CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, JUNE 15, 2009
5:00 P.M.

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

A.2 PLEDGE OF ALLEGIANCE

A.3 INVOCATION BY COUNCIL MEMBER PAMELA L. HOWETH

A.4 APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JUNE 1, 2009

Public Hearing

B.1 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5607
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Private Club (Sports Bar) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District at 401 South Sam Rayburn Freeway, Suite A, being 3.37 Acres in the Samuel Blagg Survey, Abstract No. 56 (Agasimaa, LLC, J.R. Patel, Owners, and Efrain Arroyo, Tenant); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed $2,000

Close Public Hearing and Consider Adoption of Ordinances

B.2 ADOPTION OF ORDINANCES
Consider Adoption of Ordinance Number: 5607

B.3 CONSENT AGENDA
Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Resolutions

C.1 ** RESOLUTION NO. 5369*
Amending the 2008-2009 Budget of the City of Sherman, Texas, Appropriating and Allocating Additional Funds for the Period of October 1, 2008, through September 30, 2009

C.2 RESOLUTION NO. 5370
Authorizing the Submission and Acceptance of a Grant for the Sherman Police Department under the Recovery Act: Justice Assistance Grant (JAG) Program distributed by the U.S. Department of Justice (Pass-Through from State) for the Purchase of an Automated License Plate Recognition (ALPR) System

C.3 RESOLUTION NO. 5371
Authorizing the Submission of a Joint Grant Application with the City of Denison for and the Acceptance of Grants under the Annual Justice Assistance Grant (JAG) Program distributed by the U.S. Department of Justice – CFDA #16.738

C.4 RESOLUTION NO. 5372
Authorizing Execution of an Interlocal Agreement between the City of Sherman and the City of Denison for Grant Funding to be Awarded by the U.S. Department of Justice under the Annual Justice Assistance Grant (JAG) Program – CFDA #16.738

C.5 ** RESOLUTION NO. 5373*
Authorizing Continued Participation with the Steering Committee of Cities Served by Oncor; Authorizing the Payment of Ten Cents ($0.10) Per Capita to the Steering Committee to Fund Regulatory and Related Activities Related to Oncor Electric Delivery

C.6 ** RESOLUTION NO. 5374*
Authorizing Execution of a Consulting Agreement with TriStem, Ltd. for Utility Bill Audit Services

C.7 ** RESOLUTION NO. 5375*
Authorizing Execution of a Remote Deposit Agreement and an Item Processing Agreement with Kenney Bank and Trust and iStream Financial Services, Inc. for the Remote Deposit and Electronic Disbursement of Payments made for the City of Sherman's Emergency Medical Services

C.8 ** RESOLUTION NO. 5376*
Authorizing the Expenditure of $3,000.00 in Matching Funds to the Texoma Council of Governments for Transportation Planning

C.9 ** RESOLUTION NO. 5377*
Awarding a Bid to and Authorizing Execution of a Contract with Lynn Vessels Construction, LLC to Rebuild Intersections on Taylor Street

Other Business

D.1 OTHER BUSINESS
Receive Presentation from Property Owners Scott C. Webb and Sherman E. Noble, P.E. concerning the Washington Street Reconstruction Plan

D.2 OTHER BUSINESS
Receive Quarterly Progress Report from Sherman Economic Development Corporation Board Chairman Andy Olmstead and SEDCO President John Boswell

D.3 ** OTHER BUSINESS*
Replat Approval of Lots 1 and 2, Block 1 of the O'Hanlon Ranch Addition, Phase 2; David Sprowl, Owner; Sartin and Associates, Inc., Surveyors (2925 and 2929 Sedalia Trail)

D.4 CITIZEN REQUESTS

D.5 MEDIA QUESTIONS

D.6 COUNCIL COMMENTS

D.7 ADJOURNMENT

COUNCIL CALENDAR

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Pamela L. Howeth, Council Member

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. A.3

INVOCATION BY COUNCIL MEMBER PAMELA L. HOWETH

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. A.4

APPROVE MINUTES
THE REGULAR CITY COUNCIL MEETING OF JUNE 1, 2009

STATE OF TEXAS §

June 1, 2009

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on June 1, 2009.

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

MEMBERS ABSENT: COUNCIL MEMBER HOWETH.

CALL TO ORDER

CALL TO ORDER

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

APPROVE MINUTES

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of May 18, 2009. Council Member Wacker moved to approve the Minutes as presented; Second by Council Member Steele. All present voted AYE.
MOTION CARRIED.

OTHER BUSINESS

RECEIVE PRESENTATION FROM THOMAS W. NUCKOLS OF THE TEXOMA PARKS AND TRAILS ALLIANCE AND ROBERT W. MINSHEW OF DOWNTOWN SHERMAN PRESERVATION AND REVITALIZATION CONCERNING THE COMPREHENSIVE MASTER PLAN

DOWNTOWN CONCERNS FROM MASTER PLAN

Dr. Thomas Nuckols, 2341 Canyon Creek Drive

Dr. Nuckols is a Director of the Texoma Parks and Trails Alliance and Downtown Sherman Preservation and Revitalization. The organizations jointly approved a petition and sponsored a Forum on giving priority to quality of life factors from the City's proposed Comprehensive Master Plan. One hundred and seventeen persons signed the petition.

Dr. Nuckols urged the City Council and the Planning and Zoning Commission to develop an implementation plan for the Comprehensive Master Plan that will recognize and give priority to specific aspects that are noted in the petition. He encouraged implementation within the first year of the Master Plan to ensure its success.

He explained that the petition addresses a broad range of factors, however he emphasized the goal of making Sherman green. He felt this should be given the highest priority because residents have repeatedly identified this as a high priority and because "greening Sherman will produce great benefits relatively quickly and economically."

Dr. Nuckols said much progress has already been made in the park system, but now priority should be given to increased green space and the linkage of parks. He felt the green infrastructure should be planned just as the other public infrastructure is planned.

He added that the City could also benefit from "islands of tranquility" which are natural, scenic areas such as Herman Baker Park. The City should have a plan to acquire park and green space before development occurs. Dr. Nuckols felt the flood plain would offer great opportunities for passive, scenic natural green space at a low cost.

Dr. Nuckols said the Texoma Parks and Trails urges the City to immediately acquire and passively develop the flood plain below Dean Gilbert Lake, east of FM Highway 1417. He felt this would also help address flooding issues in this developing area.

The petition also encourages development regulations to protect the City as it develops. Dr. Nuckols addressed the College Park area with the "mega duplexes" and the minimal landscaping and green space in the Town Center and Woodmont Developments to show the need for development regulations which would preserve the heritage and encourage beautiful and revitalized development of Sherman.

Dr. Nuckols added that once development occurs, the cost of restoring quality of life becomes more costly and inadequate. Therefore he urged the City to quickly acquire green space while it is still available and to develop regulations before more development and more concrete are in place. He added that the regulations should also protect against flooding.

Dr. Nuckols presented the signed petition to Mayor Magers.

<u>Robert Minshew, 703 W. Birge</u>
Mr. Minshew is President of Downtown Sherman Preservation and Revitalization, an organization that is structured to preserve and revitalize the Central Business District. He thanked the City for things that have already been accomplished downtown, such as the new planter boxes. He verified that the benches and trash cans are "on the way."

He added that the overhead wiring was a big project and they really didn't expect to see that anytime soon. He did have some suggestions to camouflage the wires for now and save money while changing the image.

Mr. Minshew presented two sets of photographs that were taken by the David Baca Architectural Drafting Firm located in downtown Sherman. On May 4, 2009 the company made a presentation of changes that could be made to the

downtown area that would include a mixed use development with some retail, professional offices and businesses, and residences. This would make a vital down town with restaurants moving in and nightlife.

Mr. Minshew presented photographs of Lamar Street going east as you enter the downtown area. He proposed adding trees to help hide the wires and to increase the aesthetics of the entryway. No wires were relocated and the only cost is planting the trees. The proposed plan has been cleared through the Texas Department of Transportation. Deputy Mayor Smith confirmed that TxDOT did not plan on actually paying for the project.

Another set of photographs were presented of the area at Walnut and Wall Streets. Mr. Minshew proposed to close that block of Wall Street to traffic and add trees for a pedestrian mall area with shops and restaurants on both sides. He felt that adding areas such as this would revitalize the entire downtown area. Trees help the ecology of an area and are much cheaper than burying utility lines underground.

DSP&R will sponsor a public showing of Mr. Baca's slide show and he invited the City Council Members to attend the meeting to see a more economical way to revitalize the downtown.

Council Member Wacker was glad that they liked the City's Comprehensive Master Plan. She said it was a big investment and the City is moving that direction. Mayor Magers verified that the Comprehensive Master Plan is still in draft form and will need to be approved by both the Planning and Zoning Commission and the City Council. Public hearings will be held before both entities.

Council Member Wacker added that the entire process for the Comprehensive Master Plan has included input from the public and reflects their priorities. Mayor Magers said cost of the Master Plan was $250,000.

PUBLIC HEARING

FINAL STATEMENT/ACTION PLAN FOR PROGRAM YEAR 2009 COMMUNITY DEVELOPMENT BLOCK GRANT

FINAL STATEMENT/ ACTION PLAN FOR CDBG

Each year the City of Sherman receives an entitlement grant (Community Development Block Grant) from the U.S. Department of Housing and Urban Development. The City is required to submit an annual Action Plan, which is a description of the activities that will be undertaken during the coming year to address the needs of the low to moderate income citizens. The City has been allocated $324,514 in CDBG funds for FY 2009.

No citizens appeared before the City Council to discuss the Final Statement/Action Plan for the 2009 Community Development Block Grant.

INTRODUCTION AND PUBLIC HEARING OF ORDINANCES

ORD 5605 ABANDON PORTION OF N. PORTER ST.

Mayor Magers introduced Ordinance 5605 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CLOSING AND ABANDONING A PORTION OF NORTH PORTER STREET FROM EAST BROCKETT STREET TO EAST RICHARDS STREET IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS; CONVEYING THE INTEREST IN SAID RIGHT-OF-WAY TO THE ABUTTING AND ADJACENT PROPERTY OWNER, AUSTIN COLLEGE.

No citizens appeared before the City Council to discuss Ordinance 5605.

ORD 5606 ABANDON ALLEY

Mayor Magers introduced Ordinance 5606 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CLOSING AND ABANDONING A 15-FOOT ALLEY IN BLOCK FOUR (4) OF THE W.P. CARTER'S ADDITION TO THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, BOUNDED BY BROUGHTON STREET, THROCKMORTON STREET, COLLEGE STREET AND CARTER STREET, AS RECORDED IN VOLUME 25, PAGE 196 OF THE GRAYSON COUNTY DEED RECORDS; CONVEYING THE INTEREST IN SAID RIGHT-OF-WAY TO THE ABUTTING AND ADJACENT PROPERTY OWNER, LAZY L ENTERPRISES.

No citizens appeared before the City Council to discuss Ordinance 5606.

CLOSE PUBLIC HEARING

The Ordinances were introduced and the Public Hearing was closed.

ADOPTION OF ORDINANCES

ORD 5605 ABANDON PORTION OF N. PORTER ST.

Mayor Magers turned the gavel over to Deputy Mayor Smith since he has an interest in Ordinance 5606.

Ordinance 5605
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CLOSING AND ABANDONING A PORTION OF NORTH PORTER STREET FROM EAST BROCKETT STREET TO EAST RICHARDS STREET IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS; CONVEYING THE INTEREST IN SAID RIGHT-OF-WAY TO THE ABUTTING AND ADJACENT PROPERTY OWNER, AUSTIN COLLEGE.

Council Member Adami verified with Tom Watt, Police Chief, and Jeff Jones, Fire Chief, that there were no public safety traffic or access problems with closing this street.

ACTION TAKEN.

Motion by Council Member Steele to approve Ordinance No. 5605, as presented. Second by Council Member Adami.

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

Ordinance 5606

ORD 5606
ABANDON ALLEY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CLOSING AND ABANDONING A 15-FOOT ALLEY IN BLOCK FOUR (4) OF THE W.P. CARTER'S ADDITION TO THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, BOUNDED BY BROUGHTON STREET, THROCKMORTON STREET, COLLEGE STREET AND CARTER STREET, AS RECORDED IN VOLUME 25, PAGE 196 OF THE GRAYSON COUNTY DEED RECORDS; CONVEYING THE INTEREST IN SAID RIGHT-OF-WAY TO THE ABUTTING AND ADJACENT PROPERTY OWNER, LAZY L ENTERPRISES.

ACTION TAKEN.

Motion by Council Member Adami to approve Ordinance No. 5606, as presented. Second by Council Member Softly.

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

Deputy Mayor Smith turned the gavel over to Mayor Magers.

CONSENT AGENDA

CONSENT AGENDA

The Council reviewed the Consent Agenda. Council Member Wacker asked to remove Item C-1, entitled "Resolution 5363 – Authorizing Publication of the Proposed Final Statement / Action Plan for the Community Development Block Grant for Fiscal Year 2009; Authorizing Submission of the Block Grant Application; Authorizing Execution of Certain Assurances of Compliance in Connection with the Administration and Conduct of the Community Development Program for Fiscal Year 2009" from the Consent Agenda for consideration in its regular order of business.

Council Member Softly moved to approve the Consent Agenda, with the exception of Item C-1, which will be considered in its regular order of business. Second by Council Member Wacker. All present voted AYE.

RESOLUTIONS

RESOLUTION NO. 5363 – AUTHORIZING PUBLICATION OF THE PROPOSED FINAL STATEMENT / ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT FOR FISCAL YEAR 2009; AUTHORIZING SUBMISSION OF THE BLOCK GRANT APPLICATION; AUTHORIZING EXECUTION

RES 5363
FINAL STATEMENT/
ACTION PLAN
FOR CDBG

OF CERTAIN ASSURANCES OF COMPLIANCE IN CONNECTION WITH THE ADMINISTRATION AND CONDUCT OF THE COMMUNITY DEVELOPMENT PROGRAM FOR FISCAL YAR 2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING PUBLICATION OF THE PROPOSED FINAL STATEMENT / ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT FOR FISCAL YEAR 2009; AUTHORIZING SUBMISSION OF THE BLOCK GRANT APPLICATION; AUTHORIZING EXECUTION OF CERTAIN ASSURANCES OF COMPLIANCE IN CONNECTION WITH THE ADMINISTRATION AND CONDUCT OF THE COMMUNITY DEVELOPMENT PROGRAM FOR FISCAL YEAR 2009.

Council Member Wacker asked to remove Item C-1 from the Consent Agenda for consideration in its regular order of business. She asked for a brief overview of the program.

George Olson, City Manager, said Sherman is an entitlement community and receives grant funds from the U.S. Department of Housing and Urban Development to benefit the low to moderate income citizens. The City receives approximately $325,000 per year from the grant.

Eligible programs under the grant include owner occupied housing rehabilitation, first time home ownership, demolition and clearance, Sherman Housing Authority off-duty security program, assistance with public transportation with the Texoma Area Paratransit System, and assistance to the Crisis Center and the Boy's and Girl's Club.

ACTION TAKEN.
> **Motion by Council Member Wacker to approve Resolution No. 5363, as presented. Second by Deputy Mayor Smith.**

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

RES 5364
DEED TO AUSTIN COLLEGE FOR PORTION OF N. PORTER ST.

RESOLUTION NO. 5364 – AUTHORIZING EXECUTION OF A DEED WITHOUT WARRANTY TO AUSTIN COLLEGE FOR THE CONVEYANCE OF A PORTION OF RIGHT-OF-WAY BEING NORTH PORTER STREET FROM EAST BROCKETT STREET TO EAST RICHARDS STREET IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEED WITHOUT WARRANTY TO AUSTIN COLLEGE FOR THE CONVEYANCE OF A PORTION OF RIGHT-OF-WAY BEING NORTH PORTER STREET FROM EAST BROCKETT STREET TO EAST RICHARDS STREET IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS.

ACTION TAKEN.

Motion by Deputy Mayor Smith to approve Resolution No. 5364, as presented. Second by Council Member Steele.

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

Mayor Magers turned the gavel over to Deputy Mayor Smith since he has an interest in Resolution 5365.

RES 5365
DEED FOR ALLEY

RESOLUTION NO. 5365 – AUTHORIZING EXECUTION OF A DEED WITHOUT WARRANTY TO LAZY L ENTERPRISES FOR THE CONVEYANCE OF A 15-FOOT ALLEY IN BLOCK FOUR (4) OF THE W.P. CARTER'S ADDITION TO THE CITY OF SHERMAN, TEXAS, BOUNDED BY BROUGHTON STREET, THROCKMORTON STREET, COLLEGE STREET AND CARTER STREET, SAID PROPERTY TO BE MAINTAINED AS A UTILITY EASEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEED WITHOUT WARRANTY TO LAZY L ENTERPRISES FOR THE CONVEYANCE OF A 15-FOOT ALLEY IN BLOCK FOUR (4) OF THE W.P. CARTER'S ADDITION TO THE CITY OF SHERMAN, TEXAS, BOUNDED BY BROUGHTON STREET, THROCKMORTON STREET, COLLEGE STREET AND CARTER STREET, SAID PROPERTY TO BE MAINTAINED AS A UTILITY EASEMENT.

ACTION TAKEN.

Motion by Council Member Steele to approve Resolution No. 5365, as presented. Second by Council Member Adami.

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

Deputy Mayor Smith turned the gavel over to Mayor Magers.

RES 5366
EMS MEDICAL DIRECTOR

RESOLUTION NO. 5366 – AUTHORIZING EXECUTION OF AN EMPLOYMENT CONTRACT WITH SHARON A. MALONE, M.D. AS LICENSED MEDICAL DIRECTOR FOR EMERGENCY MEDICAL SERVICES; PROVIDING FOR A STATEMENT OF MEDICAL DIRECTION; PROVIDING FOR AUTOMATIC RENEWAL

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN EMPLOYMENT CONTRACT WITH SHARON A. MALONE, M.D. AS LICENSED MEDICAL DIRECTOR FOR EMERGENCY MEDICAL SERVICES; PROVIDING FOR A STATEMENT OF MEDICAL DIRECTION; PROVIDING FOR AUTOMATIC RENEWAL.

CONSENT AGENDA.

RES 5367
MEDICAL SUPPLIES

RESOLUTION NO. 5367 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH BOUND TREE MEDICAL, LLC FOR EMS MEDICAL AND MEDICINAL SUPPLIES TO BE USED BY THE SHERMAN FIRE DEPARTMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH BOUND TREE MEDICAL, LLC FOR EMS MEDICAL AND MEDICINAL SUPPLIES TO BE USED BY THE SHERMAN FIRE DEPARTMENT.

CONSENT AGENDA.

RES 5368
GTUA BONDS

RESOLUTION NO. 5368 – RELATING TO GREATER TEXOMA UTILITY AUTHORITY CONTRACT REVENUE REFUNDING BONDS, SERIES 2009 (CITY OF SHERMAN PROJECT); APPROVING THE ISSUANCE THEREOF AND THE REFUNDING OF CERTAIN OUTSTANDING BONDS OF THE AUTHORITY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, RELATING TO GREATER TEXOMA UTILITY AUTHORITY CONTRACT REVENUE REFUNDING BONDS, SERIES 2009 (CITY OF SHERMAN PROJECT); APPROVING THE ISSUANCE THEREOF AND THE REFUNDING OF CERTAIN OUTSTANDING BONDS OF THE AUTHORITY.

Jerry Chapman, General Manager of the Greater Texoma Utility Authority, said Garry Kimball, the Financial Advisor for GTUA and the City of Sherman, had identified a potential savings for both entities by refunding the 1997 and 1998 bond series.

The financial markets are not as stable as they were and only two insurance firms still have an AAA rating. FSA has agreed to insure the project and since their bond rating may be downgraded, there is a need to move quickly to increase the value received by the refunding.

Morgan Keegan & Company, Inc. has agreed to buy the series and the sale will achieve a 3.05% present value savings, for a savings of approximately $160,000 to $170,000.

Mayor Magers recognized GTUA for the good job they are doing and for Mr. Kimball's good financial advice.

ACTION TAKEN.

> **Motion by Council Member Wacker to approve Resolution No. 5368, as presented. Second by Council Member Adami.**

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

REQ TO ADVERTISE

REQUEST TO ADVERTISE

PECAN GROVE PARK DEVELOPMENT – PHASE II

PECAN GROVE PARK PHASE II

The City Council approved the request to advertise for Phase II of the Pecan Grove Park Development Project, a $2.4 million project in the FY 2008-2009 Capital Improvement Program. The project will complete the park by including fishing accessibility, nature trails, picnic facilities, and amphitheatre, and other passive activities.
CONSENT AGENDA.

JANITORIAL CLEANING SERVICES

JANITORIAL SERVICES

The City Council approved the request to advertise for Janitorial Cleaning Services for certain public buildings. In the past, buildings maintained under this contract included the Sherman Public Library, Police Department, Municipal Airport, Public Works Lab, Senior Center, and Glennie O. Ham Center.
CONSENT AGENDA.

CITIZENS REQUESTS

CITIZENS REQUESTS

There were no citizens requests.

MEDIA QUESTIONS

MEDIA QUESTIONS

There were no media questions.

COUNCIL COMMENTS

COUNCIL COMMENTS

There were no Council comments.

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

EXECUTIVE SESSION

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

SECTION 551.074	**PERSONNEL MATTERS: CONSIDER THE QUALIFICATIONS, APPOINTMENT OR REMOVAL OF MEMBERS TO BOARDS AND COMMISSIONS: SHERMAN HOUSING AUTHORITY BOARD (2)**

Council Members decided not to go into Executive Session to consider appointments to the Sherman Housing Authority Board.

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS:
SHERMAN HOUSING AUTHORITY BOARD (2)

SHERMAN HOUSING AUTHORITY BOARD

ACTION TAKEN.

> **Motion by Deputy Mayor Smith to reappoint Barbara Williams and Beth Williams, to the Sherman Housing Authority Board for a term from June 1, 2009 to June 1, 2011. Second by Council Member Adami.**

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

ADJOURNMENT

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 5:36 p.m.

____
MAYOR

____
CITY CLERK

Presentation to City Council June 1 2009

Texoma Parks and Trails Alliance and Downtown Preservation and Revitalization jointly approved a petition and sponsored a Forum on giving priority to quality of life factors in the Comprehensive Master Plan. Signatures on that petition were collected at that Forum, the Earthday celebration at the Municipal Building, businesses on the Square, and from persons who read and supported the petition. This petition contains signatures from persons.

We appreciate very much the opportunity to present and discuss the petition and to urge the Council and Planning and Zoning Committee to develop an implementation plan which will recognize and give priority to the specific aspects noted in the petition.

We are very pleased and encouraged by the Consultant's recommendations in the Master Plan and that the Council and Planning and Zoning Commission has already begun discussing a plan for implementation. These are important steps in actually implementing the specific things the City can do to improve our quality of life. We therefore commend these steps.

Although the petition addresses a broad range of factors, I would like to focus on the goal of making Sherman green. Robert Minshew will then specifically address downtown Sherman.

We believe that making Sherman green should be given the highest priority because residents have clearly identified this as a high priority and because we believe that greening Sherman will produce great benefits relatively quickly and economically.

Sherman has made commendable progress in athletic facilities, hard surface walking trails, the splash pool, and traditional lawn like parks. Now we agree with the proposed Master Plan that priority should be given to increased green space and linkage of parks. In the words of the proposed Master Plan: "The recreation and social value of parks is increased when they are linked through a series of greenbelts along natural watercourses and drainage ways, trail and walkway/bikeways, corridors and other ties and connections. Just as it is necessary to plan for road networks and other public infrastructure in advance of growth, it is also important to plan and protect 'green infrastructure' in coordination with development." "Without advance planning these linkages will not happen naturally." "The current system would also benefit from more passive areas such as 'islands of tranquility'." "These natural and scenic areas, such as Baker Park, allow adults and children to experience nature." "A plan to acquire park and green space should be developed and implemented before growth. Flood plains offer great opportunities at low cost for passive, scenic natural green space."

As a first step and a case study in the use of flood plains as a key part of making Sherman green, Texoma Parks and Trails urges the City to immediately acquire and passively develop the flood plain below Dean Gilbert Lake east of Hwy 1417. Focus on this flood plain will also provide the City the opportunity to study and develop a strategy to address the increasing flooding which occurs as concrete replaces natural green space as is seen in the medical complex now being developed in this area.

The petition also commends the highest priority given to development regulations in a meeting of the Planning a Zoning Commission and the City Council and notes: "The failure to protect the College Park area from mega duplexes which have damaged its historical residential character and the minimal landscaping and green space in Town Center show the need for development regulations which both preserve a heritage and encourage beautiful and revitalized development of Sherman's historic core." Since there are so many present here who are concerned about flooding, we should also recognize that regulations should as a minimum protect against flooding.

A comment from the developer of an upscale gated community north of Hwy 120 brought home to me an economic appeal of keeping Sherman green. He said that he was attending the forum because quality of life in Sherman was vital to his ability to attract people to his development because they are seeking a community which is beautiful because it is green. For the sake of present and future residents, we must act now, before development occurs. Once development occurs, the costs of restoring quality of life becomes more costly and inadequate. Therefore we urge the City to both quickly acquire greenspace while it is still available and to develop regulations before more development occurs with wall to wall concrete. Robert Minshew will now discuss downtown Sherman.

We the undersigned petition the City of Sherman
To develop a plan to implement the quality of life factors
Of the Comprehensive Master Plan with priority given
To the factors listed below:

The consultant indicated that if the City did not use the Comprehensive Plan in the next year that the Plan would then be ineffective.

