

**SUPPLEMENT TO THE  
CITY OF SHERMAN  
CITY COUNCIL CALLED MEETING AGENDA  
COUNCIL CHAMBERS OF THE CITY HALL  
220 WEST MULBERRY STREET  
SHERMAN, TEXAS  
MONDAY, DECEMBER 12, 2022**

**5:00 P.M.**

**THE EMERGENCY SITUATION THAT REQUIRED THE PRIOR CHANGE OF LOCATION HAS BEEN  
RESOLVED. THE CALLED COUNCIL MEETING WILL BE HELD AT THE SHERMAN CITY HALL  
AT THE ADDRESS ABOVE. NO CHANGES TO ANY OTHER ITEMS.**

- A. 1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A. 2. PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER DARON HOLLAND**
- A. 3. INVOCATION BY COUNCIL MEMBER DARON HOLLAND.**
- A. 4. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF NOVEMBER 21, 2022, AND THE CALLED MEETING OF THE TAX INCREMENT FINANCING BOARD #8 OF NOVEMBER 21, 2022.**

**Citizen Comments**

- B. 1. CITIZEN COMMENTS**  
During this meeting, the City Council welcomes public comment **only** on agenda items listed under the Open Meeting portion of the agenda, in accordance with Texas Government Code Section 551.007. For items not listed on the agenda, those matters may be discussed with City staff during regular business hours, or with the Mayor or any Council member by contacting them at times other than at City Council meetings.

**Consent Agenda**

- C. 1. CONSENT AGENDA**  
Asterisked (\*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

**Resolutions**

- D. 1. RESOLUTION NO. 7002**  
Authorizing the Termination of a Drainage and Park Improvement Agreement with Artisan Development Company, Inc
- D. 2. RESOLUTION NO. 7003**  
Authorizing Execution of a Development Agreement Between the City of Sherman and Carbet Properties, LLC for the Design and Construction of Drainage Improvements to Existing Park Property Described as Lot 36, Pebblebrook South, Phase 1 and Providing for Conveyance of New Parkland Tracts in the City of Sherman

**D. 3.      RESOLUTION NO. 7004**

Approving the Greater Texoma Utility Authority's Intention to Contract with Garney Companies, Inc. for the 36-Inch West Sherman Water Main Construction Manager at Risk (CMAR)

**D. 4.      \* RESOLUTION NO. 7005**

Authorizing Execution of a Professional Services Agreement with D&S Engineering Labs, LLC for the Annual Geotechnical Engineering and Construction Materials Testing

**D. 5.      \* RESOLUTION NO. 7006**

Authorizing the Purchase of a New Base Truck Mount Loader from Texas Pack & Load for the Solid Waste Department

**D. 6.      \* RESOLUTION NO. 7007**

Awarding a Bid to and Authorizing Execution of a Contract with El Dorado for the Purchase of Four New Half-Ton Trucks from El Dorado Chevrolet Based Upon a Request for Public Bids for the Sherman Fire Department

**Other Business**

**E. 1.      OTHER BUSINESS**

Receive an update from Pape-Dawson Engineers, Inc. for City of Sherman Major Infrastructure Improvements Projects.

**E. 2.      \* OTHER BUSINESS**

Repair and Replacement of the Center Street Wastewater Aerial Crossing Under Emergency Designation

**E. 3.      \* OTHER BUSINESS**

Woods Street Wastewater Repair Under Emergency Designation

**E. 4.      \* OTHER BUSINESS**

Consider the Request of Brandy Fair and the Grayson County Sheriff's Office to Temporarily Close Certain Streets for the 10<sup>th</sup> Annual "Beat the Heat 5K" run on Saturday, April 15, 2023

**Consider Board/Commission Appointments**

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

(a)      Board of Adjustment (5) and Board of Adjustment Alternates (2)

**G.        COUNCIL COMMENTS**



## **Executive Session**

### **H. 1. EXECUTIVE SESSION**

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

|                              |                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tex. Gov't Code §<br>551.071 | Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.                                            |
| Tex. Gov't Code §<br>551.072 | Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.                                                                                                                                               |
| Tex. Gov't Code §<br>551.073 | Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.                                                                                                                                  |
| Tex. Gov't Code §<br>551.074 | Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing.                                       |
| Tex. Gov't Code §<br>551.076 | Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit.                                                                                                                                                                                                                           |
| Tex. Gov't Code §<br>551.087 | Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. |
| Tex. Gov't Code §<br>551.089 | Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices.                                                                                            |

## **The Council reconvenes into General Session**

### **I. 1. OPEN MEETING**

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

### **J. ADJOURNMENT**

## **COUNCIL CALENDAR**



## **CERTIFICATION**

I, the undersigned authority, do hereby certify that the above Notice of Called Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Monday, December 12, 2022 at 4:00 p.m., and said time of supplement posting was one hour before said meeting was convened or called to order.

Dated this 12<sup>th</sup> day of December, 2022.  
City of Sherman, Texas

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City Clerk

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

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

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

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

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

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

Mayor

David Plyler

Deputy Mayor

Josh Stevenson

Council Members

Henry Marroquin, Council-At-Large, PL #1  
Juston Dobbs, Council-At-Large, PL #2  
Shawn C. Teamann, Council – District #1

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



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**City Council Regular Meeting**

**A. 4.**

**Meeting Date:** 12/12/2022

**Approved By:** Robby Hefton, City Manager

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**Caption:**

**APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF NOVEMBER 21, 2022, AND THE CALLED MEETING OF THE TAX INCREMENT FINANCING BOARD #8 OF NOVEMBER 21, 2022.**

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**Attachments**

November 21, 2022

D-6 Presentation

November 21, 2022 - Called Meeting - Tax Increment Financing Board #8

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STATE OF TEXAS                    §  
                                                                 November 21, 2022  
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 November 21, 2022.

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

MEMBERS ABSENT:            NONE.

**CALL TO ORDER**

Mayor Plyler called the meeting to order at 5:02 p.m. The Pledge of Allegiance and Invocation were led by Council Member Shawn Teamann.

CALL TO ORDER

**APPROVE MINUTES**

The Council reviewed the Minutes of the Regular City Council Meeting of November 7, 2022. Deputy Mayor Howeth moved to approve the Minutes, as presented; Second by Council Member Dobbs; All present voted AYE.  
MOTION CARRIED.

APPROVE MINUTES

**OATH OF OFFICE**

**OATH OF OFFICE AND PRESENTATION OF CERTIFICATE OF ELECTION**

Linda Ashby, City Clerk, administered the Oath of Office to the following Council-elect positions.

OATH OF OFFICE

Council Member,                    Shawn Teamann  
District 1

Council Member,                    Pam Howeth  
District 3

A Certificate of Election was presented to each newly sworn Council Member. The new members were seated at the Council table.

**NEW COUNCIL SEATED**

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

MEMBERS ABSENT:    None.

**COUNCIL ELECTION OF DEPUTY MAYOR**

Mayor Plyler asked for a nomination for Deputy Mayor.

DEPUTY MAYOR  
ELECTION

**ACTION TAKEN.**

Motion by Deputy Mayor Howeth to nominate Council Member Josh Stevenson to serve as Deputy Mayor from November 21,

COUNCIL MINUTES – NOVEMBER 21, 2022

2022 until November 7, 2023. Second by Council Member Teamann.

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

VOTING NAY: None.

MOTION CARRIED.

**CITIZEN'S COMMENTS**

There were no citizen's comments.

**CITIZENS COMMENTS**

**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.

**CONSENT AGENDA**

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

Mayor Plyler introduced Ordinance No. 6544 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY'S PARTICIPATION IN THE TEXAS ENTERPRISE ZONE PROGRAM PURSUANT TO THE TEXAS ENTERPRISE ZONE ACT, CHAPTER 2303, TEXAS GOVERNMENT CODE; DESCRIBING AVAILABILITY OF CERTAIN LOCAL INCENTIVES; DESIGNATING A LIAISON FOR COMMUNICATION WITH INTERESTED PARTIES; AND NOMINATING GLOBAL WAFERS AMERICA TO THE OFFICE OF THE GOVERNOR ECONOMIC DEVELOPMENT & TOURISM THROUGH THE ECONOMIC DEVELOPMENT BANK FOR DESIGNATION AS A QUALIFIED BUSINESS AND ENTERPRISE PROJECT; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6544  
TEXAS ENTERPRISE  
ZONE PROGRAM  
(GLOBAL WAFERS  
AMERICA)

Mary Lawrence, Director of Finance, said this was the second ordinance concerning the Texas Enterprise Zone Program for Globi Tech. This was an additional step for their application. Redoing the ordinance gives them additional time to meet that step.

No citizens appeared before the City Council to discuss Ordinance No. 6544.

Mayor Plyler introduced Ordinance No. 6545 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES, ENTITLED "PERSONNEL", ARTICLE 9.05, ENTITLED "CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS", AT SECTION 9.05.026, ENTITLED "AUTHORIZED NUMBER OF POSITIONS", TO REVISE THE NUMBER OF AUTHORIZED POSITIONS IN THE POLICE DEPARTMENT; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 6545  
POLICE DEPT  
AUTHORIZED  
POSITIONS

COUNCIL MINUTES – NOVEMBER 21, 2022

Jason Jeffcoat, Police Chief, said he is proposing to restructure the rank and file of the Police Department. Currently there are three Assistant Police Chiefs, and with the recent retirement of Assistant Chief Bruce Dawsey, there is a vacancy.

He proposed to remove the position of the third Assistant Chief, who's responsibility it was to oversee the Criminal Investigation Division, CID. The manpower from that position would be moved into the Patrol Division.

The move would save the City some money, even though they remained at 78 positions.

No citizens appeared before the City Council to discuss Ordinance No. 6545.

Mayor Plyler introduced Ordinance No. 6546 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING AND APPROVING THE FIRST AMENDMENT TO THE PROJECT PLAN AND THE FINANCING PLAN FOR THE SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER EIGHT (#8); PROVIDING FOR FINDINGS OF FACT.

ORD 6546  
TIRZ #8  
AMENDMENT

Ms. Lawrence said, since the TIRZ #8 Board has approved the plan, it is now required to be approved by the City Council.

No citizens appeared before the City Council to discuss Ordinance No. 6546.

The Public Hearing was closed.

**ADOPTION OF ORDINANCES**

**Ordinance 6544**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY'S PARTICIPATION IN THE TEXAS ENTERPRISE ZONE PROGRAM PURSUANT TO THE TEXAS ENTERPRISE ZONE ACT, CHAPTER 2303, TEXAS GOVERNMENT CODE; DESCRIBING AVAILABILITY OF CERTAIN LOCAL INCENTIVES; DESIGNATING A LIAISON FOR COMMUNICATION WITH INTERESTED PARTIES; AND NOMINATING GLOBAL WAFERS AMERICA TO THE OFFICE OF THE GOVERNOR ECONOMIC DEVELOPMENT & TOURISM THROUGH THE ECONOMIC DEVELOPMENT BANK FOR DESIGNATION AS A QUALIFIED BUSINESS AND ENTERPRISE PROJECT; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6544  
TEXAS ENTERPRISE  
ZONE PROGRAM  
(GLOBAL WAFERS  
AMERICA)

**Ordinance 6545**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES, ENTITLED "PERSONNEL", ARTICLE 9.05, ENTITLED "CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS", AT SECTION 9.05.026, ENTITLED "AUTHORIZED NUMBER OF POSITIONS", TO REVISE THE NUMBER OF

ORD 6545  
POLICE DEPT  
AUTHORIZED  
POSITIONS

AUTHORIZED POSITIONS IN THE POLICE DEPARTMENT;  
PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES;  
PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

**ACTION TAKEN.**

Motion by Council Member Teamann to adopt Ordinance Nos. 6544 and 6545, as presented. Second by Council Member Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

**Ordinance 6546**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING AND APPROVING THE FIRST AMENDMENT TO THE PROJECT PLAN AND THE FINANCING PLAN FOR THE SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER EIGHT (#8); PROVIDING FOR FINDINGS OF FACT.

ORD 6546  
TIRZ #8  
AMENDMENT

**ACTION TAKEN.**

Motion by Deputy Mayor Stevenson to adopt Ordinance No. 6546, as presented. Second by Council Member Howeth.

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

VOTING NAY: None.

ABSTAIN: Teamann.

MOTION CARRIED.

**RESOLUTION NO. 6982 – AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH SPIARS ENGINEERING, INC. FOR THE HICKORY HILL THOROUGHFARE AND UTILITY IMPROVEMENTS (NO ACTION TAKEN AT THE NOVEMBER 7, 2022 REGULAR CITY COUNCIL MEETING)**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH SPIARS ENGINEERING, INC. FOR THE HICKORY HILL THOROUGHFARE AND UTILITY IMPROVEMENTS.

RES 6982  
HICKORY HILL  
THOROUGHFARE &  
UTILITY  
IMPROVEMENTS

Wayne Lee, Director of Engineering, said this is a service agreement with Spiars Engineering, for engineering design and construction plans for water infrastructure bordering Hickory Hill Planned Development.

This agreement involves 5,500 feet of roadway, which is an extension of Lamberth Road, from Carriage Estates westward to the western edge of the Hickory Hill Planned Development. It also includes the extension of, what will be named Friendship Road, south of Lamberth Road, where Lamberth currently turns 90 degrees northward.

The plans will design two of four lanes, and includes 6,600 feet of large wastewater main, extended from Sand Creek to Hickory Hill Development, and along Friendship Road. It also includes 6,900 feet of 12" water main, from Carriage Estates, where the water line



dead ends now, turns and goes up Lamberth Road to another dead end line.

It also includes the design of a 12" water line, along the extensions of Lamberth Road and Friendship Road. Per the Development Agreement, the developer is contributing the construction costs for one of the two lanes of Lamberth Road and one of two lanes of Friendship Road.

The project is estimated to be \$7.5 million in infrastructure, with the City's portion at about \$4.1 million and the developer's portion at \$3.4 million. Funds for the contract are included in the 2023 General Obligation Bonds, and 2023 GTUA Utility Bonds.

Council Member Teamann verified the staff had worked out the issues and pricing that caused the delay during the last Council Meeting.

**ACTION TAKEN.**

Motion by Deputy Mayor Stevenson to approve Resolution No. 6982, as presented. Second by Council Member Howeth.

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

VOTING NAY: None.

MOTION CARRIED.

**RESOLUTION NO. 6994 – AUTHORIZING EXECUTION OF AN ENCROACHMENT AGREEMENT WITH QT SOUTH, LLC FOR THE ENCROACHMENT BY A MAXIMUM OF 6 FEET FOR A NEW 80' POLE SIGN AND A NEW 6'-8 1.2" MONUMENT SIGN WITHIN THE PROPOSED PLATTED 10-FOOT UTILITY EASEMENT ALONG THE SOUTH PROPERTY LINE OF QT 1915 ADDITION, APPROVED BY CITY COUNCIL ON JULY 18, 2022, TO BE FILED IN THE PLAT RECORDS, GRAYSON COUNTY, TEXAS, LOCALLY KNOWN AS 2801 TEXOMA PARKWAY IN THE CITY OF SHERMAN**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT AGREEMENT WITH QT SOUTH, LLC FOR THE ENCROACHMENT BY A MAXIMUM OF 6 FEET FOR A NEW 80' POLE SIGN AND A NEW 6'-8 1/2 " MONUMENT SIGN WITHIN THE PROPOSED PLATTED 10-FOOT UTILITY EASEMENT ALONG THE SOUTH PROPERTY LINE OF QT 1915 ADDITION, APPROVED BY CITY COUNCIL ON JULY 18, 2022, TO BE FILED IN THE PLAT RECORDS, GRAYSON COUNTY, TEXAS, LOCALLY KNOWN AS 2801 TEXOMA PARKWAY IN THE CITY OF SHERMAN.

CONSENT AGENDA.

RES 6994  
ENCROACHMENT FOR  
SIGN FOR QT SOUTH

**RESOLUTION NO. 6995 – AUTHORIZING THE PURCHASE OF A NEW CATERPILLAR 308 EXCAVATOR FROM HOLT CAT FOR THE DISTRIBUTION SERVICES DEPARTMENT THROUGH SOURCEWELL**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW CATERPILLAR 308 EXCAVATOR FROM HOLT CAT FOR THE

RES 6995  
EXCAVATOR FOR  
DISTRIBUTION SVCS

DISTRIBUTION SERVICES DEPARTMENT THROUGH  
SOURCEWELL.  
CONSENT AGENDA.

OTHER BUSINESS

RECEIVE PRESENTATION REGARDING POLICY AND ORDINANCE  
UPDATES FOR DOWNTOWN SHERMAN

DOWNTOWN  
SHERMAN  
POLICY & ORDINANCE  
UPDATES

Nate Strauch, Community and Support Services Manager, presented an update regarding the policy and ordinances for downtown Sherman. He said the update has been “months in the making” and has involved many people. They have met with many downtown “stakeholders” to figure out where the “cracks” in the system were and where the problems were. The update will include discussions on incentives, policies, and infrastructure.

Currently the two main sources of funding for downtown include the General Fund, through the Main Street Program, and the Hotel/Motel Tax. Previously the Hotel/Motel Tax was the only funding available for downtown. Funding through Main Street was added in 2015. He showed a breakdown of how the funding was divided and noted the façade grants that were funded through Hotel/Motel Taxes at \$50,000.

Another funding source for downtown is the Tax Increment Reinvestment Zone, or TIRZ, which takes a portion of the property taxes paid by all the individuals in the downtown TIRZ, and sets that aside in its own private account to be used for projects in downtown. This TIRZ funding has experienced very good growth over the past several years. This year the staff is expecting about \$273,000 income from the TIRZ. That money is marked specifically for uses in downtown Sherman.

Mr. Strauch said, currently there is \$638,000 that has been built up in the downtown TIRZ, since the last time it was used for the downtown streetscape project for sidewalks. He reiterated that they expected a yearly income of \$273,000 in the fund this year, with that amount continuing to increase.

The State of Texas designates the uses of TIRZ money, but the City plans to focus on public infrastructure and the remediation of public or private land or buildings. He added that they would like to turn the TIRZ money into something of a more on-going process, rather than something that is used every year.

Mr. Strauch outlined some proposed projects for the TIRZ money including new lighting for the Grayson County Courthouse Square (\$200,000); improvements to Kidd-Key Park (\$70,000); and parking lot improvements (\$30,000).

The on-going remediation of public or private land or buildings, would be paid through the Downtown Building Improvement Grant. The façade grant was originally intended for the façade of a building to beautify the building, and to restore original facades.

There are three improvements that would allow for a 2:1 match, instead of a 4:1 match. All approved projects would be exempt

from building and impact fees. Applicants would no longer be required to come before the Council prior to their project. The incentives are for improvements to the building, and there would be a requirement for the building to remain occupied for four of the next five years, for ongoing applicant eligibility. Projects will not be funded for buildings that are sitting empty.

In the previous downtown ordinance, “historic” was not defined and it is now defined as more than 50 years old. Also, if the project is significant, over \$500,000, the applicant can come back in multiple budget years to receive multiple grants for the same project.

The program will also be opened up for residential projects downtown, which most people agree is the number one thing missing from downtown. People living downtown, help sustain the businesses that are located there.

Mr. Strauch said the program could either be approved at the staff level, or brought back to the Council for approval, and so they know what is going on downtown.

By using the TIRZ dollars instead of the Hotel/Motel Tax dollars, it expands the downtown footprint, of where the money can be used. Currently the program is confined to the Central Business District, which stops at the railroad tracks behind Washington Street. Using the TIRZ, would allow the district to be extended to Kam Korner, which would include several more blocks.

As for policy, Mr. Strauch said they are proposing to take a more lenient view of the City’s role in bringing utilities to the downtown area. Currently, if a business is on the west side of the street, and the waterline is on the other side of the street, it is the business owner’s responsibility to bring the water across the street. They are proposing that the City commit to bringing water and sewer “to the door” for downtown businesses.

He also discussed the vacant building registry, which has been discussed in the past, but never implemented. Some responsibilities have been moved, and they are proposing managing the registry out of the Main Street Office. The Ballroom and Auditorium bookings have been moved to the Parks and Recreation Department, which would free-up the Main Street Office to handle the registry. If the Council agrees, that change will be drafted as an ordinance and brought back for their consideration at a later date.

Mr. Hefton said the staff started working on this because they have heard “clearly from the Council,” and as a part of the Comprehensive Master Plan, a thrust and a refocus is needed on the revitalization of downtown. He said, in the past, there has been “progressive attention” given to downtown, and it has gone in that direction.

But, with this plan, the staff would like to accomplish a more noticeable, meaningful step in that direction. They want to move

toward a better utilization of the TIRZ dollars, a more robust participation by the City on parking, lights, infrastructure, and getting infrastructure to the buildings. Much of the downtown area is on State highways, and Mr. Hefton said it is very difficult for a private developer to get anything done on a State highway. The City taking a lead in getting utilities in the State right-of-way, is important.

He felt there would be some future opportunities for the City to help get services to buildings downtown, if they truly want to revitalize downtown. He said TIRZ dollars are taxpayer dollars that are already allocated to downtown.

He said they are just now doing substantial work to clean up the Kelly Square building that was damaged in the fire. There were insurance issues with the businesses. He mentioned sprinkling of buildings, and said, many business owners are willing to consider that, but the cost of getting enough volume and pressure of water, to the actual building is prohibitive.

Mr. Hefton said, part of the plan could be to help get that infrastructure in place so that the City could help sprinkle the buildings downtown.

He said, what the staff is proposing is pretty significant, however there is no action needed tonight. He did ask if the staff is “headed in the right direction,” and if they had any input regarding the City’s participation in the proposal.

Mr. Strauch presented several action items that are being proposed by the staff. These include:

- Replace 12 lights around the Court House with custom iron poles. The lights are currently owned by Oncor and this would give the City control of the lights and poles around the Court House. Cost of the project would be about \$200,000.
- Infrastructure for Kidd-Key Park. Hot Summer Nights attendance for 2022 was 17,100, with 12,500 of that being unique visitors. Cost would be about \$70,000 to refurbish the fountain and the flower beds.
- Downtown parking. They considered a new street alignment and paid parking. They are proposing to “flip” the two City lots and move the paid parking to the back City lot. The 61 lots in the front parking lot would then be available for hourly parking. Paid parking would be managed through Main Street, and would increase paid parking from 61 spaces to 110 spaces. The current lot would be resurfaced and restriped at a cost of about \$30,000. The public parking would also be featured with public parking signage.

Mr. Strauch also discussed the downtown parking policy and the situation with unpaid parking tickets. In the past, if someone didn’t pay their tickets, they received an “angry letter” and that was about it.

## COUNCIL MINUTES – NOVEMBER 21, 2022

He said the staff is recommending a more stringent parking policy because the City has some “serial abusers” on downtown parking. These abusers park wherever they want and don’t worry about receiving tickets.

The proposal is, that after January 1, 2023, if a person has more than five unpaid parking tickets, the City will tow your car. Currently of the 1,587 overdue tickets, 43 individuals have more than five tickets outstanding, totaling \$23,362.

In exchange, Mr. Strauch said they are proposing to grant amnesty to anyone that has fewer than five unpaid parking tickets. He addressed the 43 individuals that have more than five tickets. The biggest offender has 55 unpaid parking tickets and an outstanding balance of \$2,310.

He asked Council Members if they wanted to grant amnesty prior to a specific date. If they used January 1, 2021, it would remove 21 people from the list. If that date is used, the third most offender’s outstanding fines would be reduced from \$1,395 to \$500.

He delineated between projects the staff could initiate, and things that would need to be approved by Council, at a future date.

Council Member Howeth felt that the businesses located downtown, would appreciate any incentives that the Council would enact.

Council Member Howeth asked how many businesses don’t have waterlines. Mr. Hefton said many of the utilities are in the middle of the street, and if they are on Houston or Lamar Streets, it’s in the middle of a State highway. It’s very difficult to get a water tap from a main that’s in the middle of a State highway. It might be a case of running a water line from a different location to the building so as to not tear up the State highway.

She said parking has also been an issue, and said the City needed to do something to try and increase the available parking.

Council Member Teamann liked the idea of using TIRZ dollars for downtown redevelopment and infrastructure. He said that was exactly what that money was designed to do.

Council Member Holland praised the work that the staff has done. He praised the use of TIRZ dollars downtown to revitalize the area.

Deputy Mayor Stevenson said there are a lot of projects going on, including the Hwy 75 Project. He said downtown businesses are “hurting,” and he praised the new downtown policies and the way the City was making it easier to do business downtown. He said the changes would go a long way in showing the businesses that the City was here to support them.

Council Member Marroquin mentioned more favorable grease trap requirements, to attract more restaurants downtown. He asked what the City was proposing for that.

Mr. Hefton said the staff would come back with more definitive recommendations, but said they do feel they are behind other cities. The City match portion of the project might be changed, to help supplement these types of projects. He said there are also alternatives that don't require inground systems for smaller restaurants.

Council Member Marroquin added that the size of a restaurant would also make a difference. The staff is trying to be proactive in working with businesses to find workable solutions.

Council Member Teamann said the TIRZ is generating \$273,000 annually, and the City is still talking about \$50,000 for façade grants, through Hotel/Motel Tax. He suggested moving General Fund money into the TIRZ and increase the grant money to \$100,000.

Mr. Strauch said one reason to switch to the TIRZ funding is that the City would no longer need to limit how many grants could be written on an annual basis. Currently, it only allows for two grants annually.

Once the funding is switched to the TIRZ, there will be a big buffer, and they shouldn't "run out of money."

Mr. Hefton said he was hearing positive response from the Council, so staff will bring back items that require additional Council action, and will move forward with changing internal policy.

**CONSIDER CANCELLATION OF THE DECEMBER 19, 2022  
REGULAR CITY COUNCIL MEETING AND ADD CALLED CITY  
COUNCIL MEETING ON DECEMBER 12, 2022**

**CANCEL REGULAR  
COUNCIL MTG &  
ADD NEW MTG**

Mr. Hefton said December 19, is the Monday preceding Christmas, and the staff thought, instead of canceling the meeting, the meeting would be moved to December 12, which is one week earlier than originally scheduled.

**ACTION TAKEN.**

Motion by Council Member Howeth to cancel the Regular Council Meeting of December 19, 2022 and set a Called Council Meeting for December 12, 2022, as presented. Second by Deputy Mayor Stevenson.

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

VOTING NAY: None.

MOTION CARRIED.

**APPROVAL OF THE 2022 AD VALOREM TAX ROLL VALUE AND  
TAX LEVY**

**TAX ROLL &  
TAX LEVY**

The City Council approved the 2022 Ad Valorem Tax Roll Value and Tax Levy for FY 2022-2023. The 2022 tax year represents taxes that will be collected during the fiscal year.

The Grayson County Tax Assessor/Collector's Office provided Sherman's taxable value as \$4,911,424,851, which produces a levy of \$21,973,319.29, based on the City's total tax rate of \$0.469932 per \$100 valuation.  
CONSENT AGENDA.

**APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS**

**COUNCIL AUDIT COMMITTEE (3)**

**INVESTMENT COMMITTEE (2)**

**TAX REINVESTMENT COMMITTEE (2)**

**TAX INCREMENT FINANCING BOARD #1 (3)**

**TAX INCREMENT FINANCING BOARD #2 (3)**

**TAX INCREMENT FINANCING BOARD #3 (3)**

**TAX INCREMENT FINANCING BOARD #5 (3)**

**TAX INCREMENT FINANCING BOARD #6 (3)**

**TAX INCREMENT FINANCING BOARD #7 (3)**

**TAX INCREMENT FINANCING BOARD #8 (3)**

**TAX INCREMENT FINANCING BOARD #9 (3)**

**ACTION TAKEN.**

Motion by Council Member Howeth to reappoint all Council Members remaining on the Council and currently serving on the Council Audit Committee, Investment Committee, Tax Reinvestment Committee, Tax Increment Financing Board #1, Tax Increment Financing Board #2, Tax Increment Financing Board #3, Tax Increment Financing Board #5, Tax Increment Financing Board #6, Tax Increment Financing Board #7, Tax Increment Financing Board #8, and Tax Increment Financing Board #9, for terms from November 22, 2022 to November 2023.  
Second by Deputy Mayor Stevenson.

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

VOTING NAY: None.

MOTION CARRIED.

**COUNCIL COMMENTS**

**TABLETOP EXERCISE**

Council Member Marroquin thanked Mr. Hefton and the City staff, for holding a recent tabletop exercise.

TABLETOP EXERCISE

**SELECTION AS DEPUTY MAYOR**

Deputy Mayor Stevenson thanked the Council for their faith in him and for appointing him to serve as Deputy Mayor for the next year.

SELECTION AS  
DEPUTY MAYOR

**DOWNTOWN SHERMAN**

Deputy Mayor Stevenson said Downtown Sherman is a work in progress. There has been a lot of frustration about things that are going on, but this Council is trying to take action to make improvements that will make their lives and their businesses better.

DOWNTOWN  
SHERMAN

**DOWNTOWN SHERMAN**

Council Member Teamann said he appreciates the emphasis on the downtown, because it is the "heartbeat of our City." Any City that is growing has a vibrant downtown.

DOWNTOWN  
SHERMAN

He said the biggest complaints that he hears about downtown, are lighting and parking, and those issues were at the forefront of the conversation today, which means the City is listening to the citizen's feedback, and taking action on it.

**REALIGNMENT OF POLICE DEPARTMENT PERSONNEL**

Council Member Teamann mentioned the realignment of the Police Department, and removing one Assistant Police Chief position and replacing with a Patrolman.

**REALIGNMENT OF  
POLICE DEPT  
PERSONNEL**

**HAPPY THANKSGIVING**

Council Member Dobbs wished everyone a Happy Thanksgiving.

**HAPPY  
THANKSGIVING**

**STOPLIGHTS ON TRAVIS STREET**

Mayor Plyler asked the staff to look into removing the stoplights at Wall Street and Travis Street and at Cherry Street and Travis Street. He suggested putting stop signs on the respective streets and not on Travis Street.

**STOPLIGHTS ON  
TRAVIS STREET**

**ANNOUNCEMENTS**

Mayor Plyler announced the following:

- The Christmas Parade and Snowflake Festival will be held on December 3, 2022, starting at 6 pm.
- The Parks and Recreation Department will kick-off Holiday Nights of Lights at Pecan Grove Park on December 2, 2022. The event features over seven miles of Christmas lights strung amount the trees.
- Sherman Symphony Orchestra's Annual Christmas Pops concert will be held on December 3, 2022, at 7:30 p.m., at Austin College.

**ANNOUNCEMENTS**

**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**

TEX. GOV'T CODE § 551.071 --

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

- (A) Receive legal advice regarding issues addressed in a letter dated March 10, 2022 from the Texas Commission on Environmental Quality

TEX. GOV'T CODE § 551.072 --

DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING



WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

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On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 6:01 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:23 p.m. and reconvened in Open Meeting.

**OPEN MEETING**

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

**OPEN MEETING**

COUNCIL MINUTES – NOVEMBER 21, 2022

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:24 p.m.

ADJOURNMENT

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

# **Doubling-Down on Durable, Dynamic, Downtown Development**







**Incentives  
Policies  
Infrastructure**



# Who pays for downtown?

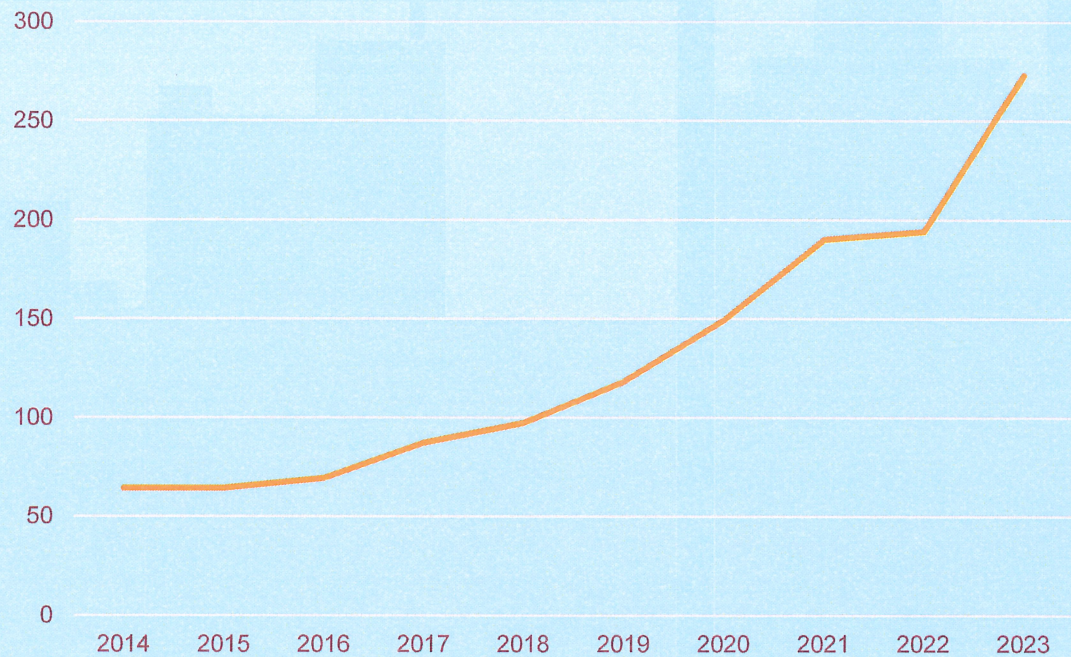
- Main Street Program (GF): \$47k
  - \$21k salary
  - \$12k grants
  - \$7k rentals
  - \$3k advertising
- Hotel/Motel Tax: 713k
  - \$215k Hot Summer Nights
  - \$132k salaries
  - \$109k debt
  - \$85k LOTL
  - \$70k library
  - \$50k façade grants





# Downtown TIRZ

- Created in 2006
- Current balance of \$638k
- Yearly income:
  - 2014 - \$64k
  - 2015 - \$64k
  - 2016 - \$69k
  - 2017 - \$87k
  - 2018 - \$97k
  - 2019 - \$119k
  - 2020 - \$149k
  - 2021 - \$190k
  - 2022 - \$194k
  - 2023 - \$273k





# Downtown TIRZ

- Current balance of \$638k
- Yearly income approximately \$273k
  - \$200k yearly earmarked for Phase 1 sewer
- Previously used for downtown sidewalks
- Can be used for:
  - public infrastructure,
  - demolition (public or private property),
  - remodel of existing public buildings,
  - preservation of the façade of public or private buildings,
  - economic development programs (Chapter 380 agreements),
  - remediation of public or private land or buildings,
  - “payments made at the discretion of the governing body of the city that the city finds necessary or convenient to the implementation of the project plans for the zone.”





# Downtown TIRZ

- Public Infrastructure (one-time):
  - New lighting (\$200k)
  - Improvements to Kidd-Key Park (\$70k)
  - Parking lot improvements (\$30K)
- Remediation of public or private land or buildings (ongoing):
  - Downtown Building Improvement Grant (D-BIG)
  - Move to a revolving credit framework
    - No caps on grants
    - Putting the money to use
    - More improvements mean more money mean more improvements



# Incentives: D-BIG

- Funding mechanism changed from GF to TIRZ
- Maximum grant changed from \$25k to \$50k
- City-required improvements eligible for 2:1 match; all others, still 4:1
  - Sprinkler systems
  - Grease traps
  - Exception for \*historic\* façade renovations
- Approved projects are exempt from building and impact fees (not retroactive)
- Requirement to remain occupied for 4 of the next 5 years for ongoing applicant eligibility
- Multi-year eligibility for projects valued at >\$500k
- “Historic” defined as more than 50 years old
- Residential projects are eligible
- Council approval?



[illegible]





# Policy

- More generous City policy toward infrastructure
  - Utilities extended to curb free of charge
    - Matches policies of surrounding cities
  - More favorable grease trap requirements
- Provide Meters & Vaults Dedicated to Fire Suppression Lines
- Replace Sidewalks / Curbs
- Vacant building registry
  - Discussed for FY 22, no FTE allocated
  - Managed out of Main Street Office
  - Ballroom/ Auditorium booking moved to Parks and Rec



# Infrastructure: Illumination

- Replace 12 lights around GC Courthouse with custom iron poles
  - 30' high on street side, 12' on sidewalk side
  - City-paid power
  - Options for hanging baskets, banners, and speakers
  - Will support cross-street lighting
  - \$200k cost to come from TIRZ
  - Engineering in progress
- Improve lighting in Crockett-Houston lot
  - Paint existing poles
  - Add solar lights on back lot





# Infrastructure: Kidd-Key Park

2022 Attendance: 17,100  
12,500 unique visitors  
\$12.57 per "ticket"

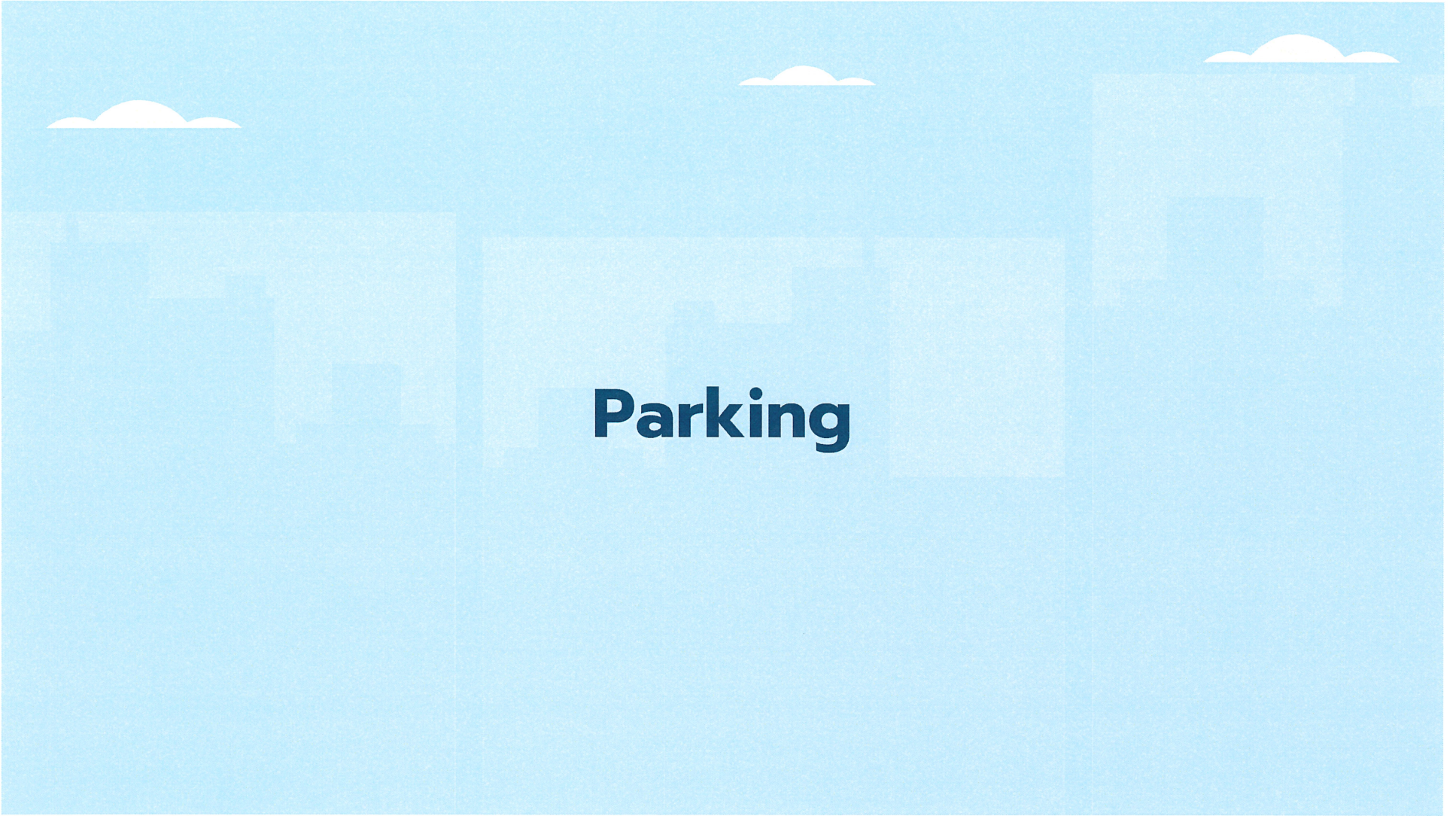




# Infrastructure: Kidd-Key Park





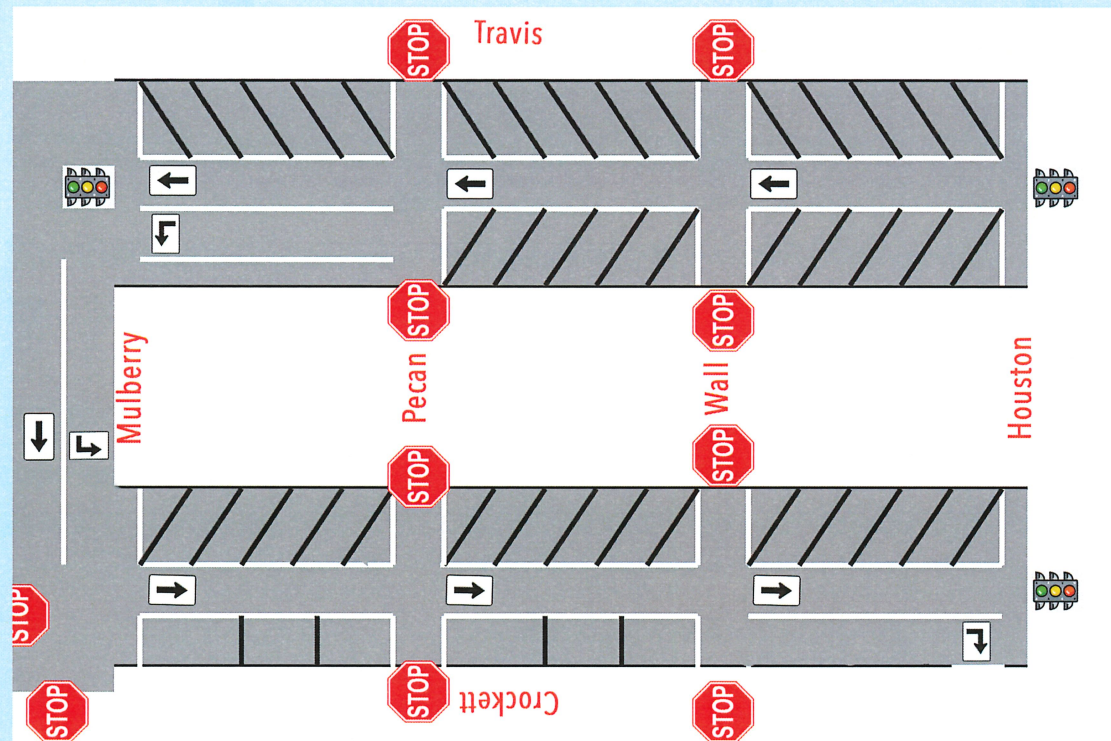


# Parking



# Infrastructure: Parking

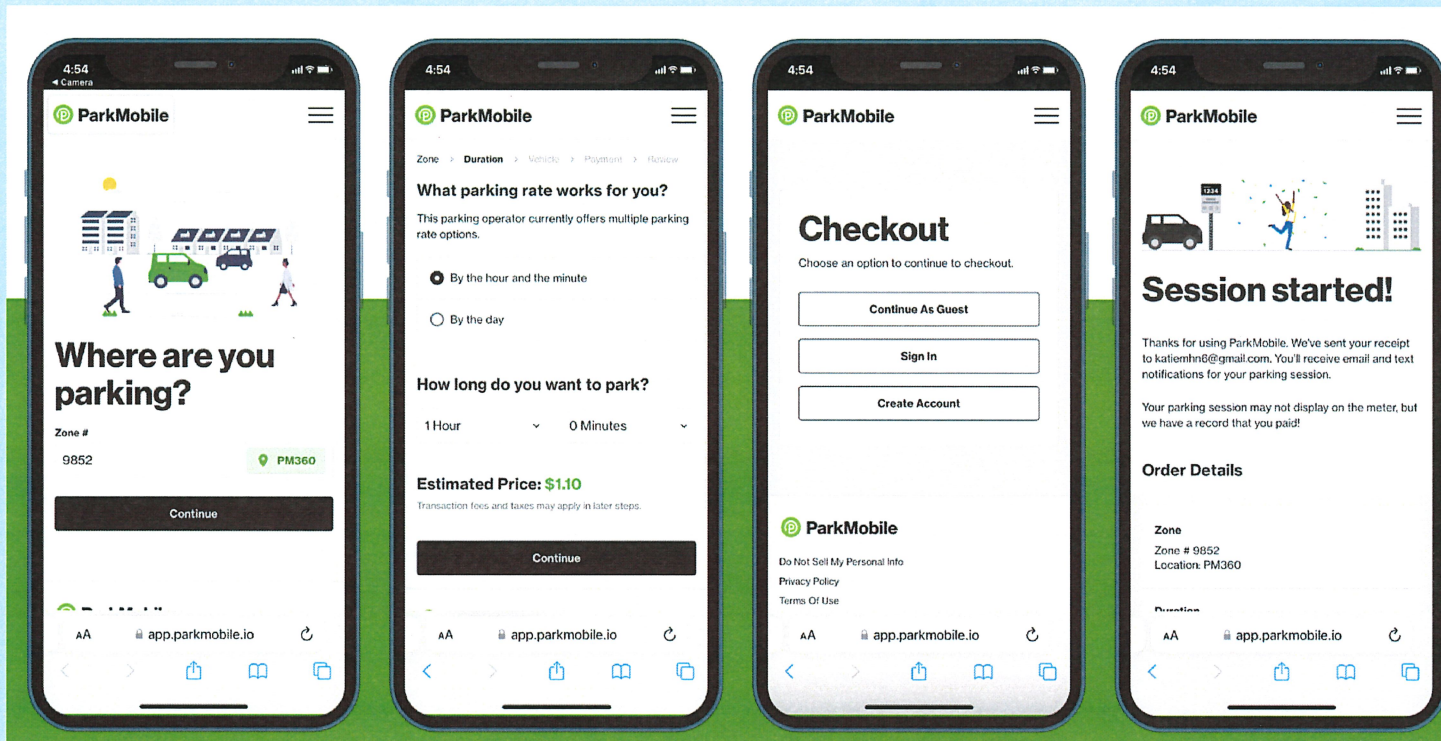
- New street alignment?





