CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, JULY 20, 2009
5:00 P.M.

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

A.2 PLEDGE OF ALLEGIANCE

A.3 INVOCATION BY COUNCIL MEMBER CAROLYN S. WACKER

A.4 APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JULY 6, 2009

Proclamation

A.5 PROCLAMATION
"General Sidney Sherman Day" – July 23, 2009

Public Hearing

B.1 PUBLIC HEARING
2009 Sherman Comprehensive Plan

B.2 PUBLIC HEARING OF ORDINANCE NO. 5611
Designating a Certain Area as Industrial Reinvestment Zone, Number 072009-2, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

B.3 PUBLIC HEARING OF ORDINANCE NO. 5612
Designating a Certain Area as Industrial Reinvestment Zone, Number 072009-1, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

B.4 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5613
Approving a Negotiated Resolution Between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division Regarding the Company's Rate Review Mechanism Filing in all Cities Exercising Original Jurisdiction; Declaring Existing Rates to be Unreasonable; Requiring the Company to Reimburse Cities' Reasonable Ratemaking Expenses; Adopting Tariffs that Reflect Rate Adjustments Consistent with

the Negotiated Settlement and Finding the Rates to be Set by the Attached Tariffs to be Just and Reasonable; Approving Atmos' Proof of Revenues; Adopting a Savings Clause; Declaring an Effective Date; and Requiring Delivery of this Ordinance to the Company and the Steering Committee's Legal Counsel

Close Public Hearing and Consider Adoption of Ordinances

B.5 ADOPTION OF ORDINANCES
Consider Adoption of Ordinance Numbers:
(a) 5611
(b) 5612
(c) 5613

B.6 CONSENT AGENDA
Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Resolutions

C.1 RESOLUTION NO. 5383
Approving and Adopting the 2009 Comprehensive Plan for the City of Sherman, Texas

C.2 RESOLUTION NO. 5384
Approving and Authorizing Publication of Notice of Intention to Issue Certificates of Obligation

C.3 RESOLUTION NO. 5385
Awarding a Bid to and Authorizing Execution of a Contract with Dean Construction, Inc. dba Dean Construction for Construction of Pecan Grove Park Development, Phase II

C.4 ** RESOLUTION NO. 5386*
Authorizing Continued Participation with the Atmos Cities Steering Committee; Authorizing the Payment of Two Cents ($0.02) Per Capita to the Atmos Cities Steering Committee to Fund Regulatory and Related Activities Related to Atmos Energy Corporation

C.5 ** RESOLUTION NO. 5387*
Authorizing Execution of an Agreement with EnerNOC, Inc. for ERCOT Demand Response Sales and Services for the Sherman Water Treatment and Wastewater Treatment Plants

C.6 ** RESOLUTION NO. 5388*
Abandoning a Ten Foot (10') City Drainage and Utility Easement located at Lot 1, Block 1 of the Windsor Place Addition

C.7 **** RESOLUTION NO. 5389***
Authorizing the Purchase of Replacement Residential Trash and Recycling Carts for the Solid Waste Services Department through the Texas Comptroller of Public Accounts Cooperative Purchasing Program

Requests to Advertise

D.1 **** REQUEST TO ADVERTISE***
Willow Street Water Main

D.2 **** REQUEST TO ADVERTISE***
Relief Sewer "C"

D.3 **** REQUEST TO ADVERTISE***
Fine Screen System – Wastewater Treatment Plant

D.4 **** REQUEST TO ADVERTISE***
Primary and Secondary Digester Rehabilitation – Wastewater Treatment Plant

D.5 **** REQUEST TO ADVERTISE***
Primary Clarifier Rehabilitation – Wastewater Treatment Plant

Change Order

D.6 **** CHANGE ORDER NO. 1***
Oak Creek Water Main Replacement; Utility Construction Services of Texas, Inc.; $7,900.00, Decrease

Other Business

D.7 **** OTHER BUSINESS***
Set Public Hearing on Three Proposed Tax Abatement Agreements for Monday, August 3, 2009

D.8 CITIZEN REQUESTS

D.9 MEDIA QUESTIONS

D.10 COUNCIL COMMENTS

D.11 ADJOURNMENT

COUNCIL CALENDAR

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Carolyn S. Wacker, Deputy Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. A.3

INVOCATION BY COUNCIL MEMBER CAROLYN S. WACKER

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. A.4

APPROVE MINUTES
THE REGULAR CITY COUNCIL MEETING OF JULY 6, 2009

STATE OF TEXAS §

July 6, 2009

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on July 6, 2009.

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

MEMBERS ABSENT: NONE.

CALL TO ORDER

CALL TO ORDER

Mayor Bill Magers called the meeting to order at 5:00 p.m. The Pledge of Allegiance and the Invocation were given by Deputy Mayor Joe Smith.

Mayor Magers said City Manager George Olson would not be attending the meeting because his son was playing in a baseball tournament.

APPROVE MINUTES

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of June 15, 2009 and the Called City Council Meeting (Budget Workshop) of June 18, 2009. Council Member Steele moved to approve the Minutes as presented; Second by Council Member Wacker. All present voted AYE. MOTION CARRIED.

INTRODUCTION AND PUBLIC HEARING OF ORDINANCES

ORD 5608
CREDIT CARD
CONVENIENCE FEE

Mayor Magers introduced Ordinance 5608 and called for a public hearing:
AN ORDINANCE BY THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 1 OF THE CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS", AT ARTICLE 1.02, ENTITLED "ADMINISTRATION", TO PROVIDE FOR SECTION 1.02.004 TO ESTABLISH A CONVENIENCE FEE OF $1.25 FOR ONLINE AND TELEPHONE CREDIT CARD PAYMENTS; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

No citizens appeared before the City Council to discuss Ordinance 5608.

ORD 5609
NO PARKING SIGNS

Mayor Magers introduced Ordinance 5609 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR PERMANENT "NO PARKING" SIGNS RESTRICTING PARKING ALONG THE EAST SIDE OF RICKETTS STREET FOR A DISTANCE OF APPROXIMATELY 100 FEET SOUTH OF PELTON STREET WITHIN THE CITY LIMITS OF THE CITY OF SHERMAN.

No citizens appeared before the City Council to discuss Ordinance 5609.

Mayor Magers introduced Ordinance 5610 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW LIVING QUARTERS IN A C-1 (RETAIL BUSINESS) DISTRICT AND THE O-1 (75 & 82) OVERLAY DISTRICT AT 8111 U.S. HIGHWAY 75 SOUTH, SUITES 100 AND 200, BEING LOT 1, BLOCK 1, CEDAR LAKE ADDITION (JACK HOPPER, OWNER; AND AIR EVAC, HELICOPTER AMBULANCE SERVICE, TENANT); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.

ORD 5610
SUP FOR
LIVING QUARTERS
FOR HELICOPTER
AMBULANCE

No citizens appeared before the City Council to discuss Ordinance 5610.

The Ordinances were introduced and the Public Hearing was closed.

CLOSE PUBLIC
HEARING

<u>ADOPTION OF ORDINANCES</u>
Ordinance 5608
AN ORDINANCE BY THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 1 OF THE CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS", AT ARTICLE 1.02, ENTITLED "ADMINISTRATION", TO PROVIDE FOR SECTION 1.02.004 TO ESTABLISH A CONVENIENCE FEE OF $1.25 FOR ONLINE AND TELEPHONE CREDIT CARD PAYMENTS; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 5608
CREDIT CARD
CONVENIENCE FEE

Mayor Magers asked for clarification on Ordinance 5608. Robby Hefton, Assistant City Manager/CFO, explained that the staff is making changes to the Incode System which will allow the City to process credit cards through that system.

The changes will not affect citizens paying in person or by mail or those non-recurring paying options, whether it is for utility billing or traffic tickets. Only citizens paying online or by telephone on a non-recurring basis will be affected. The City will be recouping only a small portion of the actual cost to process these payments.

Mayor Magers reiterated that the City would be passing through a courtesy fee, charged by the processor, if citizens want to wait until the last minute to pay their bills. It will not impact those citizens paying in person or by mail.

Ordinance 5609
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR PERMANENT "NO PARKING" SIGNS RESTRICTING PARKING ALONG THE EAST SIDE OF RICKETTS STREET FOR A DISTANCE OF APPROXIMATELY 100 FEET SOUTH OF PELTON STREET WITHIN THE CITY LIMITS OF THE CITY OF SHERMAN.

ORD 5609
NO PARKING SIGNS

Ordinance 5610
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 9, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW LIVING QUARTERS IN A C-1 (RETAIL BUSINESS) DISTRICT AND THE O-1 (75 & 82) OVERLAY DISTRICT AT 8111 U.S. HIGHWAY 75 SOUTH, SUITES 100 AND 200, BEING LOT 1, BLOCK 1, CEDAR LAKE ADDITION (JACK HOPPER, OWNER; AND AIR EVAC, HELICOPTER AMBULANCE SERVICE, TENANT); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.

ORD 5610
SUP FOR LIVING QUARTERS FOR HELICOPTER AMBULANCE

ACTION TAKEN.
Motion by Council Member Adami to approve Ordinance Nos. 5608, 5609, and 5610, as presented. Second by Council Member Steele.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

<u>CONSENT AGENDA</u>

CONSENT AGENDA

The Council reviewed the Consent Agenda. Council Member Adami asked for clarification on Item D-2 entitled "Final Plat of the Kings Ridge Addition in the City of Sherman's Extra Territorial Jurisdiction, located at 200 to 600 Blocks of Norwood Drive."

Council Member Wacker moved to approve the Consent Agenda, as presented. Second by Deputy Mayor Smith. All present voted AYE.

<u>RESOLUTIONS</u>
<u>RESOLUTION NO. 5378 – AUTHORIZING THE SUBMISSION AND ACCEPTANCE OF A DIRECT FORMULA GRANT FROM THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) PROGRAM UNDER THE RECOVERY ACT: U.S. DEPARTMENT OF ENERGY – CFDA #81.128 TO DEVELOP AND IMPLEMENT AN ENERGY EFFICIENCY AND CONSERVATION STRATEGY FOR THE CITY OF SHERMAN</u>

RES 5378
ENERGY EFFICIENCY GRANT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE SUBMISSION AND ACCEPTANCE OF A DIRECT FORMULA GRANT FROM THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) PROGRAM UNDER THE RECOVERY ACT: U.S. DEPARTMENT OF ENERGY – CFDA #81.128 TO DEVELOP

AND IMPLEMENT AN ENERGY EFFICIENCY AND CONSERVATION STRATEGY FOR THE CITY OF SHERMAN.
Mayor Magers said the City is applying for a Federal grant to lower some of the high-energy use lights throughout town. No dollars have been spent, only staff time. Assuming the grant is approved, the money should be reimbursed.

Mr. Hefton added that the grant is part of the stimulus money from the Federal government. The City will use a portion of the $170,000 to develop a plan on how the money will be used. The remaining money will be used for energy efficient types of issues such as street lights and traffic signals. The plan must be submitted for approval within 120 days.

ACTION TAKEN.
Motion by Council Member Wacker to approve Resolution No. 5378 as presented. Second by Council Member Softly.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

RES 5379 ENCROACHMENT FOR CHURCH SIGN (2002 S. EAST ST.)

<u>RESOLUTION NO. 5379 – AUTHORIZING EXECUTION OF AN ENCROACHMENT EASEMENT TO DANIEL-GRAY CHRISTIAN METHODIST EPISCOPAL (CME) CHURCH FOR CONSTRUCTION OF A SIGN IN THE STREET RIGHT-OF-WAY AT 2002 SOUTH EAST STREET</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT EASEMENT TO DANIEL-GRAY CHRISTIAN METHODIST EPISCOPAL (CME) CHURCH FOR CONSTRUCTION OF A SIGN IN THE STREET RIGHT-OF-WAY AT 2002 SOUTH EAST STREET.
CONSENT AGENDA.

RES 5380 AGREEMENT WITH RAILROAD FOR WILLOW ST. WATER MAIN REPLACEMENT

<u>RESOLUTION NO. 5380 – AUTHORIZING EXECUTION OF AN OCCUPANCY LICENSE AGREEMENT WITH THE TEXAS NORTHEASTERN RAILROAD, A DIVISION OF MID-MICHIGAN RAILROAD, INC., FOR REPLACEMENT OF THE WILLOW STREET WATER MAIN</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN OCCUPANCY LICENSE AGREEMENT WITH THE TEXAS NORTHEASTERN RAILROAD, A DIVISION OF MID-MICHIGAN RAILROAD, INC., FOR REPLACEMENT OF THE WILLOW STREET WATER MAIN.
CONSENT AGENDA.

RES 5381 AGREEMENT WITH RAILROAD FOR RELIEF SEWER "C" CONSTRUCTION

<u>RESOLUTION NO. 5381 – AUTHORIZING EXECUTION OF AN OCCUPANCY LICENSE AGREEMENT WITH THE TEXAS NORTHEASTERN RAILROAD, A DIVISION OF MID-MICHIGAN RAILROAD, INC., FOR THE CONSTRUCTION OF RELIEF SEWER "C"</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN OCCUPANCY LICENSE AGREEMENT WITH THE TEXAS

NORTHEASTERN RAILROAD, A DIVISION OF MID-MICHIGAN RAILROAD, INC., FOR THE CONSTRUCTION OF RELIEF SEWER "C".
CONSENT AGENDA.

RESIDENTIAL TAX ABATMENT (1221 N. BROUGHTON)

RESOLUTION NO. 5382 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH CUPID INVESTMENTS FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1221 NORTH BROUGHTON STREET
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH CUPID INVESTMENTS FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1221 NORTH BROUGHTON STREET.
CONSENT AGENDA.

OTHER BUSINESS

APPROVE FINAL PLAT TRAVIS ST. PATIO HOMES (1002 S. TRAVIS)

FINAL PLAT APPROVAL OF TRAVIS STREET PATIO HOMES, A REPLAT OF LOT 18R OF THE M.B. MOORE'S ADDITION; 1002 SOUTH TRAVIS, LP, OWNER; TEAGUE, NALL & PERKINS, ENGINEER; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYORS (1002 SOUTH TRAVIS STREET)
The City Council approved the Final Plat of Travis Street Patio Homes, a Replat of Lot 18R of the M.B. Moore's Addition, located at 1002 South Travis, between Spring and Lark Streets.

The owners were approved for a zone change from an R-2 (Multi-Family Residential) District to an R-1 (One Family Residential) District and a Specific Use Permit to allow patio homes in November 2008, subject to a more detailed site plan being submitted and the property being replatted into lots.

They were also approved for a variance to allow lots with no public street frontage and an exception to allow a six foot privacy fence in the front yard of a front line street with a 17' setback. They would like to replat the property into eleven lots for residential development. The Planning and Zoning Commission recommended approval of the Final Plat.
CONSENT AGENDA.

APPROVE FINAL PLAT KINGS RIDGE ADDITION (200-600 BLOCKS NORWOOD DR.)

FINAL PLAT APPROVAL OF THE KINGS RIDGE ADDITION IN THE CITY OF SHERMAN'S EXTRA TERRITORIAL JURISDICTION (ETJ), BEING 21.19 ACRES IN THE FIELDING BACON SURVEY, ABSTRACT NO. 120 AND THE WILLIAM THOMPSON SURVEY, ABSTRACT NO. 1209; CLAIR REHMENT, OWNER; AND SARTIN AND ASSOCIATES, INC., SURVEYORS (200-600 BLOCKS OF NORWOOD DRIVE)
The City Council approved the Final Plat of the Kings Ridge Addition, a 21.19 acre addition in the City's extra territorial jurisdiction. The property is located on the east side of the 200 to 600 Blocks of Norwood Drive, off of West Lamberth Road, across from the Carriage Estates subdivision. The

owner would like to plat the property into 20 lots for residential development.

Council Member Adami asked for clarification on approval of the Final Plat of the Kings Ridge Addition.

Mr. Hefton explained that the Final Plat was located in the City's extra territorial jurisdiction and was recommended by the Planning and Zoning Commission. Since no exception or variance was requested, there is no basis to deny the approval. Scott Shadden, Director of Developmental Services, added that it was a plat to make one acre lots located in the City's ETJ. No exceptions or variances were requested.
CONSENT AGENDA.

APPROVE REPLAT TEXOMA CENTER ADDITION (4505 & 4509 TEXOMA PKWY)

<u>REPLAT APPROVAL OF LOTS 2 AND 3, BLOCK 1, TEXOMA CENTER ADDITION, BEING 4.15 ACRES IN THE JOHN HENDRIX SURVEY, ABSTRACT NO. 503; WWF MOTORS, INC., BARRY FONTAINE, OWNER; AND SARTIN AND ASSOCIATES, INC., SURVEYORS (4505 AND 4509 TEXOMA PARKWAY)</u>
The City Council approved the Replat of Lots 2 and 3, Block 1, Texoma Center Addition, containing 4.15 acres in the John Hendrix Survey, Abstract No. 503. The property is located at 4505 and 4509 Texoma Parkway. Credit Choice Motors is the tenant and would like to replat the property into two lots for commercial development. The Planning and Zoning Commission recommended approval of the Replat.
CONSENT AGENDA.

APPROVE REPLAT HERITAGE PARK ADDITION, PHASE 2 (3603 CALAIS DR.)

<u>REPLAT APPROVAL LOTS 6 AND 7, BLOCK 1, HERITAGE PARK ADDITION, PHASE TWO, BEING 6.50 ACRES IN THE HILLARD JENNINGS SURVEY, ABSTRACT NO. 639; GRAYSON COUNTY PHYSICIANS PROPERTY, LLC, OWNERS; AND SARTIN AND ASSOCIATES, INC., SURVEYORS (3603 CALAIS DRIVE)</u>
The City Council approved the Replat of Lots 6 and 7, Block 1, Heritage Park Addition, Phase Two, containing 6.5 acres in the Hillard Jennings Survey, Abstract No. 639. The property is located at 3603 Calais Drive. The Ambulatory Surgery Center is the tenant and they would like to replat the property into one lot for commercial development. The Planning and Zoning Commission recommended approval of the Replat.
CONSENT AGENDA.

<u>CITIZENS REQUESTS</u>

LAMBERTH ROAD EXTENSION

<u>LAMBERTH ROAD EXTENSION</u>
Dewey Osteen, 2020 Monte Cristo Way, appeared regarding the median on the proposed Lamberth Road Extension project and the effect it will have on properties along the road. He said the median will look good in a residential area, but it isn't good for a commercial area because large trucks can't effectively be operated on a large thoroughfare.

There is commercial property on both sides of the road and taking the additional land will have a great impact on the value of the property.

Mr. Osteen said his property is located on the corner and the City is proposing to take some of his property on the front and the side. They aren't taking any from the side of the adjoining property owners. He felt this was unfair and discriminatory.

He had also previously asked the staff who would maintain the landscaped median. He was told the City would maintain that area, but in his past experience, he did not feel that they would do so. He said the City did maintain the right-of-way on Washington Street between Grant Drive and FM 1417. He said the right-of-way is not being maintained on Lamberth Road. Mr. Osteen said he had no faith in what the City promised him 41 years ago about maintenance of the right-of-way.

Mayor Magers said there are reasons behind the proposed design of Lamberth Road. It is a major arterial road and the plan has been "on the books" since 1988. There have been concerns about the median being 16 feet, but typically there is a 12 foot turn lane with a four foot divider. The City is building the road to specifications.

He asked Mr. Osteen to meet with the City staff or the engineer on the project to ask specific questions about the design of the project. If he doesn't get satisfaction, the item can be put on the City Council Agenda for discussion.

Mayor Magers said the current Council is steadfast in standing behind the thoroughfare extension plan west of FM 1417, because they made a promise to voters. He added that the City of Sherman has done a good job of maintaining property around town.

LAMBERTH ROAD EXTENSION

LAMBERTH ROAD EXTENSION

John Dixon, 2338 W. Lamberth Road, said he has received help in the past from Mark Gibson, Director of Utilities and Engineering; Jeff Miller, Director of Public Works; Brandon Shelby, City Attorney; and Chris Schmitt, Teague, Nall and Perkins. He said he is against the proposed 16 foot median on the Lamberth Road Extension.

He said years ago, West Sherman was described as anything between Texoma Parkway and FM 1417. Now it appears that West Sherman will be anything west of FM 1417.

On May 20, 2009, Mr. Dixon received a letter from the City asking him to dedicate 3,790 square feet of his front yard to the City for $1. He refused to do so 9 years ago after a similar request, and refuses to do so today. He said the plans were never explained to him until recently.

If this project is completed as planned, Mr. Dixon said his neighbors between FM 1417 and Little Lane will not be able to reach their property as they do today because there will be a solid median, which is a waste of space.

Mr. Dixon said he did not understand why a curbed, guttered side walked, two-way, four-lane boulevard with a 16 foot curbed grass median was needed. He felt this would be setting a precedent and said he understood only one road would be going all the way to Highway 289.

He felt the City was trying to expand and the "new Sherman" would be anything between FM 1417 and Highway 289. He has been told that Sherman has plans to annex all the property to Highway 289, but he did not feel there was a need for this gigantic parkway. He said the median on Grand Avenue, in front of Austin College is only 11 foot wide.

He added that the City limits currently ends at Shady Oaks Lane which is only one-half mile west of FM 1417, and is where the proposed road is planned to end. Therefore the City is planning to build this huge road for one-half mile from FM 1417 to Shady Oaks Lane at a cost of $1 million.

Mr. Dixon said he also will loose some old trees in the neighborhood and there will be additional traffic, noise, and pollution in that area. He felt the vision of the Comprehensive Master Plan did not match the destruction of things for the road.

Mr. Dixon added that Craig Estes, the State Senator for District 30, is a major champion of eminent domain reform and Senate Bill 18, even though it failed to pass this past session, will eventually pass. He said he would hate for the City to be embarrassed in the future if they can't get their way with eminent domain and the building of this "lame duck" going west towards Highway 289.

Mr. Dixon proposed that the Lamberth Road extension should be a four lane road with no passing lane and no 16 foot median. He said Kevin Harris, Area Engineer with the Texas Department of Transportation, said the proposed road was based on TxDOT standards, but this would not be required, even after FM 1417 is widened.

Mr. Dixon added that the proposed project would lessen the value of the property and he did not feel that a 16 foot median and an 85 foot right-of-way for one-half mile would help the City of Sherman.

Mayor Magers said the City has engineering studies and have presented this plan for many months. The details to the plan are being worked out but progress doesn't come without a price. The City will respect the private property rights and property owners will be treated fairly and equitably as the plan moves forward. The engineering staff

is available to talk with citizens, and if they don't get satisfaction, it can be put on a future City Council Agenda for discussion.

<u>MEDIA QUESTIONS</u>

MEDIA QUESTIONS

There were no media questions.

<u>APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS</u>

<u>PARKS AND RECREATION ADVISORY BOARD (1)</u>

PARKS & RECREATION ADVISORY BOARD

ACTION TAKEN.

> **Motion by Council Member Adami to reappoint Shane Best to the Parks and Recreation Advisory Board for a term from June 19, 2009 to June 19, 2011. Second by Deputy Mayor Smith.**

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

<u>COUNCIL COMMENTS</u>

<u>WASHINGTON STREET AND LAMBERTH ROAD EXTENSIONS</u>

WASHINGTON ST. & LAMBERTH RD. EXTENSIONS

Council Member Adami said he understood that improvements can be sensitive, especially when they apply to acquiring someone's land, with payment. The City did hold an Election and the Council was very open and up front about streets that would be improved. The plan was publicized repeatedly and open meetings were held.

The details can be looked at, however he felt it was a progressive move by the Council to not be ill-prepared for growth as some cities to the south of Sherman have been. The Council was open with the plans and citizens overwhelmingly, by a 70 to 30 margin, passed those improvements.

Council Member Adami said they were glad to hear from citizens and would take everything into consideration, but he felt obligated to take the input from the Election and to go forward with it.

Deputy Mayor Smith agreed with Council Member Adami's comments.

<u>NEW FIRE TRUCK</u>

NEW FIRE TRUCK

Deputy Mayor Smith urged citizens to look at the City's new fire truck that was on display in the parking lot outside the City Council Meeting. He said it was another example of things the City is trying to do to keep the citizens safe.

<u>PECAN GROVE PARK AND CENTER STREET PARK</u>

PECAN GROVE PARK & CENTER STREET PARK

Council Member Wacker addressed the opening of Pecan Grove Park and the future opening of Center Street Park. She urged citizens to take advantage of the two new parks.

PECAN GROVE PARK AND CENTER STREET PARK
Council Member Softly said he has received very positive feedback on the new parks.

PECAN GROVE PARK & CENTER STREET PARK

PECAN GROVE PARK
Council Member Howeth said Sherman is fortunate to have a new park and she urged citizens to visit and enjoy Pecan Grove Park. She also looked forward to the opening of Phase 2 of the park next year, adding that it will hopefully draw a lot of tourism and business to Sherman with the new facilities.

PECAN GROVE PARK

WASHINGTON STREET AND LAMBERTH ROAD EXTENSIONS
Mayor Magers said, regarding the growth of Sherman, no one expects everyone to agree and he appreciated the professionalism of the comments that had been made. He said Sherman will grow and the City Council is going to be proactive on the growth. They will respect the rights of property owners and will treat everyone as fairly and equitably as possible.

WASHINGTON ST. & LAMBERTH RD. EXTENSIONS

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

EXECUTIVE SESSION

SECTION 551.072	**DELIBERATE RAGARDING REAL PROPERTY** **DELIBERATE REGARDING THE POTENTIAL PURCHASE OF A PIECE OF REAL PROPERTY: WEST WASHINGTON STREET**
SECTION 551.087	**DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS:** **DELIBERATE REGARDING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM BUSINESS PROSPECTS AND DELIBERATE ANY OFFERS OR INCENTIVES TO THE BUSINESS PROSPECTS, INCLUDING THE FOLLOWING:** **PANDA SHERMAN POWER, LLC** **CARRUS MEDICAL CENTER**

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:33 p.m. On Motion duly made and carried, the Executive Session recessed at 6:06 p.m. and reconvened in Open Meeting.

<u>OPEN MEETING</u>

OPEN MEETING

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

<u>INTRODUCTION OF ORDINANCES AND SET PUBLIC HEARING</u>

ORD 5611 INDUSTRIAL REINVESTMENT ZONE

Mayor Magers introduced Ordinance 5611 and set the public hearing for July 20, 2009, at 5:00 p.m.:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING A CERTAIN AREA AS AN INDUSTRIAL REINVESTMENT ZONE, CITY OF SHERMAN, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF AGREEMENTS WITHIN THE ZONE, AND OTHER MATTERS RELATING THERETO; PROVIDING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE FOR THE COMMENCEMENT OF THE REINVESTMENT ZONE AND THIS ORDINANCE.

ORD 5612 INDUSTRIAL REINVESTMENT ZONE

Mayor Magers introduced Ordinance 5612 and set the public hearing for July 20, 2009, at 5:00 p.m.:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING A CERTAIN AREA AS AN INDUSTRIAL REINVESTMENT ZONE, CITY OF SHERMAN, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF AGREEMENTS WITHIN THE ZONE, AND OTHER MATTERS RELATING THERETO; PROVIDING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE FOR THE COMMENCEMENT OF THE REINVESTMENT ZONE AND THIS ORDINANCE.

Mayor Magers said the proposed Industrial Reinvestment Zones are for Panda Power LLC and Carrus Medical Center. He said these are signs of progress in Sherman and he commended Deputy Mayor Smith and Council Member Adami for their work on the committee.

ACTION TAKEN.

> **Motion by Council Member Adami to introduce Ordinance Nos. 5611 and 5612 and to set a Public Hearing for Monday, July 20, 2009, at 5:00 p.m. Second by Deputy Mayor Smith.**

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

<u>ADJOURNMENT</u>

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:08 p.m.

____
MAYOR

____
CITY CLERK

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. A.5

PROCLAMATION
"General Sidney Sherman Day" – July 23, 2009

Issue
The City of Sherman normally issues a proclamation for "General Sidney Sherman Day" on his birthday, which was July 23rd.

Background
General Sidney Sherman was a hero of the Texas Revolution; and the City of Sherman was named for him.

Origination
The request for this proclamation originated with the City Manager's Office.

Financial Consideration
There is no financial consideration.

Staff Recommendation
It is the recommendation of the staff to present a proclamation naming July 23, 2009 as "General Sidney Sherman Day" in Sherman.

Alternatives
The City Council could choose not to present the proclamation.

Attachments
The proclamation is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN

Proclamation

WHEREAS, the State of Texas owes her independence to many courageous men and women who staunchly fought for, and served her during this fight, and

WHEREAS, Sidney Sherman was among the men who came to her aid by leading 52 men from Kentucky to Texas in 1836 to relieve Colonel William B. Travis at the battle of the Alamo, and

WHEREAS, even though it was too late to save the Alamo, Colonel Sherman went on to lead a regiment in the battle of San Jacinto on April 21, 1836; the fight which made Texas independence a reality and coined the battlecry "Remember the Alamo! Remember Goliad!", and

WHEREAS, after being elected to the military office of Major General, Sherman was the principal organizer of the first railroad company in Texas, the Buffalo Bayou, Brazos and Colorado Railway Company, which was a line that ran west from Harrisburg and was the forerunner of the Southern Pacific system in Texas, and

WHEREAS, in 1846, the town of Sherman was named for General Sidney Sherman, the hero of the Texas Revolution, and

WHEREAS, General Sherman was born on July 23, 1805 in Massachusetts and went on to serve the people of Texas so valiantly.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim July 23, 2009

GENERAL SIDNEY SHERMAN DAY

in the City of Sherman and call upon all citizens to honor this man who has done so much for Texas and has lent his name to our city.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed this the 20th day of July, 2009.

____
Mayor

ATTEST:

Linda Ashby
City Clerk

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. B.1

PUBLIC HEARING
2009 Sherman Comprehensive Plan

Issue
Holding a public hearing for the City of Sherman's 2009 Comprehensive Plan

Background
The City Council approved a project, as part of the fiscal year (FY) 2007-2008 budget, to update the City's Comprehensive Plan. Kendig Keast Collaborative was retained to guide this process. The Plan update was a process that spanned about fifteen (15) months and included various public meetings to solicit input from the community. Several updates have been provided to the Council on progress of this project, culminating with a joint meeting between the City Council and the Planning and Zoning Commission (P&Z) in February, 2009.

The Plan update is now complete and implementation guidelines for the plan have been reviewed by P&Z at their June 16, 2009 meeting. As a result, this Plan is being provided to the Council for their approval, after providing for this public hearing to allow for any final citizen input. Following this public hearing, a resolution adopting the Plan will be presented to the Council for their consideration.

Origination
City Council and Staff

Board Recommendation
At the June 16, 2009 meeting, the Planning and Zoning Commission voted unanimously to recommend that the City Council implement the 2009 Sherman Comprehensive Plan.

Alternatives
Those as may be recommended by the City Council

Attachments
P&Z Communication
Implementation Plan
Hard and electronic copies of the 2009 Sherman Comprehensive Plan are available for review

Prepared by:
Scott Shadden, Director of Developmental Services

Approved by:
George Olson, City Manager

AGENDA ITEM #13

City of Sherman

Planning and Zoning Commission
Board of Adjustments

Agenda Communication Form

June 16, 2009

Jason Sofey, Chairman

2009 Sherman Comprehensive Plan

Requested Action/Proposed Use:
Review Draft 2009 Sherman Comprehensive Plan and consider possible recommendation to the City Council.

Background
The City Council approved a project, as part of the fiscal year (FY) 2007-2008 budget, to update the City's Comprehensive Plan. Kendig Keast Collaborative was retained at the City Council's January 22, 2008 meeting to prepare the Comprehensive Plan Update. The public was invited to two Community Forums to gain input from citizens and a Comprehensive Plan Advisory Committee was formed to refine the plan. The City Council and the Planning and Zoning Commission held a workshop on February 25, 2009 to review the overall draft Comprehensive Plan and the plan's implementation priorities.

Origination:
City Council and Staff

Attachments:
Implementation Plan

Prepared by:
Patsy Reeves,
Development Services Secretary

Approved by:
Scott Shadden,
Director of Development Services

IMPLEMENTATION

The comprehensive plan should be a "living document," that is, a document that is frequently referred to for guidance in community decision-making. Its assumptions, goals, policies and action strategies must also be revisited periodically to ensure that it is providing clear and reliable direction on a range of matters, including land development issues and public investments in infrastructure and services.

Implementation is not just about a list of action items. It is a challenging process that will require the commitment of the City's elected and appointed officials, staff, residents, business owners, major institutions, other levels of government, and other organizations and individuals who will serve as champions of the plan and its particular direction and strategies. Equally important are formal procedures for the ongoing monitoring and reporting of successes achieved, difficulties encountered, new opportunities and challenges that have emerged, and any other change in circumstances which may require rethinking of plan priorities.

PURPOSE

The comprehensive plan will be the basis for decision-making on the future development and enhancement of the City of Sherman. This final chapter breathes life into the rest of the plan by setting out a practical, prioritized, and sequenced implementation program. The key objective of this chapter is to integrate the different elements of the plan in such a way as to provide a clear path for sound decisions. This chapter is also intended to establish

accountability for plan implementation and provide guidance on essential processes to maintain its relevance to the City and its citizens.

