

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, MAY 2, 2022
5:00 P.M.**

- A. 1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A. 2. PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER SHAWN TEAMANN**
- A. 3. INVOCATION BY COUNCIL MEMBER SHAWN TEAMANN**
- A. 4. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF APRIL 18, 2022**

Citizen Comments

B. 1. CITIZEN COMMENTS

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

Consent Agenda

C. 1. CONSENT AGENDA

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

Public Hearing

D. 1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6476

Establishing a Tax Increment Reinvestment Zone #8 (Along U.S. Hwy 82 and between Plainview Road and Travis Street); Providing for Findings of Fact; Providing for a Preliminary Financing Plan; Providing for a Board of Directors; Providing for Severability

D. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6477

Establishing a Tax Increment Reinvestment Zone #9 (Along U.S. Hwy 82 and Between Plainview Road and F.M. 1417 (Heritage Parkway)); Providing for Findings of Fact; Providing for a Preliminary Financing Plan; Providing for a Board of Directors; Providing for a Preliminary Financing Plan; Planning for Severability

Close Public Hearing and Consider Adoption of Ordinances

D. 3. ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers 6476 & 6477

Resolutions

- E. 1. **RESOLUTION NO. 6878**
Authorizing Execution of an Interlocal Agreement Between the City of Sherman and Grayson County to Participate in the Sherman Tax Increment Reinvestment Zone #8
- E. 2. **RESOLUTION NO. 6879**
Authorizing Execution of an Interlocal Agreement Between the City of Sherman and Grayson County to Participate in the Sherman Tax Increment Reinvestment Zone #9
- E. 3. **RESOLUTION NO. 6880**
Authorizing Execution of a Professional Services Agreement with Garver, LLC for design of the Sherman Water Treatment Plant Expansion Project
- E. 4. **RESOLUTION NO. 6881**
Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for Design of the Shepherd 2.0 Million Gallon Elevated Storage Tank Project
- E. 5. **RESOLUTION NO. 6882**
Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for the Lake Texoma Pump Station Expansion Preliminary Design Project
- E. 6. **RESOLUTION NO. 6883**
Authorizing Execution of a Professional Services Agreement with Huitt-Zollars, Inc. for Design of the Post Oak Sanitary Sewer Improvements
- E. 7. *** RESOLUTION NO. 6884**
Awarding a Bid to and Authorizing Execution of a Contract with Professional Turf Products for the Purchase of a Toro Groundsmaster 4500 Sports Field Mower
- E. 8. *** RESOLUTION NO. 6885**
Authorizing the Purchase of a New 2022 Ram 2500 Crew Cab 4 x 4 from Donaldson Chrysler Dodge Jeep Ram for the Parks Maintenance Mowing Crew through TIPS.
- E. 9. *** RESOLUTION NO. 6886**
Authorizing the Purchase of a New Chevrolet Silverado 3500 from Silsbee for the Street Department Through TIPS
- E. 10. **RESOLUTION NO. 6887**
Authorizing Payment to Texoma Area Paratransit Systems, Inc. (TAPS) for the City's 2021-2022 Fiscal Year Contribution

Requests to Advertise

- F. 1. ***REQUEST TO ADVERTISE**
Purchase and Install Shading Structures at Pecan Grove West Athletic Complex

Change Orders

- G. 1. **CHANGE ORDER NO. 3**
Lamberth Road Drainage Improvements Project; Lynn Vessels Construction, LLC; \$65,822.64 increase

Other Business

H. 1. OTHER BUSINESS

Consider Approval of the Annexation Scheduling Plan for Adoption of Approximately 118.87 acres of land located South of FM 1417 and between the Burlington Northern Santa Fe Railroad and Luella Road, adjacent to the Sherman City Limits and in the City of Sherman's Extra Territorial Jurisdiction; and Directing the Department of Engineering Services to Develop a Service Plan for the Area to be Annexed Upon Approval of the Annexation Scheduling Plan