# Infrastructure: Parking

- Paid parking?





# Infrastructure: Parking





# Infrastructure: Parking







# Infrastructure: Parking

- 61 additional 3hr/1hr parking spaces at Houston/Crockett
- Moving from 61 paid spaces to 110
  - Waiting list is currently 16
- Stickers instead of individual spots
  - Managed through Main Street instead of Finance
  - Removing signs
  - More space for farmer's market
- Resurface all parking area, repaint individual spots
- Repaint light poles
- Add solar lights to rear parking lot



# Infrastructure: Parking

- New signage
  - Consistent branding
  - More street corners
  - Highlight lots vs. on-street





# Parking

- No more Mr. Nice Guy with unpaid tickets
  - Five or more unpaid tickets = tow
  - Amnesty for those with fewer than 5 tickets as of 1/1/2023 = clean slate
- Of the 1,587 overdue tickets, 43 individuals have more than 5 tickets outstanding, totaling \$23,362
  - Amnesty for all?
  - Amnesty prior to a certain date? Using 1/1/21 would remove 21 people

## Top 3 Scofflaws

| Tickets | Outstanding Balance |
|---------|---------------------|
| 55      | \$2,310             |
| 32      | \$1,302             |
| 31      | \$1,395             |

|            | Viol.Date  |
|------------|------------|
| 04/09/2021 |            |
| 05/04/2021 | 06/15/2022 |
| 07/01/2021 | 06/17/2022 |
| 07/26/2021 | 07/07/2022 |
| 08/12/2021 | 08/09/2022 |
| 08/23/2021 | 08/11/2022 |
| 09/23/2021 | 08/16/2022 |
| 09/30/2021 | 08/18/2022 |
| 10/05/2021 | 08/30/2022 |
| 10/26/2021 | 08/30/2022 |
| 11/10/2021 | 08/31/2022 |
| 11/10/2021 | 09/01/2022 |
| 01/26/2022 | 09/06/2022 |
| 01/27/2022 | 09/07/2022 |
| 02/10/2022 | 09/14/2022 |
| 03/09/2022 | 09/21/2022 |
| 03/15/2022 | 09/27/2022 |
| 03/16/2022 | 09/29/2022 |
| 03/28/2022 | 10/04/2022 |
| 04/08/2022 | 10/06/2022 |
| 04/12/2022 | 10/13/2022 |
| 04/19/2022 | 10/13/2022 |
| 04/22/2022 | 11/16/2022 |
| 05/04/2022 | 11/17/2022 |
| 05/06/2022 | 11/18/2022 |
| 05/18/2022 |            |
| 05/19/2022 |            |
| 06/07/2022 |            |
| 06/08/2022 |            |
| 06/14/2022 |            |



# D<sup>6</sup>

- Incentives
  - D-BIG overhaul (staff)
  - Funding moved to TIRZ (staff & TIRZ Board)
- Policy
  - More generous utility work (staff)
  - Vacant building registry (Council)
- Infrastructure
  - Lights (Council)
  - Kidd-Key (staff)
  - Parking lot changes (staff)
  - New signage (staff)
  - Parking ordinance (Council)







 **Incentives**  
 **Policies**  
 **Infrastructure**

A stylized illustration of a city skyline with various building shapes in shades of blue and white. Three white clouds are positioned in the upper portion of the image against a light blue background.



STATE OF TEXAS

§

November 21, 2022

COUNTY OF GRAYSON

§

**BE IT REMEMBERED THAT A** Called Meeting of the Tax Increment Financing Board #8 was begun and held in the City Council Chambers on November 21, 2022.

**TIRZ BOARD #8 MEMBERS PRESENT:** Council Members Josh Stevenson, Juston Dobbs, Henry Marroquin.

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

**COUNCIL MEMBERS ABSENT:** None.

**CITY STAFF PRESENT:** Robby Hefton, City Manager; Terrence Steele, Assistant City Manager; Ryan Pittman, Attorney, Abernathy, Roeder, Boyd, Hullett; Wayne Lee, Director of Engineering; Mary Lawrence, Director of Finance; Teri Fine, Assistant to the City Manager; Linda Ashby, City Clerk.

**PURPOSE:** Call to Order, Quorum Determined, Meeting Declared Open

Citizen Comments

Other Business

Accepting and Approving the Amended Project Plan and the Financing Plan for the Sherman Tax Increment Reinvestment Zone Number Eight (#8); Providing for Findings of Fact

Executive Session

In Accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the Tax Increment Financing Board #8 may hold an Executive Session if the discussion of any of the items identified in this agenda, or any of the items identified below, concern one or more of the following:

**TEX. GOV'T CODE § 551.071 --**

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

**TEX. GOV'T CODE § 551.072 --**

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

**TEX. GOV'T CODE § 551.073 –**

Deliberating a negotiated contract for a prospective gift or donation to

## **TAX INCREMENT FINANCING BOARD #8 – NOVEMBER 21, 2022**

the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

### **TEX. GOV'T CODE § 551.074 –**

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

### **TEX. GOV'T CODE § 551.076 –**

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

### **TEX. GOV'T CODE § 551.087 –**

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

### **TEX. GOV'T CODE § 551.089 –**

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

**Open Meeting**

**Adjournment**

## **CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**

Council Member Stevenson called the meeting to order at 5:00 p.m., declared a quorum present, and opened the Called Tax Increment Financing Board #8 Meeting.

## **CITIZEN COMMENTS**

There were no citizen's comments.

## **OTHER BUSINESS**

### **ACCEPTING AND APPROVING THE AMENDED PROJECT PLAN AND THE FINANCING PLAN FOR THE SHERMAN TAX INCREMENT REINVESTMENT ZONE NUMBER EIGHT (#8); PROVIDING FOR FINDINGS OF FACT**

Mary Lawrence, Director of Finance, explained that the Amended Project Plan and Financing Plan is to include a clause that the lender to the Municipal Utility District has requested. The current plan calls for reimbursement to be made to the developer. Therefore, the lender would like that amended to say that reimbursement will be to the MUD. That change is per the Development Agreement. Ms. Lawrence said that was the only change to the plan.



**TAX INCREMENT FINANCING BOARD #8 – NOVEMBER 21, 2022**

**ACTION TAKEN.**

Motion by Council Member Stevenson to approve the Amended Project Plan and the Financing Plan for the Tax Increment Reinvestment Zone #8, as presented. Second by Council Member Dobbs.

VOTING AYE: Dobbs, Marroquin, Stevenson.

VOTING NAY: None.

MOTION CARRIED.

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

THE TAX INCREMENT FINANCING BOARD #8 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.

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**TAX INCREMENT FINANCING BOARD #8 – NOVEMBER 21, 2022**

**TEX. GOV'T CODE § 551.089 --**

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**The Executive Session was not needed at the meeting.**

**ADJOURNMENT**

There being no further business to come before the Tax Increment Financing Board #8, motion was duly made and approved to adjourn the Called Meeting at 5:02 p.m.

\_\_\_\_\_  
JOSH STEVENSON, COUNCIL MEMBER

ATTEST

\_\_\_\_\_  
CITY CLERK





**City Council Regular Meeting**

**C. 1.**

**Meeting Date:** 12/12/2022

**Approved By:** Robby Hefton, City Manager

---

**Caption:**

**CONSENT AGENDA**

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

**Issue:**

- D.4.**      **\* RESOLUTION NO. 7005**  
Authorizing Execution of a Professional Services Agreement with D&S Engineering Labs, LLC for the Annual Geotechnical Engineering and Construction Materials Testing
- D. 5.**      **\* RESOLUTION NO. 7006**  
Authorizing the Purchase of a New Base Truck Mount Loader from Texas Pack & Load for the Solid Waste Department
- D. 6.**      **\* RESOLUTION NO. 7007**  
Awarding a Bid to and Authorizing Execution of a Contract for the Purchase of Four New Half-Ton Trucks from El Dorado Chevrolet Based Upon a Request for Public Bids for the Sherman Fire Department
- E. 2.**      **\* OTHER BUSINESS**  
Repair and Replacement of the Center Street Wastewater Aerial Crossing Under Emergency Designation
- E. 3.**      **\* OTHER BUSINESS**  
Woods Street Wastewater Repair Under Emergency Designation
- E. 4.**      **\* OTHER BUSINESS**  
Consider the Request of Brandy Fair and the Grayson County Sheriff's Office to Temporarily Close Certain Streets for the 10th Annual "Beat the Heat 5K" run on Saturday, April 15, 2023
-



# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

D. 1.

**Meeting Date:** 12/12/2022

**Prepared By:** Clint Philpott, Assistant City Manager

**Approved By:** George Olson, City Manager

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**Caption:**

**RESOLUTION NO. 7002**

Authorizing the Termination of a Drainage and Park Improvement Agreement with Artisan Development Company, Inc

**Issue:**

Authorizing the Termination of a Drainage and Park Improvement Agreement with Artisan Development Company, Inc

**Background:**

The Drainage and Park Improvement Agreement with Artisan Development Company, Inc. was approved at the April 7, 2014 City Council Meeting and was intended to set forth the terms and conditions upon which the Developer could discharge drainage from Pebblebrook South and subsequent phases, onto an area which was previously dedicated to the City. When Sherman ISD developed the high school, the master plan for the area changed substantially. The number of single family lots was reduced. This reduction in lots changed the need for the Drainage and Park Improvement Agreement. The City and the successors in title to Artisan Development Company, Inc. (the Developers and Sherman ISD), agree that the 2014 contract is no longer necessary. The City has negotiated with the developer of the single family development to dedicate additional land for the Drainage and Park area. Also included in this agenda is a reimbursement agreement for the construction of the detention pond included in the initial agreement which will also be used as and area park. Part of the initial fees collected by this agreement will be used to fund the proposed detention pond.

**Origination:**

City Manager's Office

**Financial Consideration:**

None

**Staff Recommendation:**

Staff recommends terminating the Drainage and Park Improvement Agreement.



**Alternatives:**

As directed by the City Council

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**Attachments**

Resolution No. 7002

Termination Agreement

Resolution 5847

Location Map

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**RESOLUTION NO. 7002**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE TERMINATION OF A DRAINAGE AND PARK IMPROVEMENT AGREEMENT WITH ARTISAN DEVELOPMENT COMPANY, INC.; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to terminate a drainage and park improvement agreement with Artisan Development Company, Inc., in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

**DULY PASSED AND APPROVED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS** on this the 12<sup>th</sup> day of December 2022.

**CITY OF SHERMAN, TEXAS**

**ATTEST:**

**BY:** \_\_\_\_\_  
**LINDA ASHBY, CITY CLERK**

**BY:** \_\_\_\_\_  
**DAVID PLYLER, MAYOR**

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

**BY:** \_\_\_\_\_  
**RYAN D. PITTMAN, CITY ATTORNEY**



## **TERMINATION OF DRAINAGE AND PARK IMPROVEMENT AGREEMENT AND MUTUAL RELEASE**

This Termination of Drainage and Park Improvement Agreement and Mutual Release (“Termination Agreement”) is made effective as of \_\_\_\_\_ (the “Effective Date”) by and among the CITY OF SHERMAN, TEXAS, a home-rule municipality (“Sherman”), CARBET PROPERTIES, LLC, a Texas limited liability company (“Single-Family Developer”), 3401 Steeple Chase, LLC (“Multi-Family Developer”), and the SHERMAN INDEPENDENT SCHOOL DISTRICT, a Texas independent school district (“SISD”). Sherman, Single-Family Developer, Multi-Family Developer and SISD are each referred to herein as a “party” or collectively as the “parties.”

WHEREAS, Sherman and Artisan Development Company, Inc. (“Artisan”), entered into that certain Drainage and Park Improvement Agreement dated as of April 9, 2014 (the “2014 Contract”), a copy of which is attached hereto as Exhibit A, concerning certain real property formerly known as the Estates of Pebblebrook; and

WHEREAS, Single-Family Developer, Multi-Family Developer and SISD represent and warrant that they own real property that includes land included in the Original Contract; and

WHEREAS, the parties agree that the 2014 Contract is no longer necessary; and

WHEREAS, the parties now desire to terminate the 2014 Contract under the terms and conditions of this Termination Agreement.

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

1. Termination of the 2014 Contract. Subject to the terms and conditions in Section 2 of this Termination Agreement, effective as of the Effective Date of this Termination Agreement, (a) the 2014 Contract is hereby terminated and the parties for themselves and their respective successors and assigns acknowledge and agree that all obligations, duties, rights and benefits under the 2014 Contract are hereby released and shall be of no further force or effect; and (b) each party hereby releases the other party and their respective successors and assigns from any performance or any obligations, duties, rights or benefits, if any, that might have been required in the future under the 2014 Contract and all actions, amounts, events, matters or claims arising under the 2014 Contract prior to the date of this Termination Agreement.
2. Mutual General Release. Effective as of the Effective Date of this Termination Agreement, the parties and their respective successors, assigns, heirs, affiliates, agents, servants, directors, officers, employees, and representatives fully and forever release and discharge each other and their respective successors, assigns, heirs, affiliates, agents, servants, directors, officers, employees and representatives (collectively, “Releasees” in their capacities as released parties hereunder), and all other persons acting for, under or in concert with Releasees, past or present, hereby release one another of or from any and all claims, demands, actions, causes of actions, suits, lawsuits, debts, liens, contracts,

agreements, promises, obligations, damages, liabilities, losses, costs or expenses, including attorneys' fees, past or present, ascertained or unascertained, whether or not known, suspected or claimed to exist or which can hereinafter ever arise out of or result from or in connection with any act, omission, failure to act, breach or conduct suffered to be done or omitted to be done by Releasees, relating to any claims or issues arising from, in connection with, or surrounding the 2014 Contract or any actions, amounts, events, matters or claims arising under the 2014 Contract or related to said real property prior to the date of this Termination Agreement, except for any unpaid taxes.

3. Reservation of the Right to Enforce this Termination Agreement. It is understood and agreed by the parties that the agreements and releases described in Sections 1 and 2 above do not waive nor include in any way the parties' rights and ability to enforce against each other the terms and covenants contained in this Termination Agreement.
4. Authority. Each individual executing this Termination Agreement hereby represents and warrants to each person so signing (and to each other entity for which another person may be signing) that he or she has been duly authorized to execute and deliver this Termination Agreement in the capacity of the person or entity set forth for which he or she signs.
5. Sufficient Basis for Termination Agreement. The consideration stated herein is contractual and not a mere recital. The parties hereto execute and deliver this Termination Agreement after being fully informed of its terms, content, and effect. The parties executing this Termination Agreement are not relying on any representation from any attorney, agent or representative of any other party. The parties are fully informed and have consented to this Termination Agreement based on their own opinion and the advice of their respective representatives.
6. Entire Agreement. This Termination Agreement represents the entire and integrated agreement between the parties with respect to the matters contained herein and supersedes all prior negotiations, representations and/or agreements regarding these matters, either written or oral. This Termination Agreement may be amended only by the mutual written agreement of the parties.
7. Multiple Counterparts. This Termination Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

*[Signature page follows.]*



IN WITNESS WHEREOF, the parties have executed this Termination Agreement as of the Effective Date.

**CITY OF SHERMAN, TEXAS,**  
a home-rule municipality

By: \_\_\_\_\_  
Robby Hefton, City Manager

ATTEST:

By: \_\_\_\_\_  
Linda Ashby, City Clerk

APPROVED AS TO FORM:  
Abernathy, Roeder, Boyd & Hullett, P.C.

By: \_\_\_\_\_  
Ryan D. Pittman, City Attorneys

STATE OF TEXAS           §  
                                          §  
COUNTY OF GRAYSON   §

BEFORE ME, the undersigned authority, on this day personally appeared **Robby Hefton**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the City Manager and duly authorized representative for the **City of Sherman, Texas**, and that he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

**CARBET PROPERTIES, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Randall Tudor, Manager

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared Randall Tudor, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the duly authorized representative of Carbet Properties, LLC, a Texas limited liability company, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_



3401 STEEPLE CHASE, LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the duly authorized representative of 3401 Steeple Chase, LLC, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

SHERMAN INDEPENDENT SCHOOL  
DISTRICT,  
a Texas independent school district

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the duly authorized representative of \_\_\_\_\_, a \_\_\_\_\_, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

## Exhibit A

### DRAINAGE AND PARK IMPROVEMENT AGREEMENT

This Drainage and Park Improvement Agreement (this "Agreement") is entered into on this 2nd day of April, 2014 by and between the CITY OF SHERMAN, 200 W. Mulberry Street, Sherman, Texas 75090 (the "City") and ARTISAN DEVELOPMENT COMPANY, INC., 1600 Shady Oaks Place, Corinth, Texas 76210 (the "Developer").

NOW THEREFORE, in consideration of the premises, the Developer and the City do enter into the following Agreement:

A. The purpose of this Agreement is to set forth the terms and conditions upon which the Developer may discharge drainage from Pebblebrook South, Phase II and subsequent phases. This addition is part of the Estates of Pebblebrook Master Plan (the "Master Plan"), which was approved by the City in June 2006. This Agreement will establish how and when and in what amounts the City will be compensated by the Developer for such discharge. It will further clarify the obligations of the City to improve Lot 36, Pebblebrook South, Phase I as recorded in Volume 15, Page 38 of the Plat Records of Grayson County, Texas, which was previously dedicated to City for use as a park area (the "Park Area").

B. The Developer's preliminary plat for Pebblebrook South, Phase II with 93 lots has been submitted to the City and is attached to this Agreement as Exhibit A. The approved Master Plan is attached as Exhibit B. The maximum number of lots to be included in this Agreement is 380.

C. The existing natural drainage basin of a large portion of the Master Plan flows onto the Park Area. Developer will be permitted to discharge storm water runoff, including any increases in storm water runoff due to development, from the Master Plan to the Park Area given that the Developer pay the City a total of \$250,000 in drainage and park improvement fees (the "Fees"), payable at the rate of \$658.00 per lot upon approval of each phase of the Master Plan up to a maximum of 380 lots. In no instances shall storm water runoff from the existing natural drainage basin or adjacent basins be diverted to or from the Park Area. The Fees for each phase will be paid upon completion of construction and prior to acceptance of each phase of the Master Plan by the City.

D. City will construct all segments and portions of the drainage facilities, as deemed necessary by the City, within the Park Area. The City, at its discretion, shall also select all companies to bid on the construction of the drainage facilities, determine which bids qualify and select the lowest, qualified bid.

E. No Public Facilities will be made available by the City to any lot within any phase of the Master Plan until the Project Work on such phase is performed as agreed upon.

F. At such time that the Fees received by the City total \$250,000; the City will begin construction of physical improvements to the Park Area within 180 days of that date. These improvements will include the installation of park facilities to be determined by the Director of Community & Support Services for the City. A Park Plan will be designed by the "City" and sent to the Developer, who may approve or disapprove the Park Plan (which approval shall not be unreasonably withheld) within ten (10) days following the issuance of the Park Plan prior to the initiation of construction by the City.



G. INDEMNIFICATION AND HOLD HARMLESS. DEVELOPER OBLIGATES ITSELF TO THE CITY TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING DEVELOPER'S EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION HERewith, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES. THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY. THIS INDEMNITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND DOES NOT WAIVE ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

H. The requirements of this Agreement shall be binding on the Developer, its successors and assigns, and the Developer agrees to notify the purchaser of any undeveloped portion of the Master Plan of the requirements of this Agreement before any conveyance is made.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF parties have caused this Agreement to be executed in multiple originals this 9th day of April, 2014.

DEVELOPER:

ARTISAN DEVELOPMENT COMPANY, INC.

By: Walter H. DeRonde  
WALTER DERONDE, President

ATTEST:

By: Sherry Chance Parish

Name: Sherry Chance Parish

Title: Legal Assistant

CITY:

CITY OF SHERMAN

By: George Olson

Name: George Olson

Title: City Manager

ATTEST:

By: Linda Ashby

Name: Linda Ashby

Title: City Clerk

APPROVAL RECOMMENDED:

Clay Barnett  
Clay Barnett, P.E./Director of Public Works & Engineering

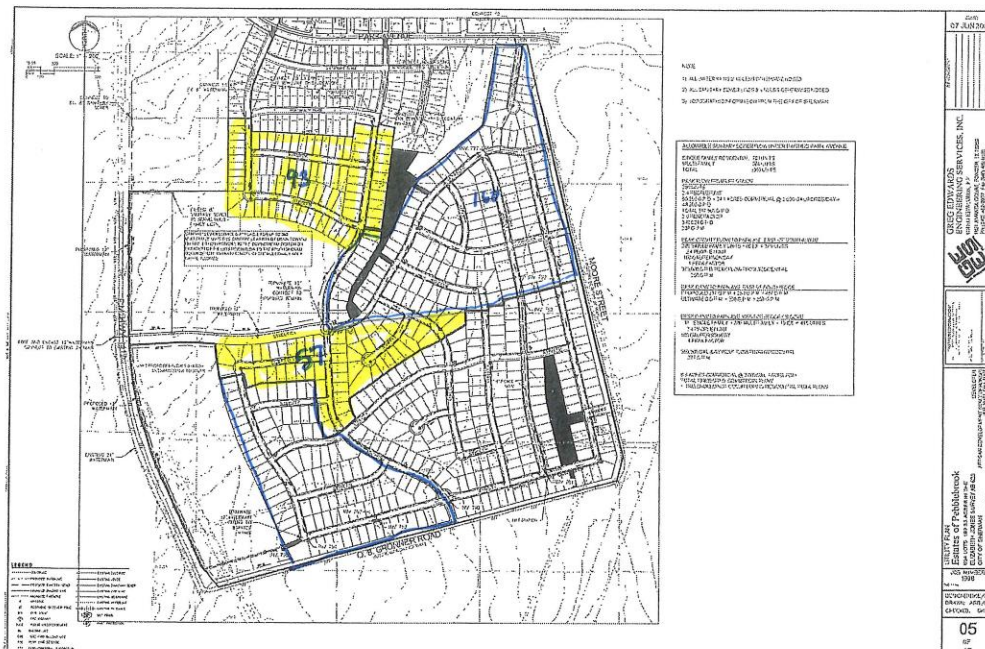
Don Keene  
Don Keene/Director of Community & Support Services

APPROVED AS TO FORM:

Brandon S. Shelby  
Brandon S. Shelby, City Attorney







RESOLUTION NO. 5847

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF A DRAINAGE AND PARK IMPROVEMENT AGREEMENT WITH ARTISAN DEVELOPMENT COMPANY, INC.; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a drainage and park improvement agreement with Artisan Development Company, Inc., in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the 7th day of April, 2014.

CITY OF SHERMAN, TEXAS

ATTEST:

BY:

Linda Ashby  
LINDA ASHBY, CITY CLERK

BY:

Carolyn Wacker  
CAROLYN WACKER, MAYOR

APPROVED AS TO FORM  
AND CONTENT:

BY:

Brandon S. Shelby  
BRANDON S. SHELBY,  
CITY ATTORNEY

## DRAINAGE AND PARK IMPROVEMENT AGREEMENT

This Drainage and Park Improvement Agreement (this "Agreement") is entered into on this 9th day of ~~March~~ <sup>April</sup>, 2014 by and between the CITY OF SHERMAN, 200 W. Mulberry Street, Sherman, Texas 75090 (the "City") and ARTISAN DEVELOPMENT COMPANY, INC., 1600 Shady Oaks Place, Corinth, Texas 76210 (the "Developer").

NOW THEREFORE, in consideration of the premises, the Developer and the City do enter into the following Agreement:

A. The purpose of this Agreement is to set forth the terms and conditions upon which the Developer may discharge drainage from Pebblebrook South, Phase II and subsequent phases. This addition is part of the Estates of Pebblebrook Master Plan (the "Master Plan"), which was approved by the City in June 2006. This Agreement will establish how and when and in what amounts the City will be compensated by the Developer for such discharge. It will further clarify the obligations of the City to improve Lot 36, Pebblebrook South, Phase I as recorded in Volume 15, Page 38 of the Plat Records of Grayson County, Texas, which was previously dedicated to City for use as a park area (the "Park Area").

B. The Developer's preliminary plat for Pebblebrook South, Phase II with 93 lots has been submitted to the City and is attached to this Agreement as Exhibit A. The approved Master Plan is attached as Exhibit B. The maximum number of lots to be included in this Agreement is 380.

C. The existing natural drainage basin of a large portion of the Master Plan flows onto the Park Area. Developer will be permitted to discharge storm water runoff, including any increases in storm water runoff due to development, from the Master Plan to the Park Area given that the Developer pay the City a total of \$250,000 in drainage and park improvement fees (the "Fees"), payable at the rate of \$658.00 per lot upon approval of each phase of the Master Plan up to a maximum of 380 lots. In no instances shall storm water runoff from the existing natural drainage basin or adjacent basins be diverted to or from the Park Area. The Fees for each phase will be paid upon completion of construction and prior to acceptance of each phase of the Master Plan by the City.

D. City will construct all segments and portions of the drainage facilities, as deemed necessary by the City, within the Park Area. The City, at its discretion, shall also select all companies to bid on the construction of the drainage facilities, determine which bids qualify and select the lowest, qualified bid.

E. No Public Facilities will be made available by the City to any lot within any phase of the Master Plan until the Project Work on such phase is performed as agreed upon.

F. At such time that the Fees received by the City total \$250,000; the City will begin construction of physical improvements to the Park Area within 180 days of that date. These improvements will include the installation of park facilities to be determined by the Director of Community & Support Services for the City. A Park Plan will be designed by the "City" and sent to the Developer, who may approve or disapprove the Park Plan (which approval shall not be unreasonably withheld) within ten (10) days following the issuance of the Park Plan prior to the initiation of construction by the City.



G. INDEMNIFICATION AND HOLD HARMLESS. DEVELOPER OBLIGATES ITSELF TO THE CITY TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING DEVELOPER'S EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION HEREWITH, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES. THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY. THIS INDEMNITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND DOES NOT WAIVE ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

H. The requirements of this Agreement shall be binding on the Developer, its successors and assigns, and the Developer agrees to notify the purchaser of any undeveloped portion of the Master Plan of the requirements of this Agreement before any conveyance is made.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF parties have caused this Agreement to be executed in multiple originals this 9th day of April, 2014.

DEVELOPER:

ARTISAN DEVELOPMENT COMPANY, INC.

By: Walter H. DeRonde

WALTER DERONDE, President

ATTEST:

By: Sherry Chance Parish

Name: Sherry Chance Parish

Title: Legal Assistant

CITY:

CITY OF SHERMAN

By: George Olson

Name: George Olson

Title: City Manager

ATTEST:

By: Linda Ashby

Name: Linda Ashby

Title: City Clerk

APPROVAL RECOMMENDED:

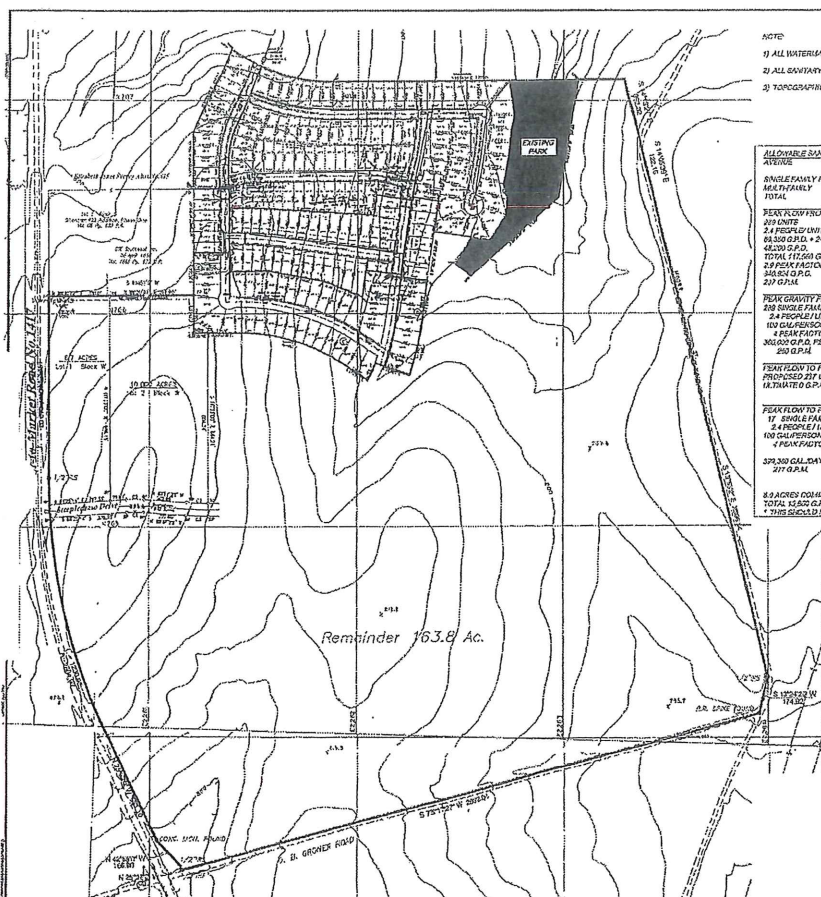
Clay Barnett  
Clay Barnett, P.E./Director of Public Works & Engineering

Don Keene  
Don Keene/Director of Community & Support Services

APPROVED AS TO FORM:

Brandon S. Shelby  
Brandon S. Shelby, City Attorney

DATE: 10 OCT 2013



- NOTE
- 1) ALL WATERLINES 8" UNLESS OTHERWISE NOTED.
  - 2) ALL SANITARY SEWER LINES 8" UNLESS OTHERWISE NOTED.
  - 3) TOPOGRAPHIC INFORMATION FROM THE CITY OF CLARK.

ALBUQUERQUE SANITARY SEWER FLOW DRAINAGE EXISTING DRAINAGE  
AVERAGE

INGLEFAIRLEY RESIDENTIAL 240 UNITS  
AGE 1940S 330 UNITS  
TOTAL 1080 UNITS

FEAR OF PAIN FLOW FROM STATION

2.1 PEOPLE/UNIT  
2.1 PEOPLE/UNIT = 2.1 X 1080 = 2268 G.P.D.  
40.30 G.P.D.  
TOTAL 176.60 G.P.D.

2.2 PEOPLE FACTOR  
366.60 G.P.D.  
2.0 G.P.D.

PEAK GRAVITY FLOW TO SURVEY EAST OF SOUTHWEST  
28.5 PEOPLE/UNIT = 28.5 X 2268 = 64638 G.P.D.  
2.4 PEOPLE/UNIT  
102.0 G.P.D.

36.0 G.P.D. = 36.0 X 2268 = 81648 G.P.D.  
250.0 G.P.D.

FEAR FLOW TO FARMER EAST OF SOUTHWEST  
100 PEOPLE/UNIT = 100 X 2268 = 226800 G.P.D.  
1.0 PERSON/UNIT = 100 X 2268 = 226800 G.P.D.

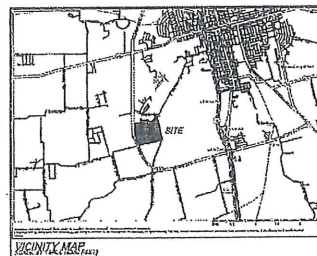
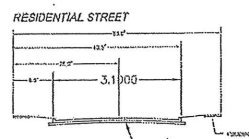
FEAR FLOW TO PARK EAST WEST OF PEGGY'S COURT  
1.1 PEOPLE/FAIRLY = 1.1 X 100,100,000 = 110,110,000 G.P.D.  
2.4 PEOPLE/UNIT  
100 G.P.D.

2.2 PEOPLE FACTOR  
366.60 G.P.D.

370.00 G.P.D. FEAR FLOW FROM RESIDENTIAL  
20.0 G.P.D.

8.2 AGERS/100 HOMES/UNIT = 8.2 X 100,000,000 = 82,000,000 G.P.D.  
TOTAL 16.00 G.P.D. COMMERCIAL FLOW  
THIS IS THE TOTAL FEAR FLOW FROM THE EXISTING FLOW FLOW

1. PERSONAL INFORMATION FROM CITY OF CHICAGO RECORDS
2. BOUNDARY FOR SOUTH DIVISION OF TRACT 10 IN 22E, 70N, 10E OF CHICAGO, ILL. IN  
CHICAGO SURVEY OF 1842
3. BOUNDARY FOR NORTH DIVISION OF TRACT 10 IN 22E, 70N, 10E OF CHICAGO, ILL. IN  
CHICAGO SURVEY OF 1842
4. UNITED STATES OF AMERICA FROM CITY OF CHICAGO SURVEY OF 1842



\*PRELIMINARY PLAT, FOR INSPECTION PURPOSES ONLY.  
IN NO WAY OFFICIAL OR APPROVED FOR RECORD  
PURPOSES.\*

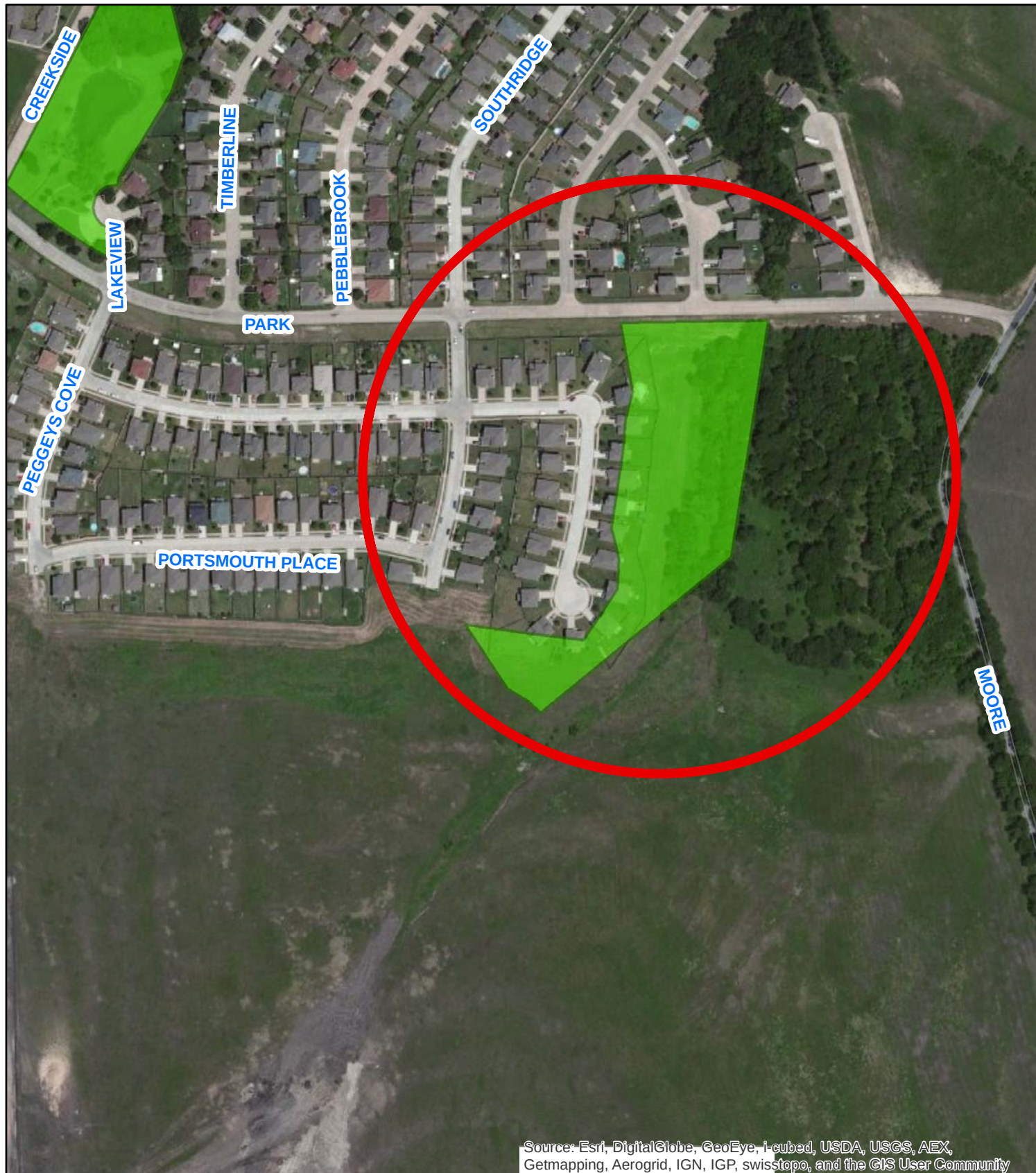
CHRYSLER CITY OF BIRMINGHAM  
PLANNING AND ZONING

PRELIMINARY PLAT  
**Pebblebrook South, Phase II**  
A 90 SINGLE FAMILY, 1 REMAINDER LOT (163.8 Acres)  
CITY OF SHERMAN, GRAYSON COUNTY, TEXAS  
±199.33 ACRES  
ELIZABETH JONES SURVEY, ABSTRACT NO.625  
10 October 2013

[illegible]



[illegible]







# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

D. 2.

**Meeting Date:** 12/12/2022

**Prepared By:** Clint Philpott, Assistant City Manager

**Approved By:** Robby Hefton, City Manager

---

### **Caption:**

#### **RESOLUTION NO. 7003**

Authorizing Execution of a Development Agreement Between the City of Sherman and Carbet Properties, LLC for the Design and Construction of Drainage Improvements to Existing Park Property Described as Lot 36, Pebblebrook South, Phase 1 and Providing for Conveyance of New Parkland Tracts in the City of Sherman

### **Issue:**

A Development Agreement for the construction of public facilities in the residential portion of the mixed-use planned development (PD) known as Pebblebrook South, Being an Approximate 37.441 Acre Residential Development

### **Background:**

The City of Sherman and the Developer's predecessor-in-title, Artisan Development Company, Inc. entered in to a Drainage and Park Improvement Agreement dated as of April 9, 2014. Carbet Properties, LLC purchased a portion of the property subject to that agreement from Artisan. Carbet, the City and other successors-in-title have agreed to terminate the original agreement with Artisan. This termination agreement was brought to Council for approval on December 12, 2022 Called City Council Meeting.