PLAN IMPLEMENTATION METHODS

Simply setting out an implementation framework in this chapter is not enough to ensure that the action items of this plan will be carried out and the community's vision and goals ultimately achieved. The policies and action priorities in this plan should be consulted frequently and should be widely used by decision-makers as a basis for judgments regarding:

- ⇒ The timing and availability of infrastructure improvements.
- ⇒ Proposed development and redevelopment applications.
- ⇒ City-initiated and landowner-requested annexations.
- ⇒ Zone change requests and other zoning-related actions.
- ⇒ Expansion of public facilities, services and programs.
- ⇒ Annual capital budgeting.
- ⇒ Potential re-writes and amendments to the City's Zoning Ordinance and related code elements.
- ⇒ Intergovernmental (including City/College, inter-City, and City/County) coordination and agreements.
- ⇒ Operations, capital improvements, and programming related to individual City departments.

There are five general methods for plan implementation:

1. policy-based decisions;
2. land development regulations and engineering standards;
3. capital improvements programming;
4. specific plans and studies; and
5. special projects, programs, and initiatives.

Policy-Based Decisions

Land use and development decisions should be made based on the policies that are set out in this comprehensive plan. In some measure, the adoption of new or amended land development regulations (e.g., zoning, subdivision, landscaping, sign controls, etc.) will establish a specific framework for evaluating private development proposals against the City's articulated policies. However, decisions regarding annexation, infrastructure investment, Future Land Use & Character map amendments, and right-of-way acquisition are generally left to the broad discretion of the City Council. This plan provides the common policy threads that should connect those decisions.

Land Development Regulations and Engineering Standards

Land development regulations and engineering standards are fundamentals for plan implementation. It is plain—but often underappreciated—that private investment decisions account for the vast majority of any City's physical form. Consequently, zoning and subdivision regulations and associated development criteria and technical engineering standards are the basic keys to ensuring that the form, character and quality of development reflect the City's planning objectives. These ordinances should reflect the community's desire for quality development outcomes while recognizing economic factors. They should not delay or interfere unnecessarily with appropriate new development or redevelopment that is consistent with plan goals and policies.

Capital Improvements Programming

A capital improvements program, or "CIP," is a multi-year plan (typically five years) that identifies budgeted capital projects, including street infrastructure; water, wastewater and drainage facilities; parks, trails and recreation facility construction and upgrades; construction of public buildings; and purchase of major equipment. Identifying and budgeting for major capital improvements will be essential to implementing this plan. Decisions regarding the prioritization of proposed capital improvements should take into account the policy and management directives of this plan.

Specific Plans and Studies

There are a number of areas where additional planning work is recommended, at a "finer grain" level of detail than is appropriate in a comprehensive plan. As such, some parts of this plan will be implemented only after some additional planning or special study.

Special Projects, Programs, and Initiatives

Special projects or initiatives are the last broad category of implementation measures. These may include initiating or adjusting City programs; entering into interlocal agreements; expanding citizen participation programs; providing training; and other types of special projects.

PLAN ADMINISTRATION

During the development of the plan, representatives of government, business, neighborhoods, civic groups, and others came together to inform the planning process. These community leaders, and new ones to emerge over the horizon of this plan, must maintain their commitment to the ongoing implementation of the plan's policies—and to the periodic updating of the plan to adapt to changing conditions or unforeseen events.

Education

Comprehensive plans are relatively general in nature, but they are still complex policy documents that account for interrelationships among various policy choices. As such, educating decision-makers and administrators about plan implementation is an important first step after plan adoption. As the principal groups that will implement the plan, the City Council, Planning & Zoning Commission, and City department heads should all be "on the same page" with regard to priorities, responsibilities and interpretations.

Consequently, an education initiative should be undertaken immediately after plan adoption, which should include:

- ⇒ A discussion of the individual roles and responsibilities of the Council, Planning & Zoning Commission, Comprehensive Plan Committee (and other advisory bodies), and individual staff members.
- ⇒ A thorough overview of the entire comprehensive plan, with emphasis on the parts of the plan that relate to each individual group.
- ⇒ Implementation tasking and priority setting, which should lead to each group establishing a one-year and three-year implementation agenda.
- ⇒ A public hearing to discuss the plan and implementation of related action items, with support from planning personnel, the City Attorney, the City Engineer, and other key staff.

Role Definition

As the community's elected officials, the City Council will assume the lead role in implementation of this plan. The key responsibilities of the City Council are to decide and establish priorities, set timeframes by which each action will be initiated and completed, and determine the budget to be made available for implementation efforts. In conjunction with the City Manager, City Council must also ensure effective coordination among the various groups that are responsible for carrying out the plan's recommendations.

The City Council will take the lead in the following general areas:

- ⇒ Acting as a "champion" of the plan.
- ⇒ Adopting and amending the plan by resolution, after recommendation by the Planning & Zoning Commission.
- ⇒ Adopting new or amended land development regulations to implement the plan.
- ⇒ Approving interlocal agreements that implement the plan.
- ⇒ Establishing the overall action priorities and timeframes by which each action item of the plan will be initiated and completed.

⇒ Considering and approving the funding commitments that will be required.
⇒ Offering final approval of projects and activities and the associated costs during the budget process, keeping in mind the need for consistency with the plan and its policies.
⇒ Providing policy direction to the Planning & Zoning Commission, other appointed City boards and commissions, and City staff.

The Planning & Zoning Commission will take the lead in the following general areas:

⇒ Hosting the education initiative described above.
⇒ Periodically obtaining public input to keep the plan up to date, using a variety of community outreach and citizen and stakeholder involvement methods.
⇒ Ensuring that recommendations forwarded to the City Council are reflective of the plan goals, policies and recommendations. This relates particularly to decisions involving development review and approval, zone change requests, ordinance amendments, and potential annexations.
⇒ After holding one or more public hearings to discuss new or evolving community issues and needs, making recommendations to the City Council regarding plan updates and plan amendments.

City Staff will take the lead in the following general areas:

⇒ Managing day to day implementation of the plan, which could include ongoing coordination through an interdepartmental plan implementation committee (similar to the staff team that informally met during the development of this plan).
⇒ Lead capital improvements planning efforts.
⇒ Managing the drafting of new or amended land development regulations.
⇒ Conducting studies and developing additional plans (including management of consultant efforts, as necessary).
⇒ Reviewing applications for consistency with the comprehensive plan as required by the City's land development regulations.
⇒ Negotiating the specifics of interlocal agreements.
⇒ Administering collaborative programs and ensuring open channels of communication with various private, public and non-profit implementation partners.
⇒ Maintaining an inventory of potential plan amendments, as suggested by City staff and others, for consideration during annual and periodic plan review and update processes.
⇒ Working with the Comprehensive Plan Committee to identify and report to Council significant deviations from the plan arising from development activities.

SHERMAN
COMPREHENSIVE
PLAN ★ 2009

A joint workshop of City Council and Planning & Zoning Commissioners enabled participants to learn about strategic opportunities and challenges identified in the draft Comprehensive Plan and consider what action initiatives might be most important to pursue in the first several years following plan adoption.

ACTION PLAN

The vision and goals in a comprehensive plan are attained, over time, through a multitude of specific actions. To this end, both long- and short-range implementation strategies must be identified along with an action timeframe and the assignment of responsibilities to specific entities.

Table 10.1, Action Agenda Ranking, highlights a variety of recommended initiatives that were identified through the long-range planning process and discussed with the Comprehensive Plan Advisory Committee (CPAC). It is helpful to have the City's leadership identify their highest priorities among these action options to provide direction for the plan implementation efforts of both municipal government and the broader community.

As part of the joint workshop of City Council and the Planning and Zoning Commission that was held to review highlights of the City's draft Comprehensive Plan (February 25, 2009), this type of prioritization exercise was completed to determine which recommended action items in the plan might receive priority attention in the first several years of plan implementation. A total of 18 individuals participated in the ranking exercise (members of City Council and the Planning and Zoning Commission, along with several key members of City staff). Each participant was given eight sticker dots to indicate their highest priorities among a list of 32 significant action items from the plan (seven dots of the same color were worth 5 points each, and a "silver bullet" dot of a different color was intended to indicate each individual's ultimate priority as it was worth 10 points).

The results show that "Updated and enhanced development regulations" received a very high number of regular dots (13), as well as a high number of "silver bullet" dots (5). While this item was by far the highest ranked action item, there was a cluster of about 10 additional items that received a relatively high ranking. Items that rose to the top through the ranking exercise—and which the City should have the capacity to address during the first several years following Comprehensive Plan adoption—are presented in **Table 10.2, Action Agenda – Highest Priorities**. It should be noted that this set of actions represents the overall comprehensive plan well since, as indicated in the table, they originated from various sections of the plan.

As discussed earlier in this chapter, the initiatives will also require different types of action, with some involving physical construction (capital improvements) while others are regulatory in nature or call for more targeted study and planning to set the stage for important community enhancements (e.g., a Trail, Bikeway & Greenway Master Plan). As was clarified in the ensuing workshop discussion of the prioritization results, code "enhancements" does not necessarily mean stricter ordinances. This could

also include providing more flexibility as to how development applicants go about meeting City standards and achieving compliance, as well as building incentives into the code to reward quality development outcomes which are desired by the community to enhance Sherman's image and development value.

Table 10.1, Action Agenda Ranking

Rank	Action	Regular Dots (5 pts)		"Silver Bullet" Dots (10 pts)		Total Points
		Number	*Points*	*Number*	*Points*	
1	Updated and enhanced development regulations	13	65	5	50	115
2	City Geographic Information System (GIS) enhancements (e.g., storm water system, parks system)	8	40	3	30	70
3	Storm drainage studies and planning for targeted capital improvements and financing	7	35	3	30	65
4	Revitalization of older neighborhoods	8	40	2	20	60
5	Parks to Standard maintenance and enhancement initiative for existing parks	8	40	1	10	50
5	Strategic annexation planning	8	40	1	10	50
6	Downtown development / revitalization	9	45		0	45
7	Trail, Bikeway & Greenway Master Plan and initial trail network development	8	40		0	40
8	Roadway system maintenance, upgrades, and safety improvements	5	25	1	10	35
8	Senior Center modernization and upgrades	5	25	1	10	35
9	Enhanced community aesthetics	4	20	1	10	30
9	Sherman Public Library modernization and upgrades	6	30		0	30
10	Enhanced and unified marketing effort through SEDCO	5	25		0	25
10	SPD / SFD facility needs study	5	25		0	25
10	Water / wastewater system master plan	5	25		0	25
10	Water system improvements	5	25		0	25
11	Formal parkland dedication (and fee in lieu of dedication) process	4	20		0	20
11	Ongoing and new housing affordability initiatives (low-income, first-time homebuyers, seniors)	4	20		0	20
12	Green building practices in new/upgraded City facilities (and promotion of private measures)	3	15		0	15
12	Promotion of conservation development practices	1	5	1	10	15
12	Workforce development and training	3	15		0	15

The priority-setting workshop was conducted to demonstrate the value of considering plan implementation priorities among the City's leadership—and then revisiting these priorities at least annually to recognize accomplishments, highlight areas where further attention and effort is needed, and determine whether some items have moved up or down on the priority list given changing circumstances and emerging needs. It should be kept in mind that early implementation of certain items, while perhaps not the uppermost priorities, may be expedited by the availability of related grant opportunities, by a state or federal mandate, or by the eagerness of one or more partners to pursue an initiative with the City. On the other hand, some high-priority items may prove difficult to tackle in the near term due to budget constraints, the lack of an obvious lead entity or individual to carry the initiative forward, or by the community's readiness to take on a potentially controversial new program.

Table 10.1, Action Agenda Ranking (continued)

Rank	Action	Regular Dots (5 pts)		"Silver Bullet" Dots (10 pts)		Total Points
		Number	*Points*	*Number*	*Points*	
13	Leadership development and networking (annual Economic Summit, Young Professionals Organization	2	10		0	10
13	Specific park/recreation improvements in accordance with 2005 Master Plan	2	10		0	10
13	Wastewater system improvements	2	10		0	10
14	Energy efficiency initiatives for public facilities (and promotion of private measures)	1	5		0	5
14	Ongoing promotion of local arts and culture (public/private Steering Committee)	1	5		0	5
14	Rehabilitation of older housing stock	1	5		0	5
15	Community-wide sidewalk inventory for targeting repairs, improvements, grant requests	0	0		0	0
15	Downtown Arts & Cultural District focus (including physical link to Courthouse Square)	0	0		0	0
15	Emergency Operations Center improvements	0	0		0	0
15	Maintain/expand strong recycling program	0	0		0	0
15	Transit system improvements by TAPS	0	0		0	0

Table 10.2, Action Agenda – Highest Priorities

Priority Action	Relevant Plan Section
▪ Updated and enhanced development regulations	*Urban Design & Future Land Use (plus others)*
▪ City Geographic Information System (GIS) enhancements	*Growth Management & Capacity*
▪ Storm drainage studies and planning	*Growth Management & Capacity*
▪ Revitalization of older neighborhoods	*Housing & Neighborhoods*
▪ Maintenance and enhancement initiative for existing parks	*Parks, Recreation & Open Space*
▪ Strategic annexation planning	*Growth Management & Capacity*
▪ Downtown development / revitalization	*Urban Design & Future Land Use*
▪ Trail, Bikeway & Greenway Master Plan and initial trail network development	*Parks, Recreation & Open Space*
▪ Roadway system maintenance, upgrades, and safety improvements	*Transportation*

Where to Start on Highest Action Priorities

In **Table 10.3, Implementation Strategy for Near Term Action Priorities**, a format is provided for expanding upon the priority items in Table 10.2. This includes the following elements and considerations:

⇒ **Further Prioritization.** The nine highest-ranked action items are further categorized as Priority 1, 2, or 3. This could relate to Years 1-3 following plan adoption, or it could just be a further indication of relative priority and readiness to take on a particular task over an initial implementation period not necessarily tied to calendar years. For example, action on a Priority 1 item might get started in Year 1 but take several years to complete fully, while some advance work on a Priority 2 item might be possible toward the end of Year 1.

⇒ **Action Type.** This relates back to the five types of implementation methods highlighted earlier in this chapter (policy focused, regulatory focused, capital focused, planning/study focused, program/initiative focused).

⇒ **Next Steps.** This involves the essential step of breaking down larger efforts into "first and next steps" to lay the groundwork for measurable action and build momentum toward targeted outcomes. This often involves further clarification of objectives and a realistic assessment of resources and capabilities to move an initiative forward. As noted in the table, in some cases it involves preparing to obtain professional services assistance if City staff do not have the time for or experience with a particular subject.

⇒ **Implementation and Coordination Roles.** In addition to identifying which City department(s) or function(s) would likely lead a task, this portion of Table 10.3 also highlights a variety of local and regional agencies and entities that might have a role to play in certain initiatives, whether through potential cost-sharing, technical assistance, direct cooperation (potentially through an interlocal agreement), or simply by providing input and feedback on a matter in which they have some mutual interest. In particular, whenever potential regulatory actions or new or revised development standards are to be considered, participation of the development community is essential to ensure adequate "give and take" and consensus building. Some of the entities currently listed do not factor into the nine actions itemized in Tables 10.2 and 10.3, but they might in future years as other Comprehensive Plan action recommendations move to the forefront. Likewise, others will likely need to be added to this table depending on the task at hand.

⇒ **Funding Sources.** This final set of columns in Table 10.3 indicates the typical ways to finance plan implementation efforts. An obvious source is through the City's own annual operating budget, as well as multi-year capital budgeting, which is not only for physical construction projects but also for funding significant studies and plans (e.g., the Trail, Bikeway & Greenway Master Plan) that are intended to lay the groundwork for phased capital investments and construction over a period of years. An "Other Governments" column is included along with a "Grants" column because grants are often applied for and awarded through a competitive process, but the County or another government agency might choose to commit funds directly to an initiative along with the City. On the other hand, "grants" can also come from foundations and other non-government sources. Finally, the "Private/Other" column is meant to underscore the potential for public/private initiatives, as well as corporate outreach and volunteerism, faith-based efforts, and other community and volunteer contributions (e.g., churches, Scouts, civic and service groups, etc.).

It is essential that this table, or a format like it, is completed by those involved in the plan development process as the first step toward implementation, especially in conjunction with the City's annual budget process, CIP

preparation, and departmental work planning. Following its refinement, this table should be advanced to the Planning & Zoning Commission and City Council for their review, consideration, and acceptance. At that point, the City staff member designated as the Comprehensive Plan Administrator should initiate a first-year work program in conjunction with the City Manager, other departments, and other public and private implementation partners.

Progress on the Year 1 priorities should be the focus of the first annual review and report a year after Comprehensive Plan adoption. Then, similar to multi-year capital improvements programming, the entire Action Agenda list in Table 10.1—and all other action items dispersed throughout the plan chapters—should be revisited annually to decide if any additional items are ready to move into the next three-year timeframe, and whether in Year 1, 2, or 3.

PLAN AMENDMENT PROCESS

The Sherman Comprehensive Plan is meant to be a flexible document allowing for adjustment to changing conditions over time. Shifts in political, economic, physical, technological, and social conditions, and other unforeseen circumstances, may influence and change the priorities and fiscal outlook of the community. As the City grows and evolves, new issues will emerge while others will no longer be as relevant. Some action statements will be found impractical or outdated while other plausible solutions will arise. To ensure that it continues to reflect the overall goals of the community and remains relevant and resourceful over time, the plan must be revisited on a regular basis to confirm that the plan elements are still on point and the associated goals, policies and action statements are still appropriate.

Revisions to the comprehensive plan are two-fold, with minor plan amendments occurring at least bi-annually and more significant modifications and updates occurring every five years. Minor amendments could include revisions to certain elements of the plan as a result of the adoption of another specialized plan or interim changes to the Future Land Use & Character Plan and/or the Thoroughfare Plan. Major updates will involve reviewing the base conditions and anticipated growth trends; re-evaluating the goals, policies and recommendations in the plan—and formulating new ones as necessary; and adding, revising or removing action statements in the plan based on implementation progress.

Annual Progress Report

The Planning & Zoning Commission along with the Comprehensive Plan Committee, with the assistance of staff, should prepare an annual progress report for presentation to the Mayor and City Council. This ensures that the

plan is consistently reviewed and that any needed modifications or clarifications are identified for the bi-annual minor plan amendment process. Ongoing monitoring of consistency between the plan and the City's implementing ordinances and regulations should be an essential part of this effort.

The Annual Progress Report should include and highlight:

⇒ Significant actions and accomplishments during the past year, including the status of implementation for each programmed task in the comprehensive plan.

⇒ Obstacles or problems in the implementation of the plan, including those encountered in administering the land use and transportation aspects, as well as any other policies of the plan.

⇒ Proposed amendments that have come forward during the course of the year, which may include revisions to the individual plan maps or other recommendations or text changes.

⇒ Recommendations for needed actions, programs and procedures to be developed and implemented in the coming year, including recommendation of projects to be included in the City's CIP, other programs/projects to be funded, and priority coordination needs with public and private implementation partners.

Bi-Annual Amendment Process

Plan amendments should occur on at least a bi-annual (every two year) basis, allowing for proposed changes to be considered concurrently so that the cumulative effect may be understood. When considering a plan amendment, the City should ensure the proposed amendment is consistent with the goals and policies set forth in the plan regarding character protection, development compatibility, infrastructure availability, conservation of environmentally sensitive areas, and other community priorities. Careful consideration should also be given to guard against site-specific plan changes that could negatively impact adjacent areas and uses or detract from the overall character of the area. Factors that should be considered in deciding on a proposed plan amendment include:

⇒ Consistency with the goals and policies set forth in the plan.

⇒ Adherence with the Future Land Use & Character and/or Thoroughfare Plans.

⇒ Compatibility with the surrounding area.

⇒ Impacts on infrastructure provision including water, wastewater, drainage, and the transportation network.

⇒ Impact on the City's ability to provide, fund and maintain services.

⇒ Impact on environmentally sensitive and natural areas.

⇒ Whether the proposed amendment contributes to the overall direction and character of the community as captured in the plan vision and goals (and ongoing public input).

Five-Year Update / Evaluation and Appraisal Report

An evaluation and appraisal report should be prepared every five years. This report should be prepared by City staff with input from various City departments, the Planning & Zoning Commission, and other boards and commissions. The report process involves evaluating the existing plan and assessing how successful it has been in achieving the community's goals. The purpose of the report is to identify the successes and shortcomings of the plan, look at what has changed over the last five years, and make recommendations on how the plan should be modified in light of those changes.

The report should review baseline conditions and assumptions about trends and growth indicators. It should also evaluate implementation potential and/or obstacles related to any unmet goals, policies and recommendations. The evaluation report and process should result in an amended comprehensive plan, including identification of new or revised information that may lead to updated goals, policies and/or action recommendations.

More specifically, the report should identify and evaluate the following:

1. Summary of major actions and interim plan amendments undertaken over the last five years.
2. Major issues in the community and how these issues have changed over time.
3. Changes in the assumptions, trends and base studies data, including the following:
   - ⇒ The rate at which growth and development is occurring relative to the projections put forward in the plan.
   - ⇒ Shifts in demographics and other growth trends based upon the 2010 Census data.
   - ⇒ The area of land that is designated and zoned for urban development and its capacity to meet projected demands and needs.
   - ⇒ City-wide attitudes and whether apparent shifts, if significant, necessitate amendments to the stated goals or strategies of the plan.
   - ⇒ Other changes in political, social, economic, technological or environmental conditions that indicate a need for plan amendments.
4. Ability of the plan to continue to support progress toward achieving the community's goals. The following should be evaluated and revised as needed:

- ⇒ Individual statements or sections of the plan must be reviewed and rewritten, as necessary, to ensure that the plan provides sufficient information and direction to achieve the intended outcome.
- ⇒ Conflicts between goals and policies that have been discovered in the implementation and administration of the plan must be pointed out and resolved.
- ⇒ The action agenda must be reviewed and major accomplishments highlighted. Those not completed by the specified timeframe should be re-evaluated to ensure their continued relevance and/or to revise them appropriately.
- ⇒ As conditions change, the timeframes for implementing the individual actions of the plan should be re-evaluated where necessary. Some actions may emerge as a higher priority given new or changed circumstances while others may become less important to achieving the goals and development objectives of the community.
- ⇒ Based upon organizational, programmatic and procedural factors, as well as the status of previously assigned tasks, the implementation task assignments must be reviewed and altered, as needed, to ensure timely accomplishment of the plan's recommended actions.
- ⇒ Changes in laws, procedures and missions may impact the ability of the community to achieve its goals. The plan review must assess these changes and their impacts on the success of implementation, leading to any suggested revisions in strategies or priorities.

Ongoing Community Outreach and Engagement

All review and updates processes related to the comprehensive plan should emphasize and incorporate ongoing public input. The annual and continual plan evaluation and reporting process should also incorporate specific performance measures and quantitative indicators that can be compiled and communicated both internally and to elected officials and citizens in a "report card" fashion. Examples might include:

- ⇒ Acres of new development (plus number of residential units and square footage of commercial and industrial space) approved and constructed in conformance with this plan and related City codes.
- ⇒ Various measures of service capacity (gallons, acre-feet, etc.) added to the City's major utility systems as indicated in this plan and associated utility master plans—and the dollars allocated to fund the necessary capital projects.
- ⇒ Acres of parkland and linear feet of trail developed or improved in accordance with this plan and related parks and recreation plans.

- ⇒ Indicators of City efforts to promote neighborhood integrity as emphasized in this plan (e.g., enhanced screening and buffering techniques between different development types, code enforcement activity, etc.).
- ⇒ Miles of new bike routes and transit routes added to the City's transportation system to provide alternative mobility options as recommended in this plan.
- ⇒ New businesses and associated employment added to the local job market through the economic development initiatives and priorities identified in this plan.
- ⇒ Indicators of the benefits of redeveloped sites and structures (appraised value, increased property and/or sales tax revenue, etc.) as envisioned through this plan.
- ⇒ The estimated dollar value of operating cost savings from reduced energy and water use, heating/cooling, etc., from green building practices and related conservation efforts in new and existing City facilities, as suggested in this plan.
- ⇒ The numbers of residents and other stakeholders engaged through City-sponsored education and outreach events related to comprehensive plan implementation and periodic review and updating, as outlined in this chapter.

Table 10.3, Implementation Strategy for Near Term Action Priorities

Item	ACTION	Priority 1	Priority 2	Priority 3	Action Type	NEXT STEPS	Implementation & Coordination Roles: CITY OF SHERMAN	SEDCO	Sh C of C	Sh C & VC	S CA&H	DSP&R	A College	GC College	SISD	Grayson Co	Grayson CAD	GSBDC	Texoma COG	S-D MPO	GTUA	TASWA	Private/ Other	Funding Sources: City Budget	CIP Budget	Other Govts	Grants	Private/Other
1	Updated and enhanced development regulations	✖			Regulation	• Identify code amendment priorities. • Determine staff capabilities and consultant needs. • Budget for consultant role.	Development Services, City Attorney																Development community	✓	✓			
2	City Geographic Information System (GIS) enhancements	✖			Program / Initiative	• Update GIS implementation plan as needed. • Identify priority data needs and map layers. • Identify sources of readily available data and mapping. • Determine items requiring fresh data collection/mapping. • Determine City staffing needs.	Information Technology, Development Services, Utilities & Engineering								●	●	●		●	●				✓	✓	✓		
3	Storm drainage studies and planning	✖			Further Study / Planning	• Prioritize study areas. • Determine potential cost-sharing to fund studies. • Explore external funding possibilities. • Budget for consultant role.	Utilities & Engineering									●			●				U.S. Army Corps of Engineers, FEMA	✓	✓	✓	✓	
4	Revitalization of older neighborhoods		✖		Program / Initiative	• Identify priority areas for neighborhood-level plans. • Outreach to neighborhood groups and leaders. • Prioritize capital projects and other actions based on plans.	Neighborhood Services, Development Services, Utilities & Engineering		●				●		●			●					Neighborhood/ civic associations, HUD-CDBG	✓	✓	✓	✓	✓
5	Maintenance and enhancement initiative for existing parks		✖		Program / Initiative	• Conduct system-wide facility review and quality/safety assessment. • Prioritize improvement needs. • Budget for multi-year CIP effort.	Parks & Recreation		●						●								User groups, sports associations, neighborhood groups	✓	✓			✓
6	Strategic annexation planning		✖		Further Study / Planning	• Identify priority annexation areas and rationale. • Determine areas appropriate for non-annex agreements. • Identify "exempt" areas eligible for near-term action. • Identify areas subject to three-year annexation plan. • Assess service needs and fiscal outlook by area. • Monitor / coordination with neighboring cities.	Development Services, Finance City Attorney	●							●	●							Neighboring cities	✓	✓			

Table 10.3, Implementation Strategy for Near Term Action Priorities *(continued)*

		Priority					Implementation & Coordination Roles																	Funding Sources				
Item	ACTION	1	2	3	Action Type	NEXT STEPS	CITY OF SHERMAN	SEDCO	Sh C of C	Sh C & VC	S CA&H	DSP&R	A College	GC College	SISD	Grayson Co	Grayson CAD	GSBDC	Texoma COG	S-D MPO	GTUA	TASWA	Private/ Other	City Budget	CIP Budget	Other Govts	Grants	Private/Other
7	Downtown development / revitalization			✖	Program / Initiative	• Identify priority issues/topics to be addressed through a Downtown Master Plan. • Determine potential cost-sharing to fund plan. • Budget for consultant role.	Development Services, Tourism		●	●	●	●				●		●					Downtown merchants and property owners	✓	✓			✓
8	Trail, Bikeway & Greenway Master Plan and initial trail network development			✖	Further Study / Planning, Capital Investment	• Identify priority areas and issues for Master Plan to address. • Determine potential cost-sharing to fund plan. • Budget for consultant role.	Parks & Recreation, Utility & Engineering	●					●	●	●	●				●			User groups, cycling clubs	✓	✓	✓	✓	✓
9	Roadway system maintenance, upgrades, and safety improvements			✖	Capital Investment	• Prioritize known problem areas and improvement needs. • Explore external funding or cost-sharing possibilities. • Define specific CIP projects. • Seek voter extension of 1/8-cent sales tax for specified projects.	Public Works, Utilities & Engineering, Finance	●								●				●			TxDOT coordination	✓	✓			

Abbreviations

CIP	Capital Improvements Program
SEDCO	Sherman Economic Development Corporation
Sh C of C	Sherman Chamber of Commerce
Sh C & VC	Sherman Convention & Visitors Council
SCA&H	Sherman Council for the Arts & Humanities
DSP&R	Downtown Sherman Preservation & Revitalization
A College	Austin College
GC College	Grayson County College
SISD	Sherman Independent School District
Grayson Co	Grayson County
Grayson CAD	Grayson County Appraisal District
GSBDC	Grayson Small Business Development Center
Texoma COG	Texoma Council of Governments
S-D MPO	Sherman-Denison Metropolitan Planning Organization
GTUA	Greater Texoma Utility Authority
TASWA	Texoma Area Solid Waste Authority
FEMA	Federal Emergency Management Agency
HUD-CDBG	U.S. Department of Housing & Community Development – Community Development Block Grant Program
TxDOT	Texas Department of Transportation

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. B.2

PUBLIC HEARING OF ORDINANCE NO. 5611

Designating a Certain Area as Industrial Reinvestment Zone, Number 072009-2, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

Issue

The creation of a new industrial reinvestment zone in response to a tax abatement requested by Panda Sherman Power, LLC

Background

On Friday, June 5, 2009, the Tax Reinvestment Committee met to consider a request from Panda Sherman Power, LLC for a tax abatement to construct a power plant. The Committee voted to recommend the abatement and creation of the Zone to the City Council and other taxing entities. The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. Ordinance No. 5611 would be the first step in accomplishing the creation of a new commercial/industrial reinvestment zone. The Zone itself will cover only Panda's property.

Ordinance No. 5611 was introduced at the July 6th Council meeting; and, pursuant to State Law, a public hearing was set for the July 20th meeting to allow interested parties to speak to the issue. If the Ordinance is adopted, the request for tax abatement will be addressed at the August 3rd Council meeting, in the form of a resolution.

Origination

Panda Sherman Power, LLC

Financial Consideration

There is no direct cost to creating Industrial Reinvestment Zone, Number 072009-2 and providing the medium for granting tax abatement agreements within the designated area.

Staff Recommendation

The staff recommends the adoption of Ordinance No. 5611 to create Industrial Reinvestment Zone, Number 072009-2, City of Sherman, Texas (the "Zone").

Alternatives

The Council could decide not to create this new industrial reinvestment zone.

Attachments

Ordinance No. 5611; Legal Description; Vicinity Map

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5611

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING A CERTAIN AREA AS INDUSTRIAL REINVESTMENT ZONE, NUMBER 072009-2, CITY OF SHERMAN, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF AGREEMENTS WITHIN THE ZONE, AND OTHER MATTERS RELATING THERETO; PROVIDING FINDINGS OF FACT, PROVIDING AN EFFECTIVE DATE FOR THE COMMENCEMENT OF THE REINVESTMENT ZONE AND THIS ORDINANCE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas (the “City”), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a Reinvestment Zone, as codified in Chapter 312 of the Texas Tax Code (the “CODE”); and

WHEREAS, a hearing before the City Council was set for 5:00 p.m. on the 20th day of July, 2009, such date being at least seven (7) days after the date of publication of the notice of such public hearing in a newspaper of general circulation in the City of Sherman; and

WHEREAS, the City has called a public hearing and published notice of such public hearing, and has properly notified the proper officials of Grayson County, Grayson County College, and Sherman Independent School District, as required by the CODE; and

WHEREAS, upon such hearing being convened, there was presented proper proof and evidence that notices of such hearing had been published and mailed as described above; and

WHEREAS, the City at such hearing invited any interested person, or his attorney, to appear and contend for or against the creation of the Reinvestment Zone, whether all or part of the territory, which is described by a metes and bounds description attached hereto as Exhibit “A” and depicted in the drawing attached hereto as Exhibit “B”, should be included in such proposed Reinvestment Zone; and

WHEREAS, all owners of property located within the proposed Reinvestment Zone, and all other taxing units and other interested persons, were given the opportunity at such public hearing to protest the creation of the proposed Reinvestment Zone or the inclusion of their property in such Reinvestment Zone; and

WHEREAS, the proponents of the Reinvestment Zone offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the Reinvestment Zone, and no opponents of the Reinvestment Zone appeared to contest creation of the Reinvestment Zone; and

WHEREAS, after considering all testimony and evidence offered at the public hearing, the City Council finds that improvements in the Reinvestment Zone will enhance significantly the value of all taxable real property in the Zone, will be of general benefit to the City of Sherman, and that it will be in the public interest to pass this ordinance creating a Reinvestment Zone;

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

SECTION 1. That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct.

SECTION 2. That the City, after conducting such hearing and having heard such evidence and testimony, has made the following findings and determinations based on the evidence and testimony presented to it:

(a) That the public hearing on adoption of the Reinvestment Zone has been properly called, held and conducted, and that notice of such hearing has been published as required by law;

(b) That the City has jurisdiction to hold and conduct this public hearing on the creation of the proposed Reinvestment Zone, pursuant to the CODE;

(c) That creation of the proposed Zone, with boundaries as described in Exhibits "A" and "B", will result in benefits to the City, its residents and property owners, and to the property, residents and property owners in the Reinvestment Zone; and

(d) That the Reinvestment Zone, as defined in Exhibits "A" and "B", meets the criteria for the creation of a Reinvestment Zone as set forth in Section 312.202 of the CODE in that:

(1) It is a contiguous geographic area located wholly within the corporate limits of the City.

(2) The area will reasonably be likely, as a result of the designation, to contribute to the retention or expansion of primary employment or to attract major investment in the Zone that would be a benefit to the property and that would contribute to the economic development of the City.