"When Sherman Residents were asked what priorities they had for their community in 20 years, a popular response was for the community to be more green." Some specific aspects included are:

"Whether it is more biking or walking opportunities or nature preserves, the system warrants a significant level of attention and commitment of resources."

"The recreation and social value of parks is increased when they are linked through a series of greenbelts along natural watercourses and drainage ways, trail and walkway/bikeway corridors and other ties and connections. Just as it is necessary to plan for road networks and other public infrastructure in advance of growth, it is also important to plan and protect "green infrastructure" in coordination with development." In the 2005 Master Survey walking and biking trails were given the highest priority. "Without advance planning, these linkages will not happen naturally." In addition to hard trails and athletic parks, "the current system would also benefit from more passive areas such as "islands of tranquility". These natural and scenic areas, such as Baker Park, allow adults and children to experience nature. A central green, park, or plaza would allow a meeting place. A plan to acquire park and green space should be developed and implemented before growth. Flood plains offer great opportunities at low cost for passive, scenic natural green space. Texoma Parks and Trails Alliance urges the immediate acquisition and passive development of the flood plain below Dean Gilbert Lake east of Hwy 1417.

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Name	Address	City	Phone	Email
PAT DANNEL	302 S. WALNUT	SHERMAN, TX	903/893.1171	patdannel @verizon.net
George Rowland	614 N McKown	Sherman	903 893-7281	[illegible]
Keith Carlisle	400 N. Travis	Sherman	903-813-3670	Kcarlisle@ aktexas.co
JARED TREDWAY	505 N. MCKOWN	SHERMAN	903.870.0007	[illegible]

Name	Address	Phone	E-mail
Roy L Vickrey	133 E Wall St Memory Music	(903)821-9038	Vickrey @ CableOne.Net
BRAD F. SPEARS	315 N. TRAVIS	(903)893-7275	"
GERALD S GIRDNER	TRAVIS PLACE MALL 529 S CROCKETT		
MICHAEL OWENS	1903 W. TAYLOR #103	903-744-5030	
Rick Perkins Perkins Freedom Bail Bonds	219 S Travis Sherman TX	903-893-4879	rickdperkins@cableone.net
Leigh Perkins	" " "	" " "	leighrperkins@hotmail.com
Candace Jarvis "Perfect Touch"	215 S. Travis	9038921929	cjarvissherman @aol.com
[illegible]	213 S. Travis	903-821-7627	
Donna J. Kumler	513 N. McLain Dr.	903-868-1780	
Becky Kenny	Sandi's 115 S. Travis	903-892-4240	
Kelly Baker	" "	"	" "
Danielle McBean	VivaRoxie S. Travis	903 893 2010	
Toni Chaffin	111 S. Travis	903-892-9133	
WAYNE GRIGG	109 S. TRAVIS	903-892-8003	
John Roden	109 S TRAVIS	903-815-5882	
Barbara Elmore	107 So Travis	903-819-2694	
Margaret Bagwell	115 N. Houston	903-893-8423	

Earth Day TPTA

Jim Murphy 601 E Main St, Whitesboro TX 76273 [signature]
Matt Spears 1311 S. Elm Sherman TX 75090 Matt
Sharon Siegfriest Dover Sherman Tx 75092
[signature] 1721 West McGee Tx 75092 Matt Offutt
Sarah Nell Evans 315 W. McGee TX 75092
John Z. West 315 W. McGee TX 75092
Don Schoree 1513 Yarborough TX 75092
Richard Ayala 105 E Atkinson TX 75092
Tony Maddox 374 Rolling Acres R Denison 75021
Daniel G. 501 John fielder DR Sherman
Sam Kripling 4817 Bello Vista ~~Ct~~ Sherman Tx 75090
Laurie Mealy 1109 N. Leslie Ave. Sherman
~~[signature]~~ 1708 E. Wells Sherman 75090
Dawn Scheller 190 Gin Rd Bowie TX 76230
Dale Maloney 1072 TATE CIR SHERMAN TX 75090
Doug MUERSCOUGH 413 GUN CLUB RD DENISON TX 75021
Jonathan Castro 1402 N. Harrison St. Sherman TX 75090
Ann Huston 516 N. Grand, Sherman, TX 75090 Ann Huston
Genevieve Lynn Walker ~~[illegible]~~ 1102 Elm Sherman, TX 75090 [signature]
SAM JONES 900 N. Grand Sherman, Tx 75090 Suite 61535
Tommy Shea 905 Western Hills Sherman Tx 75091
LEONARD BIK 3217 Burgandy LN. Sherman TX. 75090

Earth Day

George Diggs 677 Quail Run Sherman TX 903 821-4084
[illegible] 2341 Canyon Creek Sherman Tx 903 8935725
Jean Mackey 905 Patricia Dr Sherman, TX 903-893-0248
Don Mathis 1808 W. Washington Sherman 903-819-9438
Jennifer [illegible] 1377 FM 697 Sherman 75090 214 448-7072
Susan Verdeo 1531 N. Shannon Sherman Tx 903 868 4163
JAN FLETCHER 1050 HAZELWOOD RD SHERMAN TX 75092 903-892 839[illegible]
Ida + Randy Hudgins 1210 E. Lamar Sherman, Tx. 75090
Linda Hanson 1725 S. FM 1417, Sherman Tx 75092 903-960-31[illegible]
Stephanie Burnett 1443 Teal Lane Sherman 75092 903-619-0[illegible]48
[illegible] 3367 Lambert St Sherman Tx 75090 903-487-9663
Brandy Utz 1937 Timberline Ln Sherman 903-813-4879
Carol Noltensmeyer 5157 Luella Rd Sherman 903 814 8286
[illegible] Sides 1129 S. Crockett St. Sherman 903-892-2810
Chris Burton 2014 E Lamar St Sherman 903-436-4102
Don Vibrey 308 Forest Creek Dr Sherman 903-815-7543
Pat Scott 1411 Kessler Blvd Sherman 75092 903 813 8981
Katherine & Mitch Maire 225 N Friendship 75092 903 893 3980
Cathy Stoecker 1221 S. Crockett 75090 903 891-6580
Sarah Pierce 1303 S Crockett Sherman 75090
Adriana Keeton 4800 Seminole Rd Sherman TX 75092 903 718 0060
Charles Hall 408 Ridgeview Rd Sherman TX 75092 903-892-4817
Lisa Dickinson 2804 W. Houston, Sherman TX 75092 903-819-6708
Martha Kaufmann 3011 N Rickett " " 75092 903-814-0760

Earth Day

JENNIFER INNIS 1501 LILAC LANE PLANO, TX 75074 972-639-7900
Thomas Mathis 1800 W. Washington Sherman, TX 75090 903-819-9458
Faye Wedell, P.O. Box 812, Bonham, TX 75418
Lloyd W. Perkins, 1702 Ridgeway Dr, Sherman, Tx. 75092 (903-892-8303)
Dorothy O. Perkins, " " " " " " " " "

Gary Thomas P.O. Box 701 414 W. Main ST. Denison TX 75021 - (903) 624-1139
Terri Ballard 815 W. Texas Denison TX 75020 (903) 624-1231 6
Pat Daniel 302 S. Walnut Sherman, TX 75090 903/893-1171
8
Frank J. Rohm 1320 W. College Sherman, TX 75092 903/436-3296
Jon Goulding 5758 F.M. 120 W Denison, Tx. 214 368 0055
Amy Hoffman-Shehan 1503 S. Travis Sherman 903-892-4198
Larry Leavelson 2609 FairOaks Cir. Sherman 903-892-9065
James W. Kenny 3605 Bennett Sherman 903/892-4805
Andrew Horton 900 N Grand AVe suite 61533 Sherman 512 550 -6302
Paul Chandler
Carolyn Vickrey 308 Forest Creek Dr. Sherman TX 903-815-9457
Jeanette Mayfield 1119 S. Crockett St Sherman TX 9038926366
Lum E Mayfield 1119 S. CROCKETT ST SHERMAN
Richard Wright 6154 Vanderbilt Ave Dallas 75214 214.827.4246
Richard Wright

Name address Phone E-Mail

BILL JARVIS 2 VANCOUVER PL 903 813 0172 JARVISBILL@MSN.COM
Joyce JARVIS " " "
Sharon Krenek 2529 Nantucket Dr. 903-893-3314 mskrenek@cableone.ne
Pamela Cris [illegible] 2608 Nantucket (903)892-0064 pamelacris@hotmail.com
Randy & Jan Lindsey. #1 Vancouver Pl 903-893-5127 rlindsey2801@yahoo.com
Ron Jorann 2526 Nantucket Dr. 903-892-4051
D. KEITH HARRELL STEWARD 118 W. McGEE 903-821-8133
Michael Krenek 2529 Nantucket 903/893-3314
JIM GAY + RITA GAY 8 VANCOUVER PL. SHERMAN 903-893-1955
Trent Bass 7 Vancouver Pl Sherman 903-892-0255
I. J. Carlson 2525 Nantucket Dr Sherman TX 903 893 5618
Mary R Carlson 2525 Nantucket " " "
RM Selby 1931 TEXOMA PKWY. SHERMAN, TX 75090

Arthur Stoolfire 1509 Yarbrough Dr
Jerry Harrell 3020 Canyon Creek
[illegible] 1005 Western Hills
John Marlow 1410 Bentbrook Ln Sherman Tx
Neal Logan 1708 Oak Creek
Raymond Braun { 223 S. Travis Sherman
2601 Turtle Creek Dr
Bob [illegible] 223 S. TRAVIS SHERMAN
Val Wetherington 207 Travis Sherman
[illegible] 2341 Canyon Creek Dr Sherman
Elizabeth Cox

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Name	Address	City	Phone	Email
Peter Munson	123 S. Travis	Sherman	903 8938161	PK.Munson@MunsonLaw.com

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Name	Address	City	Phone	Email
BOB HARGESHEIMER	232 WILDWOOD LANE	WHITESBORO	903-564-3646	
Mary Manuel	210 Carriage Est. Rd.	Sherman, TX	903-892-2660	madmanuel@cableone.net
Sharon Younts	2313 Rex Cruse	Sherman, TX	903 893-2344	sha.younts@verizon.net
Betty Hargesheimer	232 Wildwood Ln.	Whitesboro		

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Keith Carlisle	400 N. Travis	Sherman	903-813-3670	kcarlisle@abtexas.com

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Name	Address	City	Phone	Email
Rick Perkins	215 S Travis	Sherman TX	903-893-4879	rrckdperkins


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SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. B.1

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5607
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Private Club (Sports Bar) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District at 401 South Sam Rayburn Freeway, Suite A, being 3.37 Acres in the Samuel Blagg Survey, Abstract No. 56 (Agasimaa, LLC, J.R. Patel, Owners, and Efrain Arroyo, Tenant); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed $2,000

Issue
To consider the request of Agasimaa, LLC, J.R. Patel (Owners) and Efrain Arroyo (Tenant) concerning the property located at 401 South Sam Rayburn Freeway, Suite A, being 3.37 acres in the Samuel Blagg Survey, Abstract No. 56, to allow a private club (sports bar) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District

Background
The property is located at 401 South Sam Rayburn Freeway, Suite A, between Center and Cherry Streets. The applicant would like to open a sports bar next to the hotel. The applicant was approved for a private club at this location in 2004.

Origination
Agasimaa, LLC, J.R. Patel (Owners) and Efrain Arroyo (Tenant)

Board Recommendation
At the May 19, 2009 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Attachments
Ordinance No. 5607
Location Map
Photograph
Site Plan
Letter Opposing the Request
P&Z Communication Form
Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager

ORDINANCE NO. 5607

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A PRIVATE CLUB (SPORTS BAR) IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1.2 (SAM RAYBURN) OVERLAY DISTRICT AT 401 SOUTH SAM RAYBURN FREEWAY, SUITE A, BEING 3.37 ACRES IN THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 (AGASIMAA, LLC, J.R. PATEL, OWNERS, AND EFRAIN ARROYO, TENANT); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

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

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

SECTION 1. That, from and after the passage of this ordinance, Agasimaa, LLC, J.R. Patel (Owners) and Efrain Arroyo (Tenant) are granted a Specific Use Permit to allow a private club (sports bar) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

> **SITUATED** in the City of Sherman, County of Grayson, State of Texas, being a part of the Samuel Blagg Survey, Abstract No. 56, being the same 3.37 acre tract of land conveyed by Julie McGehee, Substitute Trustee to The Federal Savings and Loan Insurance Corporation by Substitute Trustee's Deed dated February 7, 1989, recorded in Volume 2022, Page 697, Real Property Records, Grayson County, Texas, said 3.37 acre tract encompasses Lots Seven (7), Eight (8), and Nine (9) in Block One (1) of McBride's Addition to the City of Sherman, Texas as shown by plat of record in Volume 125, Page 53, Deed Records, Grayson

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

BEGINNING at a found ½ inch steel rod at the intersection of the East right-of-way line of U.S. Highway No. 75 known as Sam Rayburn Freeway with the South line of Cherry Street, said rod maintaining the Northwest corner of said 3.37 acre tract;

THENCE North 78 deg. 09 in. 31 sec. East, with the South line of Cherry Street, a distance of 329.51 feet to a found ½ inch steel rod at the intersection of the South line of Cherry Street with the West line of Austin Street, said rod maintaining the Northeast corner of said Lot 7;

THENCE South 14 deg. 22 min. 26 sec. East with the West line of Austin Street, a distance of 137.00 feet to a set ½ inch steel rod for the Southeast corner of said Lot 7, and on the North line of a 10 foot wide alley (not open) shown along the South Line of Block 1 of said McBride's Addition;

THENCE South 75 deg. 33 min. 42 sec. West, with the South line of Block 1, the North line of said alley, a distance of 150.00 feet to a chiseled "X" in concrete;

THENCE South 14 deg. 22 min. 26 sec. East, passing the south line of said alley, the Northwest corner of 0.259 acre tract of land described in Tract Two of Exhibit "A" in deed from Margaret Pack to Jennifer Pack Renshaw, dated June 2, 1989, recorded in Volume 2040, Page 703, Real Property Records, Grayson County, Texas, and continuing with the West line of said 0.259 acre tract, passing its Southwest corner, the Northwest corner of a 75 x 150 ft. tract of land conveyed by Eugenia I. Pond to Mack R. Broiles, et ux by deed dated January 13, 1982, recorded in Volume 1588, Page 276, Deed Records, Grayson County, Texas, and continuing with the West line of said 75 x 150 ft tract, passing its Southwest corner, the Northwest corner of a 50 x 150 ft. tract of land conveyed by Tim McCormick to Ronald C. Cummings, et ux by deed dated January 17, 1977, recorded in Volume 1374, Page 551, Deed Records, Grayson County, Texas, and continuing for a total distance of 212.90 feet to the Southwest corner of said 50 x 150 ft. tract;

THENCE North 75 deg. 33 min. 42 sec. East, a distance of 150.00 feet to a found 1/2 inch steel rod on the West line of Austin Street, said rod maintaining the Southeast corner of said 50 x 150 ft. tract;

THENCE South 14 deg. 22 min. 26 sec. East, with the West line of Austin Street, a distance of 228.71 feet to a found ½ inch steel rod maintaining the Northeast corner of the Sherman Democrat tract;

THENCE South 75 deg. 04 min. 14 sec. West, a distance of 273.83 feet to a found ½ inch steel rod maintaining the Northwest corner of said Sherman Democrat tract on the East right-of-way line of U.S. Highway 75;

THENCE in a Northerly direction with the East right-of-way line of U.S. Highway No. 75, the following calls and distances;

NORTH 22 deg. 14 min. 00 sec. West, a distance of 284.03 feet;
NORTH 87 deg. 46 min. 00 sec. East, a distance of 25.00 feet;
NORTH 22 deg. 14 min. 00 sec. West, a distance of 150.00 feet;
SOUTH 67 deg. 48 min. 00 sec. West, a distance of 25.00 feet;
NORTH 22 deg. 14 min. 00 sec. West, a distance of 130.90 feet;
NORTH 26 deg. 45 min. 00 sec. East, a distance of 32.80 feet
to the place of beginning and containing **3.37 acres of land more or less.**

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

Zoning

1. All aspects of the C-2 (General Commercial) District, the O-1.2 (Sam Rayburn) Overlay District and the Commercial Tree and Landscaping Ordinance must be followed.
2. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

SECTION 3. That this ordinance shall not become effective until entered upon the official zoning map as provided in Section 8, Subsection (5)(a), Ordinance No. 2280.

SECTION 4. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed $2,000.

SECTION 5. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 6. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the _____________ day of _________________, 2009.

ADOPTED on this the ________________ day of _________________, 2009.

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

CITY OF SHERMAN, TEXAS

BY: ______________________________

BILL MAGERS, MAYOR

ATTEST:

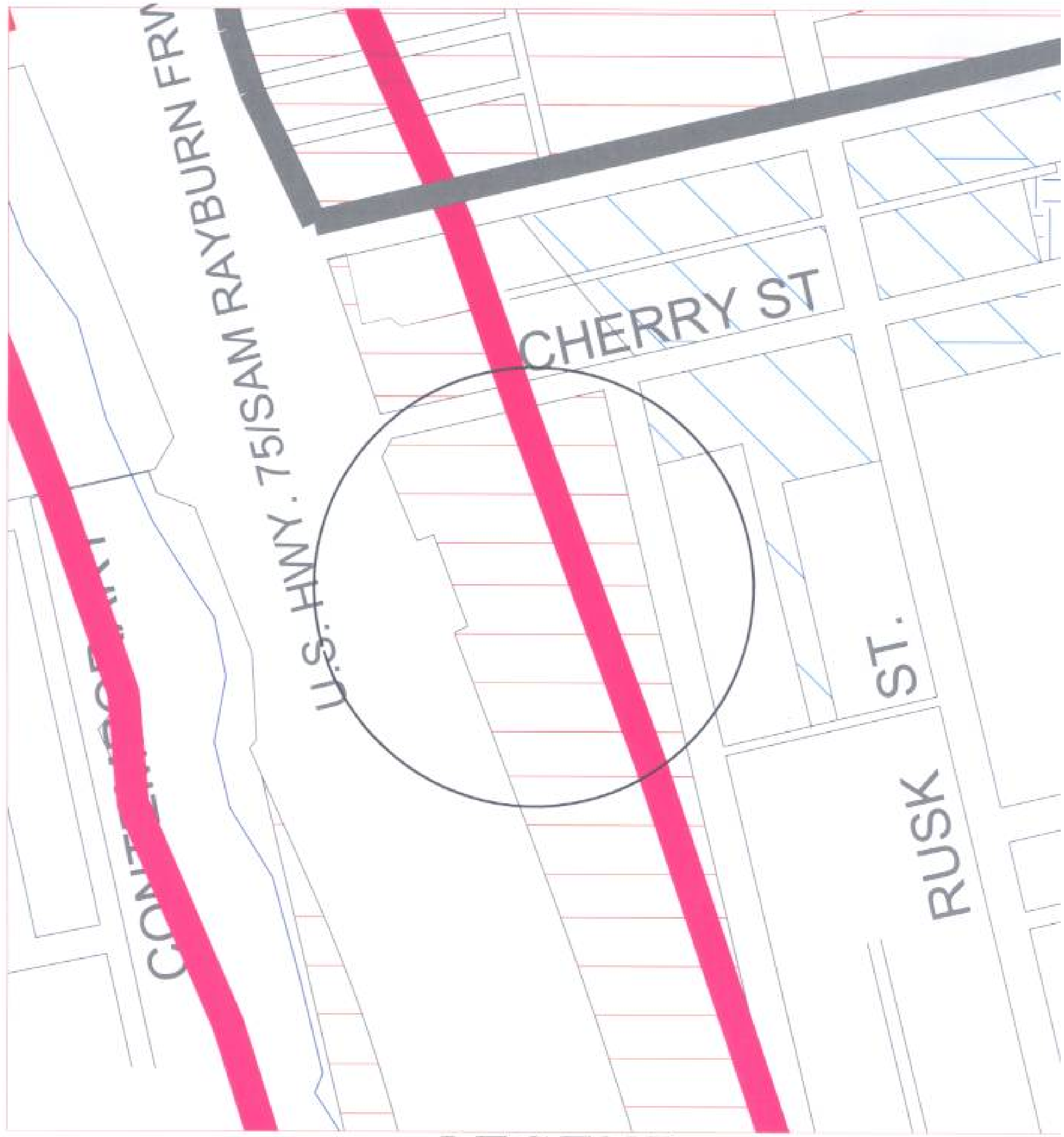
BY: ______________________________

LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________

BRANDON S. SHELBY,
CITY ATTORNEY



LEGEND

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

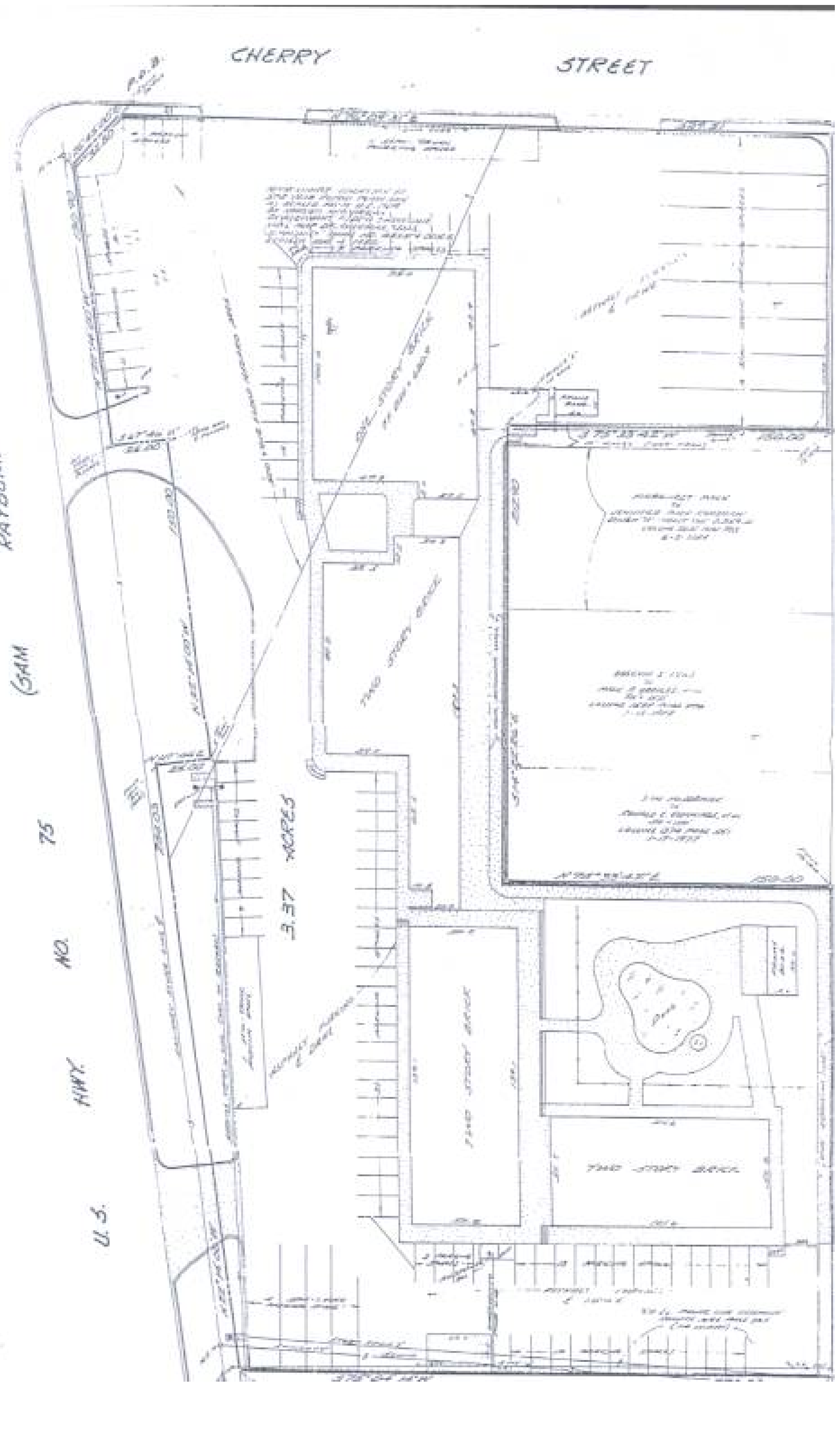
401 S. SAM RAYBURN

ENGINEERING DEPARTMENT

N


CHERRY
Sherman
US HWY 75
AUSTIN
KING

401 South Sam Rayburn Ste


CHERRY
STREET
U.S. HWY. NO. 75 (SAM RAYBURN FREEWAY)
3.37 ACRES
TWO STORY BRICK
TWO STORY BRICK
TWO STORY BRICK

MAY 19 REC'D

Kenneth & Carla Cripps
421 S. Austin
Sherman, Tx. 75090

Scott Shadden
Secretary, Planning & Zoning Board
P.O. Box 1106
Sherman, Tx. 75091-1106

Scott: Concerning 401 Sam Rayburn Frwy. Suite A.
Club & Bar

A few years ago they opened a mexican club at 401 Sam Rayburn Frwy Suite A. The first night they opened, their parking lot was full and our street (Austin St.) was lined both sides with cars. I had my pickup parked infront of myhouse where a car load of mexican men parked behind it. One of the men was urinating beside my truck while four others stood in my yard. I called the police and was told to put up No Trespassing signs. A short time later the police did show up at their parking lot where there was partying and drinking all over the parking lot. I think it closed after that weekend. This is a fairly quite neighborhood. I don't think the people here should have to deal with the overflow of a bar or club and the drinking & riff-raff it brings spilling over into our streets and yards.