H. 2. * OTHER BUSINESS

Approval of the 2021 Ad Valorem Tax Roll Value and Tax Levy

Consider Board/Commission Appointments

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

(a) Tax Increment Reinvestment Zone #8 Board (3)

I. 2. APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Tax Increment Reinvestment Zone #9 Board (3)

J. COUNCIL COMMENTS

Executive Session

K. 1. EXECUTIVE SESSION

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

Tex. Gov't Code § 551.071	Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.
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Tex. Gov't Code § 551.072	Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
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Tex. Gov't Code § 551.073	Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
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Tex. Gov't Code §
551.074

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

(a) Sherman Higher Education Finance Corporation (7)

Tex. Gov't Code §
551.076

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

Tex. Gov't Code §
551.087

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

(a) Hickory Hill

(b) Sherman Hospital

(c) Shepherd's Place

Tex. Gov't Code §
551.089

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

The Council reconvenes into General Session

L. 1. OPEN MEETING

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

M. ADJOURNMENT

COUNCIL CALENDAR

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Friday, April 29, 2022 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 29th day of April, 2022.
City of Sherman, Texas

City Clerk

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

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

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

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

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

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

Mayor

David Plyler

Deputy Mayor

Pamela L. Howeth

Council Members

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

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



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

A. 4.

Meeting Date: 05/02/2022

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF APRIL 18, 2022

Attachments

April 18, 2022

STATE OF TEXAS §
 April 18, 2022
COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on April 18, 2022.

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

MEMBERS ABSENT: NONE.

CALL TO ORDER

Mayor Plyler called the meeting to order at 5:00 p.m. The Pledge of Allegiance and Invocation were led by Mayor David Plyler.

CALL TO ORDER

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of March 21, 2022, and the Regular City Council Meeting of April 4, 2022. Deputy Mayor Howeth moved to approve the Minutes, as presented; Second by Council Member Holland; All present voted AYE.

MOTION CARRIED.

APPROVE MINUTES

CITIZEN'S COMMENTS

There were no citizen's comments.

CITIZENS COMMENTS

CONSENT AGENDA

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

CONSENT AGENDA

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

CONSENT AGENDA

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

CONSENT AGENDA

The Council reviewed the Consent Agenda. Council Member Teamann moved to approve the Consent Agenda, subject to the Staff Review Letter. Second by Council Member Stevenson. All present voted AYE.

Mayor Plyler introduced Ordinance No. 6472 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, EXTENDING THE CORPORATE LIMITS OF

ORD 6472
ANNEXATION
FRONTERA
MANUFACTURED
HOME COMMUNITY

SAID CITY SO AS TO ANNEX AN AREA OF LAND CONSISTING OF APPROXIMATELY 113.414 ACRES GENERALLY LOCATED SOUTH OF THE INTERSECTION OF FM 1417 EXT AND E. LAMAR ST. ADJACENT TO THE SHERMAN CITY LIMITS AND IN THE CITY OF SHERMAN'S EXTRATERRITORIAL JURISDICTION, ON APPLICATION OF THE LANDOWNER; PROVIDING THAT THE OWNERS AND INHABITANTS OF THE SUBJECT AREA OF LAND SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF SHERMAN AND SHALL BE BOUND BY THE ACTS AND ORDINANCES NOW IN EFFECT AND HEREINAFTER ADOPTED; AUTHORIZING EXECUTION OF THE ANNEXATION SERVICE PLAN AGREEMENT; PROVIDING FOR A PENALTY FOR A VIOLATION OF THIS ORDINANCE AND SHERMAN'S GENERAL ZONING ORDINANCE, ORDINANCE NO. 2280; PROVIDING A SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

(FM 1417 & EAST LAMAR ST)

Rob Rae, Director of Development Services, said this annexation is considering property just east of the City limits. The applicants were ready to make a presentation about their development.

Luke Motley, IV, 111 S. Travis

Mr. Motley said he represented First Step Homes, which is an affordable housing project. He said the project is unique in that it bridges the gap, between apartment living and traditional home ownership. The development will have over 400 homes.