(3) No part of the property in the Reinvestment Zone is owned or leased by a member of the governing body of the City or Town, or by a member of a zoning or planning board or commission of the City.

(4) Improvements in the Reinvestment Zone will enhance significantly the value of all taxable real property in the Reinvestment Zone.

SECTION 3. That the City hereby creates a Reinvestment Zone over the area described by the description in Exhibit "A", attached hereto and depicted in a drawing attached hereto as Exhibit "B", and such Reinvestment Zone shall hereafter be identified as the Industrial Reinvestment Zone, Number 072009-2, City of Sherman, Texas (the "Zone").

SECTION 4. That the written agreement(s) as provided in the CODE, with the owners of the property located within the Reinvestment Zone, is hereby authorized for a period of up to ten (10) years, and the written agreement(s) shall provide an exemption from taxation of the increased value in the real and/or personal property in the percentages and for the years to be established in the agreements.

SECTION 5. That, if any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this ordinance.

SECTION 6. That it is hereby officially found, determined, and declared that a sufficient written notice of the date, hour, place, and subject of the meeting of the City Council at which this ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public at the City Hall of the City for the time required by law preceding this meeting, as required by the Texas Open Meetings Act, Chapter 551 of the Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter hereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

SECTION 7. That the contents of the notice of public hearing, which hearing was held before the City Council on the 20th day of July, 2009, and the publication of said notices, is hereby ratified, approved, and confirmed.

1ST READING this the __________ day of ________________________, 2009.

2ND READING this the __________ day of ________________________, 2009.

EFFECTIVE DATE: __________ day of ________________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
BRANDON S. SHELBY,
CITY ATTORNEY

EXHIBIT “A”

FIELD NOTES – REINVESTMENT ZONE NO. 072009-2

TRACT ONE

SITUATED in the City of Sherman, Grayson County, Texas, being a part of the William Martin Survey, Abstract No. 765, and being a part of the (1) 109.760 acre tract of land and all of the (2) 37.22 acre tract of land conveyed to the Sherman Economic Development Corporation by deed of record in Volume 2633, Page 498 of the Official Public Records, Grayson County, Texas, and all of the (3) 70.68 acre tract of land and the (4) 23.63 acre tract of land conveyed to the Sherman Economic Development Corporation by deed of record in Volume 4019, Page 369 of said Official Public Records, and all of the (5) 40.03 acre tract of land conveyed to the Sherman Economic Development Corporation by deed of record in Volume 4418, Page 896 of said Official Public Records, and being more particularly described as follows:

BEGINNING at a ½” steel rod found in the south right-of-way line of Progress Drive for the northwest corner of said 40.03 acre tract and the northwest corner of the herein described tract;

THENCE North 74°20'51" East with the south right-of-way line of Progress Drive a distance of 1,405.92 feet to a point in the center of a creek for the northeast corner of the herein described tract;

THENCE in a Southerly direction with the center of said creek the following calls and distances:

South 29°38'08" East a distance of 52.73 feet;
South 07°41'27" West a distance of 50.97 feet;
South 10°23'40" East a distance of 190.88 feet;
South 43°02'42" East a distance of 117.85 feet;
North 55°32'33" East a distance of 98.58 feet;
South 49°20'09" East a distance of 53.51 feet;
South 18°07'17" West a distance of 38.00 feet;
South 07°06'09" East a distance of 138.45 feet;
South 38°21'11" East a distance of 176.76 feet;
South 19°26'00" East a distance of 72.46 feet;
North 77°12'24" East a distance of 66.97 feet;
North 23°22'22" East a distance of 64.10 feet;
South 54°32'17" East a distance of 121.05 feet;
South 11°39'13" East a distance of 48.16 feet;
South 36°21'36" East a distance of 35.59 feet;
South 73°22'59" East a distance of 114.32 feet;
South 31°03'16" West a distance of 100.19 feet;
South 00°09'28" West a distance of 64.42 feet;
South 47°26'23" East a distance of 85.75 feet;
North 30°10'37" East a distance of 76.04 feet;
South 84°38'12" East a distance of 66.35 feet;
South 01°40'43" West a distance of 79.47 feet;
South 50°16'00" West a distance of 96.85 feet;

North 57°22'55" West a distance of 45.79 feet;
South 63°16'29" West a distance of 43.89 feet;
South 01°41'19" West a distance of 22.44 feet;
South 02°25'44" West a distance of 43.58 feet;
South 37°45'00" East a distance of 29.17 feet;
South 08°21'33" East a distance of 45.56 feet;
South 04°26'27" East a distance of 51.46 feet;
South 00°50'35" West a distance of 62.57 feet;
South 24°29'48" East a distance of 22.65 feet;
South 87°38'34" East a distance of 81.83 feet;
North 86°58'42" East a distance of 76.97 feet;
South 69°06'08" East a distance of 27.15 feet;
South 38°57'22" East a distance of 60.17 feet;
South 42°11'21" East a distance of 37.74 feet;
South 22°49'34" East a distance of 51.56 feet;
South 43°04'06" East a distance of 74.45 feet;
North 75°10'46" East a distance of 26.87 feet;
North 22°44'42" East a distance of 45.25 feet;
North 82°53'37" East a distance of 29.22 feet;
South 34°11'16" East a distance of 63.18 feet;
South 33°21'17" East a distance of 52.56 feet;
North 88°03'00" East a distance of 15.73 feet;
North 38°15'30" East a distance of 35.39 feet;
North 64°33'50" East a distance of 29.29 feet;
South 57°50'11" East a distance of 13.24 feet;
South 34°26'35" East a distance of 70.92 feet;
South 69°42'17" East a distance of 14.77 feet;
North 61°13'38" East a distance of 14.46 feet;
North 47°06'21" East a distance of 34.11 feet;
South 43°45'37" East a distance of 71.54 feet;
South 83°14'43" East a distance of 65.53 feet;
North 37°01'17" East a distance of 43.53 feet;
North 22°28'00" East a distance of 26.12 feet;
South 86°49'32" East a distance of 11.89 feet;
South 39°32'08" East a distance of 24.06 feet;
South 48°02'49" East a distance of 87.83 feet;
North 53°17'04" East a distance of 43.15 feet;
South 80°11'10" East a distance of 38.20 feet;
South 09°43'07" East a distance of 52.00 feet;
South 07°14'11" West a distance of 78.30 feet;
South 08°18'33" West a distance of 65.33 feet;
South 22°29'44" East a distance of 44.41 feet;
South 68°25'46" East a distance of 48.38 feet;
North 87°52'00" East a distance of 52.17 feet;
South 01°27'35" East a distance of 67.50 feet;
South 19°47'23" West a distance of 46.81 feet;
South 36°22'56" West a distance of 61.15 feet;
South 10°41'37" East a distance of 70.35 feet;
South 46°15'08" West a distance of 57.80 feet;
South 64°21'19" West a distance of 27.36 feet;
South 78°50'20" West a distance of 43.28 feet;

South 33°00'37" West a distance of 34.00 feet;
South 02°43'09" East a distance of 32.65 feet;
South 48°26'47" East a distance of 51.14 feet;
South 03°17'43" West a distance of 33.29 feet;
South 69°04'59" West a distance of 41.28 feet;
South 42°36'20" West a distance of 19.21 feet;
South 23°51'00" East a distance of 41.21 feet;
South 23°55'19" East a distance of 55.18 feet;
South 24°06'58" West a distance of 40.71 feet;
South 46°42'41" East a distance of 27.78 feet;
South 64°57'16" East a distance of 57.68 feet;
South 11°37'31" East a distance of 21.44 feet;
South 33°46'22" West a distance of 35.17 feet;
South 10°22'28" West a distance of 28.69 feet;
South 07°22'17" East a distance of 69.82 feet to a point in the north line of the BNSF Railroad right-of-way for the southeast corner of the herein described tract;

THENCE South 63°21'20" West with said north right-of-way line, a distance of 952.18 feet to a 1/2" steel rod set for the southeast corner of the 0.857 acre tract of land conveyed to the City of Sherman, Texas by deed of record in Volume 1153, Page 32 of the Deed Records, Grayson County, Texas;

THENCE North 15°37'10" West a distance of 240.00 feet to a 1/2" steel rod found for the northeast corner of said 0.857 acre tract and the southeast corner of said 70.68 acre tract;

THENCE South 63°21'20" West a distance of 200.00 feet to a 1/2" steel rod found for the northwest corner of said 0.857 acre tract;

THENCE South 15°37'10" East a distance of 240.00 feet to a 1/2" steel rod found in said north right-of-way line for the southwest corner of said 0.857 acre tract;

THENCE South 63°21'20" West with said north right-of-way line, a distance of 1,172.66 feet to a ½" steel rod found for the southwest corner of said 70.68 acre tract, said rod being the southeast corner of the 34.835 acre tract of land (Tract 1)conveyed to Weldon Moore, III by deed of record in Volume 2438, Page 278 of said Official Public Records;

THENCE North 16°09'06" West with the east line of said 34.835 acre tract, a distance of 1,404.98 feet to a 1/2" steel rod found at the southeast corner of the 104.321 acre tract of land conveyed to Dennis D. Topletz, Trustee by deed of record in Volume 1712, Page 244 of said Deed Records, said rod being the northeast corner of said 34.835 acre tract;

THENCE North 15°03'24" West with the east line of said 104.321 acre tract, a distance of 972.88 feet to a 1/2" steel rod found at the southwest corner of said 40.03 acre tract;

THENCE North 15°38'56" West a distance of 1,106.26 feet to the Point-of-Beginning and containing 147.95 acres of land.

TRACT TWO

SITUATED in the City of Sherman, Grayson County, Texas, being a part of the William Martin Survey, Abstract No. 765, and being all of the (1) 37.22 acre tract of land conveyed to the Sherman Economic Development Corporation by deed of record in Volume 2633, Page 498 of the Official Public Records, Grayson County, Texas, and all of the (2) 23.63 acre tract of land conveyed to the Sherman Economic Development Corporation by deed of record in Volume 4019, Page 369 of said Official Public Records, and being more particularly described as follows:

BEGINNING at a ½" steel rod found in the south right-of-way line of the BNSF Railroad for the northwest corner of said 23.63 acre tract and the northwest corner of the herein described tract, said rod also being the northeast corner of the 14.270 acre tract of land (Tract 2) conveyed to Weldon L. Moore, III by deed of record in Volume 2438, Page 278 of said Official Public Records;

THENCE North 63°21'20" East with said south right-of-way line, a distance of 3,218.78 feet to a 1/2" steel rod set for the northwest corner of the 21.006 acre tract of land conveyed to Texas Instruments Inc., by deed of record in Volume 3317, Page 177, of said Official Public Records, said rod being the northeast corner of said 37.22 acre tract;

THENCE South 14°27'38" East with the west line of said 21.006 acre tract, a distance of 1,036.49 feet to a 1/2" steel rod set on the north bank of Choctaw Creek for the southeast corner of said 37.22 acre tract;;

THENCE in a Westerly direction with the meanders of said north bank and the south lines of said 37.22 acre tract and 23.63 acre tract;

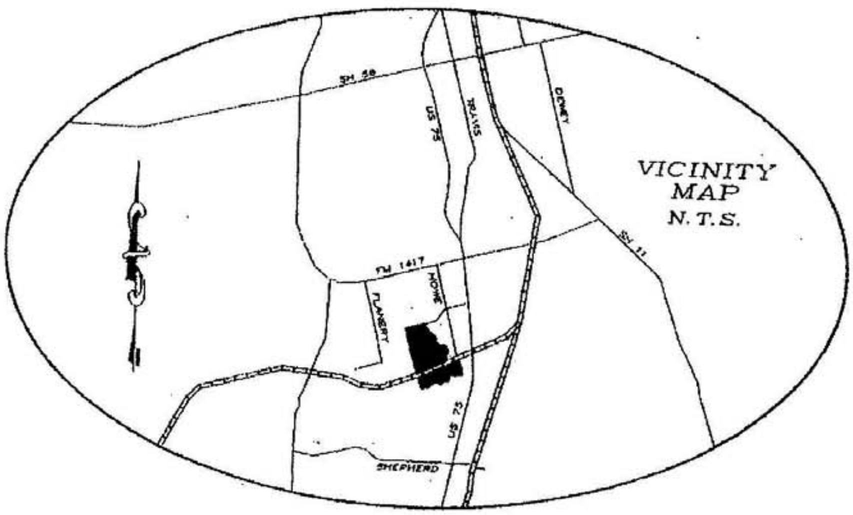
North 89°08'07" West a distance of 50.63 feet;
South 61°50'06" West a distance of 129.18 feet;
North 65°31'21" West a distance of 213.45 feet;
South 43°38'09" West a distance of 143.38 feet;
North 76°35'12" West a distance of 305.86 feet;
South 82°00'24" West a distance of 199.24 feet;
South 07°28'29" West a distance of 447.48 feet;
South 28°46'19" West a distance of 60.92 feet;
South 78°00'17" West a distance of 242.38 feet;
South 53°19'01" West a distance of 279.39 feet;
North 81°47'10" West a distance of 158.75 feet;
South 70°57'29" West a distance of 16.05 feet;
North 46°51'54" West a distance of 71.47 feet;
North 64°55'47" West a distance of 89.81 feet;
North 74°52'56" West a distance of 94.21 feet;
South 84°55'33" West a distance of 34.55 feet;
South 65°12'48" West a distance of 69.31 feet;
South 84°39'24" West a distance of 132.97 feet;
South 42°55'42" West a distance of 71.85 feet;
South 31°29'48" West a distance of 63.23 feet;
South 42°51'36" West a distance of 154.98 feet;
South 38°33'13" West a distance of 90.82 feet;
South 27°05'10" West a distance of 74.40 feet;

South 57°08'24" West a distance of 143.66 feet;
North 58°57'02" West a distance of 75.25 feet;
North 47°55'51" West a distance of 74.03 feet;
North 58°06'24" West a distance of 46.14 feet;
South 66°03'24" West a distance of 76.50 feet;
North 70°16'10" West a distance of 22.67 feet;
South 43°33'46" West a distance of 17.61 feet;
South 12°20'55" East a distance of 18.54 feet;
South 22°13'20" West a distance of 49.55 feet;
South 35°23'00" West a distance of 93.28 feet;
South 67°23'43" West a distance of 67.60 feet to a ½" steel rod found at the southwest corner of said 23.63 acre tract and the southeast corner of said 14.270 acre tract;

THENCE North 16°09'06" West with the east line of said 14.270 acre tract, a distance of 777.82 feet to the Point-of-Beginning and containing 60.85 acres of land.

EXHIBIT "B"

VICINITY MAP – REINVESTMENT ZONE NO. 072009-2



SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. B.3

PUBLIC HEARING OF ORDINANCE NO. 5612
Designating a Certain Area as Industrial Reinvestment Zone, Number 072009-1, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

Issue
The creation of a new industrial reinvestment zone in response to a tax abatement requested by Carrus Medical Center (Carrus)

Background
On Friday, June 5, 2009, the Tax Reinvestment Committee met to consider a request from Carrus Medical Center for a tax abatement to construct an $11 million, 65,000 square foot facility. The Committee voted to recommend the abatement and creation of the Zone to the City Council and other taxing entities. The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. The Zone itself would extend roughly from Travis Street west along the north and south sides of U.S. Highway 82 to Heritage Parkway. Only qualifying commercial and/or industrial projects would be eligible within this Zone for tax abatement consideration.

Ordinance No. 5612 was introduced at the July 6th Council meeting and will be considered for adoption following this public hearing; and, pursuant to State Law, this public hearing was set for the July 20th meeting to allow interested parties to speak to the issue. If the Ordinance is adopted, the request for tax abatement will be addressed at the August 3rd Council meeting, in the form of a resolution.

Origination
Carrus Medical Center

Financial Consideration
There is no direct cost to creating Industrial Reinvestment Zone, Number 072009-1.

Staff Recommendation
The staff recommends the adoption of Ordinance No. 5612 to create Industrial Reinvestment Zone, Number 072009-1, City of Sherman, Texas (the "Zone").

Alternatives
The Council could decide not to create this new industrial reinvestment zone.

Attachments
Ordinance No. 5612; Legal Description; Aerial, Acreage, and Zoning Maps

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5612

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING A CERTAIN AREA AS INDUSTRIAL REINVESTMENT ZONE, NUMBER 072009-1, CITY OF SHERMAN, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF AGREEMENTS WITHIN THE ZONE, AND OTHER MATTERS RELATING THERETO; PROVIDING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE FOR THE COMMENCEMENT OF THE REINVESTMENT ZONE AND THIS ORDINANCE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas (the “City”), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a Reinvestment Zone, as codified in Chapter 312 of the Texas Tax Code (the “CODE”); and

WHEREAS, a hearing before the City Council was set for 5:00 p.m. on the 20th day of July, 2009, such date being at least seven (7) days after the date of publication of the notice of such public hearing in a newspaper of general circulation in the City of Sherman; and

WHEREAS, the City has called a public hearing and published notice of such public hearing, and has properly notified the proper officials of Grayson County, Grayson County College, and Sherman Independent School District, as required by the CODE; and

WHEREAS, upon such hearing being convened, there was presented proper proof and evidence that notices of such hearing had been published and mailed as described above; and

WHEREAS, the City at such hearing invited any interested person, or his attorney, to appear and contend for or against the creation of the Reinvestment Zone, whether all or part of the territory, which is described by a metes and bounds description attached hereto as Exhibit “A” and depicted in the drawing attached hereto as Exhibit “B”, should be included in such proposed Reinvestment Zone; and

WHEREAS, all owners of property located within the proposed Reinvestment Zone, and all other taxing units and other interested persons, were given the opportunity at such public hearing to protest the creation of the proposed Reinvestment Zone or the inclusion of their property in such Reinvestment Zone; and

WHEREAS, the proponents of the Reinvestment Zone offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the Reinvestment Zone, and no opponents of the Reinvestment Zone appeared to contest creation of the Reinvestment Zone; and

WHEREAS, after considering all testimony and evidence offered at the public hearing, the City Council finds that improvements in the Reinvestment Zone will enhance significantly the value of all taxable real property in the Zone, will be of general benefit to the City of Sherman, and that it will be in the public interest to pass this ordinance creating a Reinvestment Zone;

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

SECTION 1. That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct.

SECTION 2. That the City, after conducting such hearing and having heard such evidence and testimony, has made the following findings and determinations based on the evidence and testimony presented to it:

(a) That the public hearing on adoption of the Reinvestment Zone has been properly called, held and conducted, and that notice of such hearing has been published as required by law;

(b) That the City has jurisdiction to hold and conduct this public hearing on the creation of the proposed Reinvestment Zone, pursuant to the CODE;

(c) That creation of the proposed Zone, with boundaries as described in Exhibits “A” and “B”, will result in benefits to the City, its residents and property owners, and to the property, residents and property owners in the Reinvestment Zone; and

(d) That the Reinvestment Zone, as defined in Exhibits “A” and “B”, meets the criteria for the creation of a Reinvestment Zone as set forth in Section 312.202 of the CODE in that:

(1) It is a contiguous geographic area located wholly within the corporate limits of the City.

(2) The area will reasonably be likely, as a result of the designation, to contribute to the retention or expansion of primary employment or to attract major investment in the Zone that would be a benefit to the property and that would contribute to the economic development of the City.

(3) No part of the property in the Reinvestment Zone is owned or leased by a member of the governing body of the City or Town, or by a member of a zoning or planning board or commission of the City.

(4) Improvements in the Reinvestment Zone will enhance significantly the value of all taxable real property in the Reinvestment Zone.

SECTION 3. That the City hereby creates a Reinvestment Zone over the area described by the description in Exhibit "A", attached hereto and depicted in a drawing attached hereto as Exhibit "B", and such Reinvestment Zone shall hereafter be identified as the Industrial Reinvestment Zone, Number 072009-1, City of Sherman, Texas (the "Zone").

SECTION 4. That the written agreement(s) as provided in the CODE, with the owners of the property located within the Reinvestment Zone, is hereby authorized for a period of up to ten (10) years, and the written agreement(s) shall provide an exemption from taxation of the increased value in the real and/or personal property in the percentages and for the years to be established in the agreements.

SECTION 5. That, if any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this ordinance.

SECTION 6. That it is hereby officially found, determined, and declared that a sufficient written notice of the date, hour, place, and subject of the meeting of the City Council at which this ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public at the City Hall of the City for the time required by law preceding this meeting, as required by the Texas Open Meetings Act, Chapter 551 of the Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter hereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

SECTION 7. That the contents of the notice of public hearing, which hearing was held before the City Council on the 20th day of July, 2009, and the publication of said notices, is hereby ratified, approved, and confirmed.

1ST READING this the __________ day of ________________________, 2009.

2ND READING this the __________ day of ________________________, 2009.

EFFECTIVE DATE: __________ day of ________________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ______________________________

BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
BRANDON S. SHELBY,
CITY ATTORNEY

EXHIBIT “A”

FIELD NOTES – REINVESTMENT ZONE NO. 072009-1

SITUATED in the City of Sherman, County of Grayson, State of Texas and being a part of the J. B. Mc Anair Survey, Abstract No. 763, Uriah Burns Survey, Abstract No. 121 and the J. Jennings Survey, Abstract No.647; and being more particularly described as one tract by metes and bounds as follows, to wit:

BEGINNING at intersection of the East right-of-way line of State Hwy 1417 (Heritage Parkway) and the South right-of-way line of U.S. Hwy 82;

THENCE North 3° 10’ West to the intersection of the East right-of-way line of Hwy 1417 and the North right-of-way line of Hwy 82, a distance of 460.60 feet;

THENCE North 5° 53’ West with East right-of-way line of Hwy 1417, a distance of 554.65 feet to a point on the East right-of-way line of Hwy 1417 that is 500 feet from and parallel to the North right-of-way of Hwy 82;

THENCE Easterly following the City Limits line which is 500 feet from and parallel to the North right-of-way line of Hwy 82, to a point were the extension of the West right-of-way line of Hickory Street intersects the City limits line;

THENCE South 4° 50’ 18” East with the extension of the West right-of-way line of Hickory Street, a distance of 192.91 feet to the intersection of the South right-of-way line of Canyon Grove Road and the West right-of-way line of Hickory Street;

THENCE Northeasterly with the South right-of-way line of Canyon Grove Road to the center line of Travis Street (Hwy 131);

THENCE Southeasterly with the centerline of Travis Street the following courses and distances;

South 11° 40’ East, a distance of 23.08;
Curve to the left having a Radius of 3820.09 feet, a length of 227.80 feet;
South 15° 5’ East, a distance of 550.10 feet;
Curve to the right having a radius of 3934.58 feet, a distance of 880.64 feet to a point in the centerline of Travis Street and being the most Southeasterly point of the herein described tract;

THENCE North 59° 47’ 30” West, a distance of 273.42 feet to the beginning of a curve to the right;

THENCE with the curve to the right having a radius of 156.00 feet and a length of 120.38 feet;

THENCE North 15° 57’ West, a distance of 115.80 feet to the beginning of a curve to the left;

THENCE with the curve to the left having a radius 54 feet and a length of 70.29 feet to a point that is 500 feet from and parallel to the South right-of-way line of Hwy 82;

THENCE Southwesterly with a line that is 500 feet from and parallel to the South right-of-way line of Hwy 82 to the West right-of-way line of Rex Cruse Drive;

THENCE North 1° 27’ 3” East with the West right-of-way line of Rex Cruse Drive, a distance of 408.61 feet to North right-of-way line of Cypress Grove Road;

THENCE South 76° 0’ 54” West with the North right-of-way line of Cypress Grove Road, a distance of 2409.62 feet to a point in the North right-of-way line of Cypress Grove Road;

THENCE Northerly the following courses and distances:

North 0° 16’ West, a distance of 134.22 feet,
North 51° 50’ 23” East, s distance of 91.02 feet,
North 0° 16’ West, a distance of 156.40 feet,
North 35° 43’ 29” West, a distance of 134.41 feet to the North right-of-way line of Post Oak Crossing;

THENCE Westerly with the North right-of-way line of Post Oak Crossing to a point in a curve to the left on the East right-of-way line Hwy 1417;

THENCE Northerly with the East right-of-way of Hwy 1417 and said Curve having a radius of 5865.89 feet and a length of 277.74 feet;

THENCE North 5° 53’ West with the East right-of-way line of Hwy 1417, a distance of 202.20 feet to the place of beginning and containing 227.84 acres of land.

EXHIBIT "B"

AERIAL – REINVESTMENT ZONE NO. 072009-1

EXHIBIT "B"

ACREAGE – REINVESTMENT ZONE NO. 072009-1

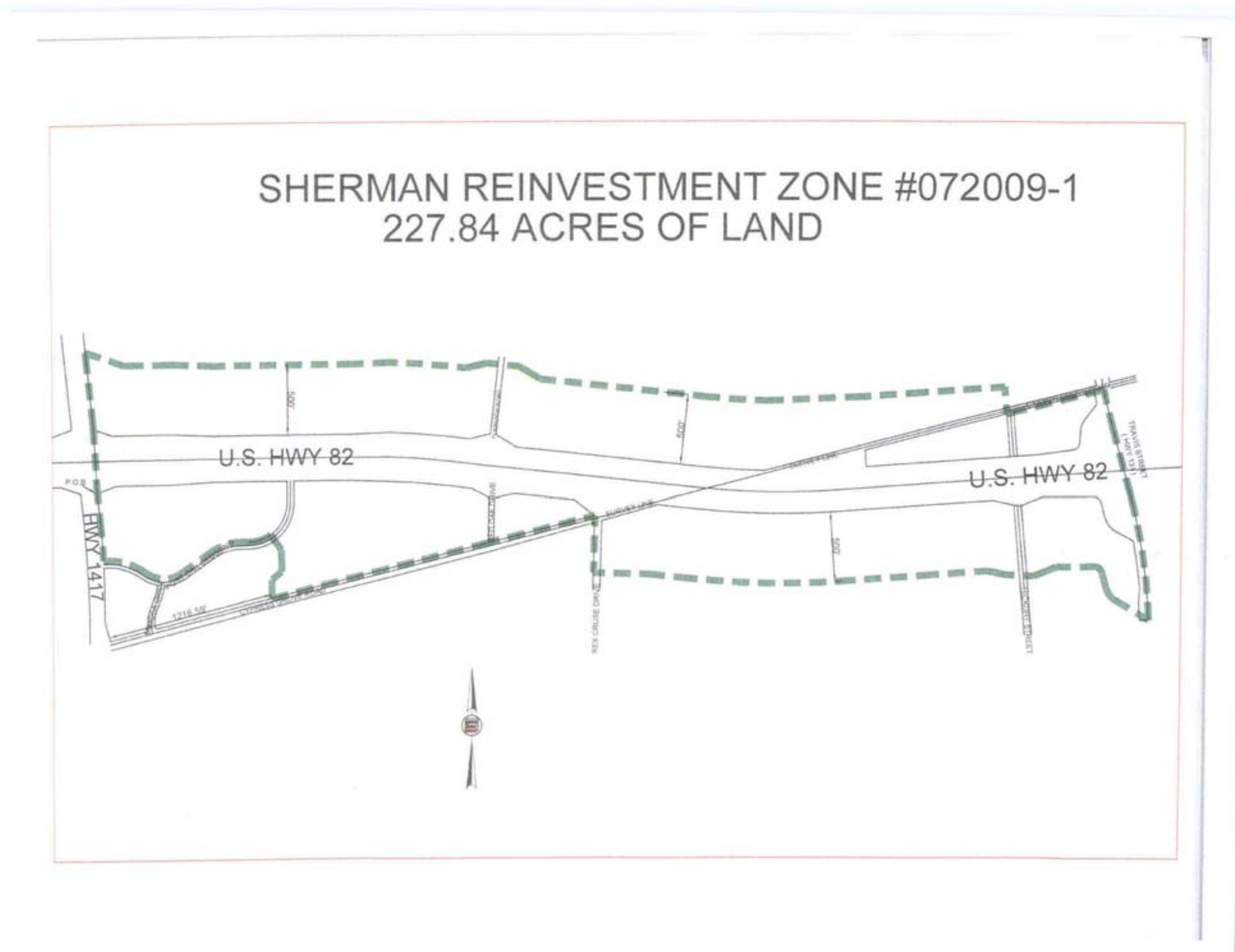
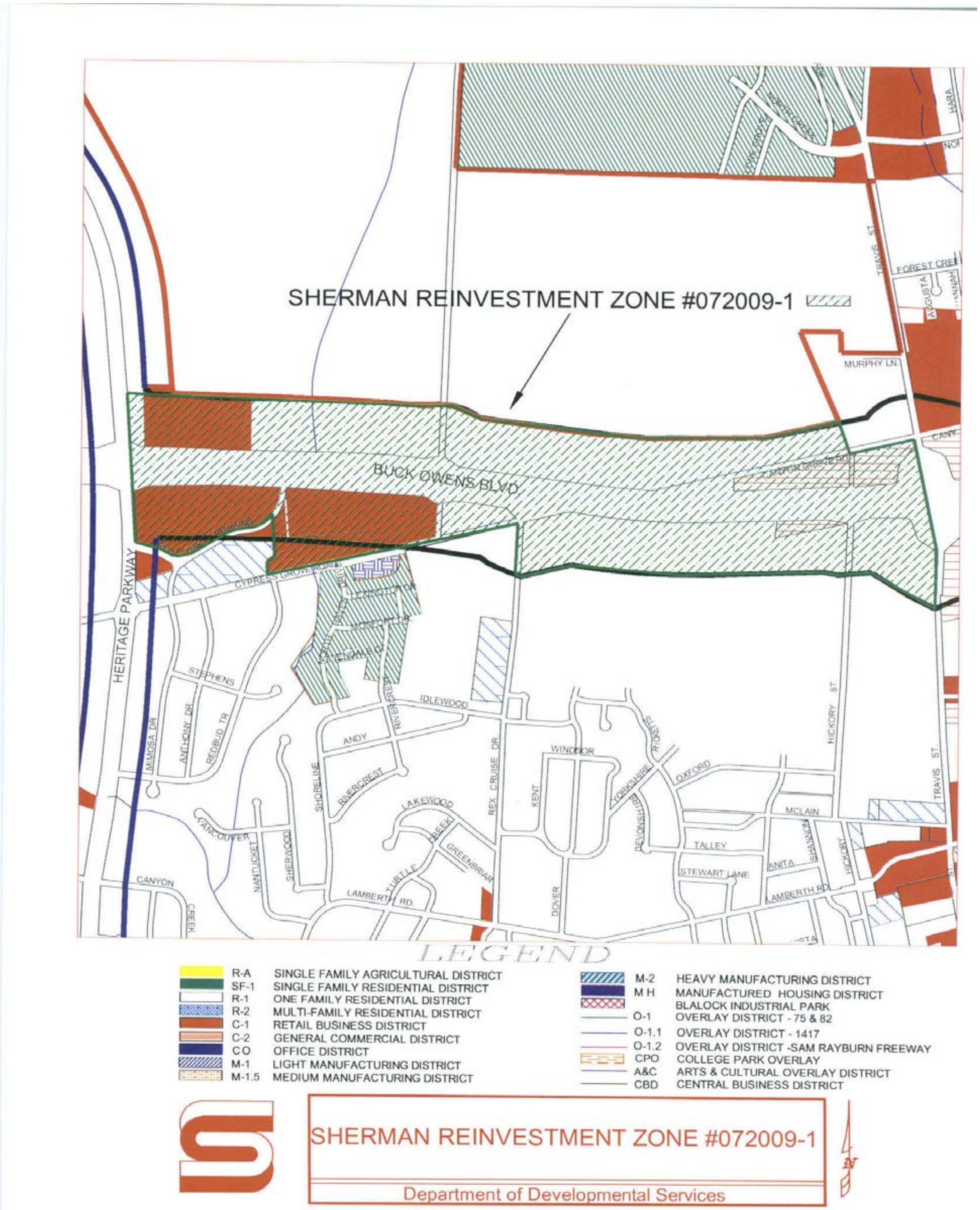


EXHIBIT "B"

ZONING – REINVESTMENT ZONE NO. 072009-1



SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. B.4

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5613
Approving a Negotiated Resolution Between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division Regarding the Company's Rate Review Mechanism Filing in all Cities Exercising Original Jurisdiction; Declaring Existing Rates to be Unreasonable; Requiring the Company to Reimburse Cities' Reasonable Ratemaking Expenses; Adopting Tariffs that Reflect Rate Adjustments Consistent with the Negotiated Settlement and Finding the Rates to be Set by the Attached Tariffs to be Just and Reasonable; Approving Atmos' Proof of Revenues; Adopting a Savings Clause; Declaring an Effective Date; and Requiring Delivery of this Ordinance to the Company and the Steering Committee's Legal Counsel

Issue
Ratification of a Negotiated Resolution between the Atmos Cities Steering Committee ("ACSC") and Atmos Energy Corp., Mid-Tex Division ("Atmos")

Background
ACSC and Atmos have reached a negotiated resolution addressing Atmos's second filing pursuant to the Rate Review Mechanism (RRM) tariff. The RRM process is a three-year experiment created by ACSC and Atmos to replace the controversial GRIP surcharge system. The RRM allows cities to conduct a more comprehensive review of all of the information regarding changes to Atmos's revenues and expenses, as well as its invested capital. Experts working on ACSC's behalf reviewed Atmos's RRM filing, analyzed supporting information and conducted discovery. Based upon their review, ACSC experts determined that the evidence supported a base rate increase of $2.6 million, and not the $20.2 million proposed by Atmos. This negotiated settlement reduces Atmos's requested rate increase by more than 85%. The ACSC Legal Counsel believes that the negotiated resolution is consistent with or better than a litigated outcome. Attached is a RRM package, including a model staff report, an RRM fact sheet, new tariffs, and proof of revenues) to implement new rates that reflect the negotiated resolution. The monthly bill impact for the average residential customer is $0.15. Sherman must take final action on the proposed ordinance by August 31, 2009. If unable to meet that deadline, we must contact ACSC's legal counsel so they can notify Atmos and seek an exception.