Thanks, Kenneth Cripps
Kenneth Cripps

AGENDA ITEM #6

City of Sherman

Planning and Zoning Commission

Board of Adjustments

Agenda Communication Form

May 19, 2009

Jason Sofey, Chairman

401 South Sam Rayburn Freeway, Suite A
Being 3.37 acres in the Samuel Blagg Survey, Abstract No. 56
Specific Use Permit & Site Plan Approval

Requested Action/Proposed Use:
Planning and Zoning Commission
Specific Use Permit and site plan approval to allow a private club (sports bar) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District.

Background
The property is located at 401 South Sam Rayburn Freeway, Suite A; between Center and Cherry Streets. The applicant would like to open a sports bar only next to the hotel. The applicant was approved for a private club at this location in 2004.

Adjacent Zoning:
C-2 (General Commercial) District and R-1 (One Family Residential) District

Origination:
Agasimaa, LLC, J.R. Patel (Owners) and Efrain Arroyo (Tenant)

Master Plan Designation:
Retail/Commercial

Number of notices mailed:
29

Objections received:
0

Attachments:
Location map, Photographs, Site Plan, Staff Review Letter

Prepared by:	**Approved by:**
Patsy Reeves,	**Scott Shadden,**
Developmental Services Secretary	**Director of Developmental Services**

STAFF REVIEW LETTER

May 14, 2009

Efrain Arroyo
901 E. Lamar
Sherman, Texas 75090

Agasimaa LLC
J.R. Patel
401 S. Sam Rayburn
Sherman, Texas 75090

Dear Applicants:

The request for approval of a Specific Use Permit and site plan to allow a private club (sports bar) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District at 401 South Sam Rayburn Freeway is scheduled to be heard by the Planning and Zoning Board on May 19, 2009 in the City Council Chambers, City Hall at 220 West Mulberry. The meeting will begin at 5:00 P.M.

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

<u>Zoning</u>

1. All aspects of the C-2 (General Commercial) District, the O-1.2 (Sam Rayburn) Overlay District and the Commercial Tree and Landscaping Ordinance must be followed.
2. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

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

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

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

Respectfully,

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

cc: George Olson, City Manager
Mark Gibson, Director Utilities & Engineering Services
Brandon Shelby, City Attorney
Lisa Whitfield, Engineering & Development Coordinator
Danny Fuller, Fire Marshal
Jeff Miller, Director of Public Works

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. B.2

ADOPTION OF ORDINANCES
Consider Adoption of Ordinance Number: 5607

B.1 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5607
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Private Club (Sports Bar) in a C-2 (General Commercial) District and the O-1.2 (Sam Rayburn) Overlay District at 401 South Sam Rayburn Freeway, Suite A, being 3.37 Acres in the Samuel Blagg Survey, Abstract No. 56 (Agasimaa, LLC, J.R. Patel, Owners, and Efrain Arroyo, Tenant); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed $2,000

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. B.3

CONSENT AGENDA

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

C.1 **** RESOLUTION NO. 5369***
Amending the 2008-2009 Budget of the City of Sherman, Texas, Appropriating and Allocating Additional Funds for the Period of October 1, 2008, through September 30, 2009

C.5 **** RESOLUTION NO. 5373***
Authorizing Continued Participation with the Steering Committee of Cities Served by Oncor; Authorizing the Payment of Ten Cents ($0.10) Per Capita to the Steering Committee to Fund Regulatory and Related Activities Related to Oncor Electric Delivery

C.6 **** RESOLUTION NO. 5374***
Authorizing Execution of a Consulting Agreement with TriStem, Ltd. for Utility Bill Audit Services

C.7 **** RESOLUTION NO. 5375***
Authorizing Execution of a Remote Deposit Agreement and an Item Processing Agreement with Kenney Bank and Trust and iStream Financial Services, Inc. for the Remote Deposit and Electronic Disbursement of Payments made for the City of Sherman's Emergency Medical Services

C.8 **** RESOLUTION NO. 5376***
Authorizing the Expenditure of $3,000.00 in Matching Funds to the Texoma Council of Governments for Transportation Planning

C.9 **** RESOLUTION NO. 5377***
Awarding a Bid to and Authorizing Execution of a Contract with Lynn Vessels Construction, LLC to Rebuild Intersections on Taylor Street

D.3 **** OTHER BUSINESS***
Replat Approval of Lots 1 and 2, Block 1 of the O'Hanlon Ranch Addition, Phase 2; David Sprowl, Owner; Sartin and Associates, Inc., Surveyors (2925 and 2929 Sedalia Trail)

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.1

**** RESOLUTION NO. 5369***

Amending the 2008-2009 Budget of the City of Sherman, Texas, Appropriating and Allocating Additional Funds for the Period of October 1, 2008, through September 30, 2009

Issue

Appropriating additional funds to increase the fiscal year (FY) 2008-2009 budget for the General Fund by $40,560.00

Background

This budget amendment relates to providing additional appropriations for purchases to be made through Justice Assistance Grants (JAG) funds awarded to the City by the U.S. Department of Justice. Funds from this grant would be used to purchase technology equipment used to read license plates. Two separate agenda items are included in this agenda for acceptance of these grants as well.

Origination

Robby Hefton, Assistant City Manager/CFO

Financial Consideration

This budget amendment will increase total authorized expenditures by $40,560.00 for FY 2008-2009, but will be fully offset by the grant revenues expected from this grant, with a zero net effect to the City.

Staff Recommendation

The staff recommends approval of this resolution.

Alternatives

The Council could opt not to accept the grants and to not approve this proposed budget amendment.

Attachments

Resolution No. 5369
Budget Summary for General Fund

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5369

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE 2008-2009 BUDGET OF THE CITY OF SHERMAN, TEXAS, APPROPRIATING AND ALLOCATING ADDITIONAL FUNDS FOR THE PERIOD OF OCTOBER 1, 2008, THROUGH SEPTEMBER 30, 2009; 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 2008-2009 budget of the City of Sherman, Texas, be amended as shown below, appropriating and/or allocating the below-described funds in the amounts indicated:

1. General Fund: To appropriate an additional $40,560.00 for purchase of equipment through the U.S. Department of Justice's Justice Assistance Grant (JAG) program.

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

PASSED AND APPROVED on this the ________ day of ____________________, 2009.

CITY OF SHERMAN, TEXAS

BY: ________________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ________________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM:

BY: ________________________________
BRANDON S. SHELBY,
CITY ATTORNEY

General Fund
Summary of Revenues & Expenditures

	Amended Budget 2008-2009	Proposed Revision	Proposed 2008-2009
Beginning Fund Balance	$ 7,788,199		$ 5,683,150
Revenues			
Property Taxes	6,550,000		6,728,000
Sales Taxes	11,850,000		11,870,000
Franchise Taxes	3,663,000		3,992,000
Other Taxes	123,000		129,000
Fines & Forfeitures	923,000		1,000,000
Recreation	236,000		272,000
Permits & Licenses	438,000		261,700
Rentals	79,700		66,500
Cemetery Sales and Services	148,000		125,000
Sales & Services	382,060		478,560
Ambulance Services	1,750,000		1,300,000
Interest	210,000		125,000
Grants and Miscellaneous	540,809	40,560	519,639
Total Revenues	26,893,569	40,560	26,867,399
Transfers In	2,312,496		2,389,000
Total Receipts	29,206,065	40,560	29,256,399
Total Funds Available	36,994,264	40,560	34,939,549
Expenditures			
Personnel	20,086,240		20,086,240
Supplies	1,192,473		1,192,473
Maintenance	1,063,943		1,063,943
Utilities	1,484,592		1,484,592
Contract Wages	343,810		343,810
Computer Services	566,575		566,575
Debt Service	195,237		195,237
Contractual and Sundry Services	2,058,902		2,058,902
Vehicle Usage	1,225,971		1,225,971
Equipment and Buildings	937,908	40,560	978,468
Transfer Out to Debt Service	-		-
Transfer Out to Fleet Fund	1,000,000		1,000,000
Transfer Out to Ins Fund	766,283		766,283
Transfer Out to Comp Svc	60,000		60,000
Transfers Out- CIP Fund	-		-
Total Expenditures	30,981,934	40,560	31,022,494
Excess Receipts over Expenditures	(1,775,869)	-	(1,766,095)
Ending Fund Balance	$ 6,012,330	$ -	$ 3,917,055

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.2

RESOLUTION NO. 5370
Authorizing the Submission and Acceptance of a Grant for the Sherman Police Department under the Recovery Act: Justice Assistance Grant (JAG) Program distributed by the U.S. Department of Justice (Pass-Through from State) for the Purchase of an Automated License Plate Recognition (ALPR) System

Issue
The City of Sherman is authorized by the State of Texas, through the Texoma Council of Governments (TCOG), to seek and obtain a non-matching grant, expected to be $22,434.57 for the purchase of an Automated License Plate Recognition (ALPR) system. The ALPR system will be mounted on a patrol unit to be used for scanning license plates for wanted persons, stolen vehicles, missing or endangered persons, etc. A second ALPR system is being requested separately (see June 15th agenda item #C.3) to be purchased with JAG annual funds.

Background
Under this portion of the Recovery Act: JAG program, funds are distributed to the State of Texas - Office of the Governor, Criminal Justice Division, for proper disbursement. A portion of the funds allocated to the State by the Federal government is funneled to the local council of governments for dissemination based on eligibility criterion established. The City of Sherman, along with eight other law enforcement organizations in Grayson, Cooke, and Fannin Counties, has met the eligibility requirements for this grant. The City of Sherman's portion of this particular grant is expected to be $22,434.57.

Origination
Sherman Police Department

Financial Consideration
There is no matching funds requirement for this grant.

Staff Recommendation
Authorize the submission and acceptance of this grant.

Alternatives
Decline the non-matching grant money and turn it back over to TCOG for dissemination to other agencies.

Attachments
Resolution No. 5370

Prepared by:
Tom Watt, Chief of Police

Approved by:
George Olson, City Manager

RESOLUTION NO. 5370

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE SUBMISSION AND ACCEPTANCE OF A GRANT FOR THE SHERMAN POLICE DEPARTMENT UNDER THE RECOVERY ACT: JUSTICE ASSISTANCE GRANT (JAG) PROGRAM DISTRIBUTED BY THE U.S. DEPARTMENT OF JUSTICE (PASS-THROUGH FROM STATE) FOR THE PURCHASE OF AN AUTOMATED LICENSE PLATE RECOGNITION (ALPR) SYSTEM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman finds it in the best interest of its citizens to acquire grant funds to purchase an Automated License Plate Recognition (ALPR) system for the Sherman Police Department; and

WHEREAS, the City of Sherman understands that there is no applicable matching requirement for grant awards under the Recovery Act: Justice Assistance Grant (JAG) Program passed through the State of Texas - Office of the Governor, Criminal Justice Division; and

WHEREAS, the City of Sherman agrees that, in the event of loss or misuse of the Criminal Justice Division funds, the grant funds will be returned to the Criminal Justice Division in full; and

WHEREAS, the City Manager will be designated as the City of Sherman's authorized official, given the power to apply for, accept, reject, alter or terminate the grant on behalf of the City of Sherman;

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to submit the grant application to the Office of the Governor, Criminal Justice Division for and, once granted by the U.S. Department of Justice, to accept a Twenty-Two Thousand Four Hundred Thirty-Four Dollars and Fifty-Seven Cents ($22,434.57) grant under the JAG Program for the Sherman Police Department's ALPR system.

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

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

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
BRANDON S. SHELBY,
CITY ATTORNEY

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.3

RESOLUTION NO. 5371

Authorizing the Submission of a Joint Grant Application with the City of Denison for and the Acceptance of Grants under the Annual Justice Assistance Grant (JAG) Program distributed by the U.S. Department of Justice – CFDA #16.738

Issue

Seeking approval to submit a joint grant application with the City of Denison for the annual Justice Assistance Grant (JAG) program. The Sherman Police Department would use its portion of grant funds to purchase a second Automated License Plate Recognition (ALPR) system. The first ALPR system is expected to be purchased with Recovery Act: JAG funds passed through the State (see June 15th agenda item #C.2).

Background

The City of Sherman is involved with two main elements of funding for the JAG program this year: Recovery JAG and Annual JAG:

1) Recovery Act JAG awards:
   - Direct Program – Sherman and Denison applied jointly in May
   - Pass-through State Program – see 6/15/2009 agenda item #C.2
2) Annual JAG awards:
   - Direct Program – Sherman and Denison must apply jointly, this agenda item

The City of Sherman and the City of Denison continue to be identified as a disparate jurisdiction and are required to submit a joint grant application for the total allocation. The total eligible joint allocation is $29,483.00 to be distributed in the following manner: Grayson County - $0.00, City of Denison - $11,358.00, and City of Sherman - $18,125.00. Both the City of Sherman and the City of Denison will have separate projects or uses for their portion of funding. Awards are made in the first fiscal year of the appropriation and may be expended during the following three years, for a total of four grant period years.

Origination

Sherman Police Department and Sherman Grant Department

Financial Consideration

There is no local match requirement for this grant. The total eligible allocation will be awarded to the City of Sherman and the amount established by the DOJ will be passed through to the City of Denison.

Staff Recommendation

The staff recommends submitting the annual JAG application.

Alternatives

The Council could decline to take advantage of this grant opportunity.

Attachments

Resolution No. 5371

Prepared by:
Tom Watt, Police Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5371

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE SUBMISSION OF A JOINT GRANT APPLICATION WITH THE CITY OF DENISON FOR AND THE ACCEPTANCE OF GRANTS UNDER THE ANNUAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM DISTRIBUTED BY THE U.S. DEPARTMENT OF JUSTICE -– CFDA #16.738; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the U.S. Department of Justice is offering grants in support of a wide range of projects designed to reduce crime and improve the criminal and juvenile justice systems under the annual Justice Assistance Grant (JAG) Program – CFDA #16.738; and

WHEREAS, the City of Sherman desires to submit a joint grant application with the City of Denison under this program; and

WHEREAS, the City of Sherman understands that there is no matching requirement for grants awarded under the annual JAG Program; and

WHEREAS, the City of Sherman agrees that, in the event of loss or misuse of the JAG funds, the City of Sherman assures that the funds will be returned to the U.S. Department of Justice in full;

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to submit a joint application for and, once granted by the U. S. Department of Justice, to accept a Twenty-Nine Thousand Four Hundred Eighty-Three Dollars and No Cents ($29,483.00) grant under the annual JAG Program, said joint allocation to be distributed for specific purposes in the following manner: Eleven Thousand Three Hundred Fifty-Eight Dollars and No Cents ($11,358.00) to the City of Denison for its Law Enforcement - Safety and Security Supplies Program; and Eighteen Thousand One Hundred Twenty-Five Dollars and No Cents ($18,125.00) to the City of Sherman to purchase a second Automated License Plate Recognition (ALPR) system for its Sherman Police Department.

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

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

CITY OF SHERMAN, TEXAS

BY: ________________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ________________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ________________________________
BRANDON S. SHELBY,
CITY ATTORNEY

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.4

RESOLUTION NO. 5372
Authorizing Execution of an Interlocal Agreement between the City of Sherman and the City of Denison for Grant Funding to be Awarded by the U.S. Department of Justice under the Annual Justice Assistance Grant (JAG) Program – CFDA #16.738

Issue
Approving an Interlocal Agreement with the City of Denison for grant funding

Background
This is a companion resolution to item #C.3 on the June 15th agenda. Execution of an Interlocal Agreement with the City of Denison is one of the required components of the joint grant application to be submitted under the U.S. Department of Justice's annual Justice Assistance Grant (JAG) Program. The total grant award would be $29,483.00 of which Denison's portion would be $11,358.00 to be used for their Law Enforcement - Safety and Security Supplies Program.

Origination
Sherman Police Department and Sherman Grant Program

Financial Consideration
Denison's portion of the total grant award would be passed through to them.

Staff Recommendation
The staff recommends approval of this Interlocal Agreement.

Attachments
Resolution No. 5372
Interlocal Agreement between the City of Sherman and the City of Denison

Prepared by:
Tom Watt, Police Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5372

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND THE CITY OF DENISON FOR GRANT FUNDING TO BE AWARDED BY THE U.S. DEPARTMENT OF JUSTICE UNDER THE ANNUAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM – CFDA #16.738; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Interlocal Agreement with the City of Denison for award of the Eleven Thousand Three Hundred Fifty-Eight Dollars and No Cents ($11,358.00) portion of a total Twenty-Nine Thousand Four Hundred Eighty-Three Dollars and No Cents ($29,483.00) annual Justice Assistance Grant, said $11,358.00 award to be expended specifically for the City of Denison's Law Enforcement - Safety and Security Supplies Program, in accordance with the terms and provisions of the contract document attached hereto and incorporated herein for all purposes.

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

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

CITY OF SHERMAN, TEXAS

ATTEST:

BY: ________________________________ **BY:** ________________________________

LINDA ASHBY, CITY CLERK **BILL MAGERS, MAYOR**

APPROVED AS TO FORM AND CONTENT:

BY: ________________________________

BRANDON S. SHELBY,
CITY ATTORNEY

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

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF SHERMAN, TEXAS
AND THE CITYOF DENISON, TEXAS

<u>JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD – CFDA 16.738</u>

THIS AGREEMENT is made and entered into this the _____ day of _____________, 2009, by and between the **CITY OF SHERMAN, TEXAS**, acting by and through its governing body, the City Council, hereinafter referred to as "SHERMAN", and the **CITY OF DENISON, TEXAS**, acting by and through its governing body, the City Council, hereinafter referred to as "DENISON", both of Grayson County, State of Texas,

W I T N E S S E T H:

WHEREAS, this Agreement is made under the authority of the Interlocal Cooperation Act, Sections 791.001-791.033, Texas Government Code; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement; and

WHEREAS, SHERMAN agrees to provide DENISON Eleven Thousand Three Hundred Fifty-Eight Dollars and No Cents ($11,358.00) from the annual Justice Assistance Grant (JAG) Program award for DENISON'S Law Enforcement - Safety and Security Supplies Program; and

WHEREAS, SHERMAN and DENISON believe it to be in their best interests to reallocate the JAG funds;

NOW, THEREFORE, SHERMAN and DENISON agree as follows:

<u>Section 1.</u> SHERMAN agrees to pay DENISON a total of Eleven Thousand Three Hundred Fifty-Eight Dollars and No Cents ($11,358.00) of annual JAG funds.

Section 2. DENISON agrees to use Eleven Thousand Three Hundred Fifty-Eight Dollars and No Cents ($11,358.00) for the Law Enforcement - Safety and Security Supplies Program to be expended during the following three (3) years, for a total of four (4) grant period years.

Section 3. DENISON agrees that, in the event of loss or misuse of the JAG Program Award funds, as determined by SHERMAN, DENISON assures that the funds will be returned to SHERMAN in full for return to the U.S. Department of Justice.

Section 4. Nothing in the performance of this Agreement shall impose any liability for claims against DENISON other than claims for which liability may be imposed by the Texas Tort Claims Act.

Section 5. Nothing in the performance of this Agreement shall impose any liability for claims against SHERMAN other than claims for which liability may be imposed by the Texas Tort Claims Act.

Section 6. Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 7. The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 8. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

Section 9. This Agreement is authorized under and governed by the laws of the State of Texas. Venue for any action arising under this Agreement shall lie in state district court, Grayson County, Texas.

Section 10. If, by reason of Force Majeure as hereinafter defined, either party to this Agreement shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the particulars of such Force Majeure to the other party within a reasonable time after the occurrence thereof. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and such party shall, in good faith, exercise its best efforts to remove and overcome such inability. The term "Force Majeure" as utilized in this Agreement shall mean and refer to Acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, or other natural disasters; arrest; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not necessarily within the control of the party claiming such inability.

Section 11. This Agreement is subject to all applicable federal, state and local laws, ordinances, rules and regulations, including but not limited to all provisions of SHERMAN'S Charter and Ordinances, as amended.

Section 12. The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

Section 13. It is expressly understood and agreed that, in the execution of this agreement, neither party waives, nor shall hereby be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising during the exercise of governmental powers and functions.

CITY OF SHERMAN, TEXAS	CITY OF DENISON, TEXAS
BY: ______________________	**BY:** ______________________
George Olson, City Manager	**Larry Cruise, City Manager**
ATTEST:	**ATTEST:**
BY: ______________________	**BY:** ______________________
Linda Ashby, City Clerk	**Julie Lollar, City Clerk**
APPROVED AS TO FORM:	**APPROVED AS TO FORM:**
BY: ______________________	**BY:** ______________________
Brandon S. Shelby, City Attorney	**Tom Akins, City Attorney**

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.5

**** RESOLUTION NO. 5373***

Authorizing Continued Participation with the Steering Committee of Cities Served by Oncor; Authorizing the Payment of Ten Cents ($0.10) Per Capita to the Steering Committee to Fund Regulatory and Related Activities Related to Oncor Electric Delivery

Issue

This resolution authorizes the continued participation with the Oncor Cities Steering Committee and authorizes the payment of the Committee's annual assessment.

Background

The City of Sherman is one of 150 member cities to comprise the Steering Committee of Cities Served by Oncor (formerly TXU). The Steering Committee has been the primary public interest advocate for electric utility regulation matters. In 2004, the Committee's activities caused TXU to make settlement payments above and beyond normal franchise payments to member cities. The City has received approximately $418,000.00 to date in additional payments from Oncor due to the Committee's efforts. The Steering Committee will have authority to act for members, with each member retaining the ability to opt out of any proposed rate case action.

Origination

Finance

Financial Consideration

A participation fee of ten cents ($0.10) per capita, based upon the City of Sherman's population figures reflected in the latest TML Directory of City Officials (37,623), is required totaling $3,762.30.

Staff Recommendation

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

Alternatives

The City Council could deny this resolution.

Attachments

Staff Report on Assessment Resolution for Steering Committee of Cities Served by Oncor
Resolution No. 5373
Oncor Cities Steering Committee 2008-2009 PUC Activities

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

STAFF REPORT ON ASSESSMENT RESOLUTION FOR STEERING COMMITTEE OF CITIES SERVED BY ONCOR

Purpose of the Resolution:

The City of Sherman is a member of a 150-member city coalition known as the Steering Committee of Cities Served by Oncor. The resolution approves the assessment of a ten cent ($0.10) *per capita* fee to fund the activities of the Steering Committee.

Why this Resolution is necessary:

The Steering Committee undertakes activities on behalf of municipalities for which it needs funding support from its members. Municipalities have original jurisdiction over the electric transmission and distribution rates and services within the city. The Steering Committee has been in existence since the late 1980s. It took on a formal structure in the early 1990s when cities served by TXU (since renamed as Oncor Electric Delivery Company) gave up their statutory right to rate case expense reimbursement in exchange for higher franchise fee payments. Empowered by city resolutions and funded by *per capita* assessments, the Steering Committee has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for nearly two decades.

In 2004, the Steering Committee coordinated the activities of 20 member cities that initiated an investigation of Oncor's wires rates. As a result of the Steering Committee's activities, the Company agreed to make settlement payments to the cities beginning in 2005. Settlement payments from Oncor will continue to be made annually through the entry of final order in the Company's pending rate case (expected on or before July 31, 2009).

The Steering Committee is actively involved in rate cases, appeals, rulemakings, and legislative efforts impacting the rates charged by Oncor Electric Delivery within the City. Steering Committee representation is also strong at ERCOT. It is possible that additional efforts will be necessary on new issues that arise during the year, and it is important that the Steering Committee be able to fund its participation on behalf of its member cities. A per capita assessment has historically been used, and is a fair method for the members to bear the burdens associated with the benefits received from that membership.

Explanation of “Be It Resolved” Paragraphs:

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

2. This paragraph authorizes payment of the City’s assessment to the Steering Committee in the amount of ten cents ($0.10) per capita, based on the population figure for the City as shown in the latest TML Directory of City Officials.

3. This paragraph requires notification to the Chair of the Steering Committee, Jay Doegey, that the City has adopted the Resolution.

Payment of Assessment

A copy of the resolution should be mailed with payment of the fee to Jay Doegey, Chair, Oncor Cities Steering Committee, c/o City Attorney’s Office, Mail Stop 63-0300, Post Office. Box 90231, Arlington, Texas 76004-3231. Checks should be made payable to: *Oncor Cities Steering Committee*.

RESOLUTION NO. 5373

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING CONTINUED PARTICIPATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR; AUTHORIZING THE PAYMENT OF TEN CENTS ($0.10) PER CAPITA TO THE STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ONCOR ELECTRIC DELIVERY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman is a regulatory authority under the Public Utility Regulatory Act (PURA) and has exclusive original jurisdiction over the rates and services of Oncor Electric Delivery Company (Oncor) within the municipal boundaries of the city; and

WHEREAS, the Steering Committee has historically intervened in Oncor (formerly known as TXU) rate proceedings and electric utility related rulemakings to protect the interests of municipalities and electric customers residing within municipal boundaries; and

WHEREAS, the Steering Committee is participating in Public Utility Commission dockets and projects, as well as court proceedings, affecting transmission and distribution utility rates; and

WHEREAS, the City is a member of the Steering Committee of Cities Served by Oncor; and

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

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

SECTION 1. That the City is authorized to continue its membership with the Steering Committee of Cities Served by Oncor to protect the interests of the City of Sherman and protect the interests of the customers of Oncor Electric Delivery residing and conducting business within the City limits.

SECTION 2. That the City is further authorized to pay its assessment to the Steering Committee in the amount of ten cents ($0.10) per capita based on the population figures for the City shown in the latest TML Directory of City Officials.

SECTION 3. That a certified copy of this resolution and the assessment payment check made payable to "Oncor Cities Steering Committee" shall be sent to:

Mr. Jay Doegey, Chair
Oncor Cities Steering Committee
c/o City Attorney's Office
Mail Stop 63-0300
P. O. Box 90231
Arlington, Texas 76004-3231.