He said one of the differences with this development is that the owners stay there. They have a community pool, a community clubhouse, and they require certain standards as to how things are kept.

Nicholas Kehl, 4501 Ari Court, Austin

Mr. Kehl appeared representing Bowman Consulting, and presented a video of the projects they plan. Their goal is to move people from rental to home ownership and give them pride in their neighborhood.

First Step Homes has 30 years' experience. The Frontera Development will sit on 113 acres and have over 405 homes. It will be a gated community, with amenities.

He said the project was originally presented to the Planning and Zoning Commission in October 2021, and they received approval.

No other citizens appeared before the City Council to discuss Ordinance No. 6472.

Mayor Plyler introduced Ordinance No. 6473 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTY WITHIN THE M-H (MANUFACTURED HOUSING) DISTRICT, LOCATED AT 2708 EAST LAMAR STREET, BEING TRACT 1; 55.272 ACRES IN THE A.

ORD 6473
ZONE CHANGE
FOR MANUFACTURED
HOUSING
(2708 E. LAMAR ST)

BURLESON SURVEY, ABSTRACT NO. 61 AND TRACT 2: 57.070 ACRES IN THE A. BURLESON SURVEY, ABSTRACT NO. 61 (VENTURA VERDE, LLC, OWNER; MARLEY PHILLIPS, APPLICANT; BOWMAN, CONSULTING FIRM; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYOR, AND NBS DRAFTING AND DESIGN, DRAFTSMAN); PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr Rae said this item is for the recommended zone change, from R-A (Residential – Agricultural) to M-H (Manufactured Housing). The property is currently not in the City limits, so the zone change is contingent on approval of the annexation.

The developer is proposing to plat the property into one lot. Streets and utilities would be within the development, and would be private. Even without annexation, the property currently has access to the City sewer system.

The Planning and Zoning Commission recommended approval of the zone change, contingent on approval of the annexation.

No citizens appeared before the City Council to discuss Ordinance No. 6473.

Mayor Plyler introduced Ordinance No. 6474 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTY WITHIN THE C-2 (GENERAL COMMERCIAL) DISTRICT, LOCATED AT 4600 AND 4608 WEST HOUSTON, BEING 5.003 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, ALSO BEING ALL OF LOT 3C, BLOCK ONE OF THE REPLAT OF LOT 3, BLOCK ONE OF SEASONS WEST ADDITION, AND ALL OF LOT 5, BLOCK ONE, OF THE AMENDED PLAT OF SEASONS WEST ADDITION (WESTAR INVESTMENTS, LLC, OWNER; HENRY MARROQUIN, REPRESENTATIVE; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6474
ZONE CHANGE
FOR CONTRACTOR'S
OFFICES
(4600 & 4608 W.
HOUSTON ST)

Mr. Rae said this item is for a zone change from C-1 (Retail Business) to C-2 (General Commercial), so the property owner can construct contractor offices. There will be minor changes to the existing building, which are currently warehouses and offices.

The Planning and Zoning Commission recommended approval of the zone change.

Ron Westervelt, 2410 N. Loy Lake Road

Mr. Westervelt appeared to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6474.

Mayor Plyler introduced Ordinance No. 6475 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A RECREATIONAL VEHICLE RESORT (TRAVEL TRAILER PARK) IN A C-2 (GENERAL COMMERCIAL) DISTRICT/O-1 (75 & 82) OVERLAY DISTRICT IN THE 2500-2700 BLOCKS EAST HIGHWAY 82, BEING 19.172 ACRES IN THE SAMUEL McGLOTHLIN SURVEY, ABSTRACT NO. 811 (BR ESTATES AT HWY 82, LLC, OWNER; MCF INVESTMENTS, LLC, PROSPECTIVE BUYER; AND COPLEY LAND SURVEYING, SURVEYOR) PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00.

ORD 6475
ZONE CHANGE
FOR TRAVEL
TRAILER PARK
(2500-2700 BLOCKS
E. HWY 82)

Mr. Rae said this item would allow a travel trailer park in the 2500 to 2700 blocks of East Highway 82. The request is for a short-term travel trailer park, and the City's ordinance allows for up to 90 days for people to park their travel trailer or RV.