Origination
Geoffrey Gay and Kristen Doyle of Lloyd Gosselink Blevins Rochelle & Townsend, P.C., Legal Counsel to ACSC

Financial Consideration
Approval of this ordinance will result in rates than implement a $2.6 million increase in Atmos's revenues effective October 1, 2009, and a monthly increase of $0.15 for the average residential customer.

Staff Recommendation

It is recommended that the City Council adopt the ordinance and approve the Negotiated Resolution with Atmos Mid-Tex.

Alternatives

As the ASCS Negotiation Team has negotiated the most beneficial settlement, no other alternatives are recommended.

Attachments

Ordinance No. 5613
ACSC Legal Counsel Memorandum of July 8, 2009
Attachments A and B
Model Staff Report
Rate Review Mechanism Fact Sheet

Prepared by:
Brandon S. Shelby, City Attorney
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5613

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY'S RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; APPROVING ATMOS' PROOF OF REVENUES; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"), a coalition of more than 150 similarly situated cities served by Atmos Mid-Tex that have joined together to facilitate the review and response to natural gas issues affecting rates charged in the Atmos Mid-Tex service area (such participating cities are referred to herein as "ACSC Cities"); and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC Cities and the Company worked collaboratively to develop the Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review process controlled in a three year experiment by ACSC Cities as a substitute to the current GRIP process instituted by the Legislature; and

WHEREAS, the City took action in 2008 to approve a Settlement Agreement with Atmos Mid-Tex resolving the Company's 2007 rate case and authorizing the RRM Tariff; and

WHEREAS, the 2008 Settlement Agreement contemplates reimbursement of ACSC Cities' reasonable expenses associated with RRM applications; and

WHEREAS, on or about March 6, 2009, Atmos Mid-Tex filed with the City its second application pursuant to the RRM tariff to increase natural gas rates by approximately $20.2 million, such increase to be effective in every municipality that has adopted the RRM tariff within its Mid-Tex Division; and

WHEREAS, ACSC Cities coordinated its review of Atmos' RRM filing and designated a Settlement Committee made up of ACSC representatives and assisted by ACSC attorneys and consultants to resolve issues identified by ACSC in the Company's RRM filing; and

WHEREAS, the Company has filed evidence that existing rates are unreasonable and should be changed; and

WHEREAS, independent analysis by ACSC's rate expert concluded that Atmos Mid-Tex is able to justify a slight rate increase over current rates; and

WHEREAS, the Steering Committee has advocated in other proceedings that Atmos Mid-Tex hedge natural gas futures in order to mitigate the volatility of natural gas prices, which are a flow through to customers; and

WHEREAS, the ACSC Executive Committee, as well as ACSC lawyers and consultants, recommend that ACSC members approve the attached rate tariffs ("Attachment A" to this Ordinance), which will increase the Company's revenue requirement by $2.6 million; and

WHEREAS, the attached tariffs implementing new rates and Atmos' Proof of Revenues ("Attachment B" to this Ordinance) are consistent with the negotiated resolution reached by ACSC Cities and are just, reasonable, and in the public interest; and

WHEREAS, it is the intention of the parties that if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City; and

WHEREAS, the negotiated resolution of the Company's RRM filing and the resulting rates are, as a whole, in the public interest;

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

SECTION 1. That the findings set forth in this Ordinance are hereby in all things approved.

SECTION 2. That the City Council finds that the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable and new tariffs and Atmos' Proof of Revenues, which are attached hereto and incorporated herein as Attachments A and B, are just and reasonable and are hereby adopted.

SECTION 3. That Atmos Mid-Tex shall reimburse the reasonable rate making expenses of the ACSC Cities in processing the Company's rate application.

SECTION 4. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

SECTION 5. That if any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

SECTION 6. That if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City.

SECTION 7. That the Company's Gas Cost Recovery tariff is revised to permit recovery of certain costs associated with hedging natural gas futures.

SECTION 8. That this Ordinance shall become effective from and after its passage with rates authorized by attached Tariffs to be effective for bills rendered on or after August 1, 2009.

SECTION 9. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of David Park, Vice President Rates and Regulatory Affairs, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

SECTION 10. That it is hereby officially found, determined, and declared that a sufficient written notice of the date, hour, place, and subject of the meeting of the City Council at which this ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public at the City Hall of the City for the time required by law preceding this meeting, as required by the Texas Open Meetings Act, Chapter 551 of the Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter hereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

INTRODUCED on this the _____________ day of _________________, 2009.

ADOPTED on this the ________________ day of _________________, 2009.

EFFECTIVE DATE on this the _________ day of _________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ____________________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ____________________________________
BRANDON S. SHELBY,
CITY ATTORNEY

Lloyd Gosselink
ATTORNEYS AT LAW
1984 25 Years 2009

816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

Ms. Doyle's Direct Line: (512) 322-5820
Email: kdoyle@lglawfirm.com

MEMORANDUM

TO: Atmos City Steering Committee (ACSC) Members

FROM: Geoffrey Gay
Kristen Doyle

DATE: July 8, 2009

RE: **Atmos RRM Settlement - FINAL ACTION NEEDED BY AUGUST 31, 2009**

The ACSC Settlement Committee (Jay Doegey – Arlington, Danny Reed – Fort Worth, Mark Israelson – Plano, Phil Boyd – Lewisville, Odis Dolton - Abilene), with the advice and input of ACSC consultants and lawyers, has worked to resolve the Company's pending $20.2 million Rate Review Mechanism ("RRM") rate increase request without the necessity of a protracted and costly contested case proceeding. The attached tariff that reflects rates that will increase Atmos' revenues by $2.6 million. The negotiated result reduces Atmos' requested rate increase by more than 85%. The monthly bill impact for an average residential customers will be $0.15. The ACSC Executive Committee recommends approval of the negotiated resolution because it represents an outcome that is equal to or better than the outcome expected from a lengthy contested case proceeding, and maintains cities' role as a regulator of natural gas rates.

Please schedule consideration of the Ordinance at your next available council meeting. Final council action to approve the Ordinance must take place by August 31, 2009. To assist you, several documents are attached:

- An ordinance setting new rates. The approved Ordinance should include the attached Tariffs ("Attachment A" to the Ordinance) and Proof of Revenues ("Attachment B")
- A model staff report
- A RRM fact sheet with customer impacts by class

Please contact Kristen (512/322-5820, kdoyle@lglawfirm.com) immediately if your city is unable to meet the August 31st deadline for final action. Once final action has been taken by your city, please forward a copy of the Ordinance to Atmos Mid-Tex and to our paralegal, Barbara Kimmell (fax number: 512/472-0532, bkimmell@lglawfirm.com).

Attachment A

ATMOS ENERGY CORPORATION
MID-TEX DIVISION

REVISION NO: 0

RATE SCHEDULE:	R – RESIDENTIAL SALES	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 29

Application
Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

Type of Service
Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate
Customer's monthly bill will be calculated by adding the following Customer and Mcf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	$ 7.00 per month
Commodity Charge – All Mcf	$2.2707 per Mcf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement
An Agreement for Gas Service may be required.

Notice
Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Issued By: David J. Park — Vice President, Rates and Regulatory Affairs
Date Issued:

ATTACHMENT B

ATMOS ENERGY CORP., MID-TEX DIVISION
PROOF OF REVENUES
TEST YEAR ENDING DECEMBER 31, 2008
(2009 RRM SETTLEMENT PROPOSAL)

Line No.	Description (a)	Prospective Rate Increase (b)	2008 True-up (c)	Total change from current rates (d)
1	**Rate R**			
2	Consumption Charge per MCF			
3	Change from Current Rate	$0.1047	$0.0060	$0.0297
4	Billing Units for Specified Period	82,321,960	82,321,960	82,321,960
5	Total Change in Base Revenue	$8,619,109	$493,932	$2,444,962
6	Associated Revenue Taxes	$532,144	$30,495	$150,952
7	Total Rate Impact	$9,151,253	$524,427	$2,595,914
8	Number of Bills for Specified Period	17,244,058	17,244,058	17,244,058
9	Average Impact per Bill	$0.53	$0.03	$0.15
10	**Rate C**			
11	Consumption Charge per MCF			
12	Change from Current Rate	$0.0383	$0.0052	$0.0068
13	Billing Units for Specified Period	52,439,100	52,439,100	52,439,100
14	Total Change in Base Revenue	$2,008,418	$272,683	$356,586
15	Associated Revenue Taxes	$124,000	$16,835	$22,016
16	Total Rate Impact	$2,132,417	$289,519	$378,601
17	Number of Bills for Specified Period	1,452,943	1,452,943	1,452,943
18	Average Impact per Bill	$1.47	$0.20	$0.26
19	**Rates I&T - 1st block**			
20	Consumption Charge per MCF			
21	Change from Current Rate	$0.0144	$0.0087	($0.0150)
22	Billing Units for Specified Period	9,681,181	9,681,181	9,681,181
23	Total Change in Base Revenue	$139,409	$84,226	($145,218)
24	Associated Revenue Taxes	$8,607	$5,200	($8,966)
25	Total Rate Impact	$148,016	$89,426	($154,183)
26	**Rates I&T - 2nd block**			
27	Consumption Charge per MCF			
28	Change from Current Rate	$0.0105	$0.0064	($0.0109)
29	Billing Units for Specified Period	10,782,882	10,782,882	10,782,882
30	Total Change in Base Revenue	$113,220	$69,010	($117,533)
31	Associated Revenue Taxes	$6,990	$4,261	($7,257)
32	Total Rate Impact	$120,210	$73,271	($124,790)
33	**Rates I&T - 3rd block**			
34	Consumption Charge per MCF			
35	Change from Current Rate	$0.0023	$0.0014	($0.0023)
36	Billing Units for Specified Period	19,798,632	19,798,632	19,798,632
37	Total Change in Base Revenue	$45,537	$27,718	($45,537)
38	Associated Revenue Taxes	$2,811	$1,711	($2,811)
39	Total Rate Impact	$48,348	$29,429	($48,348)
40	**Rates I&T - Total**			
41	Total Rate Impact	$316,575	$192,127	($327,322)
42	Number of Bills for Specified Period	11,571	11,571	11,571
43	Average Impact per Bill	$12.79	$7.73	($13.32)
44				
45	**Total Change in Base Revenue**	**$10,925,693**	**$947,570**	**$2,493,260**
46	**Total Rate Impact (Inc. Rev. Taxes)**	**$11,600,245**	**$1,006,073**	**$2,647,194**

Model Staff Report

The City, along with 150 other cities served by Atmos Energy Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On March 6, 2009, Atmos Mid-Tex filed with the City an application to increase natural gas rates pursuant to the Rate Review Mechanism ("RRM") tariff approved by the City as part of the settlement of the Atmos Mid-Tex 2007 Statement of Intent to increase rates.

The Atmos Mid-Tex March RRM filing sought a $20.2 million rate increase. The City worked with ACSC to analyze the schedules and evidence offered by Atmos Mid-Tex to support its request to increase rates. The Ordinance and attached RRM tariff are the result of negotiation between ACSC and the Company to resolve issues raised by ACSC during the review and evaluation of ACSC's RRM filing. The Ordinance and RRM tariffs approve rates that will increase the Company's revenues by $2.6 million effective for bills rendered on or after August 1, 2009. The monthly bill impact for the average residential customer will be a $0.15 increase (about a 0.22% increase in the total bill).

Please note that current rates contain a true-up component ($9 million to be collected over twelve months) from the first RRM in 2008. Collection of the 2008 true-up amount is scheduled to end on November 1, 2009. The rate impact of that 2008 true-up amount for the period August 1 – October 31, 2009 is $1,006,073. To simplify the process and to reduce rate fluctuations, the parties have agreed to eliminate collection of the 2008 true-up on August 1, 2009 rather than November 1, 2009. The remaining $1,006,073 that is still owed from the 2008 true-up will be recovered as part of the 2009 true-up over 12 months rather than 3 months. This change related to the 2008 true-up amount is revenue and rate impact neutral.

The ACSC Executive Committee recommends that all ACSC Cities adopt the Ordinance implementing the rate change.

RRM Background:

The RRM tariff was approved by ACSC Cities as part of the settlement agreement to resolve the Atmos Mid-Tex 2007 rate increase case. Atmos Mid-Tex's current action represents the second filing pursuant to the three-year trial project known as the RRM process. The RRM process was created collaboratively by ACSC and Atmos Mid-Tex as an alternative to the GRIP surcharge process. The RRM process allows for a more comprehensive rate review and annual adjustment that will function as a substitute for future GRIP filings during the three-year trial period specified by the tariff.

There are two components to the RRM adjustment. The prospective component adjusts rates for known and measurable changes in O&M and net plant investment. Atmos Mid-Tex and ACSC agreed to cap changes to expenses and invested capital at no more than 5%. The true-up component evaluates whether the Company has over or underrecovered its earnings for the previous year. For purposes of the RRM true-up component, the Atmos Mid-Tex rate of return on equity and its capital structure are frozen to avoid the parent company from manipulating the overall rate of return. Costs expressly prohibited from recovery through the RRM include first-class air fare, travel, meals or entertainment for an employee's spouse, alcohol, sports events, entertainment, arts and cultural events, sponsorship of sports, arts or cultural events, and social club membership dues.

Purpose of the Ordinance:

The purpose of the Ordinance is to approve rate tariffs ("Attachment A") and Proof of Revenues ("Attachment B") that reflect the negotiated rate change pursuant to the RRM process. In addition to the RRM tariffs, the Ordinance also approves a revision to the Atmos Mid-Tex current Gas Cost Recovery ("GCR") tariff to allow the Company to recover certain hedging costs associated with natural gas futures through the GCR tariff.

As a result of the negotiations, ACSC was able to reduce the Company's requested $20.2 million RRM increase by more than 70%. Approval of the Ordinance will result in rates that implement a $2.6 million increase in Atmos' revenues effective August 1, 2009.

Reasons Justifying Approval of the Negotiated Resolution:

During the time that the City has retained original jurisdiction in this case, consultants working on behalf of ACSC cities have investigated the support for the Company's requested rate increase. While the evidence does not support the $20.2 million increase requested by the Company, ACSC consultants agree that the Company can justify a slight increase in revenues. The agreement on $2.6 million is a compromise between the positions of the parties.

The alternative to a settlement of the RRM filing would be a contested case proceeding before the Railroad Commission of Texas ("RRC") on the Company's current application, would take several months and cost ratepayers millions of dollars in rate case expenses and would not likely produce a result more favorable than that to be produced by the settlement. The ACSC Executive Committee recommends that ACSC members take action to approve the Ordinance authorizing new rate tariffs.

With regard to the revision to the GCR tariff, ACSC has advocated that the Company use hedging as a risk management tool to help mitigate volatile natural gas prices. The tariff change is consistent with ACSC's prior position.

Explanation of "Be It Ordained" Paragraphs:

1. This paragraph approves all findings in the Ordinance.

2. This section adopts the attached tariffs ("Attachment A") and the Company's Proof of Revenues ("Attachment B") in all respects and finds the rates set pursuant to the attached tariffs to be just, reasonable and in the public interest. Note that only new tariffs or existing tariffs being revised are attached to the Ordinance. Existing tariffs not being changed in any way are not attached to the Ordinance.

3. This section requires the Company to reimburse ACSC for reasonable rate making costs associated with reviewing and processing the RRM application.

4. This section repeals any resolution or ordinance that is inconsistent with this Ordinance.

5. This section finds that the meeting was conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

6. This section is a savings clause, which provides that if any section(s) is later found to be unconstitutional or invalid, that finding shall not affect, impair or invalidate the remaining provisions of this Ordinance. This section further directs that the remaining provisions of the Ordinance are to be interpreted as if the offending section or clause never existed.

7. This section is a "Most Favored Nations" clause, which protects the City by mandating that if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City.

8. This section allows the Company to recover certain costs associated with natural gas hedging through the GCR tariff.

9. This section provides for an effective date upon passage.

10. This paragraph directs that a copy of the signed Ordinance be sent to a representative of the Company and legal counsel for ACSC.

Rate Review Mechanism
<u>Fact Sheet</u>

The Rate Review Mechanism (RRM) was created in 2008 as part of a collaborative agreement between ACSC and Atmos. It replaces the unworkable and contentious Gas Reliability Infrastructure Program (GRIP) surcharge process.

The RRM authorizes cities to meaningfully review and dispute the company's annual rate filings in an expedited rate proceeding at the city level. This authority was lacking under the GRIP process.

The RRM is a substitute for GRIP filings during the three-year trial period (2008 – 2010).

The RRM permits the Company to seek an annual review of its revenues, estimated cost of operations, and capital investments. In most cases, the company cannot seek rate adjustments greater than 5 percent. The Company must provide evidence as part of the annual review process that cities can assess and, if necessary, challenge.

The RRM process allows Atmos to seek a surcharge from ratepayers if its anticipated expenses exceed its anticipated revenues for a 12 month period. However, if the Company's revenues exceed its authorized rate of return, it must issue refunds.

<u>Costs Expressly Prohibited from Recovery Under the RRM</u>:

First class airfare, travel, meals or entertainment for an employee's spouse, alcohol, sports events, entertainment, arts and cultural events, sponsorship of sports, arts or cultural events, and social club membership dues.

The RRM is applicable only to the Company's base rates - the cost of delivering natural gas to customers. The commodity price of natural gas is a pass-through cost to customers that can change monthly based upon the price of natural gas.

<u>RRM Bill Impacts</u>:

Pursuant to the negotiated agreement between Atmos and the Steering Committee, the tariffs implementing the RRM will increase rates by $2.6 million. The average monthly customer impact by class will be:

Residential (4.7 Mcf/month) - $0.15/month increase (0.22% overall increase)
Commercial (36.1 Mcf/month) - $0.26/month increase (0.06% overall increase)
Industrial (3480 MMBtu/month) - $46.80/month decrease (1.96% overall decrease)

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. B.5

ADOPTION OF ORDINANCES
Consider Adoption of Ordinance Numbers: 5611, 5612 and 5613

B.2 PUBLIC HEARING OF ORDINANCE NO. 5611
Designating a Certain Area as Industrial Reinvestment Zone, Number 072009-2, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

B.3 PUBLIC HEARING OF ORDINANCE NO. 5612
Designating a Certain Area as Industrial Reinvestment Zone, Number 072009-1, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

B.4 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5613
Approving a Negotiated Resolution Between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division Regarding the Company's Rate Review Mechanism Filing in all Cities Exercising Original Jurisdiction; Declaring Existing Rates to be Unreasonable; Requiring the Company to Reimburse Cities' Reasonable Ratemaking Expenses; Adopting Tariffs that Reflect Rate Adjustments Consistent with the Negotiated Settlement and Finding the Rates to be Set by the Attached Tariffs to be Just and Reasonable; Approving Atmos' Proof of Revenues; Adopting a Savings Clause; Declaring an Effective Date; and Requiring Delivery of this Ordinance to the Company and the Steering Committee's Legal Counsel

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. B.6

CONSENT AGENDA

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

C.4 **** RESOLUTION NO. 5386***
Authorizing Continued Participation with the Atmos Cities Steering Committee; Authorizing the Payment of Two Cents ($0.02) Per Capita to the Atmos Cities Steering Committee to Fund Regulatory and Related Activities Related to Atmos Energy Corporation

C.5 **** RESOLUTION NO. 5387***
Authorizing Execution of an Agreement with EnerNOC, Inc. for ERCOT Demand Response Sales and Services for the Sherman Water Treatment and Wastewater Treatment Plants

C.6 **** RESOLUTION NO. 5388***
Abandoning a Ten Foot (10') City Drainage and Utility Easement located at Lot 1, Block 1 of the Windsor Place Addition

C.7 **** RESOLUTION NO. 5389***
Authorizing the Purchase of Replacement Residential Trash and Recycling Carts for the Solid Waste Services Department through the Texas Comptroller of Public Accounts Cooperative Purchasing Program

D.1 **** REQUEST TO ADVERTISE***
Willow Street Water Main

D.2 **** REQUEST TO ADVERTISE***
Relief Sewer "C"

D.3 **** REQUEST TO ADVERTISE***
Fine Screen System – Wastewater Treatment Plant

D.4 **** REQUEST TO ADVERTISE***
Primary and Secondary Digester Rehabilitation – Wastewater Treatment Plant

D.5 **** REQUEST TO ADVERTISE***
Primary Clarifier Rehabilitation – Wastewater Treatment Plant

D.6 * CHANGE ORDER NO. 1

Oak Creek Water Main Replacement; Utility Construction Services of Texas, Inc.; $7,900.00, Decrease

D.7 * OTHER BUSINESS

Set Public Hearing on Three Proposed Tax Abatement Agreements for Monday, August 3, 2009

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. C.1

RESOLUTION NO. 5383
Approving and Adopting the 2009 Comprehensive Plan for the City of Sherman, Texas

Issue
To approve and adopt the City of Sherman's 2009 Comprehensive Plan (Plan)

Background
The City Council approved a project, as part of the fiscal year (FY) 2007-2008 budget, to update the City's Comprehensive Plan. Kendig Keast Collaborative was retained to guide this process. The Plan update was a process that spanned about fifteen (15) months and included various public meetings to solicit input from the community. Several updates have been provided to the Council on the progress of this project, culminating with a joint meeting between City Council and the Planning and Zoning Commission (P&Z) in February, 2009.

The Plan update is now complete and implementation guidelines for the plan were reviewed by P&Z at their June 16, 2009 meeting. As a result, this Plan is being provided to the Council for their final approval and adoption, after providing for a public hearing to allow for any final citizen input.

The highest priority initiatives arising from the Plan update have been identified and are included in the City's plan of work and Budget for Fiscal Year (FY) 2010. These include such things as enhanced development standards, continued GIS system improvement and development, parks to standards maintenance, and funding for storm drainage planning and improvements. The staff will continue to use this Plan as a roadmap for planning and decision making in the future.

Origination
City Council & Staff

Financial Consideration
Funding to begin implementing the highest priorities arising from the Plan update has been provided in the FY 2010 budget, adoption of which is scheduled for September. There are no direct costs associated with adopting this Plan.

Board Recommendation
At the June 16, 2009 meeting, the Planning & Zoning Commission recommended unanimously to adopt the 2009 Sherman Comprehensive Plan.

Attachments
Resolution No. 5383
Implementation Plan
Hard and electronic copies of the 2009 Sherman Comprehensive Plan are available for review

Prepared by:
Scott Shadden, Director of Developmental Services

Approved by:
George Olson, City Manager

RESOLUTION NO. 5383

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AND ADOPTING THE 2009 COMPREHENSIVE PLAN FOR THE CITY OF SHERMAN, TEXAS; PROVIDING FOR AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, due to certain changes, growth and development of the City of Sherman, it has become necessary, due to the passage of time to update the Comprehensive Plan of the City of Sherman, Texas; and

WHEREAS, pursuant to the authority of Resolution No. 5149 passed and approved by the City Council on January 22, 2008, Kendig Keast Collaborative has prepared an updated Comprehensive Plan for the City of Sherman; and

WHEREAS, the City of Sherman has followed all procedures and done all things required by its Charter and State law for the update of its Comprehensive Plan; and

WHEREAS, the City Council of the City of Sherman, Texas, desires to accept the recommendations of the Planning and Zoning Commission to approve the said updated Comprehensive Plan;

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

SECTION 1. That the City Council of the City of Sherman, Texas, does hereby accept, as advisory and as a guide, the 2009 Sherman Comprehensive Plan, attached hereto and incorporated herein for all intents and purposes, and that the same be and is hereby in all things approved and adopted as the 2009 Comprehensive Plan of the City of Sherman, Texas.

SECTION 2. That the City Council of the City of Sherman, Texas, hereby submits this 2009 Comprehensive Plan to all citizen groups and committees, city boards and commissions, and all citizens interested in the orderly growth and progress of the City of Sherman for use as a guide in the planning and future growth and development of the City of Sherman.

SECTION 3. That the effective date of this resolution shall be the 20th day of July, 2009.

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

PASSED AND APPROVED on this the _____ day of ________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ______________________________

BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________

LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________

BRANDON S. SHELBY,
CITY ATTORNEY

IMPLEMENTATION

The comprehensive plan should be a "living document," that is, a document that is frequently referred to for guidance in community decision-making. Its assumptions, goals, policies and action strategies must also be revisited periodically to ensure that it is providing clear and reliable direction on a range of matters, including land development issues and public investments in infrastructure and services.

Implementation is not just about a list of action items. It is a challenging process that will require the commitment of the City's elected and appointed officials, staff, residents, business owners, major institutions, other levels of government, and other organizations and individuals who will serve as champions of the plan and its particular direction and strategies. Equally important are formal procedures for the ongoing monitoring and reporting of successes achieved, difficulties encountered, new opportunities and challenges that have emerged, and any other change in circumstances which may require rethinking of plan priorities.

PURPOSE

The comprehensive plan will be the basis for decision-making on the future development and enhancement of the City of Sherman. This final chapter breathes life into the rest of the plan by setting out a practical, prioritized, and sequenced implementation program. The key objective of this chapter is to integrate the different elements of the plan in such a way as to provide a clear path for sound decisions. This chapter is also intended to establish accountability for plan implementation and provide guidance on essential processes to maintain its relevance to the City and its citizens.

PLAN IMPLEMENTATION METHODS

Simply setting out an implementation framework in this chapter is not enough to ensure that the action items of this plan will be carried out and the community's vision and goals ultimately achieved. The policies and action priorities in this plan should be consulted frequently and should be widely used by decision-makers as a basis for judgments regarding:

- ⇒ The timing and availability of infrastructure improvements.
- ⇒ Proposed development and redevelopment applications.
- ⇒ City-initiated and landowner-requested annexations.
- ⇒ Zone change requests and other zoning-related actions.
- ⇒ Expansion of public facilities, services and programs.
- ⇒ Annual capital budgeting.
- ⇒ Potential re-writes and amendments to the City's Zoning Ordinance and related code elements.
- ⇒ Intergovernmental (including City/College, inter-City, and City/County) coordination and agreements.
- ⇒ Operations, capital improvements, and programming related to individual City departments.

There are five general methods for plan implementation:

1. policy-based decisions;
2. land development regulations and engineering standards;
3. capital improvements programming;
4. specific plans and studies; and
5. special projects, programs, and initiatives.

Policy-Based Decisions

Land use and development decisions should be made based on the policies that are set out in this comprehensive plan. In some measure, the adoption of new or amended land development regulations (e.g., zoning, subdivision, landscaping, sign controls, etc.) will establish a specific framework for evaluating private development proposals against the City's articulated policies. However, decisions regarding annexation, infrastructure investment, Future Land Use & Character map amendments, and right-of-way acquisition are generally left to the broad discretion of the City Council. This plan provides the common policy threads that should connect those decisions.

Land Development Regulations and Engineering Standards

Land development regulations and engineering standards are fundamentals for plan implementation. It is plain—but often underappreciated—that private investment decisions account for the vast majority of any City's physical form. Consequently, zoning and subdivision regulations and associated development criteria and technical engineering standards are the basic keys to ensuring that the form, character and quality of development reflect the City's planning objectives. These ordinances should reflect the community's desire for quality development outcomes while recognizing economic factors. They should not delay or interfere unnecessarily with appropriate new development or redevelopment that is consistent with plan goals and policies.

Capital Improvements Programming

A capital improvements program, or "CIP," is a multi-year plan (typically five years) that identifies budgeted capital projects, including street infrastructure; water, wastewater and drainage facilities; parks, trails and recreation facility construction and upgrades; construction of public buildings; and purchase of major equipment. Identifying and budgeting for major capital improvements will be essential to implementing this plan. Decisions regarding the prioritization of proposed capital improvements should take into account the policy and management directives of this plan.

Specific Plans and Studies

There are a number of areas where additional planning work is recommended, at a "finer grain" level of detail than is appropriate in a comprehensive plan. As such, some parts of this plan will be implemented only after some additional planning or special study.

Special Projects, Programs, and Initiatives

Special projects or initiatives are the last broad category of implementation measures. These may include initiating or adjusting City programs; entering into interlocal agreements; expanding citizen participation programs; providing training; and other types of special projects.

PLAN ADMINISTRATION

During the development of the plan, representatives of government, business, neighborhoods, civic groups, and others came together to inform the planning process. These community leaders, and new ones to emerge over the horizon of this plan, must maintain their commitment to the ongoing implementation of the plan's policies—and to the periodic updating of the plan to adapt to changing conditions or unforeseen events.

Education

Comprehensive plans are relatively general in nature, but they are still complex policy documents that account for interrelationships among various policy choices. As such, educating decision-makers and administrators about plan implementation is an important first step after plan adoption. As the principal groups that will implement the plan, the City Council, Planning & Zoning Commission, and City department heads should all be "on the same page" with regard to priorities, responsibilities and interpretations.

Consequently, an education initiative should be undertaken immediately after plan adoption, which should include:

- ⇒ A discussion of the individual roles and responsibilities of the Council, Planning & Zoning Commission, Comprehensive Plan Committee (and other advisory bodies), and individual staff members.
- ⇒ A thorough overview of the entire comprehensive plan, with emphasis on the parts of the plan that relate to each individual group.
- ⇒ Implementation tasking and priority setting, which should lead to each group establishing a one-year and three-year implementation agenda.
- ⇒ A public hearing to discuss the plan and implementation of related action items, with support from planning personnel, the City Attorney, the City Engineer, and other key staff.

Role Definition

As the community's elected officials, the City Council will assume the lead role in implementation of this plan. The key responsibilities of the City Council are to decide and establish priorities, set timeframes by which each action will be initiated and completed, and determine the budget to be made available for implementation efforts. In conjunction with the City Manager, City Council must also ensure effective coordination among the various groups that are responsible for carrying out the plan's recommendations.

The City Council will take the lead in the following general areas:

- ⇒ Acting as a "champion" of the plan.
- ⇒ Adopting and amending the plan by resolution, after recommendation by the Planning & Zoning Commission.
- ⇒ Adopting new or amended land development regulations to implement the plan.
- ⇒ Approving interlocal agreements that implement the plan.
- ⇒ Establishing the overall action priorities and timeframes by which each action item of the plan will be initiated and completed.

- ⇒ Considering and approving the funding commitments that will be required.
- ⇒ Offering final approval of projects and activities and the associated costs during the budget process, keeping in mind the need for consistency with the plan and its policies.
- ⇒ Providing policy direction to the Planning & Zoning Commission, other appointed City boards and commissions, and City staff.

The Planning & Zoning Commission will take the lead in the following general areas:

- ⇒ Hosting the education initiative described above.
- ⇒ Periodically obtaining public input to keep the plan up to date, using a variety of community outreach and citizen and stakeholder involvement methods.
- ⇒ Ensuring that recommendations forwarded to the City Council are reflective of the plan goals, policies and recommendations. This relates particularly to decisions involving development review and approval, zone change requests, ordinance amendments, and potential annexations.
- ⇒ After holding one or more public hearings to discuss new or evolving community issues and needs, making recommendations to the City Council regarding plan updates and plan amendments.

City Staff will take the lead in the following general areas:

- ⇒ Managing day to day implementation of the plan, which could include ongoing coordination through an interdepartmental plan implementation committee (similar to the staff team that informally met during the development of this plan).
- ⇒ Lead capital improvements planning efforts.
- ⇒ Managing the drafting of new or amended land development regulations.
- ⇒ Conducting studies and developing additional plans (including management of consultant efforts, as necessary).
- ⇒ Reviewing applications for consistency with the comprehensive plan as required by the City's land development regulations.
- ⇒ Negotiating the specifics of interlocal agreements.
- ⇒ Administering collaborative programs and ensuring open channels of communication with various private, public and non-profit implementation partners.
- ⇒ Maintaining an inventory of potential plan amendments, as suggested by City staff and others, for consideration during annual and periodic plan review and update processes.
- ⇒ Working with the Comprehensive Plan Committee to identify and report to Council significant deviations from the plan arising from development activities.

ACTION PLAN

The vision and goals in a comprehensive plan are attained, over time, through a multitude of specific actions. To this end, both long- and short-range implementation strategies must be identified along with an action timeframe and the assignment of responsibilities to specific entities.

Table 10.1, Action Agenda Ranking, highlights a variety of recommended initiatives that were identified through the long-range planning process and discussed with the Comprehensive Plan Advisory Committee (CPAC). It is helpful to have the City's leadership identify their highest priorities among these action options to provide direction for the plan implementation efforts of both municipal government and the broader community.

As part of the joint workshop of City Council and the Planning and Zoning Commission that was held to review highlights of the City's draft Comprehensive Plan (February 25, 2009), this type of prioritization exercise was completed to determine which recommended action items in the plan might receive priority attention in the first several years of plan implementation. A total of 18 individuals participated in the ranking exercise (members of City Council and the Planning and Zoning Commission, along with several key members of City staff). Each participant was given eight sticker dots to indicate their highest priorities among a list of 32 significant action items from the plan (seven dots of the same color were worth 5 points each, and a "silver bullet" dot of a different color was intended to indicate each individual's ultimate priority as it was worth 10 points).

The results show that "Updated and enhanced development regulations" received a very high number of regular dots (13), as well as a high number of "silver bullet" dots (5). While this item was by far the highest ranked action item, there was a cluster of about 10 additional items that received a relatively high ranking. Items that rose to the top through the ranking exercise—and which the City should have the capacity to address during the first several years following Comprehensive Plan adoption—are presented in **Table 10.2, Action Agenda – Highest Priorities**. It should be noted that this set of actions represents the overall comprehensive plan well since, as indicated in the table, they originated from various sections of the plan.

