDING TO THE PLAT OF RECORD IN VOLUME 24, PAGE 40, PLAT RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 74 DEGREES 48 MINUTES 39 SECONDS WEST, WITH THE SOUTH LINE OF THE SAID 64.401 ACRE TRACT, PASSING AT A DISTANCE OF 40.00 FEET THE NORTHEAST CORNER OF LOT 3, BLOCK 1 OF SAID SHERMAN INDUSTRIAL DEVELOPMENT ADDITION, CONTINUING, IN ALL, A TOTAL DISTANCE OF 527.51 FEET TO A POINT MARKING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION BY DEED RECORDED IN VOLUME 4895, PAGE 876, OFFICIAL PUBLIC RECORDS; SAID POINT ALSO BEING AT THE INTERSECTION OF SAID SOUTH LINE OF THE SAID 64.401 ACRE TRACT WITH THE EAST RIGHT-OF-WAY LINE OF THE EASEMENT CONVEYED TO THE ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY RECORDED IN VOLUME 945, PAGE 490, DEED RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 64.401 ACRE TRACT AND SAID RIGHT-OF-WAY LINE, THE FOLLOWING METES AND BOUNDS;

NORTH 59 DEGREES 06 MINUTES 38 SECONDS WEST, A DISTANCE OF 331.98 FEET TO A POINT MARKING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1885.08 FEET;

NORTHWESTERLY, WITH SAID CURVE TO THE RIGHT, (CHORD BEARS NORTH 36 DEGREES 28 MINUTES 48 SECONDS WEST, 1450.72 FEET), AN ARC DISTANCE OF 1409.13 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND MARKING AN "L" CORNER;

NORTH 76 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD FOUND MARKING ANOTHER "L" CORNER;

NORTHWESTERLY, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 1860.08 FEET, (CHORD BEARS NORTH 11 DEGREES 46 MINUTES 26 SECONDS WEST, 134.73 FEET), AN ARC DISTANCE OF 134.76 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND THE END OF SAID CURVE;

NORTH 09 DEGREES 41 MINUTES 54 SECONDS WEST, A DISTANCE OF 743.13 FEET TO A POINT MARKING THE NORTHWEST CORNER OF SAID 64.401 ACRE TRACT; SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SAID SHERMAN ECONOMIC DEVELOPMENT CORPORATION TRACT; SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE F.M. HIGHWAY NO. 1417;

THENCE, WITH THE SAID SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417, THE FOLLOWING METES AND BOUNDS;

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SOUTH 87 DEGREES 28 MINUTES 00 SECONDS EAST, A DISTANCE OF 156.68 FEET TO A "X" CUT IN CONCRETE FOUND AT AN ANGLE POINT;

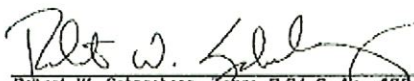
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SURVEYOR'S CERTIFICATION

To: BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders, its successors and/or assigns, CF Alpha & Golf Prepco LLC, a Delaware limited liability company, its successors and assigns; Broadstone HHI Texas, LLC; First American Title Insurance Company; Pletcher, Nichols & Meeks LLP; and The Matthews Company, Inc.

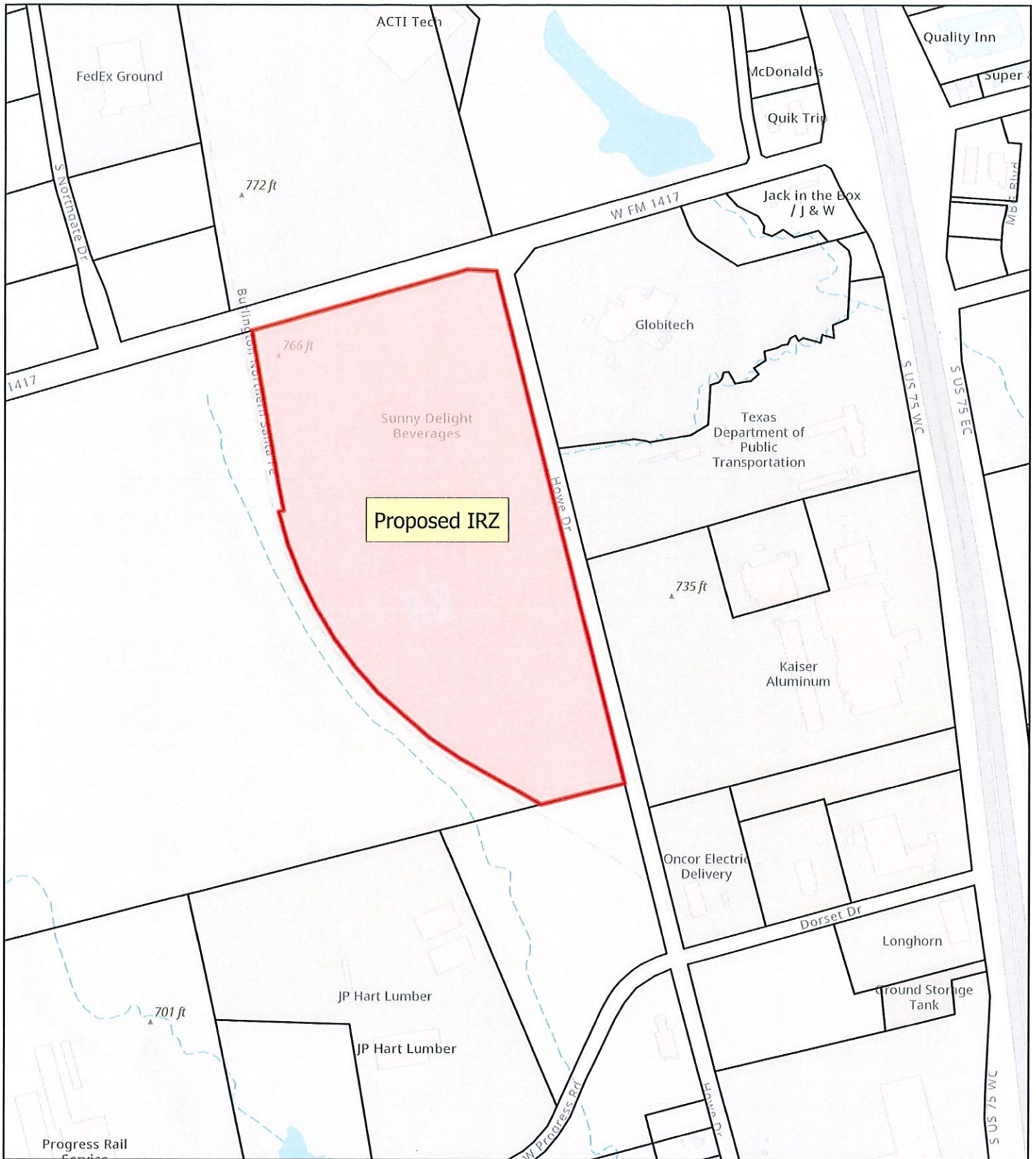
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Date of Plot or Map: May 30, 2019


Robert W. Schnaeberg, Texas R.P.L.S. No. 4804
Gonzalez & Schnaeberg, Engineers & Surveyors, Inc.
2100 Lakeside Boulevard, Suite 200
Richardson, Texas 75082
Phone (972) 516-8855
email: robert.schnaeberg@gs-engineers.com
USES 6891-19-05-04
Date: May 30, 2019
Date of Last Revision: August 14, 2019



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CITY OF SHERMAN

(Proposed) IRZ 13

8/22/2022



THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

**AD VALOREM TAX ABATEMENT AGREEMENT – TANGIBLE PERSONAL
PROPERTY**

This AD VALOREM TAX ABATEMENT AGREEMENT – TANGIBLE PERSONAL PROPERTY (“**Agreement**”) is made and entered into by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality (“**City**”), and SUNNY DELIGHT BEVERAGES COMPANY, a Florida corporation (“**Sunny Delight**”).

WHEREAS, Section 312.002 of the Texas Tax Code requires the City to adopt a resolution indicating the City’s desire to become eligible to participate in tax abatement agreements; and

WHEREAS, the City Council of the City (the “**City Council**”) previously has adopted a resolution stating that the City elected to be eligible to participate in tax abatements; and

WHEREAS, on May 16, 2016, the City Council adopted Guidelines and Criteria for the Industrial Tax Abatement Program (“**Guidelines**”) through the adoption of Resolution No. 6080, pursuant to Section 312.002 of the Tax Code; and

WHEREAS, the Guidelines constitute appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Tax Code; and

WHEREAS, on September 6, 2022, the City Council of the City (“**City Council**”) adopted Ordinance No. 6525 (“**Ordinance**”), establishing Industrial Reinvestment Zone Number 13, City of Sherman, Texas, for commercial-industrial tax abatement, as authorized by Chapter 312 of the Texas Tax Code, on approximately 64.4 acres of land (“**Zone**”); and

WHEREAS, Sunny Delight owns machinery, equipment, furniture, fixtures and inventory that are located on real property more particularly described in Exhibit A attached hereto (the “**Land**”), which is the subject of the establishment of the Zone on said property; and

WHEREAS, Sunny Delight proposes to expand production at its current manufacturing facility on the Land (the “**Premises**”) including equipping two additional production lines with new machinery, equipment, furniture, fixtures and inventory for the production of Juicy Juice tetra box products, to be placed in service on or after the Effective Date of this Agreement (collectively, the “**Tangible Personal Property**”). The Tangible Personal Property is expected to significantly enhance the economic base of the City; and

WHEREAS, Sunny Delight represents that the Tangible Personal Property, as hereinafter defined, will constitute an approximate investment of \$16 million by Sunny Delight, and that when fully operational, the Tangible Personal Property is expected to retain significant existing employment and bring new employment to the City, with expected new employment totaling 188 Employment Positions, as hereinafter defined, in each such phase; and

WHEREAS, Sunny Delight's selection of the City as the location for the Tangible Personal Property is the result of collaboration among Sunny Delight, the City and other units of local government and economic development entities; and

WHEREAS, the City Council finds that the additional production capacity realized from the Tangible Personal Property is feasible and practicable and would be of benefit to the land to be included in the Zone and the City after expiration of this Agreement; and

WHEREAS, the City Council has concluded that the Tangible Personal Property and operations proposed by Sunny Delight within the Zone and described in this Agreement and the terms of this Agreement are consistent with the requirements of Chapter 312 of the Tax Code and the Guidelines, or to the extent of any inconsistency with the Guidelines, the City Council has determined, in its discretion and in accordance with Section 312.002(d) of the Tax Code, that this Agreement should be entered into notwithstanding such inconsistency; and

WHEREAS, the City desires to enter into an Agreement with Sunny Delight for the abatement of taxes assessed against a portion of the Tangible Personal Property located on the Land as further set forth herein pursuant to the Tax Code.

NOW, THEREFORE, in consideration of the mutual benefits and promises for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the expansion of primary employment, the attraction of major investment in the Zone which contributes to the economic development of the City and the enhancement of the tax base in the City, the parties agree as follows:

I. DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

- A. "Affiliate" shall mean any person, directly or indirectly controlling, controlled by, or under common control with Sunny Delight. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.
- B. "Base Year" means the calendar year beginning January 1, 2022.
- C. "Capital Investment" means the total capitalized cost invested by Owner for the Property Improvements that are the subject of the Tax Abatements granted by this Agreement.
- D. "Commencement Date" means January 1 of the calendar year that Sunny Delight elects to begin the Tax Abatement by providing written notice to the City and Grayson County Appraisal District

- E. “Delinquent Ad Valorem Taxes” means any validly imposed Texas local or state ad valorem taxes that Sunny Delight does not remit by the lawful due date, but does not include any such taxes that are assessed against Sunny Delight as the result of a tax audit or other similar notice of assessment by any taxing authority unless Sunny Delight fails to timely appeal such audit or notice of assessment. If Sunny Delight subsequently loses the appeal of the ad valorem tax audit or other notice of assessment, or fails to timely appeal the audit or notice of assessment, the taxes assessed pursuant to the audit will be considered “delinquent” the day after the date specified by the final order on appeal as the due date for payment or the day after the due date for a timely appeal if no appeal is taken or filed by Sunny Delight.
- F. “Effective Date” means the last date of acknowledgment of the signatures set forth on the signature page below.
- G. “Employment Positions” means non-temporary full time employment positions of Sunny Delight or a Sunny Delight Affiliate at the Premises, including employees of contractors assigned to the Premises as shown on Sunny Delight’s internal management systems. Two (2) or more part-time employees, totaling thirty (30) hours or more per week may be substituted for one (1) full time employee.
- H. “Event of Bankruptcy or Insolvency” means the dissolution or termination of Sunny Delight’s existence as a going business, insolvency, appointment of receiver for any significant part of Sunny Delight’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Sunny Delight and such proceeding is not dismissed within ninety (90) days after the filing thereof.
- I. “Force Majeure” means any delay caused by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor, supplies or materials (including but not limited to circumstances related to declared national emergencies such as but not limited to COVID-19) or other circumstances which are beyond the reasonable control and are without the fault or negligence of the obligated party, regardless of whether any such circumstance is similar to any of those enumerated or not. The obligated party shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement and any applicable completion deadline shall be extended for a period of time equal to the period the obligated party was delayed, provided that the party claiming delay as a result of any of the foregoing Force Majeure events shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a Force Majeure event causing such delay, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection. Force Majeure will not mean nor include delays caused by Sunny Delight’s lack of, or inability to obtain, funding.

- J. “Land” shall mean the real property described in Exhibit A, attached hereto.
- K. “Person” shall mean an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.
- L. “Project Commencement” means the date on which all necessary permits for installation and operation of the first set of Tangible Personal Property pursuant to the respective plans therefore have been issued by all applicable governmental authorities.
- M. “Project Completion” means the date the first set of Tangible Personal Property has been placed in service.
- N. “Tangible Personal Property” means all tangible personal property, including, without limitation, equipment, machinery and fixtures, inventory and supplies owned by Sunny Delight that are located on the Premises and placed in service on or after the Effective Date of this Agreement.
- O. “Tax Abatement” shall have the same meaning set forth in Article IV herein.
- P. “Taxable Value” means the appraised value as certified by the Grayson County Appraisal District as of January 1 of a given year.