The Planning and Zoning Commission recommended approval of the zone change. Since that time the City Council has updated the Specific Use Permit with some additional conditions. Two conditions are that the SUP be tied to the applicant, and tied to the proposed Site Plan. These conditions have been included in the proposed ordinance.

Matt Moore, 301 S. Coleman, Propser

Mr. Moore was available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6475.

The Public Hearing was closed.

ADOPTION OF ORDINANCES

Ordinance 6472

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, EXTENDING THE CORPORATE LIMITS OF SAID CITY SO AS TO ANNEX AN AREA OF LAND CONSISTING OF APPROXIMATELY 113.414 ACRES GENERALLY LOCATED SOUTH OF THE INTERSECTION OF FM 1417 EXT AND E. LAMAR ST. ADJACENT TO THE SHERMAN CITY LIMITS AND IN THE CITY OF SHERMAN'S EXTRATERRITORIAL JURISDICTION, ON APPLICATION OF THE LANDOWNER; PROVIDING THAT THE OWNERS AND INHABITANTS OF THE SUBJECT AREA OF LAND SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF SHERMAN AND SHALL BE BOUND BY THE ACTS AND ORDINANCES NOW IN EFFECT AND HEREINAFTER ADOPTED; AUTHORIZING EXECUTION OF THE ANNEXATION SERVICE PLAN AGREEMENT; PROVIDING FOR A PENALTY FOR A VIOLATION OF THIS ORDINANCE AND SHERMAN'S GENERAL ZONING ORDINANCE, ORDINANCE NO. 2280; PROVIDING A SAVINGS/REPEALING CLAUSE,

ORD 6472
ANNEXATION
FRONTERA
MANUFACTURED
HOME COMMUNITY
(FM 1417 & EAST
LAMAR ST)

SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

Council Member Dobbs asked if there would be a screen or wall around the facility or just fronting on Hwy 56.

Marley Phillips, 3705 Lakeview Parkway, Rowlett

Mr. Phillips appeared representing First Step Homes. He said in that zone they are required to have screening all around the property, and they plan to install a 6' privacy fence around the boundary of the property.

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Ordinance No. 6472, as presented. Second by Deputy Mayor Howeth.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6473

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTY WITHIN THE M-H (MANUFACTURED HOUSING) DISTRICT, LOCATED AT 2708 EAST LAMAR STREET, BEING TRACT 1: 55.272 ACRES IN THE A. BURLESON SURVEY, ABSTRACT NO. 61 AND TRACT 2: 57.070 ACRES IN THE A. BURLESON SURVEY, ABSTRACT NO. 61 (VENTURA VERDE, LLC, OWNER; MARLEY PHILLIPS, APPLICANT; BOWMAN, CONSULTING FIRM; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYOR, AND NBS DRAFTING AND DESIGN, DRAFTSMAN); PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6473
ZONE CHANGE
FOR MANUFACTURED
HOUSING
(2708 E. LAMAR ST)

Council Member Stevenson asked if the premanufactured homes were held to a higher standard, for things such as wind shear. Mr. Rae said they will be required to be built to code, and they will be inspected, just like any other home. They also receive the manufacturer's specifications, which help with the inspections.

Council Member Teamann said the sewer for the development is served by the City, but asked who serves the water.

Wayne Lee, Director of Engineering, said there is a City of Sherman water line along the western boundary of the property. The property is actually in the Pink Hill Water District. The owner has talked with Pink Hill and Pink Hill and Sherman have talked. They are willing to give that up and let Sherman serve the property.

Council Member Teamann confirmed that the City has capacity in the well system to handle the additional usage.

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Ordinance No. 6473, as presented. Second by Deputy Mayor Howeth.