As discussed earlier in this chapter, the initiatives will also require different types of action, with some involving physical construction (capital improvements) while others are regulatory in nature or call for more targeted study and planning to set the stage for important community enhancements (e.g., a Trail, Bikeway & Greenway Master Plan). As was clarified in the ensuing workshop discussion of the prioritization results, code "enhancements" does not necessarily mean stricter ordinances. This could

A joint workshop of City Council and Planning & Zoning Commissioners enabled participants to learn about strategic opportunities and challenges identified in the draft Comprehensive Plan and consider what action initiatives might be most important to pursue in the first several years following plan adoption.

also include providing more flexibility as to how development applicants go about meeting City standards and achieving compliance, as well as building incentives into the code to reward quality development outcomes which are desired by the community to enhance Sherman's image and development value.

Table 10.1, Action Agenda Ranking

Rank	Action	Regular Dots (5 pts)		"Silver Bullet" Dots (10 pts)		Total Points
		Number	*Points*	*Number*	*Points*	
1	Updated and enhanced development regulations	13	65	5	50	115
2	City Geographic Information System (GIS) enhancements (e.g., storm water system, parks system)	8	40	3	30	70
3	Storm drainage studies and planning for targeted capital improvements and financing	7	35	3	30	65
4	Revitalization of older neighborhoods	8	40	2	20	60
5	Parks to Standard maintenance and enhancement initiative for existing parks	8	40	1	10	50
5	Strategic annexation planning	8	40	1	10	50
6	Downtown development / revitalization	9	45		0	45
7	Trail, Bikeway & Greenway Master Plan and initial trail network development	8	40		0	40
8	Roadway system maintenance, upgrades, and safety improvements	5	25	1	10	35
8	Senior Center modernization and upgrades	5	25	1	10	35
9	Enhanced community aesthetics	4	20	1	10	30
9	Sherman Public Library modernization and upgrades	6	30		0	30
10	Enhanced and unified marketing effort through SEDCO	5	25		0	25
10	SPD / SFD facility needs study	5	25		0	25
10	Water / wastewater system master plan	5	25		0	25
10	Water system improvements	5	25		0	25
11	Formal parkland dedication (and fee in lieu of dedication) process	4	20		0	20
11	Ongoing and new housing affordability initiatives (low-income, first-time homebuyers, seniors)	4	20		0	20
12	Green building practices in new/upgraded City facilities (and promotion of private measures)	3	15		0	15
12	Promotion of conservation development practices	1	5	1	10	15
12	Workforce development and training	3	15		0	15

The priority-setting workshop was conducted to demonstrate the value of considering plan implementation priorities among the City's leadership—and then revisiting these priorities at least annually to recognize accomplishments, highlight areas where further attention and effort is needed, and determine whether some items have moved up or down on the priority list given changing circumstances and emerging needs. It should be kept in mind that early implementation of certain items, while perhaps not the uppermost priorities, may be expedited by the availability of related grant opportunities, by a state or federal mandate, or by the eagerness of one or more partners to pursue an initiative with the City. On the other hand, some high-priority items may prove difficult to tackle in the near term due to budget constraints, the lack of an obvious lead entity or individual to carry the initiative forward, or by the community's readiness to take on a potentially controversial new program.

Table 10.1, Action Agenda Ranking (continued)

Rank	Action	Regular Dots (5 pts)		"Silver Bullet" Dots (10 pts)		Total Points
		Number	*Points*	*Number*	*Points*	
13	Leadership development and networking (annual Economic Summit, Young Professionals Organization	2	10		0	10
13	Specific park/recreation improvements in accordance with 2005 Master Plan	2	10		0	10
13	Wastewater system improvements	2	10		0	10
14	Energy efficiency initiatives for public facilities (and promotion of private measures)	1	5		0	5
14	Ongoing promotion of local arts and culture (public/private Steering Committee)	1	5		0	5
14	Rehabilitation of older housing stock	1	5		0	5
15	Community-wide sidewalk inventory for targeting repairs, improvements, grant requests	0	0		0	0
15	Downtown Arts & Cultural District focus (including physical link to Courthouse Square)	0	0		0	0
15	Emergency Operations Center improvements	0	0		0	0
15	Maintain/expand strong recycling program	0	0		0	0
15	Transit system improvements by TAPS	0	0		0	0

Table 10.2, Action Agenda – Highest Priorities

Priority Action	Relevant Plan Section
▪ Updated and enhanced development regulations	*Urban Design & Future Land Use (plus others)*
▪ City Geographic Information System (GIS) enhancements	*Growth Management & Capacity*
▪ Storm drainage studies and planning	*Growth Management & Capacity*
▪ Revitalization of older neighborhoods	*Housing & Neighborhoods*
▪ Maintenance and enhancement initiative for existing parks	*Parks, Recreation & Open Space*
▪ Strategic annexation planning	*Growth Management & Capacity*
▪ Downtown development / revitalization	*Urban Design & Future Land Use*
▪ Trail, Bikeway & Greenway Master Plan and initial trail network development	*Parks, Recreation & Open Space*
▪ Roadway system maintenance, upgrades, and safety improvements	*Transportation*

Where to Start on Highest Action Priorities

In **Table 10.3, Implementation Strategy for Near Term Action Priorities**, a format is provided for expanding upon the priority items in Table 10.2. This includes the following elements and considerations:

⇒ **Further Prioritization.** The nine highest-ranked action items are further categorized as Priority 1, 2, or 3. This could relate to Years 1-3 following plan adoption, or it could just be a further indication of relative priority and readiness to take on a particular task over an initial implementation period not necessarily tied to calendar years. For example, action on a Priority 1 item might get started in Year 1 but take several years to complete fully, while some advance work on a Priority 2 item might be possible toward the end of Year 1.

⇒ **Action Type.** This relates back to the five types of implementation methods highlighted earlier in this chapter (policy focused, regulatory focused, capital focused, planning/study focused, program/initiative focused).

- ⇒ **Next Steps.** This involves the essential step of breaking down larger efforts into "first and next steps" to lay the groundwork for measurable action and build momentum toward targeted outcomes. This often involves further clarification of objectives and a realistic assessment of resources and capabilities to move an initiative forward. As noted in the table, in some cases it involves preparing to obtain professional services assistance if City staff do not have the time for or experience with a particular subject.
- ⇒ **Implementation and Coordination Roles.** In addition to identifying which City department(s) or function(s) would likely lead a task, this portion of Table 10.3 also highlights a variety of local and regional agencies and entities that might have a role to play in certain initiatives, whether through potential cost-sharing, technical assistance, direct cooperation (potentially through an interlocal agreement), or simply by providing input and feedback on a matter in which they have some mutual interest. In particular, whenever potential regulatory actions or new or revised development standards are to be considered, participation of the development community is essential to ensure adequate "give and take" and consensus building. Some of the entities currently listed do not factor into the nine actions itemized in Tables 10.2 and 10.3, but they might in future years as other Comprehensive Plan action recommendations move to the forefront. Likewise, others will likely need to be added to this table depending on the task at hand.
- ⇒ **Funding Sources.** This final set of columns in Table 10.3 indicates the typical ways to finance plan implementation efforts. An obvious source is through the City's own annual operating budget, as well as multi-year capital budgeting, which is not only for physical construction projects but also for funding significant studies and plans (e.g., the Trail, Bikeway & Greenway Master Plan) that are intended to lay the groundwork for phased capital investments and construction over a period of years. An "Other Governments" column is included along with a "Grants" column because grants are often applied for and awarded through a competitive process, but the County or another government agency might choose to commit funds directly to an initiative along with the City. On the other hand, "grants" can also come from foundations and other non-government sources. Finally, the "Private/Other" column is meant to underscore the potential for public/private initiatives, as well as corporate outreach and volunteerism, faith-based efforts, and other community and volunteer contributions (e.g., churches, Scouts, civic and service groups, etc.).

It is essential that this table, or a format like it, is completed by those involved in the plan development process as the first step toward implementation, especially in conjunction with the City's annual budget process, CIP

preparation, and departmental work planning. Following its refinement, this table should be advanced to the Planning & Zoning Commission and City Council for their review, consideration, and acceptance. At that point, the City staff member designated as the Comprehensive Plan Administrator should initiate a first-year work program in conjunction with the City Manager, other departments, and other public and private implementation partners.

Progress on the Year 1 priorities should be the focus of the first annual review and report a year after Comprehensive Plan adoption. Then, similar to multi-year capital improvements programming, the entire Action Agenda list in Table 10.1—and all other action items dispersed throughout the plan chapters—should be revisited annually to decide if any additional items are ready to move into the next three-year timeframe, and whether in Year 1, 2, or 3.

PLAN AMENDMENT PROCESS

The Sherman Comprehensive Plan is meant to be a flexible document allowing for adjustment to changing conditions over time. Shifts in political, economic, physical, technological, and social conditions, and other unforeseen circumstances, may influence and change the priorities and fiscal outlook of the community. As the City grows and evolves, new issues will emerge while others will no longer be as relevant. Some action statements will be found impractical or outdated while other plausible solutions will arise. To ensure that it continues to reflect the overall goals of the community and remains relevant and resourceful over time, the plan must be revisited on a regular basis to confirm that the plan elements are still on point and the associated goals, policies and action statements are still appropriate.

Revisions to the comprehensive plan are two-fold, with minor plan amendments occurring at least bi-annually and more significant modifications and updates occurring every five years. Minor amendments could include revisions to certain elements of the plan as a result of the adoption of another specialized plan or interim changes to the Future Land Use & Character Plan and/or the Thoroughfare Plan. Major updates will involve reviewing the base conditions and anticipated growth trends; re-evaluating the goals, policies and recommendations in the plan—and formulating new ones as necessary; and adding, revising or removing action statements in the plan based on implementation progress.

Annual Progress Report

The Planning & Zoning Commission along with the Comprehensive Plan Committee, with the assistance of staff, should prepare an annual progress report for presentation to the Mayor and City Council. This ensures that the

plan is consistently reviewed and that any needed modifications or clarifications are identified for the bi-annual minor plan amendment process. Ongoing monitoring of consistency between the plan and the City's implementing ordinances and regulations should be an essential part of this effort.

The Annual Progress Report should include and highlight:

⇒ Significant actions and accomplishments during the past year, including the status of implementation for each programmed task in the comprehensive plan.
⇒ Obstacles or problems in the implementation of the plan, including those encountered in administering the land use and transportation aspects, as well as any other policies of the plan.
⇒ Proposed amendments that have come forward during the course of the year, which may include revisions to the individual plan maps or other recommendations or text changes.
⇒ Recommendations for needed actions, programs and procedures to be developed and implemented in the coming year, including recommendation of projects to be included in the City's CIP, other programs/projects to be funded, and priority coordination needs with public and private implementation partners.

Bi-Annual Amendment Process

Plan amendments should occur on at least a bi-annual (every two year) basis, allowing for proposed changes to be considered concurrently so that the cumulative effect may be understood. When considering a plan amendment, the City should ensure the proposed amendment is consistent with the goals and policies set forth in the plan regarding character protection, development compatibility, infrastructure availability, conservation of environmentally sensitive areas, and other community priorities. Careful consideration should also be given to guard against site-specific plan changes that could negatively impact adjacent areas and uses or detract from the overall character of the area. Factors that should be considered in deciding on a proposed plan amendment include:

⇒ Consistency with the goals and policies set forth in the plan.
⇒ Adherence with the Future Land Use & Character and/or Thoroughfare Plans.
⇒ Compatibility with the surrounding area.
⇒ Impacts on infrastructure provision including water, wastewater, drainage, and the transportation network.
⇒ Impact on the City's ability to provide, fund and maintain services.
⇒ Impact on environmentally sensitive and natural areas.

⇒ Whether the proposed amendment contributes to the overall direction and character of the community as captured in the plan vision and goals (and ongoing public input).

Five-Year Update / Evaluation and Appraisal Report

An evaluation and appraisal report should be prepared every five years. This report should be prepared by City staff with input from various City departments, the Planning & Zoning Commission, and other boards and commissions. The report process involves evaluating the existing plan and assessing how successful it has been in achieving the community's goals. The purpose of the report is to identify the successes and shortcomings of the plan, look at what has changed over the last five years, and make recommendations on how the plan should be modified in light of those changes.

The report should review baseline conditions and assumptions about trends and growth indicators. It should also evaluate implementation potential and/or obstacles related to any unmet goals, policies and recommendations. The evaluation report and process should result in an amended comprehensive plan, including identification of new or revised information that may lead to updated goals, policies and/or action recommendations.

More specifically, the report should identify and evaluate the following:

1. Summary of major actions and interim plan amendments undertaken over the last five years.
2. Major issues in the community and how these issues have changed over time.
3. Changes in the assumptions, trends and base studies data, including the following:
   - ⇒ The rate at which growth and development is occurring relative to the projections put forward in the plan.
   - ⇒ Shifts in demographics and other growth trends based upon the 2010 Census data.
   - ⇒ The area of land that is designated and zoned for urban development and its capacity to meet projected demands and needs.
   - ⇒ City-wide attitudes and whether apparent shifts, if significant, necessitate amendments to the stated goals or strategies of the plan.
   - ⇒ Other changes in political, social, economic, technological or environmental conditions that indicate a need for plan amendments.
4. Ability of the plan to continue to support progress toward achieving the community's goals. The following should be evaluated and revised as needed:

⇒ Individual statements or sections of the plan must be reviewed and rewritten, as necessary, to ensure that the plan provides sufficient information and direction to achieve the intended outcome.

⇒ Conflicts between goals and policies that have been discovered in the implementation and administration of the plan must be pointed out and resolved.

⇒ The action agenda must be reviewed and major accomplishments highlighted. Those not completed by the specified timeframe should be re-evaluated to ensure their continued relevance and/or to revise them appropriately.

⇒ As conditions change, the timeframes for implementing the individual actions of the plan should be re-evaluated where necessary. Some actions may emerge as a higher priority given new or changed circumstances while others may become less important to achieving the goals and development objectives of the community.

⇒ Based upon organizational, programmatic and procedural factors, as well as the status of previously assigned tasks, the implementation task assignments must be reviewed and altered, as needed, to ensure timely accomplishment of the plan's recommended actions.

⇒ Changes in laws, procedures and missions may impact the ability of the community to achieve its goals. The plan review must assess these changes and their impacts on the success of implementation, leading to any suggested revisions in strategies or priorities.

Ongoing Community Outreach and Engagement

All review and updates processes related to the comprehensive plan should emphasize and incorporate ongoing public input. The annual and continual plan evaluation and reporting process should also incorporate specific performance measures and quantitative indicators that can be compiled and communicated both internally and to elected officials and citizens in a "report card" fashion. Examples might include:

⇒ Acres of new development (plus number of residential units and square footage of commercial and industrial space) approved and constructed in conformance with this plan and related City codes.

⇒ Various measures of service capacity (gallons, acre-feet, etc.) added to the City's major utility systems as indicated in this plan and associated utility master plans—and the dollars allocated to fund the necessary capital projects.

⇒ Acres of parkland and linear feet of trail developed or improved in accordance with this plan and related parks and recreation plans.

- ⇒ Indicators of City efforts to promote neighborhood integrity as emphasized in this plan (e.g., enhanced screening and buffering techniques between different development types, code enforcement activity, etc.).
- ⇒ Miles of new bike routes and transit routes added to the City's transportation system to provide alternative mobility options as recommended in this plan.
- ⇒ New businesses and associated employment added to the local job market through the economic development initiatives and priorities identified in this plan.
- ⇒ Indicators of the benefits of redeveloped sites and structures (appraised value, increased property and/or sales tax revenue, etc.) as envisioned through this plan.
- ⇒ The estimated dollar value of operating cost savings from reduced energy and water use, heating/cooling, etc., from green building practices and related conservation efforts in new and existing City facilities, as suggested in this plan.
- ⇒ The numbers of residents and other stakeholders engaged through City-sponsored education and outreach events related to comprehensive plan implementation and periodic review and updating, as outlined in this chapter.

Table 10.3, Implementation Strategy for Near Term Action Priorities

Item	ACTION	Priority 1	Priority 2	Priority 3	Action Type	NEXT STEPS	Implementation & Coordination Roles: CITY OF SHERMAN	SEDCO	Sh C of C	Sh C & VC	S CA&H	DSP&R	A College	GC College	SISD	Grayson Co	Grayson CAD	GSBDC	Texoma COG	S-D MPO	GTUA	TASWA	Private/ Other	Funding Sources: City Budget	CIP Budget	Other Govts	Grants	Private/Other
1	Updated and enhanced development regulations	✖			Regulation	• Identify code amendment priorities. • Determine staff capabilities and consultant needs. • Budget for consultant role.	Development Services, City Attorney																Development community	✓	✓			
2	City Geographic Information System (GIS) enhancements	✖			Program / Initiative	• Update GIS implementation plan as needed. • Identify priority data needs and map layers. • Identify sources of readily available data and mapping. • Determine items requiring fresh data collection/mapping. • Determine City staffing needs.	Information Technology, Development Services, Utilities & Engineering								●	●	●		●	●				✓	✓	✓		
3	Storm drainage studies and planning	✖			Further Study / Planning	• Prioritize study areas. • Determine potential cost-sharing to fund studies. • Explore external funding possibilities. • Budget for consultant role.	Utilities & Engineering									●			●				U.S. Army Corps of Engineers, FEMA	✓	✓	✓	✓	
4	Revitalization of older neighborhoods		✖		Program / Initiative	• Identify priority areas for neighborhood-level plans. • Outreach to neighborhood groups and leaders. • Prioritize capital projects and other actions based on plans.	Neighborhood Services, Development Services, Utilities & Engineering		●				●		●			●					Neighborhood/ civic associations, HUD-CDBG	✓	✓	✓	✓	✓
5	Maintenance and enhancement initiative for existing parks		✖		Program / Initiative	• Conduct system-wide facility review and quality/safety assessment. • Prioritize improvement needs. • Budget for multi-year CIP effort.	Parks & Recreation		●						●								User groups, sports associations, neighborhood groups	✓	✓			✓
6	Strategic annexation planning		✖		Further Study / Planning	• Identify priority annexation areas and rationale. • Determine areas appropriate for non-annex agreements. • Identify "exempt" areas eligible for near-term action. • Identify areas subject to three-year annexation plan. • Assess service needs and fiscal outlook by area. • Monitor / coordination with neighboring cities.	Development Services, Finance, City Attorney	●							●	●							Neighboring cities	✓	✓			

Table 10.3, Implementation Strategy for Near Term Action Priorities *(continued)*

		Priority					Implementation & Coordination Roles																	Funding Sources				
Item	ACTION	1	2	3	Action Type	NEXT STEPS	CITY OF SHERMAN	SEDCO	Sh C of C	Sh C & VC	S CA&H	DSP&R	A College	GC College	SISD	Grayson Co	Grayson CAD	GSBDC	Texoma COG	S-D MPO	GTUA	TASWA	Private/ Other	City Budget	CIP Budget	Other Govts	Grants	Private/Other
7	Downtown development / revitalization			✖	Program / Initiative	• Identify priority issues/topics to be addressed through a Downtown Master Plan • Determine potential cost-sharing to fund plan. • Budget for consultant role.	Development Services, Tourism		●	●	●	●				●		●					Downtown merchants and property owners	✓	✓			✓
8	Trail, Bikeway & Greenway Master Plan and initial trail network development			✖	Further Study / Planning, Capital Investment	• Identify priority areas and issues for Master Plan to address. • Determine potential cost-sharing to fund plan. • Budget for consultant role.	Parks & Recreation, Utility & Engineering	●					●	●	●	●				●			User groups, cycling clubs	✓	✓	✓	✓	✓
9	Roadway system maintenance, upgrades, and safety improvements			✖	Capital Investment	• Prioritize known problem areas and improvement needs. • Explore external funding or cost-sharing possibilities. • Define specific CIP projects. • Seek voter extension of 1/8-cent sales tax for specified projects.	Public Works, Utilities & Engineering, Finance	●								●				●			TxDOT coordination	✓	✓			

Abbreviations

CIP	Capital Improvements Program
SEDCO	Sherman Economic Development Corporation
Sh C of C	Sherman Chamber of Commerce
Sh C & VC	Sherman Convention & Visitors Council
SCA&H	Sherman Council for the Arts & Humanities
DSP&R	Downtown Sherman Preservation & Revitalization
A College	Austin College
GC College	Grayson County College
SISD	Sherman Independent School District
Grayson Co	Grayson County
Grayson CAD	Grayson County Appraisal District
GSBDC	Grayson Small Business Development Center
Texoma COG	Texoma Council of Governments
S-D MPO	Sherman-Denison Metropolitan Planning Organization
GTUA	Greater Texoma Utility Authority
TASWA	Texoma Area Solid Waste Authority
FEMA	Federal Emergency Management Agency
HUD-CDBG	U.S. Department of Housing & Community Development – Community Development Block Grant Program
TxDOT	Texas Department of Transportation

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. C.2

RESOLUTION NO. 5384
Approving and Authorizing Publication of Notice of Intention to Issue Certificates of Obligation

Issue
To authorize a resolution that gives notice of the City of Sherman's intention to issue $3.5 million in tax-exempt certificates of obligation (CO)

Background
As part of the budget development process for Fiscal Year 2009 (FY09), the Council directed the staff to pursue issuing the third and final portion of the planned CO bond issue to fund the construction of thoroughfare projects.

State law requires that certain notices be published to the public informing them of the Council's intentions to issue debt prior to adoption of an ordinance that authorizes the debt issuance. This resolution accomplishes this requirement. The COs are expected to be approved by Council at the September 8, 2009 meeting, with final funding expected to occur in late September.

Origination
City Manager's Office and Specialized Public Finance, Inc.

Financial Consideration
Funding for the estimated annual debt service of approximately $260,000 for the COs will be provided through the City's ad valorem tax revenue, with a secondary pledge coming from the City's water and sewer revenues. Cost of advertising for the publications is expected to be about $1,000.

Staff Recommendation
The staff recommends approval of this resolution.

Alternatives
The Council could choose not to issue debt and postpone the construction of the thoroughfare projects.

Attachments
Resolution No. 5384; Exhibit A (Notice of Intention to Issue City of Sherman, Texas Certificates of Obligation)

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5384

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas, has determined that certificates of obligation should be issued under and pursuant to the provisions of V.T.C.A., Local Government Code, Subchapter C of Chapter 271 (the "Act"), for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: street improvements, including drainage, utility line relocations, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in relation to such projects and the financing thereof; and

WHEREAS, prior to the issuance of such certificates, the City Council is required to publish notice of its intention to issue the same in accordance with the provisions of the Act;

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

SECTION 1. The City Clerk is hereby authorized and directed to cause notice to be published of the Council's intention to issue certificates of obligation during a meeting scheduled to begin at 5:00 P.M. on the 8th day of September, 2009, which certificates of obligation shall be issued in a principal amount not to exceed $3,500,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: street improvements, including drainage, utility line relocations, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in relation to such projects and the financing thereof, and shall be payable from ad valorem taxes and a limited pledge of the net revenues of the City's combined Waterworks and Sewer System. The notice hereby approved and authorized to be published shall read substantially in the form and content of **Exhibit A** hereto attached and incorporated herein by reference as a part of this resolution for all purposes.

SECTION 2. That the City Clerk shall cause the aforesaid notice to be published in a newspaper of general circulation in the City, once a week for two consecutive weeks, the date of the first publication to be at least thirty-one (31) days prior to the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation.

SECTION 3. That this Resolution shall be in force and effect from and after its passage on the date shown below.

SECTION 4. That it is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

PASSED AND APPROVED on this the _____ day of ________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ______________________________

BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________

LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________

BRANDON S. SHELBY,
CITY ATTORNEY

EXHIBIT A

NOTICE OF INTENTION TO ISSUE CITY OF SHERMAN, TEXAS, CERTIFICATES OF OBLIGATION

TAKE NOTICE that the City Council of the City of Sherman, Texas, shall convene at 5:00 P.M. on the 8th day of September, 2009, at the City Hall, 220 W. Mulberry, Sherman, Texas, and, during such meeting, the City Council will consider the passage of one or more ordinances authorizing the issuance of certificates of obligation in an amount not to exceed $3,500,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: street improvements, including drainage, utility line relocations, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in relation to such projects and the financing thereof, such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the City's combined Waterworks and Sewer System. The certificates are to be issued, and this notice is given, under and pursuant to the provisions of V.T.C.A., Local Government Code, Subchapter C of Chapter 271.

____
Linda Ashby,
City Clerk, City of Sherman, Texas

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. C.3

RESOLUTION NO. 5385
Awarding a Bid to and Authorizing Execution of a Contract with Dean Construction, Inc. dba Dean Construction for Construction of Pecan Grove Park Development, Phase II

Issue
Following a brief presentation by Parks & Recreation Administrator Kevin Winkler, the Council will be asked to consider awarding a contract for construction of Phase II of the Pecan Grove Park Development project

Background
Phase I of the Pecan Grove Park Development Project, approved in the 2007-2008 Capital Improvement Program, is now complete. In the 2008-2009 Capital Improvement Program, the City Council approved $2.4 million for Phase II of the Project, which will complete the park by including fishing accessibility, nature area, picnic facilities, an amphitheatre, and other passive activities. The request to advertise the second phase of the project for bid was approved at the July 6, 2009 Council Meeting. Five (5) bidders responded to the request for bids. A bid tabulation is attached.

Origination
Sherman City Council 2008-2009 Capital Improvement Program

Financial Consideration
Adequate funding for this project is included in this year's Capital Improvement Program.

Staff Recommendation
It is recommended that the contract for construction of the Pecan Grove Park Development, Phase II be awarded to the low bidder, Dean Construction, Inc. dba Dean Construction of Argyle, Texas, in the total amount of $2,182,500.00, and that the City Manager be authorized to execute the required contract documents.

Alternatives
As may be directed by the City Council

Attachments
Resolution No. 5385; Contract; Engineer's Letter of Recommendation; Bid Tabulation; Concept Plan; Capital Improvement Project with Location Map

Prepared by:
Kevin Winkler, Parks & Recreation Administrator

Approved by:
George Olson, City Manager

RESOLUTION NO. 5385

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH DEAN CONSTRUCTION, INC. DBA DEAN CONSTRUCTION FOR CONSTRUCTION OF PECAN GROVE PARK DEVELOPMENT, PHASE II; 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 Dean Construction, Inc. dba Dean Construction of Argyle, Texas is hereby awarded the bid in the total amount of Two Million One Hundred Eighty-Two Thousand Five Hundred Dollars and No Cents ($2,182,500.00) for construction of Phase II of the Pecan Grove Park Development project; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a contract with Dean Construction, Inc. dba Dean Construction for construction of the Pecan Grove Park Development, Phase II, in accordance with the terms and provisions of 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.

PASSED AND APPROVED on this the _____ day of ________________, 2009.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: ________________________________
BILL MAGERS, MAYOR

BY: ________________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ________________________________
BRANDON S. SHELBY,
CITY ATTORNEY

AIA® Document A101™ – 1997 Instructions

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a STIPULATED SUM

GENERAL INFORMATION

Purpose. AIA Document A101–1997 is intended for use on construction projects where the basis of payment is a stipulated sum (fixed price). It is suitable for any arrangement between the Owner and Contractor where the cost has been set in advance, either by bidding or by negotiation.

Related Documents. This document has been prepared for use in conjunction with AIA Document A201™–1997, General Conditions of the Contract for Construction, which is adopted into A101–1997 by a specific reference. This integrated set of documents is suitable for most projects; however, for projects of limited scope, use of AIA Document A107™–1997 may be considered.

The A101–1997 document is used as one part of the Contract Documents that memorialize the Contract for Construction between the Owner and the Contractor. The other Contract Documents are:

General Conditions (i.e., A201–1997)
Supplementary Conditions
Drawings
Specifications
Modifications

Although the AIA does not produce standard documents for Supplementary Conditions, Drawings or Specifications, a variety of model and guide documents are available, including AIA's MASTERSPEC and AIA Document A511™, Guide for Supplementary Conditions.

AIA Document A101–1997 is published in conjunction with the following related documents:

A201™–1997, General Conditions of the Contract for Construction
A401™–1997, Standard Form of Agreement Between Contractor and Subcontractor
A511, Guide for Supplementary Conditions
A701™–1997, Instructions to Bidders
B141™–1997, Standard Form of Agreement Between Owner and Architect
B151™–1997, Abbreviated Standard Form of Agreement Between Owner and Architect
C141™–1997, Standard Form of Agreement Between Architect and Consultant
C142™–1997, Abbreviated Standard Form of Agreement Between Architect and Consultant

Dispute Resolution—Mediation and Arbitration. Through its adoption by reference of AIA Document A201–1997, this document contains provisions for mediation and arbitration of claims and disputes. Mediation is a non-binding process, but is mandatory under the terms of this agreement. Arbitration is mandatory under the terms of this agreement and binding in most states and under the Federal Arbitration Act. In a minority of states, arbitration provisions relating to future disputes are not enforceable but the parties may agree to arbitrate after the dispute arises. Even in those states, under certain circumstances (for example, in a transaction involving interstate commerce), arbitration provisions may be enforceable under the Federal Arbitration Act.

The AIA does not administer dispute resolution processes. To submit disputes to mediation or arbitration or to obtain copies of the applicable mediation or arbitration rules, call the American Arbitration Association at (800) 778-7879, or visit their Web site at www.adr.org.

Why Use AIA Contract Documents. AIA Contract Documents are the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. The documents reflect actual industry practices, not theory. They are state-of-the-art legal documents, regularly revised to keep up with changes in law and the industry—yet they are written, as far as possible, in everyday language. Finally, AIA contract documents are flexible: they are intended to be modified to fit individual projects, but in such a way that modifications are easily distinguished from the original, printed language.

Use of Non-AIA Forms. If a combination of AIA documents and non-AIA documents is to be used, particular care must be taken to achieve consistency of language and intent among documents.

Letter Forms of Agreement. Letter forms of agreement are generally discouraged by the AIA, as is the performance of a part or the whole of the Work on the basis of oral agreements or understandings. The standard AIA agreement forms have been developed through more than 100 years of experience and have been tested repeatedly in the courts. In addition, the standard forms have been carefully coordinated with other AIA documents.

Standard Forms. Most AIA documents published since 1906 have contained in their titles the words "Standard Form." The term "standard" is not meant to imply that a uniform set of contractual requirements is mandatory for AIA members or others in the construction industry. Rather, the AIA standard documents are intended to be used as fair and balanced baselines from which the parties can negotiate their bargains. As such, the documents have won general acceptance within the construction industry and have been uniformly interpreted by the courts. Within an industry spanning 50 states—each free to adopt different, and perhaps contradictory, laws affecting that industry—AIA documents form the basis for a generally consistent body of construction law.

Use of Current Documents. Prior to using any AIA document, the user should consult an AIA component chapter or a current AIA Documents Price List to determine the current edition of each document.

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The AIA hereby grants the purchaser a limited license to reproduce a maximum of ten copies of a completed A101–1997, but only for use in connection with a particular project. The AIA will not permit reproduction outside of the limited license for reproduction granted above, except upon written request and receipt of written permission from the AIA.

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CHANGES FROM THE PREVIOUS EDITION

A101–1997 revises the 1987 edition of A101 to reflect changes made in AIA Document A201–1997. It incorporates alterations proposed by architects, contractors, owners and professional consultants. The following are some of the significant changes made to the contents from the 1987 edition of A101:

Throughout: References in A101–1997 to the General Conditions refer specifically to A201–1997.

Article 2: The blank for exceptions to the Contractor's scope of Work has been eliminated.

Article 3: New emphasis is placed on the need to coordinate the date of commencement with the date of Substantial Completion. Space is also provided for bonus payments for early completion.

Article 5: Both progress payments and final payment are now covered in this article, entitled Payments. Payment of amounts not in dispute under Construction Change Directives is mandatory, as is release of retainage on completed Work at Substantial Completion. Advance payment to suppliers for materials and equipment not yet stored at the site is only permitted with the Owner's approval.

Article 6: Space is provided for identification of the Owner's and Contractor's representatives. Ten days' notice is required before a representative is changed.

USING THE A101–1997 FORM

Notices. Prospective bidders should be informed of any additional provisions which may be included in A101–1997, such as for liquidated damages or for stored materials, by an appropriate notice in the Bidding Documents and the provisions for Supplementary Conditions.

Modifications. Particularly with respect to professional or contractor licensing laws, building codes, taxes, monetary and interest charges, arbitration, indemnification, format and font size, AIA Contract Documents may require modification to comply with state or local laws. Users are encouraged to consult an attorney before completing or modifying a document.

In a purchased paper AIA Contract Document, necessary modifications may be accomplished by writing or typing the appropriate terms in the blank spaces provided on the document, or by attaching Supplementary Conditions, special conditions or referenced amendments. Modifications directly to purchased paper AIA Contract Documents may also be achieved by striking out language. However, care must be taken in making these kinds of deletions.

Under NO circumstances should standard language be struck out to render it illegible. For example, users should not apply blocking tape, correction fluid or Xs that would completely obscure text. Such practices may raise suspicion of fraudulent concealment, or suggest that the completed and signed document has been tampered with. Both parties should initial handwritten changes. Using AIA software, modifications to insert information and revise the standard AIA text may be made as the software permits. By reviewing properly made modifications to a standard AIA Contract Document, parties familiar with that document can quickly understand the essence of the proposed relationship. Commercial exchanges are greatly simplified and expedited, good faith dealing is encouraged, and otherwise latent clauses are exposed for scrutiny. AIA Contract Documents may not be retyped or electronically scanned. Retyping can introduce typographic errors and cloud legal interpretation given to a standard clause. Furthermore, retyping and electronic scanning are not permitted under the user's limited license for use of the document, constitute the creation of a derivative work and violate the AIA's copyright.