The City has agreed to allow Carbet to discharge stormwater runoff onto a portion of adjacent Existing Park Property owned by the City of Sherman. Carbet has designed and will construct the drainage improvements, including a detention pond, to be reimbursed by the City in accordance with the agreement. Carbet will also dedicate and convey two parkland tracts to the City at no cost to the City.

### **Origination:**

City Manager's Office  
Carbet Properties, LLC

### **Financial Consideration:**

The estimated design and construction cost of the Drainage Improvements are \$544,699.79

### **Staff Recommendation:**

Staff recommends approval and acceptance of the Development Agreement with Carbet Properties, LLC



**Alternatives:**

As directed by City Council

---

**Attachments**

Resolution No. 7003

Development Agreement

Location Map

---

**RESOLUTION NO. 7003**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SHERMAN AND CARBET PROPERTIES, LLC FOR THE DESIGN AND CONSTRUCTION OF DRAINAGE IMPROVEMENTS TO EXISTING PARK PROPERTY DESCRIBED AS LOT 36, PEBBLEBROOK SOUTH, PHASE 1 AND PROVIDING FOR CONVEYANCE OF NEW PARKLAND TRACTS IN THE CITY OF SHERMAN; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Development Agreement with Carbet Properties, LLC, for the Design and Construction of Drainage Improvements to existing Park Property described as Lot 36, Pebblebrook South, Phase 1 and the New Parkland Tracts in the City of Sherman, Texas, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS** on this the 12<sup>th</sup> day of December 2022.

**CITY OF SHERMAN, TEXAS**

**BY: \_\_\_\_\_**  
**DAVID PLYLER, MAYOR**

**ATTEST:**

**BY: \_\_\_\_\_**  
**LINDA ASHBY, CITY CLERK**

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

**BY: \_\_\_\_\_**  
**RYAN D. PITTMAN, CITY ATTORNEY**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS' LICENSE NUMBER.**

After Recording Return to:  
City of Sherman  
City Manager  
P. O. Box 1106  
Sherman, TX 75091-1106

**DEVELOPMENT AGREEMENT BETWEEN  
CARBET PROPERTIES, LLC  
AND THE CITY OF SHERMAN, TEXAS**

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality ("Sherman"), and CARBET PROPERTIES, LLC, a Texas limited liability company ("Developer"). Sherman and Developer are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, Developer represents and warrants that it is the sole owner of that certain tract of land situated in the City of Sherman, Grayson County, Texas, consisting of 37.441± acres in the Elizabeth Jones Survey, Abstract No. 625, as more particularly described in Exhibit A, attached hereto and incorporated herein for all purposes ("Property"); and

WHEREAS, Sherman and the predecessor-in-title to the Property, Artisan Development Company, Inc. ("Artisan"), entered into that certain Drainage and Park Improvement Agreement dated as of April 9, 2014 (the "Original Contract"), and Developer purchased the Property from Artisan and, to Developer's knowledge, Artisan did not assign to any person or entity other than Developer any portion of Artisan's obligations, duties, rights and benefits in and to the Original Contract with respect to the Property; and

WHEREAS, Developer and Sherman have agreed to terminate and release the Original Contract pursuant to that certain Termination Agreement among Developer 3401 Steeple Chase LLC, a Texas limited liability company, Sherman and Sherman Independent School District, a Texas independent school district, of even date herewith, it being the intent of Developer and Sherman that the Original Contract is replaced with this Agreement as to the Property; and

WHEREAS, provided that Developer fully complies with its obligations under this Agreement, Sherman will agree to allow Developer to discharge stormwater runoff from certain portions of the Property, including any increases in the stormwater runoff resulting from development of such portions of the Property, onto a portion of adjacent real property owned by Sherman, more particularly described as Lot 36, Pebblebrook South, Phase 1, according to that certain Final Plat recorded in Volume 15, Page 38 of the Plat Records of Grayson County, Texas (the "Existing Park Property") and the New Parkland Tracts (hereinafter defined) to be conveyed to Sherman under this Agreement, subject to the terms and conditions of this Agreement; and

WHEREAS, Developer agrees to design and construct, at its sole cost and expense and subject to the Reimbursement (hereinafter defined), the Drainage Improvements (hereinafter



defined), including a detention pond, on the Park Property (hereinafter defined) under the terms and conditions of this Agreement; and

WHEREAS, Developer represents and warrants to Sherman that it has the capacity, ability, expertise, knowledge and experience necessary to design and construct the Drainage Improvements as required by this Agreement; and

WHEREAS, Sherman has investigated and determined that it would be advantageous and beneficial to Sherman and its citizens to enter into this Agreement on the terms and conditions set forth herein.

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

1. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct, are incorporated into the body of this Agreement and are adopted as findings of Sherman and the authorized representative of Developer.
2. Land Subject to Agreement. The land that is subject to this Agreement is the Property.
3. Design and Construction of the Drainage Improvements; Conveyance of New Parkland Tracts.
  - (a) Developer, at its sole cost and expense and subject to the Reimbursement, shall cause the design of those certain drainage improvements generally depicted in Exhibit B and consisting of a detention pond with a center concrete channel, a 48" RCP inlet and 48" RCP outfall and concrete trail along said pond per the Pebblebrook Phase 4 design plans approved by Sherman on October 21, 2022 (the "Phase 4 Design Plans") (collectively, the "Drainage Improvements"). Developer shall ensure that the design of the Drainage Improvements shall comply with all applicable ordinances, rules, regulations and requirements of Sherman and other applicable laws (collectively, the "Design Requirements"). For example, in no event shall the Drainage Improvements be designed or used to divert stormwater runoff from the existing natural drainage basin or adjacent drainage basins to or from the Park Property (hereinafter defined). Developer represents and warrants that the estimated design and construction costs of the Drainage Improvements are equal to Five Hundred Forty-Four Thousand Six Hundred Ninety-Nine and 79/100 Dollars (\$544,699.79) ("Estimated Drainage Improvements Costs"), as more particularly described in the estimated cost analysis set forth in Exhibit C, attached hereto and incorporated herein for all purposes ("Estimated Cost Analysis").
  - (b) As a condition of Sherman's issuance of any building permits on the Property, Developer shall submit to Sherman the designs, plans and specifications for each of the Drainage Improvements in compliance with this Agreement and the Design Requirements, as each exists at the time Developer submits such designs, plans and specifications (collectively, "Plans"). The general depiction of each of the

Drainage Improvements attached as Exhibit B is for general informational purposes only, and the Approved Plans (hereinafter defined) are not required to be strictly bound by the same. Upon Developer's submission of the Plans, the Plans must be approved, in writing, by Sherman (collectively, "Approved Plans").

- (c) Once Sherman issues written approval of the Approved Plans, Developer, at its sole cost and expense and subject to the Reimbursement, shall promptly commence construction of the Drainage Improvements and diligently pursue completion of the same in accordance with the Approved Plans and pursuant to that certain Three-Party Agreement for Public Improvements among Developer, Sherman and Vessels Construction, the executed copy of which is attached hereto as Exhibit D (the "Three Party Agreement"), which Three Party Agreement Sherman does hereby approve.
- (d) All of the Drainage Improvements must be completed and finally accepted by Sherman as provided herein and in accordance with the Approved Plans and any and all applicable ordinances, rules, regulations and requirements, as they exist, may be amended or in the future arising (collectively, "Sherman's Final Acceptance"). Developer must complete all of the Drainage Improvements and obtain Sherman's Final Acceptance of the same before, and as a condition of, Sherman's issuance of the first building permit for development on the Property and, subject to a Force Majeure Event (defined below), within one (1) year of the Effective Date (hereinafter defined) of this Agreement. The parties agree that time is of the essence of this Agreement.
- (e) As a condition to Developer receiving a disbursement of a portion of the Reimbursement (hereinafter defined), Developer shall tender to Sherman evidence, in a commercially reasonable form, that all of the design and construction costs applicable to the portion of the Drainage Improvements that is the subject of the applicable payment application have been incurred and paid by Developer, including but not limited to, affidavits of payment/affidavits as to debts and liens and any other evidence commercially reasonably required by Sherman ("Evidence of Payments"). The Evidence of Payments for each payment application shall reflect Developer's actual cost to design and construct the applicable portion of the Drainage Improvements that is the subject of such payment application ("Actual Drainage Improvements Costs").
- (f) Conveyance of New Parkland Tracts.
  - (1) As an additional condition to Developer receiving the Reimbursement (hereinafter defined) and Sherman's Final Acceptance of the Drainage Improvements, Developer shall convey fee simple title, free and clear of any monetary liens other than the lien for ad valorem taxes ("Monetary Liens") and subject to all other matters of record, and by Special Warranty Deed, in the form attached hereto as Exhibit F, in and to the following two tracts of land: (1) that certain tract of land consisting of 4.649 ± acres, more particularly described in Exhibit E-1, attached hereto and incorporated herein for all purposes ("4.649-Acre Parcel"); and (2) that

certain tract of land consisting of 2.303± acres, more particularly described in Exhibit E-2, attached hereto and incorporated herein for all purposes (“2.303-Acre Parcel” and together with the 4.649-Acre Parcel, the “New Parkland Tracts”). Developer shall convey the New Parkland Tracts to Sherman in accordance with this Agreement simultaneously with, and as a condition of, Sherman’s approval of a final plat for any portion of the Property and Sherman’s Final Acceptance of the Drainage Improvements.

- (2) As additional conditions of Sherman’s acceptance of each of the New Parkland Tracts: (i) each of the New Parkland Tracts must be conveyed in accordance with this Agreement; (ii) Developer shall, at its sole cost and expense, obtain and file releases of any Monetary Liens affecting any portion of the New Parkland Tracts so that the New Parkland Tracts may be conveyed free and clear of all Monetary Liens; (iii) Developer shall, at its sole cost and expense, provide to Sherman any existing surveys of the New Parkland Tracts in Developer’s possession within seven (7) days of the Effective Date of this Agreement; (iv) Developer shall pay at the closing of the conveyance the taxes due on the New Parkland Tracts prorated to date of closing; and (v) Developer shall pay at the closing of the conveyance the following other costs associated with conveying the New Parkland Tracts (the “Closing Costs”): (A) recording fees; (B) charges or fees collected by the title company; and (C) fees for any other service in connection with the conveyance of the New Parkland Tracts to Sherman; provided, however, that the total amount of Closing Costs that Developer shall be obligated to pay under this Section 3(f)(2) shall not exceed Five Hundred and No/100 Dollars (\$500.00) (“Developer’s Closing Costs Cap”) and Sherman shall be responsible for paying all Closing Costs in excess of Developer’s Closing Costs Cap. Sherman shall pay at the closing of the conveyance the following costs associated with conveying the New Parkland Tracts: (E) title commitments from a title company selected by Sherman along with copies of all exception documents; and (D) an owner’s title policy for each of the New Parkland Tracts in a form acceptable to Sherman. The parties agree that the issuance of an owner’s title policy for each of the New Parkland Tracts shall be a condition precedent to Sherman’s obligations under this Agreement; provided, however, that Developer shall not be obligated to remove any of the exceptions to title in the owner’s title policy for each of the New Parkland Tracts except for the Monetary Liens. For purposes of issuance of any title policies obtained by Sherman, the parties agree that the total value of the 4.649-Acre Parcel is One Hundred Forty-Four Thousand One Hundred Nineteen and 00/100 Dollars (\$144,119.00) and the total value of the 2.303-Acre Parcel is Seventy-One Thousand Three Hundred Ninety-Three and 00/100 Dollars (\$71,393.00). THE NEW PARKLAND TRACTS ARE TO BE CONVEYED TO AND ACCEPTED BY SHERMAN IN THEIR THEN PRESENT CONDITION, "AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED", EXCEPT FOR THE EXPRESS



REPRESENTATIONS AND WARRANTIES OF DEVELOPER CONTAINED IN THIS AGREEMENT. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF DEVELOPER CONTAINED HEREIN, DEVELOPER AND DEVELOPER'S AGENTS, REPRESENTATIVES OR EMPLOYEES HAVE NOT MADE AND ARE NOT NOW MAKING, AND THEY SPECIFICALLY DISCLAIM, ANY WARRANTIES, REPRESENTATIONS OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE NEW PARKLAND TRACTS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO: (A) MATTERS OF TITLE (OTHER THAN DEVELOPER'S WARRANTY OF TITLE SET FORTH IN THE DEED TO BE DELIVERED TO SHERMAN); (B) ENVIRONMENTAL MATTERS OF ANY KIND RELATING TO THE NEW PARKLAND TRACTS OR ANY PORTION THEREOF (INCLUDING THE CONDITION OF THE SOIL OR GROUNDWATER BENEATH THE NEW PARKLAND TRACTS); (C) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES; (D) WHETHER, AND TO THE EXTENT TO WHICH THE NEW PARKLAND TRACTS OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (E) DRAINAGE; (F) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDER SHORING; (G) ZONING TO WHICH THE NEW PARKLAND TRACTS OR ANY PORTION THEREOF MAY BE SUBJECT; (H) THE AVAILABILITY OF ANY UTILITIES TO THE NEW PARKLAND TRACTS OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS AND ELECTRIC; (I) USAGE OF ADJOINING PROPERTY; (J) ACCESS TO THE NEW PARKLAND TRACTS OR ANY PORTION THEREOF; (K) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE NEW PARKLAND TRACTS OR ANY PORTION THEREOF, OR ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE NEW PARKLAND TRACTS OR ANY PART THEREOF; (L) THE

PRESENCE OF HAZARDOUS MATERIALS IN OR ON, UNDER OR IN THE VICINITY OF THE NEW PARKLAND TRACTS; (M) THE CONDITION OR USE OF THE NEW PARKLAND TRACTS OR COMPLIANCE OF THE NEW PARKLAND TRACTS WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (N) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS; (O) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE NEW PARKLAND TRACTS; (P) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE NEW PARKLAND TRACTS; (Q) THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE NEW PARKLAND TRACTS; (R) THE MERCHANTABILITY OF THE NEW PARKLAND TRACTS OR FITNESS OF THE NEW PARKLAND TRACTS FOR ANY PARTICULAR PURPOSE (SHERMAN AFFIRMING THAT SHERMAN HAS NOT RELIED ON DEVELOPER'S OR DEVELOPER'S AGENTS' OR EMPLOYEES' SKILL OR JUDGMENT TO SELECT OR FURNISH THE NEW PARKLAND TRACTS FOR ANY PARTICULAR PURPOSE, AND THAT DEVELOPER MAKES NO WARRANTY THAT THE NEW PARKLAND TRACTS ARE FIT FOR ANY PARTICULAR PURPOSE); AND (S) TAX CONSEQUENCES.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO SHERMAN, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE NEW PARKLAND TRACTS AND ANY IMPROVEMENTS LOCATED THEREON, OR THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY. SHERMAN SHALL RELY ON ITS INVESTIGATIONS OF THE NEW PARKLAND TRACTS IN DETERMINING WHETHER TO ACCEPT THE CONVEYANCE OF THEM. THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THE CONSIDERATION FOR DEVELOPER'S ENTERING INTO THIS AGREEMENT, AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

4. License and Right of Entry.

- (a) Grant of License and Right of Entry. The parties agree that a portion of the Drainage Improvements will be constructed on the Existing Park Property owned by Sherman as of the Effective Date of this Agreement. Sherman hereby grants to Developer a non-exclusive license and right of entry on the Existing Park Property for the purpose of allowing Developer and its employees, agents, contractors and representatives to construct the Drainage Improvements in accordance with the terms and conditions of this Agreement. Developer's right to

enter on and use the Existing Park Property shall be limited solely to such uses and none other. Developer's license and right of entry on the Existing Park Property under this Agreement shall be effective as of the date Sherman issues its written approval of the Approved Plans and shall expire on the earlier of the termination or expiration of this Agreement or the date of Sherman's Final Acceptance of the Drainage Improvements. If Developer abandons the Drainage Improvements project, the license and right of entry shall automatically terminate.

- (b) Non-Exclusive License. The license and right of entry granted hereunder is non-exclusive and is subject to any and all rights and interests of third parties having rights under any utility, drainage, communication or other public easement located in, on or under the Existing Park Property that exists and is shown of record in the Grayson County Real Property Records as of the Effective Date of this Agreement. Notwithstanding anything to the contrary herein, during the term of the license and right of entry, Sherman shall not convey any other license, easement or conflicting rights within the Existing Park Property that materially interferes with the rights granted in this Section; provided, however, Developer expressly acknowledges and agrees that all rights granted to Developer under this Section are inferior and subordinate to Sherman's rights to use the Existing Park Property as Sherman in its sole discretion determines to be necessary, useful or advisable; provided, further, however, that Sherman agrees to exercise its rights to use the Existing Park Property in such a manner as to avoid interfering with Developer's use of the Existing Park Property for the purposes granted under this Agreement.
- (c) Governmental Approvals. Developer, at its sole cost and expense, shall be responsible for and shall obtain any and all licenses, permits or other approvals from any and all governmental agencies, federal, state or local, required to construct the Drainage Improvements and use the Existing Park Property as contemplated in this Agreement.
- (d) Insurance. During the term of the license and right of entry, Developer shall, at its sole expense, obtain and maintain the following insurance with reputable insurance companies authorized to transact business in the State of Texas, protecting Sherman and Developer: (i) workers' compensation insurance providing statutory coverage under the laws of the State of Texas for all persons employed by Developer in connection with its activities on the Existing Park Property and in performance of this Agreement; (ii) employer's liability insurance with limits of liability for injury by accident or disease of \$1,000,000 for all persons employed by Developer in connection with its activities on the Existing Park Property and in performance of this Agreement; (iii) commercial general liability insurance, with a broad form commercial liability endorsement (including contractual liability insurance covering its indemnity obligations hereunder), written on an "occurrence basis" for death, bodily injury and property damage occurring upon, in or about or arising out of or connected with the condition or use of the Existing Park Property, the Drainage Improvements and/or arising out of or connected with performance this Agreement, with coverage limits not less than \$2,000,000 combined single limit; and (v) business automobile insurance



with limits of liability not less than \$1,000,000 per accident. Prior to entering onto the Existing Park Property for the first time in the performance of this Agreement during the term of the license and right of entry, Developer shall deliver a certificate of insurance and all associated endorsements evidencing such insurance coverage to Sherman, and shall thereafter deliver certificates of insurance and all associated endorsements showing renewal or replacement of such coverage to Sherman not less than thirty (30) days prior to the expiration of the insurance coverage. Each policy described in this subsection shall name Sherman as additional insureds as to all applicable coverage with the exception of worker's compensation insurance, and shall provide for a waiver of subrogation against Sherman for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of insurance.

(1) Application of Proceeds of Property Insurance. All proceeds payable pursuant to any policies of property insurance required to be carried under the terms of this Agreement (net of reasonable expenses of collection) shall be applied for the following purposes: (A) all such net proceeds shall first be used, subject to any other terms and conditions contained in this Agreement, as a fund for the rebuilding, restoration and repair of the portion of the Existing Park Property or Drainage Improvements which have become destroyed or damaged for which such proceeds are payable; and (B) following completion of all work under subsection (A) above, any proceeds not disbursed pursuant to subsection (A) above shall be used to compensate Developer for claims and/or damages incurred by Developer.

(e) Maintenance; Temporary Access. During construction of the Drainage Improvements, Developer shall not damage any existing trees, buildings, improvements, additions, alterations and fixtures on or about the Existing Park Property except as shown on the Approved Plans, and Developer shall not damage any other Sherman-owned property. After Sherman's Final Acceptance of the Drainage Improvements, Developer shall not damage any existing trees, buildings, improvements, additions, alterations and fixtures on or about the Existing Park Property. Developer shall be wholly responsible for maintaining the Existing Park Property and the Drainage Improvements in a safe condition during the term of the license and right of entry. Developer shall repair damages to the Existing Park Property and to any of the Drainage Improvements caused by Developer's use of the Existing Park Property or by any person who accesses the Existing Park Property during the term of the license and right of entry ("Developer Damages"); provided, however, that the Developer Damages shall not include damage to the Existing Park Property or the Drainage Improvements to the extent caused by the construction of the Drainage Improvements in accordance with the Approved Plans. All repairs necessitated by the Developer Damages shall be made at Developer's sole cost and expense. In addition, Developer shall be responsible for payment of all water, sewer, electric and other utility costs associated with its use of the Existing Park Property during the term of the license and right of entry.

- (f) Clean-Up. Promptly following termination or expiration of the license and right of entry, Developer shall remove from the Existing Park Property any personal property and equipment placed on the Existing Park Property by, on behalf of, or with the consent of Developer (collectively, “Developer’s Personal Property”). Should Developer fail to remove Developer’s Personal Property promptly following the termination or expiration of the license and right of entry in accordance with this subsection, Sherman may, in its commercially reasonable discretion, remove and dispose of the same without any liability, whatsoever, to Developer, and Developer shall promptly reimburse Sherman upon request for all costs of removal incurred by Sherman. Promptly following termination or expiration of the license and right of entry, Developer shall surrender its license to use and enter onto the Existing Park Property and fulfill its repair, restoration, and clean-up obligations in accordance with the terms and conditions of this Agreement.
- (g) Holding Over. If Developer or any party claiming a license under this Agreement to use the Existing Park Property by, through or under Developer fails to surrender its use of the Existing Park Property promptly following the termination or expiration of the license and right of entry, Sherman may deem the use of the Existing Park Property (other than as contemplated in Section 4(f) above) to be a trespass, and Sherman will be entitled to any and all remedies arising at law, in equity, or under this Agreement with respect to such failure to surrender the use of the Existing Park Property.
- (h) Disclaimer. Developer acknowledges and agrees that Sherman is not providing any guarantee, representation or warranty, and Sherman hereby disclaims any guarantee, representation or warranty, of the condition or suitability of the Existing Park Property, in whole or in part, for the Drainage Improvements project during the term of the license and right of entry, and that Developer’s entry onto and use of the Existing Park Property under the license and right of entry shall be “AS IS” with all faults, including but not limited to, any and all pollutants, asbestos, and/or any other hazardous materials that may be present in, on or under the Existing Park Property. The provisions of this subsection shall survive the termination of this Agreement.
- (i) Unpermitted Uses of the Existing Park Property. During the term of the license and right of entry, Developer shall not use or occupy, or permit the use or occupation of, the Existing Park Property in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by Developer hereunder, or (iii) violate any present or future laws, regulations, ordinances or requirements of any governmental authority, including Sherman.
5. Reimbursement. Provided that Developer is then in compliance with all of its obligations under this Agreement, Sherman shall participate in the Actual Drainage Improvements Costs by paying to Developer an amount equal to the lesser of (a) the amount of the Actual Drainage Improvements Costs; or (b) the amount of the Estimated Drainage Improvements Costs (the “Reimbursement”). Sherman shall pay the Reimbursement to

Developer in periodic payments within thirty (30) days following Sherman's receipt of a written payment application and the Evidence of Payments at Developer's address identified in this Agreement. Each periodic payment shall be in the amount set forth in a written payment application delivered to Clint Philpott, Assistant City Manager, at Sherman's address identified in this Agreement, except that Sherman is entitled to retain an amount equal to five percent (5%) of the Reimbursement, which shall be due and payable within thirty (30) days after Developer completes the Drainage Improvements and Sherman issues Sherman's Final Acceptance of the same, which issuance shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any statement to the contrary in this Agreement, (a) Sherman shall have no obligation to issue payment more frequently than once every thirty (30) days, (b) no portion of the Reimbursement is due or payable unless the Sherman City Engineer or his designee has given written approval of the applicable portion of the Actual Drainage Improvements Costs, as evidenced by the subject construction contracts and the Evidence of Payments, set forth in each such payment application, which assessment the Sherman City Engineer or his designee shall complete in a good faith, expeditious and commercially reasonable manner within twenty (20) days following Sherman's receipt of the applicable payment application and the Evidence of Payments and which approval shall not be unreasonably withheld, conditioned or delayed, and (c) if Developer is in default under this Agreement beyond any notice and cure period described in Section 6(a) on the date a payment of a portion of the Reimbursement is due, Sherman shall be entitled to withhold such payment until such default is waived by Sherman or cured by Developer. Sherman agrees to provide, and Developer agrees to accept, the Reimbursement as Sherman's sole financial participation in the costs incurred by Developer in connection with its obligations under this Agreement other than Sherman's indemnity obligations set forth in this Agreement, which shall be in addition to and separate from the Reimbursement. The rights and obligations created by this section shall survive the termination of this Agreement.

6. Default.

- (a) If Developer fails to comply with any provision of this Agreement, and such failure is not cured within thirty (30) days after Developer receives written notice of such failure from Sherman, provided that if such failure cannot reasonably be cured within such thirty (30) day period, Developer shall be entitled to such additional time as is reasonably required to cure such failure as long as Developer commences such cure within the initial thirty (30) day period, then Sherman shall have the right to exercise the following remedies, in addition to Sherman's other rights and remedies, at any time thereafter and prior to Developer's cure of such failure:
  - (i) to refuse to accept any portion of any public improvements on the Property or associated with the development of the Property;
  - (ii) to refuse to issue building permits for any building on the Property;
  - (iii) to refuse to issue a Certificate of Occupancy for any building on the Property;



- (iv) to withhold the payment of all or a portion of the Reimbursement pursuant to Section 5 of this Agreement and/or to nullify Section 5 of this Agreement; and/or
- (v) to seek specific performance of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, if Developer's default under this Agreement can be cured by the payment of money or the performance of an obligation of Developer under this Agreement, and if Developer subsequently tenders such payment or performance, as applicable, such default shall be deemed to be cured upon completion of such payment or performance provided that Developer has complied with the cure requirements set forth above.

- (b) If Sherman fails to comply with the terms and conditions of this Agreement and such failure is not cured within thirty (30) days after Sherman receives written notice of such failure from Developer, then Developer may seek specific performance of this Agreement as its sole and exclusive remedy.
7. Limitation of Liability. Notwithstanding anything to the contrary herein, the parties agree and acknowledge that Sherman shall not, under any circumstance, be required to tender, or be liable to Developer for, any credit or reimbursement of, or payment of any monies, with regard to the matters except for those expressly set forth in this Agreement. Neither Sherman nor its Council Members, officers, agents, representatives or employees shall be liable or responsible for any loss or damage to persons or property resulting from any act, omission or neglect of Developer or Developer's agents, servants, employees, contractors, customers or invitees or from any defect or failure of any condition or element of the Property or the Drainage Improvements, including the construction thereof. Sherman and its Council Members, officers, agents, representatives and employees shall not be liable or responsible to Developer, its agents, servants, employees, contractors, customers or invitees for any damage to person or property caused by any act, omission or neglect of Developer or Developer's agents, servants, employees, contractors, customers or invitees.
8. Covenant Running with the Land. This Agreement shall be a covenant running with the land as to the Existing Park Property and the New Parkland Tracts, but not the Property, and shall be binding upon Developer and the City. The parties shall cause this Agreement to be filed in the Real Property Records of Grayson County, Texas. Developer represents and warrants that there are no liens, attachments or other encumbrances that prohibit or affect Developer's right to enter into this Agreement other than the lien of Developer's lender on the New Parkland Tracts, which lien Developer shall cause to be released as to the New Parkland Tracts at or before the closing of the conveyance of the New Parkland Tracts to the City. Developer represents and warrants that the New Parkland Tracts will not be subject to any Monetary Liens on the date such New Parkland Tracts are conveyed to Sherman.
9. Limitations of Agreement. Sherman ordinances covering property taxes, land use, zoning, utility rates, impact fees, permit fees, inspection fees, tree mitigation fees,

development fees, tap fees, pro-rata fees and the like are not affected by this Agreement; provided, however, that Sherman agrees to waive its inspection fee for the Drainage Improvements if Developer agrees to waive its standard developer fee in connection with the construction of the Drainage Improvements. Further, this Agreement does not waive or limit any of the obligations of Developer to Sherman under any ordinance, whether now existing or in the future arising.

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

If to Sherman, addressed to it at:

City of Sherman  
Attn: Robby Hefton, City Manager  
220 W. Mulberry Street  
Sherman, Texas 75090  
Telephone: (903) 892-7327  
Email: [robbyh@cityofsherman.com](mailto:robbyh@cityofsherman.com)

If to Developer, addressed to it at:

Carbet Properties, LLC  
Attn: Randall Tudor  
530 Carol St.  
Pilot Point, Texas 76258  
Telephone: (469) 576-4880  
Email: [randall.tudor@gmail.com](mailto:randall.tudor@gmail.com)

With a copy to:

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

With a copy to:

Libby Sparks Willis Starnes PLLC  
Attn: Jeffrey T. Libby  
5950 Berkshire Lane, Suite 200  
Dallas, Texas 75225  
Telephone: (214) 390-3264  
E-mail: [jlibby@LibbySparks.com](mailto:jlibby@LibbySparks.com)

11. Indemnity.

- (a) DEVELOPER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS SHERMAN FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT OR INTENTIONALLY WRONGFUL ACT OR OMISSION OF DEVELOPER OR ITS OFFICERS, DIRECTORS, PARTNERS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, TRUSTEES, LICENSEES, INVITEES OR ANY OTHER THIRD PARTY FOR WHOM DEVELOPER IS LEGALLY RESPONSIBLE (COLLECTIVELY, "DEVELOPER" FOR PURPOSES OF THIS SECTION), REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF SHERMAN, (I) IN DEVELOPER'S PERFORMANCE OF THIS

AGREEMENT; AND/OR (II) ARISING OUT OF GOODS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT (COLLECTIVELY, “CLAIMS”). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM “CLAIMS” IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST SHERMAN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN DEVELOPER AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR’S OR EMPLOYEE’S EMPLOYMENT OR SEPARATION FROM EMPLOYMENT WITH THE DEVELOPER, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS’ COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS’ COMPENSATION INSURANCE AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND SHERMAN AGAINST ALL SUCH CLAIMS.

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

12. Waiver and Release of Claims for Obligations Imposed by this Agreement.

- (a) DEVELOPER ACKNOWLEDGES AND AGREES THAT:
  - (i) THE CONVEYANCES, DEDICATIONS, EASEMENTS AND/OR PAYMENT OF MONEY REQUIRED BY THIS AGREEMENT TO BE PERFORMED BY DEVELOPER, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:



- (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
  - (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
  - (C) NUISANCE; OR
  - (D) CLAIM FOR DAMAGES OR REIMBURSEMENT AGAINST SHERMAN FOR A VIOLATION OF ANY FEDERAL OR STATE CONSTITUTION, STATUTE OR CASE LAW OR ANY FEDERAL, STATE OR LOCAL ORDINANCE, RULE OR REGULATION.
- (ii) THE AMOUNT OF DEVELOPER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION OR CONVEYANCE OF REAL PROPERTY OR INTERESTS THEREIN (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT PLACES ON SHERMAN'S INFRASTRUCTURE.
- (iii) DEVELOPER HEREBY RELEASES SHERMAN FROM ANY OBLIGATION TO PERFORM OR COMMISSION A TAKINGS IMPACT ASSESSMENT UNDER CHAPTER 2007 OF THE TEXAS GOVERNMENT CODE, AS IT EXISTS OR MAY BE AMENDED.
- (iv) DEVELOPER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO SHERMAN PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY DEVELOPER FOR SUCH LAND, AND DEVELOPER HEREBY WAIVES ANY CLAIM THEREFORE THAT IT MAY HAVE. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY SHERMAN RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTEND TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S ADJACENT PROPERTY ON SHERMAN'S INFRASTRUCTURE. DEVELOPER AND SHERMAN FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.
- (v) DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS SHERMAN FROM AND AGAINST ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO, DEVELOPER'S PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES OR TRUSTEES, BROUGHT PURSUANT TO THIS SECTION.
- (b) DEVELOPER RELEASES SHERMAN FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS.

- (c) DEVELOPER WAIVES ANY CLAIM FOR DAMAGES OR REIMBURSEMENT AGAINST SHERMAN FOR A VIOLATION OF ANY FEDERAL OR STATE CONSTITUTION, STATUTE OR CASE LAW OR ANY FEDERAL, STATE OR LOCAL ORDINANCE, RULE OR REGULATION.
- (d) THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
13. Vested Rights/Chapter 245 Waiver. This Agreement shall confer no vested rights on the Property, or any portion thereof. Developer acknowledges and agrees that this Agreement does not confer vested rights on the Property and does not provide to Sherman “fair notice” of any “project” as defined in Chapter 245 of the Texas Local Government Code. In addition, nothing contained in this Agreement shall constitute a “permit” or an application for a “permit” as defined in Chapter 245 of the Texas Local Government Code. DEVELOPER HEREBY RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES CITY AND ITS CITY COUNCIL MEMBERS, OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, ATTORNEYS AND CONTRACTORS, IN EACH OF THEIR INDIVIDUAL, CORPORATE AND GOVERNMENTAL CAPACITIES, FROM ALL CLAIMS, DEMANDS AND CAUSES OF ACTION AND/OR PROPOSED CLAIMS, DEMANDS AND CAUSES OF ACTION WHICH COULD HAVE BEEN ALLEGED RELATING TO OR ARISING OUT OF VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE OR OTHER LAW IN CONNECTION WITH THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
14. Condemnation Procedures/Rights Waiver. AS ADDITIONAL CONSIDERATION FOR THE BENEFITS DEVELOPER IS RECEIVING UNDER THIS AGREEMENT, CITY AND ITS CITY COUNCIL MEMBERS, OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, ATTORNEYS AND CONTRACTORS, IN EACH OF THEIR INDIVIDUAL, CORPORATE AND GOVERNMENTAL CAPACITIES, FROM ALL CLAIMS, DEMANDS AND CAUSES OF ACTION AND/OR PROPOSED CLAIMS, DEMANDS AND CAUSES OF ACTION WHICH COULD HAVE BEEN ALLEGED RELATING TO OR ARISING OUT OF CHAPTER 2206 OF THE TEXAS GOVERNMENT CODE, AS AMENDED, AND/OR CHAPTER 21 OF THE TEXAS PROPERTY CODE, AS AMENDED.
15. Warranties/Representations. All warranties, representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
16. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties. To the extent of any conflict between the provisions of this Agreement and the exhibits, the provisions of this Agreement shall control.
17. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.

18. Consideration. This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
19. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
20. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date (hereinafter defined).
21. Savings; Severability. In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
22. Representations. Each party represents that it has carefully read this Agreement, knows the contents hereof, has consulted with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.
23. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
24. Assignment/Binding Effect.
  - (a) This Agreement is assignable, in whole or in part, upon the following conditions, all of which must be satisfied before any such assignment shall be valid and enforceable:
    - (i) the assignment of the Agreement must be evidenced by a recordable document (“Assignment”), the form of which must be approved in writing by Sherman;
    - (ii) the Assignment must expressly contain, among any other reasonable requirements and conditions of Sherman, an acknowledgment and agreement that all obligations, covenants and conditions contained in this



Agreement will be assumed solely and completely by the assignee, and the contact name, address, phone number, fax number and electronic mail address of the assignee;

- (iii) Developer will file any approved, executed Assignment in the Real Property Records of Grayson County, Texas; and
  - (iv) Developer shall provide Sherman with a file-marked copy of the Assignment within ten (10) days of filing the same, and until Sherman receives said file-marked copy of the Assignment as provided herein, Sherman shall not, under any circumstance, recognize said Assignment.
- (b) This Agreement shall be binding upon and inure to the benefit of Sherman and Developer.
- (c) This Assignment provision shall in no way modify, alter, amend, reduce or waive the provision above titled “Covenant Running with the Land” or its effectiveness. In the event there is a conflict between this Assignment provision and the Covenant Running with the Land provision, the Covenant Running with the Land provision shall control and govern.
25. Indemnification. The parties agree that the Indemnity provisions set forth in this Agreement are conspicuous, and the parties have read and understood the same.
26. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party’s right thereafter to enforce and compel strict compliance.
27. Immunity. It is expressly understood and agreed that, in the execution and performance of this Agreement, Sherman has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
28. Reference to Developer. When referring to “Developer” herein, this Agreement shall refer to and be binding upon Developer only and not any of its officers, directors, partners, employees, representatives, contractors, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives or any other third party.
29. Reference to Sherman. When referring to “Sherman” herein, this Agreement shall refer to and be binding upon Sherman only and not any of Sherman’s Council Members, officers, agents, representatives, employees and any other third party.
30. Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, if the performance of any obligation to be performed hereunder by any party is delayed as a

result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, acts of war or terrorism, shortage of supply materials, COVID or other pandemic, labor difficulties, inclement weather, or civil unrest, other than for any parties' monetary obligations hereunder and obligations that can be cured by the payment of money (i.e., maintaining insurance) (each, a "Force Majeure Event"), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of a Force Majeure Event shall deliver written notice of the commencement of any such delay resulting from such Force Majeure Event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a Force Majeure Event causing such delay, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this section.

31. Attorney's Fees. If either party files any action or brings any proceeding against the other arising from this Agreement, then as between Developer and Sherman, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable. Notwithstanding any provision in this Agreement to the contrary, neither party intends to, and does not hereby, waive any of its rights with respect to the recovery of attorneys' fees or costs in connection with an action against the other party except as otherwise expressly set forth in this Agreement.
32. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

*[Signature pages follow.]*

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

**CITY OF SHERMAN, TEXAS,**  
a home-rule municipality

By: \_\_\_\_\_  
Robby Hefton, City Manager  
Date executed: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Linda Ashby, City Clerk

APPROVED AS TO FORM:  
Abernathy, Roeder, Boyd & Hullett, P.C.

By: \_\_\_\_\_  
Ryan D. Pittman, City Attorneys

STATE OF TEXAS           §  
                                          §  
COUNTY OF GRAYSON   §

BEFORE ME, the undersigned authority, on this day personally appeared **Robby Hefton**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the City Manager and duly authorized representative for the **City of Sherman, Texas**, and that he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_



**CARBET PROPERTIES, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_

Randall Tudor, Manager

Date executed: \_\_\_\_\_

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared Randall Tudor, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the duly authorized representative of Carbet Properties, LLC, a Texas limited liability company, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**Exhibit A**  
**Legal Description of the Property**

Situated in the County of Grayson, State of Texas, being a part of Elizabeth Jones Survey, Abstract No. 625, and being all of a called 36.87 acre tract of land described in the deed to Carbet Properties, LLC, recorded in Instrument No. 2021-38984, Official Public Records, Grayson County, Texas, and all of a called 0.563 acre tract of land described in the deed to Carbet Properties, LLC, recorded in Instrument No. 2022-2756, said Official Public Records, and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the northeast corner of said 36.87 acre tract;

Thence with a non-tangent curve to the left having a radius of 1093.00 feet, (chord bears South 22°18'44" West, a distance of 10.07 feet) an arc length of 10.07 feet to a found 1/2" steel rod;

Thence with a compound curve to the left having a radius of 1093.00 feet, (chord bears South 17°21'49" West, a distance of 178.53 feet) an arc length of 178.73 feet to a found 1/2" steel rod;

Thence South 28°48'13" West, a distance of 122.22 feet to a found 1/2" steel rod;

Thence South 14°54'23" East, a distance of 0.29 feet to a point for corner;

Thence South 15°07'03" East, a distance of 69.90 feet to a found 1/2" steel rod;

Thence South 15°06'06" East, a distance of 53.39 feet to a found 1/2" steel rod;

Thence with a non-tangent curve to the left having a radius of 1093.00 feet, (chord bears South 06°58'41" East, a distance of 293.11 feet) an arc length of 294.00 feet to a found 1/2" steel rod;

Thence South 14°41'02" East, a distance of 775.77 feet to a found 1/2" steel rod;

Thence South 74°35'32" West, a distance of 1103.79 feet to a found 1/2" steel rod;

Thence with a tangent curve to the left having a radius of 500.00 feet, (chord bears South 63°20'33" West, a distance of 195.11 feet) an arc length of 196.37 feet to a found 1/2" steel rod;

Thence South 52°05'28" West, a distance of 50.53 feet to a found 1/2" steel rod;

Thence with a non-tangent curve to the right having a radius of 500.00 feet, (chord bears South 68°46'55" West, a distance of 287.36 feet) an arc length of 291.47 feet to a set 1/2" steel rod;

Thence South 85°28'55" West, a distance of 126.88 feet to a set 1/2" steel rod;

Thence North 03°56'54" West, a distance of 120.01 feet to a set 1/2" steel rod;

Thence North 85°28'55" East, a distance of 25.30 feet to a set 1/2" steel rod;

Thence North 05°12'40" West, a distance of 50.00 feet to a set 1/2" steel rod;

Thence South 85°33'33" West, a distance of 13.33 feet to a set 1/2" steel rod;

Thence North 46°42'54" West, a distance of 13.50 feet to a set 1/2" steel rod;

Thence with a non-tangent curve to the right having a radius of 370.00 feet, (chord bears North 03°53'45" West, a distance of 12.24 feet) an arc length of 12.24 feet to a set 1/2" steel rod;

Thence North 86°28'31" West, a distance of 50.00 feet to a set 1/2" steel rod;

Thence with a non-tangent curve to the right having a radius of 594.35 feet, (chord bears North 23°48'59" East, a distance of 350.03 feet) an arc length of 355.30 feet to a set 1/2" steel rod;

Thence with a reverse curve to the left having a radius of 275.00 feet, (chord bears North 28°52'57" East, a distance of 54.16 feet) an arc length of 54.25 feet to a set 1/2" steel rod;

Thence North 20°31'44" East, a distance of 88.15 feet to a found 1/2" steel rod set;

Thence South 71°52'55" East, a distance of 170.11 feet to a found 1/2" steel rod set;

Thence with a non-tangent curve to the left having a radius of 1213.92 feet, (chord bears North 12°18'55" East, a distance of 240.72 feet) an arc length of 241.12 feet to a set 1/2" steel rod set;

Thence North 06°32'34" East, a distance of 207.74 feet to a set 1/2" steel rod;

Thence North 06°20'09" East, a distance of 232.70 feet to a set 1/2" steel rod;

Thence South 83°36'09" East, a distance of 183.98 feet to a set 1/2" steel rod;

Thence South 31°56'52" West, a distance of 152.26 feet to a found 5/8" steel rod;

Thence with a non-tangent curve to the right having a radius of 325.00 feet, (chord bears South 53°53'48" East, a distance of 92.99 feet) an arc length of 93.31 feet to a set 1/2" steel rod;

Thence North 49°27'54" East, a distance of 577.80 feet to a set 1/2" steel rod;

Thence North 08°20'02" East, a distance of 561.69 feet to a set 1/2" steel rod;

Thence North 88°32'21" East, a distance of 228.64 feet to a set 1/2" steel rod;

Thence with a non-tangent curve to the right having a radius of 681.43 feet, (chord bears South 82°58'42" East, a distance of 199.89 feet) an arc length of 200.61 feet to the Point-of-Beginning and containing 37.441 acres (1,630,909 square feet) of land, more or less.....