COUNCIL MINUTES – APRIL 18, 2022

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6474

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTY WITHIN THE C-2 (GENERAL COMMERCIAL) DISTRICT, LOCATED AT 4600 AND 4608 WEST HOUSTON, BEING 5.003 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, ALSO BEING ALL OF LOT 3C, BLOCK ONE OF THE REPLAT OF LOT 3, BLOCK ONE OF SEASONS WEST ADDITION, AND ALL OF LOT 5, BLOCK ONE, OF THE AMENDED PLAT OF SEASONS WEST ADDITION (WESTAR INVESTMENTS, LLC, OWNER; HENRY MARROQUIN, REPRESENTATIVE; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6474

ZONE CHANGE
FOR CONTRACTOR'S
OFFICES
(4600 & 4608 W.
HOUSTON ST)

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Ordinance No. 6474, as presented. Second by Council Member Dobbs.

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

VOTING NAY: None.

ABSTAIN: Marroquin.

MOTION CARRIED.

Ordinance 6475

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 RECREATIONAL VEHICLE RESORT (TRAVEL TRAILER PARK) IN A C-2 (GENERAL COMMERCIAL) DISTRICT/O-1 (75 & 82) OVERLAY DISTRICT IN THE 2500-2700 BLOCKS EAST HIGHWAY 82, BEING 19.172 ACRES IN THE SAMUEL McGLOTHLIN SURVEY, ABSTRACT NO. 811 (BR ESTATES AT HWY 82, LLC, OWNER; MCF INVESTMENTS, LLC, PROSPECTIVE BUYER; AND COPLEY LAND SURVEYING, SURVEYOR) PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00.

ORD 6475

ZONE CHANGE
FOR TRAVEL
TRAILER PARK
(2500-2700 BLOCKS
E. HWY 82)

Council Member Stevenson confirmed that the current ordinance allows travel trailer parking for up to 90 days per trailer, and he asked if this would allow longer temporary parking.

Council Member Teamann asked if they generated Hotel/Motel Tax, like an Airbnb does. Mr. Hefton said he didn't think they generated Hotel/Motel Tax.

Council Member Dobbs asked if the Council would see a landscape plan.

COUNCIL MINUTES – APRIL 18, 2022

Mr. Moore said they would maintain as much existing landscaping as they can, but will meet the City requirement for trees, and other things.

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Ordinance No. 6475, as presented. Second by Council Member Holland.

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

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6872 – AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH HALFF ASSOCIATES, INC. FOR RIGHT-OF-WAY ACQUISITION ASSISTANCE

**RES 6872
R-O-W ACQUISITION
ASSISTANCE**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH HALFF ASSOCIATES, INC. FOR RIGHT-OF-WAY ACQUISITION ASSISTANCE.

Mr. Lee said the Texas Department of Transportation is currently designing construction plans for FM 1417, from Houston Street to West Travis Street, by Sherman High School. They plan on widening the street to a four-lane divided, with an extra wide median, which could handle another two lanes, added in the future.

Approximately 33 right-of-way parcels would be needed for these improvements. There are about 13 parcels owned by property owners that the City is familiar with, and will probably work with the City. There are more than 20 other parcels that maybe more challenging to obtain.

Due to staff time and resources, the City is recommending that Halff Associates be hired to assist in obtaining these rights-of-way.

According to TxDOT, they anticipate having the plans completed by March or April of 2023, at which time the utility companies can start relocating their services. The rights-of-way would also need to be acquired by that time.

The proposed contract with Halff Associates is \$164,540, and will be funded by 2017 and 2021 General Improvement Funds. Additional funding will be needed to acquire the rights-of-way from the property owners.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Resolution No. 6872, as presented. Second by Council Member Holland.

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

VOTING NAY: None.

MOTION CARRIED.

Mayor Plyler asked to have the captions of Resolution Nos. 6873 and 6874 read together.

RES 6873
TIRZ #8

RESOLUTION NO. 6873 – FINDING AND DETERMINING THE QUALIFICATIONS FOR A TAX INCREMENT REINVESTMENT ZONE; INITIATING THE FORMATION OF THE TAX INCREMENT REINVESTMENT ZONE #8

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, FINDING AND DETERMINING THE QUALIFICATIONS FOR A TAX INCREMENT REINVESTMENT ZONE; INITIATING THE FORMATION OF THE TAX INCREMENT REINVESTMENT ZONE #8.