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

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

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ___________________________________
LINDA ASHBY,
CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ___________________________________
BRANDON S. SHELBY,
CITY ATTORNEY

Lloyd Gosselink
ATTORNEYS AT LAW

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

Oncor Cities Steering Committee
2008 – 2009 PUC Activities

Current Major PUC Dockets, Projects and Rulemakings

PUC Docket No. 36958 – Oncor Application for 2010 Energy Efficiency Cost Recovery Factor

On May 1, Oncor filed a request for approval of a rider to collect $53,578,615 associated with energy efficiency programs in 2010. This amount is comprised of $44,270,530 in energy efficiency expenses forecasted for 2010, $331,945 in under-recovered costs from 2008 and a performance bonus of $8,976,140 for exceeding their 2008 goals. On May 5, the Steering Committee filed a motion to intervene and will be reviewing the filing to ensure that the Company has properly accounted for costs and has not included excess costs in their request.

PUC Docket No. 35546 - Compliance Filing Pursuant to the Commission's Order Issued in Docket No. 34077

On April 15, 2009, Oncor filed a compliance report related to their 2007 leveraged buyout case, Docket No. 34077. According to the filing, Oncor customers will receive $2 million in refunds due to the Company's failure to meet performance standards set out in the settlement. Retail electric providers have agreed to pass on the refunds to customers served on poorest performing feeders. In Docket No. 34077 the Steering Committee recommended higher penalties for failure to meet performance standards. Ultimately the parties agreed to those proposed by PUC Staff which limits the penalties to $2 million annually. According to the filing, larger refunds would be required had the $2 million limit not been in place. On or before May 6, 2009, the PUC Staff will file a recommendation on the compliance filing or propose a procedural schedule, if necessary.

PUC Docket Nos. 36412 / 36851 – ERCOT Nodal Market Implementation Surcharge

The Electric Reliability Council of Texas ("ERCOT") filed its application to increase the nodal market implementation interim surcharge on November 19, 2008. The Steering Committee intervened on November 26.

There is a long history behind the revised nodal market surcharge sought in this docket. The nodal transition project has been plagued with problems from the outset. ERCOT has mismanaged relationships with its key vendors, critical personnel have left the project to work for market participants, and Texas' nodal market includes some complexities not found in other markets.

Budget request revisions have reflected the troubled history of the program to transition to a nodal market. In 2004, a nodal market cost/benefit analysis commissioned by the Public Utility Commission of Texas ("PUC" or "Commission") determined that the cost to implement a nodal market in ERCOT would be between $54 million and $76 million, and that the nodal market would be operational by the end of 2006. In August 2006, ERCOT asked for a surcharge based upon a preliminary budget of $125 million. ERCOT increased the budget request to $263 million in May 2007 and set January 2009 as the start of the nodal market. In early 2008, the budget was revised again, increasing to $319 million.

ERCOT President and CEO Bob Kahn filed supplemental testimony on November 26, 2008, indicating that the new budget for the nodal market implementation project is now $660 million. In the filing, Mr. Kahn reported that the new "go live" date for the nodal market will be sometime in December of 2010, nearly two years later than the PUC's originally-ordered date.

The nodal budget and schedule announced by the ERCOT CEO are preliminary only, and could change as the ERCOT stakeholder process reviews them. Proposed legislation currently pending in the Texas House of Representatives would require that the nodal market surcharge would be levied only upon generators, the expected beneficiaries and strongest proponents of the nodal market.

A non-unanimous settlement was filed on January 5, 2009. Under the agreement, ERCOT would be authorized to implement a higher interim nodal surcharge. Due to concerns over the rapidly increasing cost of nodal transition and lack of supporting documentation, the Steering Committee did not sign the settlement. On February 27, the PUC authorized ERCOT to continue collecting the $.169/MWh interim surcharge through March 31, 2009. However, the PUC denied the proposal to increase the charge and deferred taking action on the settlement. They also directed ERCOT to file their permanent nodal-market fee case no later than March 31, 2009.

As directed, on March 31, 2009 ERCOT filed its permanent nodal fee request. It has been assigned Docket No. 36851. The Steering Committee filed a motion to intervene on April 2 and submitted its first set of discovery on April 20. No schedule has been established at this time.

PUC Project No. 36375 – RFPs for a Cost-Benefit Analysis of the Deployment of Utility Infrastructure Upgrades and Storm Hardening

This case involves the PUC's investigation into methods for upgrading the electrical system in order to reduce power outages during storms. In order to assist it, the Commission hired Quanta Technology to prepare a cost-benefit analysis. At the April 9 Open Meeting, Quanta presented their report: *Cost-Benefit Analysis of the Deployment of Utility Infrastructure Upgrades and Storm Hardening Programs*. The report made the following recommendations including improving post-storm data collection, removal of hazardous trees, and targeted distribution hardening. The Steering Committee is following this project and will participate if the Commission seeks input from interested parties.

PUC Docket No. 35717 – Oncor Rate Case

Oncor filed a Statement of Intent to Increase Rates on June 27, 2008 with all cities in its service area that retain original jurisdiction. If Oncor's request is approved as granted, annual residential rates will increase by $61 for the average residential customer using 1300 kWh per month. Some of the major issues include depreciation, rate of return, rate design and cost allocation, affiliate expenses, and consistency with various commitments made by the Company in its settlement with the Steering Committee and the TXU leveraged buyout settlement.

All Steering Committee cities with original jurisdiction took action to deny Oncor's requested $275 million rate increase. Some preliminary discussions about the possibility of settling the rate case were held in October 2008. The Steering Committee was asked to lead the effort for the intervenors. No real progress was made because the Company's representatives indicated that Oncor was not willing to settle for a rate decrease or a change in current rates.

On November 26, 2008, 22 intervenor witnesses on behalf of 11 parties filed testimony in response to the Company's application. The Steering Committee was the only party to present a comprehensive analysis of the Company's application. In fact, of the 18 non-city witnesses that presented testimony, 13 addressed cost allocation, rate design, and energy efficiency issues. Cities presented the testimony of four witnesses who, together, recommended $429 million in adjustments to Oncor's request. If adopted, this would result in a $175 million reduction to the Company's existing rates. Highlights include significant adjustments associated with taxes ($100 million), depreciation rates ($71 million), and return ($47 million). PUC Staff filed testimony in December. Although the Staff did not file a comprehensive case, it filed testimony supporting several recommendations similar to those offered by Steering Committee witnesses. In total, the PUC Staff recommended a reduction to current rates of approximately $102,000,000. Likewise, although they address only a limited number of issues, the Office of Public Utility Counsel and industrial customers proposed significant adjustments to the Company's case further supporting Cities' position.

The hearing was held January 13 through February 9, 2009. Final briefing was completed by parties in late March. The PUC is expected to render its decision at its July 2 Open Meeting.

PUC Docket No. 33687 - Entergy Transition to Competition

After a lengthy abatement, the Commission is again moving forward on Entergy's transition to competition case. At issue is whether Entergy should become a part of ERCOT or the Southwest Power Pool ("SPP") as an initial step towards moving into deregulation. Entergy estimates that entering ERCOT would cost approximately $1 billion with the cost being borne by all customers within ERCOT. In late January, SPP submitted a report estimating the costs and benefits of Entergy entering ERCOT. On February 3, a technical conference was held to discuss the report. Entergy presented a formal response on February 27. Additional technical conferences occurred on February 17 and March 24. On May 12, a prehearing will be held to establish a new procedural schedule. The Steering Committee has intervened in this proceeding and will be advocating to keep Entergy from entering ERCOT unless it can be demonstrated that there are significant benefits to ERCOT customers.

PUC Docket Nos. 33672/35665 – Designation of Competitive Renewable Energy Zones ("CREZs") and Selection of Transmission Service Providers

In the first phase of this project, the Commission identified zones deemed "most suitable" for locating future wind generation. Specifically, the Commission approved five zones located in West Texas and the Panhandle.

In the second phase of the project, the Commission reviewed plans to construct transmission capacity necessary to deliver electricity generated in the CREZs to the rest of ERCOT. The Steering Committee participated in the contested case proceeding held before the Commissioners on

June 11-12, 2008. ERCOT proposed five transmission scenarios associated with different amounts of renewable energy to be exported from the CREZs. According to the Steering Committee's expert witness, the largest and most expensive of these scenarios, Scenario 3, involved approximately $10 billion in additional transmission investment. The Steering Committee filed testimony recommending that the PUC proceed cautiously and adopt a scenario with a cost impact no greater than Scenario 1B ($5.9 billion, 12,053 MWs of renewable generation).

At its July 17 Open Meeting, the PUC selected Transmission Scenario 2 to connect CREZs with the rest of the state. Rate experts project that Scenario 2 will add approximately $8 billion to the state's transmission system and will cost an average residential consumer $7 per month.

The Commissioners were responsive to the issues raised by the Steering Committee. In supporting Scenario 2, Chairman Smitherman and Commissioner Hudson both cited concerns raised by the Steering Committee and others with Scenarios 3 and 4. Commissioner Parsley dissented from the decision to approve Scenario 2. She preferred adopting a scenario smaller than Scenario 2 or requiring ERCOT to develop a new, smaller scenario. In explaining her dissenting vote, Commissioner Parsley relied upon positions taken by the Steering Committee throughout the case. She was particularly concerned about whether the larger CREZ scenarios would affect overall system reliability and whether connecting the Panhandle CREZs (which lie outside the boundary of ERCOT) to the grid could subject ERCOT to federal jurisdiction.

The third phase of this project – to select the transmission providers that will be responsible for building the transmission infrastructure consistent with Scenario 2 – began last summer. The PUC held a four-day hearing at the beginning of December 2008 in which parties presented their cases. The hearing was remarkable for the volume of back-room dealing that occurred. Although numerous settlement talks took place and several non-unanimous agreements were filed, no comprehensive settlement was reached.

The Steering Committee participated in the December hearing. Cities' primary interest is strict compliance with the statutory requirement that the selection process be done in a cost-effective manner that ensures the lines are built by entities capable of constructing and maintaining the lines. Cities have advocated for the selection of transmission providers that provide firm cost estimates prior to being selected.

At its January 29 Open Meeting, the Commission assigned the construction of CREZ facilities to eight companies (Cross Texas, ETT, LCRA, Lone Star, Oncor, Sharyland, STEC and WETT). Currently, the Commission is working to address several unresolved issues such as priority construction and clarification as to who will construct certain projects.

Other Active PUC Projects/Rulemakings

PUC Project No. 35769 – Rulemaking Relating to Providers of Last Resort ("POLR")

The Steering Committee submitted comments in response to questions posed in the Proposal for Publication of Amendment to §25.43 issued by the PUC on November 13, 2008. The comments pointed out that from a consumer perspective, the POLR process appears dysfunctional. Therefore, a complete re-thinking of the POLR pricing and process is warranted.

The Steering Committee expressed appreciation of the direction and intent of the Commission's proposed rule. The preamble reflects an intent to achieve more reasonable pricing of POLR service. However, the maximum rate allowed by the proposed pricing formula for Large Service Providers will still be excessive. An alternative and more reasonable approach to establishing a maximum POLR rate should be based upon prevailing retail market prices for the month, rather than the formula used in the rule. On January 5, the Steering Committee filed reply comments addressing issues raised by other parties. On April 23, 2009, the Commission directed its Staff to modify portions of the proposed rule and to bring it back for consideration at the next open meeting.

PUC Project No. 34610 – Advanced Metering

Representatives for the Steering Committee have participated in this project concerning advanced metering. As the rulemaking has continued, often via numerous weekly workshops to discuss detailed technical aspects of advanced metering, the Steering Committee has taken a monitoring status. ERCOT filed its AMS Study with the Commission on November 24, 2008. Workshops addressing the AMS Study, technical and policy issues continue to be held. The next workshop is scheduled for May 12.

PUC Project No. 34577 – Excess Development in CREZs

In 2007, the PUC held a workshop regarding excess development in the CREZs. In August 2008, the PUC asked parties to file comments regarding dispatch of generation in the event that the CREZ is overbuilt. The Steering Committee filed comments September 29, 2008 urging the Commission to reject proposals for administrative or regulatory mechanisms to determine which CREZ generation is dispatched in the event that a CREZ becomes overbuilt. On April 17, the PUC held a workshop to receive information from wind developers on their financial commitment and how that is interrelated with dispatch priority. The Commission has expressed interest in establishing specific dates for accomplishing the tasks in this project. At the April 9 Open Meeting, an ERCOT representative indicated that ERCOT has formed a working group to include all issues in a Texas Renewables Integration Plan. Currently, the Commission is seeking legal briefs addressing dispatch priority issues. The Steering Committee will file a brief addressing the legal questions on May 8.

Inactive PUC Projects

PUC Project No. 35855 – Request for Comments on the Use of Demand Ratchets

The PUC Staff initiated this project in order to receive comments from interested parties regarding the use of demand ratchets as a tool in the rate setting process for electric utilities. In its comments, the Steering Committee described, among other issues, various weaknesses and impacts of ratchets as a rate design tool.

The PUC Staff noted that this is not a formal notice of a proposed rulemaking. However, the parties' responses and comments to the proposed questions will assist the Commission in developing Commission policies or determining the necessity for a related rulemaking in the future. The Commission has taken no further action in this docket but is expected to address the issue in its deliberation of the Oncor rate case where the issue was litigated. This issue is also addressed in legislation filed by Rep. Pitts (HB 230).

PUC Project No. 35792 – Rulemaking Relating to the Goal for Renewable Energy

On July 28, 2008, the PUC issued a Request for Comments on this rulemaking. The issue is whether the Commission should adopt additional incentives for non-wind renewable generation, and if so, at what level. Comments filed by the Steering Committee supported the development of all forms of renewable generation in a competitive and technology-neutral manner, and expressed the view that the rules currently provide significant incentives for non-wind renewable energy, and at this point it would be premature to significantly change those rules. The Commission has taken no further action in this docket. Several bills are currently pending in the legislature to mandate increased non-wind renewable energy investment.

PUC Project No. 35533 – Prepaid Service Rulemaking

The Commission initiated its second rulemaking regarding prepaid service in April 2008. The Commission indicated at a recent Open Meeting that there have been some problems and customer complaints regarding prepaid service. The Steering Committee filed comments on May 27 urging the PUC not to adopt rules that favor one type of retail service over others and also not to promulgate new rules to promote or facilitate prepaid services. The PUC has not taken any additional action on this rulemaking.

PUC Project No. 35165 – Forum on Retail Electric Provider ("REP") Issues

The Steering Committee participated in the forum on January 29, 2008 in which the parties discussed a list of 23 REP issues ranging from the definition of a small commercial customer to a review of whether consumer protection rules are adequate when multiple parties are involved. No further Commission action has been taken.

Closed PUC Dockets and Projects

PUC Project No. 35785 – ERCOT Fee Case

The Steering Committee intervened in the case on June 19, 2008. ERCOT withdrew its application on September 16, 2008.

PUC Project No. 35768 – Rulemaking Relating to Retail Electric Providers Disclosures to Customers

On July 9, 2008, the PUC issued a Request for Comments on the Revised Strawman Rule 25.475. The Steering Committee filed comments in July that stressed the importance of ensuring that the rule include a straightforward provision prohibiting a REP from changing the term or price of a fixed-price contract. Staff filed a Proposal for Publication on August 18. The proposed rule addressed the Steering Committee's concerns regarding fixed rate contracts. The Steering Committee filed comments regarding the revised rule in October that addressed areas of continued concern, including the "negative option" language present in some contracts, which is increasingly risky for consumers. At its February 20 Open Meeting, the PUC adopted a new rule addressing several of the comments raised by the Steering Committee.

PUC Project No. 35767 – Rulemaking Relating to the Certification of REPs

This project was initiated in June 2008 by the Commission. Parties were asked to file responses to various questions about improving the quality of REPs participating in the market, improving the quality of information available to assess the financial health of REPs participating in the market, and protecting customer deposits and financial integrity of transmission and distribution utilities. The Steering Committee filed responses to the questions in August and attended a workshop held at the PUC on August 15. The Steering Committee filed comments in December in response to questions filed by the Commission. The Steering Committee's comments generally support the Commission's goal of strengthening the retail electric market through changes in REP certification requirements and also stress customer protection in the REP certification rules. The Steering Committee filed reply comments on December 22 to address specific areas of concern, which arose out of other parties comments, such as ensuring that REPs maintain sufficient financial resources and ensuring that customer deposits are protected. The PUC adopted a new rule at its April 23, 2009 Open Meeting.

PUC Docket No. 35718 – Oncor Advanced Metering

Oncor filed a petition on May 28, 2008, requesting Commission approval of its Advanced Metering System ("AMS") Deployment Plan and AMS Surcharge for $1 billion associated with the deployment of more than 3 million meters by 2012. Oncor alleged that these costs related to the advanced meters, communication technologies, back-office systems, its share of a common AMS web portal, operation and maintenance, applicable taxes, customer education, in-home monitors for low-income customers, and severance related to meter readers and installers. Oncor's filing accounted for $179 million in total savings associated with reduced meter reading charges.

Oncor initially proposed a monthly infrastructure surcharge of $2.29 per month for residential customers and an average of $3.90 per month for non-residential customers beginning January 1, 2009. The surcharge will be collected every month for the next eleven years.

Because the Company is statutorily entitled to levy a surcharge to recover its AMS costs, the purpose of this docket was to determine whether Oncor's AMS plan complied with the Commission's rule and whether costs included in the surcharge were justified. The Steering Committee reviewed Oncor's request and was the only party pursuing issues that reduced the cost of the proposed surcharge.

Pursuant to settlement negotiations, Oncor agreed to reduce its requested recovery to account for cost issues raised by the Steering Committee. In addition, at the behest of Commission Staff and low-income customers' advocates, Oncor will increase funds available for customer education programs and for programs that ensure that low-income customers will receive the benefits of advanced meters.

The PUC filed an Order approving the agreement on August 29, 2008. In January, Oncor began assessing a monthly AMS surcharge of $2.21 for residential customers (non-residential customers pay an average of $3.78 per month).

PUC Docket No. 35634 – Oncor Energy Efficiency Cost Recovery Factor ("EECRF") Filing

On June 27, 2008, Oncor filed its EECRF request. The Steering Committee participated in discovery and filed testimony, arguing that Oncor did not properly calculate its EECRF because it did not account for load growth. Due to the lack of disputed facts, briefs were filed by the parties addressing the load growth issue. The PUC issued a Final Order approving Oncor's EECRF on October 31.

PUC Docket No. 35546 – Compliance Filing of Oncor Pursuant to Docket No. 34077

On April 7, 2008, Oncor initiated this docket in order to comply with the Order and Stipulation in Docket No. 34077. The Steering Committee intervened and filed comments on May 7. In its comments, the Steering Committee requested a change in the wording to reflect the language embodied in the Stipulation. On August 1, the Commission issued an Order approving Oncor's compliance plan as altered according to Steering Committee comments.

PUC Docket No. 35280 – Petition of Oncor for Good Cause Exception to Rules 25.214 and 25.130

A representative for the Steering Committee attended a workshop regarding this project and expressed concern with Oncor's request, particularly as it related to advanced meters. In essence, Oncor sought an exception to the recently adopted advanced metering rule under which the Company can deploy a limited number of meters that do not meet the rule requirements. Oncor sought to increase the number of non-compliant meters it could deploy and for which it could nevertheless receive reimbursement. The Steering Committee opposed this exception and retail electric providers did not indicate a high level of enthusiasm regarding the proposition. Ultimately, the Company withdrew its petition and the case has been dismissed.

PUC Project No. 34890 – Rulemaking Relating to Net Metering and Interconnection of Distributed Generation

On November 27, 2007, the PUC filed a Request for Comments in this project. A representative for the Steering Committee attended a workshop and filed initial comments in December 2007. In its comments, the Steering Committee indicated support for distributed renewable generation, which offers consumers additional choices in power supply, increases fuel diversity in ERCOT, and poses a likely environmental benefit.

On April 24, 2008, the PUC issued an Order adopting the new Rule 25.213, and on June 6, the PUC filed a Proposal for Publication of New 25.217 and an Amended 25.242. This rulemaking was discussed at the December 4, 2008 Open Meeting and the proposed new and amended rules were adopted at the December 18 Open Meeting.

PUC Project No. 34888 – Nuclear Decommissioning Rule

Commission Staff initiated this project in October 2007. The Steering Committee participated in the November workshop, as well as filed initial and reply comments early last year. At the February 22, 2008 Open Meeting, the Commission unanimously adopted the rule.

In its comments, the Steering Committee noted that the proposed rule generally complies with the requirements of the Public Utility Regulatory Act ("PURA"). The comments also addressed prepayment of decommissioning funds by retail customers and noted concern that the proposed rule does not clearly allow for participation in dockets initiated to review power generation companies' applications setting annual decommissioning funding.

The rule ultimately adopted by the Commission on February 28, 2008 included language regarding the repayment of funds contributed by retail customers while the nuclear generating unit is operational. Consistent with the Steering Committee's recommendation, the rule makes repayment contingent upon the conclusion of decommissioning.

PUC Docket No. 34077 – Joint Report and Application of Oncor and Texas Energy Future Holdings

In 2007, Oncor and Texas Energy Future Holdings filed a joint application with the PUC to approve certain aspects of the leveraged buyout of TXU. The Steering Committee was extensively involved in this proceeding, which was ultimately resolved by a non-unanimous stipulation. The Steering Committee was a party to the non-unanimous stipulation. On February 22, 2008, the Commission approved the application as amended by a Non-unanimous Stipulation Agreement. Nucor Steel appealed to the district court and the Steering Committee intervened on July 21, 2008. No further action has taken place regarding the appeal.

PUC Docket No. 34061 – TXU Notice of Violation ("NOV")

This docket was initiated on March 28, 2007 when Staff filed an enforcement action against Luminant for improper bidding behavior during the summer of 2005, resulting in an estimated $70 million increase in costs to purchasers of balancing energy and $19.6 million in estimated profits for TXU. Staff recommended $140 million in administrative penalties and $70 million in refunds.

In September 2007, PUC Staff found an error in the computer model that formed the basis of the NOV, and revised its claim to $171 million in administrative penalties. In the revised NOV, Staff claims that Luminant raised prices 11.4% for a profit of $18.8 million and a total cost to the market of $57 million. Staff arrived at its revised $171 million number by multiplying the total cost to the market ($57 million) by three.

In the proceeding to consider TXU's (now Luminant's) manipulation of the wholesale power market in 2006, the Administrative Law Judge ("ALJ") issued a ruling limiting the penalty that the PUC can seek against the Company. The ALJ ruled that the "act" at the heart of the offense is the submission of a set of manipulative bids, rather than the submission of each MW or MWh in an abusive manner. Because the law in effect at the time capped the penalty that the PUC could seek at $5,000 per act, this decision drastically reduced the penalty that Luminant could be forced to pay.

Commission Staff appealed the ALJ's decision to the Commissioners. On August 14, 2008, the Commission granted the appeal in order to get more information. The parties then requested a 60 day abeyance to discuss settlement. On November 26, the PUC Staff announced that a settlement had been reached. The settlement is for less than the amount that Luminant profited. It is not clear why Staff would agree to drop its NOV against Luminant for an amount less than what Luminant profited by its wrongdoing. As part of the settlement, Staff also indicated that it believes a "Voluntary Mitigation Plan" written by Luminant and approved by the PUC in 2007, but later invalidated by a district court, continues to be a safe harbor for the Company. In essence, so long as Luminant functions within the plan, Staff believes that Luminant is operating in the market appropriately. This is a large concession, and again it is not clear why Staff felt compelled to make it. Staff's settlement calls into serious question whether, in the hands of the PUC, the law's prohibitions against market power abuse and market power manipulation are meaningful.

PUC Staff and TXU filed a Joint Motion for Commission Approval of Settlement Agreement, and on December 18, the settlement was approved. Several bills are currently pending this session that address market power abuse. Bills have been voted out of House and Senate committees that would allow the PUC to require refunds in cases where market manipulation/market power abuse is found to have occurred.

PUC Project No. 33487 – Energy Efficiency Rules

At its March 26, 2008 Open Meeting, the Commission adopted amendments to the energy efficiency rules and templates. The Commission opened the project in November 2006 and the Steering Committee filed comments in December 2007, indicating that although it was generally supportive of the Commission's effort regarding energy efficiency programs, the proposed energy efficiency initiatives, cost recovery provisions, and electric utility performance bonus provisions were overly generous and likely to lead to inflated estimates of energy efficiency impacts and excessive spending on programs. Overspending would erode any net benefit that might accrue to customers. The Steering Committee indicated that it preferred a rule that focused on programs that have proven benefits and verified measurable net economic benefits to customers.

The rule adopted by the Commission increases utilities' energy efficiency goals from 10% of growth in demand in 2008, to 15% by January 2009, and 20% by January 2010. In addition, the Commission agreed with the Steering Committee that performance bonuses should be included in the annual reports and that customer savings should be reported by program and customer class. The Commission ultimately included provisions effectuating Steering Committee recommendations.

Monitored Projects

- **Project No. 35770 – PUC Report on Advanced Metering**
- **Project No. 35289 – House Committee on Generation**
- **Project No. 35466 – Earnings Monitoring Report**
- **Project No. 35628 – Industrial Opt-Out Renewables**
- **Project No. 35631 – Scope of Competition Report**
- **Project No. 36234 – Oncor AMS Low-Income Program**

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.6

**** RESOLUTION NO. 5374***
Authorizing Execution of a Consulting Agreement with TriStem, Ltd. for Utility Bill Audit Services

Issue
To consider approval of a resolution to authorize the execution of a Consulting Agreement with TriStem, Ltd. to conduct an audit and study of the City of Sherman's prior utility bills

Background
The City currently spends over $4.0 million per year on utilities. TriStem, Ltd. will audit past electric and natural gas bills, including street light bills, to determine if the amounts paid contain such items as overcharges, billing errors, or rate adjustments. TriStem's fee is forty-nine percent (49%) of actual refunds obtained, based on past bills. Some errors may result in future savings which are retained by the City. At no cost to the City, this agreement could result in refunds for overpayment of utilities and could help ensure the accuracy of future bills. The City of Denison has used this company and has given a favorable recommendation of TriStem.