### LOCATION MAP

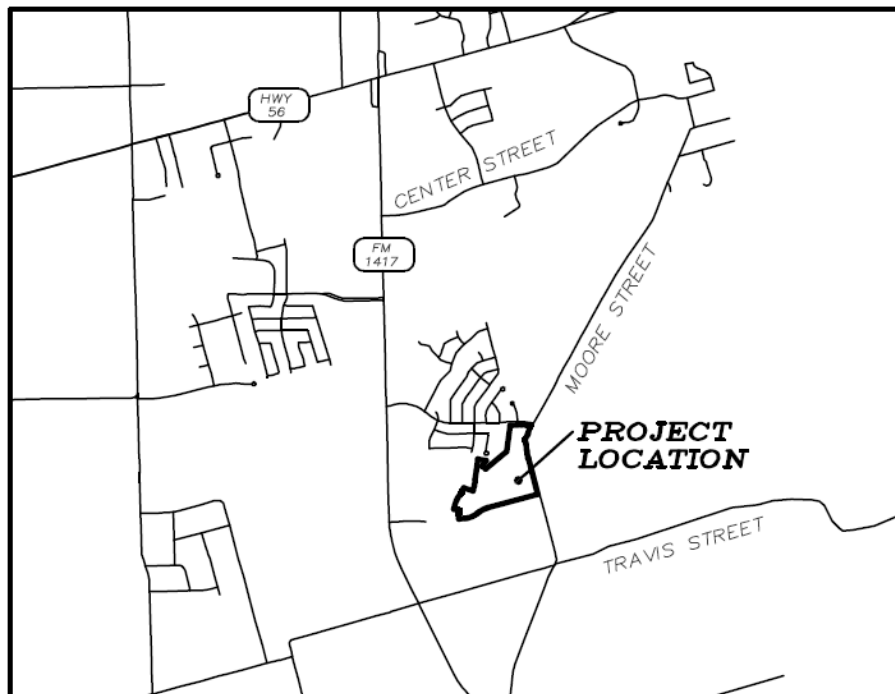
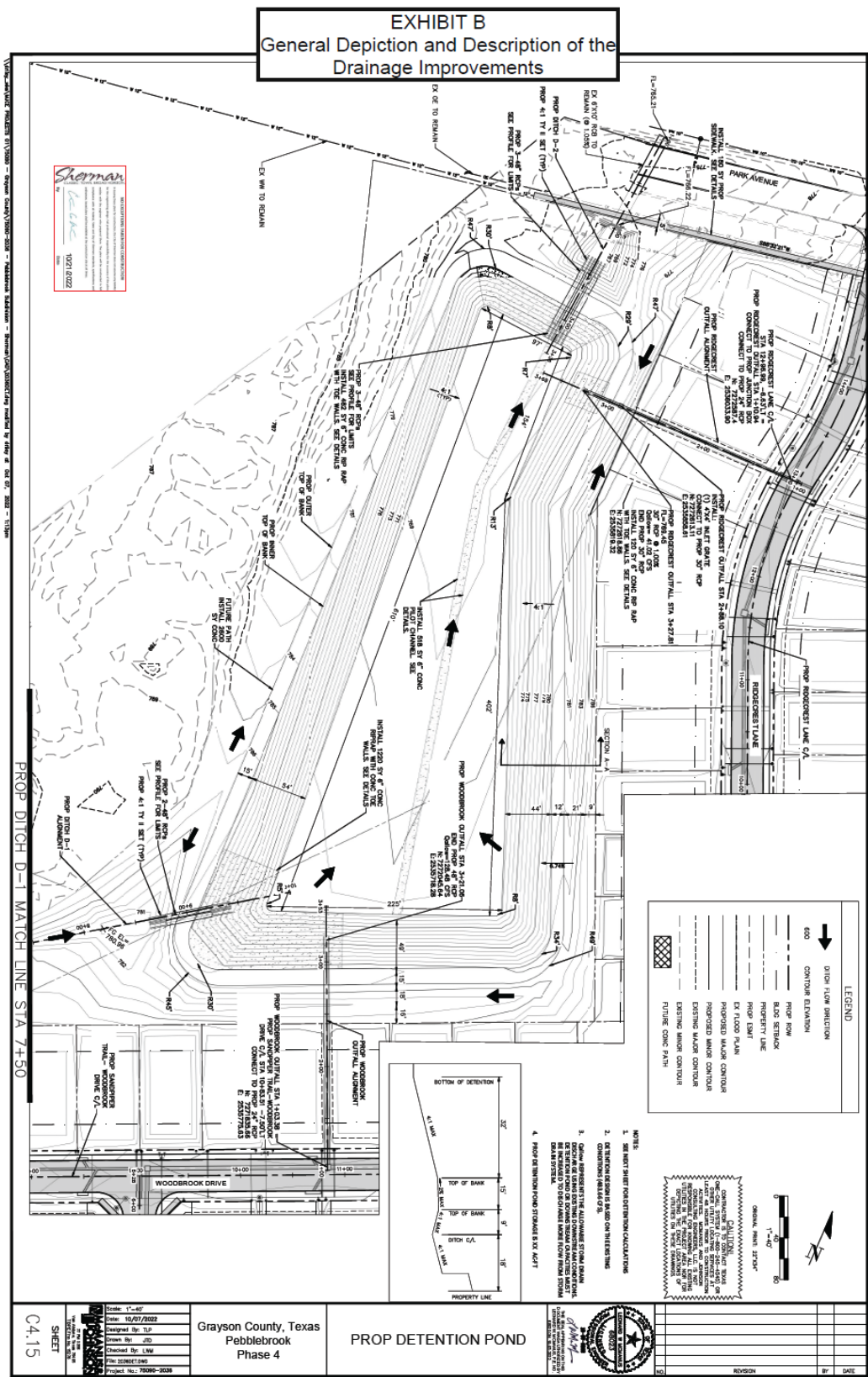




Exhibit B  
General Depiction and Description of the Drainage Improvements



**Exhibit C**  
**Estimated Cost Analysis**

| Description                    | Quantity | Unit price   | Amount              |
|--------------------------------|----------|--------------|---------------------|
| McManus Engineering            | 1        | \$33,410.00  | \$33,410.00         |
| Vessel's Construction          | 1        | \$505,536.21 | \$505,536.21        |
| Underwood Surveying- Surveying | 1        | \$1,441.08   | \$1,441.08          |
| Underwood Surveying- Soils     | 1        | \$4,312.50   | \$4,312.50          |
| <b>Total</b>                   |          |              | <b>\$544,699.79</b> |

**Exhibit D**  
**Agreed Form of Three-Party Agreement for Public Improvements**



**Construction of Public Infrastructure in Public Rights-Of-Way or Easements**  
**(Drainage, Pavement, Sanitary Sewer, Water and/or Other Public Facilities)**

CHECKLIST of items required for release of plans and issuance of notice to proceed. (See Item 7.)

| <u>Submitted</u> | <u>N/A</u> |                                                                                                                      |
|------------------|------------|----------------------------------------------------------------------------------------------------------------------|
| _____            | _____      | Four (4) originals of the Contract, Bonds, Insurance Certificates and Acknowledgement Form (See instructions below.) |
| _____            | _____      | Three (3) to scale half size copies of approved construction plans, sealed by a Professional Engineer.               |
| _____            | _____      | Plat has been approved by P&Z and City Council.                                                                      |
| _____            | _____      | All necessary off-site easements executed and submitted per instructions.                                            |
| _____            | _____      | Copy of SWPPP (booklet) and NOI as sent to TCEQ (or Site Notice) as applicable.                                      |
| _____            | _____      | Copy of construction material submittals.                                                                            |
| _____            | _____      | List of proposed subcontractors and emergency contact phone numbers.                                                 |
| _____            | _____      | Flash drive with construction plans in pdf format (by Engineer).                                                     |
| _____            | _____      | 4.0% Inspection Fee (Paid)                                                                                           |

**INSTRUCTIONS FOR EXECUTION AND SUBMITTAL OF CONTRACT AND BONDS**

1. Owner and Contractor must sign “**Three-Party Agreement**” and provide four (4) originals of documents.
2. Attach **Schedule of Values** (bid item costs) as **Exhibit “A”**. Do not use “lump sum” prices unless approved by City Engineer in writing in advance. Do not include any private facilities or private improvements in the Schedule of Values. The City Engineer or his designee must approve the Schedule of Values prior to submission of the completed Three-Party Agreement.
3. Bonds:
  - Execute **Performance Bond** and **Payment Bond** in the amount of One Hundred Percent (100%) of the value of the work (public infrastructure) to be performed.
  - Execute the **Maintenance Bond** in the amount of One Hundred Percent (100%) of the value of the work (public infrastructure) to be performed for a term of two (2) years from the date of acceptance of the work. (Note that the date of the Maintenance Bond must not be earlier than the date of the Contract.)
4. Provide a **Certificate of Insurance and All Applicable Endorsements**, in accordance with the attached form and sample, showing coverage with liability limits. The minimum limits are as specified below:
  - a. Workers’ Compensation/Employer’s Liability: Providing for payment of benefits as specified by the Workers’ Compensation Laws of the State of Texas.
  - b. Contractor’s Public Liability
    - (1) Bodily Injury: \$1,000,000 each person  
\$1,000,000 each accident
    - (2) Property Damage: \$1,000,000 each accident
5. Sign **Acknowledgement** related to the payment of inspection fees and testing costs prior to acceptance of public improvements by the City.
6. Submit four (4) sets of documents as above, each with original signatures. The order of each set should be:
  - Contract
  - Exhibit “A” - Schedule of Values
  - Performance Bond, Payment Bond, Maintenance Bond; power of attorney must be submitted for all bonds
  - Certificate of Insurance and Endorsements and Contractor’s Certification of Workers’ Compensation
  - Acknowledgement Form
7. Beginning Construction: The written release of approved construction plans to the field via the City’s Engineering Inspector constitutes **Notice to Proceed (NTP)**.
8. If you have any questions, please call 903-892-7208.

THREE-PARTY AGREEMENT FOR PUBLIC IMPROVEMENTS

This THREE-PARTY AGREEMENT FOR PUBLIC IMPROVEMENTS is made and entered into by and between \_\_\_\_\_ (“OWNER”) and \_\_\_\_\_ (“CONTRACTOR”). OWNER and CONTRACTOR are each referred to herein as a “party” or collectively as the “parties.”

1. CONTRACTOR hereby agrees to furnish all labor, materials, tools, and the necessary equipment for the construction and installation (“work”) of the following:

\_\_\_\_\_  
See Exhibit “A” – Schedule of Values and scope of work (collectively, “Public Improvements”).

2. The construction and installation of the Public Improvements shall be performed according to the plans prepared by \_\_\_\_\_ (engineering firm), titled \_\_\_\_\_ (name of project), dated \_\_\_\_\_, and the current ordinances, standards, specifications, details and other requirements relating to the design and construction of public improvements (collectively, “Sherman Construction Standards”) adopted or issued by the City of Sherman (“CITY”), including the City Engineer and his designee (which are on file in the CITY Engineering Department), and the current edition of the Standard Specifications for Public Works Construction published by the North Central Texas Council of Governments. In the event of a conflict between the Sherman Construction Standards and the NCTCOG Standard Specifications, the Sherman Construction Standards and the NCTCOG Standard Specifications shall govern in that order. The parties agree that the Public Improvements construction, installation and the locations thereof shall be inspected and accepted by the City Engineer or his designee.

3. Inasmuch as the Public Improvements are proposed for dedication to the CITY, it is agreed by and between the parties that the CITY has an interest in the proper performance of this Agreement and any other contract relating to or arising out of the work, and that the CITY may bring suit for failure to comply with the terms of this Agreement and/or any such other contract, as a third-party beneficiary thereof. Although the Public Improvements may be accepted by the City Engineer, the CITY may recover damages and seek other remedies against the parties and/or upon the bonds if it is discovered that the Public Improvements were not built or completed in accordance with the terms of this Agreement.

4. It is agreed between the parties that a Performance Bond in the amount of one hundred percent (100%) of the contract price for work on the Public Improvements shall be furnished by the CONTRACTOR in favor of the CITY and shall be executed by a reputable and solvent surety company authorized to do business in the State of Texas and in the form required by the City Engineer. The Performance Bond shall indemnify the CITY for the completion of the Project in accordance with the terms of this Agreement. The Performance Bond shall be approved by the City Engineer or his designee prior to CONTRACTOR beginning work on the Public Improvements.

5. It is agreed between the parties that a Payment Bond in the amount of one hundred percent (100%) of the contract price for work on the Public Improvements shall be furnished by the CONTRACTOR in favor of the CITY and shall be executed by a reputable and solvent surety company authorized to do business in the State of Texas and in the form required by the City Engineer. The Payment Bond shall indemnify the CITY against any claims of nonpayment by all persons, firms, corporations and other entities who may furnish materials or perform labor in connection with the work. The Payment Bond shall be approved by the City



Engineer or his designee prior to CONTRACTOR beginning work on the Public Improvements

6. It is agreed between the parties that a Maintenance Bond in the amount of one hundred percent (100%) of the contract price for work on the Public Improvements shall be furnished by the CONTRACTOR in favor of the CITY and shall be executed by a reputable and solvent surety company authorized to do business in the State of Texas and in the form required by the City Engineer. The Maintenance Bond ensure the repair or remedy of any maintenance issues the CITY may have regarding the Public Improvements after the CITY accepts the same. The Maintenance Bond shall be approved by the City Engineer or his designee prior to CONTRACTOR beginning work on the Public Improvements

7. OWNER hereby agrees to pay CONTRACTOR for the work on the Public Improvements performed hereunder on the following basis:

See Exhibit "A" – Schedule of Values for unit prices and total value of work.

8. Each of the parties hereto has been furnished a copy of the plans referenced above. The project plans have been reviewed and accepted by the City Engineer or his designee.

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

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH

ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

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

10. CONTRACTOR shall not start work under this Agreement until CONTRACTOR has obtained, at CONTRACTOR's expense, all of the insurance specified in, and required by, this Section, nor shall CONTRACTOR allow any subcontractor to commence work on its subcontract until similar insurance has been obtained by the subcontractor. CONTRACTOR shall procure and keep in full force and effect the types and amounts of insurance specified herein for and during all aspects and phases of CONTRACTOR's work at no expense to CITY. All policies shall name the CITY, its officers, agents, representatives and employees as additional insureds as to all applicable coverages with the exception of workers compensation insurance and professional liability insurance (if applicable). Such policies shall require the provision of written notice to CITY at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. General Liability Insurance shall provide for a Waiver of Subrogation against Sherman for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name Sherman as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance. All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A-" by A.M. Best's Key Rating Guide, or other equivalent rating service(s). A Certificate of Insurance and all applicable endorsement(s) evidencing the required insurance shall be submitted prior to commencing work on the Project.

|                                                                                       |                                                                                                                                                   |
|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| General Liability insurance for personal injury (including death) and property damage | \$1 Million per occurrence<br>\$2 Million aggregate                                                                                               |
| Statutory Worker's compensation insurance                                             | as required by state law                                                                                                                          |
| Employers Liability insurance                                                         | \$1 Million bodily injury per accident<br>\$1 Million bodily injury by disease-policy limit<br>\$1 Million bodily injury by disease-each employee |
| Hired and Non-Owned Auto Liability insurance covering hired and non-owned autos       | \$1 Million per occurrence                                                                                                                        |
| Umbrella / Excess Liability insurance                                                 | \$2 Million per occurrence<br>(Projects less than \$100,000)                                                                                      |
| Umbrella Liability insurance only                                                     | \$2 Million per occurrence<br>(Projects more than \$100,000)                                                                                      |

11. This Agreement shall bind the parties, their heirs, successors, assigns and representatives for the full and faithful performance of the terms hereof, jointly and severally.

12. In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been included in this Agreement.

13. It is understood and agreed that the Public Improvements, all work and all installations of whatever kind made under the terms of this Agreement shall, upon the written acceptance thereof by the City Engineer or his designee, immediately become the property of the CITY, subject only to such reimbursement to the OWNER as provided by the ordinances of the CITY or by separate written agreement.

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

\_\_\_\_\_  
Signature of Contractor's Representative

\_\_\_\_\_  
Signature of Owner's Representative

\_\_\_\_\_  
Print Name/Title of Contractor's Representative

\_\_\_\_\_  
Print Name/Title of Owner's Representative

\_\_\_\_\_  
Name of Contractor (company)

\_\_\_\_\_  
Name of Owner (company)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Area Code - Telephone Number

\_\_\_\_\_  
Area Code - Telephone Number

STATE OF TEXAS       §  
                                     §  
COUNTY OF \_\_\_\_\_§

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me that he/she is the duly authorized representative and agent of OWNER, and that he/she executed the same for the purposes and consideration therein stated and in the capacity therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS           §  
                                          §  
COUNTY OF \_\_\_\_\_§

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me that he/she is the duly authorized representative and agent of CONTRACTOR, and that he/she executed the same for the purposes and consideration therein stated and in the capacity therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

RECEIVED AND APPROVED AS TO FORM:

\_\_\_\_\_  
Engineer, City of Sherman

Attachments:   Exhibit "A"- Schedule of Values, Performance, Payment, and Maintenance Bonds, Certificate of Insurance/Endorsements, Contractor's Certification of Workers' Compensation, Acknowledgement Form



PERFORMANCE BOND

BOND NO. \_\_\_\_\_

STATE OF TEXAS       §

§       KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson   §

THAT \_\_\_\_\_ (Name of Contractor) of \_\_\_\_\_ (City) \_\_\_\_\_ County, State of \_\_\_\_\_, as PRINCIPAL and \_\_\_\_\_ (Name of Surety) as SURETY, authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Sherman (CITY), in the penal sum of \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$\_\_\_\_\_) for the payment whereof, the said PRINCIPAL and SURETY bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the PRINCIPAL has entered into a certain written contract with the CITY, for \_\_\_\_\_ (Name of Project) which contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said PRINCIPAL shall faithfully perform the said contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the PRINCIPAL to be observed and performed, and according to the true intent and meaning of said contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect:

“PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code for Public Works as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.”

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bonds, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL:

SURETY:

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
City, State, Zip

The name, address and phone number of the Resident Agent of Surety is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PAYMENT BOND

BOND NO. \_\_\_\_\_

STATE OF TEXAS       §

§       KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson   §

THAT \_\_\_\_\_ (Name of Contractor) of \_\_\_\_\_ (City) \_\_\_\_\_ County, State of \_\_\_\_\_, as PRINCIPAL and \_\_\_\_\_ (Name of Surety) as SURETY, authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Sherman (CITY), in the penal sum of \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$\_\_\_\_\_) for the payment whereof, the said PRINCIPAL and SURETY bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the PRINCIPAL has entered into a certain written contract with the CITY, for \_\_\_\_\_ (Name of Project) which contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said PRINCIPAL shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be void; otherwise to remain in full force and effect:

“PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code for Public Works as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.”

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bonds, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL:

SURETY:

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
City, State, Zip

The name, address and phone number of the Resident Agent of Surety is:

\_\_\_\_\_  
\_\_\_\_\_

MAINTENANCE BOND

BOND NO. \_\_\_\_\_

STATE OF TEXAS §

§ KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson §

THAT \_\_\_\_\_ (Name of Contractor) of \_\_\_\_\_ (City) \_\_\_\_\_ County, State of \_\_\_\_\_ as PRINCIPAL and \_\_\_\_\_ (Name of Surety) as SURETY, a corporation organized under the laws of the State of \_\_\_\_\_ as sureties, do hereby expressly acknowledge themselves to be held and bound to pay unto the City of Sherman, a municipal corporation, chartered by virtue of a special act of legislature of the State of Texas, at Sherman, Grayson County, Texas, the sum of \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$ \_\_\_\_\_) for the payment of which sum will truly be made unto said City of Sherman, and its successors, and said principal and sureties to hereby bind themselves, their assigns and successors jointly and severally.

This obligation is conditioned, however, that whereas the said contractor has this day entered into a written contract with the said City of Sherman to build and construct \_\_\_\_\_ (Name of Project) which contract, plans and specifications therein mentioned are hereby expressly made a part hereof as though the same were written embodied herein.

WHEREAS, under the plans, specifications, and contract, it is provided that the contractor will maintain and keep in good repair the work herein contracted to be done and performed for a period of two (2) years from the date of the acceptance of said work, and to do all necessary repairing and/or reconstructing in whole or in part of said improvements that should be occasioned by settlement of foundation, defective workmanship or materials furnished in the construction or any part thereof or any of the accessories thereto constructed by the contractor. It being understood that the purpose of this section, in part, is to cover all defective conditions arising by reason of defective material and charge the same against the said contractor and sureties on this obligation, and the said contractor sureties hereon shall be subject to the liquidation damages mentioned in said contract for each day's failure on its part to comply with the terms of said provisions of said contract. Now, therefore, if the said contractor shall keep and perform its said agreement to maintain said work and keep the same in repair for the said maintenance period of two (2) years, as provided, then these presents shall be null and void, and have no further effect, but if default shall be made by said contractor in the performance of its contract to so maintain and repair said work, then these presents shall have full force and effect, and said City of Sherman shall have and recover from the said contractor and its principal and sureties damages in the premises, as provided; and it is further agreed that this obligation shall be continuing one against the principal and sureties, hereon, and that successive recoveries may be and had hereon for successive branches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished or in any manner affected from any cause during said time.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL:

SURETY:

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
City, State, Zip

The name, address and phone number of the Resident Agent of Surety is:

\_\_\_\_\_  
\_\_\_\_\_

ACKNOWLEDGEMENT

As the person or entity constructing public improvements in public rights-of-way or easements in the City of Sherman ("City"), as set forth in the attached City of Sherman Private Contract, \_\_\_\_\_(Name of Contractor) and \_\_\_\_\_(Name of Owner) acknowledge and agree to the following prior to the construction of said improvements:

1. Give at least five (5) work days' notice to the City Engineer of the construction start date.
2. Confirm that the plans to be followed are those which have been approved by the City Engineer, or that any changes thereto are approved in writing by the City Engineer.
3. Provide to the City Engineer Performance, Maintenance, and Payment Bonds for the improvements in the same amounts as if the City were engaging a contractor to do the work. The City shall be a named beneficiary on these bonds.
4. Provide to the City Engineer any soil tests deemed appropriate by the City Engineer.
5. Prior to acceptance of the improvements by the City, pay any fees for any reasonable retesting deemed appropriate by the City Engineer.
6. Provide timely notice to the City Engineer for the purposes of inspecting the work on the improvements, and make the work site available for City inspectors as needed.
7. Pay review, inspection and testing fees in the amount of four percent (4.0%) of the value of the improvements inspected or \$\_\_\_\_\_.
8. Provide the City with a flash drive containing record drawings in pdf format and dwg/dxf format of the public improvements installed.

AGREED AND ACKNOWLEDGED this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Name of Contractor (company)

\_\_\_\_\_  
Name of Owner (company)

\_\_\_\_\_  
Signature of Contractor's Representative

\_\_\_\_\_  
Signature of Owner's Representative

\_\_\_\_\_  
Print Name/Title of Contractor's Representative

\_\_\_\_\_  
Print Name/Title of Owner's Representative



**Exhibit E-1**  
**Legal Description and Depiction of 4.649-Acre Parcel**

Lot 17, Block C of that certain Final Plat of Pebblebrook Phase 4, an addition to the City of Sherman, Grayson County, Texas, according to the Plat approved by the City Council on May 16, 2022.

**Exhibit E-2**  
**Legal Description and Depiction of 2.303-Acre Parcel**

Lot 25, Block G of that certain Final Plat of Pebblebrook Phase 4, an addition to the City of Sherman, Grayson County, Texas, according to the Plat approved by the City Council on May 16, 2022.

## Exhibit F

## Agreed Form of Special Warranty Deed

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS' LICENSE NUMBER.**

After Recording Return to:  
City of Sherman  
Office of the City Manager  
P. O. Box 1106  
Sherman, TX 75091-1106

## SPECIAL WARRANTY DEED

STATE OF TEXAS                   §  
                                          §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF GRAYSON           §

As used herein, the following terms shall have the following meanings:

**Effective Date:** \_\_\_\_\_, 20\_\_\_\_

**Grantor:** \_\_\_\_\_

**Grantor's Mailing Address:** \_\_\_\_\_

**Grantee:** CITY OF SHERMAN, TEXAS, a home-rule municipality

**Grantee's Mailing Address:** P.O. Box 1106  
Sherman, TX 75091

**Consideration:** TEN DOLLARS (\$10.00) cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged

**Property (including any improvements):**

\_\_\_\_ ± acres of land, situated in the \_\_\_\_\_ Survey, Abstract No. \_\_\_\_\_, City of Sherman, Grayson County, Texas, as more particularly described and depicted in Exhibit 1, attached hereto and incorporated herein for all purposes (“Property”).

This conveyance shall include all and singular the rights and appurtenances pertaining to the Property, including any right, title and interest in and to adjacent streets, roads, alleys or rights-of-way; all oil, gas and other minerals; and any improvements, fixtures, and personal property situated on or attached to the Property.

**Reservations from and Exceptions to Conveyance and Warranty:**

Permitted Encumbrances, if any, listed on Exhibit 2, attached hereto and incorporated herein for all purposes.

Grantor, for the Consideration and subject to the Reservations from and Exceptions to

Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through or under Grantor but not otherwise, except as to the Reservations from and Exceptions to Conveyance and Warranty.

THE PROPERTY IS HEREBY CONVEYED TO GRANTEE IN ITS PRESENT CONDITION, "AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED", EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF GRANTOR CONTAINED IN THAT CERTAIN DEVELOPMENT AGREEMENT BETWEEN GRANTOR AND GRANTEE AND RECORDED AS DOCUMENT \_\_\_\_\_ IN THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS (THE "DEVELOPMENT AGREEMENT"). NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF GRANTOR CONTAINED IN THE DEVELOPMENT AGREEMENT, GRANTOR AND GRANTOR'S AGENTS, REPRESENTATIVES OR EMPLOYEES HAVE NOT MADE AND ARE NOT NOW MAKING, AND THEY SPECIFICALLY DISCLAIM, ANY WARRANTIES, REPRESENTATIONS OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO: (A) MATTERS OF TITLE (OTHER THAN GRANTOR'S WARRANTY OF TITLE SET FORTH IN THE DEED TO BE DELIVERED TO GRANTEE); (B) ENVIRONMENTAL MATTERS OF ANY KIND RELATING TO THE PROPERTY OR ANY PORTION THEREOF (INCLUDING THE CONDITION OF THE SOIL OR GROUNDWATER BENEATH THE PROPERTY); (C) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES; (D) WHETHER, AND TO THE EXTENT TO WHICH THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (E) DRAINAGE; (F) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDER SHORING; (G) ZONING TO WHICH THE PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT; (H) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS AND ELECTRIC; (I) USAGE OF ADJOINING PROPERTY; (J) ACCESS TO THE PROPERTY OR ANY PORTION THEREOF; (K) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS OR CLAIMS ON



OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF; (L) THE PRESENCE OF HAZARDOUS MATERIALS IN OR ON, UNDER OR IN THE VICINITY OF THE PROPERTY; (M) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (N) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS; (O) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE PROPERTY; (P) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY; (Q) THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY; (R) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (GRANTEE AFFIRMING THAT GRANTEE HAS NOT RELIED ON GRANTOR'S OR GRANTOR'S AGENTS' OR EMPLOYEES' SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT GRANTOR MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE); AND (S) TAX CONSEQUENCES.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO GRANTEE, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE PROPERTY AND ANY IMPROVEMENTS LOCATED THEREON, OR THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY. GRANTEE SHALL RELY ON ITS INVESTIGATIONS OF THE PROPERTY IN DETERMINING WHETHER TO ACCEPT THE CONVEYANCE OF IT. THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THE CONSIDERATION FOR GRANTOR'S ENTERING INTO THIS AGREEMENT, AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

This instrument shall be binding on, and inure to the benefit of, Grantee and Grantor and their respective successors or assigns.

This instrument may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

When the context requires, singular nouns and pronouns include the plural.

*[Signature pages follow.]*

EXECUTED on the dates of the acknowledgments, but to be EFFECTIVE on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF TEXAS           §  
                                          §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the \_\_\_\_\_ and duly authorized representative of \_\_\_\_\_, a \_\_\_\_\_, and that he executed the same for the purposes and consideration therein stated and in the capacity therein stated as the act and deed of said \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

AGREED AND ACCEPTED:

**CITY OF SHERMAN, TEXAS**

By: \_\_\_\_\_  
Robby Hefton, City Manager

STATE OF TEXAS           §  
                                     §  
COUNTY OF GRAYSON   §

BEFORE ME, the undersigned authority, on this day personally appeared **ROBBY HEFTON**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the City Manager and duly authorized representative of the **CITY OF SHERMAN, TEXAS**, a home-rule municipality, and that he executed the same for the purposes and consideration therein stated and in the capacity therein stated as the act and deed of the City of Sherman, Texas.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
Linda Ashby, City Clerk

APPROVED AS TO FORM:  
Abernathy, Roeder, Boyd & Hullett, P.C.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
City Attorney

**PARTIAL RELEASE OF LIEN**

The undersigned, being the holder of the lien against all or a portion of the Property evidenced by:

hereby consents to the execution of the foregoing Deed and hereby releases the Property from the lien or lien(s) described above.

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
                                                  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the \_\_\_\_\_ and duly authorized representative of \_\_\_\_\_, a \_\_\_\_\_, and that he executed the same for the purposes and consideration therein stated and in the capacity therein stated as the act and deed of said \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**Exhibit 1**  
**Legal Description of the Property**

## **Exhibit 2 Permitted Exceptions**

To the extent the following applies to the Property, these are the sole Permitted Exceptions:

**Reservation and/or Conveyance of the subsurface mineral estate, including oil, gas, and other minerals in and under the land above described, including royalty interests, royalties, bonuses, rental and all other rights in connection therewith including all easements or rights-of-way owned or held by any lessee or mineral owner, on, over or across the said lands for the purpose of producing or transporting any of said minerals together with the right of ingress and egress.**

**Conveyance of an undivided One-Half (1/2) Interest in all oil, gas and other minerals, together with rights of ingress and egress, to Texas Farm Mortgage, as contained in Mineral Deed dated September 1, 1931, from Wint Davis, Leslie Waggener, and Percy Davis, to said Texas Farm Mortgage Company, of record in Volume 359, at Page 125, Deed Records of Grayson County, Texas, and subject to all rights incident thereto in favor of the owners and/or lessees of such outstanding minerals and/or mineral interest. (TITLE TO SAID INTEREST NOT CHECKED SUBSEQUENT TO DATE OF AFORESAID INSTRUMENT.)**

**Conveyance of an undivided One-Fourth (1/4) Interest in all oil, gas and other minerals, together with rights of ingress and egress, to The Prospect Company, as contained in Mineral Deed dated May 20, 1936, from Travelers Insurance Company to The Prospect Company, of record in Volume 387, at Page 237, Deed Records of Grayson County, Texas, and subject to all rights incident thereto in favor of the owners and/or lessees of such outstanding minerals and/or mineral interest. (TITLE TO SAID INTEREST NOT CHECKED SUBSEQUENT TO DATE OF AFORESAID INSTRUMENT.)**

**Reservation of an undivided One-Third (1/3) Interest in all oil, gas and other minerals, together with rights of ingress and egress, in favor of Mrs. Grace Burns, as contained in Warranty Deed dated October 1, 1958, from said Grace Burns to Charles R. Burns, et al, of record in Volume 878, at Page 226 of the Deed Records of Grayson County, Texas, and subject to all rights incident thereto in favor of the owners and/or lessees of such outstanding minerals and/or mineral interest. (TITLE TO SAID INTEREST NOT CHECKED SUBSEQUENT TO DATE OF AFORESAID INSTRUMENT.)**

**Mineral Reservation contained in Warranty Deed dated January 2, 1981, from Charles F. Burns to Dixie Wagner, Trustee, of record in Volume 1542, at Page 329 of the Deed Records of Grayson County, Texas, and subject to all rights incident thereto in favor of the owners and/or lessees of such outstanding minerals and/or mineral interest. (TITLE TO SAID INTEREST NOT CHECKED SUBSEQUENT TO DATE OF AFORESAID INSTRUMENT.)**

**Mineral Reservation contained in Warranty Deed dated March 20, 1981, from Dorothy B. Bomar to Jimmie Evans, of record in Volume 1553, at Page 32 of the Deed Records of Grayson County, Texas, and subject to all rights incident thereto in favor of the owners and/or lessees of such outstanding minerals and/or mineral interest. (TITLE TO SAID INTEREST NOT CHECKED SUBSEQUENT TO DATE OF AFORESAID INSTRUMENT.)**

All of the oil, gas and other minerals, together with rights of ingress and egress, have been reserved and/or conveyed by prior grantors, as contained in Warranty Deed dated February 22, 1983, from John S. Calhoun to T. A. Harrell, of record in Volume 1635, at Page 640 of the Deed Records of Grayson County, Texas, and as contained in Warranty Deed dated January 24, 1994, from the Resolution Trust Corporation to Bobby McCraw, of record in Volume 2315, at Page 865 of the Real Property Records of Grayson County, Texas, and subject to all rights incident thereto in favor of the owners and/or lessees of such outstanding minerals and/or mineral interest. (TITLE TO SAID INTEREST NOT CHECKED SUBSEQUENT TO DATE OF AFORESAID INSTRUMENT.)

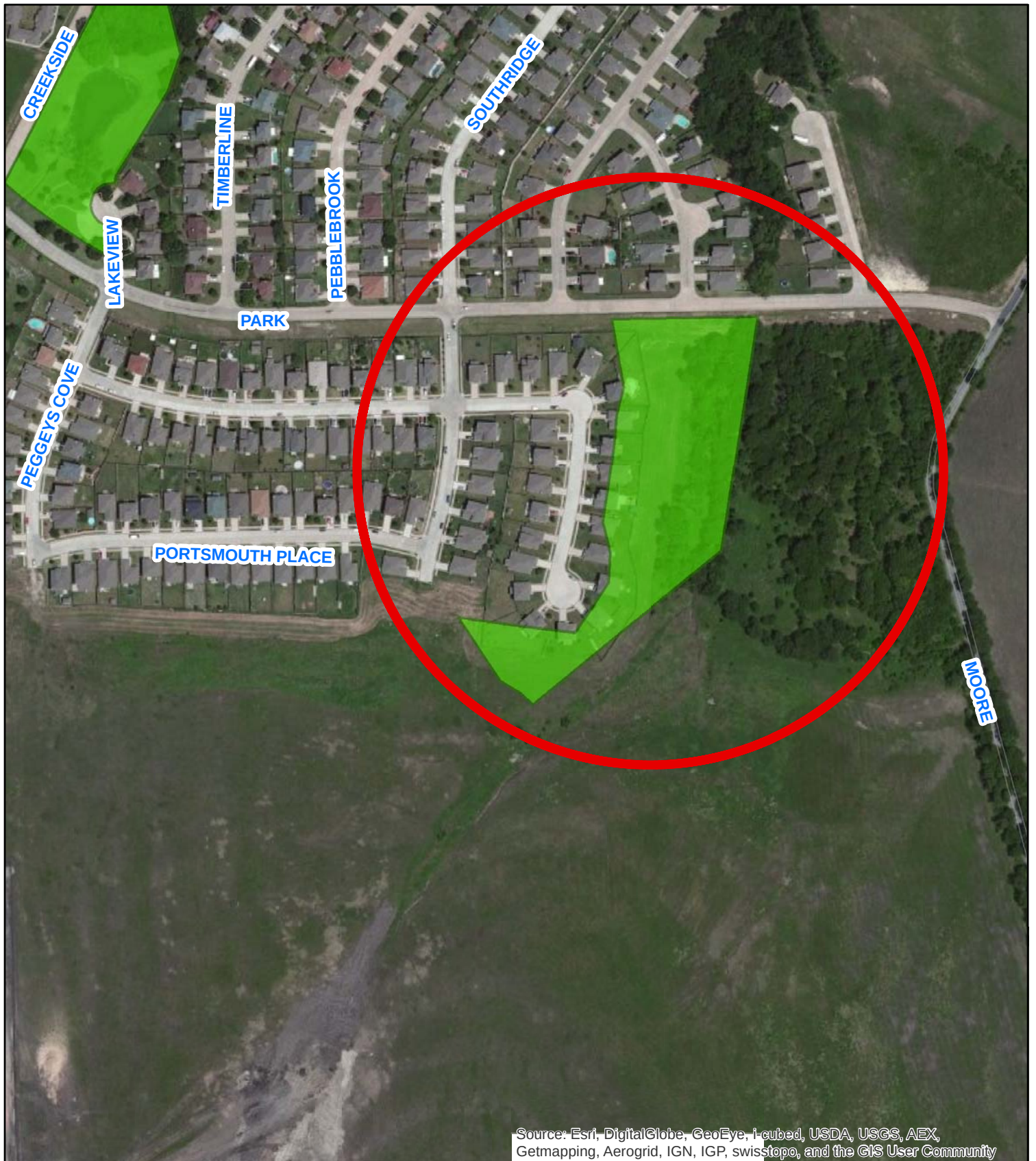
Royalty Deeds dated June 17, 1954, of record in Volume 763, at Page 281, Volume 764, at Page 146, Volume 780, at Page 253, and Volume 820, at Pages 81, 84 & 86, all of the Deed Records of Grayson County, Texas; Royalty Deed dated March 16, 1956, of record in Volume 832, at Page 248 of the Deed Records of Grayson County, Texas; AND Royalty Deed dated December 16, 1955, of record in Volume 826, at Page 168 of the Deed Records of Grayson County, Texas. (TITLE TO SAID INTERESTS NOT CHECKED SUBSEQUENT TO DATE OF AFORESAID INSTRUMENTS.)

Easement and Right-of-Way granted to Texas Power & Light Company, as shown by instrument dated June 13, 1938, from C. R. Burns, of record in Volume 403, at Page 290 of the Deed Records of Grayson County, Texas.

Easement and Right-of-Way granted to Texas Power & Light Company, as shown by instrument dated July 27, 1945, from C. R. Burns, of record in Volume 493, at Page 303 of the Deed Records of Grayson County, Texas.

Drainage Easement granted by instrument dated February 20, 2020 executed by Artisan Development Company, Inc., a Texas corporation to City of Sherman, a municipal corporation recorded in Instrument Number 2020-4963 et seq of the Official Public Records of Grayson County, Texas.





Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community







# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

D. 3.

**Meeting Date:** 12/12/2022

**Prepared By:** Tom Pruitt, Utility Engineer

**Approved By:** Robby Hefton, City Manager

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#### **Caption:**

#### **RESOLUTION NO. 7004**

Approving the Greater Texoma Utility Authority's Intention to Contract with Garney Companies, Inc. for the 36-Inch West Sherman Water Main Construction Manager at Risk (CMAR)

#### **Issue:**

Approving the intention of the Greater Texoma Utility Authority (GTUA) to administer an agreement for the 36-Inch West Sherman Water Main Construction Manager at Risk (CMAR)

#### **Background:**

Due to major growth of both industrial and residential development, the need to provide large quantities to the southern portion of the City is necessary in less than two years.

GTUA and the City's Program Manager (Pape-Dawson) advertised a Request for Proposals for a Construction Manager At Risk (CMAR) for the installation of a new 36-inch diameter water main from the water treatment plant, through the western portion of the City, and down to the southern portion of the City. The City received proposals from two firms, Archer Western and Garney.

GTUA and the City interviewed both firms, and scored the firms based on their proposals and interviews. Garney scored the highest of the two firms.

#### **Origination:**

Engineering Department

#### **Financial Consideration:**

The CMAR Pre-Construction and Procurement Services for this contract is \$588,698.00. The project is funded through the Greater Texoma Utility Authority (GTUA) Open Market Bonds.

#### **Staff Recommendation:**

It is recommended that the City Council approve GTUA's intention to contract with Garney Companies, Inc. for the 36-Inch West Sherman Water Main Construction Manager at Risk (CMAR).

**Alternatives:**

As may be directed by the City Council

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**Attachments**

Resolution No. 7004

Recommendation Letter

Agreement

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**RESOLUTION NO. 7004**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO CONTRACT WITH GARNEY COMPANIES, INC. FOR CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES FOR THE 36-INCH WEST SHERMAN WATER MAIN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That the City Council of the City of Sherman hereby approves the Greater Texoma Utility Authority's intention to enter into a contract with Garney Companies, Inc. for Construction Manager at Risk (CMAR) Services on the 36-Inch West Sherman Water Main Project in the total amount of Five Hundred Eighty-Eight Thousand Six Hundred Ninety-Eight Dollars and Zero Cents (\$588,698.00).