RESOLUTION NO. 6874 – FINDING AND DETERMINING THE QUALIFICATIONS FOR A TAX INCREMENT REINVESTMENT ZONE; INITIATING THE FORMATION OF THE TAX INCREMENT REINVESTMENT ZONE #9

RES 6874
TIRZ #9

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, FINDING AND DETERMINING THE QUALIFICATIONS FOR A TAX INCREMENT REINVESTMENT ZONE; INITIATING THE FORMATION OF THE TAX INCREMENT REINVESTMENT ZONE #9.

Mary Lawrence, Director of Finance, said these resolutions are the first step in the creation of the Tax Increment Reinvest Zones, one for commercial, and one for residential, for the Heritage Ranch Development.

The zones are located in the northeast corner of FM 1417 and Hwy 82, bordered on the east by Travis Street. Zone #8 is the residential portion, on the east side of Plainview Road. Zone #9 is the commercial part on the west side of Plainview Road.

She said the Preliminary Financing Plan, for both zones, calls for the City to contribute 50% of its Maintenance and Operations Rate, to the zone to reimburse the developer for public infrastructure.

They also expect Grayson County to participate at 50% of their tax rate, allocated to their General Fund. The Preliminary Financing Plan follows the same terms that the Council has already approved in the Master Development Agreement.

These resolutions begin the process to create the zones. There will be three more actions at the May 2, 2022 Council Meeting. The first will be to approve the creation ordinance and approve the Preliminary Financing Plan. The second will be the approval of the Interlocal Agreement with Grayson County, allowing them to allocate their part of the tax rate. The final action will be for the Council to appoint the Board of Directors for the zones.

ACTION TAKEN.

Motion by Deputy Mayor Howeth to approve Resolution Nos. 6873 and 6874, as presented. Second by Council Member Stevenson.

COUNCIL MINUTES – APRIL 18, 2022

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson.
VOTING NAY: None.
ABSTAIN: Teamann.
MOTION CARRIED.

RESOLUTION NO. 6875 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH FERGUSON ENTERPRISES, LLC FOR THE ANNUAL SUPPLY OF WATER AND SEWER MAINTENANCE PARTS AND SUPPLIES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH FERGUSON ENTERPRISES, LLC FOR THE ANNUAL SUPPLY OF WATER AND SEWER MAINTENANCE PARTS AND SUPPLIES.
CONSENT AGENDA.

RES 6875
ANNUAL SUPPLY
WATER & SEWER
MAINTENANCE PARTS

RESOLUTION NO. 6876 – AUTHORIZING THE PURCHASE OF A NEW JOHN DEERE TRACTOR FROM UNITED AG & TURF FOR THE STREET MAINTENANCE DEPARTMENT THROUGH SOURCEWELL

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW JOHN DEERE TRACTOR FROM UNITED AG & TURF FOR THE STREET MAINTENANCE DEPARTMENT THROUGH SOURCEWELL.
CONSENT AGENDA.

RES 6876
STREET MAINT
EQUIPMENT

RESOLUTION NO. 6877 – AUTHORIZING THE PURCHASE OF A NEW PETERSEN TL3 LOADER FROM FREIGHTLINER OF AUSTIN FOR THE SOLID WASTE DEPARTMENT THROUGH TIPS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW PETERSON TL3 LOADER FROM FREIGHTLINER OF AUSTIN FOR THE SOLID WASTE DEPARTMENT THROUGH TIPS.
CONSENT AGENDA.