II. GENERAL PROVISIONS

- A. Sunny Delight represents that it has the right to locate, operate and maintain the Tangible Personal Property on the Land and the Premises and contemplates locating the Tangible Personal Property on the Premises.
- B. The Premises are not an improvement project financed by tax increment bonds.
- C. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City; provided, however, that this section shall not be construed to create a security interest in the Land or Tangible Personal Property in favor of such holders of outstanding bonds of the City.
- D. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of the City or any member of the governing body of any taxing unit joining in or adopting this Agreement.
- E. This Agreement is intended to comply with the requirements of Section 312.204 of the Code and is authorized by the Texas Property Redevelopment and Tax Abatement Act of the Texas Tax Code, Chapter 312, by the Guidelines and by resolution of the City Council authorizing execution of this Agreement.

- F. During the period of the Tax Abatement herein authorized, Sunny Delight shall be subject to all applicable taxation not specifically abated or exempted, including but not limited to sales tax and ad valorem taxation on land, inventory, and supplies.
- G. The Premises shall at all times be used in the manner (1) that complies with the City's Ordinances, regulations, and other laws, and (2) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone as set forth in the Guidelines as of the Effective Date.
- H. Sunny Delight acknowledges and agrees, beginning on the date the first element of Tangible Personal Property is placed in service, that Sunny Delight or a Sunny Delight Affiliate shall, subject only to events of Force Majeure, continuously own and operate the Tangible Personal Property on the Premises, and shall continuously operate and maintain the Premises as a beverage manufacturing facility.

III. TANGIBLE PERSONAL PROPERTY

- A. Sunny Delight contemplates equipping two additional production lines for the manufacture of juice beverages. Sunny Delight represents that the value of the Tangible Personal Property is \$16 million. In order to receive the Tax Abatement under this Agreement, Sunny Delight agrees, subject to events of Force Majeure, to cause Project Commencement to occur on or before December 31, 2022, and to cause Project Completion thereof on or before December 31, 2023. Nothing in this Agreement shall obligate Sunny Delight to purchase or place in service and/or to locate and maintain Tangible Personal Property on the Premises, but said actions are conditions precedent to the Tax Abatement provided herein.
- B. As a condition precedent to the initiation of the Tax Abatement set forth in this Agreement, Sunny Delight will diligently and faithfully, in good and workmanlike manner, pursue the Project Completion in accordance with all applicable state and local laws, codes, and regulations.
- C. Sunny Delight shall maintain the Tangible Personal Property during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.
- D. The City, its agents and employees shall have the right of reasonable access to inspect the Tangible Personal Property at reasonable times and with reasonable notice to Sunny Delight, and in accordance with Sunny Delight's visitor access and security policies, to ensure that the operation of the Tangible Personal Property is in accordance with this Agreement and all applicable state and local laws, codes, and regulations. After Project Completion the City, its agents and employees shall have the continuing right to inspect the Tangible Personal Property at reasonable times with reasonable notice to Sunny Delight, and in accordance with Sunny Delight's reasonable visitor access and security policies, to ensure that the Tangible Personal is thereafter maintained and operated in accordance with this Agreement during the term hereof.

IV.

TAX ABATEMENT

- A. Subject to the terms and conditions of this Agreement, and to the extent authorized by the Texas Constitution and the Tax Code, the City grants Sunny Delight the Tax Abatement set forth in this Article IV. The Tax Abatement is subject to and conditioned on the Project Completion within the timeframe set forth in Article III above. Subject to the notice and cure provisions set forth in this Agreement, this Agreement shall automatically terminate without notice to any party if the Project Completion does not occur within the timeframe set forth in Article III above unless such delay is caused by events of Force Majeure.
- B. Subject to the conditions set forth herein, Sunny Delight shall receive an abatement of the City's property tax rate according to the percentages in the table below, based on the year of the abatement, applied against the product of (i) the Taxable Value of all of the Tangible Personal Property, less (ii) \$0.00 (the agreed Taxable Value for the Base Year of Tangible Personal Property). The Tax Abatement shall commence on the Commencement Date and shall continue for a period of eight (8) consecutive calendar years thereafter; provided, however, no Tangible Personal Property shall be eligible for the Tax Abatement after eight (8) calendar years from the Commencement Date, regardless of circumstance or the date Sunny Delight obtains Project Completion or places the Tangible Personal Property into service. Provided that the requirements set forth in this Agreement are satisfied in connection with minimum capital investment requirements, minimum Employment Positions and Project Completion, the Tax Abatement shall apply to Tangible Personal Property placed into service during the term of the Tax Abatement.

<i>Year</i>	<i>Percentage of Property Taxes Abated</i>
1	34%
2	34%
3	34%
4	28%
5	28%
6	28%
7	28%
8	14%

V.

CAPITAL INVESTMENT; INVESTMENT REPORTS

Sunny Delight covenants and agrees that the Capital Investment in Tangible Personal shall meet or exceed the aggregate amount of \$16 million as of the Project Completion. Sunny Delight shall provide the City with reports in a form reasonably acceptable to the City certifying Sunny Delight's compliance with the minimum Capital Investment set forth herein (the **"Investment Reports"**). The Investment Reports shall be prepared and maintained in accordance with generally accepted accounting principles and shall include information on the extent and the amount of Sunny Delight's investments in the Tangible Personal Property. Sunny Delight agrees to submit the Investment Reports no later than thirty (30) days following the start of the Commencement Date and on or before January 31 of each successive calendar year during the term of this Agreement. The City shall have the right to inspect Sunny Delight's books and records relating to the acquisition, location and maintenance of the Tangible Personal Property on the Premises, subject to Sunny Delight's reasonable security and confidentiality requirements.

VI.

EMPLOYMENT COMMITMENTS; EMPLOYMENT REPORTS

Sunny Delight covenants and agrees to employ and maintain no fewer than 188 Employment Positions at the Premises beginning on the Commencement Date and throughout the term of this Agreement. Within thirty (30) days following the Commencement Date and then as part of its Certification of Compliance each successive year thereafter during the term of this Agreement, Sunny Delight agrees to provide the City with reports in a form reasonably acceptable to the City certifying Sunny Delight's compliance with the above commitment to Employment Positions and shall include information on the number of Employment Positions created, filled or contracted for at the Improvements (the **"Employment Reports"**). The City shall have the right to inspect Sunny Delight's payroll and other employment records, including Sunny Delight's management system assigned to the Premises, relating to the Employment Positions on the Premises, subject to Sunny Delight's reasonable security and confidentiality requirements.

VII.

DEFAULT

- A. The following shall constitute an "Event of Default" hereunder: (1) Sunny Delight's failure to cause Project Commencement or Project Completion in accordance with this Agreement; (2) Sunny Delight's failure to pay any Delinquent Ad Valorem Taxes owed to the City or any other taxing authority; (3) Sunny Delight's failure to make the Capital Investment; (4) Sunny Delight's failure to meet the employment commitments described herein; (5) Sunny Delight suffering an Event of Bankruptcy or Insolvency; or (6) Sunny Delight breaching any of the terms and conditions of this Agreement, including without limitation, the other conditions to the Tax Abatements set forth herein.
- B. Upon breach by Sunny Delight of any obligations under this Agreement, the City shall notify Sunny Delight in writing. Sunny Delight shall have ninety (90) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within a ninety (90) day period, other than a monetary default, and Sunny Delight has diligently pursued such remedies as shall be reasonably necessary to cure such default, then

the City shall extend the period in which the default must be cured for an additional sixty (60) days.

- C. Upon the occurrence and during the continuance of an Event of Default, the City shall have all remedies available to it at law or in equity, including without limitation, termination of this Agreement. Upon an Event of Default, the City shall have the right hereunder to enforce specific performance of amounts owed to the City or to bring an action to collect such amounts. The City also will have the right to pursue legal action against Sunny Delight to recapture the total amount of Tax Abatements granted to Sunny Delight during the term of this Agreement. Upon the occurrence of an Event of Default there will be a stay of Tax Abatements and the City will be relieved of its obligations herein until such Event of Default is cured within the applicable cure period described.
- D. Periods described above for curing a delinquency or violation hereunder shall toll, and shall not be considered for any purpose as having run, beginning on the day Sunny Delight files a petition in district court in Grayson County, Texas to determine whether a delinquency or violation has in fact occurred under this Agreement and/or to determine whether any attempt to cure has been sufficient, and ending upon the issuance of a final court decision or other final resolution of such court proceeding.
- E. Upon any termination of this Agreement by the City, all tax abated as a result of this Agreement shall become a debt of Sunny Delight to the City as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is delivered to Sunny Delight. Sunny Delight agrees that the City shall have all remedies for the collection of this debt as provided generally in the Tax Code for the collection of delinquent property tax. The City, at its sole discretion, has the option to provide a repayment schedule. The computation of tax abated for the purposes of the Agreement shall, with respect to any tax year in which an abatement was granted, be based upon the portion of the Taxable Values of any Tangible Personal Property which received abatement in such year, multiplied by the City's tax rate applicable in such year, as calculated each year by the Tax Assessor-Collector for the City, as the case may be.

VIII. ANNUAL APPLICATION FOR TAX EXEMPTION

It shall be the responsibility of Sunny Delight, pursuant to the Tax Code, to file an annual exemption application form with the chief appraiser for the Grayson County Appraisal District and any other appraisal district in which the eligible taxable property has situs. A copy of the exemption application shall be submitted to the City contemporaneously therewith.

IX. ANNUAL RENDITION

Sunny Delight shall annually render the value of the Tangible Personal Property eligible for the Tax Abatement, being the subject of the abatement provided herein, to the Grayson County Appraisal District and any other appraisal district in which the eligible taxable property has situs and provide a copy of the same to the City simultaneously therewith.

X.
EFFECT OF SALE, ASSIGNMENT OR LEASE OF PROPERTY

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may not be assigned without the written consent of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, so long as no Event of Default of Sunny Delight under this Agreement exists and remains uncured, Sunny Delight may, without the prior written consent of the City, (1) assign its rights and obligations under this Agreement to an Affiliate of Sunny Delight, so long as such Affiliate continues to be wholly-owned, directly or indirectly, by Sunny Delight or one of its constituent parties and Sunny Delight notifies the City in advance of such assignment and provides evidence reasonably satisfactory to the City that such assignee is an Affiliate, or (2) make a collateral assignment of the Agreement solely for the benefit of a creditor providing financing for Tangible Personal Property. In the event the City consents to an assignment of this Agreement by Sunny Delight, no further assignment shall be made without the express consent in writing of the City, unless such assignment may otherwise be made without such consent pursuant to the terms of this Agreement. Except as otherwise set forth herein, an assignment by Sunny Delight of its interest in this Agreement shall not relieve Sunny Delight from its obligations under this Agreement unless approved by the City.

XI.
NOTICE

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

If to the City:

City of Sherman, Texas
220 W. Mulberry Street
Sherman, Texas 75090
Attn: City Manager

With required copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Attn: Ryan D. Pittman

If to Sunny Delight:

Sunny Delight Beverages Co.
300 FM 1417 West
Sherman, Texas 75092
Attn: _____

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

XII.
TERM

The term of this Agreement shall begin on the Effective Date and shall continue during the period set forth in Article IV hereof, unless sooner terminated. Time is of the essence in this Agreement.

XIII. AUTHORIZATIONS

The City Council has authorized the City Manager to execute this Agreement on the City's behalf. This Agreement was entered into by Sunny Delight pursuant to authority granted by one or more of its officers to execute this Agreement on behalf of Sunny Delight.

XIV. SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase, or word herein is held invalid, illegal, or unconstitutional, the balance of this Agreement, shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word. If any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal, the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.

XV. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be in the State District Court of Grayson County, Texas. The parties consent to venue and to the jurisdiction of the State District Court of Grayson County, Texas.

XVI. INDEMNIFICATION

- A. IN ADDITION TO THE OTHER REMEDIES AFFORDED TO THE CITY IN THIS AGREEMENT, SUNNY DELIGHT SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, ATTORNEYS, CONTRACTORS, OR AGENTS (HEREINAFTER "CITY'S INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART) SUNNY DELIGHT'S PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.
- B. Notice of Indemnified Loss. The City's Indemnified Party shall promptly notify Sunny Delight of any indemnified Losses or Claim for indemnified Losses in respect of which the City's Indemnified Party may be entitled to indemnification under this Article XVI. Such

notice shall be given as soon as reasonably practicable after the City's Indemnified Party becomes aware of the Loss or Claim for Losses.

- C. Defense of Third Party Claims. In the event any action or proceeding shall be brought against the City's Indemnified Party by reason of any matter for which the City's Indemnified Party is indemnified hereunder, Sunny Delight shall, upon notice from the City's Indemnified Party or its authorized agents or representatives, at Sunny Delight's sole cost and expense, resist and defend the same with legal counsel selected by City. Sunny Delight's obligation to defend shall apply regardless of whether the City's Indemnified Party is solely or concurrently negligent. Nothing herein shall be deemed to prevent the City's Indemnified Party at its election and at its own expense from participating in the defense of any litigation with their own counsel. If Sunny Delight fails to retain defense counsel within seven (7) business days after receipt of City's Indemnified Party written notice that the City's Indemnified Party is invoking its right to indemnification under this Agreement, the City's Indemnified Party shall have the right to retain defense counsel on their own behalf, and Sunny Delight shall be liable for all usual and customary defense costs incurred by the City's Indemnified Party.

XVII. ENTIRE AGREEMENT

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

XVIII. RECORDATION OF AGREEMENT

A certified copy of this Agreement in recordable form shall be recorded in the real property records of Grayson County, Texas.

XIX. INCORPORATION OF RECITALS; EXHIBITS

The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

XX. CERTIFICATIONS REQUIRED BY TEXAS LAW

- A. Pursuant to Section 2271.002, Texas Government Code, Sunny Delight hereby represents that neither Sunny Delight, nor any wholly owned subsidiary, majority-owned subsidiary, parent, owner or affiliate of Sunny Delight "boycotts Israel", and subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, Sunny Delight agrees it will not boycott Israel during the term of this Agreement. As used

in the immediately preceding sentence, “boycott Israel” shall have the meaning given such term in Section 2271.001, Texas Government Code.