Origination
Finance Department

Financial Consideration
Compensation paid to TriStem will be forty-nine percent (49%) of any actual refunds received.

Staff Recommendation
It is recommended that the City Council approve the Resolution and Consulting Agreement with TriStem for the specified services.

Alternatives
No alternatives are recommended.

Attachments
Resolution No. 5374
Consulting Agreement
Executive Summary and Audit Checklist
Denison Correspondence and Consulting Agreement

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5374

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONSULTING AGREEMENT WITH TRISTEM, LTD. FOR UTILITY BILL AUDIT SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute an Agreement with TriStem, Ltd. for consulting services to conduct an audit and study of the City of Sherman's prior utility bills, in accordance with the contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
BRANDON S. SHELBY,
CITY ATTORNEY

CONSULTING AGREEMENT

THIS AGREEMENT, entered into this _______________ day of, __________, 20____, by and between the **CITY OF SHERMAN**, a home rule municipality of the State of Texas, hereinafter referred to as **CLIENT,** and **TRISTEM, LTD.,** hereinafter referred to as **TRISTEM** or **CONSULTANT,** and covers the relationship of **CONSULTANT** and **CLIENT.**

TRISTEM will conduct an audit and study of prior utility billing (including street light bills) to determine that amounts paid by **CLIENT** are correct. **TRISTEM** will also inform **CLIENT** if there is a possibility that **CLIENT** can qualify for a more advantageous rate for future billing. **TRISTEM** will notify **CLIENT** of the results of the audit and study and will seek to obtain refunds for any past overbillings which **TRISTEM** determines have occurred. As a fee for this service, **CLIENT** agrees to pay **TRISTEM 49%** of any refunds **CLIENT** receives as a result of **TRISTEM'S** services or audit process, or any part thereof. *

CONSULTANT'S fee is not due until **CLIENT** receives refund. **CLIENT** agrees to pay **CONSULTANT'S** fee within ten days of receipt of refund, whether refund is in the form of cash, credit to accounts, in-kind contributions or any other form of payment or reimbursement. If future considerations are given in lieu of refunds, **TRISTEM** will receive the same percentage of the value of the future considerations, as **TRISTEM** would have received for refunds obtained.

There are no up-front fees or service charges. ALL FUTURE SAVINGS GO TO **CLIENT.** If there are no refunds or credits to the **CLIENT,** there is no fee to **CONSULTANT.**

CLIENT retains **TRISTEM** for audit services for:

__X__ Electric _X___ Street Lighting __X__ Gas _____ Water/Sewer

AGREED AND ACCEPTED:

CLIENT: CITY OF SHERMAN, TEXAS

BY: ____

Signature **Title**

DATE: ____

TRISTEM, LTD.

BY: ____

Signature **Title**

DATE: ____

*Plus state and local taxes, if applicable.

EXECUTIVE SUMMARY

Given the opportunity, TriStem, Ltd., (TriStem) will audit the electric, natural gas, and water bills paid by *large users.* TriStem will ask our Client to provide certain basic data, and we do the rest. Where billing errors are found, those accounts will be corrected. TriStem will verify that bills are correct, going forward. This results in future cost savings, for the corrected accounts.

Our mission will be to find overcharges, billing errors, and rate adjustments. TriStem will document all claims, and work directly with the utility company to obtain the proper remedy. The main focus is on past bills.

BENEFITS

The results sought after from this project are actual refunds, rate corrections where appropriate, and future savings where possible.

WHY DO THIS?

This project brings revenue into your budget, with no out-of-pocket expense. **Take action against budget short-falls.** Also, future energy cost will be lower due to corrected billing.

WHAT CAN GO WRONG WITH A UTILITY BILL?

The types of billing errors typically found by TriStem are wrong rates, meter errors, wrong calculations in the bills, tariff violations, violations of the contract for service, overcharges in outdoor light billing, and others. We check "anything and everything."

FEE STRUCTURE

TriStem's only fee is to keep **49%** of actual refunds obtained, base on you past bills. Over-charges will be corrected, resulting in lower cost in the future. **All such "future savings" are retained by our Client.** *This is the TriStem difference, from other firms.* Your organization keeps the savings, 100%. No Recovery-----No Fee.

ABOUT TRISTEM

TriStem, Ltd. is a partnership located near Waco, Texas. The company has been in business since 1979. Our track record is second to none. TriStem has recovered over $1 million on eight separate occasions. Visit our website www.tristem.com or Contact Ross Puryear at mobile (254) 214-4713.

UTILITY BILL AUDIT CHECKLIST

[ ] Copies of one month's **electric bill**, water/sewer bill, and gas bill for each account to be audited. Bill copies should be for **the most current month available**. Bills for additional service periods may be requested later for specific accounts. Where possible, TriStem can help by obtaining copies of bills on-line.

[ ] The most recent **inventory of street lights** (preferably in electronic format) and a street map. If an older inventory is available, please provide it as well.

[ ] **Two Letters of Agency** – one authorizing the release of account information, and another specifying the method by which refunds should be issued. **We will provide sample letters** to you to print and sign on your letterhead.

[ ] A **list of all facilities** with physical **addresses** and approximate **square footage** of each building. If known, please tell us the electric account number that corresponds with each building.

[ ] **Copies of contracts or Service Agreements** that may exist between your organization and the utility providers. **These documents are very important**. If none exist, please advise.

[ ] Have you **changed electric providers** in the last four years? Please explain.

[ ] Copies of **lease agreements** for any facilities that are leased from others.

[ ] A listing of all **water/sewer pumps** at each facility, including the size of the pumps in **horsepower** and **physical address**. If none exist, please advise.

[ ] Copies of any **Franchise Agreements** your organization may have with utility providers.

[ ] **Contact information** (including name, title, address, phone, email, fax) for the following persons who we may need to contact with questions:

- Person in your organization who pays the utility bills
- Person in your organization who is familiar with your facilities (such as a Facilities Manager, Engineer, Maintenance Manager, etc.)
- Person in your Public Works/Traffic Dept. who is familiar with street lights
- Account Manager at each utility company who handles your organization's accounts

Please mail the Checklist information and any future correspondence to the address below.

TriStem, Ltd.
328 Ivy Lane
Hewitt, TX 76643
(254) 420-1200
(800) 234-7937

PLEASE NOTE: WE CANNOT BEGIN THE AUDIT UNTIL ALL CHECKLIST ITEMS ARE RECEIVED.

CITY OF DENISON

500 West Chestnut • P. O. Box 347 • Denison, Texas 75021-0347
(903) 465-2720 • FAX (903) 464-4499

May 21, 2008

To Whom It May Concern:

The City of Denison has retained TriStem, Ltd., (TriStem), and their subcontractors as our agents to communicate with your company regarding our utility billings for prior periods. This agency authorization shall continue in effect until you are notified in writing by me of its cancellation.

You are fully authorized and requested to respond to TriStem in all matters pertaining to our accounts with your company. You are hereby instructed to provide them with billing records, service agreements, and additional information deemed necessary by them to adequately review our accounts.

All communications regarding the investigation of prior billings and negotiation of any refunds should be with TriStem. Please send copies of all correspondence between you and TriStem to the attention of Susan Way.

Your cooperation will be greatly appreciated. If you have any questions, please contact Susan Way with the City of Denison at 903-464-4444 or Trisha Santiago with TriStem at 254-420-1200.

Sincerely,

Robert Brady

Mayor Robert Brady
CITY OF DENISON

cc: TriStem, Ltd.
328 Ivy Lane
Hewitt, TX 76643

City of Denison

500 West Chestnut • P. O. Box 347 • Denison, Texas 75021-0347
(903) 465-2720 • FAX (903) 464-4499

May 21, 2008

To Whom It May Concern:

As you are aware, the City of Denison has retained TriStem, Ltd., (TriStem), and their subcontractors as our agents to communicate with your company regarding our utility billings for prior periods. This agency authorization shall continue in effect until you are notified in writing by me of its cancellation.

Please be advised that any and all refunds due to over billings on any City of Denison accounts are to be issued via <u>check</u> payable to City of Denison and mailed directly to us.

Thank you in advance for your cooperation.

Sincerely,

Robert Brady

Mayor Robert Brady
CITY OF DENISON

cc: TriStem, Ltd.
328 Ivy Lane
Hewitt, TX 76643

TRISTEM

CONSULTING AGREEMENT

THIS AGREEMENT, entered into this 21ST day of May, 2008, by and between the City of Denison, Texas hereinafter referred to as **CLIENT**, and **TRISTEM, LTD.**, hereinafter referred to as **TRISTEM** or **CONSULTANT**, and covers the relationship of **CONSULTANT** and **CLIENT**.

TRISTEM will conduct an audit and study of prior utility billing (including street light bills) to determine that amounts paid by **CLIENT** are correct. **TRISTEM** will also inform **CLIENT** if there is a possibility that **CLIENT** can qualify for a more advantageous rate for future billing. **TRISTEM** will notify **CLIENT** of the results of the audit and study and will seek to obtain refunds for any past overbillings which **TRISTEM** determines have occurred. As a fee for this service, **CLIENT** agrees to pay **TRISTEM 49%** of any refunds **CLIENT** receives as a result of **TRISTEM=S** services or audit process, or any part thereof. *

CONSULTANT'S fee is not due until **CLIENT** receives refund. **CLIENT** agrees to pay **CONSULTANT=S** fee within ten days of receipt of refund, whether refund is in the form of cash, credit to accounts, in-kind contributions or any other form of payment or reimbursement. If future considerations are given in lieu of refunds, **TRISTEM** will receive the same percentage of the value of the future considerations, as **TRISTEM** would have received for refunds obtained.

There are no up-front fees or service charges. ALL FUTURE SAVINGS GO TO **CLIENT**. If there are no refunds or credits to the **CLIENT**, there is no fee to **CONSULTANT**.

CLIENT retains **TRISTEM** for audit services for:

__X__ Electric __X___ Street Lighting __X__ Gas _____ Water/Sewer

AGREED AND ACCEPTED:

CLIENT: **City of Denison, Texas**

BY: [signature] Mayor

Signature **Title**

DATE: 5 21-08

TRISTEM, LTD.

BY: ____________________________

Signature **Title**

DATE: ____________________________

*Plus state and local taxes, if applicable.

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.7

RESOLUTION NO. 5375

Authorizing Execution of a Remote Deposit Agreement and an Item Processing Agreement with Kenney Bank and Trust and iStream Financial Services, Inc. for the Remote Deposit and Electronic Disbursement of Payments made for the City of Sherman's Emergency Medical Services

Issue

To consider approval of a resolution to authorize execution of a Remote Deposit Agreement and an Item Processing Agreement for the City to electronically receive emergency medical payments received by Intermedix, Inc. and deposited into a clearing account

Background

The City currently receives 20-30 checks each Thursday from Intermedix, Inc., made payable to the City of Sherman for payments made for emergency medical services. City staff currently processes these payments and deposits the checks to our bank account. These two agreements would enable the deposit of these checks to a clearing account, with the disbursement made to us electronically each week. We would receive our funds faster and would have the ability to view images of the checks online.

Origination

Finance Department

Financial Consideration

There is no cost associated with this agreement. Intermedix, Inc. will pay any fees on our behalf.

Staff Recommendation

It is recommended that the City Council approve the Resolution, the Remote Deposit Agreement, and the Item Processing Agreement.

Alternatives

No viable alternatives are recommended.

Attachments

Resolution No. 5375
Remote Deposit Agreement with Kenney Bank and Trust
Item Processing Agreement with Kenney Bank and Trust and iStream Financial Services, Inc.

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5375

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A REMOTE DEPOSIT AGREEMENT AND AN ITEM PROCESSING AGREEMENT WITH KENNEY BANK AND TRUST AND ISTREAM FINANCIAL SERVICES, INC. FOR THE REMOTE DEPOSIT AND ELECTRONIC DISBURSEMENT OF PAYMENTS MADE FOR THE CITY OF SHERMAN'S EMERGENCY MEDICAL SERVICES; FINDING AND DETERMING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a Remote Deposit Agreement and an Item Processing Agreement with Kenney Bank and Trust and iStream Financial Services, Inc. for the remote deposit of payments made for the City of Sherman's emergency medical services into a clearing account and for the disbursement from said account to the City's bank account, in accordance with the contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

ATTEST:

BY: ________________________________
BILL MAGERS, MAYOR

BY: ________________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ________________________________
BRANDON S. SHELBY,
CITY ATTORNEY

KENNEY BANK AND TRUST

Route 54 and Jordan Street, Kenney, Il 61749

REMOTE DEPOSIT AGREEMENT

For: Clearing Account

General Agreement. The terms of this Remote Deposit Agreement ("Agreement"), along with any other documents applicable to this clearing account ("Clearing Account"), govern the operation of this Clearing Account, unless varied or supplemented in writing. Unless it would be inconsistent to do so, words and phrases used in this Remote Deposit Agreement ("Agreement") should be construed so that the singular includes the plural and the plural includes the singular. The terms "Company", "you" and "your" refer to the depositor, **City of Sherman**, and the terms "Bank", "we", "us" and "our" refer to **Kenney Bank and Trust**. "Item" is any check, draft, or order for the payment of money, oral or written, in electronic or other form. "Business Day" is any day we are open for carrying on substantially all of our banking business other than Saturday, Sunday, or Federal Reserve Bank holiday. You understand and agree that this Clearing Account is being opened as part of and in conjunction with the Item processing services provided by Bank and iStream Financial Services, Inc. ("iStream") pursuant to the Item Processing Agreement entered into by and between Company, iStream and Bank. Terms that are defined in the Item Processing Agreement shall have the same meaning in this Agreement. You understand that your Clearing Account is also governed by applicable federal and state law (except to the extent that this Agreement can and does vary such rules or laws).

General Rules. The following rules apply to your Clearing Account:

1. **Deposits.** Deposits shall be made to the Clearing Account by remote deposit in accordance with the Item Processing Agreement. All transactions received after our "daily cut-off time" on a Business Day we are open, or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next banking day. We may refuse to accept particular checks or similar instruments as a deposit to your Clearing Account at our discretion. Company understands and agrees that Company will not deposit Items that are issued by Company or Company's affiliates and Company will not deposit foreign Items drawn on financial institutions that are located outside of the United States or United States Territories. Unless we agree in writing to the contrary, you agree that you will not deposit a substitute check if a bank has not made the warranties in section 5 of the Check Clearing for the 21st Century Act with respect to substitute checks (non-warranted substitute check). If you deposit a non-warranted substitute check, you agree to indemnify us against any loss from any source that we incur (including attorneys' fees and other costs) and hold us harmless, as the result of your depositing the non-warranted substitute check. You also agree to indemnify us and hold us harmless as the result of any loss that we incur if we convert the Item that you deposit to a substitute check and the image of the original check is not an accurate representation of the original check because of the design of the check or the color of the ink used to print, complete the terms of or indorse the check. Deposits may be subject to a service charge.

When we receive your deposits, we may provisionally credit your Clearing Account for the amount declared on the deposit slip, subject to later verification by us. You must ensure that the amount declared on the deposit slip is correct, even if you did not prepare the deposit slip. If we later determine that the amount declared on the deposit slip is incorrect, we may adjust (debit or credit) your Clearing Account. However, if the error in completing the deposit slip was inadvertent and is less than our standard adjustment amount, we may not adjust your Clearing Account. We may change our standard adjustment amount from time to time without notice to you.

2. **Collection of Deposited Items.** In receiving Items for deposit or collection, we act only as your agent and assume no responsibility beyond the exercise of ordinary care. All Items, including "on us" Items, are credited subject to final settlement in cash or credits. We shall have the right to forward Items to correspondents including all Federal Reserve Banks and we shall not be liable for default or neglect of said correspondents for loss in transit, nor shall any correspondent be liable except for its own negligence. You specifically authorize us or our correspondents to utilize Federal Reserve Banks to handle such Items in accordance with provisions of Regulation J (12 CFR Part 210), as revised or amended from time to time by the Federal Reserve Board. In the event we are subject to local clearinghouse rules, you specifically authorize us to handle such Items in accordance with the rules and regulations of the clearinghouse. You agree to be bound by all other agreements entered into by us for the purpose of clearing, collecting, presenting or returning Items.

All Items presented for deposit must be in a format that can be processed in accordance with the requirements of the Item Processing Agreement and we may refuse to accept any check that does not meet this requirement. All endorsements on the reverse side of any check deposited into your Clearing Account must be placed on the left side of the check when looking at it from the front, and must be placed so as to not go beyond an area located 1 ½ inches from the left edge of the check, when looking at it from the front. It is your responsibility to ensure that these requirements are met and you are responsible for any loss incurred by us for failure of an endorsement to meet this requirement.

If any Item you deposit to your Clearing Account is returned unpaid, we have the right to debit your Clearing Account for the amount of such Item. We may reprocess the Item, but you do not require it. We may also process returned Items in accordance with your special instructions accompanying your Application for Item processing services from iStream and Bank, or as such special instructions may be revised from time to time. We can process a copy, electronic entry, or other evidence of the returned Item. You waive presentment, notice of dishonor and protest. You will, in any event, be liable to us for the amount of any check or similar instrument you deposit to your Clearing Account or receive cash that is returned unpaid, plus our costs and expenses associated with collection of all or any part of such amount from you, including reasonable attorney fees. In addition, we may charge back any deposited Item at any time before final settlement for whatever reason. We may charge back any Item to your Clearing Account on which there is a claim for breach of warranty even after final settlement of the Item. A breach of warranty includes but is not limited to Items that you have deposited that contain an alteration, a forged or missing endorsement, or Items for which you do not have good title. We shall not be liable for any damages resulting from the exercise of these rights.

3. **Encoding.** If we accept Items for deposit from you which you or your agent have encoded with MICR encoding, we may rely upon the accuracy and completeness of such encoding in processing the Items for collection or payment. You shall be solely responsible for any encoding errors or defects, including without limitation, amount errors, and shall indemnify and hold us harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, settlements and expenses (including attorneys' fees) resulting directly or indirectly from such encoding.

4. **Right of setoff.** We may exercise the right of setoff, that is, the right under certain circumstances, to use funds in your Clearing Account to pay any debts you owe us now or in the future, either before or after any default. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. We may recover funds you owe us from any of your accounts with us. For accounts with more than one owner, we may treat any name on the account as the sole owner and agent of that account and we may exercise this right to pay individual debts of any owner. If you are the sole proprietor or general partner of a business, you agree that we have the right of setoff under this paragraph against the funds in any of your personal accounts for the debts of your business. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff, and we agree to hold you harmless from any claim arising as a result of any unauthorized exercise of setoff. .

5. **Legal Process.** We may accept and act on any legal process that we believe to be valid without any liability by us to you, whether served in person, by mail or by facsimile transmission at any of our offices. "Legal process" includes a subpoena, restraining order, injunction, writ of attachment or execution, levy, garnishment, tax withholding order, search warrant, forfeiture or other similar order relating to your Clearing Account. We may charge your Clearing Account a legal process fee for each order. Any garnishment, attachment or other levy against any of your accounts is subject to our right of setoff and any security interest we have in any account. If a bankruptcy or similar proceeding is filed by or against any owner, we can place an administrative hold on part or all of the balance while we seek to have the automatic stay lifted.

6. **Authorized Individuals.** We are authorized to rely upon any document provided by you to us, which indicates the persons authorized to act on your behalf until the authority from any such person is withdrawn in writing. By using any service provided by us, you represent and warrant that the execution, delivery and performance by you of any agreement or acknowledgement covering such service have been duly authorized by necessary action and do not and will not violate any provision of law or your charter or by-laws, or result in the breach of or constitute a default under any other agreement or instrument by which you are bound or affected.

In order to induce us to honor any request, direction or instruction regarding your Clearing Account, or the services provided by us to you, including but not limited to services enumerated in this Agreement, you hereby agree to indemnify and hold us harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, costs and expenses (including attorneys' fees) resulting directly or indirectly from our alleged acceptance or execution of any request, direction or instruction, on the part of any individual listed as a person authorized to act on your behalf in any document provided by you to us.

7. **Authority.** You will not grant anyone authority to conduct business with us on your behalf until we have reviewed the terms of authorization and have given you written acceptance. This includes authority such as power of attorney or other method. If you have not given us the proposed authorization for advance review, we may, in good faith, honor instructions from the person you authorized. You will not hold us responsible if someone you authorized to do business with us misapplies your money. You assume all risk of improper acts by such person. We can consider an authorization valid until we actually receive written revocation of it and have had reasonable time to review and act upon it. If we accept a grant of authority from you, we may revoke our acceptance of that authority at any time at our discretion.

8. **Disputed Authority**. If anyone claims ownership over funds, and we have a good faith doubt about whether to recognize the claim, we can hold some or all of the balance until the claim is resolved. We can interplead some or all of the balance into court or take other action to determine ownership.

9. **Transfers and Assignments**. You cannot assign or transfer an interest in your Clearing Account unless we agree in writing. Your successors and assigns are bound by this agreement. Any actual or purported assignment of the Clearing Account remains subject to our right of setoff.

10. **Withdrawal of Funds.** Company understands and agrees that this Clearing Account has been opened exclusively for the remote deposit of Items by Company in accordance with the Item Processing Agreement (and this Agreement is a part thereof). As a clearing account, Company has no right to withdraw funds from this Clearing Account. Bank, in accordance with Company's board resolution, has the sole authority to withdraw funds from this Clearing Account. Bank shall transfer funds remotely deposited to the Clearing Account to the Designated Account in accordance with the provisions of the Item Processing Agreement.

11. **Non-Sufficient Funds.** When you do not have enough available funds in your Clearing Account to cover a debit, we consider the debit a non-sufficient funds Item. You do not expect any notice of an overdraft beyond any normal periodic statement. If your Clearing Account balance is not sufficient to pay a debit, we charge you a fee.

Funds in your Clearing Account are not available if we determine that they are subject to a hold, dispute or legal process that prevents their withdrawal. If there is an overdraft, you agree that to repay the overdraft, we may deduct the amount from your Clearing Account, including any subsequent deposits and credits without regard to the source of the deposits or credits. You also agree to pay all collection costs and reasonable attorneys' fees.

12. **Closing Account.** We may close your Clearing Account at any time, with or without cause. You may only request that this Clearing Account be closed in conjunction with termination of the Item Processing Agreement. We may close it without notice to you if we reasonably believe it will prevent loss to us or you have violated this Agreement or the Item Processing Agreement. You will pay any fees and costs for closing the Clearing Account, as well as any outstanding Items. Our rights and your obligations survive any closing of the Clearing Account or cancellation of this Agreement. At our discretion, we have the authority to pay a debit entry initiated by us after the closing of your Clearing Account.

13. **Wire Transfers and Automated Clearing House (ACH) Transactions.** This Agreement is subject to Article 4A of the Uniform Commercial Code - Funds Transfers as adopted by the state of Illinois. If we originate a wire transfer from your Clearing Account or you receive a wire transfer, you agree that Fedwire may be used. Federal Reserve Board Regulation J is the law that covers transactions made over Fedwire. You agree that we are not required to notify you of any incoming wire transfer or other electronic transfer of funds in the Account. You agree that any notice of such a transfer that we may give you shall not impose any duty on us to notify you of any other such transfer.

If you are a party to an Automated Clearing House (ACH) entry, you agree to be bound by the rules and regulations of the National Automated Clearing House Association (NACHA) Operating Rules, Rules of any local ACH, and the rules of any other system through which the entry is made.

Provisional Payment. Credit we give you with respect to an ACH credit entry is provisional until we receive the final settlement for that entry through a Federal Reserve Bank. If we do not receive final settlement, you agree that we are entitled to a refund of the amount credited to you in connection with the entry, and that we may exercise our option to reverse the credit or require that you reimburse us by way of direct payment.

Notice of Receipt. Under the operating rules of NACHA, which are applicable to ACH transactions involving your Clearing Account, we are not required to give next day notice of receipt of an ACH Item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statements we provide to you.

14. **Statements**. We will provide you with a periodic statement showing the Clearing Account activity. Unless you have requested to receive such statement by regular mail or otherwise (which may incur an additional fee), we will send the Clearing Account statement to the electronic mail address in our records for you, and you are considered to have received the statements upon mailing, whether or not you actually receive them. If you have asked us to hold your statement, you are considered to have received the statement when we make it available for you to pick up. You must examine your Clearing Account statement immediately upon receipt of the statement or after it is otherwise made available to you. If you discover (or reasonably should have discovered) any unauthorized payments, alterations, errors, or Items that are otherwise not properly payable, you must promptly notify us in writing of the relevant facts. If you fail to examine your statement and notify us, we will not be responsible for any loss suffered by you. The loss could be not only with respect to Items on the statement but also includes other Items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will depend on the circumstances, but that such time will not, in any circumstance, exceed a total of thirty (30) days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized withdrawals, Items that are not otherwise properly payable, or errors in your Clearing Account within sixty (60) days of when we make the statement available, you cannot assert a claim against us on any Item(s) in or described on that statement, and the loss will be entirely yours. This sixty (60) day limitation is without regard to whether we exercised ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section. If you do not receive a statement from us, it is your responsibility to advise us that you did not receive a statement. If you do not receive a statement from us because you have failed to claim it or have supplied us with an incorrect address, we may stop sending your statements until you specifically make written request that we resume sending your statements after you supply us with a proper address.