Cover Page
Date: The date represents the date the Agreement becomes effective. It may be the date an original oral agreement was reached, the date the Agreement was originally submitted to the Owner, the date authorizing action was taken or the date of actual execution. It will be the date from which the Contract Time is measured unless a different date is inserted under Section 3.1.

Parties: Parties to the Agreement should be identified using the full address and legal name under which this Agreement is to be executed, including a designation of the legal status of both parties (sole proprietorship, partnership, joint venture, unincorporated association, limited partnership or corporation [general, limited liability, closed or professional], etc.). Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached. Other information may be added, such as telephone numbers and electronic addresses.

Project: The proposed Project should be described in sufficient detail to identify: (1) the official name or title of the facility; (2) the location of the site; (3) the proposed building usage; and (4) the size, capacity or scope of the Project.

Architect: As in the other Contract Documents, the Architect's full legal or corporate title should be used.

Article 2 The Work of This Contract. If portions of the Work are to be performed by persons or entities other than the Contractor, these should be indicated in the Supplementary Conditions.

Article 3 Date of Commencement and Substantial Completion. The following items should be included as appropriate:
§ 3.1 The date of commencement of the Work should be inserted if it is different from the date of the Agreement. It should not be earlier than the date of execution (signing) of the Agreement. After the first sentence, enter either the specific date of commencement of the Work, or if a notice to proceed is to be used, enter the sentence, "The date of commencement shall be stipulated by the notice to proceed." When time of performance is to be strictly enforced, the statement of starting time should be carefully weighed.

§ 3.3 The time within which Substantial Completion of the Work is to be achieved may be expressed as a number of days (preferably calendar days) or as a specified date. If a specified date is used and the date of commencement is to be given in a notice to proceed, these dates must be carefully coordinated to allow sufficient time for completion of the Work. Any requirements for earlier Substantial Completion of portions of the Work should be entered here if not specified elsewhere in the Contract Documents.

Optionally, insert any provisions for liquidated damages relating to failure to complete on time, or for bonus payments for early completion. Liquidated damages are not a penalty to be inflicted on the Contractor, but must bear an actual and reasonably estimable relationship to the Owner's loss if construction is not completed on time. There is little or no legal precedent to support the proposition of linking a bonus with a penalty. If liquidated damages are to be assessed because delayed construction will result in actual loss to the Owner, the amount of damages due for each day lost should be entered in the Supplementary Conditions or the Agreement. Factors such as confidentiality or the need to inform subcontractors about the amount of liquidated damages will help determine the placement of such language. If provision for liquidated damages is included, it should be carefully drafted by the Owner's attorney. Such a provision may be based on the following sample language:

> "The Contractor and the Contractor's surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: ________ Dollars ($ ______)."

For further information on liquidated damages, penalties and bonus provisions, see AIA Document A511, Guide for Supplementary Conditions.

Article 4 Contract Sum
§ 4.1 Enter the Contract Sum payable to the Contractor.

§ 4.2 Identify any alternates described in the Contract Documents and accepted by the Owner. If decisions on alternates are to be made subsequent to execution of A101–1997, attach a schedule showing the amount of each alternate and the date it expires.

§ 4.3 Enter any unit prices, cash allowances or cash contingency allowances. If unit prices are not covered in greater detail elsewhere in the Contract Documents, the following provision for unit prices is suggested:

> "The unit prices listed below shall determine the value of extra Work or changes in the Work, as applicable. They shall be considered complete and shall include all material and equipment, labor, installation costs, overhead and profit. Unit prices shall be used uniformly for additions or deductions."

Specific allowances for overhead and profit on Change Orders may be included under this section to forestall disputes over future Change Order costs.

Article 5 Payments

§ 5.1.2 Insert the time period covered by each Application for Payment if it differs from the one given.

§ 5.1.3 Insert the time schedule for presenting Applications for Payment, and indicate due dates for making progress payments. The last day upon which Work may be included in an Application should normally be no less than 14 days prior to the payment date, in consideration of the 7 days required for the Architect's evaluation of an Application and issuance of a Certificate for Payment and the time subsequently accorded the Owner to make Payment in Article 9 of A201. The Contractor may prefer a few additional days to prepare the Application. Due dates for payment should be acceptable to both the Owner and Contractor. They should allow sufficient time for the Contractor to prepare an Application for Payment, for the Architect to certify payment, and for the Owner to make payment. They should also be in accordance with time limits established by this Article and Article 9 of A201–1997.

§ 5.1.6.1 Indicate the percent retainage, if any, to be withheld when computing the amount of each progress payment. The Owner frequently pays the Contractor the bulk of the earned sum when payments fall due, retaining a percentage to ensure faithful performance. These percentages may vary with circumstances and localities. The AIA endorses the practice of reducing retainage as rapidly as possible, consistent with the continued protection of all affected parties. See AIA Document A511, Guide for Supplementary Conditions, for a complete discussion.

§ 5.1.6.2 Insert any additional retainage to be withheld from that portion of the Contract Sum allocable to materials and equipment stored at the site. Payment for materials stored off the site should be provided for in a specific agreement and enumerated in Section 7.6. Provisions regarding transportation to the site and insurance protecting the Owner's interests should be included.

§ 5.1.8 Describe any arrangements to reduce or limit retainages indicated in Sections 5.1.6.1 and 5.1.6.2, if not explained elsewhere in the Contract Documents. A provision for reducing retainage should provide that the reduction will be made only if the Architect judges that the Work is progressing satisfactorily. If the Contractor has furnished a bond, demonstration of the surety's consent to reduction in or partial release of retainage must be provided before such reduction is effected. Use of AIA Document G707A™ is recommended.

§ 5.2.2 Insert the date by which Owner shall make final payment, if it differs from the one stated. When final payment is requested, the Architect should ascertain that all claims have been settled or should define those which remain unsettled. The Architect should obtain the Contractor's certification required by Article 9 of A201–1997 and must determine that, to the best of the Architect's knowledge and belief and according to the Architect's final inspection, the requirements of the Contract have been fulfilled.

Article 7 Miscellaneous Provisions

§ 7.2 Enter any agreed-upon interest rate for overdue payments.

§ 7.3 Identify the Owner's representative and indicate how that person may be contacted.

§ 7.4 Identify the Contractor's representative and indicate how that person may be contacted.

§ 7.6 Insert other provisions here.

Article 8 Enumeration of Contract Documents

A detailed enumeration of all Contract Documents must be made in this article.

EXECUTION OF THE AGREEMENT

The Agreement should be executed in not less than triplicate by the Owner and the Contractor. The persons executing the Agreement should indicate the capacity in which they are acting (i.e., president, secretary, partner, etc.) and the authority under which they are executing the Agreement. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.

AIA® Document A101™ – 1997

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the day of
in the year of
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

and the Contractor:
(Name, address and other information)

The Project is:
(Name and location)

The Architect is:
(Name, address and other information)

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Dollars ($), subject to additions and deductions as provided in the Contract Documents.

§ **4.2** The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

§ **4.3** Unit prices, if any, are as follows:

ARTICLE 5 PAYMENTS
§ 5.1 PROGRESS PAYMENTS
§ **5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ **5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ **5.1.3** Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.

§ **5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ **5.1.5** Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- **.1** Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201–1997;
- **.2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);
- **.3** Subtract the aggregate of previous payments made by the Owner; and
- **.4** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- **.1** add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
  (Section 9.8.5 of AIA Document A201–1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- **.2** add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- **.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- **.2** a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–1997.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201–1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 The Owner's representative is:
(Name, address and other information)

§ 7.4 The Contractor's representative is:
(Name, address and other information)

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101–1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201–1997.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages

§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages

§ 8.1.5 The Drawings are as follows, and are dated unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

§ 8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

SECTION 00600 -- Supplementary General Conditions

PART 1 - GENERAL

1.01 **GENERAL CONDITIONS**: The "General Conditions" of the Contract for Construction, AIA Document A201, 1997, Articles 1 through 14 inclusive, is a part of this Contract and is incorporated herein as fully as here set forth.

1.02 **SUPPLEMENTS:** The following supplements modify, change, delete from or add to the General Conditions. Where any part of the General Conditions is modified or voided by these Articles, the unaltered provisions of that part shall remain in effect.

Article 1: CONTRACT DOCUMENTS:

Add new sub-paragraphs:

"1.1.8 MISCELLANEOUS DEFINITIONS:

1.1.8.1 The term "Product" as used in these Supplementary Documents includes materials, systems and equipment.

1.1.8.2. The term "Project Manual" as used in these Contract Documents includes the bidding documents, Conditions of the Contract and the Specifications.

1.1.8.3. The term "provide" as used in this Project Manual means to furnish and install.

1.1.8.4. The term "architect" as used in these contract documents shall mean either the architect or landscape architect.

1.1.8.5. The term "City" as used in these contract documents shall mean the City referred to in the Advertisement for Bid, Section 00020."

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

"1.2.1.1. Should the Drawings disagree in themselves or with the Specifications the better quality or the greater quantity of the work or materials shall be estimated upon, and unless otherwise ordered by the Architect in writing, shall be performed or furnished."

"1.2.1.2. The inter-relation of the Specifications, the Drawings and the Schedules is as follows: The specifications determine the nature and setting of the several materials; the Drawings establish the quantities, dimensions and details; and the Schedules give the location."

Article 2: OWNER:

"2.2.3. Delete the first sentence and substitute the following: The Owner will establish lot lines, restrictions and permanent bench marks. All other grades, lines, levels, and bench marks shall be established and maintained by General Contractor, who shall be responsible for same."

Add new sub-paragraphs:

2.2.3.1. Shown or indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ARCHITECT by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

AIA Document A201-2007.

Second Set of Supplementary Conditions to AIA Document A-201-2007.

The following supplements modify, delete from and add to the General Conditions of the Contract for Construction, AIA Document A201-2007 and the Supplementary Conditions in the Bid Package. Where any article or section of the General Conditions is modified, or any paragraph, subparagraph, or clause thereof is modified or deleted by these supplements, then the unaltered provisions of the article, paragraph, subparagraph or clause shall remain in effect except to the extent contrary to these supplementary conditions.

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

Delete 10.3.3 in its entirety.

Modify 10.5 to read "If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance by reason of performing Work as required by the Contract Documents, then to the extent permitted by law, the Owner shall indemnify the Contract for all cost and expense thereby incurred.

ARTICLE 11 – INSURANCE AND BONDS

11.1.2 of both the AIA Document A201-2007 and the Supplemental Conditions in the bid package are deleted and replaced with the following:

11.1.2 Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons, damages to property, or any errors and omissions relating to the performance of any work by the Contractor, its agents, employees or subcontractors under this Agreement, as follows:

1. Workers' Compensation with the Texas Statutory/ Employer Liability as required by law.

2. Comprehensive General Liability Insurance with minimum limits of $1,000,000 for injury or death of any one person, $1,000,000 for each occurrence, $1,000,000 for each occurrence of damage to or destruction of property, and $2,000,000 general aggregate.

3. Automobile covering owned, hired, and non-owned vehicles, with minimum combined single limit of $1,000,000.

Contractor shall require its independent contractors to carry insurance with the following limits:

1. Workmen's Compensation -- Texas Statutory/Employer's Liability - Statutory Limits

2. Comprehensive General Liability --

a. Bodily Injury -- each person/each occurrence $250,000/$500,000

b. Property Damage -- each occurrence/aggregate $100,000/$500,000

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3. Comprehensive Automobile Liability -- per person/per occurrence, including coverage of owned, non-owned and hired vehicles.

a. Bodily Injury -- $100,000/$300,000

b. Property Damage -- $300,000, each occurrence

11.1.3 of both the AIA and the Supplemental Conditions is hereby replaced with the following:

> 11.1.3 Contractor shall include the Owner as an additional insured under the policies, with the exception of the Workers' Compensation. Certificates of Insurance and endorsements, along with the Owner's Protective Liability shall be furnished to the Owner and the Architect before work commences that demonstrates that the required coverage, conditions, and limits required by this Contract are in full force and effect. Certificates shall state that coverage shall not be suspended, voided, canceled, and/or reduced in coverage or in limits (Change in Coverage) prior to the receipt of written notice provided to the Owner at least thirty (30) days prior to the effective date of such Change in Coverage.

11.3.3 – Deleted in its entirety.

DUNKIN
SIMS
STOFFELS
Inc.

July 13, 2009

Mr. Kevin Winkler
City of Sherman
407 W. Washington
Sherman, Texas 75090

Re: Pecan Grove – Phase II

Dear Mr. Winkler:

Bids for the referenced project were opened at 2:00 P.M. on Thursday, June 25, 2009. A total of five (5) bids were received for the project. Dean Construction, Inc. was the low bidder with a base bid of $2,278,000.00. The City has elected to accept Deduct Alternate #9 ($73,500.00) which is the trail on the lake dam and Alternate #10 ($22,000.00) which reduces the trail from 10' to 8' within the park. This would bring the total contract award to $2,182,500.00.

Having reviewed the bid, discussed the project with a representative of Dean Construction, Inc. to confirm they understand the complete scope of the work and based upon the Contractor's prior experience and performance on similar projects, it appears that Dean Construction, Inc. is qualified to perform the services outlined in the Construction documents; therefore, award of the contract to Dean Construction, Inc. should be considered by the Sherman City Council.

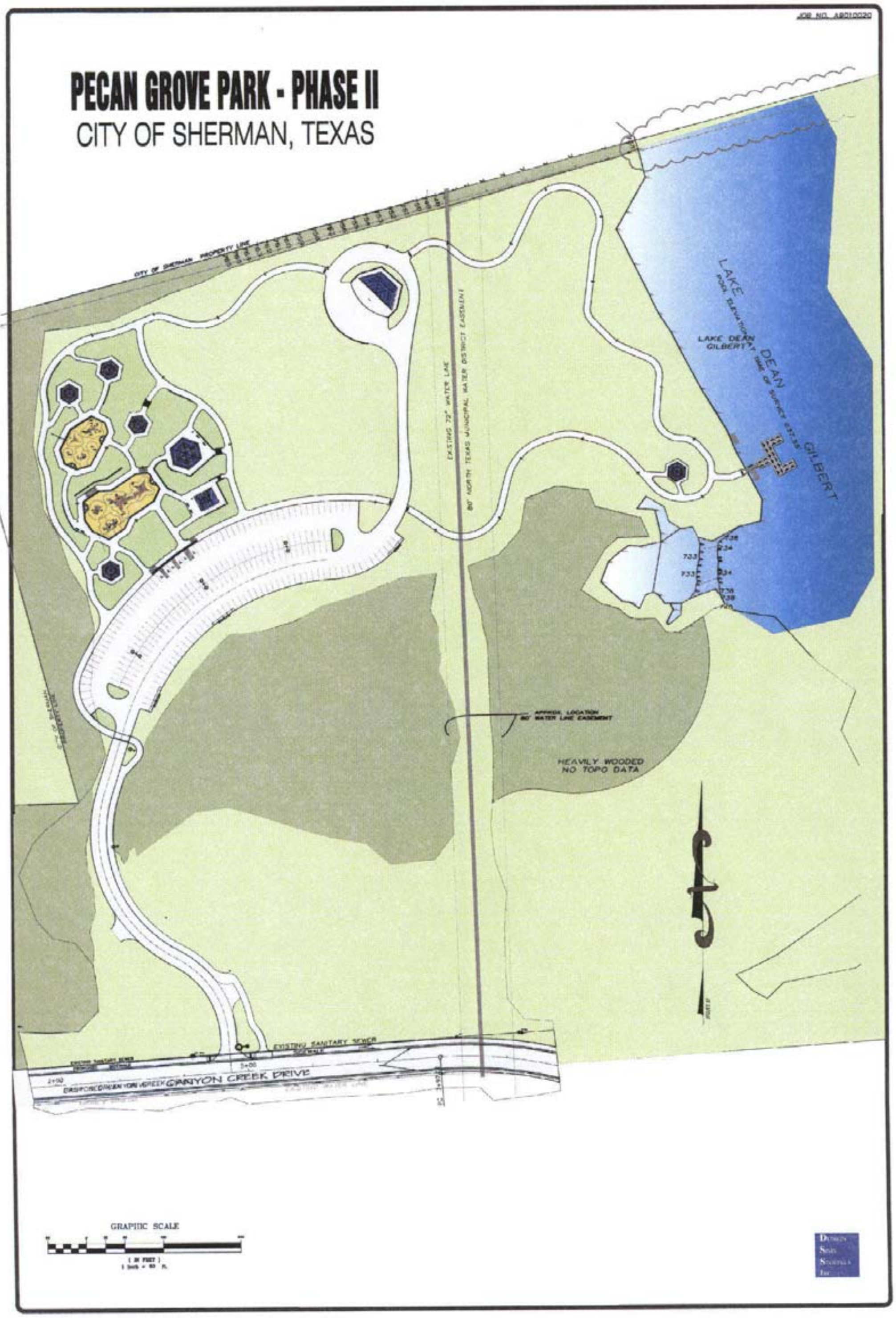
I will be at the July 20, 2009 City Council meeting to answer any questions regarding the contract award.

Sincerely,

Dennis Sims, ASLA
Principal

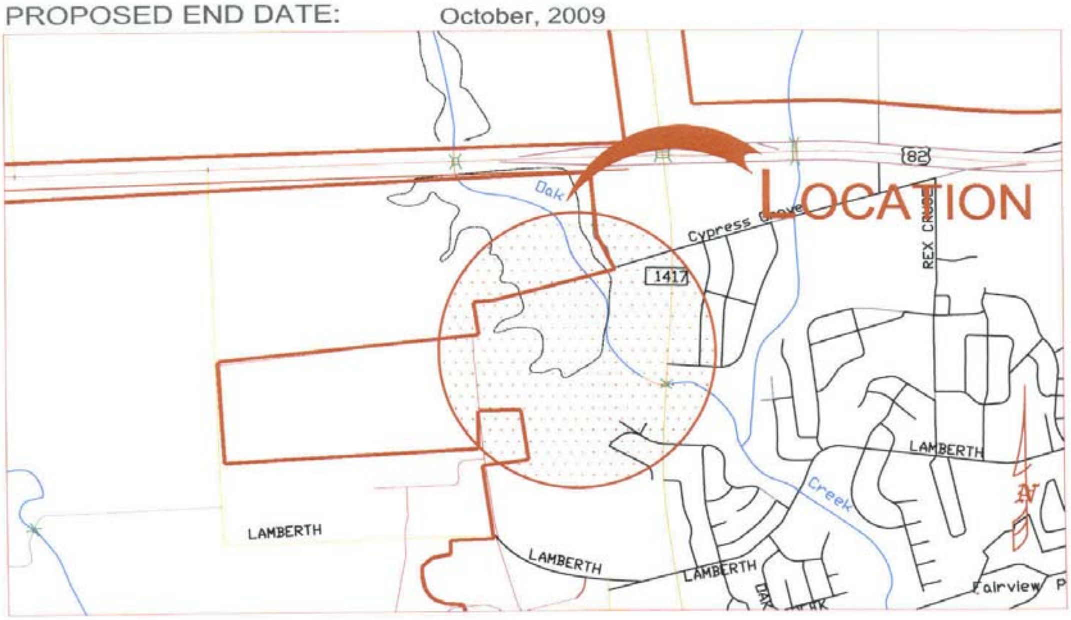
Bid Tabulation Sheet
Pecan Grove Park- Phase II
Sherman, Texas
June 25, 2009

Bidder	Base Bid	ADD. #1	ADD. #2	ADD. #3	ADD. #4	Length of Construction	Bid Bond	ADD - Alt. #1 Elements of the Irrigation System within Plaza Area	ADD - Alt. #2 Elements of the Irrigation System in Lawn Area	ADD - Alt. #3 Furnish & Install Plant Material	ADD - Alt. 04 Furnish & Install Thirty, Six-Foot Picnic Tables & Six, Six-Foot Benches	ADD - Alt. #5 Furnish & Install Stone Veneer on Pavilion Columns	ADD - Alt. #6 Furnish & Install Stone Veneer on Exposed Surfaces of Retaining Walls	ADD - Alt. #7 Furnish & Install Components of Rock Climbing Playground	DEDUCT - Alt. #8 Plaza Lighting	DEDUCT - Alt. #9 Do Not Construct Trail Along Crest of Lake	DEDUCT - Alt. #10 Concrete Hike & Bike Trail 10 to 8	DEDUCT - Alt. #11 Concrete Trail Along Crest of Lake 10 to 8
Dean Construction	$2,278,000	√	√	√	√	300	√	$ 58,000.00	$ 19,000.00	$ 17,500.00	$ 33,000.00	$ 40,000.00	$ 47,000.00	$ 73,000.00	$ 21,000.00	$ 73,500.00	$ 22,000.00	$ 10,000.00
C R Reynolds	$2,299,000	√	√	√	√	210	√	$ 49,920.00	$ 14,248.00	$ 20,488.00	$ 32,664.32	$ 36,296.00	$ 45,177.60	$ 89,517.00	$ 17,411.00	$ 42,331.00	$ 21,834.00	$ 11,000.00
Piazza Construction	$2,349,000	√	√	√	√	210	√	$ 32,000.00	$ 19,800.00	$ 18,200.00	$ 29,000.00	$ 38,390.00	$ 56,034.00	$ 88,000.00	$ 18,411.00	$ 55,000.00	$ 23,000.00	$ 10,800.00
Mitchell Enterprises	$2,396,200	√	√	√	√	345	√	$ 51,000.00	$ 28,000.00	$ 22,400.00	$ 30,200.00	$ 37,800.00	$ 47,520.00	$ 75,000.00	$ 18,000.00	$ 69,000.00	$ 19,000.00	$ 11,000.00
JDC Construction	$2,660,000	√	√	√	√	300	√	$ 62,000.00	$ 20,000.00	$ 114,000.00	$ 32,000.00	$ 99,000.00	$ 50,000.00	$ 80,000.00	$ 20,000.00	$ 70,000.00	$ 33,000.00	$ 14,000.00


PECAN GROVE PARK - PHASE II
CITY OF SHERMAN, TEXAS
LAKE DEAN GILBERT
HEAVILY WOODED
NO TOPO DATA
CANYON CREEK DRIVE
EXISTING SANITARY SEWER
GRAPHIC SCALE

PROJECT YEAR: 2008-2009

PROJECT NAME:	Pecan Grove Park Development - Phase II
DESCRIPTION:	Complete the park by including fishing accessibility, nature trails, picnic facilities and other passive activities.
ESTIMATED COST:	$2,400,000
ESTIMATED O&M COST:	$3,500
PROPOSED FINANCING:	General Improvement Fund
PROJECT NECESSITY:	Recommended in the Parks Master Plan
DEPARTMENT/DIRECTOR:	City Manager, George Olson
PROPOSED START DATE:	July, 2009
PROPOSED END DATE:	October, 2009



SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. C.4

**** RESOLUTION NO. 5386***

Authorizing Continued Participation with the Atmos Cities Steering Committee; Authorizing the Payment of Two Cents ($0.02) Per Capita to the Atmos Cities Steering Committee to Fund Regulatory and Related Activities Related to Atmos Energy Corporation

Issue
This resolution authorizes the continued participation with the Atmos Cities Steering Committee (ACSC) and authorizes the payment of the Committee's annual assessment.

Background
The original Gas Cities Steering Committee was formed several years ago in response to a gas rate filing by Lone Star Gas Company (TXU Gas and Atmos Energy's predecessor). Over the past several years, the gas distribution systems have been consolidated; and the gas company has filed rate cases annually. In 2006, a formal organizational structure was adopted for the Committee, which includes 151 member cities. The Committee's activities have focused on minimizing the impact of rate increases on consumers and increasing transparency in the way that Atmos reports its results and pays franchise fees. The Committee will have authority to act for members, with each member retaining the ability to opt out of any proposed rate case action.

Origination
Finance

Financial Consideration
A participation fee of two cents ($0.02) per capita, based upon the City of Sherman's population figures reflected in the latest TML Directory of City Officials (37,623), is required totaling $752.46.

Staff Recommendation
The staff recommends approval of this resolution and authorization of the required payment.

Alternatives
The City Council could deny this resolution.

Attachments
Resolution No. 5386; ACSC Co-Chairs Memorandum on 2009 Membership Assessment; Staff Report on ACSC Assessment Resolution; List of ACSC Cities

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5386

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING CONTINUED PARTICIPATION WITH THE ATMOS CITIES STEERING COMMITTEE; AUTHORIZING THE PAYMENT OF TWO CENTS ($0.02) PER CAPITA TO THE ATMOS CITIES STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ATMOS ENERGY CORPORATION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman is a regulatory authority under the Gas Utility Regulatory Act (GURA) and has exclusive original jurisdiction over the rates and services of Atmos Energy Corporation, Mid-Tex Division (Atmos) within the municipal boundaries of the city; and

WHEREAS, the Atmos Cities Steering Committee (ACSC) has historically intervened in Atmos rate proceedings and gas utility related rulemakings to protect the interests of municipalities and gas customers residing within municipal boundaries; and

WHEREAS, ACSC is participating in Railroad Commission dockets and projects, as well as court proceedings, affecting gas utility rates; and

WHEREAS, the City is a member of ACSC; and

WHEREAS, in order for ACSC to continue its participation in these activities which affects the provision of gas utility service and the rates to be charged, it must assess its members for such costs;

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

SECTION 1. That the City is authorized to continue its membership with the Atmos Cities Steering Committee to protect the interests of the City of Sherman and to protect the interests of the customers of Atmos Energy Corporation, Mid-Tex Division residing and conducting business within the city limits.

SECTION 2. That it is further authorized to pay its 2009 assessment to the ACSC in the amount of two cents ($0.02) per capita based on the population figures for the City shown in the latest TML Directory of City Officials.

SECTION 3. That a copy of this Resolution and the approved assessment fee payable to “Atmos Cities Steering Committee” shall be sent to:

Mary Bunkley, Treasurer
Atmos Cities Steering Committee
℅ Arlington City Attorney's Office
Mail Stop 63-0300
Post Office Box 90231
Arlington, Texas 76004-3231

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

PASSED AND APPROVED on this the _____ day of ________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
BRANDON S. SHELBY,
CITY ATTORNEY

MEMORANDUM

TO: Atmos Cities Steering Committee
FROM: Jay Doegey and Odis Dolton, Co-Chairs, Atmos Cities Steering Committee
DATE: June 18, 2009
RE: 2009 Membership Assessment

Earlier this year, the Executive Committee of the Atmos Cities Steering Committee (ACSC) met to plan for upcoming natural gas issues and approve the assessment for ACSC membership. Based upon the population-based assessment protocol previously adopted by the ACSC, the assessment for 2009 is a per capita fee of $0.02 based upon the population figures for each city shown in the latest TML Directory of City Officials.

ACSC protects the authority of municipalities over the monopoly natural gas provider and defends the interests of the residential and small commercial customers within the cities. Cities are the only consumer advocates that work to keep natural gas rates reasonable. The work undertaken by ACSC has saved ratepayers millions of dollars in unreasonable charges. In order to continue to be an effective voice at the Railroad Commission, at the Legislature, and in the courts, ACSC must have your support.

Please take action to pay the membership assessment as soon as possible. Payment of the membership assessment fee shall be deemed to be agreement with the terms of the ACSC participation agreement.

Although ACSC does not require that your city take action by resolution to approve the assessment, some members have requested a model resolution authorizing payment of the 2009 membership assessment. To assist you in the assessment process, we have attached several documents to this memorandum for your use: 1) *Model resolution approving the 2009 assessment*; 2) *Model staff report supporting the resolution*; 3) *List of ACSC members; and 4) assessment invoice.*

Forward the membership assessment fee and, if applicable, the signed resolution to Mary Bunkley, Treasurer, Atmos Cities Steering Committee, c/o City Attorney's Office, Mail Stop 63-0300, P.O. Box 90231, Arlington, Texas 76004-3231. Checks should be made payable to: *Atmos Cities Steering Committee*.

If you have any questions, please contact ACSC Co-Chairmen Jay Doegey (817/459-6878), or Odis Dolton (325/676-6496.) ACSC's counsel, Geoffrey Gay (ggay@lglawfirm.com) and Kristen Doyle (kdoyle@lglawfirm.com) at 512/322-5877 are also available to assist you.

MODEL STAFF REPORT
ON ATMOS CITIES STEERING COMMITTEE ASSESSMENT RESOLUTION

Purpose of the Resolution:

Municipalities have original jurisdiction over gas utility rates and services within the city. The Atmos Cities Steering Committee (“ACSC”) is composed of municipalities in the service area of Atmos Energy Corporation, Mid-Tex Division. Atmos is a monopoly provider of natural gas. Because Atmos has no competitors, regulation of the rates that it charges its customers is the only way that cities can ensure that natural gas rates are fair. Working as a coalition to review the rates charged by Atmos allows cities to accomplish more collectively than each city could do acting alone. Cities have more than 100 years experience in regulating natural gas rates in Texas.

ACSC is the largest coalition of cities served by Atmos Gas-Mid Tex. There are 151 ACSC member cities, which represent more than 60 percent of the total load served by Atmos-Mid Tex. ACSC protects the authority of municipalities over the monopoly natural gas provider and defends the interests of residential and small commercial customers within the cities. Although many of the activities undertaken by ACSC are connected to rate cases (and therefore expenses are reimbursed by the utility), ACSC also undertakes additional activities on behalf of municipalities for which it needs funding support from its members.

The ACSC Membership Assessment Supports Important Activities:

ACSC is actively involved in rate cases, appeals, rulemakings, and legislative efforts impacting the rates charged by Atmos within the City. These activities will continue throughout the calendar year. It is possible that additional efforts will be necessary on new issues that arise during the year, and it is important that ACSC be able to fund its participation on behalf of its member cities. A per capita assessment has historically been used, and is a fair method for the members to bear the burdens associated with the benefits received from that membership.

Explanation of Resolution Paragraphs:

1. The City is currently a member of ACSC; this paragraph authorizes the continuation of the City’s membership.

2. This paragraph authorizes payment of the City’s assessment to the ACSC in the amount of two cents ($0.02) per capita, based on the population figure for the City as shown in the latest TML Directory of City Officials.

3. This paragraph requires notification that the City has adopted the Resolution.

Payment of Assessment

The assessment payment check should be made out to ***“Atmos Cities Steering Committee”*** and mailed to Mary Bunkley, Treasurer, Atmos Cities Steering Committee, c/o Arlington City Attorney’s Office, Mail Stop 63-0300, PO Box 90231, Arlington, Texas 76004-3231.

ACSC Cities

(151 Total)

Abilene
Addison
Allen
Alvarado
Angus
Anna
Argyle
Arlington
Bedford
Bellmead
Benbrook
Beverly Hills
Blossom
Blue Ridge
Bowie
Boyd
Bridgeport
Brownwood
Buffalo
Burkburnett
Burleson
Caddo Mills
Carrollton
Cedar Hill
Celeste
Celina
Cisco
Cleburne
Clyde
College Station
Colleyville
Colorado City
Comanche
Coolidge
Coppell
Corinth
Corral City
Crandall
Crowley
Dalworthington Gardens
Denison
DeSoto
Duncanville
Eastland
Edgecliff Village
Emory
Ennis
Euless
Everman
Fairview
Farmers Branch
Farmersville
Fate
Flower Mound
Forest Hill
Fort Worth
Frisco
Frost
Gainesville
Garland
Grand Prairie
Grapevine
Haltom City
Harker Heights
Haskell
Hewitt
Highland Park
Highland Village
Honey Grove
Hurst
Iowa Park
Irving
Justin
Kaufman
Keene
Keller
Kemp
Kennedale
Kerrville
Killeen
Krum
Lake Worth
Lakeside
Lancaster
Lewisville
Lincoln Park
Little Elm
Lorena
Malakoff
Mansfield
McKinney
Melissa
Mesquite
Midlothian
Murphy
Newark
Nocona
North Richland Hills
Northlake
Oak Leaf
Ovilla
Palestine
Pantego
Paris
Parker
Pecan Hill
Plano
Ponder
Pottsboro
Prosper
Putnam
Quitman
Red Oak
Reno (Parker County)
Richardson
Richland
Richland Hills
Roanoke
Robinson
Rockwall
Roscoe
Rowlett
Sachse
Saginaw
Seagoville
Sherman
Snyder
Southlake
Springtown
Stamford
Stephenville
Sulphur Springs
Sweetwater
Temple
Terrell
The Colony
Throckmorton
Tyler
University Park
Venus
Vernon
Waco
Watauga
Waxahachie
Westlake
Westworth Village
White Settlement
Whitesboro
Wichita Falls
Woodway
Wylie

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. C.5

**** RESOLUTION NO. 5387***

Authorizing Execution of an Agreement with EnerNOC, Inc. for ERCOT Demand Response Sales and Services for the Sherman Water Treatment and Wastewater Treatment Plants

Issue

This agenda item is to consider a contract with EnerNOC, Inc. to reduce electrical demand at the Water Treatment and Wastewater Treatment Plants. The City will be compensated for reducing its power requirements during periods of extremely high electrical demand.