- B. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Sunny Delight certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.
- C. Pursuant to Chapter 2274, Texas Government Code, Sunny Delight verifies that (i) it does not boycott energy companies and will not boycott energy companies during the term of this Agreement and (ii) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.
- D. Pursuant to Chapter 2264, Texas Government Code, Sunny Delight represents and certifies that it does not and will not knowingly employ any undocumented worker at the Premises or on the Land 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, Sunny Delight is convicted of a violation under 8 U.S.C. § 1342a(f), Sunny Delight shall repay to the City an amount equal to all Grant payments tendered to Sunny Delight under this Agreement plus interest at the annual rate of four percent (4%) not later than the 120th day after the date the public agency, state or local taxing jurisdiction notifies Sunny Delight of such violation.

XX.

NO VESTED RIGHTS

Nothing in this Agreement shall be interpreted or implied to vest any rights in the parties. In addition, nothing in this Agreement constitutes a “permit” as defined in Chapter 245, Texas Local Government Code. SUNNY DELIGHT WAIVES ANY CLAIM THAT THIS AGREEMENT ESTABLISHES VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE OR OTHER LAW. THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

XXII.

COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. The parties acknowledge the inherent unpredictability of the global semiconductor industry and the possibility that schedules for investment and job creation and other provisions may require adjustment over the terms of this Agreement, subject to the mutual written asset of all parties.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the Effective Date.

CITY OF SHERMAN, TEXAS,
a Texas home rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

ATTEST:

By: _____
Linda Ashby, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan D. Pittman, City Attorney

**SUNNY DELIGHT BEVERAGES
COMPANY,**
a Florida corporation

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT A

Legal Description of the Land

MEASURED DESCRIPTION

DESCRIPTION OF A 64.401 ACRE TRACT SITUATED IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND CONVEYED TO AGNL BEVERAGES (TX), L.P. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 5732, PAGE 308, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; SAID 64.401 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY MEETS AND BOUNDS AS FOLLOWS:

BEGINNING, AT A "X" CUT IN CONCRETE FOUND MARKING THE NORTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417 (VARIABLE WIDTH) WITH THE CENTER OF A PUBLIC ROAD TO THE SOUTH LOCALLY KNOWN AS HOWE DRIVE RUNNING ALONG OR NEAR THE EAST LINE OF THE SAID MARTIN SURVEY;

THENCE, SOUTH 14 DEGREES 08 MINUTES 48 SECONDS EAST, WITH SAID CENTER OF HOWE DRIVE, A DISTANCE OF 2433.63 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE SAID 64.401 ACRE TRACT AND THE NORTHEAST CORNER OF SHERMAN INDUSTRIAL DEVELOPMENT ADDITION TO SAID CITY OF SHERMAN, TEXAS ACCORDING TO THE PLAT OF RECORD IN VOLUME 24, PAGE 40, PLAT RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 74 DEGREES 48 MINUTES 39 SECONDS WEST, WITH THE SOUTH LINE OF THE SAID 64.401 ACRE TRACT, PASSING AT A DISTANCE OF 40.00 FEET THE NORTHEAST CORNER OF LOT 3, BLOCK 1 OF SAID SHERMAN INDUSTRIAL DEVELOPMENT ADDITION; CONTINUING, IN ALL, A TOTAL DISTANCE OF 527.51 FEET TO A POINT MARKING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO SHERMAN ECONOMIC DEVELOPMENT CORPORATION BY DEED RECORDED IN VOLUME 4895, PAGE 876, OFFICIAL PUBLIC RECORDS; SAID POINT ALSO BEING AT THE INTERSECTION OF SAID SOUTH LINE OF THE SAID 64.401 ACRE TRACT WITH THE EAST RIGHT-OF-WAY LINE OF THE EASEMENT CONVEYED TO THE ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY RECORDED IN VOLUME 945, PAGE 490, DEED RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 64.401 ACRE TRACT AND SAID RIGHT-OF-WAY LINE, THE FOLLOWING METES AND BOUNDS; NORTH 59 DEGREES 06 MINUTES 38 SECONDS WEST, A DISTANCE OF 331.98 FEET TO A POINT MARKING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1885.08 FEET;

NORTHWESTERLY, WITH SAID CURVE TO THE RIGHT, (CHORD BEARS NORTH 36 DEGREES 28 MINUTES 48 SECONDS WEST, 1450.72 FEET), AN ARC DISTANCE OF 1489.13 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND MARKING AN "L" CORNER;

NORTH 76 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD FOUND MARKING ANOTHER "L" CORNER;

NORTHWESTERLY, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 1860.08 FEET, (CHORD BEARS NORTH 11 DEGREES 46 MINUTES 26 SECONDS WEST, 134.73 FEET), AN ARC DISTANCE OF 134.76 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 5433" FOUND THE END OF SAID CURVE;

NORTH 09 DEGREES 41 MINUTES 54 SECONDS WEST, A DISTANCE OF 743.13 FEET TO A POINT MARKING THE NORTHWEST CORNER OF SAID 64.401 ACRE TRACT; SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SAID SHERMAN ECONOMIC DEVELOPMENT CORPORATION TRACT; SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE F.M. HIGHWAY NO. 1417;

THENCE, WITH THE SAID SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 1417, THE FOLLOWING METES AND BOUNDS;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 1057.58 FEET TO A POINT FOR ANGLE AT THE WEST BASE OF A DISTURBED CONCRETE MONUMENT FOUND;

SOUTH 87 DEGREES 28 MINUTES 00 SECONDS EAST, A DISTANCE OF 156.68 FEET TO A "X" CUT IN CONCRETE FOUND AT AN ANGLE POINT;

NORTH 73 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2,805,290 SQUARE FEET OR 64.401 ACRES OF LAND.

SURVEYOR'S CERTIFICATION

To: BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders, its successors and/or assigns, CF Alpha & Golf Procco LLC, a Delaware limited liability company, its successors and assigns; Broadstone HHH Texas, LLC; First American Title Insurance Company; Pilcher, Nichols & Meeks LLP; and the Matthews Company, Inc.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(i), 7(c), 8, 9, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The fieldwork was completed on May 29, 2019.

Date of Plat or Map: May 30, 2019


Robert W. Schneeberg, Texas R.P.L.S. No. 4804
Gonzalez & Schneeberg, Engineers & Surveyors, Inc.
2100 Lakeside Boulevard, Suite 200
Richardson, Texas 75082
Phone (972) 516-8855
email: robert.schneeberg@gs-engineers.com
GSES 6891-19-05-04
Date: May 30, 2019
Date of Last Revision: August 14, 2019



The property described and shown hereon is the same property described in First American Title Insurance Company Title Commitment GF No. 3020-958726TX31, effective date May 3, 2019.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 3.

Meeting Date: 10/03/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6962**

Finding that Oncor Electric Delivery Company LLC's ("Oncor" or "Company") Application to Change Electric Transmission and Distribution Rates within the City Should Be Denied; Authorizing Participation with Oncor Cities Steering Committee; Authorizing the Hiring of Legal Counsel and Consulting Services; Finding that the City's Reasonable Rate Case Expenses Shall Be Reimbursed by the Company; Requiring Notice of this Resolution to the Company and Legal Counsel

Issue:

Denial of the filing by Oncor Electric Delivery Company of an application to change transmission and distribution rates within the City of Sherman, Texas

Background:

On May 13, 2022, Oncor Electric Delivery Company LLC ("Oncor" or "Company") filed an application with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by about \$251 million or approximately 4.5% over present revenues. The Company asks the City to approve an 11.2% increase in residential rates and a 1.6% increase in street lighting rates. The impact of this requested increase on an average residential customer using 1,300 kWh/month would be about \$6.02 per month.

On June 6, 2022, the City Council approved a resolution to suspend Oncor's rate request from taking effect for 90 days, the fullest extent permissible under the law. This time period has permitted the City, through its participation with the Steering Committee of Cities Served by Oncor ("Steering Committee"), to determine that the proposed rate increase is unreasonable. Consistent with the recommendations of the experts engaged by the Steering Committee, Oncor's request for a rate increase should be denied.

Accordingly, the purpose of the Resolution is to deny the rate change application proposed by Oncor. Once the Resolution is adopted, Oncor will have 30 days to appeal the decision to the Public Utility Commission of Texas where the appeal will be consolidated with Oncor's filing (i.e. PUC Docket No. 53601) currently pending at the Commission.

Origination:

Thomas L. Brocato, Jamie Mauldin, and Roslyn Dubberstein
Lloyd Gosselink Blevins Rochelle & Townsend, P.C.
Legal Counsel to the Steering Committee of Cities Served by Oncor

Financial Consideration:

If the Company's application is approved, the City's residential customers would see a monthly increase of 11.2% in transmission and distribution rates, an average of about \$6.02 per month.

The City's reasonable rate case expenses will be reimbursed by Oncor.

Staff Recommendation:

It is the staff's recommendation that the City Council approve the Resolution, as recommended by the Steering Committee's legal counsel.

Alternatives:

No alternatives are recommended.

Attachments

Resolution No. 6962
OCSC Staff Report

RESOLUTION NO. 6962

A RESOLUTION OF THE CITY COUNCIL OF THE SHERMAN, TEXAS FINDING THAT ONCOR ELECTRIC DELIVERY COMPANY LLC'S ("ONCOR" OR "COMPANY") APPLICATION TO CHANGE ELECTRIC TRANSMISSION AND DISTRIBUTION RATES WITHIN THE CITY SHOULD BE DENIED; AUTHORIZING PARTICIPATION WITH ONCOR CITIES STEERING COMMITTEE; AUTHORIZING THE HIRING OF LEGAL COUNSEL AND CONSULTING SERVICES; FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman, Texas ("City") is an electric utility customer of Oncor Electric Delivery Company LLC ("Oncor" or "Company"), and a regulatory authority with an interest in the rates and charges of Oncor; and

WHEREAS, the City is a member of the Steering Committee of Cities Served by Oncor ("Steering Committee"), a coalition of similarly situated cities served by Oncor that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in Oncor's service area; and

WHEREAS, on or about May 13, 2022, Oncor filed with the City an application to increase system-wide transmission and distribution rates by \$251 million or approximately 4.5% over present revenues. The Company asks the City to approve an 11.2% increase in residential rates and a 1.6% increase in street lighting rates; and

WHEREAS, the Steering Committee is coordinating its review of Oncor's application and working with the designated attorneys and consultants to resolve issues in the Company's filing; and

WHEREAS, through review of the application, the Steering Committee's consultants determined that Oncor's proposed rates are excessive; and

WHEREAS, the Steering Committee's members and attorneys recommend that members deny the Application; and

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

SECTION 1. That the rates proposed by Oncor to be recovered through its electric rates charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

SECTION 2. That the Company shall continue to charge its existing rates to customers within the City.

SECTION 3. That the City's reasonable rate case expenses shall be reimbursed in full by Oncor within 30 days of the adoption of this Resolution.

SECTION 4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5. That a copy of this Resolution shall be sent to Oncor, Care of Howard Fisher, Oncor Electric Delivery Company, LLC, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202 and to Thomas Brocato, Counsel to the Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Ave., Suite 1900, Austin, TX 78701.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this 3rd day of October 2022.

CITY OF SHERMAN, TEXAS

DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
ABERNATHY, ROEDER, BOYD AND HULLETT, P.C.

BY: _____
RYAN PITTMAN, CITY ATTORNEY

MODEL STAFF REPORT REGARDING ONCOR ELECTRIC'S REQUESTED RATE CHANGE

Purpose:

On May 13, 2022, Oncor Electric Delivery Company LLC (“Oncor” or “Company”) filed an application with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by about \$251 million or approximately 4.5% over present revenues. The Company asks the City to approve an 11.2% increase in residential rates and a 1.6% increase in street lighting rates. The impact of this requested increase on an average residential customer using 1,300 kWh/month would be about \$6.02 per month.

In a prior City action, Oncor’s rate request was suspended from taking effect for 90 days, the fullest extent permissible under the law. This time period has permitted the City, through its participation with the Steering Committee of Cities Served by Oncor (“Steering Committee”), to determine that the proposed rate increase is unreasonable. Consistent with the recommendations of the experts engaged by the Steering Committee, Oncor’s request for a rate increase should be denied.

Accordingly, the purpose of the Resolution is to deny the rate change application proposed by Oncor. Once the Resolution is adopted, Oncor will have 30 days to appeal the decision to the Public Utility Commission of Texas where the appeal will be consolidated with Oncor’s filing (i.e. PUC Docket No. 53601) currently pending at the Commission.

All cities with original jurisdiction will need to adopt the Resolution ***prior to October 30, 2022.***

Explanation of “Be It Resolved” Sections:

1. This paragraph finds that the Company’s application is unreasonable and should be denied.
2. This section states that the Company’s current rates shall not be changed.
3. The Company will reimburse Cities for their reasonable rate case expenses. Legal counsel and consultants approved by Cities will submit monthly invoices that will be forwarded to Oncor for reimbursement.
4. This section merely recites that the resolution was passed at a meeting that was open to the public and that the consideration of the Resolution was properly noticed.
5. This section provides Oncor and counsel for Cities will be notified of the City’s action by sending a copy of the approved and signed resolution to counsel.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 4.

Meeting Date: 10/03/2022

Prepared By: Nathan Whiddon, Wastewater Superintendent

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6963**

Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the Redevelopment of Technically Based Local Limits.

Issue:

To consider a contract for professional services with Mead & Hunt, Inc. for engineering services to redevelop technically-based local limits and update sludge provisions in the City's current wastewater discharge permit.

Background:

The redevelopment of these technically-based local limits are part of a substantial modification to the City's pretreatment program. This requirement is established in the City's wastewater discharge permit that was reissued by the Texas Commission on Environmental Quality (TCEQ) on August 19, 2020.

These local limits are established in Sec. 13.07.356 of the City Code of Ordinances for significant industrial users (SIU's) that are permitted through the City's pretreatment program. The last major redevelopment of these local limits occurred on May 20, 2005, with minor updates on May 20, 2011, and July 29, 2020.

The work included in the proposed contract to redevelop these local limits will meet regulatory requirements and provide additional capacity for existing and future industries that need to discharge the regulated pollutants. The minor revisions to the sludge provisions in the wastewater permit are needed to synchronize the permit with recent updates to Title 30 Chapter 312 of the Texas Administrative Code.

Origination:

Wastewater Superintendent, Nathan Whiddon

Financial Consideration:

The total engineering services fee will be \$82,022. Funding is available in the Dept. 7722 - Treatment Services Operating Budget for FY 2023.