You shall not institute any legal proceeding or action against us for any claim which you may have regarding any such errors, discrepancies or irregularities, including, but not limited to those listed above unless a) you have given the written notice described above, and b) such legal proceeding or action has been commenced within one year after the date when such Statement or advice was mailed or made available to you.

15. **Notice.** The notice terms and requirements of the Item Processing Agreement will apply to notices under this Agreement. You will notify us immediately of any change in your name, address, electronic mail address, telephone number, facsimile number, or taxpayer identification number.

16. **Fees and Service Charges.** We have given you disclosures explaining applicable transaction limits and fees. You agree that our fees and charges need not be based upon the cost of providing the service or administering the event to which the fee or charge is associated, but may be based on other considerations such as the expense of providing account services, generally similar charges of other financial institutions with which we compete, revenues to the bank, and the deterrence of abuse of an account. You agree to pay us and are responsible for any fees and charges provided in any agreement for banking services connected with this Clearing Account. You agree that we may amend any fees applicable to this Clearing Account from time to time and you agree to be bound thereby. We may deduct fees and other amounts you owe us under this Agreement from any of your accounts with us at any time without prior notice of any deductions. If there are not enough funds in your accounts to cover the fees and other amounts you owe us, we may overdraw your accounts. You agree to pay us immediately all amounts you owe us.

17. **Expenses.** You will pay any expenses we incur in good faith related to this Agreement, such as fees on Items sent for collection, and unreimbursed research and copying fees when someone requires records about our relationship, and attorneys' fees we incur in good faith because of concerns about the Clearing Account, whether or not litigation has begun, including such fees through trial and all appeals, plus court costs. You also agree to pay any expenses that we incur, including attorneys' fees in responding to any subpoena, writ, government agency or judicial order, search warrant, or other order, which we may be required to respond to regarding your Clearing Account or your relationship with us.

18. **Recording.** You give us permission to record your communications with us. If you authorize someone to do business with us on your behalf, such as by power of attorney, you will be responsible for obtaining their permission to our recording their communications with us.

19. **Credit Report.** You authorize us to obtain reports about you periodically from organizations such as consumer reporting agencies, check reporting services, and other credit reporting entities, and to provide them information. Late payments, missed payments, or other defaults on your Clearing Account may be reflected in your credit report.

20. **Amendments and Alterations.** Notice will be given to you if we change the terms of this Agreement at any time by mailing notice to your address shown on our records, by including a notice with or on your statement, by posting a notice of any such changes at our main office, or by whatever notice requirements that may be required by law. If you use the Clearing Account after the effective date of a change, that indicates your acceptance of the changes.

21. **Delisting.** If any of your shares or other equity interests are, or ever become, listed for trading on any securities exchange or the National Association of Securities Dealers Automated Quotation (NASDAQ) system, you will notify us immediately in writing upon their delisting or suspension of trading.

22. **No Waiver**. You understand and agree that no delay or failure on our part to exercise any right, remedy, power or privilege available to us under this Agreement shall affect or preclude our future exercise of that right, remedy, power or privilege.

23. **Our Rights.** You agree that our rights under this Agreement are cumulative, not exclusive. We may exercise any of them without giving up the right to exercise others. Where permissible by law, Bank has the right to delegate any of its responsibilities under this agreement to a third party of its choosing.

24. **Severability.** If any of the terms of this Agreement conflicts with applicable law and are declared to be invalid and unenforceable, those terms will be ineffective to the extent of the conflict and the applicable law will govern. The remaining provisions will remain unaffected.

25. **Force Majeure.** We shall not be liable for any loss or damage to you caused by our failure to provide any service or delay in providing such service resulting from an act of God, act of governmental authority, legal constraint, war, terrorism, fire, catastrophe, or electrical computer, mechanical or telecommunications failure, or failure of any agent or correspondent or any other cause beyond our control.

26. Liability. You agree that: **IN NO EVENT SHALL BANK BE LIABLE TO COMPANY OR ANY OTHER PARTY DEALING THROUGH OR WITH COMPANY FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF BANK HAS KNOWLEDGE OF THE EXISTENCE OF THE PARTICULAR CIRCUMSTANCES GIVING RISE TO CONSEQUENTIAL DAMAGES.** We agree that: **IN NO EVENT SHALL COMPANY BE LIABLE TO BANK OR ANY OTHER PARTY DEALING THROUGH OR WITH BANK FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF COMPANY HAS KNOWLEDGE OF THE EXISTENCE OF THE PARTICULAR CIRCUMSTANCES GIVING RISE TO CONSEQUENTIAL DAMAGES.**

27. **Indemnification.** Unless such failure is authorized or permitted by law, (i) you will indemnify us against, and hold us harmless from, any and all losses, damages, costs, and attorney fees that we incur because of your failure to abide by any of the terms of this Agreement, and (ii) we will indemnify you against, and hold you harmless from, any and all losses, damages, costs, and attorney fees that you incur because of our failure to abide by any of the terms of this Agreement.

28. ARBITRATION OF DISPUTES. You and we agree that the transactions in your Clearing Account involve "commerce" under the Federal Arbitration Act ("FAA"). ANY CONTROVERSY OR CLAIM BETWEEN YOU AND US, OR BETWEEN YOU AND ANY OF OUR OFFICERS, EMPLOYEES, AGENTS OR AFFILIATED ENTITIES, THAT ARISES OUT OF OR IS RELATED TO YOUR ACCOUNT, OR ANY SERVICE RELATED TO YOUR ACCOUNT, OR ANY AGREEMENT RELATED TO YOUR ACCOUNT OR ANY SUCH SERVICE, WHETHER BASED ON CONTRACT OR IN TORT OR ANY OTHER LEGAL THEORY, INCLUDING CLAIMS OF FRAUD, SUPPRESSION, MISREPRESENTATION AND FRAUD IN THE INDUCEMENT (COLLECTIVELY, ANY "CLAIM"), WILL BE SETTLED BY BINDING ARBITRATION UNDER THE FAA. The arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules ("the Arbitration Rules"). IF A CLAIM IS SUBMITTED TO ARBITRATION, (A) YOU WILL NOT HAVE THE RIGHT TO GO TO COURT OR TO HAVE A JURY TRIAL;(B) YOU WILL NOT HAVE THE RIGHT TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES; (C) YOU WILL NOT HAVE THE RIGHT TO HAVE ANY CLAIM ARBITRATED AS A CLASS ACTION UNDER THE RULES OR UNDER ANY OTHER RULES OF CIVIL PROCEDURE; (D) THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING WITH LIMITED RIGHTS TO APPEAL; (E) THIS AGREEMENT SUPERSEDES ANY PRIOR ALTERNATIVE DISPUTE RESOLUTION AND/OR ARBITRATION AGREEMENT THAT MAY EXIST BETWEEN YOU AND US. This agreement to arbitrate disputes will survive the closing of your Clearing Account and the termination of your deposit agreement with us.

29. **Applicable Laws, Jurisdiction, Venue and Regulations.** You understand this Agreement is governed by the laws of the state of Illinois and includes, but is not limited to the Uniform Commercial Code. Changes in these laws and regulations may modify the terms and conditions of your Clearing Account. We do not have to notify you of these changes, unless required to do so by law. You will not hold us liable for anything we do or decline to do based on a good faith belief that it is required by law or regulation. The courts of the state have jurisdiction of any dispute in connection with this agreement.

RDA040606 City of Sherman

BANK:
KENNEY BANK AND TRUST

BY: ______________________
NAME: ______________________
TITLE: ______________________
ADDRESS: Route 54 and Jordan Street
Kenney, Illinois 61749

DATE SIGNED: ______________________

ATTEST:

BY: ______________________
NAME: ______________________
TITLE: ______________________

APPROVED AS TO FORM:

BY: ______________________
NAME: ______________________
TITLE: ______________________

COMPANY:
CITY OF SHERMAN, TEXAS

BY: ______________________
NAME: George Olson
TITLE: City Manager
ADDRESS: 220 West Mulberry Street, P. O. Box 1106
Sherman, Texas 75090

DATE SIGNED: ______________________

ATTEST:

BY: ______________________
NAME: Linda Ashby
TITLE: City Clerk

APPROVED AS TO FORM:

BY: ______________________
NAME: Brandon S. Shelby
TITLE: City Attorney

ITEM PROCESSING AGREEMENT

This Item Processing Agreement ("Agreement") is made by and between **Kenney Bank and Trust**, an Illinois chartered bank located at Route 54 and Jordan Street, Kenney, IL 61749 ("Bank"), **iStream Financial Services, Inc.**, located at 13555 Bishop's Court, Suite 102, Brookfield, WI 53005 ("iStream"), and the **City of Sherman** which is a city located in Sherman, TX 75091 and the entity authorizing this Agreement as indicated on the respective Item Processing Application ("Company"), effective as of the date provided in Section 1., below.

Recitals:
A. Whereas, Company desires to remotely deposit checks, other items and Automated Clearing House ("ACH") entries (individually or collectively, "Item(s)") to be processed electronically and/or via the ACH system by Bank and iStream; and,
B. Whereas, Bank and iStream desire to provide remote deposit capabilities to Company so that it may remotely deposit Items and/or initiate electronic debit entries;
C. Now, Therefore, in consideration of the mutual promises and covenants and other valuable consideration, Company, Bank and iStream agree as follows:

Terms and Conditions

1. **Acceptance, Effective Date and Start of Services.** Upon receipt of Company's fully completed Item Processing Application ("Application"), Bank and iStream shall determine whether to accept the Application and provide the products and services requested by Company therein ("Services"). If Company's Application is accepted, Company will be notified through an electronic notice and will be assigned a processing identification number. The date on which Company receives the electronic acceptance notice will be the effective date of this Agreement ("Effective Date"). Bank shall then establish a remote deposit Clearing Account for Company through which all Accepted Files (defined in Section 4) shall be processed and settled. **As the final step in setting up Services, Customer must log-in to iStream's website and read and accept the End User License Agreement ("EULA") for the software related to the Services ("Software").** If the EULA is accepted, Company may download the Software and, upon successful installation and testing, may begin to receive Services. By signing this Agreement, Company acknowledges receipt during the application process of the terms and conditions of the Remote Deposit Agreement for the Clearing Account which, along with the Application and EULA are incorporated herein by reference and made a part of this Agreement. Any origination of ACH entries shall also require execution of the ACH Addendum to this Agreement.
2. **Receipt, Scanning and Transmission of Items.** Company shall undertake prudent measures designed to verify the identity of individuals issuing Items to Company. Such Items shall then be scanned and transmitted under this Agreement in compliance with the then current version of the online procedure manual available on iStream's website ("Procedures") and the Laws and Rules (defined in Section 15). Scanning shall capture the image of the front and back of each Item ("Image"). Files of Item Images ("Image File") or batched ACH data or entries ("ACH File") (individually or collectively, a "File") that are transmitted to Bank and iStream on any given day shall not exceed the dollar limit established for Company by Bank and iStream. Files that are not transmitted in accordance with the Procedures or which are received after Bank's established cut-off time may be deemed to have been received on the business day following the business day on which the Files are actually received by Bank and iStream. After transmitting Files, Company may elect to print a report detailing the transmitted File ("Deposit Report"). Terms affecting the processing and funds availability of Items are as provided on the Deposit Report and elsewhere in this Agreement.
3. **Prohibited Deposits.** Company agrees that it will not transmit for deposit any Item that (i) is issued by Company or any affiliate and drawn on an account of Company or any affiliate, (ii) is in violation of the Laws or Rules, (iii) Company suspects or should know to be fraudulent or not authorized by the legal owner of the account on which the check is drawn, or (iv) is a foreign Item drawn on a financial institution that is located outside of the United States or Territories of the United States.
4. **Receipt and Deposit of Files.** Upon receipt of a transmitted File, the File will be reviewed by Bank and/or iStream. Images in a File must be of such quality that the information on the Item can clearly be read by sight review. If Bank or iStream notes an error in a File, it may either reject the entire File or correct the error. Following review, if Bank and iStream determine that a File (i) is of appropriate Image quality, (ii) is balanced and appears to contain no errors, and (iii) has been created in compliance with the Procedures, Bank and iStream shall accept such File ("Accepted File") for deposit to the Clearing Account. File acceptance shall be indicated by the posting of the File contents to the Clearing Account. Company, but not Bank or iStream, shall remain liable for any File or Item that (i) is not actually received by Bank and iStream, and (ii) is intercepted or altered by an unauthorized third party. Bank and iStream shall have no obligation to accept a File and may reject any File without liability therefor. Bank or iStream shall solely determine the manner in which Items will be presented for payment to the drawee bank and shall solely select the clearing agents used to collect and present the Items. Selection of such clearing agents shall be considered to have been designated by Company and neither Bank nor iStream shall be liable for the negligence or delay of any clearing agent.
5. **Returned Items.** If Images of Items previously deposited by Company are dishonored and returned unpaid by the drawee bank, Company understands and agrees that the original Item will not be returned and Bank may charge back an Image of the Item to the Clearing Account. Dishonored Items are the sole responsibility of Company. Company may request that Bank process returned Items according to Company's written instructions ("Special Instructions"). Changes to Special Instructions shall not become effective until acknowledged and accepted by Bank. Notwithstanding the foregoing, Bank has no obligation to re-present any returned Item and may choose to disregard the Special Instructions at any time and charge a returned Item back to the Clearing Account. Following initial presentment or any re-presentment of an Item under this Agreement, if such Item remains unpaid, Company shall be notified and neither Bank nor iStream shall have any further liability to Company for such re-presented Item. In no event will Bank re-present an Item in excess of the limit established or permitted by the Laws and Rules.
6. **Availability of Funds and Holds.** Remotely deposited Items are "non-local" items as defined in Federal Reserve Board Regulation CC. Despite this fact, Bank shall grant provisional credit to the Clearing Account for the total amount of an Accepted File in accordance with prudent business timeframes as permitted by law. Company authorizes Bank to place a hold on funds in the Clearing Account if, after performing risk management activities on Items in a File, Bank has concerns about or doubts the validity or collectibility of an Item.
7. **Retention and Destruction of Original Items.** Appropriate security measures shall be taken by Company to ensure that an original Item (i) can only be accessed by authorized personnel, (ii) will not be duplicated, (iii) will be scanned only one time, (iv) will not be otherwise deposited or negotiated in any form with another bank, credit union or other entity if it has been scanned and accepted for processing, and (v) is secured so that the information contained on the original Item is not improperly disclosed. Original Items must be securely stored for a period of at least fourteen (14) days after posting to the Clearing Account. Thereafter, retention and destruction of original Items and copies shall be determined by Company in compliance with the Laws and Rules.
8. **Fees and Other Charges.** Company will pay Bank and iStream (i) applicable fees for Services, forms or equipment in accordance with the Application, (ii) licensing and other third party fees and assessments that are passed through to Company, and (iii) any applicable additional ancillary and pass-through fees and assessments related to the Services, forms or equipment provided under this Agreement (collectively, "Fees"). Fees will be calculated and debited from the Clearing Account, or as otherwise provided herein. Bank and iStream may revise the Fees from time to time. Company shall pay all taxes and other charges imposed by any governmental authority on the Services.
9. **Miscellaneous Issues.**
   A. Storage of Information. iStream shall store and retain imaged documents accepted from Company according to iStream's established methods and pursuant to the available storage options (if any) selected by Company. Company shall pay the applicable Fee listed in Pricing Schedule A for any such storage services received.
   B. Risk Parameters. Any Item or File activity that falls beyond the risk parameters established by iStream and Bank will constitute a breach of this Agreement. In such event, Company authorizes additional actions as iStream and Bank deem necessary, including, but not limited to, suspension of any Services provided under this Agreement or creation or maintenance of a Reserve Account in accordance with this Agreement.

C. System Capabilities; Scanners. Company understands that if its computer system and internet connectivity does not comply with the minimum recommendations of iStream, Services might not perform in an optimal manner. Since Item scanners must be compatible with the Software, Company shall purchase, lease or rent all necessary scanners from iStream pursuant to a separate agreement.

D. Equipment Security and Maintenance. Company must comply with the minimum requirements for network security contained in the Procedures or shall not receive Services. This includes using effective anti-virus programs, promptly installing security patches, protecting passwords and otherwise properly maintaining its computer equipment and system requirements necessary to receive Services. These are minimum requirements only, and Company will likely need to do more to comply with their responsibility to maintain their respective network security. Notwithstanding the foregoing and the provisions of the Procedures, Company shall always be ultimately liable on an ongoing basis for determining what measures are necessary to adequately secure their respective computer system and for maintaining the security of its computer system and the information stored on or sent from its computer system, whether an actual or potential compromise is known or unknown. Neither Bank nor iStream shall be liable to Company, in any manner whatsoever, for any type of errors, losses, damages or other claims due or related to any failure by Company to maintain their respective network security. To help maintain its network security, in addition to prudent day to day security procedures and periodic examinations by state and federal regulators, iStream shall perform an annual risk assessment and external third party security review. iStream and Bank shall at all times comply with any laws and regulations governing the public disclosure of such reviews.

E. Financial Information. Company authorizes (i) Bank and iStream to make any credit inquiries they consider necessary to review the acceptance and continuation of this Agreement, and (ii) credit reporting agency to provide information to the requesting party. If necessary to make credit inquiries as to a Company owner or affiliate, Company shall promptly obtain authorization for Bank and iStream to do so. Company will provide Bank and iStream with financial information as requested from time to time and, within 60 days after the end of each fiscal year, will furnish to Bank and iStream a financial statement of profit and loss and a balance sheet as of the end of the fiscal year.

F. Services From Others. A third party may be providing services, special equipment or software to assist Company in processing Items, Files and other business transactions, including authorizations and settlements, or accounting functions hereunder ("Third Party"). Company (i) agrees any Third Party is acting as Company's agent in the delivery of Items and Files to Bank and iStream, and (ii) agrees to assume full responsibility and liability for any failure of a Third Party to comply with the Laws, Rules or this Agreement. Bank and iStream will not be liable for any losses or additional costs incurred by Company as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party.

G. Notice of Change. If changes occur to information in the Application, Company shall provide written notice to Bank and iStream not later than 5 business days prior to the change. If Bank or iStream request updated information from Company, such updated information shall be provided within 5 days of the request. Bank and iStream reserve the right to re-price or terminate Services to Company based on changes to the information provided in the Application.

10. Accounts.

A. Clearing Account. Company acknowledges that in order to receive Services, it shall establish a remote deposit Clearing Account at Bank ("Clearing Account") which shall be subject to the terms of the Remote Deposit Agreement. All Accepted Files shall be deposited into the Clearing Account for processing and settlement.

B. Designated Account. Company will establish and maintain one or more commercial demand deposit accounts to facilitate payment of available funds from the Clearing Account ("Designated Account"). If the Designated Account is established at a financial institution other than Bank, Company shall provide Bank with ever-current account information. If the Designated Account is changed, Company shall provide at least 10 days advance written notice to Bank and any Company obligations and authorizations as to the former Designated Account shall continue forward to the new Designated Account. Unless delays result due to the clearing agent, funds from Accepted Files shall be transferred in such a manner and timeframe that Company shall receive the transferred funds, in Bank's sole discretion, by the opening of the second business day following the business day on which Bank accepted the respective Files, or, at the time that the provisional credit in the Clearing Account becomes final. Bank is authorized to initiate debit/credit entries to the Designated Account, or any other account maintained by Company, in accordance with this Agreement. Company authorizes Bank to debit the Designated Account via ACH for any amounts Company owes or must repay to Bank or iStream under this Agreement. Company will indemnify and hold Bank and iStream harmless for any action Bank takes against the Designated Account. Company will also indemnify and hold harmless any other depository institution at which Company maintains its Designated Account for acting in accordance with any instruction from Bank regarding the Designated Account.

C. Reserve Account. Company or Bank shall establish and maintain for Company a non-interest bearing deposit account at Bank ("Reserve Account") initially or at any time in the future in an amount determined by Bank if Bank and iStream determine in good faith that a reserve is reasonably necessary to protect their interests. Bank may deposit to this account incoming funds from processed Items and amounts it would otherwise be obligated to pay Company and Bank will have sole control of the Reserve Account.

11. Security Interest; Recoupment and Set-Off.

A. Security Interest. This Agreement will constitute a security agreement under the Uniform Commercial Code. Company grants Bank a security interest in and lien upon: (i) all funds at any time in the Clearing Account, Designated Account or any Reserve Account, (ii) future File proceeds, and (iii) all Company's rights to other accounts or items relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Bank, Company will execute one or more financing statements or other documents to evidence this security interest. Company represents and warrants that no other person or entity has or will be granted a security interest in the Secured Assets without Bank's prior written consent. These security interests and liens will secure all of Company's obligations under this Agreement and other agreements referenced herein. This security interest may be exercised by Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets in the Clearing Account, Designated Account, Reserve Account, or any other applicable account. Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity.

B. Recoupment and Set Off. Bank and iStream shall each have the rights of recoupment and set-off as specified in this Agreement and they are authorized by Company to offset any outstanding or uncollected amounts owed by Company under this or any other agreement from: (i) any amounts in the Designated Account and Reserve Account, (ii) any amounts that Bank or iStream would otherwise be obligated to deposit into the Clearing Account or Designated Account, and (iii) any other amounts Bank or iStream may owe Company under this Agreement or any other agreement.

12. Indemnification, Limitation of Liability.

A. Indemnification by Company. In addition to other indemnification and liability provisions elsewhere in this Agreement, Company will be liable for, hold harmless, and will indemnify Bank and iStream from and against all claims, damages, losses and expenses reasonably incurred by Bank or iStream arising out of this Agreement in connection with the receipt of Services, (except to the extent of any negligence or misconduct of Bank or iStream), including all losses and expenses incurred by Bank or iStream due to Company's failure to report required changes, transmission of incorrect data or Files, failure to prevent a breach in its computer systems or in information stored on or sent from such system(s), whether the item or event causing the breach was known or unknown, or failure to maintain compliance with the Laws and Rules. Notwithstanding anything to the contrary herein, Company agrees to indemnify Bank and iStream for the amount of any returns or other losses that are incurred by Bank or iStream that relate to Items Company submits for processing.

B. **Indemnification by Providers.** In addition to other indemnification and liability provisions elsewhere in this Agreement, Providers will be liable for, hold harmless, and will indemnify Company from and against all claims, damages, losses and expenses reasonably incurred by Company arising out of this Agreement in connection with their provision of Services to Company (except to the extent of any negligence or misconduct of Company), including all losses and expenses incurred by Company due to Provider's transmission of incorrect data or Files, failure to prevent a breach in their computer systems or in information stored on or sent from such system(s), whether the item or event causing the breach was known or unknown, or failure to maintain compliance with the Laws and Rules.

C. Limitation of Liability. No party shall be liable for any claims, acts, omissions or delays of any third party that relate to this Agreement. In no event will any party or its agents, officers, directors or employees be liable for indemnifying another party for any punitive, special, consequential or indirect losses or damages hereunder.

D. Performance. Bank and iStream will be responsible for performing only those Services expressly provided for in this Agreement,. Bank and iStream make no other warranty, express or implied, regarding the Services, and nothing contained in the Agreement will constitute such a warranty. BANK AND

ISTREAM DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In conjunction with Section 12.B., neither Bank nor iStream will be liable for any damages or other losses, or failure or delay in their performance of this Agreement if such damages, losses, failure or delay arises out of (i) any third party patent claims, (ii) any losses or damages resulting from a breach in the security of Company's network security by whatever means, or (iii) causes beyond their control and without their fault or negligence.

13. Warranties of Company. Company represents and warrants the following to Bank and iStream: (i) Company shall only deposit Items that are authorized by this Agreement and the Remote Deposit Agreement, (ii) Company will not create duplicate Images of Items, transmit a duplicate Image or File, and deposit or otherwise negotiate the original Item from which an Image was created, (iii) No subsequent transferee, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Item from which an Image was created or duplication made (whether paper or electronic), (iv) No subsequent transferees of an Item, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that an Image of an Item was presented for payment or returned instead of the original Item, (v) All information contained in the Application or any other document submitted to Bank and iStream is true, complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Company throughout the term of this Agreement, (vi) Company is not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, except as any such change has been noticed to Bank and iStream in compliance with Section 9.G., (vii) Company and the person signing this Agreement have the power to execute and perform obligations of Company under this Agreement and this Agreement will not violate any law, or conflict with any other agreement to which Company is subject, (viii) There is no action, suit or proceeding pending or to Company's knowledge threatened which if decided adversely would impair Company's ability to carry on its business substantially as now conducted or which would adversely affect Company's financial condition or operations, (ix) All Items and business transactions of Company are bona fide and Company conducts its business and submits Items and Files in compliance with the Laws and Rules. Files and Items submitted to iStream or Bank do not contain computer viruses or other harmful, intrusive, or invasive codes and Company maintains its computer system in compliance with the Procedures, and (x) Company agrees to indemnify and hold Bank and iStream harmless from and against any and all claims, losses, liability, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising from the breach of any of Company's warranties, representations or obligations under this Agreement.

14. Term and Termination.

A. Term. This Agreement will remain in effect for a period of 3 years from the Effective Date ("Initial Term") and will automatically renew for successive 3 year terms (each a "Renewal Term"), unless another term period is agreed among Company, Bank and iStream, or unless terminated as set forth below.

B. Termination.

1. Without Cause. The Agreement may be terminated by either party to be effective at the end of the Initial Term or any Renewal Term by giving written notice of intent not to renew to the other party at least 90 days before the end of the then-current term. This Agreement may be terminated by Bank or iStream at any time upon 30 days prior notice to Company. If this Agreement is terminated by Company other than as permitted in this Section 14.B., the provisions of Section 14.E.2. shall apply.