Background

EnerNOC will conduct ongoing power savings studies and coordinate an emergency interruptible load service program with the Electrical Reliability Council of Texas (ERCOT) at the Water Treatment and Wastewater Treatment Plants. These City facilities have the option, but not obligation, of decreasing power use during periods of extremely high electric demand to assist the statewide electrical system in meeting its peak power demands, in exchange for payments estimated at about $17,000 annually.

Origination

Department of Utility Services

Financial Consideration

It is estimated that the City will receive $10,000.00 for the Water Treatment Plant and $7,000.00 for the Wastewater Treatment Plant, for a total of $17,000.00 per year. Actual payments could increase or decrease depending upon the hours of participation, actual power reduction, and other factors.

Staff Recommendation

It is recommended that the agreement with EnerNOC be approved.

Alternatives

As may be directed by the Council

Attachments

Resolution No. 5387
EnerNOC Agreement and Financial Analysis for the Water Treatment and Wastewater Treatment Plants

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager

RESOLUTION NO. 5387

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH ENERNOC, INC. FOR ERCOT DEMAND RESPONSE SALES AND SERVICES FOR THE SHERMAN WATER TREATMENT AND WASTEWATER TREATMENT PLANTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to execute an Agreement with EnerNOC, Inc. for ERCOT Demand Response Sales and Services for the Sherman Water Treatment and Wastewater Treatment Plants, in accordance with all documents attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the _____ day of ________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
BRANDON S. SHELBY,
CITY ATTORNEY

ENERNOC
Get More From Energy

ERCOT Demand Response Sales and Services Agreement

This ERCOT Demand Response Sales and Services Agreement (this "Agreement"), effective as of **June 30, 2009** ("Effective Date") the scope of which is described more fully below, is made by and between EnerNOC, Inc. ("EnerNOC"), located at 75 Federal Street, Suite 300, Boston, MA 02110, and **The City of Sherman - WasteWater Plant**("Customer"), located at **1800 E FM Hwy 1417, Sherman, TX 75091**. EnerNOC and Customer are defined herein as the Parties ("Parties") to this Agreement.

1. Internet-Based Metering and Communications Equipment

EnerNOC agrees to equip Customer with the EnerNOC system (the "EnerNOC System"), which includes an EnerNOC Site Server ("ESS") that enables, as applicable, remote generator start/stop, and/or direct load management, power metering, data collection, real-time data communication, and Internet-based reporting and analytics.

a. *Delivery and Installation.* EnerNOC agrees to install, free of charge, in a good and workmanlike manner **1 ESS(s)** at each site address (a "Site Address") as identified in Attachment A hereto. Subsequent to the date hereof, Attachment A may be updated from time to time by the Parties in writing to reflect additional Site Addresses.

b. *Term.* The services provided herein will commence upon the Effective Date and shall continue until the earlier of **September 30, 2014,** or upon the termination of EnerNOC's participation in the EILS Program (the "Term"). Specifically, implementation of the EnerNOC System will begin on the Effective Date and Customer's participation in the EILS Program will begin after (i) implementation is completed and (ii) Customer is registered with ERCOT for a Contract Period (as defined below).

c. *Compliance.* During the Term, EnerNOC will ensure that the ESS meets all technical requirements for Customer to qualify for payments under the EILS Program, the details of which are described in Attachment B hereto.

2. Managed Services

EnerNOC agrees to manage Customer's participation in the EILS Program during all contract periods, which contract periods are defined by ERCOT as February– May, June – September, and October – January (each, a "Contract Period" and collectively, the "Contract Periods"). EnerNOC will complete all necessary permits on Customer's behalf, register Customer's curtailable electrical capacity ("Capacity"), execute demand response events ("Demand Response Events"), manage Customer's Capacity in the EILS Program, and reconcile all program payments in accordance with all EILS Program requirements and, if applicable, through remote generator start/stop and/or direct load control. EnerNOC will also coordinate with host utility to capture kilowatt-hour (kWh) pulses from the Customer's primary utility meter to provide Customer near real-time, Internet-enabled power monitoring EnerNOC shall make payments under the EILS Program, as set forth below.

a. *Capacity.* Customer agrees to generate and/or reduce electrical demand at each Site Address as identified in Attachment A during Demand Response Events when notified by EnerNOC according to the requirements defined in Attachment B. Customer and EnerNOC understand that the Capacity identified in Attachment A ("Estimated Capacity") is their best estimate of performance and the actual kW reduction during event hours ("Actual Capacity") may vary. Capacity for a Contract Period will be determined by ERCOT at the end of such Contract Period and will be adjusted based on Customer's performance and availability to curtail during such Contract Period. In no event shall Customer be penalized for underperformance or non-performance, other than to have future Capacity Payments (as defined below) reduced to reflect Actual Capacity.

b. *Capacity Payments.* EnerNOC will pay Customer **50%** of the Capacity payments received from ERCOT ("Capacity Payments") for EILS Program hour product(s) made available by Customer, as defined in Attachment B (e.g., Business Hour, Peak Hour 1, Peak Hour 2 and/or Non-Business Hour). Capacity Payments are only available for EILS Program resource bids that are accepted by ERCOT and may be adjusted based on Customer's performance and availability to curtail during the Contract Period. In the event that the Customer Capacity bid is not accepted by ERCOT, then EnerNOC will not be obligated to make any payments to Customer hereunder, nor will Customer be obligated to curtail during the Contract Period for which the bid was not accepted. An example of a Capacity Payment calculation is as follows: if Customer made 1 MW of Capacity available for all program hour products (7x24) during the Contract Period and the hourly payment is $7/MW-hr ($5.12 per kW-month) for the Contract Period resources, then EnerNOC would owe customer **50%** x 7.00 x 1 MW X 2,920 total hours (assumed for the Contract Period), or **$10,220** for the Contract Period.

c. *Demand Response Event Payments.* EnerNOC will pay Customer **$100/MWh** for responding to a Demand Response Event. For example, if Actual Capacity equals 2.0 MW, total Demand Response Event hours for the month equals four (4) hours, and the price paid for Demand Response Event hours is $100/MWh then the Customer would be paid $100 per MWh x 2.0 MW x 4 hours = $800.

d. *Payment Timing.* EnerNOC shall make payment of all Capacity and Demand Response Event Payments associated with Customer's participation in the EILS Program to Customer within forty-five (45) days of EnerNOC's receipt of total payment from ERCOT. Under the EILS Program rules, it is anticipated that ERCOT will pay EnerNOC within 70 days following the completion of each contract period as detailed in Attachment B hereto.

e. *Capacity Adjustments.* Customer and EnerNOC agree upon the estimated Capacity in Attachment A hereto. Customer and EnerNOC agree to adjust Capacity in the future based on actual performance, changes in facility operations, program rules, regulations and/or other relevant information.

3. Environmental Permitting and Reporting

a. *Obtaining Permits.* Promptly upon entering into this Agreement, if Customer participates in the EILS Program using onsite electrical generation sets, EnerNOC will obtain from the relevant regulatory agency(ies) the necessary permits for participation in the EILS Program at no expense to Customer.

b. After obtaining any necessary permits, and once EnerNOC establishes the capability to remotely dispatch Customer's electrical generation set(s), if applicable, EnerNOC shall be responsible for monitoring run-time and other parameters specified under applicable federal and state regulations which (i) are established as applicable permitting limits for the electrical generation sets installed at each Site Address as identified in Attachment A, or (ii) are applicable thresholds for permitting exceptions under which Customer has installed and operates the electrical generation sets without such permits (said limits or thresholds, the "Regulatory Thresholds"). In no event shall EnerNOC bid or dispatch and load any individual electrical generation set so that its operation under the EILS Program would reasonably be expected to exceed 90% of the applicable Regulatory Thresholds for the Site Address, as determined over any measuring period established under law or regulation. Further, EnerNOC shall file all reports required by relevant regulatory agency(ies) in an accurate and timely manner.

4. Customer Support Requirements

a. *Cooperation.* Customer agrees to complete and execute any forms or agreements which are necessary, in EnerNOC's discretion, to allow EnerNOC to complete pulse metering installation.

b. *Acceptance Testing.* Customer agrees to collaborate with EnerNOC in testing the ESS at each Site Address in a timely manner prior to registering Capacity with ERCOT.

c. *ESS Installation.* Within fourteen (14) days of execution of this Agreement, Customer shall provide a static Internet Protocol address and Local Area Network access that allows for Internet-based communication of Site Address' energy consumption and Demand Response Event performance.

d. *Nondisclosure to Third Parties.* Customer acknowledges that in its relationship with EnerNOC, it may receive information including (but without limitation): confidential information, business strategies, financial information, information relating to the ESS and the EnerNOC System, and information contained in this Agreement, including the terms of the revenue sharing arrangement described in Section 2 above (all collectively "Program information"). Customer shall not disclose any Program Information to any third party or allow any third party access to such Program Information.

e. *Trade Secret Protection Obligations.* Customer shall not alter, reverse engineer, disassemble, decompile or copy the ESS or any other EnerNOC System components and shall not allow any third party to use, access, or examine the ESS or any other EnerNOC System components.

f. *Use of Confidential Information.* Customer acknowledges that EnerNOC may receive confidential information of Customer, either through data collected by the ESS and the EnerNOC System or otherwise, which may be used by EnerNOC for any necessary business purpose (so long as it does not disclose any uniquely identifiable confidential information of Customer).

g. *Service Provider Limitation.* Customer agrees not to contract with any other demand response service provider for the Term of this Agreement. Should Customer wish to contract with another demand response service provider within one (1) year from the termination or expiration of this Agreement, Customer hereby entitles EnerNOC to match any written offer or proposal for demand response services within 30 days of receiving the proposal from Customer. Should EnerNOC substantially match the terms of such offer or proposal, it shall be awarded the associated contract.

h. *Logo Authorization.* In connection with this Agreement, Customer hereby consents to EnerNOC's use of Customer's name and logo in EnerNOC's promotional materials, including, but not limited to, website, presentations and other printed materials. EnerNOC acknowledges that Customer is the owner of all right, title and interest in and to the Customer's name and logo and shall not take any action that is inconsistent with such ownership. EnerNOC shall not, by any act or omission, use Customer's name or logo in any manner that tarnishes, degrades, disparages or reflects adversely on Customer or its business or reputation.

5. General Terms

ENERNOC
Get More From Energy

a. *Limitation on Liability.* EnerNOC's liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages shall not exceed the lesser of (i) the total amount paid to Customer under this Agreement during the six-month period immediately preceding the event giving rise to the claim(s) or (ii) $100,000. All other remedies or damages (at law, in equity, tort, contract, or otherwise) are expressly waived, including any indirect, punitive, special, consequential, or incidental damages, lost profit, or other business interruption damages.

b. *Consent to Venue and Jurisdiction Selection.* Each party hereby waives any right it may have to assert the doctrine of forum non conveniens and stipulates that the State and Federal courts located in the State of Texas shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address as set forth in the introductory paragraph of this Agreement.

c. *Choice of Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without giving effect to choice of law rules.

d. *Miscellaneous.* Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of EnerNOC. This Agreement contains the entire agreement between Customer and EnerNOC and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the parties hereto shall be construed and enforced accordingly. This Agreement shall be binding upon the parties together with their successors and assigns.

e. *Force Majeure.* The parties shall be excused for any failure or delay in the performance of their obligations hereunder due to acts of God or any other legitimate cause beyond their reasonable control.

f. *Termination.* EnerNOC may terminate this Agreement immediately if the EILS Program is materially altered, suspended or ended.

EnerNOC, Inc.		**Customer**	
Name:	____________	Name:	____________
Title:	____________	Title:	____________
Signature:	____________	Signature:	____________
Date:	____________	Date:	____________

ENERNOC
Get More From Energy

Attachment A

Site Name and Address	City	Zip	Estimated Capacity (kW)					
			ESI ID#	Contract Period	Business Hours 1	Business Hours 2	Business Hours 3	Non-Business Hours
Site 1 1800 E FM Hwy 1417	Sherman	75091	10443720004109764	Feb-May	185	185	185	185
				Jun-Sep	185	185	185	185
				Oct-Jan	185	185	185	185
Site 2				Feb-May				
				Jun-Sep				
				Oct-Jan				
Site 3				Feb-May				
				Jun-Sep				
				Oct-Jan				

ENERNOC
Get More From Energy

Attachment B

Electric Reliability Council of Texas (ERCOT). ERCOT helps protect the health of Texas' economy and the well-being of its people by ensuring the constant availability of electricity. ERCOT meets this obligation in three ways: by ensuring the day-to-day reliable operation of Texas' bulk power generation and transmission system, by overseeing and ensuring the fair administration of the region's wholesale electricity markets, and by managing comprehensive, regional planning processes.

Emergency Interruptible Load Service (EILS). The EILS is a demand response program that compensates large electricity users for reducing consumption when demand for electricity is high and system reliability is at risk. The EILS is meant to help alleviate the potential for blackouts and brownouts by acting as a "last line of defense," emergency program that provides ERCOT with a program to call upon only in a defined emergency situation.

The terms of this agreement will reflect the terms and conditions which may be amended from time to time by ERCOT, the current terms of which are summarized below. Complete program details can be found at http://www.ercot.com/services/programs/load/eils/.

EILS Parameters. The EILS requires customers to reduce load and/or generate electricity within the following parameters:

a. **Contract Periods**. Customer may contract with EnerNOC to provide EILS year-round during the contract periods defined by ERCOT as February– May, June – September, October – January.

b. **Program hours**. Customer can elect to participate during any or all of the Business Hour 1 ("BH1"), Business Hours 2 (BH2), Business Hours 3 (BH3) and/or Non-Business Hour ("NBH") periods.
    a. BH1 resources must be available to respond during non-holiday weekdays from 8:00 a.m. to 1:00 p.m.
    b. BH2 resources must be available to respond during non-holiday weekdays from 1:00 p.m. to 4:00 p.m.
    c. BH3 resources must be available to respond during non-holiday weekdays from 4:00 p.m. to 8:00 p.m.
    d. NBH resources must be available to respond during all other hours not defined as BH1, BH2 and BH3.
    e. BH1, BH1, BH3 and NBH resources must be available to respond during all hours of the year.

   The Program Hours might change from time to time pending changes made by ERCOT to the rules surrounding EILS. EnerNOC will help determine if customers are eligible to qualify as BH and/or NBH participation.

c. **Event Notification and Response.** Demand Response Events under the EILS will only be called in the event of an emergency, as defined by ERCOT. Customers must be able to respond to an EILS event notice within 10 minutes of such notice, provided by EnerNOC.

d. **Metering Equipment.** Customers must have an ERCOT-approved Interval Data Recorder ("IDR") meter installed to monitor and record performance.

e. **Determination of Load Shed and Generation.** The determination of the Capacity Value due to customer, for customer's electric demand reduction or generation, will be calculated in accordance with the ERCOT approved method as set forth in ERCOT's rules and as measured by the IDR meter.

f. **Test Event**. ERCOT may conduct a load-shedding test of each resource once a year unless the resource has met its performance obligations during an EILS deployment during the preceding 12 months.

g. **Other Demand Response Programs**. Customer shall not provide other ancillary services, including balancing energy services with the same capacity.

h. **EILS Payments**. The payments under the EILS will be determined by ERCOT before the start of each contract period as defined in section (a). Payments in one contract period may vary from payments in another contract period.

Performance Requirement. ERCOT reserves the right to deny participation, on a going forward basis, any load not performing in a manner satisfactory to its performance standards, which may change from time to time.

City of Sherman - WWTP

ENERNOC

Demand Response Financial Analysis

Revenue

	Base	Low	High
City of Sherman WWTP Facilities Under Proposal		1	
Expected February-May Contract Period Capacity (Weighted Average, kW)	185	150	200
Expected June-September Contract Period Capacity (Weighted Average, kW)	185	150	200
Expected October-January Contract Period Capacity (Weighted Average, kW)	185	150	200
	555	450	600
City of Sherman WWTP's Average Demand Response Capacity (kW) (a)	185	150	200
Estimated ERCOT EILS Clearing Price $ / MW - H (Weighted Average) (b)	$8.50		
Estimated Annual Hours of Participation (c)	8,760		
EILS Clearing Price Percentage Payment to (d)	50%		
Estimated Annual Installed Capacity Payment to City of Sherman WWTP (equals (a	$6,888	$5,585	$7,446
Estimated Demand Response Event Hours (e)	1		
$/kWh Payment to City of Sherman WWTP (f)	$0.10		
Estimated Energy Payments to City of Sherman WWTP (equals (a) X (e) X (f))	$19	$15	$20
Annual Total Estimated Payments to City of Sherman WWTP	**$6,906**	**$5,603**	**$7,465**

Cost

Total EnerNOC Site Servers (ESS) Required	1
Value per ESS Installation	5,000
Total ESS Installed Cost for Facilities Under Proposal	$5,000
ERCOT Reimbursement	$0
City of Sherman WWTP Contribution to ESS Through Capacity Payment	$0
EnerNOC Contribution to EnerNOC Site Server Installation	$5,000
City of Sherman WWTP Total Cash Cost	$0

Time to Payback

Expected Time to Payback	**0 Months**

Total Value

	Base	Low	High
Estimated Total Payments Over 5 Years	**$34,530**	**$28,015**	**$37,323**

Additional FREE Benefits Include:

- Online monitoring and presentation of real-time energy data with PowerTrak™
- Advance notice of reliability events such as blackouts and brownouts
- EnerNOC energy expertise

Quoted percentage payment is valid for 30 days.
This analysis is based on estimated demand response capacity and estimated demand response pricing.
Demand Response Capacity is subject to adjustment based on baseline determination by ERCOT
Actual results will be based on nominated capacity and pricing accepted by ERCOT.
Final payments are determined by ERCOT and are subject to adjustments for availability and performance."

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. C.6

**** RESOLUTION NO. 5388***
Abandoning a Ten Foot (10') City Drainage and Utility Easement located at Lot 1, Block 1 of the Windsor Place Addition

Issue
To consider the abandonment of a 10' wide drainage and utility easement located at 1210 Yorkshire Circle and described as Lot 1, Block 1 of the Windsor Place Addition to the City of Sherman, Texas.

Background
The existing drainage and utility easement is not being utilized and is no longer deemed necessary.

Origination
Department of Engineering and Utilities

Financial Consideration
None

Staff Recommendation
Staff recommends approval of the abandonment of the drainage and utility easement contingent upon the approval of the franchise utilities.

Alternatives
As may be directed by the City Council

Attachments
Resolution No. 5388
Sketch
Location Map

Prepared by:
Mark Gibson, Director of Engineering & Utilities

Approved by:
George Olson, City Manager

RESOLUTION NO. 5388

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING A TEN FOOT (10') CITY DRAINAGE AND UTILITY EASEMENT LOCATED IN LOT 1, BLOCK 1 OF THE WINDSOR PLACE ADDITION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council is of the opinion that the abandoning, vacating and closing of said drainage and utility easement as depicted on the attached map is in the public interest and is approved;

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

SECTION 1. That the ten foot (10') drainage and utility easement located at 1210 Yorkshire Circle and being described as Lot 1, Block 1 of the Windsor Place Addition as described and depicted in Exhibit "A", and attached hereto and made a part hereof for all purposes, is hereby extinguished, vacated, closed, and permanently abandoned as an easement for public use.

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

PASSED AND APPROVED on this the _____ day of ________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ________________________________
BILL MAGERS, MAYOR

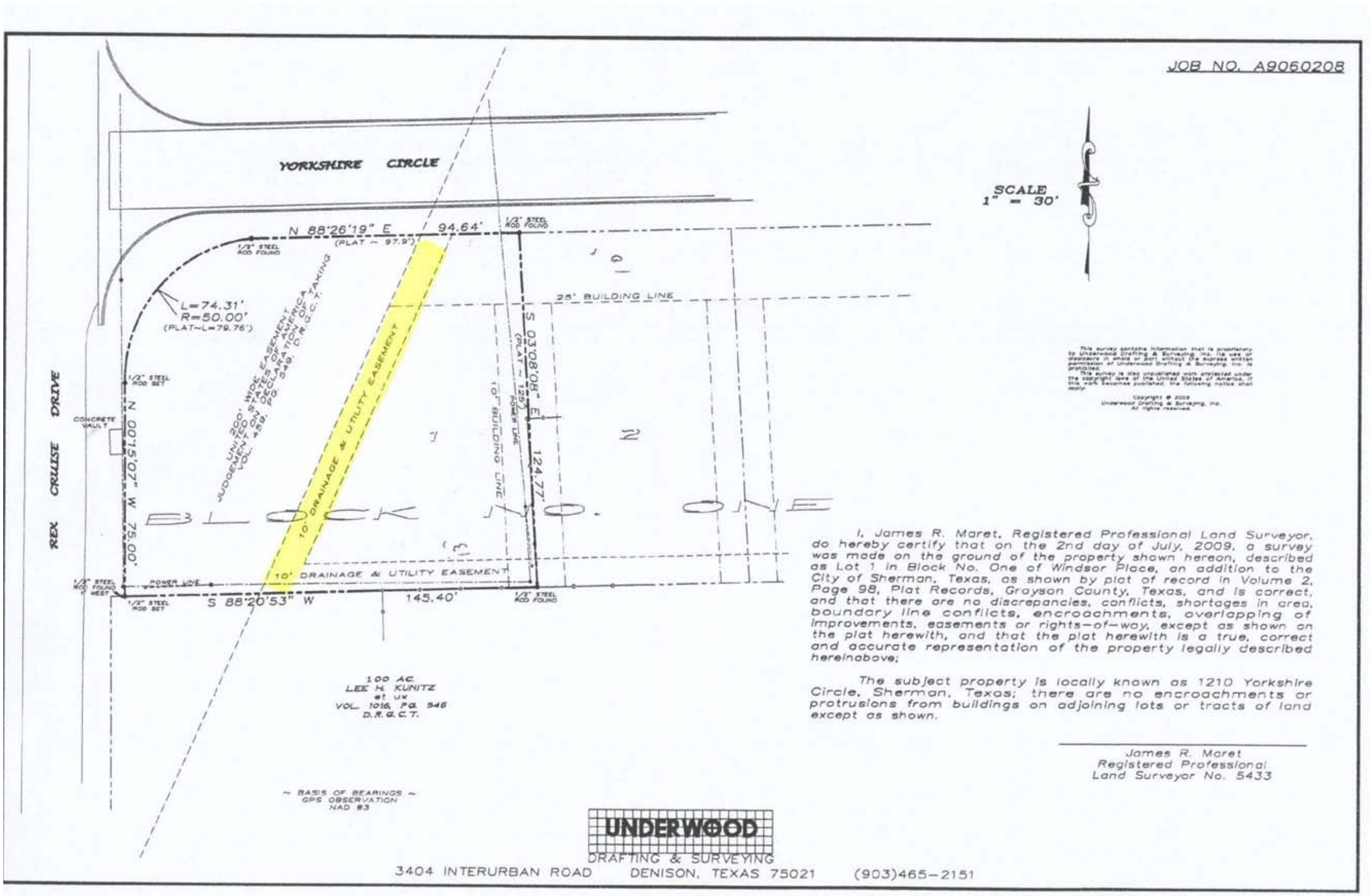
ATTEST:

BY: ________________________________
LINDA ASHBY, CITY CLERK

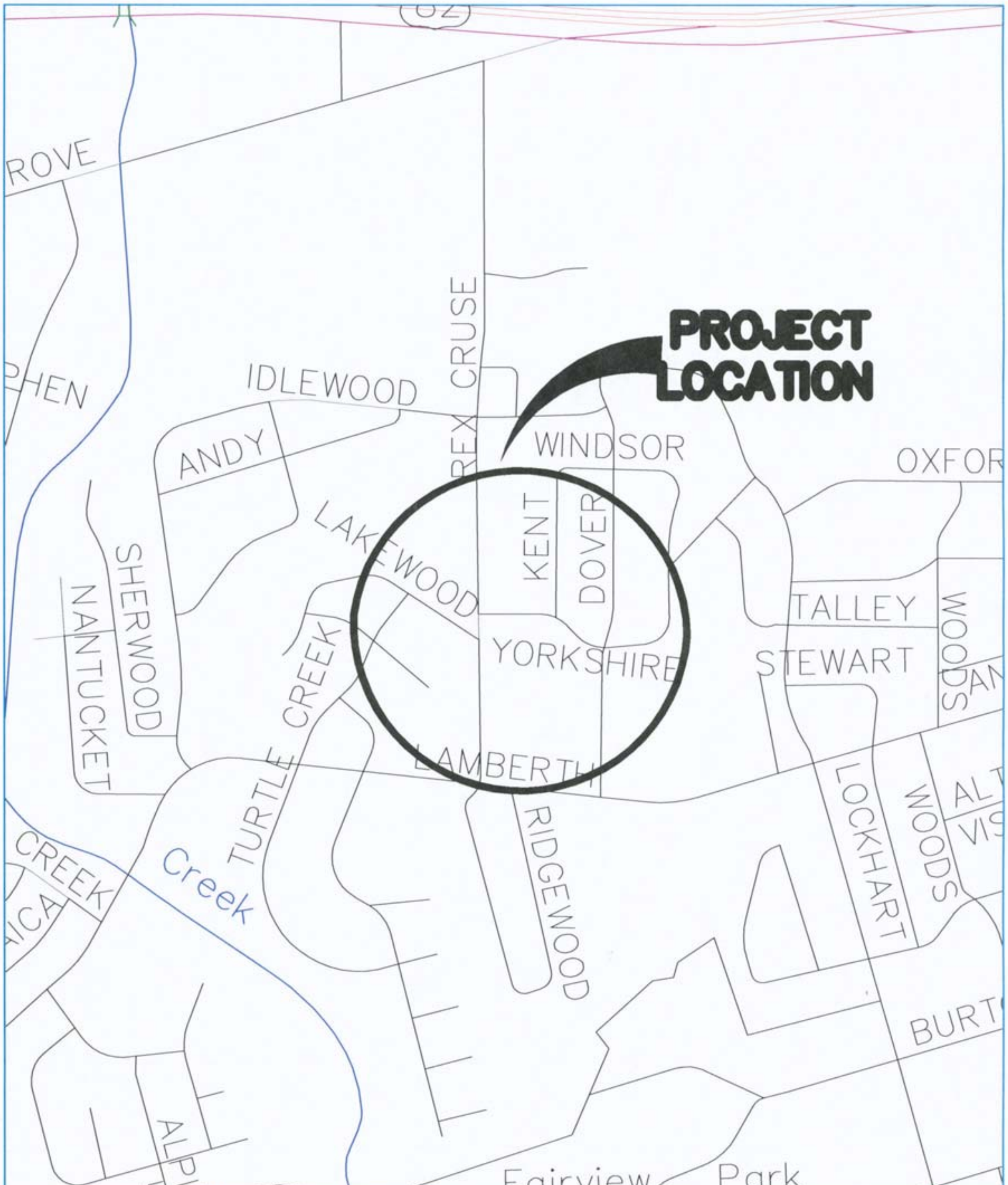
APPROVED AS TO FORM AND CONTENT:

BY: ________________________________
BRANDON SHELBY,
CITY ATTORNEY

EXHIBIT "A"



JOB NO. A9060208
YORKSHIRE CIRCLE
REX CRUISE DRIVE
SCALE 1" = 30'
N 88°26'19" E
94.64'
(PLAT ~ 97.9')
1/2" STEEL ROD FOUND
L=74.31'
R=50.00'
(PLAT~L=79.76')
1/2" STEEL ROD SET
CONCRETE VAULT
N 00°15'07" W 75.00'
200' WIDE EASEMENT UNITED STATES OF AMERICA TAKING JUDGEMENT ON DECLARATION OF VOL. 459, PG. 549, D.R.G.C.T.
10' DRAINAGE & UTILITY EASEMENT
25' BUILDING LINE
S 03°08'08" E
(PLAT ~ 125')
124.77'
10' BUILDING LINE
POWER LINE
BLOCK NO. ONE
10' DRAINAGE & UTILITY EASEMENT
S 88°20'53" W
145.40'
100 AC.
LEE H. KUNITZ
et ux
VOL. 1016, PG. 546
D.R.G.C.T.
~ BASIS OF BEARINGS ~
GPS OBSERVATION
NAD 83
Copyright © 2009
Underwood Drafting & Surveying, Inc.
All rights reserved.
I, James R. Moret, Registered Professional Land Surveyor, do hereby certify that on the 2nd day of July, 2009, a survey was made on the ground of the property shown hereon, described as Lot 1 in Block No. One of Windsor Place, an addition to the City of Sherman, Texas, as shown by plat of record in Volume 2, Page 98, Plat Records, Grayson County, Texas, and is correct, and that there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown on the plat herewith, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove;
The subject property is locally known as 1210 Yorkshire Circle, Sherman, Texas; there are no encroachments or protrusions from buildings on adjoining lots or tracts of land except as shown.
James R. Moret
Registered Professional
Land Surveyor No. 5433
UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903)465-2151



City of Sherman, Texas

1210 YORKSHIRE CIRCLE

PROJECT LOCATION MAP

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. C.7

**** RESOLUTION NO. 5389***

Authorizing the Purchase of Replacement Residential Trash and Recycling Carts for the Solid Waste Services Department through the Texas Comptroller of Public Accounts Cooperative Purchasing Program

Issue

To consider approval of a resolution to purchase replacement residential trash and recycling carts off of the Texas Comptroller of Public Accounts Cooperative Purchasing Program (Co-Op) contract for use within the Solid Waste Services Department

Background

Maintaining and periodically replacing residential automated trash carts is an important part of the solid waste program, both for our residents and to assure continued efficient collection. The typical life of an automated cart is about ten (10) years, but can be shorter based upon a number of factors, including exposure to the elements and collection equipment mechanical malfunctions. As we enter the thirteenth year of our automated trash collection program and the ninth year of our recycling program, we need to continue our replacement program for those aging or broken carts. It is also important to maintain a supply of carts for new homes and accommodate requests for extra carts. This year, the Texas Co-Op Program had the lowest price for the Toter brand cart which has been used in the city for the past several years.

Origination

Department of Public Works

Financial Consideration

Funds for the purchase of new 100-gallon automated carts (both trash and recycling) were appropriated in the 2008-2009 fiscal year operating budget. The lowest contract price for the Toter cart was available to the City off of the Texas Co-Op purchasing contract ($46.67 per cart).

Staff Recommendation

It is recommended by staff that the Toter cart continue to be used for a consistent look across the city and that the City Manager be authorized to acquire both residential trash and recycling carts off of the Texas Comptroller of Public Accounts Cooperative Purchasing Program contract.

Alternatives

Those as may be recommended by the City Council

Attachments

Resolution No. 5389; Bid Tabulation; Texas Co-Op Program Information

Prepared by:
Jeff Miller, Director of Public Works

Approved by:
George Olson, City Manager

RESOLUTION NO. 5389

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF REPLACEMENT RESIDENTIAL TRASH AND RECYCLING CARTS FOR THE SOLID WASTE SERVICES DEPARTMENT THROUGH THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS COOPERATIVE PURCHASING PROGRAM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase from the Texas Comptroller of Public Accounts Cooperative Purchasing Program (Co-Op) residential solid waste roll-out carts (trash and recycling) at a purchase price of Forty-Six Dollars and Sixty-Seven Cents ($46.67) per cart, in compliance with the City's partnership renewal in the Texas Comptroller of Public Accounts Cooperative Purchasing Program (Co-Op) attached hereto as Exhibit "A".

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

PASSED AND APPROVED on this the _____ day of ________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ________________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ________________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ________________________________
BRANDON S. SHELBY,
CITY ATTORNEY

BID TAB
Residential/Recycling Automated Cart
July 2009

	Toter (manufacture of current city cart)	Cascade	Rehrig Pacific
H-GAC	$49.00	$59.35	$59.35
Direct Quote From Manufacturers	$50.40	$45.79	$47.25
State of Texas Purchasing Contract	$46.67	NA	NA

SUSAN
COMBS

TEXAS COMPTROLLER of PUBLIC ACCOUNTS
P.O. Box 13528 • AUSTIN, TX 78711-3528

January 29, 2009

MARY ANN WINKLER, PURCH AGENT
CITY OF SHERMAN
PO BOX 1106
SHERMAN TX 75091-1106

Re: Cooperative Purchasing Program
Membership Renewal

Account Number: M0913

Dear Ms. Winkler:

We are pleased that you have renewed your partnership in the Texas Comptroller of Public Accounts (CPA) Cooperative Purchasing Program (Co-Op). Your renewal payment has been received, extending your membership through March 18, 2010.

For your convenience, all state term contracts are accessible via the CPA Internet website (www.window.state.tx.us). The website is updated weekly, giving you the most current data. We hope you will be able to utilize this valuable tool to simplify your procurement practices and increase productivity. In addition, the CPA Co-Op manual is available on line at http://www.cpa.state.tx.us/procurement/prog/coop under Publications and CPA Co-Op manual.

The CPA Co-Op Team wishes to ensure that your membership meets all expectations. For further assistance, contact us by phone at 512/463-3368 or email us at coop@cpa.state.tx.us.

Sincerely,

Charlene Rendon

State of Texas CO-OP Representative

Window on State Government

Susan Combs Texas Comptroller of Public Accounts

Search Co-Op Members

GO

State of Texas CO-OP Listing for CITY OF SHERMAN

CITY OF SHERMAN

Agency #	**M0913**
Contact	**MARY ANN WINKLER, PURCH AGENT**
Address	**PO BOX 1106** **SHERMAN, TX 75091-1106**
Phone #	**903/892-7218**
FAX #	**903/891-0255**
E-mail	**maryannw@ci.sherman.tx.us**
Travel Eligible	**Y**
Expiration Date	**18-MAR-2010**

Go to MUNICIPALITIES
Go to Alpha Listing - S
Go to Member Page

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.1

**** REQUEST TO ADVERTISE***
Willow Street Water Main

Issue
Advertise for bids for the construction of the Willow Street Water Main

Background
The existing water main is deteriorated, resulting in frequent breaks and service interruptions. The project will replace an existing six inch (6") main on Willow Street, between Mulberry Street and Pacific Street. The project is funded in this year's Capital Improvement Program.