Staff Recommendation:

It is recommended that the contract for professional services with Mead & Hunt, Inc. for the Redevelopment of Technically-Based Local Limits be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6963
Agreement

RESOLUTION NO. 6963

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MEAD & HUNT FOR THE REDEVELOPMENT OF TECHINCALLY BASED LOCAL LIMITS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a professional services agreement with Mead & Hunt for the Redevelopment of Technically Based Local Limit, 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 3rd day of October, 2022.

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 D. PITTMAN, CITY ATTORNEY

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
MEAD & HUNT, INC.
FOR
PROFESSIONAL SERVICES

Made as of the 22nd day of September, 2022:

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

and Consultant: **Mead & Hunt, Inc.**
 6001 Interstate 20 West, Suite 219
 Arlington, Texas 76017
 Telephone: (817) 719-0372
 Facsimile: (000) 000-0000

for the following Project: **TBLL REDEVELOPMENT PROJECT**

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

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

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1

CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a lump sum basis in an amount not to exceed **WRITTEN DOLLAR AMOUNT (\$82,022.00)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Project Design Budget Summary as set forth in **Exhibit B**.
- 311 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in **Exhibit C**, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 312 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written

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

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

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

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

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

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

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

Hourly Billable Rates by Position

Position	Hourly Rate
Principal	\$240
Senior Project Manager	\$225
Project Scientist	\$177
Technician	\$103
Admin	\$75

- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit B**. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

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

parties before the services are performed.

- 3.10 **Fixed Budget Limit for Construction Cost** - If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in the following paragraph. All adjustments in the scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of \$(Not Applicable – This contract Does Not Involve Design or Construction) due to the negligence of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project. Absent negligence on the part of the Consultant in making its estimates of probable Construction Cost, providing services as defined in Exhibit A shall be the limit of the Consultant's liability arising from the establishment of such fixed limitation of Construction Costs. The Consultant shall be entitled to compensation for all other services performed in accordance with this Agreement.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

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

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

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

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

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

ARTICLE 6 CONSULTANT’S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

Fiscal records of the City pertinent to Consultant’s compensation and payments under this Agreement will be kept in accordance with generally accepted accounting principles.

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

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

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

This contract may be terminated by the Consultant, for cause, for non-payment on undisputed amount by City, IF the Consultant provides a 30-day notice of its intent to terminate this contract and the City fails to cure any late payment(s) on undisputed

amounts to Consultant. The City must be past-due on payment of undisputed invoices to Consultant before the Consultant can send the 30-day notice referenced in this paragraph with its intent to terminate this Contract.

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10 INDEMNITY

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

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

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

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

Janet Sims

Senior Project Manager
Mead & Hunt, Inc.
6001 Interstate 20 West, Suite 219
Arlington, Texas 76017
Telephone: 817-719-0372
Email: janet.sims@meadhunt.com

ARTICLE 12 MISCELLANEOUS

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

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

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

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

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

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

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

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

Exhibit E or **Exhibit A** shall prevail in that order.

- 122 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 123 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 124 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 126 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 127 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 128 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

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

- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2020-2021 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2020-2021 fiscal year unless and until such funds are budgeted.
- 12.23 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.
- 12.24 **Reference to City** – When referring to "City," this Agreement shall refer to and be

binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

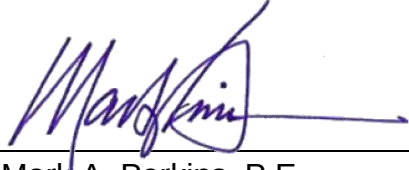
CITY:

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

CONSULTANT:

Mead & Hunt, Inc.

By: _____
Robby Hefton, City Manager

By:  _____
Mark A. Perkins, P.E.
Vice President

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **ROBBY HEFTON**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE CITY MANAGER AND DULY AUTHORIZED REPRESENTATIVE FOR THE **CITY OF SHERMAN, TEXAS**, A TEXAS HOME-RULE MUNICIPALITY, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

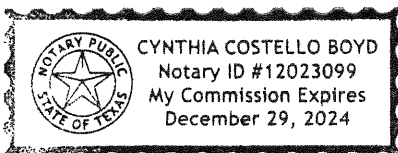
GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY
OF _____ 2022.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **MARK PERKINS**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **MEAD & HUNT**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 22 DAY
OF September 2022.



Cynthia Costello Boyd

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 12/29/2024

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

- A.** Mead & Hunt will provide assistance with the redevelopment of technically based local limits (TBLL). All activities will be based on procedures described in the EPA guidance documents, requirements in the City's Texas Pollutant Discharge Elimination System (TPDES) permit, and protocols acceptable to the Texas Commission on Environmental Quality (TCEQ) for the development of TBLLs.
- B.** It is recognized that the specific assignment contemplated under this agreement does not involve design or construction-related services. Services are regulatory in nature; the provisions of this contract that address preparation of plans, specifications, and construction documents are not applicable to this specific assignment.
- C. Scope of Services**
 - i. Provide consultation with the implementation of intensive monitoring at the City's wastewater treatment plant and non-industrial source sites in the collection system.
 - ii. Compile and confirm intensive monitoring data meet data quality objectives.
 - iii. Calculate TBLLs.
 - iv. Prepare and submit to City for review the draft TBLL calculation report and revisions to Program documents to incorporate the revised TBLLs.
 - v. Finalize calculation report based on City comments and prepare report for submittal to TCEQ.
 - vi. Prepare for and participate in conference calls with City to discuss project (up to 6 calls).
 - vii. Prepare for and attend up to three meetings in Sherman with City and one meeting in Austin with TCEQ.
 - viii. Prepare for and attend one City Council work session or meeting.
 - ix. Assist with the TCEQ Staff Initiated Amendment of the City's TPDES permit, including revisions related to the sludge reporting requirements.
 - x. Responsibilities of City of Sherman
 - xi. Our Scope of Services and Compensation are based on the City performing or providing the following:
 - xii. Implementing the intensive monitoring at the wastewater treatment plant and in the collection system.
 - xiii. Paying all costs associated with monitoring, shipping of samples, and laboratory costs.
 - xiv. Submitting to TCEQ the certification statement and official request for proposed TBLLs.
 - xv. Publishing public notification associated with the TPDES permit Staff Initiated Amendment.

EXHIBIT A SCOPE OF SERVICES

- D.** The completion of tasks associated with this project will be in accordance with the schedule agreed to with the City and in accordance with the schedule provided by TCEQ.

II. GENERAL REQUIREMENTS

- A.** Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B.** Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
- C.** Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
- D.** The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
- E.** Communications and Reporting:
- i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
 - ii Attend review meeting with the City at the end of each design phase.
 - iii Prepare and submit monthly invoices in the format acceptable to the City.
 - iv Prepare and submit monthly progress reports.
 - v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
 - vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.

EXHIBIT A SCOPE OF SERVICES

- vii With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.
- viii Attend additional project coordination meetings, if needed.

III. TASK SUMMARY, BASIC SERVICES

A. Preliminary Design Phase

- a. 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 City. Include preliminary layouts, a right-of-way map, sketches, and cost estimates for the Project and set forth clearly the Consultant's recommendations for any alternate designs.
- b. Water, sanitary sewer, and storm drains will be shown on the plans based on field information and surveys collected by the Consultant 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 Consultant, utility locates requested by the Consultant, and any available "Record Drawings" that the Consultant can obtain from other utilities.
- c. Depending on comments received from the City's review and field investigations, another set of preliminary phase construction drawings may be required.
- d. Upon completion of the Preliminary Design Phase, the Engineer will advise the City of any geotechnical, soil, foundation, or other subsurface investigations or any special surveys, Level B or A SUE, or special testing which, in the opinion of the Consultant, may be required for the proper execution of the project, and assist the City in arranging for the conduct of such investigations and tests. The performance of geotechnical investigations and tests will not be a part of the Consultant's Basic Engineering Services and will not be included unless specifically authorized in writing under "F. Special Services."
- e. Prior to the Preliminary review meeting with the City, the Consultant shall schedule and attend a project site visit with the City Project Manager and Construction personnel to walk the project. The Consultant shall summarize the City's comments from the field visit and submit this information to the City

EXHIBIT A SCOPE OF SERVICES

in writing.

- f. The Consultant will consult with the City, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. Consultant will design City facilities to avoid or minimize conflicts with existing utilities, and where known and possible, consider potential future utilities in designs.

B. Intermediate Design Plans (60%)

- a. 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 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.
- b. Prepare miscellaneous plan sheets, including cover sheet, index, general notes, project control (1"=100' scale), and applicable City standard details.
- c. Prepare Preliminary Project Manual, including Bid Form and Special Conditions and technical specifications.

C. Final Design/Construction Plans (90%, 100%)

- a. Prepare final engineering review drawings that address all comments from the intermediate review.
- b. 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.
- c. Finalize miscellaneous plan sheets, including cover sheet, index, general notes, project control (1"=100' scale, 11"x17"), and applicable City standard details.
- d. Submit three (3) final sealed copies each of any necessary right-of-way or easement documents.
- e. When required by the nature of the project, the Consultant shall provide

EXHIBIT A SCOPE OF SERVICES

necessary exhibits and attend a public meeting with the City.

- f. Upon completion of the final design review, the Consultant shall furnish to the City up to four (4) additional copies and a pdf of the construction drawings to be forwarded to the utility companies.
- g. Upon completion of the final design review, the Consultant shall furnish to the City, 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).

D. Bid Phase Services

- 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 City all necessary copies of approved Construction Contract Documents needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of Construction Contract Documents in excess of eight (8) copies are to be paid for separately as provided hereinafter.
- c. Consultant will submit the project plans to the State of Texas for the TAS/ADA review, if required for the Project. Consultant will prepare the application and make the submittal. The City will provide a check for the fee based on the construction cost of pedestrian improvements per the submittal requirements. Consultant will address comments from the review and revise plans if necessary.
- d. Assist the City in the advertisement of the Project for competitive bids.
- e. Assist the City with any Pre-Bidders meetings.
- f. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.
- g. Assist the City in the opening and tabulation of bids for construction of the Project.
- h. Prepare a written summary of the bid tabulation and evaluation together with a

EXHIBIT A SCOPE OF SERVICES

letter addressing the award of the construction contract.

- i. 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.
- j. The Consultant shall not be required to guarantee the accuracy of the final design Cost of Construction, but may be required to provide additional services at no cost to the City if bids for the Project exceed the fixed budget limit for the Construction Cost as provided in Article 3.

E. Construction Phase Services

- a. Conformed Document submittal:
 - i. Update the Bid Documents (plans and Project Manual) to incorporate bid addenda items
 - ii. Print up to ten (10) sets 11"x17" plans and Project Manuals for issuance at the Pre-Construction Conference.
 - iii. Package and submit CAD base files upon request.
- b. Site Visits upon request
- c. *Pre-Construction Meeting*. Attend Pre-Construction Meeting(s) prior to commencement of Work at the Site
- d. *Franchise Utility Coordination*. Assist the City with franchise utility coordination efforts and conflict resolution during construction.
- e. *Requests for information*. Coordinate with Engineer and issue clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by City.
- f. *Change Orders*. Recommend Change Orders to City, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor. Task includes preparing plan sheet revisions.
- g. *Shop Drawings, Samples, and Submittals*. Review and approve or take other appropriate action in respect to Shop Drawings, Samples, Submittals and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.
- h. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in

EXHIBIT A SCOPE OF SERVICES

- accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- i. *Disagreements between City and Contractor.* As necessary, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
 - j. *Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.
 - k. Consultant shall prepare construction Record Documents based on the information received from Contractor within 30 days of final completion in accordance with the Agreement. Consultant shall submit one full size set and one pdf file of the Record Documents.

F. Special Services

- a. 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 City, or may be added to the Consultant's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following:
 - i. Design Surveying - to collect information required for design, including photogrammetry, land surveying, 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. This also includes refreshing and re-establishing 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.
 - ii. Staking of the Centerline of the proposed Project for utility coordination. The Consultant 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.
 - iii. Furnish descriptive instruments related to the acquisition of easements

EXHIBIT A SCOPE OF SERVICES

- 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. As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the acquisition.
- iv. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
 - v. Appearances before regulatory agencies.
 - vi. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.
 - vii. 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 City.
 - viii. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
 - ix. Geotechnical Investigation & Report - obtain the services of a qualified geotechnical engineering laboratory to conduct soil and foundation investigations, including test borings, soil tests, and analyses of test results.
 - x. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
 - xi. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
 - xii. Revision of reports and Construction Contract Documents after specific approval by City.
 - xiii. Subsurface Utility Engineering that involves Level "A" or "B" identification of a utility.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

- A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following: None.

EXHIBIT B

PROJECT DESIGN BUDGET SUMMARY

City of Sherman							
Pretreatment Program Assistance TBLL Redevelopment							
Task 1 Assistance with TBLL Redevelopment							
Labor Summary		Labor Category & Projected Hours					Labor Subtotal
Subtask	Description	Principal	Sr. Proj. Mgr.	Proj. Manager	Grad. Engineer	Admin	
1	Provide consultation with implementation of intensive monitoring at the City's wastewater treatment plant and non-industrial source sites.		2	8			\$ 1,866
2	Compile data and confirm data meet quality objectives		16	24			\$ 7,848
3	Calculate technically based local limits		24	40			\$ 12,480
4	Prepare draft calculation report	2	30	60			\$ 17,850
5	Submit draft calculation report to Sherman for review and update report based on City comments		8	16			\$ 4,632
6	Revise Pretreatment Program documents to incorporate revised TBLLs		4	6			\$ 1,962
7	Finalize calculation report and Program documents based on City comments and prepare for submittal to TCEQ	1	4	12			\$ 3,264
8	Prepare for and participate in conference calls with City (6 calls)	1	18	20			\$ 7,830
9	Prepare for and attend meetings (Three with City, one with TCEQ)	1	20	34			\$ 10,758
10	Prepare for and attend one City Council work session or meeting	1	4	12			\$ 3,264
11	Assist with TCEQ's TPDES Staff Initiated Amendment (SIA) process to incorporate TBLLs and clarify sludge monitoring and reporting requirements in the City's current TPDES permit		16	24			\$ 7,848
							\$ -
Total Hours		6	146	256	0	0	408
Labor Subtotal		\$1,440	\$32,850	\$45,312	\$0	\$0	\$79,602
Expense Summary							
	Estimated Direct Expenses:						
	Mileage & Expenses	\$ 1,900					
	Printing & Reproduction	\$ 250					
	Postage, Delivery, & Courier Charges	\$ 50					
	Other	\$ -	Labor Fee				\$ 79,602
	Subtotal Direct Expenses	\$ 2,200	Direct Expense Fee				\$ 2,420
	Service Charge for Outside Direct Expenses	\$ 220	Total Professional Services Fee				\$ 82,022

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

1. Files shall be done in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
 - a. Pre-Construction/As-Built Plans and/or Record Documents:
 - i. Layers from Final Plat Requirements as Applicable to Project Type.
 - ii. Water Utility Features.
 - iii. Sanitary Sewer Features.
 - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be done per accepted industry norms.
9. Text should not be smaller than 0.08" on a full size sheet, and should be a font such as Simplex, Calibri, or Arial.