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

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS** on this the 12<sup>th</sup> day of December 2022.

**CITY OF SHERMAN, TEXAS**

**ATTEST:**

**BY:** \_\_\_\_\_  
**LINDA ASHBY, CITY CLERK**

**BY:** \_\_\_\_\_  
**DAVID PLYLER, MAYOR**

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

**BY:** \_\_\_\_\_  
**RYAN D. PITTMAN, CITY ATTORNEY**

December 1st, 2022

GTUA / City of Sherman  
220 W Mulberry St.  
P.O. Box 1106  
Sherman, TX 75091  
(903) 892-7208

Re: 36-Inch West Sherman Water Main CMAR contractor selection

Dear Tom:

Request for proposals "RFP" for the 36-Inch West Sherman Water Main CMAR project were received by the City of Sherman on November 18th, 2022, from two short listed proposers - Garney Companies, Inc and Archer Western Construction, LLC.

The program management team has reviewed the technical and cost proposals, representative projects from the request for qualifications (RFQ) and key personnel from the two proposers and prepared selection worksheet materials.

On November 30, 2022, representatives with the GTUA, City of Sherman, Program Management Team and Freese and Nichols (Engineer of Record) participated in interviews with the two shortlisted proposers.

Based on review of the two proposals, interviews and evaluation discussions with GTUA and City staff, the Program Management Team evaluated and ranked the two proposers based on the evaluation criteria and weighting described in the RFP as follows:

1. Garney Companies, Inc. scored **91/100**
2. Archer Western Construction, LLC scored **83/100**

Based on the scoring obtained, we recommend award of the contract to Garney Companies, Inc. for the CMAR Services for the 36-inch West Sherman Water Main CMAR project.

Please find attached the detailed evaluation and scoring sheet.

Sincerely,

 12/01/2022  
V.T. Madhavan – Program Manager

Cc: Robby Hefton, Clint Philpott, Wayne Lee, Paul Sigle, Nichole Murphy, Clayton Bernard, Jacob Pannell, Monte Dwaynie, Matt Garcia, Kim Keefer, Chris Noe, Joe Castillo, Eugene Chung



GTUA | City of Sherman - Major Infrastructure Improvements Program - 36-Inch West Sherman Water Main CMAR  
Interview Evaluation and Scoring (Scale of 1 to 10 with 1 being worst and 10 being best)

| Evaluator         | Organization            | Archer Western | Garney Companies |
|-------------------|-------------------------|----------------|------------------|
| Robby Hefton      | CoS                     | 8              | 9                |
| Tom Pruitt        | CoS                     | 7              | 8                |
| Wayne Lee         | CoS                     | 8              | 9                |
| Clint Philpott    | CoS                     | 7              | 8                |
| Paul Sigle        | GTUA                    | 7              | 8                |
| Nichole Sims      | GTUA                    | 8              | 9                |
| Clayton Barnard   | FNI                     | 7              | 8                |
| Jacob Pannell     | FNI                     | 7              | 8                |
| VT Madhavan       | Program management team | 7              | 9                |
| Monte Dwaynie     | Program management team | 8              | 9                |
|                   |                         |                |                  |
| Average score     |                         | 7              | 9                |
| Evaluation Points | 25                      | 19             | 21               |

THIS CONSTRUCTION MANAGEMENT AT RISK SERVICES AGREEMENT, hereinafter referred to as the "Agreement," is made and dated as of \_\_\_\_\_, 20\_\_\_\_, between the Greater Texoma Utility Authority (GTUA) having its principal office at 5100 Airport Drive, Denison, Texas 75020, hereinafter referred to as "Owner" and, Garney Companies, Inc, a corporation organized and operating under the laws of the State of Texas, having an office at 361 CR 4965 LEONARD, TX 75452, hereinafter referred to as "CMAR," (each also hereinafter referred to as "Party" individually or "Parties" collectively), for construction management at risk services in connection with the Major Infrastructure Improvements Program, 36-Inch West Sherman Water Main.

#### Recitals

- GTUA has determined to implement a program for the construction of Major Infrastructure Improvements Program. The 36-Inch West Sherman Water Main consists of installation of approximately 15 miles of 36-inch water transmission main from Sherman Water Treatment Plant to connect to existing line in Shepherd Drive. Construction includes the installation of water main pipe by open cut and trenchless methods, butterfly valves, drain line manholes with valves, casing, combination air release/vacuum relief valves, service manways, tunnels, a cathodic protection system, SWPPP, traffic control plan, tree and plant protection, site and pavement restorations.

The 36-Inch West Sherman Water Main project will be completed using the construction manager-at-risk ("CMAR") project delivery method in accordance with Chapter 2269 of the Texas Government Code.

Owner has determined to contract with a construction manager-at-risk to perform the preconstruction, procurement and construction services. The services will include working and coordinating with the design engineers selected pursuant to one or more separate procurements.

Owner issued a Request for Qualifications (the "RFQ") on Sep. 19<sup>th</sup>, 2022.

Statements of Qualifications ("SOQs") submitted in response to the RFQ were received on October 7<sup>th</sup>, 2022 from 2 proposers.

The SOQs were reviewed by the Owner and assigned a score based on the evaluation criteria and weighting set forth in the RFQ.

Based on the evaluations and scoring of the SOQs, the 2 highest ranked Proposers ("Short Listed Proposers") were short-listed to receive the Request for Proposals ("RFP").

The RFP was released to the Short-Listed Proposers on October 20<sup>th</sup>, 2022

The proposals submitted in response to the RFP ("Proposals") were received on November 18<sup>th</sup>, 2022

The Proposals were reviewed by the Owner and assigned a score based on the evaluation criteria and weighting set forth in the RFP.

Based on the evaluations and scoring of the Proposals, the highest ranked Proposer provided the best value Proposal for the performance of the services among the Short Listed Proposers responding to the RFP.

In November of 2022, the Owner initiated negotiations with Garney Companies, Inc for performance of the services, which have concluded with this Agreement.

On December 12<sup>th</sup> 2022, by Resolution No. 7004, the governing body of the Owner authorized the execution and delivery of this Agreement on behalf of the City.

In consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

#### ARTICLE 1. REPRESENTATIONS AND WARRANTIES

##### 1.01 Representations and Warranties of the CMAR.

###### A. The CMAR hereby represents and warrants that:

1. Existence and Powers. The CMAR is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.
2. Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary corporate action of the CMAR and constitutes the legal, valid and binding obligation of the CMAR, enforceable against the CMAR in accordance with the terms contained herein and pursuant to applicable law.
3. Information Supplied by the CMAR. The information supplied and representations and warranties made by the CMAR in all submittals made in response to the RFP with respect to the CMAR (and to the best of its knowledge after due inquiry, all information supplied in such submittals with respect to any CMAR Team Member) are true, correct and complete in all material respects.
4. No Conflict of Interest. The CMAR understands that as a political subdivision of Texas, the laws governing Owner's Board, employees, and agents may prohibit certain persons from having a financial interest, directly or indirectly, in any contract with the Owner ("Prohibited Persons"). The CMAR represents and certifies that its owners, officers, employees and agents are not Prohibited Persons and that it has tendered to the Owner all necessary disclosures and other documents in compliance with the Owner's policies and governing laws, including, without limitation, a discretionary contracts disclosure statement and a Conflict of Interest Questionnaire.
5. No Commitments Limiting Ability to Perform CMAR Services. The CMAR has no commitments, obligations, or impediments of any kind that would have a material and

adverse impact on the ability of the CMAR to perform the Services in accordance with the Agreement. The CMAR covenants that it will not enter into any such commitment throughout the period of the performance of the Services.

6. No approvals required. No approval, authorization, order of consent or declaration of, or registration of filing with any governmental body is required for the valid execution and delivery of the Agreement by the CMAR except as such have been duly obtained or made.
7. Licensing and Registration Requirements. The CMAR possesses all licenses required under Laws and Regulations to perform all services required of the CMAR under this Agreement and is not in violation of any of the terms or conditions of such licenses. The CMAR is registered with all appropriate governmental bodies to the extent necessary to perform all of the Services. The CMAR has the authority to do business in the State of Texas.
8. No Litigation. Except as disclosed in writing to Owner, there is no legal proceeding, at law or in equity, before or by any court, arbitral tribunal or other governmental body pending or, to the best of the CMAR's knowledge after due inquiry, overtly threatened or publicly announced against the CMAR, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the CMAR or the validity, legality or enforceability of this Agreement against the CMAR, or any other agreement or instrument entered into by the CMAR in connection with the transactions contemplated hereby, or on the ability of the CMAR to perform its obligations hereunder or under any such other agreements or instruments. For the purposes of this section only, "material" is defined to be an effect in excess of \$1M.
9. Claims and demands. Except as disclosed in writing to Owner, there are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against the CMAR or any of its affiliates that would have a material and adverse effect upon the ability of the CMAR to perform the Services. For the purposes of this section only, "material" is defined to be an effect in excess of \$1M.
10. . Laws and Regulations Compliance. Neither the CMAR nor any of its affiliates has any knowledge of any material violation of any law, order, rule or regulation with respect to any facilities or structures constructed by the CMAR or any of its affiliates. For the purposes of this section only, "material" is defined to be an effect in excess of \$1M.
11. The CMAR represents that it is familiar with the ethics requirements of the Owner and agrees to comply with such requirements.



## ARTICLE 2. WORK, SERVICES AND THE PROJECT

- 2.01 CMAR shall complete all Work as specified or indicated in the Contract Documents. The “Work” is generally described as follows, and includes (but is not limited to) all Construction Management at Risk Services (the “Services”) as specified or indicated in the Contract Documents Section 01 01 01, as well as the following:

36-Inch West Sherman Water Main Project (“Project”). The Project consists of:

construction of approximately 15 miles of 36-inch water transmission main from Sherman Water Treatment Plant to connect to existing line in Shepherd Drive. Construction includes the installation of water main pipe by open cut and trenchless methods, butterfly valves, drain line manholes with valves, casing, combination air release/vacuum relief valves, service manways, tunnels, a cathodic protection system, SWPPP, traffic control plan, tree and plant protection, site and pavement restorations.

- 2.02 The Owner's Budget for the work immediately is \$68 Million. Construction could be initiated as early as first quarter of 2023 with an anticipated completion to allow the Project to be Substantially Complete by June 2024.

- 2.03 This Project is commonly referred to as follows:

36-Inch West Sherman Water Main

## ARTICLE 3. ENGINEERS

- 3.01 Owner has retained the services of the following identified engineering firms to perform those professional services identified below.
- 3.02 Engineering design shall be performed by the following firm(s) with regard to the general scopes of work as set forth below:

A. Freese and Nichols Inc.

- 3.03 Collectively, the engineering firms are referred to as the “Engineers.” The Engineer shall mean that engineering firm that has primary responsibility for the design and any construction administration obligations over the respective scope of the Work. Each Engineer shall be legally responsible and liable for those consultants and subconsultants retained by the Engineer to provide the engineering services required in its agreement with the Owner.

- 3.04 Engineer, who is to act as Owner's representative, shall assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Services and the Work in accordance with the Contract Documents.

#### ARTICLE 4. CONTRACT TIMES

- 4.01 Time of the Essence: All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 4.02 Dates for Substantial Completion and Final Payment:

The Work will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions of the Construction Contract on or before the dates contemplated in Paragraph 2.02, above. These dates are approximate as of the time of this initial Agreement and will be fixed if and when a Guaranteed Maximum Price Amendment for the entire Work is established.

- 4.03 Liquidated Damages

CMAR and Owner recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraphs 2.01 and 2.02 above, plus any extensions of the Contract Times allowed in accordance with Article 12 of the General Conditions of the Construction Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and CMAR agree that as liquidated damages for delay (but not as penalty), CMAR shall pay Owner the amount of Liquidated Damages stipulated in the Amendment establishing the Guaranteed Maximum Price for each day that expires after the time specified in Paragraphs 2.01 and 2.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CMAR shall neglect, refuse, or fail to complete the remaining Work and achieve final completion within the Contract Time, CMAR shall pay Owner the amount of Liquidated Damages stipulated in the Amendment establishing the Guaranteed Maximum Price. The Owner will be the sole judge as to whether the Work has been completed within the allotted time. Assessment of Liquidated Damages by the Owner shall not constitute a waiver of the Owner's right to sue and collect additional damages which Owner may sustain by the failure of the CMAR to perform in accordance with the terms of its Contract.

#### ARTICLE 5. CONTRACT PRICE

Contract Price shall be as defined by Section 1.01 A (13) of the General Conditions of the Construction Contract, which is incorporated herein by reference.

ARTICLE 6. CMAR'S CONSTRUCTION SERVICES FEE

- 6.01 CMAR's construction services fee ("CMAR Fee") shall be nine and half percent (9.5 %) of the Cost of the Work. CMAR Fee is intended to compensate CMAR for its profit, as well as its indirect overhead costs not compensated through reimbursement for its General Conditions, defined below and in the General Conditions of the Construction Contract.
- 6.02 If Owner approves the use of contingency funds in accordance with Article 8 of this Agreement, CMAR shall be paid nine and half percent (9.5 %) of the contingency funds approved by Owner as its fee for construction services associated with the contingency work.

ARTICLE 7. COST OF THE WORK

- 7.01 Cost of the Work shall be defined by Section 11.01 of the General Conditions of the Construction Contract, which is incorporated herein by reference.

ARTICLE 8. CONTINGENCY FUNDS

- 8.01 The contingency funds are for the exclusive use of the CMAR while executing the Work to reimburse the CMAR for Costs of Work due to unforeseen causes or details not capable of reasonable anticipation at the time of the execution of the Agreement; such contingency funds are not intended for changes in the scope of the Work or for reimbursement of expenses and costs not otherwise recoverable as a Cost of Work under Paragraph 11.01 of the General Conditions of the Construction Contract. The contingency funds shall not be allocated to any particular line item in the Cost of Work.
- 8.02 The amount of the contingency funds shall be three percent (3 %) of the Cost of Work.
- 8.03 Subject to prior written approval by the Owner, the contingency funds may be used for costs incurred in accordance with this Article by the CMAR. The CMAR shall prepare and submit to Owner a detailed listing and written justification as to the need to use any part of the contingency funds prior to using any part of the contingency funds. Charges against the contingency funds will be tabulated and reported by the CMAR as part of the CMAR's monthly Progress Meeting. CMAR will also provide a tracking system for the measurement and transfer of contingency accounts.
- 8.04 It is understood that the amount of any such contingency funds is the maximum amount available to the CMAR to cover costs incurred in accordance with this Article and that all cost overruns in excess of the contingency funds will be borne by the CMAR.

ARTICLE 9. GUARANTEED MAXIMUM PRICE

- 9.01 At the time specified in Section 9.02, below, the CMAR shall prepare a Guaranteed Maximum Price proposal (the “GMP Proposal”) for the Owner’s review and acceptance. The Guaranteed Maximum Price in the GMP Proposal shall be the sum of the CMAR’s estimate of the Cost of Work, including contingencies described in Article 8, plus the CMAR Fee described in Article 6. If signed by the Owner, this total shall be established as the Guaranteed Maximum Price in an Amendment to the Agreement and shall be subject to authorized increases or decreases for changes in the Work. By signing the Guaranteed Maximum Price Amendment, CMAR guarantees that the total Contract Price will not exceed the GMP unless the Owner authorizes an increase in accordance with the Agreement. The CMAR is responsible for all costs in excess of the GMP, unless the GMP has been increased by Change Order for a change in scope of Work by the Owner.
- 9.02 Within 30 days after the CMAR is furnished the 90% Construction Documents and if the 404 Permit is not imminent, the CMAR shall provide the Owner a 90% GMP estimate. The Owner will notify the CMAR in writing once the Section 404 permit is imminent, and assuming the 90% Construction Plans have already been provided to the CMAR, the CMAR shall have 30 days to submit its GMP Proposal for the entire Work, in such form and with such backup documentation as required herein for the GMP Proposal. Except as may otherwise be agreed by the Owner and the CMAR in advance, the GMP Proposal shall include a contingency fund of no more than is specified in Section 8.02, above.
- 9.03 Any GMP Proposal shall include the following, unless the Parties mutually agree otherwise:
- A. The proposed GMP will be developed as specified in Article 9 of this Agreement and as set out herein. The GMP Proposal shall be submitted in a binder with a title page that indicates whether the GMP Proposal is for an Early Work Package or GMP Proposal for the entire Work. If for an Early Work Package it shall be numbered and titled and dated. Binder pages shall be numbered. Binder shall include all specified items and components of a GMP as required by the Agreement. Sections must be divided by tabs for ease of reference. The GMP Proposal will be organized as follows:
    - 1. Transmittal Letter
    - 2. Table of Contents
    - 3. Tab 1 – Executive Summary- brief general summary, including the Scope of Work for the GMP Proposal.
    - 4. Tab 2 – A list of Drawings and Specifications and other Contract Documents, with the most recent revisions dates, upon which the GMP Proposal is based
    - 5. Tab 3 – Description of Variations, Substitutions proposed to the Drawings and Specifications.
      - 1. Specification listing- provide a detail listing of Specifications by division and section, which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert “as per specifications.”
        - 1) Qualifications and Assumptions- a narrative summary of all qualifications and assumptions included in the Specifications listing.



- 2) Exclusions- a summary of all exclusions included in the Specifications listing, plus any exclusions not related to the Specifications
  2. Exclusions- a summary of all exclusions included in the Specifications listing, plus any exclusions not related to the Specifications
  3. Value Analysis recommendations – if applicable.
  4. Allowance Schedule – a list of allowances including definitions for all allowances or any open pricing terms and a statement of their basis – if applicable.
  5. A schedule of unit prices – if applicable.
  6. All other information used as the basis for the GMP Proposal.
6. Tab 4 – The proposed GMP for the designated portion of the Work - Cost of the Work Breakdown:
1. Estimated Cost of the Work shall be broken down into Master Format 2004 divisions and such additional sections and Early Work Packages as may have been directed by Owner prior to the submission of the GMP Proposal.
  2. Cost breakdown will be a lump sum for each Division and, if applicable, a section with information on proposed subcontractors and pricing supporting such costs.
  3. Itemized listing of all proposed General Conditions costs, including all definitions of cost categories.
  4. The GMP Proposal shall provide for contingency funds in accordance with the Agreement.
  5. Allowances and unit prices shall be included
  6. It must include a description of how the estimated Cost of the Work was derived and prepared in accordance with the requirements of the Agreement.
7. Tab 5 Progress Schedule
1. The Progress Schedule for a GMP Proposal must include detailed activities for all events and Milestones included in the construction phase.
  2. Additionally, the Progress Schedule update must include detailed, logic driven activities for all construction phase activities.
  3. All paths in the Progress Schedule must lead to Milestone activities to ultimately achieve Substantial Completion on or before the Milestone for Substantial Completion.
  4. The Progress Schedule must be provided in hard copy form in the binder and also in an electronic format attached to the binder.
  5. A Schedule of Values based upon the Contract Time requirements.

- 9.04 Early Work Package shall be defined as a portion of Work that the Parties agree should be performed prior to the establishment of a Guaranteed Maximum Price for the Project. Prior to being provided with 90% Construction Drawings or establishment of a GMP Proposal for the entire Work, Early Work Packages may be awarded to the CMAR to facilitate the early preparation of the Site, purchase long lead time materials and equipment and otherwise accelerate certain portions of the Work in advance of an agreement between the Owner and CMAR regarding the GMP Amendment for the entire Work.
- 9.05 Either Owner or the CMAR may propose Early Work Packages to proceed prior to that time the GMP Proposal for the entire Work is approved by the Owner. Based upon the written agreement of the Parties, the CMAR may either self-perform, if selected by the Owner as the successful Bidder, or subcontract such Early Work Packages before the GMP Proposal for the entire Work has been submitted and approved. The approved “not to exceed” amount for the scope of the Work included in any Early Work Package shall later be included within the GMP Proposal for the entire Work as an individual line item with reference made to the appropriate Early Work Package agreement. For any Early Work Package payments, the CMAR’s fee shall be the same percentage of the Cost of Work set forth in Section 6.01, above. Additionally, CMAR’s General Conditions costs relating to the Early Work Package shall be calculated in the same manner and in the same percentage stated in Article 2.02 of the Cost Proposal. The CMAR will be obligated to provide payment and performance bonds in accordance with Article 5 of the General Conditions of the Construction Contract for the GMP amount of any Early Work Package.
- 9.06 The Owner may choose to accelerate the completion of certain portions of the design work so that some specific Early Work Packages may be awarded by the CMAR prior to the completion of the remaining Construction Documents or acceptance by the Owner of the GMP Proposal for the entire Work. The CMAR shall verify that the Engineer has provided the documents necessary to Bid and award any Early Work Package. Any Early Work Package shall contain language which makes those subcontracts 100% assignable to Owner at Owner’s option, in the event this Agreement is terminated, and that the Subcontractors shall be obligated to accept that assignment if it should occur.
- 9.07 After submission of any Early Work Package “not to exceed” proposal, as well as after submission of the GMP Proposal for the entire Work, the CMAR and Owner shall promptly meet to discuss and review the proposals.
- A. If Owner has any comments regarding the respective proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to the CMAR of such comments or findings.
  - B. To the extent that the estimated Cost of the Work of the GMP Proposal exceeds the Owner’s Budget, the CMAR shall exercise best efforts (as measured by its applicable standard of care under this Agreement) to propose Value Analysis solutions and other cost reduction measures to bring such construction costs within the Owner’s Budget.

1. The Owner and CMAR may cooperate in the revision of the Scope of Work to reduce the cost and re-Bid those portions of the Scope of Work that were revised.
  2. The Owner may authorize the CMAR to re-bid some or all portions of the Scope of Work within a reasonable time in an attempt to reduce costs.
- C. If appropriate, the CMAR shall, upon receipt of Owner's notice to the CMAR, make appropriate adjustments to the GMP Proposal.
  - D. If Owner accepts a GMP Proposal, as may be amended by Owner and the CMAR, the GMP Proposal and its basis shall be set forth in a GMP Amendment to this Agreement.
  - E. Notice to Proceed on a GMP Amendment may be issued immediately upon full approval and execution and receipt of all required bonds and insurance.
  - F. The CMAR agrees that to the best of its knowledge that the Contract Documents at the time of the execution of the respective GMP Amendment are sufficient to enable it to determine the GMP for all the Work covered by such GMP Amendment and that such Work can be completed in accordance with the Contract Documents for the GMP. By agreeing to a GMP, the CMAR agrees with the Owner that the Work required by the Contract Documents for the Work covered by the respective GMP Amendment, including without limitation, construction means, methods, procedures and techniques necessary to perform the Work, will be consistent with (i) good and sound practices within the construction industry, (ii) generally prevailing and accepted industry standards applicable to the Work, and (iii) requirements of any warranties applicable to the Work.
- 9.08 If Owner rejects the GMP Proposal for the entire Work (which it may do in its sole discretion) or fails to notify the CMAR in writing within thirty (30) calendar days of receipt of the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and the CMAR shall meet and confer as to how the Project will proceed with Owner having the following options, the selection of which option Owner may make in its sole discretion:
- A. Owner may suggest modifications to the GMP Proposal and consider the CMAR's additional Value Analysis proposals and other suggestions for cost reduction, whereupon, if such modifications are accepted in writing by the Owner and CMAR, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 9.07 D, E and F above; or
  - B. Owner may authorize and direct, in writing, the CMAR to proceed with the specified Work on the basis of reimbursement as provided in Article 6 (CMAR's Fee) and Article 7 (Cost of the Work) hereof without a GMP, in which case all references in Agreement to the GMP will not be applicable; or
  - C. Owner may terminate this Agreement in accordance with Article 19

- 9.09 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CMAR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CMAR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them being necessary to produce the indicated results. To the extent the Drawings and Specifications are anticipated to require further development by the Engineer, the CMAR has provided in the GMP for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required shall be incorporated by Change Order.

#### ARTICLE 10. CHANGES IN THE GUARANTEED MAXIMUM PRICE

- 10.01 The amount of any increases or decreases in the GMP that result from a change in the scope of Work shall be set forth in an applicable written Change Order. The amount of any such increase or decrease in the GMP shall be determined by Articles 11 and 12 of the General Conditions of the Construction Contract.

#### ARTICLE 11. PAYMENT PROCEDURES

- 11.01 Submittal and Processing of Payments for Services associated with the Pre-Construction Services and Procurement Services:
- A. On the first working day following the 25th of each month, Contractor shall submit to Owner for review an Application for Payment completed and signed by Contractor covering the Services completed as of the date of the Application and accompanied by such documentation as may be required.
  - A. Engineer will within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present Application to Owner or return the Application to CMAR indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
  - B. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's knowledge and review of the Services completed, that such Services were generally in accordance with the requirements of the Agreement and the Contract Documents.

Thirty days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will become due, and when due will be paid by Owner to CMAR.



- 11.02 Submittal and Processing of Payments for Services associated with the Construction Services: CMAR shall submit Applications for Payment of the Work in accordance with Article 14 of the General Conditions of the Construction Contract. Applications for Payment will be processed by Engineer as provided in the General Conditions of the Construction Contract.
- 11.03 Progress Payments and Retainage for the Work:
- A. Owner shall make progress payments on the basis of CMAR's Applications for Payment on or about the 25th day of each month during performance of the Work. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.07.A of the General Conditions of the Construction Contract.
  - B. Owner shall make progress payments on the basis of CMAR's Applications for Payment on or about the 25th day of each month during performance of the Work. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.07.A of the General Conditions of the Construction Contract.
  - C. Payment will be less the aggregate of payments previously made and less such amounts as Owner may be entitled to withhold pursuant to the Contract Documents, including but not limited to Liquidated Damages, in accordance with Paragraph 14.02 of the General Conditions of the Construction Contract. In addition to the amount retained above, the Owner may retain additional amounts as permitted elsewhere in the Contract Documents.

- 11.04 Final Payment: Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions of the Construction Contract, Owner shall pay within thirty (30) days the remainder of the Contract Price, as modified in accordance with the Contract Documents, and as recommended by Engineer as provided in said Paragraph 14.07. In no event shall such final payment cause the total amount paid by Owner to exceed the Guaranteed Maximum Price.

ARTICLE 12. WORK SELF-PERFORMED BY CMAR OR A CMAR TEAM MEMBER

- 12.01 The CMAR may seek to perform portions of the Work itself, other than the work that may be included in the CMAR's General Conditions costs, if the CMAR submits its Bid and is awarded for those portions of the Work in the same manner as all other Subcontractors. If the CMAR intends to submit a Bid for such Work or a CMAR Team Member intends to submit a Bid, it shall notify Owner prior to soliciting Bids and all such Bids will be submitted directly to the Owner or the Engineer. If the Owner determines that the CMAR's Bid or CMAR Team Member's Bid provides the best value for Owner, the CMAR or CMAR Team Member will be awarded that portion of the Work. Owner's determination in such matters is final.

ARTICLE 13. INTEREST

- 13.01 The Owner is not obligated to pay interest on monies not paid except as provided in Section 2252.032 of the Texas Government Code

ARTICLE 14. CMAR'S REPRESENTATIONS FOR THE WORK

- 14.01 14.01 CMAR makes the following representations:
- A. CMAR has examined and carefully studied the Contract Documents and the other related data identified in the Request for Proposals.
  - B. CMAR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. CMAR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. CMAR has carefully studied: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site including Underground Facilities which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions of the Construction Contract and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions of the Construction Contract.

- E. CMAR has obtained and carefully studied all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions including surface, subsurface, and Underground Facilities at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents, and safety precautions and programs incident thereto or assumes responsibility for doing so.
- F. CMAR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. CMAR is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. CMAR has correlated the information known to CMAR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. CMAR has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that CMAR has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to CMAR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### ARTICLE 15. ACCOUNTING RECORDS

- 15.01 Accounting Record Availability: CMAR shall keep such full and detailed accounts of materials incorporated and labor and equipment utilized for the Work consistent with the requirements of Paragraph 11.01.B of the General Conditions of the Construction Contract and as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all CMAR's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and CMAR's fee. CMAR shall preserve all such documents for a period of 5 years after the final payment by Owner.

#### ARTICLE 16. CONTRACT DOCUMENTS

##### 16.01 Contents

- A. The Contract Documents consist of the following:

1. Specifications, all forms and documents listed in Section 00 01 10 "Table of Contents".
  2. Addenda (Numbers 00 91 00-1 to 00 91 00-insert Addenda number, inclusive)
  3. Exhibits to this Agreement (enumerated as follows):
    1. \_\_\_\_\_
    2. \_\_\_\_\_
  4. Documentation submitted by Contractor prior to Notice of Award (pages insert page numbers, inclusive).
  5. 00 42 23.01 Cost Proposal
  6. This Agreement.
  7. General Conditions of the Construction Contract
- B. The following are also Contract Documents which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto
1. Notice to Proceed.
  2. Amendment(s)
  3. Change Order(s).
  4. Field Order(s)
  5. Work Change Directive(s).
- C. The documents listed in Paragraph 17.01.A are attached to this Agreement (except as expressly noted otherwise above).
- D. There are no Contract Documents other than those listed above in this Article 17.
- E. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions of the Construction Contract.

#### ARTICLE 17. NON-APPROPRIATION OF FUNDS

- 17.01 Notwithstanding any other provision of this Agreement, this Agreement may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining the City's payment obligations under this Agreement. In the event of such termination, the termination will be in accordance with Paragraph 15.03 of the General Conditions of the Construction Contract.

#### ARTICLE 18. TERMINATION

- 18.01 In addition to the termination terms and conditions in Article 15 of the General Conditions of the Construction Contract, CMAR's failure to provide the Key Personnel or Alternate Key Personnel will justify termination for cause by the Owner, unless such failure is due to death, disability or the personnel's voluntary separation from employment from the CMAR or its CMAR Team Members.
- 18.02 In addition to the termination terms and conditions in Article 15 of the General Conditions of the Construction Contract, upon three days written notice, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate this Agreement at the conclusion of the Pre-Construction Services or failure of the Owner and CMAR to come to an agreement on the Guaranteed Maximum Price Proposal for the entire Work. The CMAR shall be paid for Services actually rendered through the date of termination.

#### ARTICLE 19. MISCELLANEOUS

- 19.01 Terms: Terms used in this Agreement will have the meanings stated in the General Conditions of the Construction Contract and any Supplementary Conditions.
- 19.02 Assignment of Contract: No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 19.03 Successors and Assigns: Owner and CMAR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.



- 19.04 Severability: Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and CMAR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 19.05 Venue: CMAR agrees that venue shall lie exclusively in district courts of Grayson County, Texas for any legal action.
- 19.06 CMAR shall provide Owner with any necessary documents as required by the Owner.
- 19.07 In the execution of the contract, the Contractor must comply with all applicable local, state and federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall be familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances and regulations which in any manner affect the conduct of the work, and shall defend, indemnify and save harmless the Owner, Engineer, Texas Water Development Board, and their representatives against any claim arising from violation of any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.
- 19.08 Owner may, but is not obligated to, advance to CMAR a lump sum amount of the anticipated General Conditions to cover costs associated with CMAR's project mobilization (the "Mobilization Advance"). In exchange for the Mobilization Advance, the General Conditions percentage to be paid on all future payment applications will be reduced by an amount agreed to by Owner and CMAR until Project completion. After the true-up calculation has been performed, Owner and CMAR will make any adjustments necessary to reconcile what Owner has actually paid CMAR for General Conditions versus what Owner should have paid CMAR for General Conditions. If Owner overpaid CMAR for General Conditions, CMAR shall promptly pay (or credit) back to Owner any such overpayment. The total General Conditions ultimately to be paid on the Project shall remain unchanged, unless later amended in writing, at six and half percent (6.5%) of the sum of subcontract costs, self-performed work, materials and equipment costs and special consultants' costs as defined in Article 11.01(A)(1)(a) and (b) of the General Conditions of the Construction Contract which is not intended to be modified by this Item other than in the timing of said payments.

ARTICLE 20. ENDANGERED SPECIES

- 20.01 No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.
- 20.02 If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with the Federal Endangered Species Act and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, or implement other mitigation actions. The Contractor shall not resume construction in the area of the encounter until authorized to do so by the Owner. If a delay to the Work is caused by an encounter with threatened or endangered species as described above, and expressly conditioned upon such delay being on the critical path of Contractor's Work at the time of the encounter, Contractor shall be entitled to seek an extension of the Contract Time in accordance with Article 12 of the General Conditions. IN NO EVENT IS THIS AMENDMENT INTENDED TO LIMIT, ABRIDGE OR OTHERWISE MODIFY THE "NO DAMAGE FOR DELAY" CLAUSES SET FORTH WITHIN ARTICLE 12 OF THE AGREEMENT'S GENERAL CONDITIONS, INCLUDING BUT NOT LIMITED TO ARTICLE 12.04.

\*\*\*\*\*

IN WITNESS WHEREOF, Owner and CMAR have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and CMAR. All portions of the Contract Documents have been signed or identified by Owner and CMAR or on their behalf.

This Agreement will be effective on Date to be inserted at the Time of Contract Execution.

Owner: \_\_\_\_\_  
(typed or printed)

CMAR: William D. Williams  
(typed or printed)

By: \_\_\_\_\_  
(Individual's signature)

By: \_\_\_\_\_  
(Individual's signature)

Name: \_\_\_\_\_  
(typed or printed)

Attest: \_\_\_\_\_  
(Individual's signature)

Name: \_\_\_\_\_  
(typed or printed)

Attest: \_\_\_\_\_  
(Individual's signature)

Address for giving notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Garney Companies, Inc

361 CR 4965 LEONARD, TX 75452

\_\_\_\_\_  
\_\_\_\_\_

Designated representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

Designated representative:

Name: William D. Williams

Title: Director

Address: 361 CR 4965 LEONARD, TX 75452

\_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

END OF SECTION



# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

D. 4.

**Meeting Date:** 12/12/2022

**Prepared By:** Wayne Lee, Director of Engineering

**Approved By:** Robby Hefton, City Manager

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#### **Caption:**

#### **\* RESOLUTION NO. 7005**

Authorizing Execution of a Professional Services Agreement with D&S Engineering Labs, LLC for the Annual Geotechnical Engineering and Construction Materials Testing

#### **Issue:**

To consider a contract for professional services with D&S Engineering Labs, LLC for the Annual Geotechnical Engineering and Construction Material Testing contract.

#### **Background:**

With every subdivision and capital improvement project, the Engineering Department solicits a proposal for geotechnical and construction material testing services from an engineering laboratory. With the unprecedented growth, the Engineering Department is having to solicit many contracts in a year and with some of the extremely large subdivisions, the cost of the services need City Council Approval. With an annual services contract with set fees for services, Engineering staff will not have to request and review multiple service contracts every year, but just issue a Purchase Order with a budgeted amount with each project. This contract is for a 12-month period and renewable upon agreement of both parties.

#### **Origination:**

Engineering Department

#### **Financial Consideration:**

The total funding needed for this contract is for an estimated \$275,000.00. This will be funded on a project by project basis out of the Engineering Department's Professional Services budget and CIP project budgets.

**Staff Recommendation:**

D&S Engineering Labs, LLC has a local presence in Sherman/Denison and is highly qualified to perform these services. D&S Engineering Labs, LLC has typically been the firm the Engineering Department has solicited proposals from the past 3 years. It is recommended that the professional services agreement with D&S Engineering Labs, LLC for the Annual Geotechnical Engineering and Construction Material Testing contract be approved.

**Alternatives:**

As may be directed by the City Council

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**Attachments**

Resolution No. 7005

Unsigned - Agreement

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**RESOLUTION NO. 7005**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH D&S ENGINEERING LABS, LLC FOR THE ANNUAL GEOTECHNICAL ENGINEERING AND CONSTRUCTION MATERIALS TESTING; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with D&S Engineering Labs, LLC for the Annual Geotechnical Engineering and Construction Materials Testing, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS** on this the 12<sup>th</sup> day of December 2022.

**CITY OF SHERMAN, TEXAS**

**ATTEST:**

**BY: \_\_\_\_\_**  
**LINDA ASHBY, CITY CLERK**

**BY: \_\_\_\_\_**  
**DAVID PLYLER, MAYOR**

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

**BY: \_\_\_\_\_**  
**NAME: \_\_\_\_\_**  
**CITY ATTORNEY**

**AGREEMENT**  
**BETWEEN**  
**THE CITY OF SHERMAN, TEXAS AND**  
**D&S ENGINEERING LABS, LLC.**  
**FOR**  
**PROFESSIONAL SERVICES**

Made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022:

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

and Consultant: **D&S Engineering Labs, LLC**  
4702 South Texoma Parkway  
Denison, Texas 75020  
Telephone: (903) 465-0333

for the following Project: **Annual Geotechnical Engineering and Construction  
Material Testing**

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

**WHEREAS**, City desires to engage Consultant to provide professional material testing and Geotechnical engineering services for the Annual Construction Material Testing ("Project"); and

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

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:**

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

## ARTICLE 1 CONSULTANT'S SERVICES

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

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

## **ARTICLE 2 CITY'S RESPONSIBILITIES**

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

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

## **ARTICLE 3 CONSULTANT'S COMPENSATION**

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) on an time and material per project basis for a contract estimated amount of **Two Hundred and seventy five Thousand Dollars (\$275,000.00)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Annual Geotechnical Engineering and Construction Material Testing Fee Schedule as set forth in **Exhibit B**.
- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Annual Geotechnical Engineering and Construction Material Testing Fee Schedule set forth in **Exhibit B**, and consistent with **Exhibit C**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from

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

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

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

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

- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21<sup>st</sup>) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of **Article 3.5** of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment



for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

- 3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10<sup>th</sup>) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter “D” of the TEX. GOV’T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.
- 3.8 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant’s compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

#### **ARTICLE 4 OWNERSHIP OF DOCUMENTS**

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

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

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

## **ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS**

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

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

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

## **ARTICLE 6 CONSULTANT’S ACCOUNTING RECORDS**

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

## **ARTICLE 7**

### **AUDITS AND RECORDS/VENDOR DISCLOSURE**

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

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

## **ARTICLE 8**

### **TERMINATION OF AGREEMENT/REMEDIES**

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

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

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

parties may have by law, statute, ordinance, or otherwise.

## **ARTICLE 9 DISPUTE RESOLUTION/MEDIATION**

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

## **ARTICLE 10 INDEMNITY**

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



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

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

#### **ARTICLE 11 NOTICES**

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

**Amy Brothers, P.E.**  
President  
D&S Engineering labs, LLC.  
4702 South Texoma Parkway  
Denison, Texas 75020  
Telephone: (903) 465-0333  
Email: [abrothers@dsenglabs.com](mailto:abrothers@dsenglabs.com)

## **ARTICLE 12 MISCELLANEOUS**

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

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

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

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

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

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



- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2022-2023 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2022-2023 fiscal year unless and until such funds are budgeted.
- 12.23 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners,

employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

- 1224 **Reference to City** – When referring to “City,” this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

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

**CONSULTANT:**  
**D&S Engineering Labs, LLC**  
a Texas corporation

By: \_\_\_\_\_  
Robby Hefton, City Manager

By: \_\_\_\_\_  
Amy Brothers, President

**APPROVED AS TO FORM:**

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

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **AMY BROTHERS** KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **D&S ENGINEERING LABS, LLC**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

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

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

## **EXHIBIT A SCOPE OF SERVICES**

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### **I. PROJECT DESCRIPTION**

The City of Sherman desires to retain an outside Consultant to assist the City in providing Geotechnical Engineering and Construction Material Testing. The scope of services of the testing tasks are but not limited to the following:

- Geotechnical Engineering:
  - Laboratory testing of soils
  - Drilling, Sampling & Field Testing
  - Pavement and subgrade design
- Construction Material Testing:
  - Concrete testing
  - Masonry testing
  - Aggregate testing
  - Soils testing
  - Asphalt testing
  - Structural Steel Inspection

**EXHIBIT B**  
**ANNUAL GEOTECHNICAL ENGINEERING AND CONSTRUCTION MATERIAL**  
**TESTING FEE SCHEDULE**

Compensation will be billed on the below fee schedule. An estimated budget of **Two Hundred and Seventy Five Thousand (\$275,000.00)** is established for a twelve (12) month period and may be renewed at the mutual agreement of the City and Consultant. Below is the D&S Engineering Labs Fee Schedule for the period of this contract.

**D&S Engineering Labs Hourly Fee Schedule**

| <b>Geotechnical Engineering Services</b>       |                    |
|------------------------------------------------|--------------------|
| <b>Position</b>                                | <b>Hourly Rate</b> |
| Expert Witness                                 | \$525.00           |
| Principal                                      | \$235.00           |
| Geotechnical Project Manager                   | \$185.00           |
| Sr. Geotechnical Project Engineer (P.E.)       | \$175.00           |
| Sr. Geologist (P.G.)                           | \$145.00           |
| Staff Geotechnical Engineer (P.E.)             | \$125.00           |
| Engineering Intern (E.I.T.)/Geologist (G.I.T.) | \$100.00           |
| CADD/Drafting                                  | \$85.00            |
| Administrative                                 | \$75.00            |
| <b>Testing Service Fees</b>                    |                    |
| <b>Position</b>                                | <b>Hourly Rate</b> |
| Principal                                      | \$225.00           |
| Senior CMET Engineer (P.E.)                    | \$165.00           |
| Senior Geologist (P.G.)                        | \$140.00           |
| Staff CMET Engineer (P.E.)                     | \$125.00           |
| CMET Operations Manager                        | \$150.00           |
| CMET Project Manager                           | \$115.00           |
| CMET Engineering Intern (EIT)/Geologist (GIT)  | \$100.00           |
| Quality Control                                | \$100.00           |
| Administrative                                 | \$75.00            |



## EXHIBIT B

### Miscellaneous Fees

|                                                                                              |                |
|----------------------------------------------------------------------------------------------|----------------|
| Project Coordination/Report Preparation                                                      | 10% of Invoice |
| New Project Set up                                                                           | \$100          |
| Project Management                                                                           | 10% of Invoice |
| Vehicle Transport Fees                                                                       |                |
| Within 30 miles                                                                              | \$50           |
| Over 30 miles (additional rate per mile, round trip)                                         | \$0.65         |
| Per Diem (Lodging & Food), per day (may vary with location)                                  | \$150          |
| Project Completion Letters (please notify D&S at beginning of project if required), per hour | \$165          |

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

- A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of Consultant in connection with the Project, and when such transportation exceeds beyond thirty (30) miles from the Project site, shall be reimbursed, per EXHIBIT B.