2. With Cause. The party not in default may terminate this Agreement immediately upon the occurrence of an Event of Default (defined below). Notice of termination may be given orally or in writing, at the discretion of Bank and iStream. Termination will be effective on the date specified in such notice and, except for a termination by Company due to an Event of Default by Bank or iStream, the provisions of Section 14.E.2. shall apply.

C. Events of Default. The following will each individually constitute an Event of Default:

1. Exceeding Risk Parameters. The occurrence of any Item or File activity that falls beyond the risk parameters established by Bank and iStream.

2. Nonpayment. Company fails to pay any amount owed to Bank and/or iStream.

3. Adverse Financial Condition. Company's financial condition changes adversely.

4. Garnishment. Company's deposit accounts with Bank, the Designated Account, the Clearing Account or any of Company's property or other accounts in the possession of Bank is garnished or attached.

5. Asset Assignment. Company assigns its assets generally for the benefit of creditors.

6. Bankruptcy. A proceeding is commenced by or against Company under any bankruptcy, insolvency or similar law seeking an order to adjudicate Company as bankrupt or insolvent or other relief with respect to Company or its debts, or seeking appointment of a receiver or similar official for Company or for any substantial part of Company's assets.

7. Breach. A party fails to perform a material obligation of this Agreement, and such failure continues for a period of 15 days after the breaching party receives written notice of the breach.

8. False Representation. Any representation and warranty by Company is or becomes false or misleading in any material respect as of the date made or at any time during the term of this Agreement.

9. Fraud. A reasonable determination by Bank or iStream that fraud is occurring, including any attempt by Company to obtain duplicate payments on a single Item.

10. Laws and Rules. Company's violation of the Laws or Rules.

D. Action upon an Event of Default. Upon the occurrence of an Event of Default by Company, Bank and iStream may take one or more of the following actions: (i) suspend Services to Company and terminate this Agreement as provided in Section 14.B.2., (ii) create a Reserve Account, or (iii) implement any other reasonable action deemed necessary by Bank and iStream to protect their interests.

E. Action upon Termination.

1. Accounts. Company (a) must maintain in the Designated Account and any Reserve Account enough funds to cover all Items for which provisional credit was given by Bank, and all Fees and other amounts for which Company is liable, for a period of 180 days, and (b) authorizes Bank to charge such accounts, or any other account maintained under this Agreement, for all such amounts. All of Company's obligations regarding Items and Files will survive termination and Company will remain liable to Bank and iStream for all liabilities occurring beyond such 180 day period. If the amount in the Designated Account and any Reserve Account is not adequate, Company will pay, upon demand, any amount owing to Bank or iStream, as the case may be, together with all costs and expenses incurred to collect such amount.

2. Early Termination. For terminations to which this Section 14.E.2. applies, this Agreement may be terminated on a specified date prior to the end of the Initial Term or any Renewal Term ("Early Termination") and Company shall immediately pay the following amounts to iStream and Bank: (a) all Fees owed by Company but not paid up to the Early Termination; (b) any current termination, deconversion, or change-over Fees established by iStream; and (c) all amounts that iStream and Bank would have been entitled to receive hereunder for the remainder of the then-current Initial Term or Renewal Term, if not for the Early Termination ("Unperformed Term"). The foregoing amounts include all fixed, monthly, or annual Fees hereunder, as well as any minimum required Fees ("Minimum Fees") applicable to the Unperformed Term; provided, however, that if no Minimum Fees are included in this Agreement, then the amount owed by Company under Section 14.E.2.(c) shall be calculated by multiplying the number of months remaining in the Unperformed Term by the average monthly Fees charged to Company during the six (6) months preceding Early Termination (or any such shorter time elapsed since the start of Services). Company agrees that the Early Termination charges set forth above are not a penalty, but rather are reasonable in light of the financial harm that Bank and iStream would incur due to an Early Termination of Company.

15. Compliance with Laws and Rules. Company agrees to comply with all applicable federal, state, and local laws, rules, regulations and Operating Circulars ("Laws") and with (i) all applicable rules and operating guidelines issued by the National Automated Clearing House Association (NACHA) or other clearing agent and (ii) any policies and procedures, including the Procedures, provided from time to time by Bank or iStream (collectively, the "Rules"). The Laws and Rules are incorporated into this Agreement by reference as if they were fully set forth herein. Company will be responsible for knowing the requirements of the applicable Laws and Rules, and will assist Bank and iStream in complying with Laws and Rules applicable to any Item, File, or this Agreement. Company shall be liable for the amount of any fines and/or liabilities assessed against Bank for any violation of the Laws or Rules that are due to the acts or omissions of Company or any other third party providing services to Company that in any way relate to Services under this Agreement.

16. Use of Trademarks; Confidentiality. Company may not use the name or trademarks of Bank or iStream without the express written consent of the trademark owner and shall not indicate, directly, indirectly, that either Bank or iStream endorse, or are connected in any way with, Company. If Bank or iStream receive any protected or confidential healthcare or financial information from Company during the course of providing services under this Agreement, the receiving party shall not use or disclose such information other than as permitted by law or to maintain data bases for the provision of Services.

17. General Provisions.

A. Entire Agreement; Governing Law. This Agreement, the Application, and other agreements or documents referenced herein, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded by this Agreement. The laws of the State of Delaware shall govern this Agreement.

B. Assignability. This Agreement may be assigned by Bank or iStream without the permission of Company. Company may assign this Agreement directly or by operation of law with the prior written consent of Bank and iStream.

C. Notices. Bank and iStream shall send written notices and communications to Company at the last address (electronic or regular mail) that Company provided to the other parties in writing. Company shall provide written notices and communications to iStream and Bank at the address then-currently specified in the Procedures. Any written notice under this Agreement will be deemed given upon the earlier of: (i) actual receipt indicated by confirmation receipt if by facsimile, United States mail, private courier, or electronic mail, or (ii) five days after being deposited in the United States mail, and addressed to the Company at the last address shown on the records of Bank and iStream; or to Bank and iStream as provided in the Procedures. If written notice is not otherwise required, Bank or iStream may provide a notice verbally to Company, effective upon receipt or as otherwise specified, if followed up with a written confirmation notice.

D. Amendments; Changes to Fees. Bank and iStream may propose amendments or additions to this Agreement. Company will be notified of any such proposed amendment or addition via a periodic statement or other form of written notice. Company will be deemed to have agreed to the change if Company continues to present Items or Files for processing after 2 days following the time at which notice is deemed given per Section 17.C. Notwithstanding the previous sentence, changes to Fees that may be assessed under this Agreement will be effective upon notice (by any method) to Company, unless a later effective date is provided.

E. Bankruptcy. Company will immediately notify Bank and iStream of any bankruptcy, receivership, insolvency or similar action initiated by or against Company or any of its principals. Company will include Bank and iStream on the list of creditors as filed with the Bankruptcy Court and failure to do so will be cause for immediate termination or any other action available to Bank or iStream under applicable Laws or Rules. As an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of Company, this Agreement cannot be assumed or assigned under Company's bankruptcy.

F. Employee Actions. Company is solely responsible for its employees' actions while in Company's employ, including assuring Company's compliance with this Agreement.

G. Survival. All provisions that by their context are intended to survive termination of this Agreement will so survive, including all liability, indemnification and arbitration terms herein.

H. Non-Waiver. The failure of Bank or iStream to object to or to take any affirmative action with respect to any conduct by Company which is in violation, breach, or default of the terms hereof, shall not be construed as a waiver thereof, nor of any future breach or subsequent violation, breach or default.

18. ARBITRATION OF DISPUTES. Company, Bank and iStream agree that the transactions governed by this agreement involve "commerce" under the Federal Arbitration Act ("FAA"). Any controversy or claim between Company and Bank and/or iStream, or between Company and any of Bank's and/or iStream's officers, employees, agents or affiliated entities, that arises out of or is related to this Agreement, or any service related to this Agreement, irrespective of the legal theory, (collectively, any "claim"), will be settled by binding arbitration under the FAA. The arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules. Company will not have the right to go to court or to have a jury trial, engage in pre-arbitration discovery except as provided in the rules, or have any claim arbitrated as a class action. The arbitrator's decision will be final and binding with limited rights to appeal.

IN WITNESS WHEREOF, by signing the Item Processing Application, Company accepts and agrees to be bound by the terms of this Agreement as of the Effective Date, ***under the condition that***, as of the Effective Date, Company has received written notice from Bank or iStream that (i) Company's Application has been accepted and (ii) Company has been assigned a processing identification number. **If this condition is not fulfilled, this Agreement shall have no force or effect on Company, iStream and Bank.** Company agrees that receipt of such notice from iStream or Bank shall indicate for all purposes that iStream and Bank agree to be bound by the terms of this Agreement as of the Effective Date, without the need for the signatures of iStream and Bank as to this Agreement.

BANK:
KENNEY BANK AND TRUST

BY: __________
NAME: __________
TITLE: __________
ADDRESS: Route 54 and Jordan Street
Kenney, Illinois 61749

DATE SIGNED: __________

ATTEST:

BY: __________
NAME: __________
TITLE: __________

APPROVED AS TO FORM:

BY: __________
NAME: __________
TITLE: __________

COMPANY:
CITY OF SHERMAN, TEXAS

BY: __________
NAME: George Olson
TITLE: City Manager
ADDRESS: 220 West Mulberry Street, P. O. Box 1106
Sherman, Texas 75090

DATE SIGNED: __________

ATTEST:

BY: __________
NAME: Linda Ashby
TITLE: City Clerk

APPROVED AS TO FORM:

BY: __________
NAME: Brandon S. Shelby
TITLE: City Attorney

ISTREAM:
ISTREAM FINANCIAL SERVICES, INC.

BY: __________
NAME: __________
TITLE: __________
ADDRESS: 13555 Bishop's Court, Suite 102
Brookfield, Wisconsin 53005

DATE SIGNED: __________

ATTEST:

BY: __________
NAME: __________
TITLE: __________

APPROVED AS TO FORM:

BY: __________
NAME: __________
TITLE: __________

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.8

**** RESOLUTION NO. 5376***
Authorizing the Expenditure of $3,000.00 in Matching Funds to the Texoma Council of Governments for Transportation Planning

Issue
The Sherman-Denison Metropolitan Planning Organization (MPO) has asked the City of Sherman to provide $3,000.00 as its portion of the local match needed to acquire the transportation planning funds made available from the Federal Transit Administration under Section 5307, Title 49 U.S.C.

Background
Federal Transit Administration Section 5307 Planning Funds are available to the Cities of Sherman and Denison through The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). These activities are carried on in cooperation with the Texas Department of Transportation. The City of Sherman's matching requirement for grant participation is $3,000.00 annually. This participation will allow us to have access to funds for public transit administration and planning (TAPS), the Operating Transportation Grant received by the Senior Citizens Transportation program, and Off-System Bridge Repair/Replacement (not on state highways or roads). These planning funds also could be available for efforts such as truck route studies, traffic counts to determine high hazardous intersections, and SAFETEA-LU required TxDOT projects for improvement to the State Transportation System. The professional staff of the MPO is available for traffic planning studies and information for planning purposes.

Origination
Robert Wood, Director of the Sherman-Denison MPO

Financial Consideration
This year's local match of $3,000.00 is budgeted in fiscal year 2008 - 2009.

Staff Recommendation
It is recommended that the City Council adopt the attached resolution, authorizing the City staff to participate in the public transit administration and planning effort and that the grant match fee of $3,000.00 be approved.

Alternatives
The City Council could opt not to contribute Sherman's local match. This alternative would leave us without a voice on the MPO Board and would cause us to lose benefits attributable to the program.

Attachments
Resolution No. 5376; Request from MPO Director Robert Wood dated June 2, 2009

Prepared by:
Jeff Miller, Director of Public Works

Approved by:
George Olson, City Manager

RESOLUTION NO. 5376

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXPENDITURE OF THREE THOUSAND DOLLARS ($3,000.00) IN MATCHING FUNDS TO THE TEXOMA COUNCIL OF GOVERNMENTS FOR TRANSPORTATION PLANNING; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the Federal Transit Administration has available transportation planning funds for the Texoma Council of Governments acting as the Metropolitan Planning Organization; and

WHEREAS, 49 U.S.C. and The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires local governments to contribute matching funds for the operation of the program;

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

SECTION 1. That the City Manager is hereby authorized and directed to expend Three Thousand Dollars and No Cents ($3,000.00) to the Texoma Council of Governments as the City's share of the matching funds for public transit administration and planning.

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

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

CITY OF SHERMAN, TEXAS

BY: ________________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ________________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

____

BRANDON S. SHELBY,
CITY ATTORNEY

SHERMAN-DENISON
METROPOLITAN PLANNING ORGANIZATION
INTERMODAL URBAN TRANSPORTATION PLANNING
www.sdmpo.org

June 2, 2009

George Olson, City Manager
City of Sherman
220 West Mulberry Street
Sherman, Texas 75090

Dear Mr. Miller:

The Sherman - Denison Metropolitan Planning Organization (MPO) has been advised of the availability of planning funds from the Federal Transit Administration (FTA) under Section 5307 Title 49 U.S.C.

In accordance with Title 49 U.S.C. and The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), local governments must provide matching funds for the operation of this program. The MPO respectfully requests the City of Sherman provide $3,000, by resolution, as its portion of the local match needed to accomplish the required public transit administration and planning in support of the Section 5307 grant. The City of Denison has also been requested to provide $3,000.

Ten years ago we were able to reduce your needed local match amount by $ 1,000. We are glad to announce that because of state funding match ($11,000) for this important program we will be able to keep the required local match at the same level as last year. Additionally, we have been able to hold the line on budget increases for this program.

The attached administrative and planning budget is for your use as appropriate. This budget has been approved by the MPO, but is subject to State and FTA administrative changes. The SAFETEA-LU required annual listing of projects is also attached.

These transportation programs will provide an excellent return on the city's investment. As an example, the MPO has been able to set aside $ 10,000 annually to meet city specific needs. A copy of your last year's resolution is attached.

If you have any questions, please contact me at 813-3534.

Sincerely,

Robert Wood
Director
Sherman - Denison MPO

enclosures

1117 Gallagher Drive Suite 300 Sherman, Texas 75090 Phone: (903) 813-3531 / 813-3534 FAX: (903) 813-3539

Sherman - Denison Urban Area

FTA SECTION 5307 ALLOCATION
FOR FY 2009

TASK	FTA FUNDING	Min. Required LOCAL SHARE[1]	TOTAL
Planning	$68,000	$17,000	$85,000
Capital[2]	$40,000	$10,000	$50,000
Operations (TAPS)	$837,977	$837,977	$1,675,954
TOTAL	**$945,977**	**$864,977**	**$1,810,954**

1. Planning requires $ 6,000 local share plus $11,000 additional offset by state match.
2. Capital items includes funds allocated for preventative maintenance of vehicles, ADA equipment and software upgrades.

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. C.9

RESOLUTION NO. 5377

Awarding a Bid to and Authorizing Execution of a Contract with Lynn Vessels Construction, LLC to Rebuild Intersections on Taylor Street

Issue

Awarding a bid and executing a contract to rebuild two intersections on Taylor Street as part of the sales tax street improvement initiative

Background

As a major east-west thoroughfare, Taylor Street was an important project identified for improvement in the November 2007 sales tax referendum election. Two intersections on Taylor Street, at Alexander and Crockett, have severe dips due to an old street design using valley gutters to transmit storm water from areas north of Taylor Street. Teague, Nall & Perkins was hired to develop a new intersection design to smooth out the intersections, allowing for traffic to pass safely through at a normal travel speed. Two bids for construction were received on June 8, 2009, from local contractors. The low qualifying bid was received from Lynn Vessels Construction. The contractor will be required to complete the project before school starts on August 24, 2009.

Origination

Department of Public Works

Financial Consideration

The low bid for the project is $197,815.15. Funds for the design and construction of these two intersections are available as a part of the street sales tax initiative.

Staff Recommendation

Award the bid and execute a contract with Lynn Vessels Construction, LLC for construction of this project.

Alternatives

Those as may be recommended by the City Council

Attachments

Resolution No. 5377, Contract, Consultant Recommendation Letter, Bid Tabulation, Location Map

Prepared by:
Jeff Miller, Director of Public Works

Approved by:
George Olson, City Manager

RESOLUTION NO. 5377

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH LYNN VESSELS CONSTRUCTION, LLC TO REBUILD INTERSECTIONS ON TAYLOR STREET; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That Lynn Vessels Construction, LLC of Sherman, Texas, is hereby awarded the bid in the total amount of One Hundred Ninety-Seven Thousand Eight Hundred Fifteen Dollars and Fifteen Cents ($197,815.15) for the rebuilding of intersections on Taylor Street; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a contract with Lynn Vessels Construction, LLC in accordance with the terms and provisions of all contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ___________________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ___________________________________
BRANDON S. SHELBY,
CITY ATTORNEY

CITY OF SHERMAN §

COUNTY OF GRAYSON §

CONTRACT
BETWEEN THE CITY OF SHERMAN AND THE CONTRACTOR
FOR
IMPROVEMENT OF TAYLOR STREET AT THE INTERSECTION OF CROCKETT STREET AND ALEXANDER STREET

THIS AGREEMENT is by and between the **CITY OF SHERMAN** ("CITY" or "OWNER") and **LYNN VESSELS CONSTRUCTION, LLC** ("CONTRACTOR").

The **CITY** and **CONTRACTOR**, for the consideration set forth in Article 4 of the Contract and the mutual covenants expressed in this Contract, agree as follows:

ARTICLE 1 - PROJECT

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:

> ***The work to be performed under the provisions of these documents includes the replacement of approximately 1900 SY of 6" Concrete Pavement, as well as the installation of approximately 500 LF of 18"-24" RCP Storm Drain.***

This Project will be completed with/without change orders and all extra work in connection with the project, as described in the contract documents, shall be at the CONTRACTOR'S sole cost and expense all the materials, supplies, machinery, equipment, tools, superintendence, labor, necessary and customary insurance, and other accessories and services necessary to complete the Project in accordance with the Contract Documents.

ARTICLE 2 – INDEPENDENT CONTRACTOR

2.01 CONTRACTOR is and throughout this Contract shall remain an INDEPENDENT CONTRACTOR and as such is the sole judge on how to perform the work required under this Contract.

ARTICLE 3 - CONTRACT TIMES

3.01 *Commencement of Contract*

A. CONTRACTOR agrees to commence work under this Contract on or before the date specified in the written "Notice to Proceed" of the CITY and to fully complete the contract within **Fifty (50) days.**

B. 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.

3.02 *Dates for Substantial Completion and Final Payment*

The Work will be substantially completed by CONTRACTOR on or before fifty (50) consecutive calendar days from the date of the Notice to Proceed.

3.03 *Liquidated Damages*

CONTRACTOR and CITY recognize that time is of the essence of this Contract and that CITY will suffer loss that is difficult to calculate if the Work is not completed within the times specified in paragraph 3.02 above, plus any extensions thereof allowed in accordance with paragraph 4.02 of the General Conditions. The parties also recognize the expense, and difficulties involved with a delay make it impossible to evaluate the actual loss suffered by CITY due to the nature of this project if the Work is not completed on time. CONTRACTOR must agree to commence work on or before a date to be specified in written "Notice to Proceed" of the CITY, and to fully complete the project within 50 (fifty) consecutive calendar days thereafter. CONTRACTOR must also agree to pay liquidated damages as indicated in Schedule 108.8.1.(a) below for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

Schedule 108.8.1.(a) Liquidated Damages

Amount of Contract ($)	Amount of Liquidated Damages ($)
Less than 25,000.00	100.00 per Day
25,000.000 to 99,999.99	160.00 per Day
100,000.00 to 999,999.99	240.00 per Day
1,000,000.00 or More	500.00 per Day

ARTICLE 4 - CONTRACT PRICE/CONSIDERATION

4.01 CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.01.A and 4.01.B below:

A. For all Project work, a total Sum of: $197,815.15.

B. If the payment for the Project is based on Unit Pricing, the Contract Price shall be as set forth in the Unit Pricing portion of the Proposal.

C. The above price reflects the consideration for the performance of this Contract.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

CONTRACTOR shall submit Applications for Payment in accordance with Article 5 of the General Conditions. Applications for Payment will be processed by the ENGINEER (defined in Article 9.01 of this Contract) as provided in the General Conditions.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

6.01 In order to induce CITY to enter into this Contract, CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR has carefully studied all Contract Documents and understands the Work and Performance required in the Contract Documents and represents to the CITY that CONTRACTOR is fully capable of completing the work specified in the Contract Documents.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (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 CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR 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. CONTRACTOR is aware of the general nature of work to be performed by CITY and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, 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. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

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 7 - CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of the following and are incorporated into this Contract for all purposes:

1. This Contract;
2. Performance Bond;
3. If applicable, the Unit Pricing in the Proposal;
4. Payment Bond;
5. Any Other Bonds;
6. General Conditions of Agreement;
7. Special Conditions of Agreement;
8. Any Other Documents listed in the Table of Contents of the Specifications and Contract Documents;
9. Any Drawings associated with the Project;
10. Addenda (if applicable);
11. Exhibits to this Contract(enumerated as follows):
    a. Notice to Proceed;
    b. CONTRACTOR'S Bid;
    c. Documentation submitted by CONTRACTOR prior to Notice of Award;
    d. Any other documentation submitted by the CONTRACTOR that is applicable to this Project.
12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    a. Written Amendments;
    b. Work Change Directives;
    c. Change Order(s), if permissible under the Resolution enacted by the City.

B. There are no Contract Documents other than those listed above in this Article 7.

C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 9.10 of this Contract.

ARTICLE 8 – NOTICE

8.01 Any notice and/or statement required or permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing;

If intended for CITY to:
Designee:
Jeff Miller, Director of Public Works
Address:
P.O. Box 1106
Sherman, TX 75091-1106
903-892-7315

If intended for CONTRACTOR, to:
Designee:
Lynn Vessels Construction, LLC
Address:
P.O. Box 1212
Sherman, TX 75091
903-893-4300

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

A. Terms used in this Contract will have the meanings indicated in the General Conditions.

B. In addition to the terms in the General Conditions, the term "ENGINEER" in this Contract shall mean a person designated as the ENGINEER by the City.

9.02 *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.

9.03 *Successors and Assigns*

CITY and CONTRACTOR 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.

9.04 *Severability and Conflict*

A. 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 CITY and CONTRACTOR, 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.

B. If there are any conflicts between the Contract and the Contract Documents, the provisions in the Contract prevail over the provisions in the Contract Documents.

9.05 *Captions*

Section or other headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

9.06 *Indemnity and Duty to Defend*

A. CONTRACTOR agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses including attorneys fees, for personal injury (including death), property damage or other harm, for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of this Agreement, or by any negligent, grossly negligent, strictly liable act, or any omission of CONTRACTOR, its officers, agents, employees or subcontractors, in the performance of this Agreement (hereinafter "Claims"); except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents, employees or separate contractors. In addition, this indemnification and save harmless shall apply to any imputed or actual joint enterprise liability.

B. CONTRACTOR is expressly required to defend the CITY against all Claims for which the CITY becomes liable. In its sole discretion, CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such a right is expressly waived by CITY in writing by the City Manager, approved by the City Attorney, and properly authorized by the CITY'S Council. 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 the CITY or as a waiver of CONTRACTOR'S obligation to indemnify the CITY pursuant to this Contract. CONTRACTOR shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. 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 in defense of Claims for which CONTRACTOR is liable under this Paragraph.

C. This indemnification and duty to defend is subject to and does not waive any governmental immunity available to the CITY under Texas law, and any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

9.07 *Deletion of Arbitration Clause*

The parties agree that Paragraph 6.03 entitled Arbitration in the General Conditions, is not binding on the parties. This paragraph is not designed to prevent the parties from mutually agreeing to select arbitration as a means of resolving any disputes related to this Contract. The parties, however, agree not to be bound by the terms of 6.03 entitled Arbitration in the General Conditions.

9.08 *Choice of Law: Venue*.

This contract, the entire relationship of the parties, and any litigation between the parties (whether grounded in contract, tort, statute, law or equity) shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Texas, without giving effect to its choice of laws principles. This contract is wholly performable in Grayson County, Texas. Exclusive venue for any litigation between the parties shall be brought in Grayson County, Texas, and shall be brought in the State District Courts of Grayson County, Texas, or in the United States District Court for the Eastern District of Texas. The parties waive any challenge to personal jurisdiction or venue (including without limitation a challenge based on inconvenience) in Grayson County, Texas, and specifically consent to the jurisdiction of the State District Courts of Grayson County, Texas, or in the United States District Court for the Eastern District of Texas, Sherman Division.

9.09 *Binding Authority*

By their signatures below, the individuals represent that they have reviewed Contract with their attorney and that the individuals have the express authority to enter into this Contract.

9.10 *Entire Agreement*

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Contract, and except as otherwise provided herein cannot be modified without written agreement of both the parties to be attached to and made a part of this Contract.

9.11 *Contract Interpretation*

Although this CONTRACT is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

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

This Contract will be effective on June 15, 2009 (which is the Effective Date of the Contract).

CITY:	**CONTRACTOR:**
CITY OF SHERMAN, TEXAS	**LYNN VESSELS CONSTRUCTION, LLC**
BY: ______________________________	**BY:** ______________________________
NAME: George Olson	**NAME:** ______________________________
TITLE: City Manager	**TITLE:** ______________________________

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared ___________________________, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein express.

GIVEN UNDER MY HAND and seal of office this ________day of ____________________, 2009.