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

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

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

N/A

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

N / A

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ **Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).**

7



Signature of vendor doing business with the governmental entity

09/22/2022

Date



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 5.

Meeting Date: 10/03/2022

Prepared By: Chuck Carlisle, Facilities Manager

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6964**

Authorizing Approval and Execution of an Agreement Through the TIPS-USA Cooperative Purchasing Program with Archer Construction & Design for the Installation of a 2 Inch Force-Main System to Service the New Sherman Police Headquarters.

Issue:

To consider authorizing the execution of an agreement through the TIPS-USA Cooperative Purchasing Program with Archer Construction & Design for the installation of a 2 inch force-main system and SCADA system, installed by RLC Controls, Inc., to service the New Sherman Police Headquarters.

Background:

Due to the elevation of the new Sherman Police Headquarters building, access to the city's gravity-fed wastewater system is not available. In order to gain access to the city's wastewater system, the installation of a lift station and 2 inch force-main is necessary. A lift station is designed to move wastewater from lower to higher elevations through a force-main system.

Several contractors were contacted to provide quotes; Archer Construction & Design provided the lowest quote and is available to begin the project immediately. Archer's quote was received through a cooperative purchasing program, TIPS-USA Contract Number 200201, for the amount of \$294,191. The total project cost will be \$332,191 with \$38,000 for the SCADA Control System being installed by RLC Controls

Origination:

Police Department

Financial Consideration:

The cost for this agreement will be funded through Capital Improvement Program Project Code #22-053.

Staff Recommendation:

Staff recommends authorizing the execution of a contract with Archer Construction & Design for the installation of a 2 inch force-main system to service the new Sherman Police Headquarters.

Alternatives:

As may be directed by the City Council.

Attachments

Resolution No. 6964

Agreement

Lift Station Proposal

Force-Main Plans

SCADA System

RESOLUTION NO. 6964

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF AN AGREEMENT THROUGH THE TIPS-USA COOPERATIVE WITH ARCHER CONSTRUCTION & DESIGN FOR THE INSTALLATION OF A 2 INCH FORCE-MAIN SYSTEM TO SERVICE THE NEW SHERMAN POLICE HEADQUARTERS; 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 the execution of an agreement with Archer Construction & Design through TIPS-USA for the installation of a 2 inch Force-Main System to service the New Sherman Police Headquarters. Any agreements related to the purchase must be approved by the City Attorney.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 3rd day of October, 2022.

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 D. PITTMAN, CITY ATTORNEY

**CONSTRUCTION AGREEMENT BETWEEN THE CITY OF SHERMAN, TEXAS
AND SMALLWOOD ARCHER CONSTRUCTION, INC.**

The **City of Sherman, Texas**, a home-rule municipality ("Sherman"), and **Smallwood Archer Construction, Inc. d/b/a Archer Construction and Design, Inc.**, a Texas corporation ("Contractor"), enter into this Construction Agreement ("Agreement") for the installation of a 2-inch force-main on the west side of Northgate Drive in City Right of Way. Sherman and Contractor are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, Sherman desires to engage Contractor to provide services in connection with the installation of a 2-inch force-main under the terms and conditions of this Agreement ("Project");

WHEREAS, Sherman issued a Request for Quote (RFQ) through the TIPS-USA Cooperative Purchasing Program; and

WHEREAS, Contractor timely submitted a response to the RFQ, attached hereto as Exhibit A and incorporated herein for all purposes ("Submittal"), seeking to provide such services for City; and

WHEREAS, based on Contractor's representations in response to the RFQ, including those representations set forth in the Submittal, City has selected Contractor to provide the services sought in the RFQ under the terms and conditions of this Agreement ("Project").

WHEREAS, Contractor has agreed to provide the services for the Project.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope of Services.

Contractor shall provide the services and deliverables that are set forth and described in the Agreement Documents (hereinafter defined) and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Agreement Documents (collectively, "Services"). The parties understand and agree that deviations or modifications to the scope of Services described in the Agreement Documents, in the form of one or more written change orders, may be authorized from time to time by Sherman ("Change Orders"). "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Change Orders by the Sherman City Manager or his designee will not be authorized for payment and/or shall not become part of this Agreement. A duly executed, written Change Order shall be preceded by the Sherman City Council's authorization for the Sherman City Manager to execute said Change Order. Contractor agrees that Sherman's project managers, superintendents and/or inspectors are not authorized to issue verbal or written Change Orders.

2. Term.

All Services in connection with this Project must be completed, inspected and finally accepted by Sherman within forty (40) days of the date of delivery of the pump equipment, which Contractor shall order promptly after Sherman issues a written notice to proceed with such order, that Sherman issues a written notice to proceed to Contractor. All obligations relating to time set forth herein are material and are of the essence of this Agreement. This Agreement shall remain in full force and effect until completion of the Project to Sherman's satisfaction. The obligations listed hereunder shall be fulfilled upon the completion of the Project to Sherman's satisfaction.

3. Compensation.

In exchange for the Services as described in the Agreement Documents, Sherman agrees to pay the Contractor in an amount not to exceed Two Hundred Ninety-Four Thousand One Hundred Ninety-One and 00/100 dollars (\$294,191) ("Contractor's Fee") for the completion of the Project contemplated by and in accordance with the Agreement Documents as follows:

On a monthly basis, Contractor shall submit a written invoice to Sherman for all Services completed in the immediately preceding month. The applicable portion of Contractor's Fee as reflected in each such invoice shall be due and payable by Sherman within thirty (30) days after Sherman finally accepts the Services described in each such invoice in accordance with the Agreement Documents and Sherman's ordinances, rules, regulations and requirements, as they exist, may be amended or in the future arising, except that Sherman is entitled to retain an amount equal to five percent (5%) of the Contractor's Fee, which shall be due and payable within thirty (30) days after Contractor completes the Project and Sherman finally accepts the same. Notwithstanding anything to the contrary herein, Sherman shall not be required to pay any invoice submitted by Contractor if Contractor is in breach of this Agreement.

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

4. Agreement Documents.

The "Agreement Documents," as that term is used herein, shall mean and include the following documents, and this Agreement expressly incorporates the same herein by reference for all purposes:

- a. This Agreement;
- c. The Submittal, attached hereto as Exhibit A;

- d. Sherman's Insurance Requirements, attached hereto as Exhibit B;
- e. City of Sherman's Standard Construction Details (which is on file in with the City Engineering Department);
- f. The Standard Specifications for Public Works Construction (North Central Texas (Most Recent Edition)) as amended and supplemented by the City of Sherman's Special Provisions to said Standard Specification, as amended (which is on file in the City Engineering Department);
- g. Affidavit of No Prohibited Interested, attached hereto as Exhibit C;
- h. Conflict of Interest Questionnaire, attached hereto as Exhibit D;

This Agreement shall incorporate the terms of the Agreement Documents in their entirety. To the extent that Exhibit A, Exhibit B, Exhibit C or Exhibit D are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Exhibit B, Exhibit C, Exhibit D and Exhibit A shall prevail in that order.

5. Reserved.

6. Payment, Performance and Maintenance Bonds.

Prior to commencing work under this Agreement, Contractor shall furnish to Sherman an original payment bond and an original performance bond, each of which shall be in an amount equal to one hundred percent (100%) of the total cost of the Project to ensure Sherman is indemnified: (i) against any claims for nonpayment of any part of the construction or work performed in connection with the Project; and (ii) for the completion of the Project in accordance with this Agreement. Prior to Sherman's final acceptance of the Project, Contractor shall furnish to Sherman a two (2) year maintenance bond in an amount equal to one hundred percent (100%) of the total cost of the Project to ensure the repair or remedy of any maintenance issues Sherman may have regarding the Project after Sherman finally accepts the same.

The bonds required by Sherman pursuant to this Section 5 must be: (i) good and sufficient bonds; (ii) in the amounts prescribed herein; and (iii) with a reputable and solvent corporate surety in favor of Sherman.

7. Entire Agreement.

The Agreement Documents contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. The Agreement Documents supersede all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the parties prior to the Effective Date of this Agreement which does not concern the subject matter of this Agreement. No amendment to the Agreement Documents shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

8. Required Insurance.

Contractor shall not start work under this Agreement until Contractor has obtained, at

Contractor's expense, all of the insurance specified in, and required by, the Agreement Documents. Contractor shall procure and keep in full force and effect the types and amounts of insurance specified in Sherman's Insurance Requirements, attached hereto as Exhibit B and incorporated herein for all purposes, for and during all aspects and phases of Contractor's work throughout the term of this Agreement at no expense to Sherman. Contractor also shall comply with all other requirements set forth in Exhibit B.

9. No Prohibited Interest; Vendor Disclosure.

Contractor acknowledges and agrees that it is aware of, and will abide by, the no prohibited interest requirement of the Sherman City Charter. Contractor shall execute and deliver to Sherman the Affidavit of No Prohibited Interest, attached hereto as Exhibit C and incorporated herein for all purposes, no later than the Effective Date of this Agreement (hereinafter defined). Contractor acknowledges and agrees that the existence of a prohibited interest during the term of this Agreement will render this Agreement voidable. Contractor further acknowledges and agrees that it also is aware of, and will abide by, the vendor disclosure requirements set forth in Chapter 176 of the Texas Local Government Code, as amended. In this connection, Contractor shall execute and deliver to Sherman the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit D and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

10. Indemnity.

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

EMPLOYMENT WITH CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

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

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

11. Liability.

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

12. Compliance with Laws; Standard of Care.

Contractor shall comply with all federal, state and local laws, statutes, ordinances, regulations and policies, as they exist, may be amended or in the future arising, applicable to Contractor and its work. Contractor shall ensure that its officers, agents, representatives, employees, subcontractors, licensees, invitees and other parties performing services for or on behalf of Contractor under this Agreement comply with all applicable laws, statutes, ordinances, regulations and policies. If Contractor observes or is notified that the work under this Agreement is at variance with applicable laws, statutes, ordinances, regulations and policies, Contractor shall immediately notify Sherman in writing. Contractor shall perform the Services in accordance with the prevailing standard of care by exercising the

skill and care ordinarily utilized by professionals performing the same or similar services under the same or similar circumstances in the State of Texas.

13. Termination.

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

Sherman is entitled to terminate this Agreement immediately on breach of any term or provision of the Agreement Documents by Contractor. If at any time during the term of this Agreement, Contractor shall fail to commence the work in accordance with the provisions of the Agreement Documents or fail to diligently perform the Services in an efficient, timely and careful manner and in strict accordance with the provisions of the Agreement Documents, then Sherman shall have the right to terminate this Agreement and complete the work in any manner it deems desirable, including engaging the services of other parties, if Contractor does not cure any such default after five (5) days written notice thereof. Any such act by Sherman shall not be deemed a waiver of any other right or remedy of Sherman.

If after exercising any remedy provided herein, the cost to Sherman of the performance of the balance of the work on the Project is in excess of that part of the Contractor's Fee which has not yet been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse Sherman for such excess, without waiver of any other right or remedy of Sherman.

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

14. Authority to Execute.

Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.

15. Assignment.

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

16. No Waiver of Immunity.

The parties acknowledge and agree that, in executing and performing this Agreement, Sherman has not waived, nor shall be deemed to have waived, any defense or immunity,

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

17. 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 included in this Agreement.

18. Consideration.

This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

19. Attorneys' Fees.

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

20. 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.

21. Binding Effect.

This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

22. No 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.

23. Headings.

The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

24. Indemnity.

The parties agree that the indemnity provision set forth in Section 10 herein is conspicuous and the parties have read and understood the same.

25. Notice.

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

If to Contractor, to: Archer Construction & Design
Attn: Brad Archer, President of Construction
1161 Clarksville Street
Paris, TX 75460
Telephone: (903) 739-2350
Email: brad@archer-cdc.com

If to Sherman, to: City of Sherman
Attn: Robby Hefton, City Manager
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7201
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

With a copy to:

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

26. Representations.

Each party states that they have carefully read this Agreement, know the contents hereof, have consulted with an attorney of their choice regarding the meaning and effect hereof and is signing the same solely of their own judgment.

27. Independent Contractor.

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of Sherman; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between Sherman and Contractor, its officers, agents, employees, contractors,

subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between Sherman and Contractor.

28. Incorporation of Recitals.

The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of Sherman and the authorized representative of Contractor.

29. Reference to Contractor.

When referring to “Contractor” herein, this Agreement shall refer to and be binding upon Contractor, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Contractor is legally responsible.

30. Reference to Sherman.

When referring to “Sherman” herein, this Agreement shall refer to and be binding upon Sherman, its Council Members, officers, agents, representatives, employees and/or any other authorized third parties for whom Sherman is legally responsible.

31. Certifications Required by Texas Law.

In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Contractor hereby certifies that Contractor does not boycott Israel and will not boycott Israel during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 809 of the Texas Government Code (to the extent applicable), Contractor hereby certifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 2274 of the Texas Government Code (to the extent applicable), Contractor hereby certifies that Contractor does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of any contract with City, including during the term of this Agreement. The foregoing terms in this Section have the meanings ascribed to them in the referenced statutes if defined therein.

32. Debarment/Suspension.

Sherman is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Sherman, Contractor and Contractor’s subcontractors shall comply with federal and state regulations regarding debarment and suspension. Contractor shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.