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

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

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

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

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

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**III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.**

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

**IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.**

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

**EXHIBIT D**  
**CONSULTANT'S INSURANCE GUIDELINES**

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**I. GENERAL INSURANCE REQUIREMENTS –**

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

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

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

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

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



**EXHIBIT D**  
**CONSULTANT'S INSURANCE GUIDELINES**

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

**EXHIBIT E**  
**CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ**

| <b>CONFLICT OF INTEREST QUESTIONNAIRE</b><br><b>For vendor doing business with local governmental entity</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                            | <b>FORM CIQ</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-----------------|
| <p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>OFFICE USE ONLY</b><br><br><div style="border: 1px solid black; height: 100px; margin-top: 5px;"></div> |                 |
| <b>1 Name of vendor who has a business relationship with local governmental entity.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                            |                 |
| <b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                            |                 |
| <b>3 Name of local government officer about whom the information is being disclosed.</b><br><br><div style="text-align: center; border-bottom: 1px solid black; width: 60%; margin: 0 auto;">             Name of Officer           </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                            |                 |
| <b>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b><br><br><br><br><br><br><br><br><br><br><div style="margin-left: 40px;"> <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="checkbox"/> Yes           <input type="checkbox"/> No         </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="checkbox"/> Yes           <input type="checkbox"/> No         </div> </div> |                                                                                                            |                 |
| <b>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                            |                 |
| <b>6</b> <input type="checkbox"/> <b>Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                            |                 |
| <b>7</b><br><br><div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%; border-bottom: 1px solid black; text-align: center;">             Signature of vendor doing business with the governmental entity           </div> <div style="width: 35%; border-bottom: 1px solid black; text-align: center;">             Date           </div> </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                            |                 |



# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

D. 5.

**Meeting Date:** 12/12/2022

**Prepared By:** Kevin Winkler, Public Works Manager

**Approved By:** Robby Hefton, City Manager

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### **Caption:**

#### **\* RESOLUTION NO. 7006**

Authorizing the Purchase of a New Base Truck Mount Loader from Texas Pack & Load for the Solid Waste Department

### **Issue:**

To consider approval of a resolution to purchase a new Base Truck Mount Loader from Texas Pack & Load for use within the Solid Waste Department.

### **Background:**

The requested purchase is a new purchase to be installed on Unit 659 for use in the daily operations of the Solid Waste Department.

### **Origination:**

Department of Public Works

### **Financial Consideration:**

The new Base Truck Mount Loader will be purchased from Texas Pack & Load for \$116,471.00. Funding for this purchase was appropriated in the fiscal year 2022-2023 Solid Waste Department Budget.

### **Staff Recommendation:**

It is recommended that staff be authorized to purchase the new Base Truck Mount Loader from Texas Pack & Load.

### **Alternatives:**

As may be recommended by the City Council

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### **Attachments**

Resolution No. 7006

Texas Pack & Load Quote

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**RESOLUTION NO. 7006**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW BASE TRUCK MOUNT LOADER FROM TEXAS PACK & LOAD FOR THE SOLID WASTE DEPARTMENT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That the City Manager be and is hereby authorized and directed to purchase from Texas Pack & Load a new Base Truck Mount Loader at a total price of One Hundred Sixteen Thousand and Four Hundred Seventy One Dollars (\$116,471.00). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2022-2023 budget.

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

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TX on this the 12<sup>th</sup> day of December 2022.**

**CITY OF SHERMAN, TEXAS**

**BY: \_\_\_\_\_  
DAVID PLYLER, MAYOR**

**ATTEST:**

**BY: \_\_\_\_\_  
LINDA ASHBY, CITY CLERK**

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

**BY: \_\_\_\_\_  
RYAN D. PITTMAN, CITY ATTORNEY**

Texas Pack + Load  
1030 Brussels Street  
San Antonio, TX 78219 US  
parts@texaspackandload.com

*sent's  
Purchase Req.*



## QUOTE

### ADDRESS

Sherman, City of  
PO Box 1106  
Sherman, TX 75091

### SHIP TO

Sherman, City of  
100 S RUSK ST  
SHERMAN, TX 75090-5860  
US

QUOTE # 3820

DATE 10/19/2022

EXPIRATION DATE 12/30/2022

### MEMO

Sherman, CP 3

| ACTIVITY              | DESCRIPTION                                                     | QTY | RATE      | AMOUNT     |
|-----------------------|-----------------------------------------------------------------|-----|-----------|------------|
| 0.CP3                 | Base Truck Mount Loader, Walk Through Controls                  | 1   | 96,471.00 | 96,471.00T |
| PI-03.11SAI           | Heavy Duty Swing Motor                                          | 1   | 0.00      | 0.00       |
| PI-01.11MQCA          | QUADSTICK MECH CONTROLS                                         | 1   | 0.00      | 0.00T      |
| PI-12.02 TP           | Tandem Pump                                                     | 1   | 0.00      | 0.00       |
| 10.16 HDHI            | Heavy Duty; High Intensity LED Outrigger Strobes                | 1   | 0.00      | 0.00T      |
| PI-07.13CBWB          | Crab Can Lifting attachment                                     | 1   | 0.00      | 0.00       |
| PI-10.04BUWL          | Boom-Up Warning Light/Decal                                     | 1   | 0.00      | 0.00       |
| 10.05 DS              | Dual LED Strobes, Mounted on Head                               | 1   | 0.00      | 0.00       |
| 10.97 WL              | Work Lights - (Set of 2) (1 ea side of boom)                    | 1   | 0.00      | 0.00       |
| PI-04.10 SL           | Swing Lock                                                      | 1   | 0.00      | 0.00       |
| 12.05 HG              | Hose Guards (Head and Valve Bank)                               | 1   | 0.00      | 0.00T      |
| PI-12.36HD            | HD Control Box, includes Throttle Control, Horn and Engine Kill | 1   | 0.00      | 0.00       |
| 8.24 2222-TBS         | Container Body, 22 CBS, 22ft. X 30" tall, Non-dump              | 1   | 0.00      | 0.00       |
| PI-8.47 WL-BW         | Wire Loom for Body Wiring                                       | 1   | 0.00      | 0.00       |
| PI-10.09 LED          | LED Type Body Lights                                            | 1   | 0.00      | 0.00       |
| 10.10 LED FLASH       | LED Flashers in Rear Corner Body Post                           | 1   | 0.00      | 0.00T      |
| VA-Additional Options | Rear Camera Mounted in Marker Light                             | 1   | 0.00      | 0.00       |
| NI-EQP MISC           | 2" x 2" Retaining Bar                                           | 1   | 0.00      | 0.00T      |
| 8.35 BL               | Body Ladder (Outside)                                           | 1   | 0.00      | 0.00       |
| NI-EQP MISC           | Dumpster Lid Rack                                               | 1   | 0.00      | 0.00T      |
| PI-8.77               | ANSI Z245 Package                                               | 1   | 0.00      | 0.00T      |
| 8.41 TB TFM           | Tool Box, Truck Frame Mounted Under Body, 18x18x48              | 1   | 0.00      | 0.00       |
| Sales Tax             | Sales Tax calculated by AvaTax on Wed 19 Oct                    | 1   | 0.00      | 0.00       |

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



| ACTIVITY              | DESCRIPTION                                         | QTY | RATE      | AMOUNT     |
|-----------------------|-----------------------------------------------------|-----|-----------|------------|
|                       | 14:06:52 UTC 2022                                   |     |           |            |
| MISC<br>EQUIPMENT     | Adjust Cab to Trunion & Add Afterframe for Mounting | 1   | 10,500.00 | 10,500.00T |
| Equipment<br>Delivery | Equipment Delivery                                  | 1   | 9,500.00  | 9,500.00   |

Texas Pack + Load thanks you for the opportunity to quote your business!

SUBTOTAL

116,471.00

\*\*All Invoices are COD unless pre-approved credit terms have been arranged.\*\*

TAX

0.00

TOTAL

**\$116,471.00**

Mounting on Sherman Used Cabover Autocar chassis. City will be responsible for having chassis ready to drive to Petersen for prepping and mounting new CP3 (Container Handler Boom and Body)

Accepted By

Accepted Date

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

D. 6.

**Meeting Date:** 12/12/2022

**Prepared By:** Billy Hartsfield, Acting Fire Chief

**Approved By:** Robby Hefton, City Manager

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#### **Caption:**

##### **\* RESOLUTION NO. 7007**

Awarding a Bid to and Authorizing Execution of a Contract with El Dorado for the Purchase of Four New Half-Ton Trucks from El Dorado Chevrolet Based Upon a Request for Public Bids for the Sherman Fire Department

#### **Issue:**

To consider awarding a bid to and authorizing execution of a contract for the purchase of four new half-ton trucks from El Dorado Chevrolet of McKinney, Texas, based upon a request for public bids for the Sherman Fire Department.

#### **Background:**

The Sherman Fire fleet is aging, with multiple units reaching the end of their useful life within the department. The four (4) new half-ton trucks will replace existing staff vehicles.

At the November 7, 2022 meeting, the City Council approved a request to advertise for public bids. On December 8, 2022, four (4) bidders responded to the request for bids. In the best interest of the City, staff recommends awarding to the second-lowest bid in the amount of \$207,344.22, submitted by El Dorado Chevrolet of McKinney, Texas. The four vehicles are immediately available onsite at El Dorado Chevrolet, whereas the lowest responsive bid stipulated a four to six month estimated delay in availability.

#### **Origination:**

Sherman Fire Department

#### **Financial Consideration:**

The total cost of these four vehicles is \$207,344.22.

#### **Staff Recommendation:**

It is recommended the Council approve this request

#### **Alternatives:**

As may be directed by City Council

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## **Attachments**

Resolution No. 7007

El Dorado Chevrolet Submittal

Purchase Four New Half-Ton Trucks for Fire ITB

Exhibits C & D - placeholder

Exhibit E

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**RESOLUTION NO. 7007**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH EL DORADO FOR THE PURCHASE OF FOUR NEW HALF-TON TRUCKS FROM EL DORADO CHEVROLET BASED UPON A REQUEST FOR PUBLIC BIDS FOR THE SHERMAN FIRE DEPARTMENT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That El Dorado Chevrolet of McKinney, Texas, is hereby awarded the bid for the purchase of four new half-ton trucks in the amount of Two Hundred Seven Thousand Three Hundred Forty-Four Dollars and Twenty-Two Cents (\$207,344.22); and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a contract with El Dorado Chevrolet for the purchase of four new half-ton trucks, in accordance with all contract documents attached hereto and made a part hereof for all purposes. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2022-2023 budget.

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

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 12<sup>th</sup> day of December 2022.**

**CITY OF SHERMAN, TEXAS**

**ATTEST:**

**BY: \_\_\_\_\_**  
**LINDA ASHBY, CITY CLERK**

**BY: \_\_\_\_\_**  
**DAVID PLYLER, MAYOR**

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

**BY: \_\_\_\_\_**  
**RYAN D. PITTMAN, CITY ATTORNEY**

## SPECIFICATIONS

- ❖ Four (4) new half-ton trucks; Used will not be accepted
- ❖ 4x4 models preferred, but, not required for bid submittal
- ❖ Four-door models preferred, but, not required for bid submittal
- ❖ Exterior colors must be either white or red
- ❖ Make must be Chevy, Ford, or Dodge, with minimum trim packages as follows:
  - a. Chevrolet 1500 Custom Trail Boss or higher model
  - b. Ford XL-STX or higher model
  - c. Dodge 1500 Big Horn/Longhorn or higher model

### **BIDDERS CERTIFICATION:**

I, the undersigned, by signing the following statement agree that I have read and understand all of the terms and conditions, specifications, and requirements contained on each page of this Invitation to Bid. I also understand that if this bid is accepted by the City of Sherman that all of the terms and conditions, specifications, and requirements submitted in my bid and any additions, changes, or deletions made during negotiations will be made a part of this bid under a binding contract between my company and the City of Sherman, Texas. I also certify that this bid is made without previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same materials, and is in all fair and without collusion or fraud:

### **OUR company is a (Check One):**

- ☐ Corporation (The bid MUST be signed by an Officer of the company)
- ☐ Partnership (The bid MUST be signed by a General Partner)
- ☐ Joint Venture (The bid MUST be signed by an Officer of the company)
- ☐ Sole Proprietor (The bid MUST be signed by the Owner)

Company Name: Eldorado Chevrolet

Address of Principal Place of Business:

2300 N. Central Expressway  
McKinney, Tx 75070

Mailing Address (if different):

\_\_\_\_\_  
\_\_\_\_\_



Phone: 972-569-0101

Fax: 972-569-3132

Email: TBEAN@ELDORADOMOTORS.COM

Authorized Representative: TOM BEAN

Signature: [Signature]

Date: \_\_\_\_\_

Acknowledgement of Addenda (if any): #1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_

### BID FORM

Bidder accepts all of the terms and conditions set forth in the Advertisement for Bid and the Bid Specification Package.

Total Price for Four (4) New Half-Ton Trucks  
INCLUDING all fees:

\$ 207,344.<sup>22</sup>

Signature of Bidder: [Signature]

Bidder (print name) Mark Welch

### Contractor References

Customer Name: FARMERSVILLE OVERHEAD DOOR  
Address: 14024 CNTY RD. 507 FARMERSVILLE, TX 75442  
Contact: KEN DAVIS Telephone #: 214-733-0575  
Scope of work performed: GARAGE DOORS  
Length of Service: 10 years

Customer Name: CITY OF EDGEWOOD  
Address: 107 NE FRONT ST Edgewood, TX 75117  
Contact: MARLA PERTRA Telephone #: 903-896-4448  
Scope of work performed: TRUCKS  
Length of Service: 2 years

Customer Name: GRAYSON-COLLIN ELECTRIC COOP  
Address: PO BOX 548 VAN ALSTYNE, TX 75495  
Contact: BRUCE STEVENS Telephone #: 903-482-5231  
Scope of work performed: TRUCKS  
Length of Service: 20 years



## Vehicle Locator

### Dealer Information

EL DORADO MOTORS, INC.  
2300 N CENTRAL EXPRESSWAY  
MCKINNEY, TX 75070  
Phone: 972-569-0101  
Fax: 972-569-0117

3GCPDDEK6PG142735

Model Year: 2023

Make: Chevrolet

Model: 1500 Silverado

CK10543-4WD, Short Crew

PEG: 1LT-LT Preferred Equipment Group

Primary Color: G7C-Red Hot

Trim: H0U-1WT/1LT/1SP/2LT/1FL/1LS-Cloth, Jet Black,  
Interior Trim

Engine: L3B-Engine: 2.7L, Turbo

Transmission: MQE-8-Speed Automatic

Event Code: 5000-Delivered to Dealer

Order #: CCKBWH

MSRP: \$54,345.00

Order Type: TRE-Retail Stock

Stock #: PG142735

Inventory Status: Available

Total Cash Allowance:\* \$2,250.00  
(Expires on 01/03/2023)

Total Cash Allowance:\* \$2,250.00  
(Expires on 01/03/2023)

### Additional Vehicle Information

### GM Marketing Information

### Vehicle Options

#### Chargeable Options

|                                                         | MSRP        |
|---------------------------------------------------------|-------------|
| 1SZ-2.7L TURBO HIGH-OUTPUT ENGINE CREDIT                | -\$1,500.00 |
| QDS-Tires: 265/65 R18 All Terrain, White Outline Letter | \$350.00    |
| R7N-CREDIT - NOT EQUIPPED WITH STEERING COLUMN LOCK     | -\$50.00    |
| R7O-Rear Seat: Folding with Storage Package             | \$225.00    |
| RCV-Wheels: 18" Aluminum Bright Silver                  | \$300.00    |
| RIA-LPO - Interior Floor Liners                         | \$230.00    |
| VBJ-LPO - Under Seat Storage                            | \$295.00    |

#### No Cost Options

C5W-GVW Rating 7000 Lbs  
FE9-Federal Emissions  
GU6-Rear Axle: 3.42 Ratio  
L3B-Engine: 2.7L, Turbo  
MQE-8-Speed Automatic  
PCL-1LT/1SP/2LT Convenience 1 Package  
PDU-1LT/1SP All-Star Edition

**Other Options**

1LT-LT Preferred Equipment Group  
AKO-Glass, Deep Tinted  
AVJ-Keyless Open & Keyless Start

B30-Floor Covering: Carpet, Color Keyed  
BTV-Remote Engine Starting Pkg  
CJ2-Climate Control, Electronic - Multi-zone  
E63-Durabed  
G80-Auto Locking Differential, Rear

IOK-Chevrolet Infotainment, Enhanced connectivity 2.0

KA1-Heated Seats, Front

KI4-120 Volt Electrical Receptacle, In Cab

PRF-Remote Access Plan

QT5-Tailgate Function--EZ Lift, Power Lock & Release

SAF-Spare Tire Lock

U2K-SiriusXM Satellite Radio (subscription)

UE1-OnStar Communication System

UEU-Sensor, Forward Collision Alert

UHX-Lane Keep Assist/Departure Warning

UK3-Radio Controls -Steering Wheel

UQF-Speaker System: Standard Sound System

UVB-Rear Vision Camera, HD

V76-Recovery Hooks

VK3-Front License Plate Mounting Provisions

YM8-LPO Processing Option

A2X-Power Seat Adjuster (Driver's Side)

AU3-Power Door Locks

AZ3-Seats: Front 40/20/40 Split-Bench, Full Feature

B59-Remote Start Package

C49-Defogger, Rear Window, Electric

DLF-Mirrors, O/S: Power, Heated

G7C-Red Hot

H0U-1WT/1LT/1SP/2LT/1FL/1LS-Cloth, Jet Black, Interior Trim

K34-Cruise Control

KI3-Heated Steering Wheel

KW5-Alternator, 220 AMP

QK1-Standard Tailgate

R6Y-OPD / Focused Ordering Configuration Not Desired

TQ5-Headlamps, Intellibeam

UBI-2-USBs, Second Row Charge/Data Ports

UE4-Following Distance Indicator

UF2-Lighting, Cargo Box, LED

UHY-Automatic Emergency Braking

UKJ-Sensor, Front Pedestrian Braking

UTJ-Theft Protection System, Unauthorized Entry

V46-Bumper, Front, Chrome

VJH-Bumper, Rear, Chrome Step

XCQ-Tire, Spare: 265/70 R17 All Season, Blackwall

Z82-Trailer Package

"~" indicates vehicle belongs to Trading Partner's inventory

**Disclaimer:**

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Cash Allowance is calculated based on your dealer's Zip Code. Customer must take delivery by 01/03/2023.



## Vehicle Locator

### Dealer Information

EL DORADO MOTORS, INC.  
2300 N CENTRAL EXPRESSWAY  
MCKINNEY, TX 75070  
Phone: 972-569-0101  
Fax: 972-569-0117

3GCUDD86PG127465

Model Year: 2023

Make: Chevrolet

Model: 1500 Silverado

CK10543-4WD, Short Crew

PEG: 1LT-LT Preferred Equipment Group

Primary Color: GAZ-Summit White

Trim: H0U-1WT/1LT/1SP/2LT/1FL/1LS-Cloth, Jet Black,  
Interior Trim

Engine: LZ0-Engine: Duramax 3.0L, Turbo-Diesel, Inline 6  
Cylinder

Transmission: MQB-10-Speed Automatic

Event Code: 5000-Delivered to Dealer

Order #: BZCRH0

MSRP: \$60,035.00

Order Type: TRE-Retail Stock

Stock #: PG127465

Inventory Status: Available

Total Cash Allowance: N/A

Total Cash Allowance: N/A

### Additional Vehicle Information

### GM Marketing Information

### Vehicle Options

#### Chargeable Options

|                                                                                                                        | MSRP       |
|------------------------------------------------------------------------------------------------------------------------|------------|
| 08R-CREDIT - NOT EQUIPPED WITH 120V AC<br>INSTRUMENT PANEL AND CARGO BED<br>POWER OUTLETS (INCLUDES LATER<br>RETROFIT) | -\$25.00   |
| 1SZ-Z71 OFF-ROAD & PROTECTION<br>PACKAGE DISCOUNT                                                                      | -\$500.00  |
| JL1-Integrated Trailer Brake Controller                                                                                | \$275.00   |
| LZ0-Engine: Duramax 3.0L, Turbo-Diesel,<br>Inline 6 Cylinder                                                           | \$2,390.00 |
| NZN-WHEEL 20 X 9.0, J, ALUMINUM, DESIGN<br>11                                                                          | \$1,100.00 |
| PDZ-Off-Road and Protection Package                                                                                    | \$1,910.00 |
| QK2-Multi-Flex Tailgate                                                                                                | \$445.00   |
| R7N-CREDIT - NOT EQUIPPED WITH<br>STEERING COLUMN LOCK                                                                 | -\$50.00   |
| VBJ-LPO - Under Seat Storage                                                                                           | \$295.00   |

#### No Cost Options

B1J-Liner, Rear Wheelhouse  
C5Z-GVW Rating 7200 Lbs  
FE9-Federal Emissions  
GU5-Rear Axle: 3.23 Ratio  
MQB-10-Speed Automatic  
PCL-1LT/1SP/2LT Convenience 1 Package  
PDU-1LT/1SP All-Star Edition

## Other Options

1LT-LT Preferred Equipment Group  
 AAK-LPO- Floor Liners, 1st&2nd Row, All-Weather, with logo  
 AU3-Power Door Locks  
 AZ3-Seats: Front 40/20/40 Split-Bench, Full Feature  
 B59-Remote Start Package  
 C49-Defogger, Rear Window, Electric  
 CJ2-Climate Control, Electronic - Multi-zone  
 E63-Durabed  
 GAZ-Summit White  
  
 IOK-Chevrolet Infotainment, Enhanced connectivity 2.0  
 K05-Engine Block Heater  
 K47-Heavy Duty Air Filter  
 KI3-Heated Steering Wheel  
 KW5-Alternator, 220 AMP  
 NQH-Transfer Case: Active, 2-Speed, Autotrac, Rotary Dial  
 QAE-Tires: 275/60 R20 All Terrain, Blackwall  
  
 QT5-Tailgate Function--EZ Lift, Power Lock & Release  
 SAF-Spare Tire Lock  
 TUF-Texas Edition Package / Emblem  
 UBI-2-USBs, Second Row Charge/Data Ports  
 UE4-Following Distance Indicator  
 UF2-Lighting, Cargo Box, LED  
 UHY-Automatic Emergency Braking  
 UKJ-Sensor, Front Pedestrian Braking  
  
 UTJ-Theft Protection System, Unauthorized Entry  
 V46-Bumper, Front, Chrome  
 VJH-Bumper, Rear, Chrome Step  
 WPQ-1LT/1SP/2LT Bed Protection Package  
 Z71-Suspension Package: Off-Road

A2X-Power Seat Adjuster (Driver's Side)  
 AKO-Glass, Deep Tinted  
  
 AVJ-Keyless Open & Keyless Start  
 B30-Floor Covering: Carpet, Color Keyed  
  
 BTV-Remote Engine Starting Pkg  
 CGN-Chevytec Spray-on Liner  
 DLF-Mirrors, O/S: Power, Heated  
 G80-Auto Locking Differential, Rear  
 H0U-1WT/1LT/1SP/2LT/1FL/1LS-Cloth, Jet Black, Interior Trim  
 JHD-Hill Descent Control  
  
 K34-Cruise Control  
 KA1-Heated Seats, Front  
 KI4-120 Volt Electrical Receptacle, In Cab  
 N10-Dual Exhaust System  
 NZZ-Skid Plate  
  
 QAA-Tire, Spare: 255/80 R17 All Season, Blackwall  
 R6Y-OPD / Focused Ordering Configuration Not Desired  
 TQ5-Headlamps, Intellibeam  
 U2K-SiriusXM Satellite Radio (subscription)  
 UE1-OnStar Communication System  
 UEU-Sensor, Forward Collision Alert  
 UHX-Lane Keep Assist/Departure Warning  
 UK3-Radio Controls -Steering Wheel  
 UQF-Speaker System: Standard Sound System  
 UVB-Rear Vision Camera, HD  
  
 V76-Recovery Hooks  
 VK3-Front License Plate Mounting Provisions  
 YM8-LPO Processing Option  
 Z82-Trailer Package

"~" indicates vehicle belongs to Trading Partner's inventory

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## Vehicle Locator

### Dealer Information

EL DORADO MOTORS, INC.  
2300 N CENTRAL EXPRESSWAY  
MCKINNEY, TX 75070  
Phone: 972-569-0101  
Fax: 972-569-0117

3GCUDCED5PG127187

Model Year: 2023

Make: Chevrolet

Model: 1500 Silverado

CK10543-4WD, Short Crew

PEG: 2CX-Custom Trail Boss Preferred Equipment Group

Primary Color: GAZ-Summit White

Trim: H0U-1WT/1LT/1SP/2LT/1FL/1LS-Cloth, Jet Black,  
Interior Trim

Engine: L84-Engine: 5.3L, EcoTec3 V-8, DI, Dynamic Fuel  
Mgt, V V T

Transmission: MHT-10-Speed Automatic

Event Code: 5000-Delivered to Dealer

Order #: BXB3J

MSRP: \$55,945.00

Order Type: TRE-Retail Stock

Stock #: N/A

Inventory Status: Available

Total Cash Allowance: N/A

Total Cash Allowance: N/A

### Additional Vehicle Information

### GM Marketing Information

### Vehicle Options

#### Chargeable Options

|                                                                                                               | MSRP       |
|---------------------------------------------------------------------------------------------------------------|------------|
| 08R-CREDIT - NOT EQUIPPED WITH 120V AC INSTRUMENT PANEL AND CARGO BED POWER OUTLETS (INCLUDES LATER RETROFIT) | -\$25.00   |
| AAK-LPO- Floor Liners, 1st&2nd Row, All-Weather, with logo                                                    | \$275.00   |
| CGN-Chevytec Spray-on Liner                                                                                   | \$545.00   |
| JL1-Integrated Trailer Brake Controller                                                                       | \$275.00   |
| L84-Engine: 5.3L, EcoTec3 V-8, DI, Dynamic Fuel Mgt, V V T                                                    | \$1,795.00 |
| PDB-LPO - Dark Essentials Package                                                                             | \$120.00   |
| QK2-Multi-Flex Tailgate                                                                                       | \$445.00   |
| R7N-CREDIT - NOT EQUIPPED WITH STEERING COLUMN LOCK                                                           | -\$50.00   |
| RFO-CREDIT - NOT EQUIPPED WITH REAR USB PORTS                                                                 | -\$25.00   |
| VBJ-LPO - Under Seat Storage                                                                                  | \$295.00   |

#### No Cost Options

C5Y-GVW Rating 7100 Lbs  
FE9-Federal Emissions  
GU5-Rear Axle: 3.23 Ratio  
MHT-10-Speed Automatic  
PCX-1CX/2CX Convenience 1 Package  
RD1-Wheels, 18" x 8.5" High Gloss Black Painted Aluminum

# Other Options

2CX-Custom Trail Boss Preferred Equipment Group

AKO-Glass, Deep Tinted

AU3-Power Door Locks

B30-Floor Covering: Carpet, Color Keyed

C49-Defogger, Rear Window, Electric

E63-Durabed

GAZ-Summit White

IOR-Chevrolet Infotainment, 7" Color Screen

K34-Cruise Control

KC4-Cooler, Engine Oil

KNP-Transmission Cooling System

N10-Dual Exhaust System

NZZ-Skid Plate

R3O-Tires: LT275/65 R18 "C" All Terrain, Blackwall

RIK-LPO - Badge Exterior Black Nameplates

TQ5-Headlamps, Intellibeam

UBI-2-USBs, Second Row Charge/Data Ports

UE4-Following Distance Indicator

UF2-Lighting, Cargo Box, LED

UHX-Lane Keep Assist/Departure Warning

UKJ-Sensor, Front Pedestrian Braking

UTJ-Theft Protection System, Unauthorized Entry

VK3-Front License Plate Mounting Provisions

YM8-LPO Processing Option

Z82-Trailer Package

A2X-Power Seat Adjuster (Driver's Side)

AQQ-Keyless Remote Entry

AZ3-Seats: Front 40/20/40 Split-Bench, Full Feature

BTV-Remote Engine Starting Pkg

DLF-Mirrors, O/S: Power, Heated

G80-Auto Locking Differential, Rear

H0U-1WT/1LT/1SP/2LT/1FL/1LS-Cloth, Jet Black, Interior Trim

JHD-Hill Descent Control

K47-Heavy Duty Air Filter

KI4-120 Volt Electrical Receptacle, In Cab

KW7-Alternator, 170 AMP

NQH-Transfer Case: Active, 2-Speed, Autotrac, Rotary Dial

QT5-Tailgate Function--EZ Lift, Power Lock & Release

R6Y-OPD / Focused Ordering Configuration Not Desired

SAF-Spare Tire Lock

U2K-SiriusXM Satellite Radio (subscription)

UE1-OnStar Communication System

UEU-Sensor, Forward Collision Alert

UGA-Red Recovery Hooks

UHY-Automatic Emergency Braking

UQF-Speaker System: Standard Sound System

UVB-Rear Vision Camera, HD

XCQ-Tire, Spare: 265/70 R17 All Season, Blackwall

Z7X-Suspension Package: Off-Road, Two Inch Lift

"~" Indicates vehicle belongs to Trading Partner's inventory

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## Vehicle Locator

### Dealer Information

EL DORADO MOTORS, INC.  
2300 N CENTRAL EXPRESSWAY  
MCKINNEY, TX 75070  
Phone: 972-569-0101  
Fax: 972-569-0117

3GCUDCED7PG135940

Model Year: 2023

Make: Chevrolet

Model: 1500 Silverado

CK10543-4WD, Short Crew

PEG: 2CX-Custom Trail Boss Preferred Equipment Group

Primary Color: GAZ-Summit White

Trim: H0U-1WT/1LT/1SP/2LT/1FL/1LS-Cloth, Jet Black,  
Interior Trim

Engine: L84-Engine: 5.3L, EcoTec3 V-8, DI, Dynamic Fuel  
Mgt, V V T

Transmission: MHT-10-Speed Automatic

Event Code: 5000-Delivered to Dealer

Order #: BXSVPs

MSRP: \$57,470.00

Order Type: TRE-Retail Stock

Stock #: N/A

Inventory Status: Available

Total Cash Allowance: N/A

Total Cash Allowance: N/A

### Additional Vehicle Information

### GM Marketing Information

### Vehicle Options

#### Chargeable Options

|                                                                                                                        | MSRP       |
|------------------------------------------------------------------------------------------------------------------------|------------|
| 08R-CREDIT - NOT EQUIPPED WITH 120V AC<br>INSTRUMENT PANEL AND CARGO BED<br>POWER OUTLETS (INCLUDES LATER<br>RETROFIT) | -\$25.00   |
| B1J-Liner, Rear Wheelhouse                                                                                             | \$140.00   |
| G0S-Realtree Special Edition                                                                                           | \$2,770.00 |
| JL1-Integrated Trailer Brake Controller                                                                                | \$275.00   |
| L84-Engine: 5.3L, EcoTec3 V-8, DI, Dynamic<br>Fuel Mgt, V V T                                                          | \$1,795.00 |
| R7N-CREDIT - NOT EQUIPPED WITH<br>STEERING COLUMN LOCK                                                                 | -\$50.00   |
| RFO-CREDIT - NOT EQUIPPED WITH REAR<br>USB PORTS                                                                       | -\$25.00   |
| VBJ-LPO - Under Seat Storage                                                                                           | \$295.00   |

#### No Cost Options

C5Y-GVW Rating 7100 Lbs  
FE9-Federal Emissions  
GU5-Rear Axle: 3.23 Ratio  
MHT-10-Speed Automatic  
PCX-1CX/2CX Convenience 1 Package  
RD1-Wheels, 18" x 8.5" High Gloss Black Painted Aluminum

## Other Options

2CX-Custom Trail Boss Preferred Equipment Group

AAK-LPO- Floor Liners, 1st&2nd Row, All-Weather, with logo

AQQ-Keyless Remote Entry

AZ3-Seats: Front 40/20/40 Split-Bench, Full Feature

BTV-Remote Engine Starting Pkg

CGN-Chevytec Spray-on Liner

E63-Durabed

GAZ-Summit White

IOR-Chevrolet Infotainment, 7" Color Screen

K34-Cruise Control

KC4-Cooler, Engine Oil

KNP-Transmission Cooling System

N10-Dual Exhaust System

NZZ-Skid Plate

QT5-Tailgate Function--EZ Lift, Power Lock & Release

R6Y-OPD / Focused Ordering Configuration Not Desired

SAF-Spare Tire Lock

U2K-SiriusXM Satellite Radio (subscription)

UE1-OnStar Communication System

UEU-Sensor, Forward Collision Alert

UHX-Lane Keep Assist/Departure Warning

UKJ-Sensor, Front Pedestrian Braking

UTJ-Theft Protection System, Unauthorized Entry

V76-Recovery Hooks

XCQ-Tire, Spare: 265/70 R17 All Season, Blackwall

Z7X-Suspension Package: Off-Road, Two Inch Lift

A2X-Power Seat Adjuster (Driver's Side)

AKO-Glass, Deep Tinted

AU3-Power Door Locks

B30-Floor Covering: Carpet, Color Keyed

C49-Defogger, Rear Window, Electric

DLF-Mirrors, O/S: Power, Heated

G80-Auto Locking Differential, Rear

H0U-1WT/1LT/1SP/2LT/1FL/1LS-Cloth, Jet Black, Interior Trim

JHD-Hill Descent Control

K47-Heavy Duty Air Filter

KI4-120 Volt Electrical Receptacle, In Cab

KW7-Alternator, 170 AMP

NQH-Transfer Case: Active, 2-Speed, Autotrac, Rotary Dial

QK1-Standard Tailgate

R3O-Tires: LT275/65 R18 "C" All Terrain, Blackwall

RVS-LPO - Assist Steps, 4" Round, Tubular, Black

TQ5-Headlamps, Intellibeam

UBI-2-USBs, Second Row Charge/Data Ports

UE4-Following Distance Indicator

UF2-Lighting, Cargo Box, LED

UHY-Automatic Emergency Braking

UQF-Speaker System: Standard Sound System

UVB-Rear Vision Camera, HD

VK3-Front License Plate Mounting Provisions

YM8-LPO Processing Option

Z82-Trailer Package

"~" indicates vehicle belongs to Trading Partner's inventory

### Disclaimer:

GM has tried to make the pricing information provided in this summary accurate. Please refer to actual vehicle invoice, however, for complete pricing information. GM will not make any sales or policy adjustments in the case of inaccurate pricing information in this summary.



## Purchase Agreement

Your Friends at El Dorado Motors  
 El Dorado Motors  
 2300 N. Central Expressway  
 McKinney, TX 75070

| Buyer                                                                                                              | Co-Buyer | Vehicle                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------|----------|----------------------------------------------------------------------------------------------------------------------------------------|
| City Of Sherman<br>(no name)<br>PO Box 1106<br>Sherman, TX 75090<br>E: (903) 892-7301<br>michaels@ci.sherman.tx.us |          | 2023 Chevrolet Silverado 1500<br>Custom Trail Boss<br>VIN: 3GCUDCED7PG135940<br>Stock #: PG135940<br>Mileage: 3<br>Color: Summit White |

| Purchase Details          |                    |
|---------------------------|--------------------|
| Accessories:              | \$0.00             |
| Service Contract:         | \$0.00             |
| GAP:                      | \$0.00             |
| Government Fees:          | \$33.75            |
| Proc/Doc Fees:            | \$150.00           |
| Total Taxes               | \$105.87           |
| <b>Total Sales Price:</b> | <b>\$52,359.62</b> |
| Trade Allowance:          | \$0.00             |
| Trade Payoff:             | \$0.00             |
| Trade Equity:             | \$0.00             |
| Rebate:                   | \$0.00             |
| Cash Down:                | \$0.00             |
| <b>Cash Price:</b>        | <b>\$52,359.62</b> |

X

\_\_\_\_\_  
 Customer Signature

\_\_\_\_\_  
 Date

X

\_\_\_\_\_  
 Manager Signature

\_\_\_\_\_  
 Date

Disclaimer:

Printed 12/6/22 3:52 PM

This is an offer to purchase this vehicle today, NOT A FINANCE CONTRACT. You certify that the above information is correct and accurate, and authorize the release of credit history for the purpose of vehicle sales. Payments on this worksheet are estimates and are subject to lender approval.



## Purchase Agreement

Your Friends at El Dorado Motors  
 El Dorado Motors  
 2300 N. Central Expressway  
 McKinney, TX 75070

| Buyer                                                                                                              | Co-Buyer | Vehicle                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------------------------------------------------------|
| City Of Sherman<br>(no name)<br>PO Box 1106<br>Sherman, TX 75090<br>E: (903) 892-7301<br>michaels@ci.sherman.tx.us |          | 2023 Chevrolet Silverado 1500 LT<br>VIN: 3GCUDE86PG127465<br>Stock #: PG127465<br>Mileage: 2<br>Color: Summit White |

| Purchase Details          |                    |
|---------------------------|--------------------|
| Accessories:              | \$0.00             |
| Service Contract:         | \$0.00             |
| GAP:                      | \$0.00             |
| Government Fees:          | \$33.75            |
| Proc/Doc Fees:            | \$150.00           |
| Total Taxes:              | \$111.08           |
| <b>Total Sales Price:</b> | <b>\$54,929.83</b> |
| Trade Allowance:          | \$0.00             |
| Trade Payoff:             | \$0.00             |
| Trade Equity:             | \$0.00             |
| Rebate:                   | \$0.00             |
| Cash Down:                | \$0.00             |
| <b>Cash Price:</b>        | <b>\$54,929.83</b> |

X

\_\_\_\_\_  
 Customer Signature

\_\_\_\_\_  
 Date

X

\_\_\_\_\_  
 Manager Signature

\_\_\_\_\_  
 Date

Disclaimer:

Printed 12/6/22 4:05 PM

This is an offer to purchase this vehicle today, NOT A FINANCE CONTRACT. You certify that the above information is correct and accurate, and authorize the release of credit history for the purpose of vehicle sales. Payments on this worksheet are estimates and are subject to lender approval.





## Purchase Agreement

Your Friends at El Dorado Motors  
 El Dorado Motors  
 2300 N. Central Expressway  
 McKinney, TX 75070

| Buyer                                                                                                              | Co-Buyer | Vehicle                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------|----------|----------------------------------------------------------------------------------------------------------------------------------------|
| City Of Sherman<br>(no name)<br>PO Box 1106<br>Sherman, TX 75090<br>E: (903) 892-7301<br>michaels@ci.sherman.tx.us |          | 2023 Chevrolet Silverado 1500<br>Custom Trail Boss<br>VIN: 3GCUDCED5PG127187<br>Stock #: PG127187<br>Mileage: 3<br>Color: Summit White |

| Purchase Details          |                    |
|---------------------------|--------------------|
| Accessories:              | \$0.00             |
| Service Contract:         | \$0.00             |
| GAP:                      | \$0.00             |
| Government Fees:          | \$33.75            |
| Proc/Doc Fees:            | \$150.00           |
| Total Taxes               | \$102.77           |
| <b>Total Sales Price:</b> | <b>\$50,831.52</b> |
| Trade Allowance:          | \$0.00             |
| Trade Payoff:             | \$0.00             |
| Trade Equity:             | \$0.00             |
| Rebate:                   | \$0.00             |
| Cash Down:                | \$0.00             |
| <b>Cash Price:</b>        | <b>\$50,831.52</b> |

X

Customer Signature

Date

X

Manager Signature

Date

Disclaimer:

Printed 12/6/22 4:02 PM

This is an offer to purchase this vehicle today, NOT A FINANCE CONTRACT. You certify that the above information is correct and accurate, and authorize the release of credit history for the purpose of vehicle sales. Payments on this worksheet are estimates and are subject to lender approval.



## Purchase Agreement

Your Friends at El Dorado Motors  
 El Dorado Motors  
 2300 N. Central Expressway  
 McKinney, TX 75070

| Buyer                                                                                                              | Co-Buyer | Vehicle                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------------------|
| City Of Sherman<br>(no name)<br>PO Box 1106<br>Sherman, TX 75090<br>E: (903) 892-7301<br>michaels@ci.sherman.tx.us |          | 2023 Chevrolet Silverado 1500 LT<br>VIN: 3GCPDDEK6PG142735<br>Stock #: PG142735<br>Mileage: 2<br>Color: Red Hot |

| Purchase Details          |                    |
|---------------------------|--------------------|
| Accessories:              | \$0.00             |
| Service Contract:         | \$0.00             |
| GAP:                      | \$0.00             |
| Government Fees:          | \$33.75            |
| Proc/Doc Fees:            | \$150.00           |
| Total Taxes:              | \$99.50            |
| <b>Total Sales Price:</b> | <b>\$49,223.25</b> |
| Trade Allowance:          | \$0.00             |
| Trade Payoff:             | \$0.00             |
| Trade Equity:             | \$0.00             |
| Rebate:                   | \$0.00             |
| Cash Down:                | \$0.00             |
| <b>Cash Price:</b>        | <b>\$49,223.25</b> |

X

Customer Signature

Date

X

Manager Signature

Date

Disclaimer:

Printed 12/6/22 3:50 PM

This is an offer to purchase this vehicle today, NOT A FINANCE CONTRACT. You certify that the above information is correct and accurate, and authorize the release of credit history for the purpose of vehicle sales. Payments on this worksheet are estimates and are subject to lender approval.