Origination
Department of Utilities Administration

Financial Consideration
The project is funded at $95,000.00 in this year's Capital Improvement Program

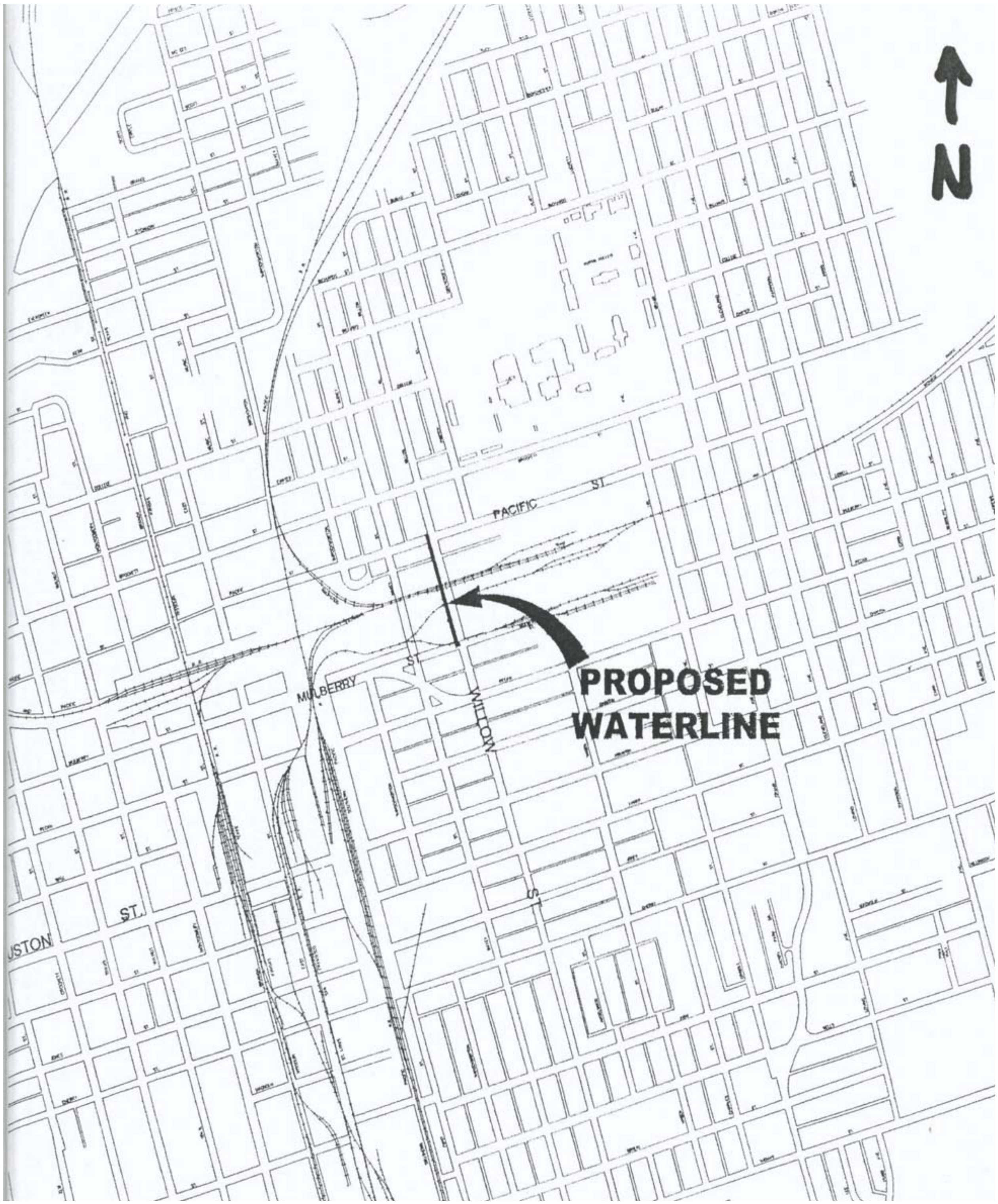
Staff Recommendation
It is recommended that the City Council authorize the staff to advertise the project for bid.

Alternatives
As may be directed by the City Council

Attachments
Location map

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager



N
PACIFIC ST
MULBERRY ST
WILLOW ST
PROPOSED WATERLINE
USTON ST.

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.2

**** REQUEST TO ADVERTISE***
Relief Sewer "C"

Issue
Advertise for bids for the construction of Relief Sewer "C"

Background
Relief Sewer "C" will replace an existing sewer along Branch Street, between King Street and Pacific Street, in central Sherman. The existing sewer has deteriorated and requires replacement. Plans and specifications have been finalized and are being approved by the State.

Origination
Department of Utilities Administration

Financial Consideration
The project is funded at $1 million in this year's Capital Improvement Program through bonds previously issued by the Greater Texoma Utility Authority on behalf of the City of Sherman. Advertising for this project is expected to cost less than $200.00.

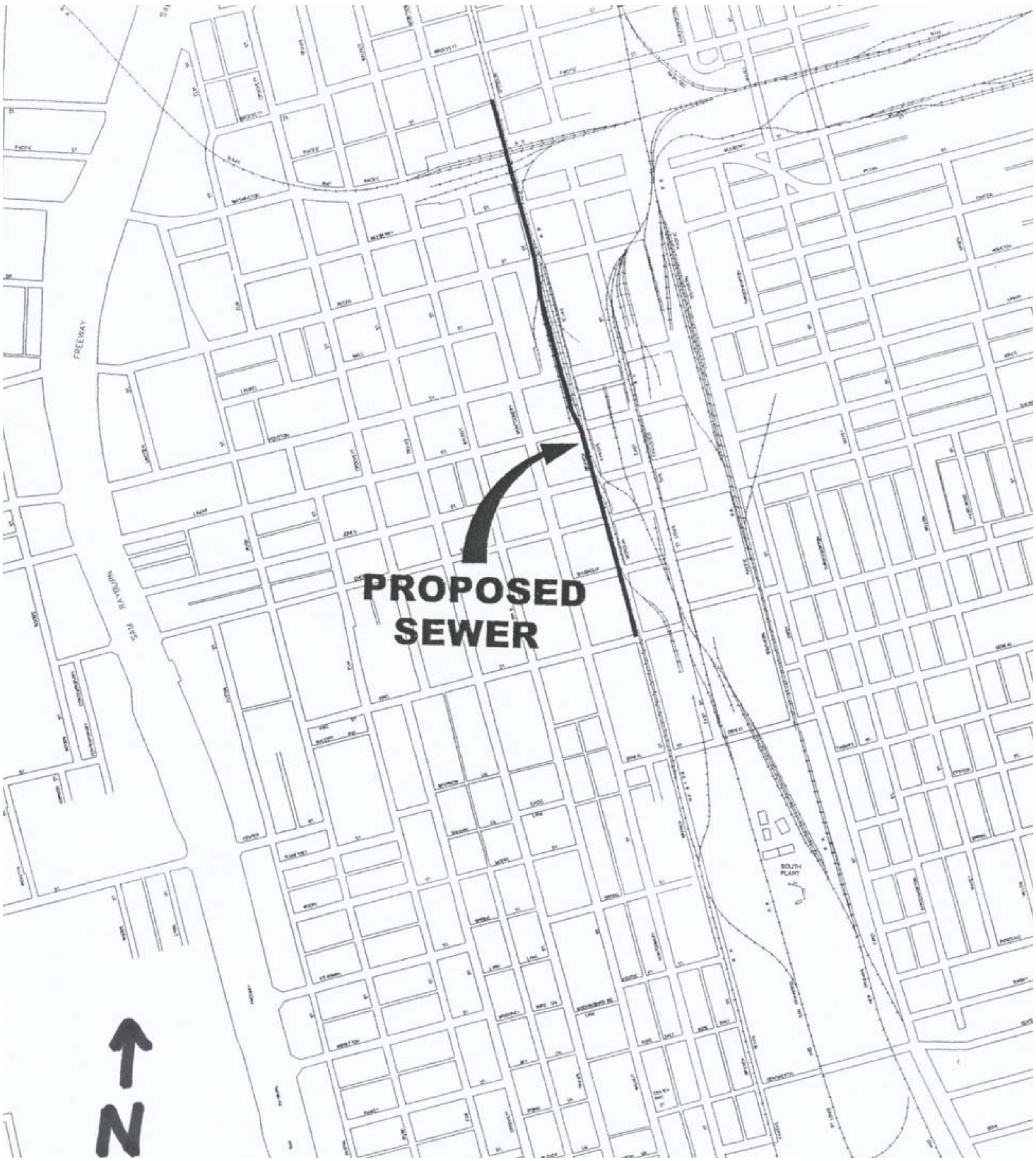
Staff Recommendation
It is recommended that the City Council authorize the staff to advertise the project for bid.

Alternatives
As may be directed by the City Council

Attachments
Location map

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager


PROPOSED
SEWER
FREEWAY
SAM RAYBURN
N

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.3

**** REQUEST TO ADVERTISE***
Fine Screen System – Wastewater Treatment Plant

Issue
Advertise for bids for the installation of a fine screen system at the City's Wastewater Treatment Plant

Background
The current Capital Improvement Program contains a project to install fine screens to remove debris passing the bar screens and clarification processes. Plans and specifications are being finalized.

Origination
Department of Utilities Administration

Financial Consideration
The project will be funded in this year's Capital Improvement Program through bonds issued by the Greater Texoma Utility Authority on behalf of the City of Sherman. The cost of advertising is expected to be about $200.00.

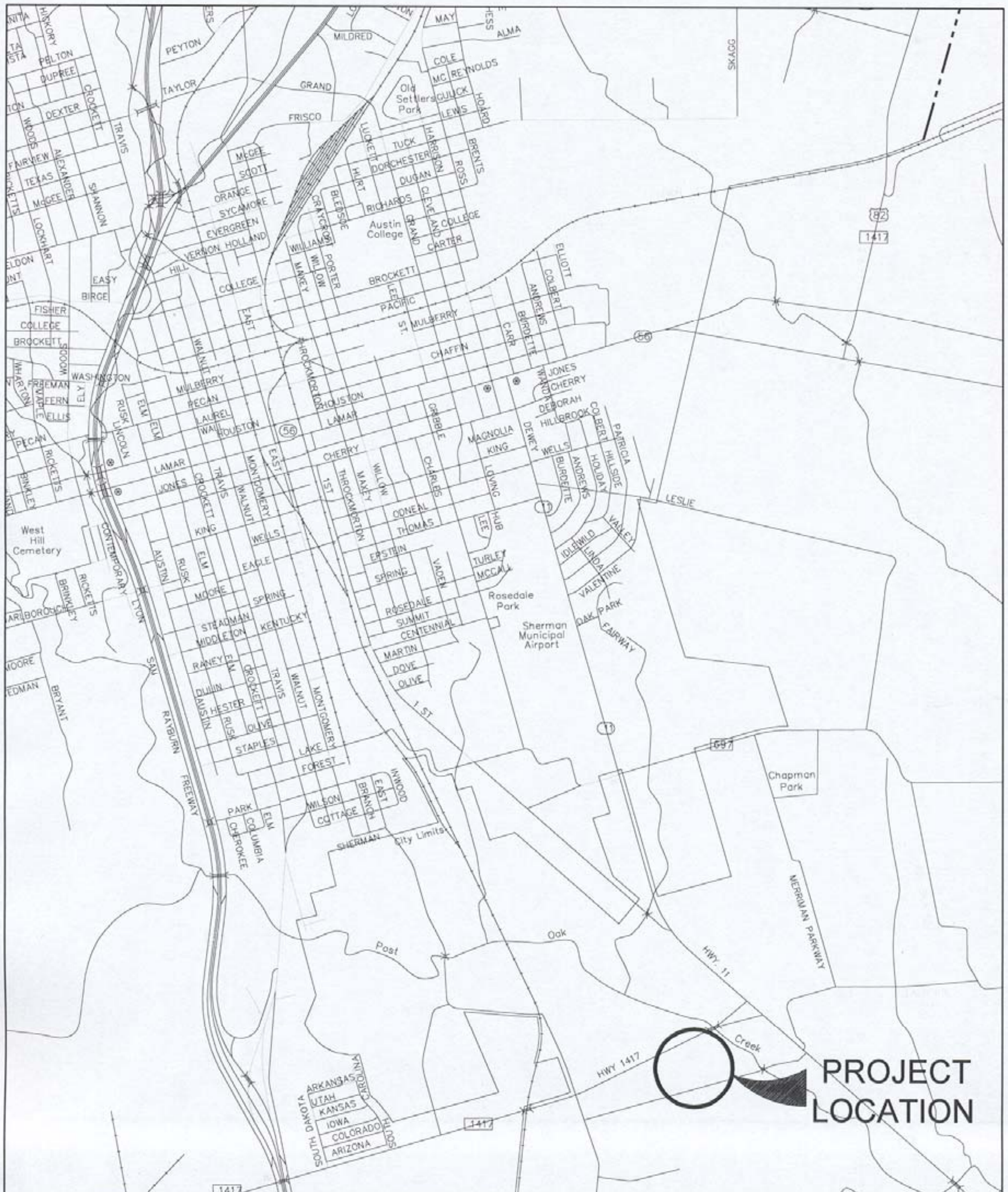
Staff Recommendation
It is recommended that the City Council authorize the staff to advertise the project for bid.

Alternatives
As may be directed by the City Council

Attachments
Location map

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager



City of Sherman, Texas

WASTEWATER TREATMENT PLANT

PROJECT LOCATION MAP

N

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.4

**** REQUEST TO ADVERTISE***
Primary and Secondary Digester Rehabilitation – Wastewater Treatment Plant

Issue
Advertise for bids for the rehabilitation of the primary and secondary digesters at the City's Wastewater Treatment Plant

Background
The current Capital Improvement Program contains a project to repair the primary and secondary digesters at the Wastewater Treatment Plant. Plans and specifications are being finalized.

Origination
Department of Utilities Administration

Financial Consideration
The project will be funded in this year's Capital Improvement Program through bonds issued by the Greater Texoma Utility Authority on behalf of the City of Sherman. The cost of advertising is expected to be about $200.00.

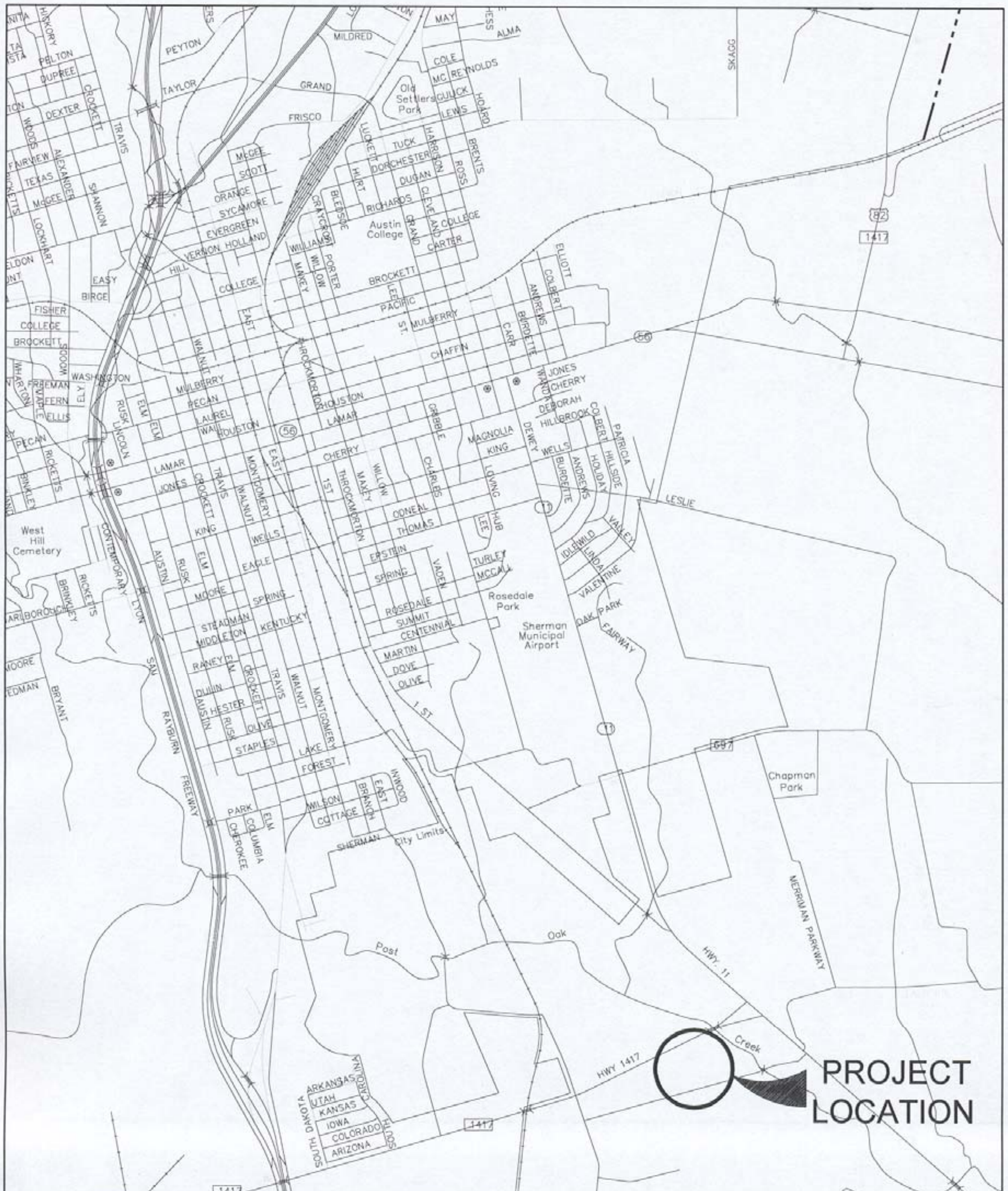
Staff Recommendation
It is recommended that the City Council authorize the staff to advertise the project for bid.

Alternatives
As may be directed by the City Council

Attachments
Location map

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager



City of Sherman, Texas

WASTEWATER TREATMENT PLANT

PROJECT LOCATION MAP

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.5

**** REQUEST TO ADVERTISE***
Primary Clarifier Rehabilitation – Wastewater Treatment Plant

Issue
Advertise for bids for the rehabilitation of Primary Clarifier No. 2 at the City's Wastewater Treatment Plant

Background
The current Capital Improvement Program contains a project to rehabilitate Primary Clarifier No. 2 at the Wastewater Treatment Plant. A new center mechanism will be installed. Plans and specifications are being finalized.

Origination
Department of Utilities Administration

Financial Consideration
The project will be funded in this year's Capital Improvement Program through bonds issued by the Greater Texoma Utility Authority on behalf of the City of Sherman. The cost of advertising is expected to be about $200.00.

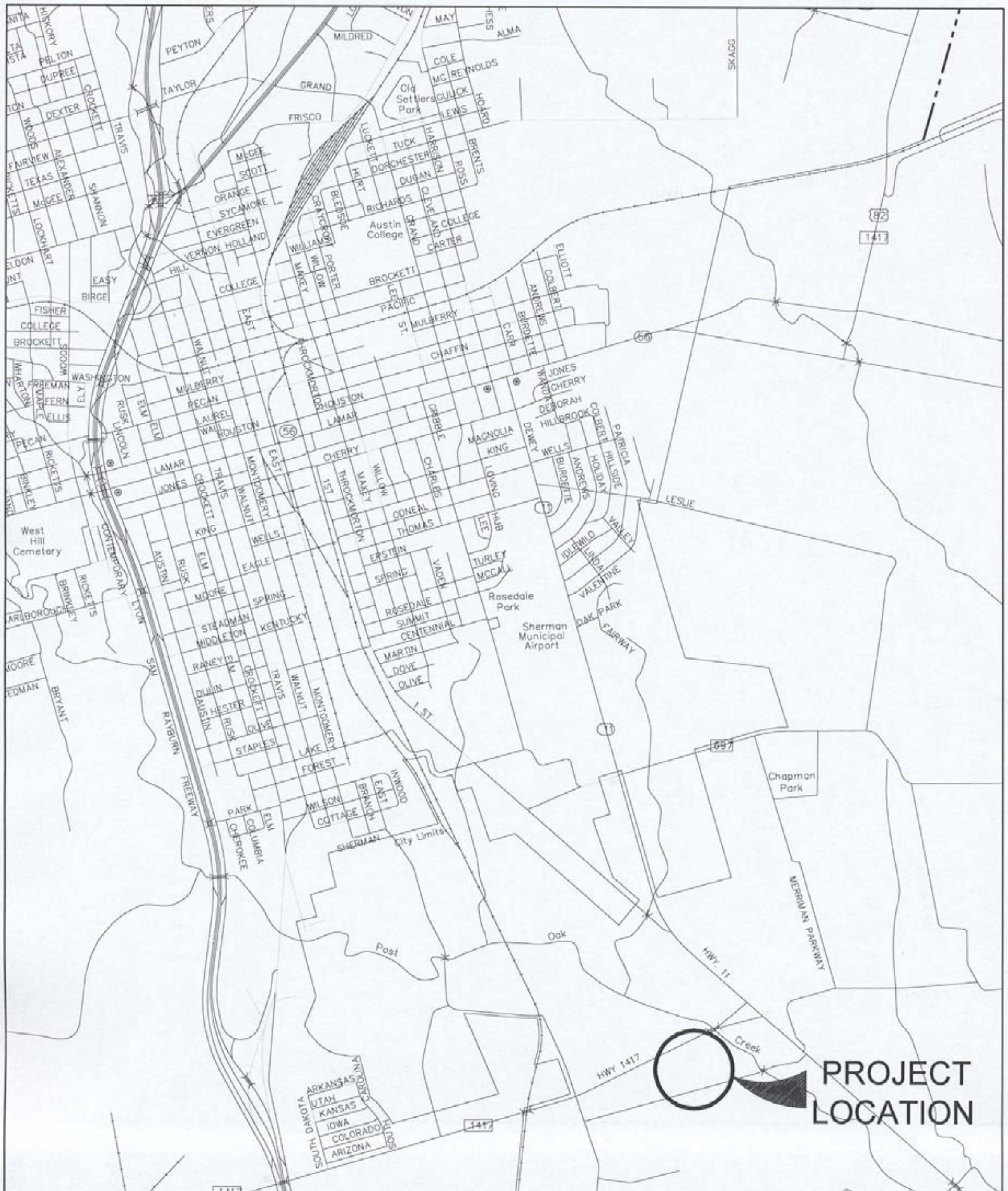
Staff Recommendation
It is recommended that the City Council authorize the staff to advertise the project for bid.

Alternatives
As may be directed by the City Council

Attachments
Location map

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager



City of Sherman, Texas

WASTEWATER TREATMENT PLANT

PROJECT LOCATION MAP

N

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.6

**** CHANGE ORDER NO. 1***
Oak Creek Water Main Replacement; Utility Construction Services of Texas, Inc.; $7,900.00, Decrease

Issue
Change Order No. 1 is a final reconciliatory change order to adjust final project quantities for the Oak Creek Drive Water Main Replacement Project.

Background
The Oak Creek Drive Water Main Replacement Project has been completed. The change order results in a decrease of $7,900.00 to the contract amount.

Origination
Department of Utility Services

Financial Consideration
The change order results in a $7,900.00 decrease in the contract amount, yielding a final contract price of $42,840.50.

Staff Recommendation
It is recommended that Change Order No. 1 be approved.

Alternatives
As may be directed by the City Council

Attachments
Change Order No. 1
Location Map

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager

CHANGE ORDER NO. 1

DATE: June 30, 2009

PROJECT: **Oak Creek Drive Water Main Construction**

OWNER: City of Sherman

CONTRACTOR: Utility Construction Services of Texas Inc.

TNP JOB NO.: SHN08348

I. DESCRIPTION OF CHANGE IN WORK QUANTITIES: This change order consists of the deletion of the "Dry Bore for 6" Waterline" bid item, an additional 24 SY of "Remove & Replace 6" Concrete Pavement", an additional 6" Gate Valve, and 2 additional 6"x6"x6" Tees.

ADDITIONS:

ITEM	*DESCRIPTION*	*QTY*	*UNIT*	*COST*	*TOTAL*
1	Remove & Replace 6" Concrete Pavement	24	SY	$60.00	$1,440.00
7	6" Gate Valve	1	EA	$700.00	$700.00
9	6"x6"x6" Tee	2	SY	$130	$260.00
				TOTAL:	**$2,400.00**

*Indicates new item not in original contract.

DELETIONS:

ITEM	*DESCRIPTION*	*QTY*	*UNIT*	*COST*	*TOTAL*
14	Dry Bore for 6" Waterline	103	LF	$100.00	($10,300.00)
				TOTAL:	**($10,300.00)**

II. ADJUSTMENTS IN CONTRACT PRICE

ORIGINAL CONTRACT AMOUNT	$50,740.50
ADJUSTMENTS TO CONTRACT AMOUNT PER PREVIOUS CHANGE/EXTRA WORK ORDER	$0.00
TOTAL ADJUSTMENT PER THIS CHANGE ORDER	($7,900.00)
REVISED CONTRACT AMOUNT	**$42,840.50**

III. ADJUSTMENTS IN CONTRACT TIME

ORIGINAL CONTRACT TIME	0 calendar days
ADJUSTMENTS IN CONTRACT TIME PER PREVIOUS CHANGE/EXTRA WORK ORDER	0 calendar days
ADJUSTMENTS TO CONTRACT TIME PER THIS CHANGE ORDER	0 calendar days
REVISED CONTRACT TIME	**0 calendar days**

RECOMMENDED BY ENGINEER:

Date: 6/30

Teague Nall and Perkins, Inc.

AGREED BY CONTRACTOR:

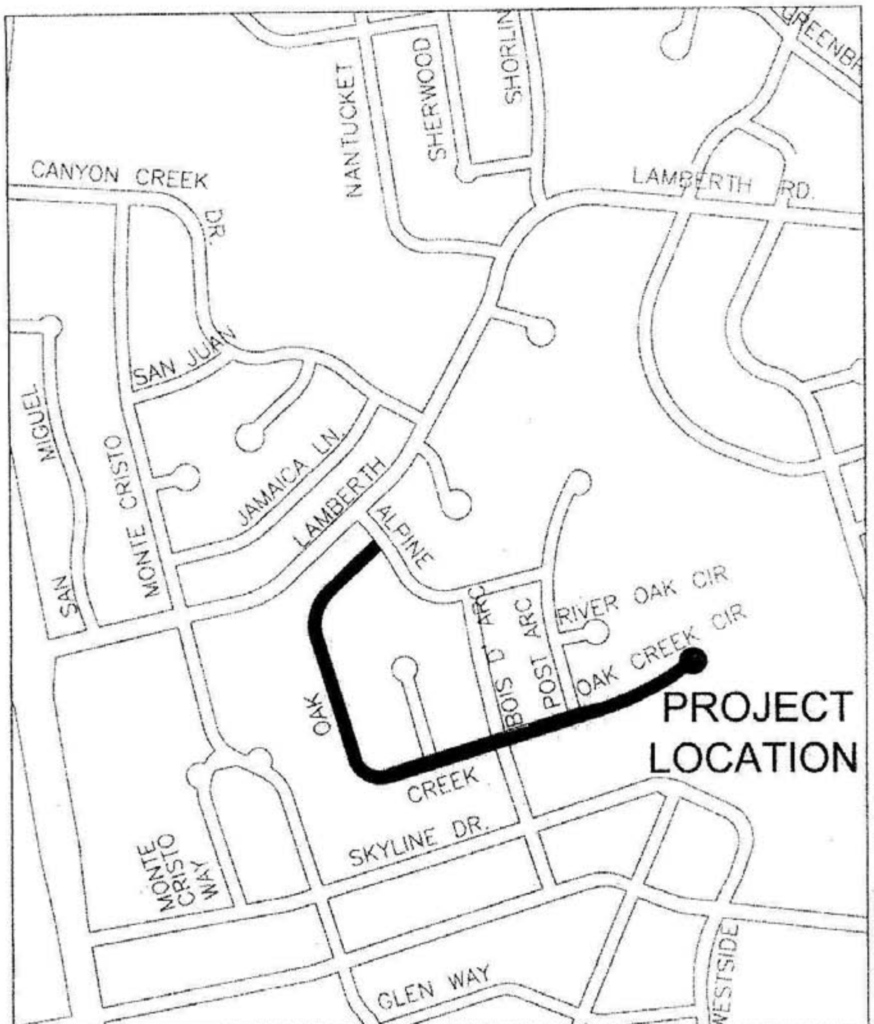
Date: 7-01-09

Utility Construction Services of Texas Inc.

ACCEPTED BY OWNER:

Date: _____

City of Sherman



OAK CREEK DRIVE WATER MAIN REPLACEMENT
OAK CREEK CIRCLE NORTH TO ALPINE DRIVE

City of Sherman, Texas

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.7

**** OTHER BUSINESS***

Set Public Hearing on Three Proposed Tax Abatement Agreements for Monday, August 3, 2009

Issue

To consider setting a public hearing on three proposed tax abatement agreements for the City Council's regular meeting on Monday, August 3, 2009

Background

The City has been approached for property tax abatements from three parties:

- The first was received from Beard and Buller, LLC, whose property is in the Central Business District, at the southwest corner of Houston and Crockett Streets. This property has already received a $25,000.00 reimbursable grant under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program; and the Central Business District Tax Abatement Program is already in place.
- The second was received from Panda Sherman Power, LLC for their property west of U.S. Highway 75 and south of F.M. 1417, where they propose to construct a power plant. The expected cost of construction is at least $300 million.
- The third was received from Carrus Medical Center whose property lies within the proposed Industrial Reinvestment Zone No. 072009-1, City of Sherman, Texas, which will extend roughly from Travis Street west along the north and south sides of U.S. Highway 82 to Heritage Parkway. Carrus proposes to construct an $11 million, 65,000 square facility within the area.

The Tax Reinvestment Committee met on Friday, June 5, 2009, to consider the requests and voted to recommend the tax abatements to the City Council and other taxing entities. The reinvestment zones necessary for consideration of these abatements have been created.

Origination

Assistant City Manager/CFO

Financial Consideration

There is no direct cost associated with the public hearing.

Staff Recommendation

The staff recommends that the City Council set a public hearing on the three proposed tax abatement agreements for the regular August 3rd Council meeting.

Attachments

None

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.8

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.9

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.10

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. D.11

ADJOURNMENT

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 7-20-2009

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2009
CITY COUNCIL MEETINGS

JANUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	**5**	6	7	8	9	10
11	12	13	14	15	16	17
18	**19**	20	21	22	23	24
25	**26**	27	28	29	30	31

FEBRUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	**2**	3	4	5	6	7
8	9	10	**11**	12	13	14
15	**16**	17	**18**	19	20	21
22	23	24	**25**	26	27	28

MARCH

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	**2**	3	4	5	6	7
8	9	10	11	12	13	14
15	**16**	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

APRIL

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	**6**	7	8	9	10	11
12	13	14	15	16	17	18
19	**20**	21	22	23	24	25
26	27	28	**29**	30		

MAY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	**4**	5	6	7	8	9
10	11	12	13	14	15	16
17	**18**	19	20	21	22	23
24	25	26	27	28	29	30
31						

JUNE

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	**15**	16	17	**18**	19	20
21	22	23	24	25	26	27
28	29	30				

JULY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	**6**	7	8	9	10	11
12	13	14	15	16	17	18
19	**20**	21	22	23	24	25
26	27	28	29	30	31	

AUGUST

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	**3**	4	5	6	7	8
9	10	11	12	13	14	15
16	**17**	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

SEPTEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	**7**	**8**	9	10	11	12
13	14	15	16	17	18	19
20	**21**	22	23	24	25	26
27	28	29	30			

OCTOBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	**5**	6	7	8	9	10
11	12	13	14	15	16	17
18	**19**	20	21	22	23	24
25	26	27	28	29	30	31

NOVEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	**2**	3	4	5	6	7
8	9	10	11	12	13	14
15	**16**	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

DECEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	**7**	8	9	10	11	12
13	14	15	16	17	18	19
20	**21**	22	23	24	25	26
27	28	29	30	31		

01/19/09 - M.L.K., Jr. Birthday / Regular Council Meeting
~~01/26/09 - 12 Noon Joint Meeting w/P&Z Commission re: Comprehensive Plan~~
02/11/09 - 12 Noon Called Meeting to Interview City Attorney Candidates
02/16/09 - Washington's Birthday / Regular Council Meeting
02/18/09 - 1PM Called Meeting to Interview City Attorney Candidates
02/25/09 - 12 Noon Joint Meeting w/P&Z Commission re: Comprehensive Plan
~~03/06/09 - Proposed 12 Noon Called Meeting with Chamber Board~~
04/29/09 - 12 Noon Budget Planning Meeting in Council Chambers
~~05/09/09 - City Council Election~~
~~05/12/09 - 12 Noon Called Meeting to Canvass Election Results~~

~~06/17-18/09 - Budget Workshop in Council Chambers~~
06/18/09 - Budget Workshop/Long Range Planning Workshop in Council Chambers
~~06/19/09 - Long-Range Planning Workshop~~
09/07/09 - Labor Day / Called Council Meeting on 09/08/09