33. Restrictions on Lobbying.
Sherman and Contractor are prohibited from using funds awarded under the Agreement for lobbying purposes. Contractor shall include a statement of compliance with this provision in applicable procurement solicitations and third-party agreements for work on the Project.
34. 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.
35. Multiple Counterparts.
This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to 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: _____

ATTEST:

APPROVED AS TO FORM:

Linda Ashby, City Clerk

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

Smallwood Archer Construction, Inc.
d/b/a Archer Construction and Design, Inc.,
a Texas corporation

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be one of the persons whose names are subscribed to the foregoing instrument; that he acknowledged to me he is the _____ and duly authorized representative of **Smallwood Archer Construction, Inc. d/b/a Archer Construction and Design, Inc.** and that he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2022.

Notary Public in and for the State of _____
My Commission Expires: _____

Exhibit A

[__ pages attached hereto]

Exhibit B

[__ pages attached hereto]

Exhibit C

[__ pages attached hereto]

Exhibit D

[__ pages attached hereto]



September 20, 2022

Mr. Charles Carlisle
City of Sherman

RE: New Police Station Lift Station

Dear Mr. Carlisle,

Archer Construction has reviewed the onsite conditions at the new Sherman Police Station Lift Station project as well as revised documents provided by City of Sherman and we are proposing the following scope with costs below:

- Building of equipment rack to hold main electrical disconnect and lift station control panel. We assume power will be provided complete from building to equipment rack with disconnect. We will hook up power to control panel.
- We have included manufacturer startup of equipment
- Install 2 inch forced main on west side of Northgate drive in City Right of Way west of Power Utility Poles from Lift Station Unit to New Manhole
- One boring under new drive to police station on west side of Northgate
- Construct new manhole south of police station where existing gravity sanitary lateral crosses Northgate
- Install Homa Brand manufactured lift station unit adjacent to existing manhole and continue sanitary line into manufactured lift station unit. Packaged lift station lead time estimated 8 weeks. Will have to confirm upon order.
- We will need new or existing utilities located prior to work beginning

Base Bid Proposal Cost	\$ 280,182
Owner Contingency 5%	\$ 14,009

Grand Total	\$ 294,191
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General Clarifications & Exclusions

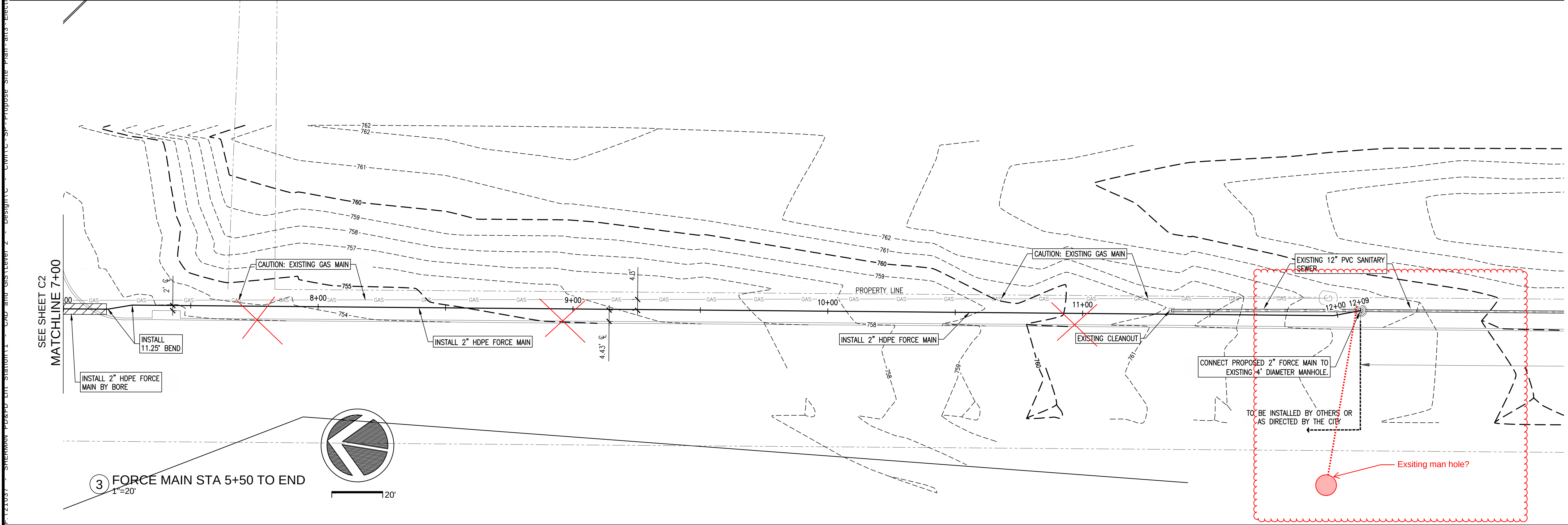
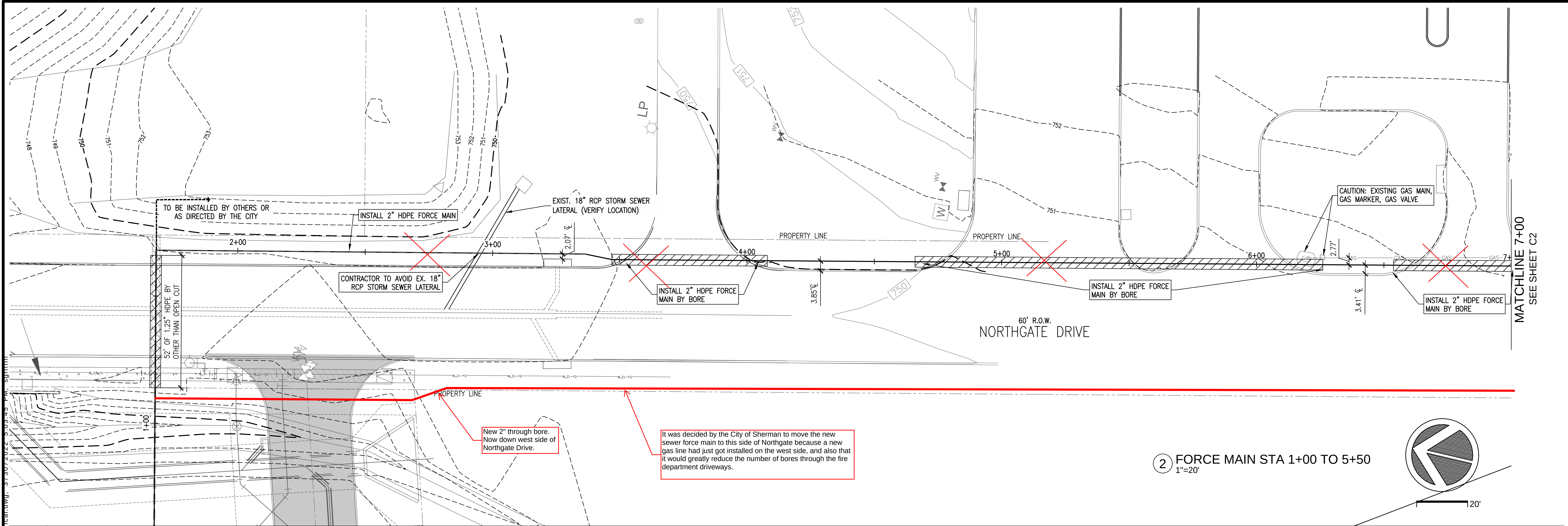
- P&P Bond and TIPS Vendor Fee have been included
- Archer Construction **TIPS (JOC) Contract Number 200201**
- Permits and Permitting Costs are by the City of Sherman
- We are assuming there is adequate space in the city right of way for the force main
- If existing manhole is full we assume City of Sherman will provide vacuum truck to pump out manhole.
- We have not included providing power from existing circuits from the building to the Lift Station.
- We have not included any traffic control or lane closures
- We have not included any soil or concrete testing
- We have not included any landscaping or landscaping repair
- We have assumed that there are no hazardous materials on this project and therefore any testing or abatement of existing materials for asbestos or hazardous material is not included

We sincerely appreciate the opportunity to provide this quote to the City of Sherman and look forward to the possibility of working together. We are available to discuss any scope to help you make the right decisions for your project.

Thank you,

A handwritten signature in black ink that reads 'Travis Frank'.

Travis Frank
Archer Construction & Design
903-739-2350



CITY OF SHERMAN POLICE DEPARTMENT LIFT STATION	
FORCE MAIN STA 1+00 TO END	
No.	DATE
REVISION	BY
FREEMAN-MILLICAN, INC. ENGINEERS - ARCHITECTS - PLANNERS 9303 LBJ Fwy., Ste. 125 Dallas, TX 75243 PH: 214.630.8555 TX REG. ENG. 00161-2027	
CONSTRUCTION	
 THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY VICTOR L. ACUY, P.E. NO. 114152 ON 03.30.2022 IF SHEET IS IN 11"x17" FORMAT, DRAWINGS ARE AT 1/2 OF NOTED SCALE PROJECT No. 21037 DESIGNED: VLA DRAWN: VLA CHECKED: VLA SHEET C2 SHEET 3 OF 9	

RLC Controls, Inc.*Serving your Instrumentation Needs*

*Main Address: 8115 Hicks Hollow
McKinney, TX 75071
Phone: 214-683-8185*

BID DATE: 8/22/2022
PROJECT: Sherman PD Lift Station

RLC, Inc. is pleased to provide pricing for this project as an Instrumentation & Controls Subcontractor:

THIS QUOTE INCLUDES THE FOLLOWING:

- A. RLC will provide the following per specifications for the equipment furnished in our scope:
- a. Submittals and O&M Manuals
 - b. Training for Owners personnel
 - c. Startup and Commissioning
 - d. Field Terminations
 - e. Tests and Testing Documentation as required in the specifications.
- B. Provide and terminate field Surge Suppression per the plans and specifications.
- C. Provide new Lift Station RTU, wired, tested and commissioned equipped for the following.
- *Micrologix 1100 PLC
 - *24VDC Power Supply
 - *36"X36"X12" Nema 4X enclosure
 - *Cellular Communication System
 - *UPS
 - *Ethernet Switch
- Sierra wireless airlink model
LX40,NA,WIFI part #
1104573
- D. Provide, install, calibrate, test and commission Ultrasonic level per plans and specifications.
- E. RLC Controls will provide and install one antenna system equipped with coax, connectors, grounding kit and Cellular antenna.
- cellular antenna will be
mounted on top of the
cabinet
- F. RLC Controls will program the lift station and the top end SCADA system for the new Lift Station.

Proposal Clarifications & Exclusions

1. Pricing does NOT include the following services and equipment:

a. Tower foundation

no tower

- b. Furnishing or installation of any panel racks, instrument racks or mounting plates, conduit, raceway, duct banks, wire, etc. required to connect instruments and associated panels. Or placement of fiber cable in conduit.

- c. Furnishing or installation of any electrical power and specialty panels/products including switchgear, MCCs, distribution panels, AFD's/VFD's, disconnects, heat tracing, power monitor devices, auxiliary panels for VCP's, etc.
 - d. Physical installation of related enclosures.
 - e. Any equipment or work associated with Vendor Provided equipment or panels including terminations, testing, programming, surge protection, communications equipment, etc.
 - f. Mechanical installation of in-line devices (flow meters, valves, etc.).
 - g. Furnishing and installation of stilling wells, piping saddles, mating flanges/sleeves, process taps, and isolating valves required to connect field instrumentation.
 - h. Concrete work, core drilling, housekeeping/equipment pads, antenna tower foundations, etc.
 - i. "Civil" work including building and vessel modifications, asphalt demolition/patching, concrete foundations/piers, etc. Jobsite storage, handling or protection of equipment delivered to the jobsite and received in good order.
 - j. Insulation of Heat Trace or any piping devices.
 - k. Sales tax or bonding cost. Payment and/or Performance Bond pricing can be added by request.
- 2. Pricing includes all Per Diem and Travel Costs.
 - 3. Pricing is based on progressive invoicing and to include payment for properly stored material. Payment terms to be net thirty days.
 - 4. Bid valid for sixty (60) days.

TERMS: Net due in thirty (30) days from date of invoice.

TAXES: Excluded

FREIGHT: FOB Jobsite; freight allowed.

INSURANCE: RLC carries builder's risk and general liability insurance as required by project specifications. Any additional insurance, such as being named on our policy, can be provided at an additional Cost.

This quote is valid for 60 days.

Project Total.....\$38,000.00

RLC Controls, Inc.

Michael Cunningham
President



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F. 1.

Meeting Date: 10/03/2022

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

CHANGE ORDER NO. 3

Lamberth Road Drainage Improvements Project; Lynn Vessels Construction, LLC; \$272,706.44 increase

Issue:

To consider the approval of Change Order No. 3 with Lynn Vessels Construction, LLC for the Lamberth Road Drainage Improvements Project

Background:

The Lamberth Road project was awarded by City Council on December 10, 2019 and then placed on hold until franchise utilities relocated their facilities. Change Order No. 1 was approved by City Council in December 2019 to reduce the scope and cost of the original project by \$747,180.72 to keep the project within budget. Vessel's original bid was about \$252,000 lower than the next lowest bid. Change Order No. 2 was approved by City Council in June 2021 in the amount of \$81,993.52 for emergency repairs needed for a failing wastewater main in Lamberth Road from Travis to Post Oak Creek. The emergency repairs were started before franchise utilities were relocated for the road and drainage project. The road and drainage project received its Notice to Proceed on September 2, 2021. As a result of this extensive delay, construction materials and pricing increased at a rapid rate for some construction materials due to supply chain issues. Some costs within the change order are for these supply-chain price adjustments. Other costs are for quantity increases or changes to materials needed to complete the project properly. Other items proactively replaced aged infrastructure, which would be under new pavement.

Origination:

Engineering Department

Financial Consideration:

The change order results in a \$272,706.44 increase in the contract amount, yielding a new contract price of \$1,896,452.98. This is 17.15% under the originally awarded contract.