## **Exhibit A**

### **Invitation to Bid**



**City of Sherman  
PO Box 1106  
Sherman, TX 75091-1106**

# Invitation to Bid

**For**

**PURCHASE OF FOUR NEW HALF-TON TRUCKS FOR THE SHERMAN  
FIRE DEPARTMENT  
ITB No. 2023-04**

**Publication Dates:** Sunday November 20, 2022  
Sunday November 27, 2022

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**CITY OF SHERMAN, TEXAS**

**FINANCE DEPARTMENT**

**INVITATION TO BID - BID NO. 2023-04; PURCHASE OF FOUR NEW HALF-TON TRUCKS FOR THE SHERMAN FIRE DEPARTMENT**

The enclosed **INVITATION TO BID** (ITB) and accompanying **SPECIFICATIONS** are for your convenience in bidding the enclosed referenced **PURCHASE OF FOUR NEW HALF-TON TRUCKS FOR THE SHERMAN FIRE DEPARTMENT** for the City of Sherman.

Questions may be addressed to the Finance Department at the address listed below. The bids will be opened at **2:00 p.m. on Thursday, December 8, 2022**, at the following address:

**City of Sherman – Finance Department  
Municipal Building  
405 N. Rusk Street  
Sherman, TX  
903-892-7215  
[craigl@cityofsherman.com](mailto:craigl@cityofsherman.com)**

Bids may be submitted by mail to the following address:

**City of Sherman  
Finance Dept. – ITB for PURCHASE OF FOUR NEW HALF-TON TRUCKS FOR THE SHERMAN FIRE  
DEPARTMENT - No. 2023-04**

**P.O. Box 1106  
Sherman, TX 75091-1106**

**OR**

**Electronically at [www.publicpurchase.com](http://www.publicpurchase.com)**

**OR**

**By delivery at the Municipal Building address listed above.**

## NOTICE TO BIDDERS

Bids will be received by the City of Sherman, Sherman, Texas, at the Finance Department, Attention: Craig Long, Sherman Municipal Building, 405 N. Rusk, Sherman, Texas 75091 until the hour **2:00 PM on the 8th day of December, 2022**, at which time bids duly delivered and submitted will be considered for supplying the following:

### **BID NO. 2023-04 – PURCHASE OF FOUR NEW HALF-TON TRUCKS FOR THE SHERMAN FIRE DEPARTMENT**

The award is intended to be included on the agenda of a regularly scheduled meeting of the City Council at the following address:

**City Council Chambers  
City Hall  
220 W. Mulberry  
Sherman, TX**

Each bid delivered to the City shall be sealed and clearly marked “PURCHASE OF FOUR NEW HALF-TON TRUCKS FOR THE SHERMAN FIRE DEPARTMENT 2023-04” on the exterior of the bid. Electronic submittals may only be made through Public Purchase at <https://www.publicpurchase.com>. No email or faxed bids will be accepted. Each bid shall be **manually signed and dated by a person having the authority to bind the firm in a contract. Bids that are not signed and dated will be rejected.**

Please note that all bids **must be received at the designated location or through Public Purchase by the deadline shown.** Bids received after the deadline will not be considered for the award of the contract, and shall be considered void and unacceptable. The Opening is scheduled for **2:00 p.m., Thursday, December 8, 2022**, at which time the sealed bids will be opened.

Any bid received after stated closing time will be returned unopened. If bids are sent by mail to the Finance Department, the bidder shall be responsible for actual delivery of the bid before the advertised date and hour for opening of bids. If the mail is delayed by the postal service, courier service, or an ISP (Internet Service Provider), beyond the date and hour set for the bid opening, bids thus delayed will not be considered.

The City of Sherman will receive sealed bids for: **PURCHASE OF FOUR NEW HALF-TON TRUCKS FOR THE SHERMAN FIRE DEPARTMENT.**

Bidders should carefully examine all terms, conditions, specifications and related documents. Should a bidder find discrepancies in or omissions from the specifications or related documents, or should there be doubt as to their meaning, the City of Sherman Finance Department should be notified immediately for clarification prior to submitting the bid. In the event of any conflict



between the terms and conditions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City of Sherman's interpretation shall govern.

**Information concerning the bid specifications or bid process/procedures may be submitted in writing to Craig Long, Budget Analyst at [craigl@cityofsherman.com](mailto:craigl@cityofsherman.com), or via phone at (903) 892-7215.**

Until the final awarding by the City of Sherman, said City reserves the right to reject any and/or all bids, to waive technicalities, to re-advertise, and proceed otherwise when the best interests of said City will be realized hereby.

**[Rest of Page Intentionally Left Blank]**

## **CITY OF SHERMAN GENERAL CONDITIONS**

### **ADDENDA**

It is the responsibility of the vendor to check for addenda. Addenda will be posted to: [www.ci.sherman.tx.us](http://www.ci.sherman.tx.us) and to [www.publicpurchase.com](http://www.publicpurchase.com).

### **ANNUAL CONTRACT FUNDING**

The city operates on a fiscal year that ends on September 30<sup>th</sup>. Because state law mandates that a municipality may not commit funds beyond a fiscal year, this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

### **ASSIGNMENT OF BID/CONTRACT**

The successful bidder may not assign their rights and duties under and award without the written consent of the City. Such consent shall not relieve the assignor of liability in event of default by their assignee.

### **BID CONSIDERATION / TABULATION**

Until final award of the Contract, the city reserves the right to reject any or all bids, to waive technicalities, and to re-advertise for new bids, or proposed to do the work otherwise in the best interests of the City.

### **BID SUBMISSION**

Bids may be submitted in person, by mail, or electronically at [www.publicpurchase.com](http://www.publicpurchase.com).

- Submit bids via mail to PO Box 1106, Sherman, TX 75091-1106.
- To submit a bid via mail, all documents must be returned and an original signature provided on the proposal to bidders sheet.
- Bids will not be accepted without a signature.
- Bids submitted by email or fax will not be accepted.
- The City is not responsible for mail service. See page 4, paragraph 2 of the Notice to Bidders.

### **BRAND NAMES**

If items for which bids have been called for have been identified by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering “equal” products will be considered for award if such products are clearly identified in the bids and are determined by the City to be equal in all material respects to the brand name products referenced. **Unless the bidder clearly indicates in their bid that they are offering an “equal product”, their bid shall be considered as offering a brand name product referenced in the Proposal Schedule.**

## **CHANGES OR ALTERATIONS**

No part of this bid may be changed/alterd in any way. Vendors must submit written requests to change any specifications/conditions with their proposal. ***Changes made without submission of a written request to this bid will result in disqualification.***

## **COMPLETING INFORMATION**

Bidder must fill in all information asked for in the blanks provided under each item. Failure to comply may result in rejection of the Bid at the City's option.

## **CONTRACT CLAUSE**

All bidders understand and agree that the vendor's bid response will become a legally binding contract upon acceptance in writing by the City. This contract may be superseded only if replaced with a more extensive contract that is agreed to by both parties.

## **TERMINATION**

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

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

## **DELIVERY**

The City reserves the right to demand bond or penalty to guarantee delivery by the date indicated. If order is given and the Bidder fails to furnish the materials by the guaranteed date, the City reserves the right to cancel the order without liability on its part. All prices are to be F.O.B. Sherman, Texas all freight prepaid.

## **DELIVERY DATE**

Delivery date is an important factor to the City and may be required to be a part of each bid. The city of Sherman considers delivery time to be that period elapsing from the time the individual order is placed until that order or work thereunder is received by the City at the specified delivery location. The delivery date indicates a guaranteed delivery at Sherman, Texas. Failure of the bidder to meet guaranteed delivery dates or service performance could affect future City orders.

Whenever the Contractor encounters any difficulty which is delaying or threatens to delay timely performance (including actual or potential labor disputes), the Contractor shall immediately give notice thereof in writing to the City, stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by the City of any rights or remedies to which it is entitled by law or pursuant to

provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delivery.

### **INDEMNIFICATION**

In case any action in court is brought against the Owner, or any officer or agent of the Owner, for the failure, omission, or neglect of the vendor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the vendor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, materialmen, or suppliers the vendor shall indemnify and save harmless the Owner and his officers and agents, from all losses, damages, costs, expenses, judgments, or decrees arising out of such action.

### **INSURANCE**

Deductibles, of any type, are the responsibility of the vendor/contractor.

### **MISCELLANEOUS**

Except as to any supplies or components which the specifications provide need not be new, all supplies and components to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production and of the most suitable grade for the purpose intended. If at any time during the performance of this contract the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, they shall notify the City immediately, in writing, including the reasons therefore and proposing any consideration which will flow to the City if authorization to use supplies or components is granted.

The city of Sherman supports a recycling program. Recycled materials are acceptable and will be considered for award. The City desires to use recycled products when a comparable material/product is available. If your company distributes products made of recycled materials please submit an alternate bid for the items requested. All recycled products should meet the minimum standards established in the bid specifications provided. State any exceptions: costs, warranties and percentage of recycle materials used in the manufacture of the material/product. The City will determine the acceptability of the materials/product bid as an alternate.

Successful bidder(s) agrees to extend prices to all entities that have entered into or will enter into joint purchasing inter-local cooperation agreements with the city of Sherman. As such, the city of Sherman has executed an inter-local agreement with certain other governmental entities authorizing participation in a cooperative purchasing program. The successful vendor may be asked to provide product/services, based upon the bid price, to any other participant in the forum.

The City operates on a fiscal year that ends on September 30<sup>th</sup>. State law mandates that a municipality may not commit funds beyond a fiscal year; this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

### **PAYMENT TERMS & CONDITIONS**

All bids shall specify terms and conditions of payment, which will be considered as part of, but not

control, the award of bid. City review, inspection, and processing procedures ordinarily require thirty (30) days after receipt of invoice, materials or service. Bids which call for payment before 30 days from receipt of invoice, or cash discounts given on such payment, will be considered only if in the opinion of the City the review, inspection and processing procedures can be completed as to the specific purchases within the specified time. It is the intention of the city of Sherman to make payment on completed orders within thirty (30) days of receiving invoicing unless unusual circumstances arise. Invoices shall be fully documented as to labor, materials and equipment provided.

### **PROVISIONAL CLAUSES**

The city of Sherman will not enter into any contract where the cost is provisional upon such clauses as are known as “escalator” or “cost-plus” clauses.

### **REJECTION OF BIDS**

The City reserves the right to reject any or all bids or to waive technicalities at its option when in the best interests of said City. Bids will be considered irregular if they show any omissions, alteration of form, additions, or conditions not called for, unauthorized alternate bids or irregularities of any kind. However, the City reserves the right to waive any irregularities and to make the award in the best interests of the City.

The City reserves the right to reject any or all bids, and all bids submitted are subject to this reservation. Bids may be rejected, among other reasons, for any of the following specific reasons:

- Bids received after the time limit for receiving bids as stated in the advertisement.
- Proposal containing any irregularities.
- Bids submitted via fax or email.
- Unbalanced value of any items.

Bidders may be disqualified and their bids not considered, among other reasons, for any of the following specific reasons:

- Reason for believing collusion exists among the Bidders.
- Reasonable grounds for believing that any Bidder is interested in more than one Proposal for the work contemplated.
- The Bidder being interested in any litigation against the City.
- The Bidder being in arrears on any existing contract or having defaulted on a previous contract.
- Lack of competency as revealed by a financial statement, experience and equipment, questionnaires, etc.
- Uncompleted work, which in the judgment of the City will prevent or hinder the prompt completion of additional work if awarded.

### **REQUEST FOR NON-CONSIDERATION**

Bids deposited with the City cannot be withdrawn prior to the time set for opening bids. Request for non-consideration of bids must be made in writing to the Finance Department and received by the City prior to the time set for opening bids. After other bids are opened and publicly read, the Proposal for

which non-consideration is properly requested may be returned unopened. The Proposal may not be withdrawn after the bids have been opened, and the Bidder, in submitting the same, warrants and guarantees that this bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid will not and cannot be withdrawn because of any mistake committed by the Bidder.

### **SALES TAX**

The total for each bid submitted must include any applicable taxes. Although the City is exempt from most City, State, or Federal taxes, this is not true in all cases. It is suggested that taxes, if any, be separately identified, itemized, and stated on each bid. The City cannot determine for the bidder whether or not the bid is taxable to the City. The bidder through the bidder's attorney or tax consultant must make such determination. Bills submitted for taxes after the bids are awarded will not be honored.

### **PROPOSAL DEFINITIONS:**

**"City"** is the City of Sherman, Texas.

**"Bidder"** is an individual or business submitting a bid or proposal to the City of Sherman.

**"Independent contractor" or "contractor"** is one who contracts to perform work or furnish materials in accordance with a contract.

### **I. PROPOSAL TERMS**

- A. The City of Sherman reserves the right to reject any and all proposals received as a result of this ITB. If a proposal is selected, it will be the most advantageous regarding price, quality of service, the independent contractor's qualifications and capabilities to provide the specified service, and other factors which the City of Sherman may consider. The City does not intend to award a contract fully on the basis of any response made to the proposal: the City reserves the right to consider proposals for modifications at any time before a contract would be awarded; and negotiations would be undertaken with the independent contractor whose proposal is deemed to best meet the City's specifications and needs.
- B. Proposals must be signed by an official authorized to bind the independent contractor to its provisions for a period of at least ninety (90) days. Failure of the successful bidder to accept the obligation of the contract may result in the cancellation of any award.
- C. In the event it becomes necessary to revise any part of the ITB, addenda will be provided. The deadline for submission of proposals may be adjusted to allow for revisions. To be considered, the entire proposal document, with any amendments, should be returned by the specified date, time and method identified on page 2 of this document.
- D. Proposals should be prepared simply and economically providing a straightforward, concise description of the independent contractor's ability to meet the requirements



of the ITB. Proposals shall be written in ink or typewritten. No erasures are permitted. Mistakes may be crossed out and corrected and must be initialed in ink by the person signing the proposal.

- E. The price quotations from the contractor stated in this proposal will not be subject to any price increase from the closing date of this ITB to the mutually agreed to date of contract.
- F. The City of Sherman reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire ITB.

**[REST OF THIS PAGE INTENTIONALLY LEFT BLANK]**

## **SPECIFICATIONS**

- ❖ Four (4) new half-ton trucks; Used will not be accepted
- ❖ 4x4 models preferred, but, not required for bid submittal
- ❖ Four-door models preferred, but, not required for bid submittal
- ❖ Exterior colors must be either white or red
- ❖ Make must be Chevy, Ford, or Dodge, with minimum trim packages as follows:
  - a. Chevrolet 1500 Custom Trail Boss or higher model
  - b. Ford XL-STX or higher model
  - c. Dodge 1500 Big Horn/Longhorn or higher model

### **BIDDERS CERTIFICATION:**

I, the undersigned, by signing the following statement agree that I have read and understand all of the terms and conditions, specifications, and requirements contained on each page of this Invitation to Bid. I also understand that if this bid is accepted by the City of Sherman that all of the terms and conditions, specifications, and requirements submitted in my bid and any additions, changes, or deletions made during negotiations will be made a part of this bid under a binding contract between my company and the City of Sherman, Texas. I also certify that this bid is made without previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same materials, and is in all fair and without collusion or fraud:

### **OUR company is a (Check One):**

- ☐ Corporation (The bid MUST be signed by an Officer of the company)
- ☐ Partnership (The bid MUST be signed by a General Partner)
- ☐ Joint Venture (The bid MUST be signed by an Officer of the company)
- ☐ Sole Proprietor (The bid MUST be signed by the Owner)

Company Name: \_\_\_\_\_

Address of Principal Place of Business:

\_\_\_\_\_  
\_\_\_\_\_

Mailing Address (if different):

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Acknowledgement of Addenda (if any): #1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_

### **BID FORM**

Bidder accepts all of the terms and conditions set forth in the Advertisement for Bid and the Bid Specification Package.

**Total Price for Four (4) New Half-Ton Trucks**  
**INCLUDING all fees:**

\$ \_\_\_\_\_

Signature of Bidder \_\_\_\_\_

Bidder (print name) \_\_\_\_\_

## Contractor References

Customer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Scope of work performed: \_\_\_\_\_

Length of Service: \_\_\_\_\_

Customer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Scope of work performed: \_\_\_\_\_

Length of Service: \_\_\_\_\_

Customer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Scope of work performed: \_\_\_\_\_

Length of Service: \_\_\_\_\_

**Exhibit C**  
**City's Insurance Requirements**

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

IV. INSURANCE CHECKLIST – “X” means that the following coverage is required for this Agreement.

|  | Coverage Required | Limits |
|--|-------------------|--------|
|--|-------------------|--------|

|              |                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                              |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <u>  X  </u> | 1. Worker’s Compensation & Employer’s Liability                                                                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"><li>▪ Statutory Limits of the State of Texas</li></ul>                                                     |
| <u>  X  </u> | 2. General Liability                                                                                                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"><li>▪ Minimum \$1,000,000.00 each occurrence;</li><li>▪ Minimum \$2,000,000.00 in the aggregate.</li></ul> |
| <u>    </u>  | 3. XCU Coverage                                                                                                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"><li>▪ Minimum \$1,000,000.00 each occurrence;</li><li>▪ Minimum \$2,000,000.00 in the aggregate.</li></ul> |
| <u>    </u>  | 4. Professional Liability                                                                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"><li>▪ Minimum \$1,000,000.00 each claim;</li><li>▪ Minimum \$2,000,000.00 in the aggregate.</li></ul>      |
| <u>    </u>  | 5. Umbrella Coverage or Excess Liability Coverage                                                                                                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"><li>▪ An amount of \$ 2,000,000.00.</li></ul>                                                              |
| <u>  X  </u> | 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.                                                                                                                                                                                                               |                                                                                                                                              |
| <u>  X  </u> | 7. General Liability Insurance provides for a Waiver of Subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance. |                                                                                                                                              |

- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title.
- \_\_\_ 11. Other Insurance Requirements (State Below):



**Exhibit D**  
**Affidavit of No Prohibited Interest**

THE STATE OF \_\_\_\_\_ §

THE COUNTY OF \_\_\_\_\_ §

I, \_\_\_\_\_, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

- \_\_\_\_\_ Ownership of ten percent (10%) or more of the voting shares of the business entity.
- \_\_\_\_\_ Ownership of Twenty-Five Thousand and 00/100 Dollars (\$25,000) or more of the fair market value of the business entity.
- \_\_\_\_\_ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.
- \_\_\_\_\_ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars (\$25,000).
- \_\_\_\_\_ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.
- \_\_\_\_\_ Other: \_\_\_\_\_.
- \_\_\_\_\_ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

Signed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_, and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

## OFFICE USE ONLY

Date Received

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

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

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

\_\_\_\_\_  
Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;  
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## **TEXAS ETHICS FORM 1295 & VERIFICATION FORM 2270**

**NOTE: TEC Form 1295 will not be required for all submitting contractors, but, will be required from the recommended contractor prior to award. Verification Form 2270 is required with all proposal submittals. See next page for forms.**

## INSTRUCTIONS for State Law Mandated Certificate of Interested Parties Form (Form 1295)

1. Pursuant to House Bill 1295 passed by the 84<sup>th</sup> Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the Sherman City Council must be accompanied by an original signature unsworn declaration, Certificate of Interested Parties, Form 1295.
2. Form 1295 must be completed in accordance with the TEC Rules: (<https://www.ethics.state.tx.us/legal/ch46.html>) and Section 2252.908 of the Texas Government Code, as amended: (<http://www.legis.state.tx.us/tlodocs/84R/billtext/html/HB01295F.htm>).
3. For questions or issues regarding the TEC rules and state law provisions and how Form 1295 should be completed, please consult with your own legal counsel.
4. In order to fill out and submit Form 1295, you will need to log in as directed on the TEC website: <https://www.ethics.state.tx.us/whatsnew/elf info form1295.htm>  
  
Tutorials for creating an account and for creating and submitting Form 1295 may also be found on this web page.
5. Please provide the bolded information exactly as it appears below when creating your certificate:  
  
Who is the contract with? Click the button for **Other**  
  
**Governmental Entity**  
  
Agency/Entity Name: **City of Sherman**  
  
Contract ID Number: **2023-04**  
  
Description of Goods and Services to be provided: **Purchase of Four New Half-Ton Trucks for the Sherman Fire Department**
6. All other fields as required or as applicable to the individual vendor must be completed as explained in the tutorial video.
7. Vendors must provide a signed, original signature copy of this form along with four signed, notarized, original signature copies of the contract no later than 14 days after Notice of Recommendation for Award is received. All documents shall be signed by an Officer, Director or other Authorized Agent of the company. If the individual signing as Authorized Agent is not an officer or director of the company, appropriate documentation must be included with these documents to confirm that the individual has the authority to bind the company contractually.

**VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270**

By signing below, the signatory hereby verifies that the firm it represents:

1. Does not boycott Israel; and,
2. Will not boycott Israel during the term of the contract.

**SIGNED BY:** \_\_\_\_\_

**Print Name & Title:** \_\_\_\_\_

**Firm Name:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

## NOTARIZATION

THE STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned notary public on this day personally appeared \_\_\_\_\_, on behalf of \_\_\_\_\_ (Company), who, being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct.

SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

NOTARY PUBLIC IN AND  
FOR THE STATE OF \_\_\_\_\_

The following definitions apply to Texas Government Code Section 2270.001:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

**State law requires any firm entering into an agreement or contract with the Authority to complete the foregoing verification. TEX. GOV'T CODE § 2270.002.**



**Exhibit C**  
**City's Insurance Requirements**

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

IV. INSURANCE CHECKLIST – “X” means that the following coverage is required for this Agreement.

|  | Coverage Required | Limits |
|--|-------------------|--------|
|--|-------------------|--------|

|              |                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                              |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <u>  X  </u> | 1. Worker’s Compensation & Employer’s Liability                                                                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"><li>▪ Statutory Limits of the State of Texas</li></ul>                                                     |
| <u>  X  </u> | 2. General Liability                                                                                                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"><li>▪ Minimum \$1,000,000.00 each occurrence;</li><li>▪ Minimum \$2,000,000.00 in the aggregate.</li></ul> |
| —            | 3. XCU Coverage                                                                                                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"><li>▪ Minimum \$1,000,000.00 each occurrence;</li><li>▪ Minimum \$2,000,000.00 in the aggregate.</li></ul> |
| —            | 4. Professional Liability                                                                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"><li>▪ Minimum \$1,000,000.00 each claim;</li><li>▪ Minimum \$2,000,000.00 in the aggregate.</li></ul>      |
| —            | 5. Umbrella Coverage or Excess Liability Coverage                                                                                                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"><li>▪ An amount of \$ 2,000,000.00.</li></ul>                                                              |
| <u>  X  </u> | 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.                                                                                                                                                                                                               |                                                                                                                                              |
| <u>  X  </u> | 7. General Liability Insurance provides for a Waiver of Subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance. |                                                                                                                                              |

- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title.
- \_\_\_ 11. Other Insurance Requirements (State Below):

**Exhibit D**  
**Affidavit of No Prohibited Interest**

THE STATE OF \_\_\_\_\_ §

THE COUNTY OF \_\_\_\_\_ §

I, \_\_\_\_\_, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

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- \_\_\_\_\_ Ownership of ten percent (10%) or more of the voting shares of the business entity.
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- \_\_\_\_\_ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.
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- \_\_\_\_\_ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.
- \_\_\_\_\_ Other: \_\_\_\_\_.
- \_\_\_\_\_ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

Signed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_, and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

## OFFICE USE ONLY

Date Received

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

ELDRADO CHEVROLET

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

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

\_\_\_\_\_  
Name of Officer

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

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

☐ Yes

☒ No

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

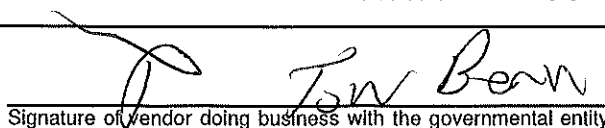
☐ Yes

☒ No

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

N/A

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

7   
Signature of vendor doing business with the governmental entity

12/6/22  
Date



# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

E. 1.

**Meeting Date:** 12/12/2022

**Prepared By:** Tom Pruitt, Utility Engineer

**Approved By:** Robby Hefton, City Manager

---

**Caption:**

**OTHER BUSINESS**

Receive an update from Pape-Dawson Engineers, Inc. for City of Sherman Major Infrastructure Improvements Projects.

**Issue:**

To receive an update on the status of current and planned Major Infrastructure Improvements Projects

**Background:**

The City of Sherman is executing a major infrastructure improvements program to meet the fast-growing needs of the city including industrial, commercial and residential users. The city needs to complete certain key infrastructure projects to meet the planned industrial expansion needs of significant industrial users before 2025. At this time, this includes water treatment plant, pump station, transmission pipeline, elevated storage tank and wastewater treatment plant expansion. The City hired Pape-Dawson Engineers as the Program Manager to help deliver the collection of these projects as a program by the required dates. Their contract was approved by the City Council on August 1, 2022.

This is the first City Council status update by Pape-Dawson Engineers on this task.

Pape-Dawson Engineers Project Manager VT Madhaven will provide a brief update on the status of several projects, the accomplishments, upcoming activities, current program status, and individual project status.

**Origination:**

Engineering Department

**Financial Consideration:**

There is no financial consideration related to this agenda item.

**Staff Recommendation:**

There is no Council action required on this agenda item.

**Alternatives:**

This is an update presentation, so no alternatives apply to this agenda item.

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# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

E. 2.

**Meeting Date:** 12/12/2022

**Prepared By:** Tom Pruitt, Utility Engineer

**Approved By:** Robby Hefton, City Manager

---

### **Caption:**

#### **\* OTHER BUSINESS**

Repair and Replacement of the Center Street Wastewater Aerial Crossing Under Emergency Designation

### **Issue:**

To allow the repair and replacement of the Center Street Wastewater Aerial Crossing under emergency designation.

### **Background:**

The Utilities Department discovered an aerial wastewater line crossing the creek channel below Baker Lake, just south of Center Street, in need of immediate repair or replacement. Preliminary design from the Freeman-Millican, Inc. recommends emergency replacement. The aerial wastewater line is sagging and appears in imminent failure. The Engineering Department has directed Hayes Construction to undertake temporary support and subsequent repairs. Hayes Construction has already supported the existing line and has begun construction on the final solution. Hayes Construction will be used to complete the work for replacement as soon as possible.

### **Origination:**

Engineering Department

### **Financial Consideration:**

The cost to repair and replace the wastewater line is estimated to be \$307,950.00. The City's Utility Improvement Fund will be utilized to fund the repairs, then be reimbursed from the 2023 GTUA Open Market Bond proceeds. Work will include new wastewater line casing, piers, 2 new manholes, and 1 manhole rehab.

### **Staff Recommendation:**

It is recommended that the emergency repair and replacement to the Center Street Wastewater Aerial Crossing be approved and that the City Manager be authorized to execute any required contract documents.

**Alternatives:**

As may be directed by the City Council

---

**Attachments**

Quote

Unsigned - Agreement

Location Map

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Hayes Construction, LLC.  
205 Cody Lane  
Sherman, TX 75092  
Tel 214.551.9040



11.28.2022

#### ESTIMATE FOR

City of Sherman  
220 W. Mulberry St.  
Sherman, TX 75091

#### PROJECT NAME

Pebblebrook, Center St. Emergency Aerial Crossing

#### SCOPE OF WORK

Background: The aerial 18" sewer crossing south of Center St. has deteriorated to the point that the top portion of the steel has holes in it. We have placed a temporary steel support under the line until new construction can be completed.

New construction will consist of new concrete piers on both sides of the creek with 30" steel casing crossing and a new 18" sewer line. The existing terrain on the south side of the creek is too hazardous for concrete trucks and pier drilling equipment, therefore a low water crossing had to be constructed with 48" steel culvert. Once temporary access is complete, the steel cased piers can be drilled and poured. A concrete manhole will be built on the south side of the creek to intercept the existing sewer line and make the transition from existing to new sewer line. Once this step is complete, two additional manholes and approx 130Lf of 18" sewer line will be replaced due to deterioration of manholes. Below is an approx cost estimate for this scope of work.

\*Please note: This estimate is for items as discussed and does not include any unforeseen obstacles or additional work. To date, the temporary pipe support and the low water crossing are both in place. The 18" pipe, bends, casing spacers, steel pipe and casing pipe is on site. The steel saddles are in the process of being custom designed and the pipe and manholes on Phase II have been ordered.

| PHASE I                                                                                                                                                    |                 | TOTAL        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------|
| Mobilization and bonding                                                                                                                                   | LS              | \$ 20,000.00 |
| Traffic Control                                                                                                                                            | LS              | \$ 2,000.00  |
| Temporary support: labor and material                                                                                                                      | LS              | \$ 3,200.00  |
| Low water crossing: 48" x 40' steel culvert, 40 yds of 5" rock, excavation for 2ea pads for drilling and move approx 700yds of dirt for low water crossing | LS              | \$ 19,200.00 |
| Manhole on south for transition with Raven 405 lining                                                                                                      | LS              | \$ 16,000.00 |
| 2ea piers approx 30" diameter x 20' vertical length with steel casing, rebar, concrete, labor                                                              | \$ 14,800.00/ea | \$ 29,600.00 |
| Install 80' of 30" x 0.375 wall steel casing with casing spacers                                                                                           | LS              | \$ 18,000.00 |
| 2ea steel saddles to secure crossing to piers: saddles custom built to spec- design approval still pending                                                 | \$ 6,000.00/ea  | \$ 12,000.00 |
| Place approx 140Lf of 18" sewer line with tie ins, includes labor and materials                                                                            | \$ 355.00/Lf    | \$ 49,700.00 |
| Remove existing concrete encased 18" sewer pipe                                                                                                            | LS              | \$ 8,000.00  |
| Bypass set up ***if necessary***                                                                                                                           | LS              | \$ 8,500.00  |

| PHASE I                                                                                                                                                                                             |                      | TOTAL         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------------|
| Bypass pump ***if necessary, estimated time of 2 weeks***                                                                                                                                           | \$ 3,400.00/per week | \$ 6,800.00   |
| Remove low water crossing and restore area back to original condition (can not be done until Phase 2 is complete)                                                                                   | LS                   | \$ 8,300.00   |
| PHASE I TOTAL                                                                                                                                                                                       |                      | \$ 201,300.00 |
| PHASE II                                                                                                                                                                                            |                      | TOTAL         |
| Site excavation (FL 20'3.5" North MH, FL 19'4" South MH)- there is a rise between the two manholes of more than 10', which will be approx 30' cover. We will need to cut path down for safe working | LS                   | \$ 6,500.00   |
| Trench safety                                                                                                                                                                                       | LS                   | \$ 4,500.00   |
| Place 130Lf 18" sewer, labor and material                                                                                                                                                           | \$ 355.00/Lf         | \$ 46,150.00  |
| Remove 2ea existing MH and place 2ea new fiberglass MHs                                                                                                                                             | \$ 23,000.00/ea      | \$ 46,000.00  |
| Restore area to original condition                                                                                                                                                                  | LS                   | \$ 3,500      |
| PHASE II TOTAL                                                                                                                                                                                      |                      | \$ 106,650.00 |
| TOTAL ESTIMATE FOR PROJECT                                                                                                                                                                          |                      | \$ 307,950.00 |
| ESTIMATED DAYS                                                                                                                                                                                      |                      | 120           |

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

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#### **Center Street Wastewater Aerial Crossing – Emergency Designation**

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

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- 3.1 The Work will be substantially completed and ready for final payment within 120 calendar days from the date when the Contract Time commences to run, as provided in the Special Conditions.
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At the unit prices shown on the Quote included in the Contract Documents.

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- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies in addition to, or to supplement, those referred to above, which pertain to the subsurface or physical conditions at or contiguous to the site, or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are, or will be, required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of all Underground Facilities, whether indicated in the Contract Documents, or not. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are, or will be, required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 7.7 CONTRACTOR has reviewed and fully agrees to the limitation of liability provisions included in the Special Provisions.
- 7.8 CONTRACTOR certifies that they are eligible to be awarded government contracts. CONTRACTOR also certifies that any agreement entered into with a subcontractor will contain a clause stating that the subcontractor is eligible to be awarded government contracts.

## Article 8. **CONTRACT DOCUMENTS**

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

- 8.1 This Agreement
- 8.2 Certifications Required by Texas Law
- 8.3 Suspension and Debarment Certification
- 8.4 Agenda Item

- 8.5 Request for Quotation
- 8.6 Quotation
- 8.7 Form 1295, Certificate of Interested Parties
- 8.8 Certificate of Insurance
- 8.9 Performance Bond and POA
- 8.10 Payment Bond and POA
- 8.11 Notice to Proceed
- 8.12 Maintenance Bond and POA
- 8.13 Closeout Documents
- 8.14 Davis-Bacon Wage Determinations
- 8.15 Special Conditions
- 8.16 Technical Specification prepared or issued by Freeman-Millican 11/15/2022
- 8.17 Drawings, consisting of sheets numbered 1 through 6, inclusive with each sheet bearing the following general title: City of Sherman, 18" Pebblebrook Aerial Crossing Replacement Construction.
- 8.18 The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

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

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

#### Article 9. INDEMNITY

**CONTRACTOR HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS SECTION), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE**

CONNECTED WITH GOODS AND/OR SERVICES PROVIDED BY **CONTRACTOR**, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM **CONTRACTOR** IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS “**CONTRACTOR**” FOR PURPOSES OF THIS SECTION) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF **CONTRACTOR** IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF **CITY** (COLLECTIVELY, “**CLAIMS**”). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM “**CLAIMS**” IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST **CITY** BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN **CONTRACTOR** AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR’S OR EMPLOYEE’S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH **CONTRACTOR**, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS’ COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

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

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

#### Article 10. **LIABILITY**

To the fullest extent permitted by law, **CONTRACTOR** shall be fully and solely responsible and liable for its own acts and omissions, including those of its officers, agents, representatives, employees, subcontractors, licensees, invitees and all other parties performing services for or on

behalf of CONTRACTOR under this Agreement, and for any and all damage to CONTRACTOR's equipment and other property. CITY assumes no such responsibility or liability. CITY shall have no such responsibility or liability to either CONTRACTOR or its officers, agents, representatives, employees, subcontractors, licensees, invitees or other persons.

#### Article 11. **TERMINATION**

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

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

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

#### Article 12. **MISCELLANEOUS**

- 12.1 Terms used in the Agreement will have the meanings indicated in the Special Provisions.
- 12.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 12.3 CONTRACTOR acknowledges and agrees that the existence of a prohibited interest during the term of this Agreement will render this Agreement voidable. CONTRACTOR further acknowledges and agrees that it also is aware of, and will abide by, the vendor disclosure requirements set forth in Chapter 176 of the Texas Local Government Code, as amended.
- 12.4 Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.

- 12.5 The parties acknowledge and agree that, in executing and performing this Agreement, CITY has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
- 12.6 In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been included in this Agreement.
- 12.7 If either party files any action or brings any proceeding against the other arising from this Agreement, then as between CITY and CONTRACTOR, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 12.8 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.9 Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 CONTRACTOR covenants and agrees that CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between CITY and CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONTRACTOR.
- 12.11 This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- 12.12 This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will

also be deemed to constitute an original if properly executed and delivered to the other party.

- 12.13 CITY and CONTRACTOR each binds itself, its partners, successors, assign, and legal representatives to the other party hereto, its partners, successors, assign and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 13. **OTHER PROVISIONS**

None.

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

CITY: CITY OF SHERMAN, TEXAS

CONTRACTOR:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(Corporate Seal)

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

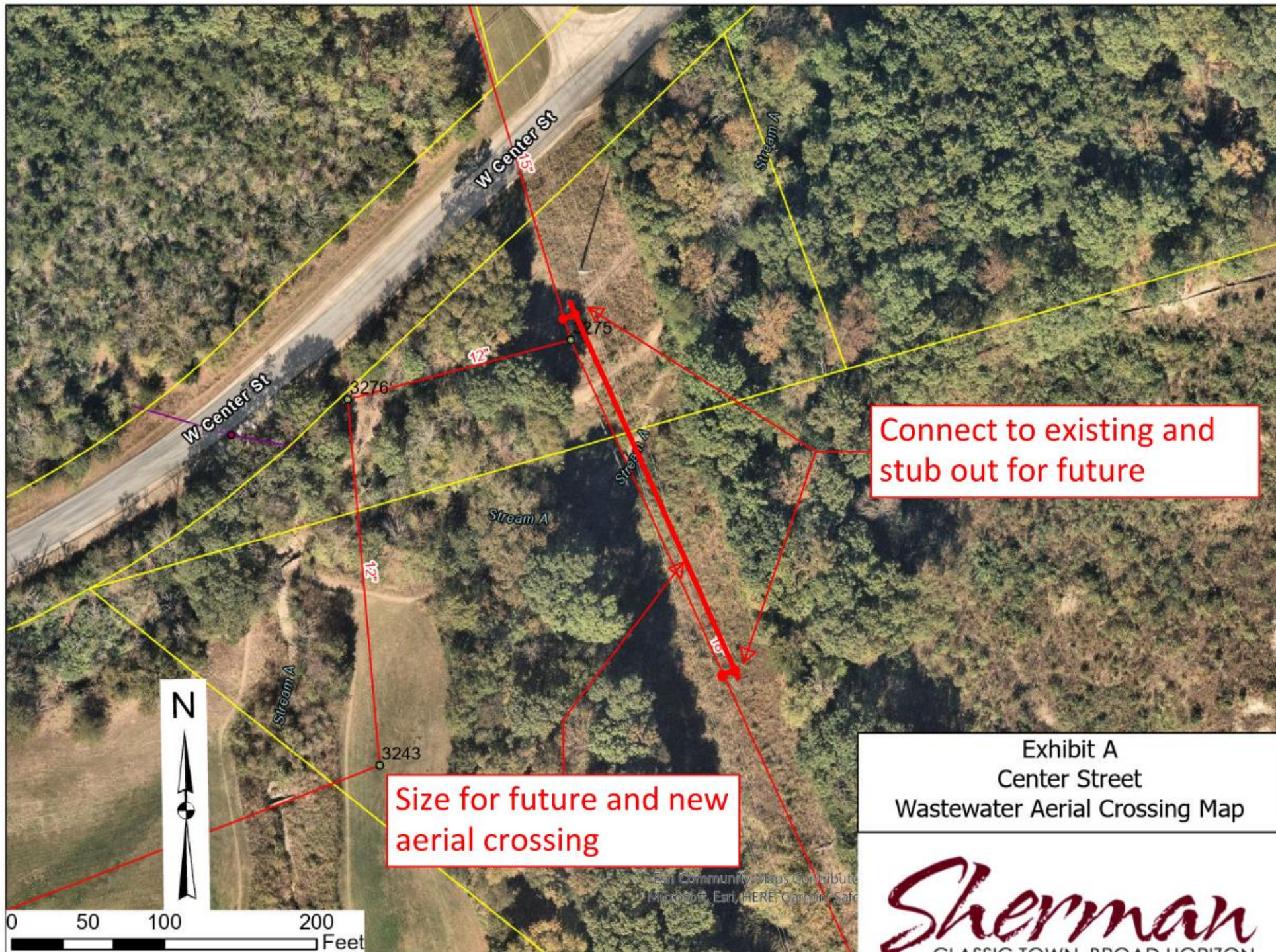
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





Connect to existing and  
stub out for future

Size for future and new  
aerial crossing

Exhibit A  
Center Street  
Wastewater Aerial Crossing Map





# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

E. 3.

**Meeting Date:** 12/12/2022

**Prepared By:** Tom Pruitt, Utility Engineer

**Approved By:** Robby Hefton, City Manager

---

**Caption:**

**\* OTHER BUSINESS**

Woods Street Wastewater Repair Under Emergency Designation

**Issue:**

To approve the repair and replacement of the Woods Street Wastewater under emergency designation.

**Background:**

City staff discovered a section of collapsed wastewater main along Wood Street between Birge and Fischer. This section of main has caused maintenance issues for the Utility Division and has been on a regular jetting schedule. The existing main is deep in this location and staff determined it best to have a utility contractor perform this work rather than city crews. The current condition of the main continues to place nearby customers at risk of backing up and is being replaced under an emergency declaration by city staff. The engineering design calls for the replacement of two manholes and replaces approximately 330 LF of 8" PVC wastewater main.

**Origination:**

Engineering Department

**Financial Consideration:**

The cost to repair and replace the wastewater line is estimated to be \$303,585.00. The City's Utility Improvement Fund will be utilized to fund the repairs.

**Staff Recommendation:**

It is recommended that the emergency repair and replacement to the Woods Street Wastewater Line be approved and that the City Manager be authorized to execute any required contract documents.