____
Print Name:______________________________
Notary Public
Date of Expiration:______________________

(Stamp)

Attest:

By: ______________________________
Linda Ashby, City Clerk

Approved as to form:

By: ______________________________
Brandon S. Shelby, City Clerk

Agent for service of process:

By: ______________________________
Name: ______________________________
(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

TEAGUE NALL AND PERKINS

Civil Engineering Surveying Landscape Architecture Planning

June 8, 2009

Jeff Miller, PE
Director of Public Works
City of Sherman
P O Box 1106
Sherman, TX 75091

RE: RECOMMENDATION FOR AWARD OF CONSTRUCTION CONTRACT
Taylor Street Improvement at the Intersections of Crockett Street and Alexander Street
TNP Job No: SHN 09164

Dear Mr. Miller,

On Monday, June 8th, 2009, at 2:00 pm, bids were received at the City of Sherman Department of Public Works for the Taylor Street Improvement project. The low bidder was Lynn Vessels Construction LLC with a base bid of $197,815.15.

After checking their references, we recommend the City of Sherman award the contract in the amount of **$197,815.15** to **Lynn Vessels Construction, LLC** for the Taylor Street Improvement project.

Thank you for the opportunity to work with the City of Sherman on this project and please do not hesitate to call if you need any additional information.

Sincerely,

TEAGUE NALL AND PERKINS INC.

Chris Schmitt, P.E.

Cc: TNP file

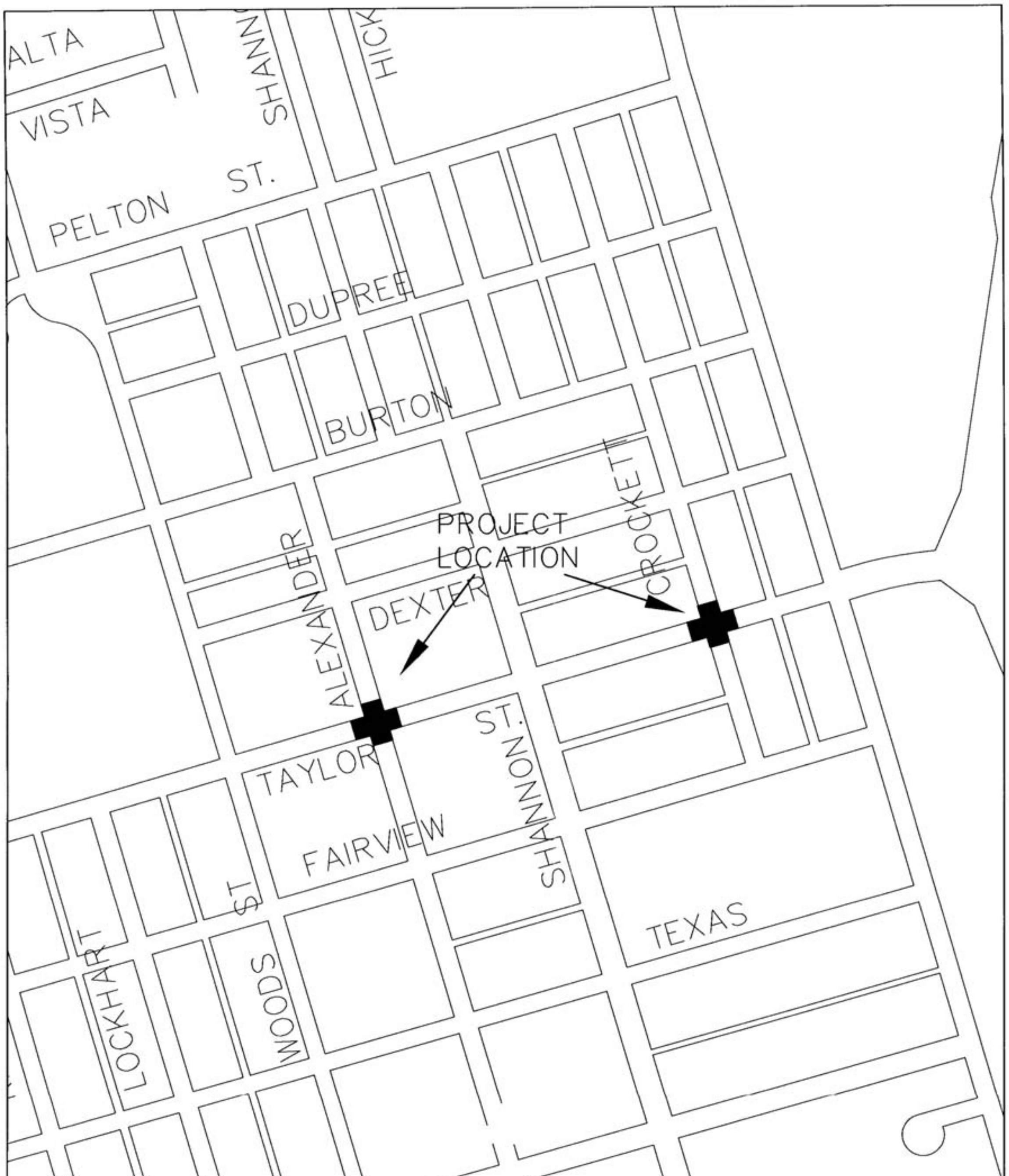
TEAGUE NALL AND PERKINS

Civil Engineering Surveying Landscape Architecture Planning

IMPROVEMENT OF TAYLOR STREET AT THE INTERSECTIONS OF CROCKETT STREET AND ALEXANDER STREET
Project No. SHN09164
City of Sherman
BID TABULATION REPORT

Engineer's Estimate = **$186,874.00**
BID OPENING DATE: **6/8/2009**
BID OPENING TIME: **2:00 PM**

				BIDDERS					
				Lynn Vessels Construction LLC		**Vessels Construction, Div. of Vescore**			
ITEM NO.	DESCRIPTION OF ITEMS	QUANTITY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	Remove Asphalt Pavement	1,914.00	SY	$13.00	$24,882.00	$16.55	$31,676.70		$0.00
2	Remove Concrete Curb & Gutter	883.00	LF	$2.59	$2,286.97	$1.50	$1,324.50		$0.00
3	Remove Concrete Valley Gutter	76.00	SY	$6.90	$524.40	$6.00	$456.00		$0.00
4	Remove Concrete Sidewalk	26.00	SY	$6.90	$179.40	$4.00	$104.00		$0.00
5	Remove & Replace Driveway	6.00	SY	$37.95	$227.70	$46.00	$276.00		$0.00
6	Construct 6" Asphalt Pavement	205.00	SY	$21.85	$4,479.25	$55.00	$11,275.00		$0.00
7	Construct 8" Concrete Pavement	1,919.00	SY	$36.80	$70,619.20	$41.00	$78,679.00		$0.00
8	Construct 4" Concrete Sidewalk	30.00	SY	$30.19	$905.70	$42.00	$1,260.00		$0.00
9	Construct 6" Concrete Curb	879.00	LF	$4.77	$4,192.83	$1.20	$1,054.80		$0.00
10	Remove 5' Concrete Curb Inlet	2.00	EA	$575.00	$1,150.00	$1,786.50	$3,573.00		$0.00
11	Remove 10' Concrete Curb Inlet	2.00	EA	$920.00	$1,840.00	$2,000.00	$4,000.00		$0.00
12	Remove 18" RCP	32.00	LF	$11.50	$368.00	$133.59	$4,274.88		$0.00
13	Construct 5' Concrete Curb Inlet	2.00	EA	$2,817.50	$5,635.00	$3,396.60	$6,793.20		$0.00
14	Construct 10' Concrete Curb Inlet	5.00	EA	$3,392.50	$16,962.50	$4,496.40	$22,482.00		$0.00
15	Remove & Replace 6" Curb & 18" Gutter	50.00	LF	$21.85	$1,092.50	$20.00	$1,000.00		$0.00
16	6" Lime Stabilized Subgrade (27 lbs/sy)	2,124.00	SY	$3.45	$7,327.80	$4.50	$9,558.00		$0.00
17	Hydrated Lime for Stabilized Subgrade	29.00	TON	$154.45	$4,479.05	$150.00	$4,350.00		$0.00
18	Construct Barrier Free Ramp	4.00	EA	$471.50	$1,886.00	$672.00	$2,688.00		$0.00
19	24" RCP (Class IV)	220.00	LF	$79.35	$17,457.00	$135.36	$29,779.20		$0.00
20	18" RCP (Class IV)	290.00	LF	$69.00	$20,010.00	$103.82	$30,107.80		$0.00
21	24"x24"x18" 45° RCP Wye (Class IV)	1.00	EA	$618.70	$618.70	$833.00	$833.00		$0.00
22	18"x18"x18" 45° RCP Wye (Class IV)	2.00	EA	$549.70	$1,099.40	$645.00	$1,290.00		$0.00
23	18" 45° RCP Bend (Class IV)	1.00	EA	$273.70	$273.70	$565.00	$565.00		$0.00
24	24" 30° RCP Bend (Class IV)	1.00	EA	$323.15	$323.15	$675.00	$675.00		$0.00
25	Remove & Relocate Existing 4" Waterline	35.00	LF	$61.53	$2,153.55	$77.00	$2,695.00		$0.00
26	Adjust Existing Manhole to Grade	2.00	EA	$575.00	$1,150.00	$675.00	$1,350.00		$0.00
27	Adjust Existing Water Valve to Grade	1.00	EA	$224.25	$224.25	$300.00	$300.00		$0.00
28	Trench Safety	510.00	LF	$1.15	$586.50	$1.00	$510.00		$0.00
29	Remove & Relocate Misc. Signs	12.00	EA	$71.30	$855.60	$63.00	$756.00		$0.00
30	Traffic Control	1.00	LS	$4,025.00	$4,025.00	$2,490.00	$2,490.00		$0.00
	TOTALS:				**$197,815.15**		**$256,176.08**		**$0.00**



TAYLOR ST. INTERSECTION IMPROVEMENTS
AT CROCKETT AND ALEXANDER

City of Sherman, Texas

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. D.1

OTHER BUSINESS
Receive Presentation from Property Owners Scott C. Webb and Sherman E. Noble, P.E. concerning the Washington Street Reconstruction Plan

Issue
Mr. Scott C. Webb and Mr. Sherman E. Noble, P.E. have asked to appear before the City Council at the June 15th meeting concerning the Washington Street reconstruction plan.

Origination
Mr. Scott C. Webb and Mr. Sherman E. Noble, P.E., property owners of 2701 West Washington Street in Sherman, Texas

Financial Consideration
There is no financial impact to this agenda item.

Attachments
None

Prepared and Approved by:
George Olson, City Manager

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. D.2

OTHER BUSINESS
Receive Quarterly Progress Report from Sherman Economic Development Corporation Board Chairman Andy Olmstead and SEDCO President John Boswell

Issue
To receive the Sherman Economic Development Corporation's (SEDCO's) quarterly progress report from Chairman Andy Olmstead and President John Boswell

Background
The brief presentation by the SEDCO Board Chairman and President will provide the City Council with an overview of SEDCO's activities and accomplishments during the last three months. SEDCO's last progress report was presented at the March 16, 2009 City Council meeting.

Origination
City Council

Financial Consideration
None

Attachments
SEDCO's Quarterly Progress Report

Prepared and Approved by:
George Olson, City Manager

REPORTING FORM FOR BOARDS AND COMMISSIONS

Name of Board: **Sherman Economic Development Corporation**

Name of Chairman: **Andy Olmstead**
Name of Vice Chairman: **Greg Kirkpatrick**

Date of Report to City Council: **June 15, 2009**

1. In simple terms and as briefly as possible, please describe the mission of your board.

The mission of the Sherman Economic Development Corporation (SEDCO) is to grow and diversify the Sherman and surrounding area economies through the addition of new jobs and investment of primary employers.

2. Please list the top accomplishments of your board within the past quarter. (please limit the list to five or fewer items).

1) The Corporation continues to work closely with Grayson County and the Denison Development Alliance to promote the North Texas Regional Airport.
2) The staff continues to meet with existing businesses to discuss development issues and how Sherman can help their business grow.
3) The Board approved a request from the Leadership Sherman Class for a new "Welcome to Sherman" sign on U.S. 75 South.
4) The Board approved a Performance Agreement with Prophecy Radio Group for the creation of seven new full-time employees.

3. What are your plans for this board in the next quarter?

The Board and staff are working with several prospects (new and existing businesses) that will add new investment and jobs to Sherman. The Board and staff will work together to develop a new budget and work plan. This year the Board will review the Comprehensive Master Plan when developing the work plan and budget.

4. How often did this board meet in the last quarter?

The SEDCO Board held three regular scheduled meetings.

5. In what percentage of those meeting was a quorum of board members present?

100%.

6. **Did any member attend less than 75% of those meetings? If so, which member and how often did they attend.**

   No.

7. **What other information would your board like to communicate to the City Council? (please be concise in your response).**

   The SEDCO Board looks forward to working with the City on the implementation of the Comprehensive Master Plan and to continue to work with Panda Energy as they move forward to build a natural gas-fired electricity plant in Progress III Industrial Park.

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. D.3

OTHER BUSINESS

Replat Approval of Lots 1 and 2, Block 1 of the O'Hanlon Ranch Addition, Phase 2; David Sprowl, Owner; Sartin and Associates, Inc., Surveyors (2925 and 2929 Sedalia Trail)

Issue

To consider replat approval of Lots 1 and 2, Block 1, O'Hanlon Ranch Addition, Phase 2

Background

The property is located at the northeast corner of Sedalia and Silverado Trails in the O'Hanlon Ranch Estates subdivision. The owner would like to replat two lots into one for residential development.

Origination

David Sprowl (Owner) and Sartin and Associates, Inc. (Surveyors)

Board Recommendation

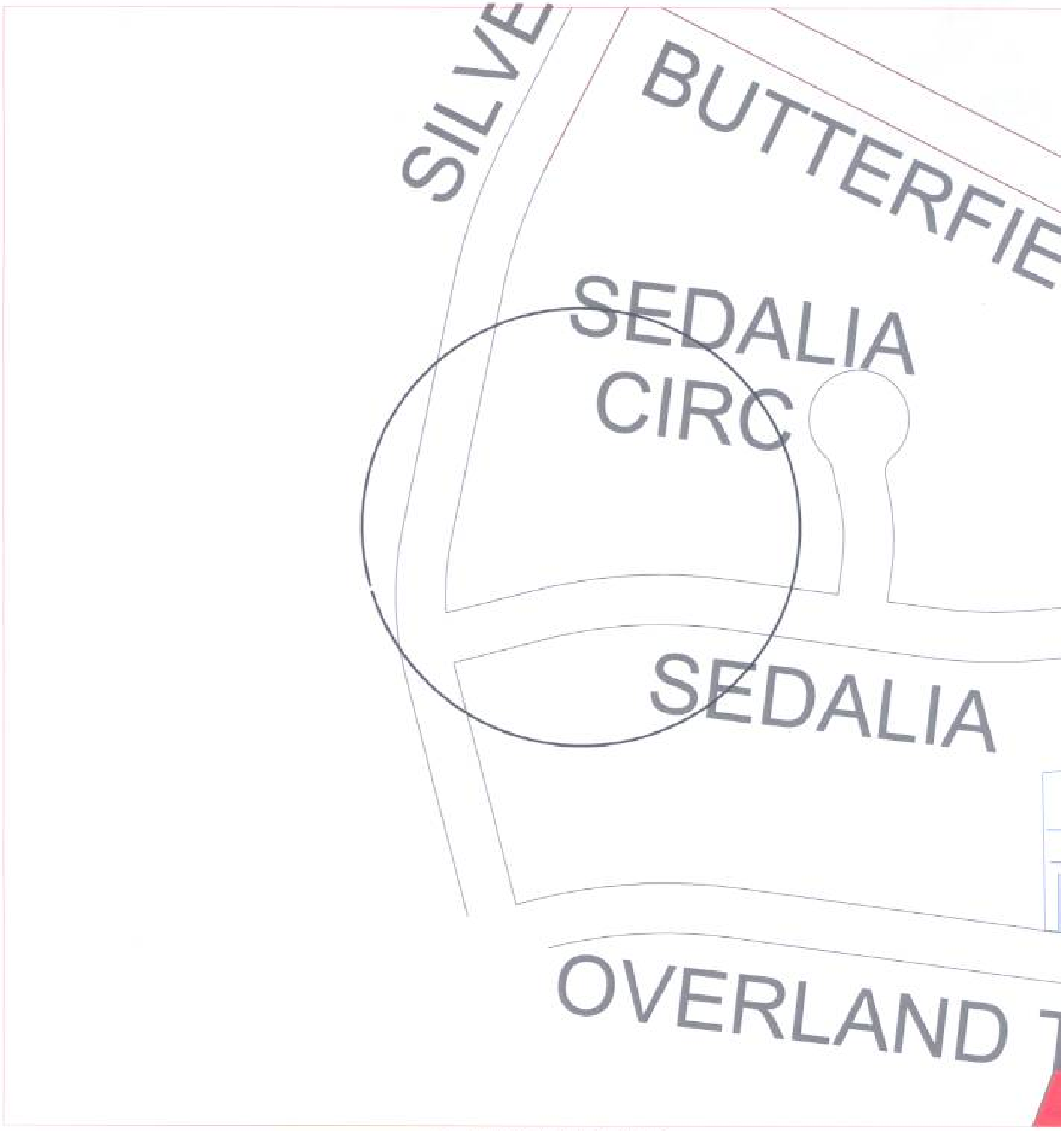
At the May 19, 2009 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Replat be approved.

Attachments

Location Map
Photos
Plat
P&Z Communication
Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager



LEGEND

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

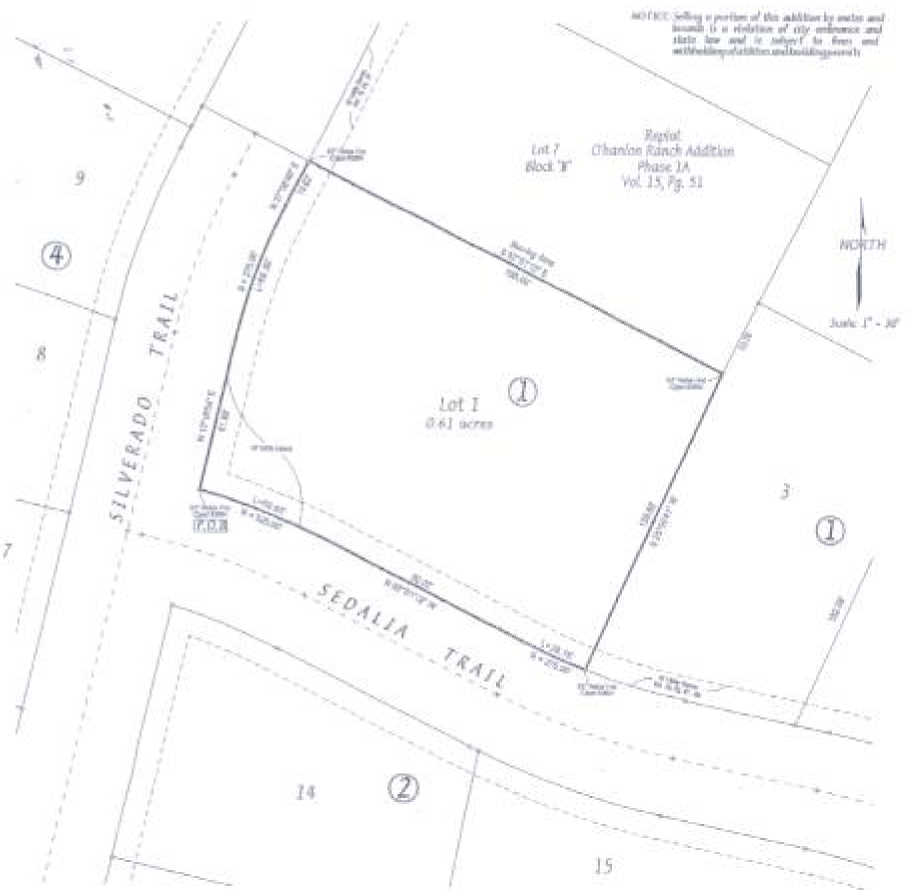
2925 AND 2929 SEDALIA TR.

ENGINEERING DEPARTMENT

N


CANYON CREEK
GOODNIGHT
SILVERADO
Sherman
BUTTERFIELD

2925, 2929 Sedalia Trl.



REPLAT of
LOTS ONE and TWO, BLOCK ONE
O'HANLON RANCH ADDITION, PHASE 2

to the
CITY of SHERMAN, TEXAS

being 0.61 Acres

Owner & Developer

David Sprowl
P.O. Box 1222
Sherman, Texas 75090
(903) 893-5248

SARTIN & ASSOCIATES, INC.
Registered Professional Land Surveyors
109 S. Travis, P.O. Box 1393   Sherman, Texas 75091-1393
Ph.: (903) 892-8003   Fax: (903) 868-1970

SHEET 1 OF 2

AGENDA ITEM #5

City of Sherman

Planning and Zoning Commission
Board of Adjustments

Agenda Communication Form

May 19, 2009

Jason Sofey, Chairman

2925 and 2929 Sedalia Trail
Being Lots 1 & 2, Block 1, O'Hanlon Ranch Addition, Phase 2.
Final Replat

Requested Action/Proposed Use:
Final Replat of Lots 1 & 2, Block 1 of the O'Hanlon Ranch Addition, Phase 2.

Background
This is a replat reconfiguring two adjacent lots into one lot.

Adjacent Zoning:
R-1 (One Family Residential) District

Origination:
David Sprowl (Owner) and Sartin and Associates Inc. (Surveyors)

Master Plan Designation:
Residential

Attachments:
Location map
Photographs
Plat
Staff Review

Prepared by:
Lisa Whitfield,
Engineering & Development Coordinator

Approved By:
Scott Shadden,
Development Services Director

STAFF REVIEW LETTER

May 13, 2009

David Sprowl
PO Box 1222
Sherman, Texas 75091

Dear Applicants,

The request for approval of a Final Replat of Lots 1 and 2, Block 1 of the O'Hanlon Ranch Addition, Phase 2 concerning the property located at 2925 and 2929 Sedalia Trail has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, May 19, 2009 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

1. Original tax certificates shall be furnished for the purpose of recording the plat.
2. Letters from the various utility providers are required verifying availability of service and when service will be available. (City will acquire)
3. Drive approaches and sidewalks shall conform to City of Sherman standards.
4. Any other changes made to the final replat prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Lisa Whitfield, Engineering & Development Coordinator at 903-892-7212 prior to the meeting.

Respectfully,

Mark Gibson
Director of Utilities and Engineering

cc: George Olson, City Manager
Brandon Shelby, City Attorney
Lisa Whitfield, Engineering & Development Coordinator
Sartin & Associates, Inc., PO Box 1843, Sherman, Texas 75091
Scott Shadden, Director of Development Services
Danny Fuller, Fire Marshal
Jeff Miller, Director of Public Works

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. D.4

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. D.5

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. D.6

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. D.7

ADJOURNMENT

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 6-15-2009

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2009
CITY COUNCIL MEETINGS

JANUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	**5**	6	7	8	9	10
11	12	13	14	15	16	17
18	**19**	20	21	22	23	24
25	**26**	27	28	29	30	31

FEBRUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	**2**	3	4	5	6	7
8	9	10	**11**	12	13	14
15	**16**	17	**18**	19	20	21
22	23	24	**25**	26	27	28

MARCH

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	**2**	3	4	5	6	7
8	9	10	11	12	13	14
15	**16**	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

APRIL

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	**6**	7	8	9	10	11
12	13	14	15	16	17	18
19	**20**	21	22	23	24	25
26	27	28	**29**	30		

MAY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	**4**	5	6	7	8	9
10	11	12	13	14	15	16
17	**18**	19	20	21	22	23
24	25	26	27	28	29	30
31						

JUNE

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	**15**	16	17	**18**	19	20
21	22	23	24	25	26	27
28	29	30				

JULY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	**6**	7	8	9	10	11
12	13	14	15	16	17	18
19	**20**	21	22	23	24	25
26	27	28	29	30	31	

AUGUST

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	**3**	4	5	6	7	8
9	10	11	12	13	14	15
16	**17**	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

SEPTEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	**7**	**8**	9	10	11	12
13	14	15	16	17	18	19
20	**21**	22	23	24	25	26
27	28	29	30			

OCTOBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	**5**	6	7	8	9	10
11	12	13	14	15	16	17
18	**19**	20	21	22	23	24
25	26	27	28	29	30	31

NOVEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	**2**	3	4	5	6	7
8	9	10	11	12	13	14
15	**16**	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

DECEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	**7**	8	9	10	11	12
13	14	15	16	17	18	19
20	**21**	22	23	24	25	26
27	28	29	30	31		

01/19/09 - M.L.K., Jr. Birthday / Regular Council Meeting
~~01/26/09 - 12 Noon Joint Meeting w/P&Z Commission re: Comprehensive Plan~~
02/11/09 - 12 Noon Called Meeting to Interview City Attorney Candidates
02/16/09 - Washington's Birthday / Regular Council Meeting
02/18/09 - 1PM Called Meeting to Interview City Attorney Candidates
02/25/09 - 12 Noon Joint Meeting w/P&Z Commission re: Comprehensive Plan
~~03/06/09 - Proposed 12 Noon Called Meeting with Chamber Board~~
04/29/09 - 12 Noon Budget Planning Meeting in Council Chambers
~~05/09/09 - City Council Election~~
~~05/12/09 - 12 Noon Called Meeting to Canvass Election Results~~

~~06/17-18/09 - Budget Workshop in Council Chambers~~
06/18/09 - Budget Workshop/Long Range Planning Workshop in Council Chambers
~~06/19/09 - Long Range Planning Workshop~~
09/07/09 - Labor Day / Called Council Meeting on 09/08/09