Staff Recommendation:

It is recommended Change Order No. 3 for the Lamberth Road Drainage Improvements Project to be approved

Alternatives:

As may be directed by the City Council

Attachments

Unsigned - Change Order No.3

Location Map

CHANGE ORDER FORM

CO No: 3
Project: Lamberth Road Drainage Improvements
Contractor: Lynn Vessels Construction, LLC, P.O. Box 1212, Sherman, TX 75091
Project No.: PW #3045, Bid #2019-17
Contract Date: December 16, 2019

Item No	Item Description	Contract Qty. Subject to Price Increase	Increased Qty.	Unit	Contract Unit Price	Increased Unit Price	Additions	Non-Performance
CO3-1.04B	PREPARING RIGHT-OF-WAY FOR FRANCHISE UTILITIES	-	1	ACRE	\$ 3,323.20	\$ -	\$ 3,323.20	
CO1,3-1.05	REMOVE TREE 6" OR LARGER	-	7	EA	\$ 480.00	\$ -	\$ 3,360.00	
CO1,3-1.07	SEDIMENT CONTROL FENCE (INSTALL/MAINTAIN/REMOVE)	-	-144	LF	\$ 2.40	\$ -	\$ -	\$ (345.60)
CO1,3-1.08	STABILIZED CONSTRUCTION ENTRANCE/EXIT (INST/MAINT/REMOVE)	-	-2	EA	\$ 1,800.00	\$ -	\$ -	\$ (3,600.00)
CO1,3-1.14	REMOVE PAVEMENT AND CONCRETE RIPRAP, SIDEWALK & FLATWORK	-	505	SY	\$ 9.72	\$ -	\$ 4,908.60	
CO3-2.06	SOIL RETENTION BLANKET	-	-500	SY	\$ 3.00	\$ -	\$ -	\$ (1,500.00)
CO3-2.07	ESTABLISH GRASS BY HYDROMULCH SEEDING	-	-500	SY	\$ 7.20	\$ -	\$ -	\$ (3,600.00)
CO3-2.15	PARALLEL WINGWALL "A"*	1.00	0	LS	\$ 260,397.60	\$ 11,839.41	\$ 11,839.41	\$ -
CO1-2.19	TRAFFIC & PEDESTRIAN COMBINATION RAIL*	161.00	0	LF	\$ 138.74	\$ 7.00	\$ 1,127.00	\$ -
CO1,3-2.20	CEM-LIME SUBGRAD TREATMENT	2,500.00	340	SY	\$ 4.20	\$ -	\$ 1,428.00	\$ -
CO1,3-2.21	CEM-LIME MATERIALS	30.00	12.6	TON	\$ 210.00	\$ -	\$ 2,646.00	\$ -
CO1,3-2.23	8-INCH REINFORCED CONCRETE PAVEMENT*	2,370.00	516	SY	\$ 59.25	\$ 16.86	\$ 79,230.96	\$ -
CO3-2.23B	7-INCH REINFORCED CONCRETE PAVEMENT	-	45	SY	\$ 64.80	\$ -	\$ 2,916.00	\$ -
CO1,3-2.24	6-INCH MONOLITHIC CONCRETE CURB*	1,254.00	197	SY	\$ 5.85	\$ 1.38	\$ 3,154.83	\$ -
CO1,3-2.25	4-INCH CONCRETE SIDEWALK*	510.00	40	SY	\$ 54.24	\$ 18.21	\$ 12,185.10	\$ -
CO1,3-2.26	CONCRETE DRIVEWAY*	165.00	29	SY	\$ 55.78	\$ 18.34	\$ 5,175.58	\$ -
CO1,3-2.27	PAVEMENT MARKINGS	1.00	-0.5	LS	\$ 2,513.00	\$ -	\$ -	\$ (1,256.50)
CO1,3-2.8	TRAFFIC SIGNS	5.00	-5	EA	\$ 600.00	\$ -	\$ -	\$ (3,000.00)
CO3-3.01	REMOVE OR ABANDON SANITARY SEWER PIPE	-	-20	LF	\$ 30.00	\$ -	\$ -	\$ (600.00)
CO3-3.03	8-INCH SANITARY SEWER PVC (SDR 26) PIPE	-	-19	LF	\$ 97.98	\$ -	\$ -	\$ (1,861.62)
CO3-3.05	SEALED 4 FEET DIA. SANITARY SEWER MH	-	-1	EA	\$ 4,716.00	\$ -	\$ -	\$ (4,716.00)
CO1,3-3.07	8-INCH C-900 DR-18 PVC WATER PIPE*	175.00	0	LF	\$ 102.00	\$ 15.29	\$ 2,675.75	\$ -
CO3-3.11	REMOVE AND REPLACE 4-FT DIA MANHOLE (9-FT DEEP)	-	1	EA	\$ 10,834.89	\$ -	\$ 10,834.89	\$ -
CO3-3.12	REMOVE AND REPLACE 4-FT DIA MANHOLE (14-FT DEEP)	-	1	EA	\$ 17,834.89	\$ -	\$ 17,834.89	\$ -
CO3-3.13	CONNECT EXISTING SEWER MAIN TO NEW MANHOLE	-	3	EA	\$ 1,500.00	\$ -	\$ 4,500.00	\$ -
CO3-3.14	REMOVE AND REPLACE 8" SDR-35 SEWER LINE "LIVE"	-	182	LF	\$ 145.13	\$ -	\$ 26,413.66	\$ -
CO3-5.01	EARTHWORK - CUT & FILL WITHIN SITE	-	100	CY	\$ 15.00	\$ -	\$ 1,500.00	\$ -
CO3-5.02	EARTHWORK - HAUL OFF EXCESS SOIL	-	-810	CY	\$ 22.20	\$ -	\$ -	\$ (17,982.00)
CO3-5.03	TOPSOIL (6")	-	-245	SY	\$ 7.89	\$ -	\$ -	\$ (1,933.05)
CO1,3-5.05	24" THICK DRY ROCK RIPRAP, 18" GRADATION W/GRAVEL & FILTER FABRIC	-	5	SY	\$ 7.20	\$ -	\$ 36.00	\$ -
CO1,3-5.07	PARALLEL WINGWALL "B" OPTION 2*	1.00	0	LS	\$ 196,542.00	\$ 98,454.35	\$ 98,454.35	\$ -
CO1,3-5.09	MODULAR CONCRETE RETAINING WALL "1" OPTION 2*	1.00	0	LS	\$ 92,568.00	\$ 22,625.55	\$ 22,625.55	\$ -
CO1,3-5.12	TRAFFIC AND PEDESTRIAN COMBINATION RAIL*	131.00	-55	LF	\$ 138.74	\$ 7.00	\$ -	\$ (7,098.70)
CO3-5.14	BONDS AND INSURANCE PRICE INCREASE PER THIS CO	-	1	LS	\$ 4,030.14	\$ -	\$ 4,030.14	\$ -
							Total	\$ 320,199.91 \$ (47,493.47)
							Net Total	\$ 272,706.44

Justification: RECONCILIATION OF AS-BUILT QUANTITIES. *ITEMS THAT HAVE UNIT PRICE INCREASES DUE TO UNEXPECTED INFLATION FROM DATE OF PROJECT AWARD.

CHANGE IN CONTRACT PRICE
ORIGINAL CONTRACT PRICE:
\$2,288,933.74
INCREASE/(DECREASE) FROM PEVIOUSLY APPROVED CHANGE ORDERS
CHANGE ORDER NO. 1:
(\$747,180.72)
CHANGE ORDER NO. 2:
\$81,993.52
INCREASE/(DECREASE) OF THIS CHANGE ORDER:
\$272,706.44
NEW CONTRACT PRICE:
\$1,896,452.98
PERCENT INCREASE/DECREASE FROM ORIGINAL CONTRACT
-17.15%

CHANGE IN CONTRACT TIME
ORIGINAL CONTRACT DAYS:
240
INCREASE/DECREASE OF DAYS FROM PEVIOUSLY APPROVED CHANGE ORDERS
CHANGE ODER NO. 1:
0
CHANGE ODER NO. 2:
0
INCREASE/DECREASE OF DAYS FOR THIS CHANGE ORDER
0
NEW CONTRACT DAYS
240

Authorized by Owner:
Accepted by Contractor:
Architect/Enginer:
(if applicable)

By: _____
By: _____
By: _____

Date: _____
Date: _____
Date: _____

Name: _____
Name: _____
Name: _____





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

G. 1.

Meeting Date: 10/03/2022

Prepared By: Shawn Hackworth, IT Manager

Approved By: Robby Hefton, City Manager

Caption:

***PAYMENT APPROVAL**

Authorizing Payment of \$120,446.94 for Microsoft Enterprise Agreement Annual Billing Year 2 under Texas DIR Contract DIR-TSO-4061.

Issue:

Authorizing Payment of \$120,446.94 for Microsoft Enterprise Agreement Annual Billing Year 2 under Texas DIR Contract DIR-TSO-4061.

Background:

This is the second annual payment for Microsoft Services, including Office 365 and SQL Server licenses.

Origination:

Information Technology Department

Financial Consideration:

This expense is budgeted in the Information Technology Fund in fiscal year 2022-2023.

Staff Recommendation:

Recommend approval of payment

Attachments

Invoice

City of Sherman
220 W Mulberry Street
SHERMAN, TX 75090

Date 10/27/2022
Customer No. US-SCU-148247
PO No. 22-02467
External Document No. DIR-TSO-4061
Your Reference Annual Billing Yr2 (WS)
Account Manager Phillip Bushman
Your Contact Person statestore us
E-Mail statestore.us@softwareone.com
Our Tax ID 39-1501504

Proforma Invoice US-SCO-1203959

Invoice Address

City of Sherman
Municipal Building
405 N Rusk St
SHERMAN, TX 75090

Shipping Address

City of Sherman
Municipal Building
Shawn Hackworth
405 N Rusk St
SHERMAN, TX 75090

License Address

City of Sherman
220 W Mulberry Street
SHERMAN, TX 75090

Pos. No.	Description	Start Date	Version	End Date	OS	Qty.	Unit Price	Sales Tax	Amount
Pos. No.	Manufacturer Disc-Lev. Format	Lic. Model	Lic. Metrics						(USD)
EA# 89476629									
Contract DIR-TSO-4061									
10 AAD-34704	M365 E3 GCC Unified ShrdSvr ALNG SubsVL MVL PerUsr Government Monthly Subscription Add Prod Microsoft LEVEL D SUB	11/01/2021 10/31/2024 IEA ADD G	NON-SPEC/AL Non-Specific			260	355.92	0.00	92,539.20
20 AAD-63092	M365 F3 GCC Unified ShrdSvr ALNG SubsVL MVL PerUsr Government Monthly Subscription Microsoft LEVEL D SUB	11/01/2021 10/31/2024 IEA ADD G	NON-SPEC/AL Non-Specific			217	84.96	0.00	18,436.32
30 7NQ-00302	SQL Server Standard Core 2 Lic Government License and 1 Year SA Add Prod Added at Signing Microsoft LEVEL D LIC&MNT	11/01/2021 10/31/2024 IEA ADD G	NON-SPEC/AL Non-Specific			7	1,353.06	0.00	9,471.42
Total USD excl. Tax									120,446.94
Tax									0.00
Total USD incl. Tax									120,446.94

Tax Amount Specification

Tax Identifier	Tax %	Line Amount	Inv. Disc. Base	Inv. Disc. Amount	Tax Base	Tax Amount
	0.00	120,446.94	120,446.94	0.00	120,446.94	0.00
Total		120,446.94	120,446.94	0.00	120,446.94	0.00

Software One, Inc.

20875 Crossroads Circle
Suite 1 Waukesha,
WI 53186

Phone: +800 444 9890
Fax: +262 317 5554
Email: info.us@softwareone.com
Web: www.softwareone.com

Proforma Invoice US-SCO-1203959

				Start Date	Version				
Description				End Date	OS	Amount			
Pos. No.	Manufacturer	Disc-Lev.	Format	Lic. Model	Lic. Metrics	Qty.	Unit Price	Sales Tax	(USD)

Payment Terms 30 Days net

Bank Information HSBC-USD, USA-14203 Buffalo, BLZ , Acc. No.: 000255319

Rtg. No.: 021001088, SWIFT: MRMDUS33

View or place within PyraCloud: <https://portal.softwareone.com/Orders/DocumentDetail/US/US-SCO-1203959>



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

H. 1.

Meeting Date: 10/03/2022

Prepared By: Clint Philpott, Assistant City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider Approval of the Annexation Scheduling Plan for Annexation of Approximately 20.435 acres of land located North of Kreager Road and West of N. Travis Street adjacent to the Sherman City Limits and in the City of Sherman's Extraterritorial 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 20.435 acres of land located north of Kreager Road and west of N. Travis Street adjacent to the Sherman City Limits and in the City's extraterritorial jurisdiction (ETJ), in accordance with state law and the City Charter

Background:

The property owner, Young Enterprises, L.P., have requested annexation into the city limits of approximately 20.435 acres of land located north of Kreager Road and west of N. Travis Street, 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 17th meeting and that action on the Annexation Ordinance be taken at the same meeting.

Origination:

Authorization Letter from Young Enterprises, L.P.

Financial Consideration:

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 17th regular meeting and that action on the Annexation Ordinance be taken at the same meeting.

Alternatives:

None proposed

Attachments

Annexation Schedule
Annexation Service Plan Agreement
Annexation Letter
Annexation Survey
Legal Description
Aerial Location Map

ANNEXATION SCHEDULING PLAN

**Annexation of approximately 20.435 acres of land adjacent to the city limits, located North of Kreager Road and West of N Travis Street
being more specifically described as:
Kreager & Travis**

Monday, October 3, 2022City Council sets public hearing date and accepts annexation application.

Wednesday, October 5, 2022Send 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 7, 2022Publish 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 13, 2022.....Post notice of public hearing as required by Open Meetings Act.

Monday, October 17, 2022Hold public hearing. (Regular Council Meeting)

Monday, October 17, 2022Adopt ordinance. (Regular Council Meeting)

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 YOUNG ENTERPRISES, L.P., a Texas limited partnership ("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 20.435± acres, situated in the Frank Richards Survey, Abstract No. 1044 and the Alexander & Richards Survey, Abstract No. 42, 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's 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

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:

YOUNG ENTERPRISES, LP
Attn: Todd Young
P.O. Box 517
Sherman, TX 75091-0517
Telephone: (903) 892-1508
Email: tyoung@yecon.net

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

YOUNG ENTERPRISES, LP

By: Todd Young
Printed Name: Todd Young
Title: PRESIDENT
Date: 8/30/22

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 _____, 2022.

Notary Public, State of Texas
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF Grayson §

BEFORE ME, the undersigned authority, on this day personally appeared Todd Young, 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 30th day of August, 2022.