**Alternatives:**

As may be directed by the City Council

---

### **Attachments**

Quote

Unsigned - Agreement

Location Map

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# ESTIMATE

**Hayes Construction, LLC.**  
205 Cody Ln  
Sherman, TX 75092

lara@hayesconstruction.org  
+1 4695127290



## City of Sherman

### Bill to

City of Sherman  
220 W. Mulberry Street  
Sherman, Texas 75090

### Estimate details

Estimate no. : Wood St  
Estimate date : 11/15/22

| Product or service                                                                                         |                       | Amount      |
|------------------------------------------------------------------------------------------------------------|-----------------------|-------------|
| 1. <b>Mobilization</b>                                                                                     |                       | \$20,000.00 |
| includes mobilization and bonding                                                                          |                       |             |
| 2. <b>Replace sewer line</b>                                                                               | 333 units × \$285.00  | \$94,905.00 |
| replace approx 333Lf. 8" SDR26 @ +/- 15' depth                                                             |                       |             |
| 3. <b>Sewer manhole</b>                                                                                    | 2 units × \$21,000.00 | \$42,000.00 |
| remove and replace 2ea 4' x 16' MH                                                                         |                       |             |
| 4. <b>Haul off</b>                                                                                         | 740 units × \$70.00   | \$51,800.00 |
| haul off all spoils and replace with crushed concrete, approx 740 cubic yards depending on width and depth |                       |             |
| 5. <b>Bypass pump</b>                                                                                      | 3 units × \$3,400.00  | \$10,200.00 |
| ***price per week***                                                                                       |                       |             |
| 6. <b>Bypass set up</b>                                                                                    |                       | \$8,500.00  |
| bypass piping and placement                                                                                |                       |             |
| 7. <b>Tie in existing line</b>                                                                             |                       | \$3,800.00  |
| Tie in existing 6in sewer line from west on north side of Fisher into new 8 in main                        |                       |             |
| 8. <b>Reconnect existing laterals</b>                                                                      | 5 units × \$2,300.00  | \$11,500.00 |
| reconnect existing laterals, ***price per each****                                                         |                       |             |
| 9. <b>Traffic control</b>                                                                                  |                       | \$4,000.00  |
| 10. <b>Trench Safety</b>                                                                                   |                       | \$4,500.00  |

|              |                                                                                                                 |                      |                     |
|--------------|-----------------------------------------------------------------------------------------------------------------|----------------------|---------------------|
| 11.          | <b>Saw Cut</b>                                                                                                  |                      | \$3,500.00          |
| 12.          | <b>Remove and replace asphalt</b><br>approx 2,000 sqft                                                          | 2000 units × \$19.00 | \$38,000.00         |
| 13.          | <b>MH liner- Raven 405</b><br>***price per MH ft***                                                             | 32 units × \$340.00  | \$10,880.00         |
| 14.          | <b>Remove and replace concrete</b><br>4" concrete remove and replace if needed, price \$16 per sqft             | 0 units × \$16.00    | \$0.00              |
| 15.          | <b>Remove and replace concrete</b><br>6" concrete remove and replace if needed, price \$22 per sqft             | 0 units × \$22.00    | \$0.00              |
| 16.          | <b>Remove and replace curb and gutter</b><br>6" curb and gutter remove and replace if needed, price \$40 per Lf | 0 units × \$40.00    | \$0.00              |
| Sales tax    |                                                                                                                 |                      | \$0.00              |
| <b>Total</b> |                                                                                                                 |                      | <b>\$303,585.00</b> |

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- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that, in any manner, may affect cost, progress, performance or furnishing of the Work.
- 7.2 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions and drawings of physical conditions, if any, which are contained or identified in the Contract Documents, and accepts the determination set forth in the Contract Documents of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.



- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies in addition to, or to supplement, those referred to above, which pertain to the subsurface or physical conditions at or contiguous to the site, or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are, or will be, required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of all Underground Facilities, whether indicated in the Contract Documents, or not. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are, or will be, required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 7.7 CONTRACTOR has reviewed and fully agrees to the limitation of liability provisions included in the Special Provisions.
- 7.8 CONTRACTOR certifies that they are eligible to be awarded government contracts. CONTRACTOR also certifies that any agreement entered into with a subcontractor will contain a clause stating that the subcontractor is eligible to be awarded government contracts.

## Article 8. **CONTRACT DOCUMENTS**

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

- 8.1 This Agreement
- 8.2 Certifications Required by Texas Law
- 8.3 Suspension and Debarment Certification
- 8.4 Agenda Item

- 8.5 Request for Quotation
- 8.6 Quotation
- 8.7 Form 1295, Certificate of Interested Parties
- 8.8 Certificate of Insurance
- 8.9 Performance Bond and POA
- 8.10 Payment Bond and POA
- 8.11 Notice to Proceed
- 8.12 Maintenance Bond and POA
- 8.13 Closeout Documents
- 8.14 Davis-Bacon Wage Determinations
- 8.15 Special Conditions
- 8.16 Technical Specification prepared or issued by City of Sherman
- 8.17 Drawings, consisting of attached exhibit
- 8.18 The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

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

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

#### Article 9. INDEMNITY

**CONTRACTOR HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS SECTION), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH GOODS AND/OR SERVICES PROVIDED BY CONTRACTOR, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY**

OTHER THIRD PARTIES FOR WHOM **CONTRACTOR** IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS “**CONTRACTOR**” FOR PURPOSES OF THIS SECTION) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF **CONTRACTOR** IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF **CITY** (COLLECTIVELY, “**CLAIMS**”). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM “**CLAIMS**” IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST **CITY** BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN **CONTRACTOR** AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR’S OR EMPLOYEE’S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH **CONTRACTOR**, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS’ COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

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

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

#### Article 10. **LIABILITY**

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

no such responsibility or liability to either CONTRACTOR or its officers, agents, representatives, employees, subcontractors, licensees, invitees or other persons.

#### Article 11. **TERMINATION**

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

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

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

#### Article 12. **MISCELLANEOUS**

- 12.1 Terms used in the Agreement will have the meanings indicated in the Special Provisions.
- 12.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 12.3 CONTRACTOR acknowledges and agrees that the existence of a prohibited interest during the term of this Agreement will render this Agreement voidable. CONTRACTOR further acknowledges and agrees that it also is aware of, and will abide by, the vendor disclosure requirements set forth in Chapter 176 of the Texas Local Government Code, as amended.
- 12.4 Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.
- 12.5 The parties acknowledge and agree that, in executing and performing this Agreement, CITY has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be

available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

- 12.6 In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been included in this Agreement.
- 12.7 If either party files any action or brings any proceeding against the other arising from this Agreement, then as between CITY and CONTRACTOR, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 12.8 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.9 Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 CONTRACTOR covenants and agrees that CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between CITY and CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONTRACTOR.
- 12.11 This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- 12.12 This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

12.13 CITY and CONTRACTOR each binds itself, its partners, successors, assign, and legal representatives to the other party hereto, its partners, successors, assign and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 13. **OTHER PROVISIONS**

None.

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

CITY: CITY OF SHERMAN, TEXAS

CONTRACTOR:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(Corporate Seal)

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





APPROX. 333LF OF 8" PVC @ 1.49%





# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

E. 4.

**Meeting Date:** 12/12/2022

**Prepared By:** Sarah McRae, Tourism/Main Street Manager

**Approved By:** Robby Hefton, City Manager

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### **Caption:**

#### **\* OTHER BUSINESS**

Consider the Request of Brandy Fair and the Grayson County Sheriff's Office to Temporarily Close Certain Streets for the 10<sup>th</sup> Annual "Beat the Heat 5K" run on Saturday, April 15, 2023

### **Issue:**

Brandy Fair, along with the Grayson County Sheriff's Office, will host their 10<sup>th</sup> annual "Beat the Heat 5K" Run, benefiting the Chad Key Memorial Scholarship at Grayson College, on Saturday, April 15, 2023, and are requesting assistance with street closures and traffic control. The closure of Rusk Street in front of Piner Middle School is also requested.

### **Background:**

The 10<sup>th</sup> annual "Beat the Heat" 5K event will begin at 8:00 a.m. and will follow the route displayed on the attached map. The event will require traffic control assistance, barricades, and cones from the City of Sherman.

The closure of Rusk Street in front of Piner Middle School from 7:00 a.m. to 11:00 a.m. is also requested. Delivery and pick up of barricades for the closure is requested. Organizers have been reminded that, although Rusk Street will be closed with barricades, accessibility through Rusk Street by emergency and fire vehicles must be maintained at all times throughout the event.

### **Origination:**

Chad Tomaselli, Grayson Honors College Coordinator

### **Financial Consideration:**

City labor and equipment to provide traffic control assistance and implement barricade placement and removal will be required.

### **Staff Recommendation:**

It is recommended that the City Council authorize the street closures and necessary traffic control and support to accommodate the event.

**Alternatives:**

As directed by the Council

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**Attachments**

Beat the Heat 5K Request Special Event Packet

Beat the Heat 5K Route Map

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## Special Event Application

This agreement is between the City of Sherman, hereinafter referred to as City, and an event/event coordinator, hereinafter referred to as event, for the cooperation of planning and operating a Special Event.

City reserves the right to close down or cancel any Event that is in violation of any City Ordinance or deviation from this agreement. The City also reserves the right to close down or cancel the Event if public safety or affected department supervisors deem the event unsafe for public participation.

- Application must be submitted at least 60 days prior to the event date.
- The Event must carry property, bodily injury and municipal liability insurance of \$1,000,000.00 per occurrence. The City of Sherman must be shown as an additional named insured on the insurance declaration. One (1) original copy of insurance must be submitted 30 days prior to event date.
- Alcohol distribution or consumption in any City Park and/or street is prohibited, unless approval is granted by motion and order by the City Council. A special event permit for alcohol on private property in conjunction with a Sherman private club may be permitted with a T.A.B.C license. Certain city-owned properties may allow for the consumption of alcohol.
- Please provide all information pertaining to the event as accurately as possible.

### General Event Information

Official Name of Event: Beat the Heat\_\_\_\_\_

Type of Event: (i.e. Carnival, Circus, 1 Mile/5 K Run, etc.) 5k/Fun Run\_\_\_\_\_

Event Date: Preferred April 15, 2023\_\_\_\_\_ Event Times: 7:00 am-11:00 am\_\_\_\_\_

Alternate Date: N/A\_\_\_\_\_ Event Times: \_\_\_\_\_

\*Alternate date required in case of weather delays

Location of Event: Piner Middle School.....

Event Contact Name: Brandy Fair.....

Event Contact Address: 3004 Mimosa Dr, Sherman TX, 75092.....

Event Contact Phone: (903) 814-2871.....

Event Contact Email: brandy.fair@gmail.com.....

Alternate Event Contact Name: Sheriff Tom Watt.....

Alternate Event Contact Address: 200 S. Crockett St #105A, Sherman TX 75090.....

Alternate Event Contact Phone: (903) 267-1607.....

Alternate Event Contact Email: wattt@co.grayson.tx.us.....

Event Day Emergency Contact: Brandy Fair..... Phone: (903) 814-2871.....

Event Day Emergency Contact: Tom Watt..... Phone: (903) 267-1607.....

Estimated# of Participants: 200..... Spectators: 30.....

Is Event Private or Open to the Public? ☐ Private Event ☒ Public Event

### **Description of Event**

Include background/history of this event or type of event and a timeline of event. Maps and site plans are required; site plans should include location of concessions, port-a-lets and dumpsters; description of routes to be used, severe weather emergency plan, etc. Clean-up deposit may be required.

This will be our 10<sup>th</sup> annual Beat the Heat 5k event. Proceeds benefit the Chad Key Memorial Scholarship at Grayson College. Chad was a Sheriff Deputy with the Grayson County Sheriffs Office who was killed on duty in April 2013. I am collaborating with the Grayson County Sheriffs Office and April Key (Chad's widow) to help host this event. Our race route is attached. We use Piner Middle School as our start/finish line, for power for the amplifier, and restrooms if needed. I have approval from Sherman ISD for facility use.

### **Public Services**

Will event take place at a public park/facility? ☒ Yes ☐ No

If yes, which park/facility? Piner Middle School.....

\*Park and/or facility reservation(s) required prior to completing this application.

Will you need any public street closures? X\_ Yes No

If Yes, which streets? Rusk Street directly behind Piner (between Pecan and Houston)\_\_\_\_\_

\*Closure of TxDOT controlled streets will need prior approval by TxDOT.

\*Police and Fire vehicles must have access through street closures if the need arises.

Street closure time: 7:00 am\_\_\_\_\_ Time closure removed: 11:00 am\_\_\_\_\_

\*Barricades will be provided by the City for the listed street closures. Fees may be required for additional barricade requests.

Where are the parking areas located: (Include on site plan} by Piner Middle School/football stadium

Does your event require special/additional support? (Fee may be required}

**Police**

(crowd control, traffic control, etc.)

If yes, contact Jarena Capps, Police  
Department, 903-892-7397

**Fire Department**

(EMT Support, etc.)

If yes, contact Chief Jones, Fire  
Department, 903-892-7263

**Other**

(provide detail}

If any special/additional support is checked above it is the responsibility of the event coordinator to contact the person listed above, prior to approval. If no contact is made by the event coordinator, the approval process for your special event will cease.

Number of trash containers and size requested over and above the current level: 0\_\_\_\_\_

\*Per city ordinance, all solid waste services must be provided by the city. Additional fees are possible for solid waste services.

**Concessions**

Will food concessions be present at the event? \_\_\_\_ Yes ☒ No

Name, Address & Phone Number for Food Vendors: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*All food vendors are required to have the appropriate permits required by the city or the county.

**Fire Prevention**

Will you have any tents at the event? \_\_\_\_ Yes ☒ No

Will any tents be over 200sq. ft.? \_\_\_\_ Yes \_\_\_\_ No

\*No smoking signs and Sib. ABC extinguishers are required in all tents over 200sq. ft.

Will any tents be enclosed? \_\_\_\_ Yes \_\_\_\_ No

\*A permit (\$50.00 fee) must be obtained from the Developmental Services Department for enclosed tents.

\*Aflame certificate for the tent and a site plan showing the setback from the property lines will be required to obtain this permit.

Will you have bounce houses? \_\_\_\_ Yes ☒ No Number: \_ \_ \_ \_ \_

Will you have other air supported structures? \_\_\_\_ Yes ☒ No

Will there be fireworks? Yes ☒ No

Will there be any temporary structures built or placed on site? \_\_\_\_ Yes ☒ No

If Yes, describe: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Miscellaneous**

Will you need the use of city water and/or electricity? \_\_\_\_ Yes ☒ No

\*Additional fees will apply to the usage of city utilities

Where will restroom facilities be located? Piner Middle School \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\*Depending on accessibility of restroom facilities, city may require portable toilets to be used



Will there be music or any other use of a loudspeaker? \_\_\_\_ X Yes \_\_\_\_ No

If Yes, please fill out the following:

Type of loudspeakers: One for speaking & playing music \_\_\_\_\_ How many: 1 \_\_\_\_\_

Type of Amplifiers: \_\_\_\_\_ How many: \_\_\_\_\_

Type of electrical devices: \_\_\_\_\_ How many: \_\_\_\_\_

Date and time loudspeakers/amplifiers/electrical devices will be in use: 4/15/23 from 8-10:30 am\_\_

\*Loudspeakers/Amplifiers/Electrical Devices cannot be used during the hours of 9pm to 8am

Will you have any animals at the event? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ X Possibly

If yes, are any prohibited/regulated animals? Some runners will bring their dogs to run. Dogs are always on a leash during the event.

\_\_\_\_\_  
\*All pet owners must abide by Grayson County leash law

### **Public Information**

Describe signage that will be used for the event, to include placement of signs: \_\_\_\_\_

We will have a Start/Finish line arch, there will be volunteers with signage on where to turn along the route.

Describe how you will notify residents affected by the event either living on the route/course or nearby. -----

\_\_\_\_\_  
We do promote our race each year through news coverage, flyers, and our Facebook page.

\*Proof of notification may be required

### **Overnight Accommodation Needs**

Will event produce overnight stays in Sherman hotels, motels or bed and breakfasts? If so, how many rooms potentially? n o \_\_\_\_\_

\*The Sherman Chamber of Commerce is available for assistance with hotel information and accommodation needs for the event.

**Agreement:**

Initial  I hereby attest that the information contained in this application is true and correct. I understand that this is only an application and not a guarantee that a permit will be issued. If a permit is issued, I agree that: {1) if any of the information contained in this application is found to be false: or (2) should my conduct, or the conduct of any participants or guests, not adhere to the Special Event Policies and Procedures: or {3) should any applicable city, county, state or federal rules, regulations, codes or laws be violated, any permit issued shall automatically become null and void and any activity associated with this permit will immediately cease.

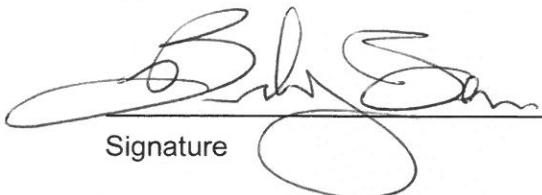
Initial  Applicant agrees to assume the defense of and indemnify and save harmless the City, its council members, boards, commissions, officers, employees and agents, from all suits, actions, damages or claims to which the City may be subjected of any kind or nature whatsoever resulting from, caused by, arising out of or as a consequence of such temporary street closure and the activities permitted in connection therewith. The city may require, as a condition of issuance of a permit, that the applicant obtain insurance to serve this end, in such an amount and with such terms as the City determines to be appropriate under the circumstances. This shall be a continuing release and shall remain in effect until revoked in writing.

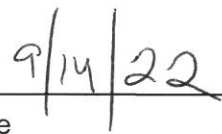
Initial  In case of emergency or for reasons beyond the City's control, the City reserves the right to cancel the permit prior to scheduled use without liability. Refunds will be made if cancellation by the City is necessary.

Initial  Alcohol must be confined to private property. Alcohol consumed on Public property is a violation of city Ordinance and is prohibited.

**Signature:**

I the undersigned representative have read the policies and procedures with reference to this application. The information contained herein is complete and accurate.

  
Signature

  
Date

**For Office Use Only**

**DEPARTMENT APPROVALS**

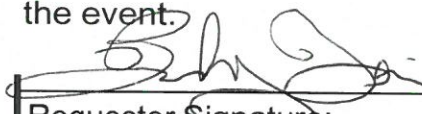
| <b>DEPARTMENT</b>                  | <b>DATE</b> | <b>SIGNATURE</b> |
|------------------------------------|-------------|------------------|
| City Council Approval              |             |                  |
| Fire Department                    |             |                  |
| Police Department                  |             |                  |
| Public Works Department            |             |                  |
| Solid Waste & Recycling Department |             |                  |
| Parks & Recreation Department      |             |                  |
|                                    |             |                  |



## Special Event Date Request Form

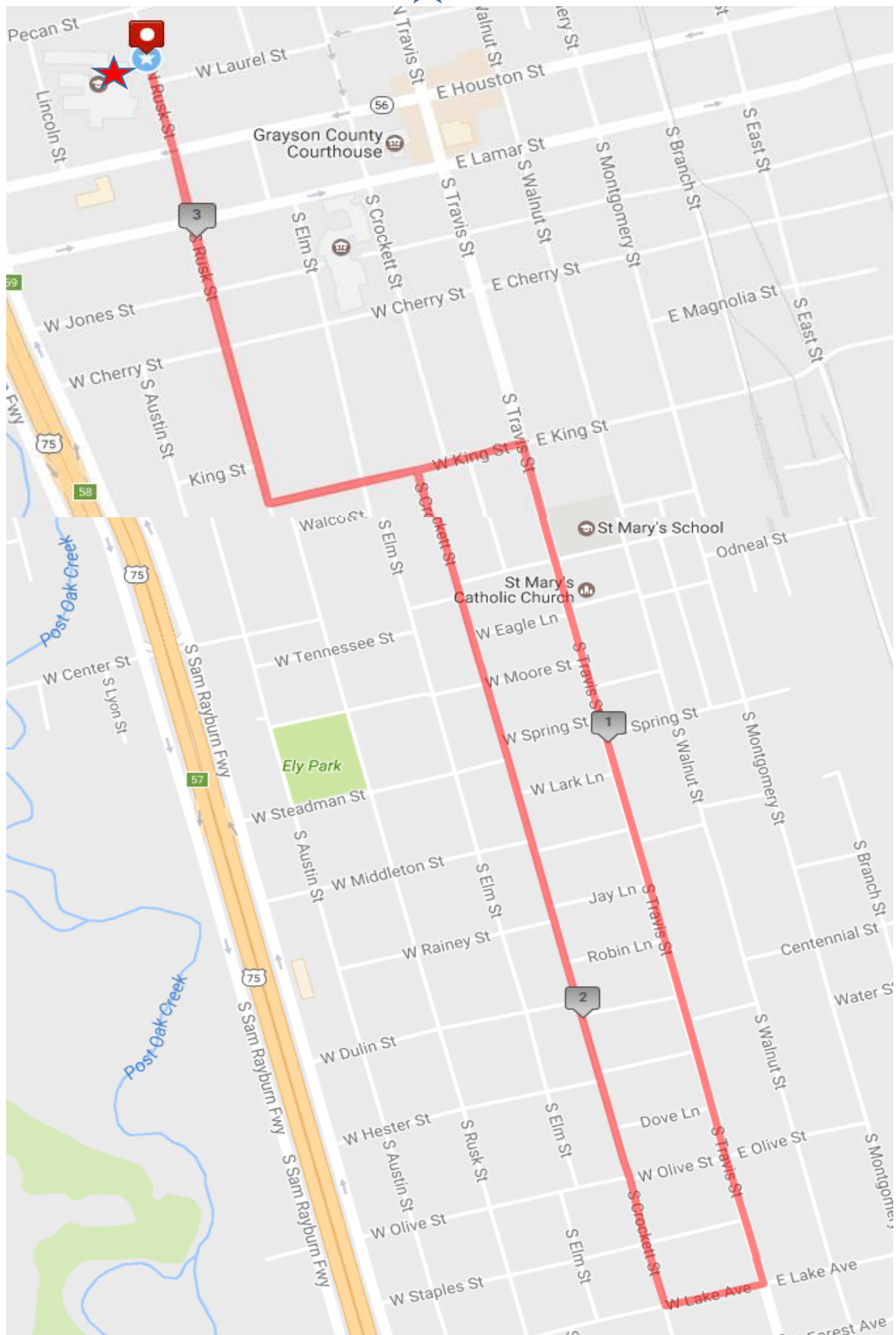
|                                                                                            |
|--------------------------------------------------------------------------------------------|
| Name of Event: Beat the Heat                                                               |
| Type of Event (i.e. Carnival, Circus, Festival, 1 Mile/5 K Run, etc.): 5k/Fun Run          |
| Location of Event: Piner Middle School                                                     |
| Date of Event: April 15, 2023                                                              |
| Event Contact Name: Brandy Fair or Sheriff Tom Watt                                        |
| Event Contact Address: 3004 Mimosa Dr, Sherman TX 75092 or Grayson County Sheriffs' Office |
| Event Contact Phone: 903-814-2871                                                          |
| Event Contact Email: brandy.fair@gmail.com                                                 |

Completion and approval of the Special Event Date Request Form does not guarantee event approval. The Community and Support Services Department must receive the completed Special Event Application 60 days prior to the event date. If the application is not received the date will be released 60 days prior to the event.

  
Requester Signature:

9/14/22  
Date:

|                                                      |
|------------------------------------------------------|
| *Office Use Only                                     |
| Date Request Received:                               |
| Event Date Hold Approved: YES NO                     |
| If NO, reason:                                       |
|                                                      |
|                                                      |
|                                                      |
| Date 60 Days Prior to the Event Date:                |
| Date Special Event Application Received:             |
| Requested Event Date Released: YES NO Date:          |
| Community and Support Services Department Signature: |





# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

F. 1.

**Meeting Date:** 12/12/2022

**Prepared By:** Rob Rae, Director of Development Services

**Approved By:** Robby Hefton, City Manager

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### **Caption:**

#### **APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS**

- (a) Board of Adjustment (5) and Board of Adjustment Alternates (2)

### **Issue:**

Appoint 5 members of the Board of Adjustment and 2 alternates from the Planning and Zoning Commission.

### **Background:**

The Planning and Zoning Commission and Board of Adjustment meetings occur concurrently once a month. In the past, the Chairman of the Planning and Zoning Commission appointed the 5 members of the Board of Adjustment at the beginning of each monthly meeting from the Commission members in attendance.

Section 14.05.004 of the Zoning Ordinance clarifies the process for selecting the members of the Board of Adjustment. "The City Council shall appoint a Board of Adjustment of five (5) members from its own body to serve as provided by Texas Local Government Code Section 211.008. The two (2) remaining members of the Planning and Zoning Commission shall serve as alternate members of the Board of Adjustment."

This new language in the Zoning Ordinance is consistent with State Legislation related to the Board of Adjustment,

### **Origination:**

The reappointments originated with the City Clerk's Office.

### **Financial Consideration:**

There is no financial consideration.



**Staff Recommendation:**

The staff recommends that Clay Mahone, Shawn Davis, David Downtain, Leigh Ann Sims, and Paul Manley be appointed to the Board of Adjustment and that Glenn Whitaker and Bryan Blagg be appointed as Alternates to the Board of Adjustment.

**Alternatives:**

The alternative is to delay reappointments to the Board.

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**Attachments**

Planning & Zoning Commission Roster

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# MEMBERSHIP ROSTER

## PLANNING & ZONING BOARD

LENGTH OF TERMS:THREE YEARS

City Charter Art. VII, Sec. 1- No Term Limit

| MEMBER                  | DISTRICT | TERM BEGINS                                  | TERM EXPIRES                           | TERMS       | MEMBERSHIP REQUIREMENTS |
|-------------------------|----------|----------------------------------------------|----------------------------------------|-------------|-------------------------|
| David Downtain          | 1        | A 5/2/2017<br>R 5/2/2019<br>R 5/2/2022       | 5/2/2019<br>5/2/2022<br>5/2/2025       | 1<br>2<br>3 |                         |
| Glenn Whitaker          | 4        | A 8/4/2020                                   | 8/4/2023                               | 1           |                         |
| Shawn Davis             | 1        | A 11/18/2014<br>R 11/18/2017<br>R 11/18/2020 | 11/18/2017<br>11/18/2020<br>11/18/2023 | 1<br>2<br>3 |                         |
| Leigh Ann Sims          | 4        | A 2/21/2018<br>R 2/21/2021                   | 2/21/2021<br>2/21/2024                 | 1<br>2      |                         |
| Clay Mahone<br>Chairman | 4        | A 9/22/2015<br>R 9/22/2018<br>R 9/22/2021    | 9/22/2018<br>9/22/2021<br>9/22/2024    | 1<br>2<br>3 |                         |
| Paul Manley             | 1        | A 12/18/2018<br>R 12/18/2021                 | 12/18/2021<br>12/18/2024               | 1<br>2      |                         |
| Bryan Blagg             | 4        | U 1/5/2021<br>R 5/2/2022                     | 5/2/2022<br>5/2/2025                   | 0<br>1      |                         |

NOTE: CHAIR MAY SERVE ONE TWO-YEAR APPOINTMENT (per Sec.9.04.001(d) Code of Ord)

| CHAIR             | APPOINTMENT DATE | DATE CHAIR EXPIRES             | YEARS SERVED AS CHAIR |
|-------------------|------------------|--------------------------------|-----------------------|
| David Estes       | A 8/1/2002       | 8/1/2003                       | 1                     |
| Kelly Bickerstaff | A 8/1/2003       | 8/1/2004                       | 1                     |
| Kelly Bickerstaff | R 8/1/2004       | 8/1/2005                       | 2                     |
| Kelly Bickerstaff | R 8/1/2005       | 8/1/2006                       | 3                     |
| Willie Steele     | A 8/8/2006       | 8/1/2007 (Resigned 5/22/2007)  | 1                     |
| Jason Sofey       | U 6/5/2007       | 8/1/2007                       | 0                     |
| Jason Sofey       | R 8/1/2007       | 8/1/2008                       | 1                     |
| Jason Sofey       | R 8/1/2008       | 8/1/2009 (Resigned 1/15/2010)  | 2                     |
| Lawrence Davis    | A 1/19/2010      | 1/19/2012                      | 1, 2-year term        |
| Don Hicks         | A 8/8/2012       | 8/8/2014 (Term ended 7/6/2014) | 1, 2-year term        |
| Joe Gilbert       | A 7/8/2014       | 7/8/2016                       | 1, 2-year term        |
| Clay Mahone       | A 5/2/2017       | 5/2/2019                       | 1, 2-year term        |

| Alternate Members |              |  |
|-------------------|--------------|--|
| Darren Tankersley | A 12/17/2019 |  |
| Brad Morgan       | A 12/17/2019 |  |
| Sean Vanderveer   | A 12/17/2019 |  |
| Jason Bethel      | A 12/17/2019 |  |

City Staff: Rob Rae, Director of Development Services

Revised – 5/17/2022

Note – 11/7/2017 – Charter Election reduced membership from 9 to 7 members

Note – 11/5/2019 – Charter Election removed 2 term limit; service of 18 months of 3 year term, constitutes a full term

Note – 12/16/2019 – Council Agenda – Council approved adding 4 Alternate Members to serve as needed



# SHERMAN CITY COUNCIL

## Agenda Communication Form

### City Council Regular Meeting

**Meeting Date:** 12/12/2022

**Approved By:** Robby Hefton, City Manager

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**Caption:**

**COUNCIL CALENDAR**

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### **Attachments**

2022 Council Calendar

2023 Council Calendar

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# 2022 Council Calendar

| January |    |    |    |    |    |    |
|---------|----|----|----|----|----|----|
| Su      | Mo | Tu | We | Th | Fr | Sa |
|         |    |    |    |    |    | 1  |
| 2       | 3  | 4  | 5  | 6  | 7  | 8  |
| 9       | 10 | 11 | 12 | 13 | 14 | 15 |
| 16      | 17 | 18 | 19 | 20 | 21 | 22 |
| 23      | 24 | 25 | 26 | 27 | 28 | 29 |
| 30      | 31 |    |    |    |    |    |

| February |    |    |    |    |    |    |
|----------|----|----|----|----|----|----|
| Su       | Mo | Tu | We | Th | Fr | Sa |
|          |    | 1  | 2  | 3  | 4  | 5  |
| 6        | 7  | 8  | 9  | 10 | 11 | 12 |
| 13       | 14 | 15 | 16 | 17 | 18 | 19 |
| 20       | 21 | 22 | 23 | 24 | 25 | 26 |
| 27       | 28 |    |    |    |    |    |

| March |    |    |    |    |    |    |
|-------|----|----|----|----|----|----|
| Su    | Mo | Tu | We | Th | Fr | Sa |
|       |    | 1  | 2  | 3  | 4  | 5  |
| 6     | 7  | 8  | 9  | 10 | 11 | 12 |
| 13    | 14 | 15 | 16 | 17 | 18 | 19 |
| 20    | 21 | 22 | 23 | 24 | 25 | 26 |
| 27    | 28 | 29 | 30 | 31 |    |    |

| April |    |    |    |    |    |    |
|-------|----|----|----|----|----|----|
| Su    | Mo | Tu | We | Th | Fr | Sa |
|       |    |    |    |    | 1  | 2  |
| 3     | 4  | 5  | 6  | 7  | 8  | 9  |
| 10    | 11 | 12 | 13 | 14 | 15 | 16 |
| 17    | 18 | 19 | 20 | 21 | 22 | 23 |
| 24    | 25 | 26 | 27 | 28 | 29 | 30 |

| May |    |    |    |    |    |    |
|-----|----|----|----|----|----|----|
| Su  | Mo | Tu | We | Th | Fr | Sa |
| 1   | 2  | 3  | 4  | 5  | 6  | 7  |
| 8   | 9  | 10 | 11 | 12 | 13 | 14 |
| 15  | 16 | 17 | 18 | 19 | 20 | 21 |
| 22  | 23 | 24 | 25 | 26 | 27 | 28 |
| 29  | 30 | 31 |    |    |    |    |

| June |    |    |    |    |    |    |
|------|----|----|----|----|----|----|
| Su   | Mo | Tu | We | Th | Fr | Sa |
|      |    |    | 1  | 2  | 3  | 4  |
| 5    | 6  | 7  | 8  | 9  | 10 | 11 |
| 12   | 13 | 14 | 15 | 16 | 17 | 18 |
| 19   | 20 | 21 | 22 | 23 | 24 | 25 |
| 26   | 27 | 28 | 29 | 30 |    |    |

| July |    |    |    |    |    |    |
|------|----|----|----|----|----|----|
| Su   | Mo | Tu | We | Th | Fr | Sa |
|      |    |    |    |    | 1  | 2  |
| 3    | 4  | 5  | 6  | 7  | 8  | 9  |
| 10   | 11 | 12 | 13 | 14 | 15 | 16 |
| 17   | 18 | 19 | 20 | 21 | 22 | 23 |
| 24   | 25 | 26 | 27 | 28 | 29 | 30 |
| 31   |    |    |    |    |    |    |

| August |    |    |    |    |    |    |
|--------|----|----|----|----|----|----|
| Su     | Mo | Tu | We | Th | Fr | Sa |
|        | 1  | 2  | 3  | 4  | 5  | 6  |
| 7      | 8  | 9  | 10 | 11 | 12 | 13 |
| 14     | 15 | 16 | 17 | 18 | 19 | 20 |
| 21     | 22 | 23 | 24 | 25 | 26 | 27 |
| 28     | 29 | 30 | 31 |    |    |    |

| September |    |    |    |    |    |    |
|-----------|----|----|----|----|----|----|
| Su        | Mo | Tu | We | Th | Fr | Sa |
|           |    |    |    | 1  | 2  | 3  |
| 4         | 5  | 6  | 7  | 8  | 9  | 10 |
| 11        | 12 | 13 | 14 | 15 | 16 | 17 |
| 18        | 19 | 20 | 21 | 22 | 23 | 24 |
| 25        | 26 | 27 | 28 | 29 | 30 |    |

| October |    |    |    |    |    |    |
|---------|----|----|----|----|----|----|
| Su      | Mo | Tu | We | Th | Fr | Sa |
|         |    |    |    |    |    | 1  |
| 2       | 3  | 4  | 5  | 6  | 7  | 8  |
| 9       | 10 | 11 | 12 | 13 | 14 | 15 |
| 16      | 17 | 18 | 19 | 20 | 21 | 22 |
| 23      | 24 | 25 | 26 | 27 | 28 | 29 |
| 30      | 31 |    |    |    |    |    |

| November |    |    |    |    |    |    |
|----------|----|----|----|----|----|----|
| Su       | Mo | Tu | We | Th | Fr | Sa |
|          |    | 1  | 2  | 3  | 4  | 5  |
| 6        | 7  | 8  | 9  | 10 | 11 | 12 |
| 13       | 14 | 15 | 16 | 17 | 18 | 19 |
| 20       | 21 | 22 | 23 | 24 | 25 | 26 |
| 27       | 28 | 29 | 30 |    |    |    |

| December |    |    |    |    |    |    |
|----------|----|----|----|----|----|----|
| Su       | Mo | Tu | We | Th | Fr | Sa |
|          |    |    |    |    | 1  | 2  |
| 3        | 4  | 5  | 6  | 7  | 8  | 9  |
| 10       | 11 | 12 | 13 | 14 | 15 | 16 |
| 17       | 18 | 19 | 20 | 21 | 22 | 23 |
| 24       | 25 | 26 | 27 | 28 | 29 | 30 |
| 31       |    |    |    |    |    |    |

|  |                                      |
|--|--------------------------------------|
|  | Holiday                              |
|  | Holiday for Firefighters/Police Only |
|  | City Council Regular Meeting         |
|  | City Council Called Meeting          |
|  | Special Called Meeting               |
|  | Budget Workshop                      |
|  | Cancelled City Council Meeting       |

| CALLED MEETINGS |                                                          |
|-----------------|----------------------------------------------------------|
| 1/18/2022       | Rescheduled - Martin Luther King, Jr. Day                |
| 2/9/2022        | CIP-Public Works Planning Session                        |
| 2/23/2022       | Joint Meeting - Legal Training (Canceled-Bad Weather)    |
| 3/23/2022       | Joint Meeting - Legal Training                           |
| 4/19/2022       | Budget Planning Meeting                                  |
| 5/26/2022       | Capital Improvement Program Work Session                 |
| 6/7/2022        | Budget Workshop - Day 1                                  |
| 6/16/2022       | Special Called Meeting                                   |
| 7/5/2022        | Rescheduled - Independence Day                           |
| 9/6/2022        | Rescheduled - Labor Day                                  |
| 9/13/2022       | Joint Meeting - SEDCO Board                              |
| 9/22/2022       | Review CompPlan and Zoning Ordinances                    |
| 12/12/2022      | Called City Council Meeting (Christmas Holiday)          |
| 12/19/2022      | Regular Council Meeting - (Canceled - Christmas Holiday) |

**2023**

| January |    |    |    |    |    |    |
|---------|----|----|----|----|----|----|
| Su      | Mo | Tu | We | Th | Fr | Sa |
| 1       | 2  | 3  | 4  | 5  | 6  | 7  |
| 8       | 9  | 10 | 11 | 12 | 13 | 14 |
| 15      | 16 | 17 | 18 | 19 | 20 | 21 |
| 22      | 23 | 24 | 25 | 26 | 27 | 28 |
| 29      | 30 | 31 |    |    |    |    |
|         |    |    |    |    |    |    |

| February |    |    |    |    |    |    |
|----------|----|----|----|----|----|----|
| Su       | Mo | Tu | We | Th | Fr | Sa |
|          |    |    | 1  | 2  | 3  | 4  |
| 5        | 6  | 7  | 8  | 9  | 10 | 11 |
| 11       | 12 | 14 | 15 | 16 | 17 | 18 |
| 19       | 20 | 21 | 22 | 23 | 24 | 25 |
| 26       | 27 | 28 |    |    |    |    |
|          |    |    |    |    |    |    |

| March |    |    |    |    |    |    |
|-------|----|----|----|----|----|----|
| Su    | Mo | Tu | We | Th | Fr | Sa |
|       |    |    | 1  | 2  | 3  | 4  |
| 5     | 6  | 7  | 8  | 9  | 10 | 11 |
| 12    | 13 | 14 | 15 | 16 | 17 | 18 |
| 19    | 20 | 21 | 22 | 23 | 24 | 25 |
| 26    | 27 | 28 | 29 | 30 | 31 |    |
|       |    |    |    |    |    |    |

| April |    |    |    |    |    |    |
|-------|----|----|----|----|----|----|
| Su    | Mo | Tu | We | Th | Fr | Sa |
|       |    |    |    |    |    | 1  |
| 2     | 3  | 4  | 5  | 6  | 7  | 8  |
| 9     | 10 | 11 | 12 | 13 | 14 | 15 |
| 16    | 17 | 18 | 19 | 20 | 21 | 22 |
| 23    | 24 | 25 | 26 | 27 | 28 | 29 |
| 30    |    |    |    |    |    |    |

| May |    |    |    |    |    |    |
|-----|----|----|----|----|----|----|
| Su  | Mo | Tu | We | Th | Fr | Sa |
|     | 1  | 2  | 3  | 4  | 5  | 6  |
| 7   | 8  | 9  | 10 | 11 | 12 | 13 |
| 14  | 15 | 16 | 17 | 18 | 19 | 20 |
| 21  | 22 | 23 | 24 | 25 | 26 | 27 |
| 28  | 29 | 30 | 31 |    |    |    |
|     |    |    |    |    |    |    |

| June |    |    |    |    |    |    |
|------|----|----|----|----|----|----|
| Su   | Mo | Tu | We | Th | Fr | Sa |
|      |    |    |    | 1  | 2  | 3  |
| 4    | 5  | 6  | 6  | 8  | 9  | 10 |
| 11   | 12 | 13 | 14 | 15 | 16 | 17 |
| 18   | 19 | 20 | 21 | 22 | 23 | 24 |
| 25   | 26 | 27 | 28 | 29 | 30 |    |
|      |    |    |    |    |    |    |

| July |    |    |    |    |    |    |
|------|----|----|----|----|----|----|
| Su   | Mo | Tu | We | Th | Fr | Sa |
|      |    |    |    |    |    | 1  |
| 2    | 3  | 4  | 5  | 6  | 7  | 8  |
| 9    | 10 | 11 | 12 | 13 | 14 | 15 |
| 16   | 17 | 18 | 19 | 20 | 21 | 22 |
| 23   | 24 | 25 | 26 | 27 | 28 | 29 |
| 30   | 31 |    |    |    |    |    |

| August |    |    |    |    |    |    |
|--------|----|----|----|----|----|----|
| Su     | Mo | Tu | We | Th | Fr | Sa |
|        |    | 1  | 2  | 3  | 4  | 5  |
| 6      | 7  | 8  | 9  | 10 | 11 | 12 |
| 13     | 14 | 15 | 16 | 17 | 18 | 19 |
| 20     | 21 | 22 | 23 | 24 | 25 | 26 |
| 27     | 28 | 29 | 30 | 31 |    |    |
|        |    |    |    |    |    |    |

| September |    |    |    |    |    |    |
|-----------|----|----|----|----|----|----|
| Su        | Mo | Tu | We | Th | Fr | Sa |
|           |    |    |    |    | 1  | 2  |
| 3         | 4  | 5  | 6  | 7  | 8  | 9  |
| 10        | 11 | 12 | 13 | 14 | 15 | 16 |
| 17        | 18 | 19 | 20 | 21 | 22 | 23 |
| 24        | 25 | 26 | 27 | 28 | 29 | 30 |
|           |    |    |    |    |    |    |

| October |    |    |    |    |    |    |
|---------|----|----|----|----|----|----|
| Su      | Mo | Tu | We | Th | Fr | Sa |
| 1       | 2  | 3  | 4  | 5  | 6  | 7  |
| 8       | 9  | 10 | 11 | 12 | 13 | 14 |
| 15      | 16 | 17 | 18 | 19 | 20 | 21 |
| 22      | 23 | 24 | 25 | 26 | 27 | 28 |
| 29      | 30 | 31 |    |    |    |    |
|         |    |    |    |    |    |    |

| November |    |    |    |    |    |    |
|----------|----|----|----|----|----|----|
| Su       | Mo | Tu | We | Th | Fr | Sa |
|          |    |    | 1  | 2  | 3  | 4  |
| 5        | 6  | 7  | 8  | 9  | 10 | 11 |
| 12       | 13 | 14 | 15 | 16 | 17 | 18 |
| 19       | 20 | 21 | 22 | 23 | 24 | 25 |
| 26       | 27 | 28 | 29 | 30 |    |    |
|          |    |    |    |    |    |    |

| December |    |    |    |    |    |    |
|----------|----|----|----|----|----|----|
| Su       | Mo | Tu | We | Th | Fr | Sa |
|          |    |    |    |    | 1  | 2  |
| 3        | 4  | 5  | 6  | 7  | 8  | 9  |
| 10       | 11 | 12 | 13 | 14 | 15 | 16 |
| 17       | 18 | 19 | 20 | 21 | 22 | 23 |
| 24       | 25 | 26 | 27 | 28 | 29 | 30 |
| 31       |    |    |    |    |    |    |

|  |                                      |
|--|--------------------------------------|
|  | Holiday                              |
|  | Holiday for Firefighters/Police Only |
|  | City Council Regular Meeting         |
|  | Special Called Meeting               |
|  | Budget Workshop                      |
|  | Cancelled City Council Meeting       |

[illegible]