Tish D Smith

Notary Public, State of Texas
My Commission Expires: 10-22-2025

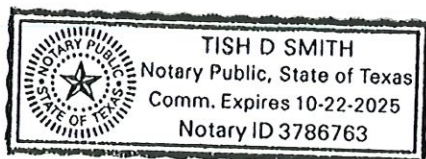


Exhibit A

SITUATED in the County of Grayson, State of Texas, and being a part of the Frank Richards Survey, Abstract No. 1044 and the Alexander & Richards Survey, Abstract No. 42 and being all of the 20.11 acre tract of land conveyed by General Warranty Deed from Ernestine T. White, Trustee of the W.K. White Family Trust and William Keller White, III, Mary Lu Aycock and Kimberly Ann Smith on November 15, 2018 and recorded in Instrument No. 2018-25815, Official Public Records, Grayson County, Texas, and also being a portion of a 30 ft. wide strip dedicated for right-of-way along Kreager Road, a public road, by Final Plat of Austin Landing, Phase 3, an addition to the City of Sherman as per plat of record in Doc. No. 2018-43, Plat Records, Grayson County, Texas and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING in the center of F. M. Highway No. 131 (aka: Travis Street), in the East line of said Frank Richards Survey and the West line of the J.H. Clark Survey, Abstract No. 281, at the most Easterly Northeast corner of said Young Enterprises, LP 20.11 ac.;

THENCE South 00 deg. 29 min. 41 sec. West, with the center of said highway and said survey lines, a distance of 296.73 ft. to the most Eastern Southeast corner of said Young Enterprises, LP 20.11 ac.;

THENCE North 89 deg. 30 min. 19 sec. West, a distance of 50.00 ft. to an Ell corner of said Young Enterprises, LP 20.11 ac.;

THENCE South 00 deg. 29 min. 41 sec. West, with the West line of said highway right-of-way, a distance of 100.88 ft. to a point at a Southeast corner of said Young Enterprises, LP 20.11 ac.;

THENCE in a general Westerly direction, the following calls and distances:

1. North 89 deg. 30 min. 19 sec. West, 307.51 ft. to an angle point;
2. South 45 deg. 38 min. 25 sec. West, 861.05 ft. to an angle point;
3. South 00 deg. 47 min. 08 sec. West, at a distance of 307.51 ft., passing the most Southerly Southeast corner of said Young Enterprises, LP 20.11 ac., FROM which the most Northerly Northwest corner of the 224.030 acre tract of land annexed into the City Limits of the City of Sherman as per Ordinance No. 5357, dated January 3, 2006 bears South 89 deg. 12 min. 52 sec. East, 828.13 ft., said property corner being in the North line of both said 30 ft. wide right-of-way dedication strip to the City of Sherman per Doc. No. 2018-43 and the Alexander & Richards Survey, Abstract No. 42 and the South line of said Frank Richards Survey, continuing on through said 30 ft. wide right-of-way dedication strip for a **TOTAL** distance of 337.52 ft. to a point in the North line of Block D, said Austin Landing, Phase 3 and the South line of said 30 ft. wide right-of-way dedication strip and Kreager Road, at the most Southerly Southeast corner of the herein described tract;

THENCE North 89 deg. 12 min. 55 sec. West, with the North line of said Block D, Austin

Landing, Phase 3 and the South line of both said Kreager Road and 30 ft. wide right-of-way dedication strip, a distance of 473.75 ft. to the Southwest corner of the herein described tract;

THENCE North 00 deg. 47 min. 08 sec. East, over and across both said Kreager Road and 30 ft. wide right-of-way dedications strip, passing the Southwest corner of said Young Enterprises, LP 20.11 ac. and continuing on now for a total distance of 829.83 ft. to the most Westerly Northwest corner of said Young Enterprises, LP 20.11 ac.;

THENCE South 89 deg. 30 min. 19 sec. East, a distance of 212.28 ft. to an angle point of said Young Enterprises, LP 20.11 ac.;

THENCE Northeasterly, along the Northwesterly lines of said Young Enterprises, LP 20.11 ac., the following calls and distances:

1. North 75 deg. 43 min. 47 sec. East, 25.48 ft. to an angle point;
2. North 63 deg. 52 min. 45 sec. East, 236.85 ft. to an angle point;
3. North 54 deg. 28 min. 49 sec. East, 76.70 ft. to an angle point;
4. North 42 deg. 17 min. 24 sec. East, 119.34 ft. to an angle point;
5. North 40 deg. 19 min. 06 sec. East, 196.40 ft. to an angle point;
- 6 North 53 deg. 09 min. 33 sec. East, 54.15 ft. to an angle point;
7. North 68 deg. 19 min. 01 sec. East, 98.27 ft. to an angle point;
8. South 83 deg. 34 min. 43 sec. East, 206.10 ft. to a fence corner;
9. North 05 deg. 06 min. 01 sec. East, 64.25 ft. to a point at the most Northerly Northwest corner of said Young Enterprises, LP 20.11 ac.;

THENCE South 89 deg. 30 min. 19 sec. East, with a North line of said Young Enterprises, LP 20.11 ac. a distance of 378.91 ft. to the **PLACE OF BEGINNING** and containing **20.435 ACRES** of land.

Annexation drawing for: City of Sherman

Preparation Date: August 19, 2022

LINE TABLE		
LINE	LENGTH	BEARING
L1	25.48'	N75°43'47"E
L2	236.85'	N63°52'45"E
L3	76.70'	N54°28'49"E
L4	119.34'	N42°17'24"E
L5	196.40'	N40°19'06"E
L6	54.15'	N53°09'33"E
L7	98.27'	N68°19'01"E
L8	206.10'	S83°34'43"E
L9	64.25'	N05°06'01"E

remainder of the
W. K. White, Jr.
& Ernestine T. White
118.169 Acres
Vol. 1889, Pg. 55

Young Enterprises, LP
20.11 acres
Inst. No. 2018-25815
O.P.R.G.C.T.

part of the W. K. White, Jr.
& Ernestine T. White
118.169 Acres
Vol. 1889, Pg. 55

**20.435
Acres**

Frank Richards Survey
Abstract No. 1044
Grayson County, Texas

J.H. Clark Survey
Abstract No. 281
City of Knollwood
Grayson County, Texas

F. M. Highway No. 131

(aka: Travis Street)

GRAPHIC SCALE



30' wide right-of-way
dedication to the City
of Sherman per Doc.
No. 2018-43, P.R.G.C.T.

Kreager Road

North line of 224.030 ac. tract annexed into
the City Limits of the City of Sherman per
Ordinance No. 5357, dated January 3, 2006.

Alexander & Richards Survey
Abstract No. 42
City of Sherman, Grayson County, Texas

August 19, 2022

City of Sherman
Attn: Amber Doan
220 W. Mulberry Street
Sherman, TX 75090

Dear Amber,

Please accept this letter as a Voluntary Annexation request for the property known as GCAD ID# 395447 as G-1044 RICHARDS FRANK A-G1044, ACRES 20.11. Geographic ID: 100 104400102 near the NW intersection of Travis Rd. and Kreager Rd in Sherman, TX. See attached Annexation boundary survey for the legal description.

I am requesting annexation into the City Limits as part of our concurrent zoning change application for the same property to serve a proposed Single-Family Rental Home community with City of Sherman services. Additionally, I am requesting that this voluntary annexation petition be withdrawn if the zoning is not approved for the proposed development.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Young", with a stylized, looping flourish at the end.

Todd Young
Young Enterprises, LP
P.O. Box 517
Sherman, TX 75091-0517
903.892.1508
tyoung@yecon.net

City of Sherman, Grayson County, Texas
Abstract No. 42

Alexander & Richards Survey

North line of 224.030 ac. tract annexed into the City Limits of the City of Sherman per Ordinance No. 5357, dated January 3, 2006.

HWS Job No. CGS150822

30' wide right-of-way dedication to the City of Sherman per Doc. No. 2018-43, P.R.G.C.T.

Kreager Road

Frank Richards Survey
Abstract No. 1044
Grayson County, Texas

part of the W. K. White, Jr. & Ernestine T. White
Vol. 1889, Pg. 55

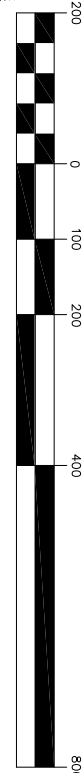
20.435 Acres

Young Enterprises, LP
20.11 acres
Inst. No. 2018-25815
O.P.R.G.C.T.

remainder of the
W. K. White, Jr.
& Ernestine T. White
118.169 Acres
Vol. 1889, Pg. 55

F. M. Highway No. 131
(aka: Travis Street)

J.H. Clark Survey
Abstract No. 281
City of Knollwood
Grayson County, Texas



(IN FEET)
1 inch = 200 ft.

GRAPHIC SCALE



LINE TABLE		
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Preparation Date: August 19, 2022

Annexation drawing for: City of Sherman

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North line of both said 30 ft. wide right-of-way dedication strip to the
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Survey, Abstract No. 42 and the South line of said Frank Richards
Survey, continuing on through said 30 ft. wide right-of-way dedication
strip for a **TOTAL** distance of 337.52 ft. to a point in the North line of
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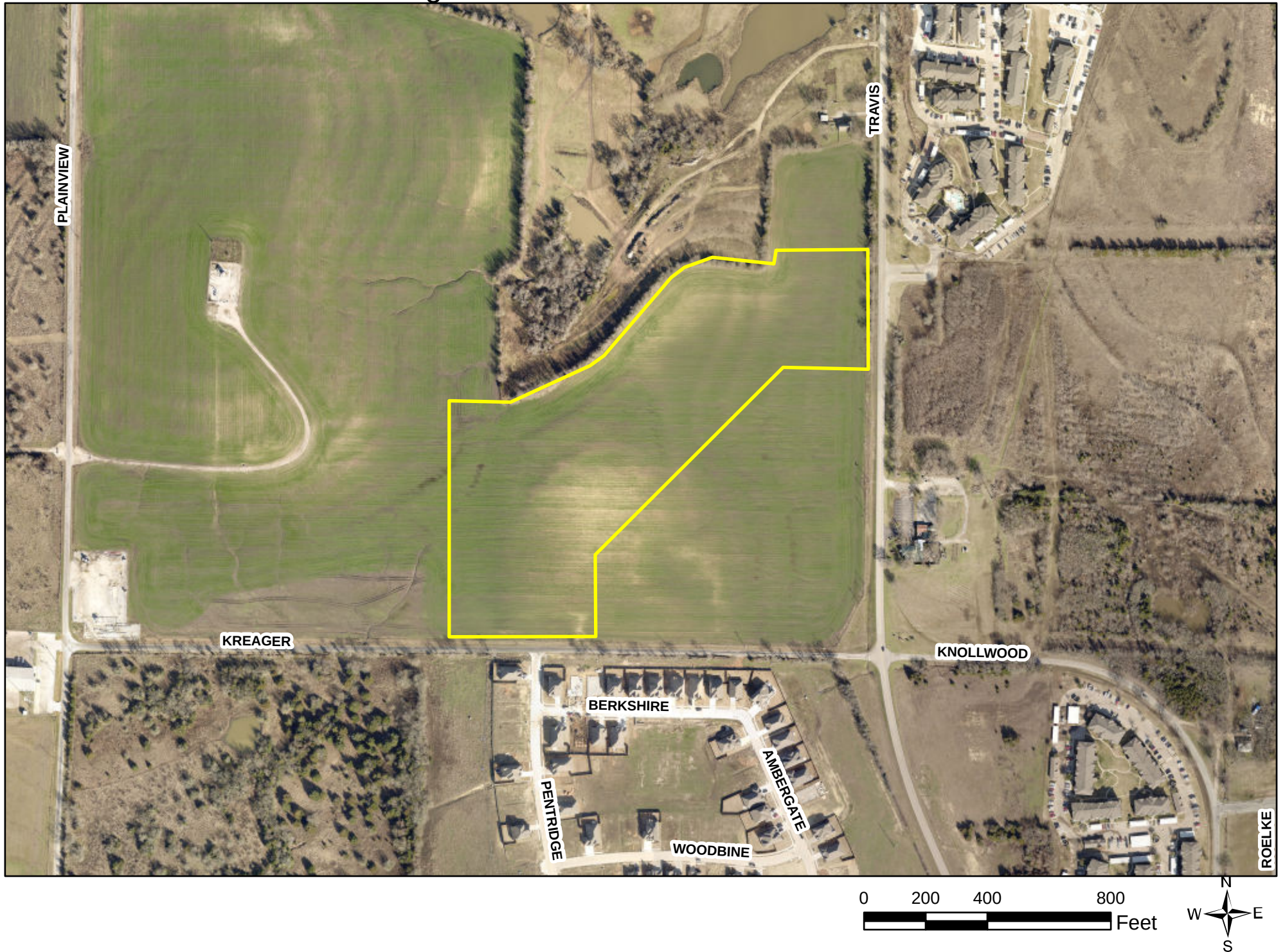
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Kreager Road at North Travis Annexation





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

H. 2.

Meeting Date: 10/03/2022

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 21st annual Halloween "Fright Fest" on Friday, October 28, 2022 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. Last year the Sherman Police Department moved the location to the Pecan Grove Athletic Complex. This location will allow the PD to grow the event each year.

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

2022 Fright Fest Announcement

FRI. OCTOBER 28



THE SHERMAN POLICE DEPARTMENT PRESENTS

FRIGHT FEST





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Meeting Date: 10/03/2022

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2022 Council Calendar

2022 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
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27	28	29	30	31		

April						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
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24	25	26	27	28	29	30

May						
Su	Mo	Tu	We	Th	Fr	Sa
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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
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19	20	21	22	23	24	25
26	27	28	29	30		

July						
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24	25	26	27	28	29	30
31						

August						
Su	Mo	Tu	We	Th	Fr	Sa
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7	8	9	10	11	12	13
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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
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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
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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	
1/18/2022	Rescheduled - Martin Luther King, Jr. Day
2/9/2022	CIP-Public Works Planning Session
2/23/2022	Joint Meeting - Legal Training (Canceled-Bad Weather)
3/23/2022	Joint Meeting - Legal Training
4/19/2022	Budget Planning Meeting
5/26/2022	Capital Improvement Program Work Session
6/7/2022	Budget Workshop - Day 1
6/16/2022	Special Called Meeting
7/5/2022	Rescheduled - Independence Day
9/6/2022	Rescheduled - Labor Day
9/13/2022	Joint Meeting - SEDCO Board
9/22/2022	Review CompPlan and Zoning Ordinances