RES 6877
SOLID WASTE
DEPT EQUIPMENT

OTHER BUSINESS

REPLAT APPROVAL SEASONS WEST ADDITION, PHASE FOUR, BEING A REPLAT OF LOT 5, BLOCK ONE, AMENDED PLAT OF SEASONS WEST ADDITION, PHASE ONE AND LOT 3C, BLOCK ONE, REPLAT OF LOT 3, BLOCK ONE OF SEASONS WEST ADDITION, BEING 5.003 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, ALSO BEING ALL OF LOT 3C, BLOCK ONE OF THE REPLAT OF LOT 3, BLOCK ONE OF SEASONS WEST ADDITION, AND ALL OF LOT 5, BLOCK ONE, OF THE AMENDED PLAT OF SEASONS WEST ADDITION; WESTAR INVESTMENTS, LLC, OWNER; HENRY MARROQUIN, REPRESENTATIVE; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (4600 AND 4608 WEST HOUSTON STREET)

Mr. Rae said this Replat conforms to all City requirements and the staff has no issues with the request. The Planning and Zoning Commission voted to approve the Replat, subject to the Staff Review Letter.

APPROVE REPLAT
SEASONS WEST
ADDITION, PHASE 4
(4600 & 4608 W.
HOUSTON ST)

ACTION TAKEN.

Motion by Council Member Dobbs to approve the Replat of Seasons West Addition, Phase Four, as presented. Second by Council Member Stevenson.

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

VOTING NAY: None.

ABSTAIN: Marroquin.

MOTION CARRIED.

RECEIVE AN UPDATE ON THE WASTEWATER TREATMENT PLANT CONDITION ASSESSMENT RESULTS

WWTP CONDITION ASSESSMENT

Tom Pruitt, Utility Engineer, said Plummer and Associates was hired in April 2021, to perform a Condition Assessment on the City's Wastewater Treatment Plant. The assessment is now complete, and they are prepared to make recommendations for rehabilitation and replacement costs, critical infrastructure, and future equipment needed.

Sara Kerr, 1320 S. University Drive, Suite 300, Fort Worth

Ms. Kerr is an Engineer with Plummer and Associates, and is the Project Manager for the project. She discussed technology changes and plant priorities.

The City's priorities before the assessment included the primary clarifier #3, digesters, lagoon line, electrical power system, trickling filters, the EQ basin blower building, and the bar screens.

Plummer's priorities after the assessment included the outfall, sludge dewatering building, electrical power system, primary clarifier #3, EQ basin and blower building, and the grit building-NPFA. She discussed the specifics of the priorities and their conditions, and recommendations for their rehabilitation.

She presented a list of "immediate", "near term", and "long term" projects that need to be addressed. Immediate issues are estimated to cost \$19,533,600; near term issues are estimated to cost \$19,377,000; and long term issues are estimated at \$192,263,000. The total estimated cost is \$231,173,600.

There were also some priorities needed for the Texas Instruments expansion. Items for the TI expansion were estimated to be \$208,240,000.

Mayor Plyler asked if primary clarifier #3 needed more or less "attention" than the other clarifiers. He asked if it was following generally "acceptable wear and tear" on the clarifier. Mr. Pruitt explained that, normally clarifier #3 isn't used until #1 or #2 is out of service, and it's needed. However, when the flows increase because of TI, that clarifier will be needed.

Mayor Plyler asked about removal of the trickling filters. Ms. Kerr said the trickling filters have not been used in some time. Mayor Plyler verified that they could be removed and the space reused for something else. The trickling filters are old technology.

Mr. Hefton said the City will have to decide what the future path is for wastewater treatment, especially with TI and other industry's future usage. He said if the trickling filters are removed, there would be some space available to add more current, efficient technology. Or is a separate plant needed just to treat industrial waste. He said the Utility Master Plan will help decide some of those issues.

Council Member Teamann asked about the trickling filters. Ms. Kerr said that was an older technology that was used when air needed to be put back into the system. That's no longer needed.

Deputy Mayor Howeth confirmed that the Wastewater Treatment Plant was originally constructed in the early 1950's, and has been added onto. She said, it's working, but moving forward the Council needs to decide how the sewer will be treated for all the new businesses and homes coming to Sherman, and especially the industrial customers.

RECEIVE QUARTERLY PROGRESS REPORT FROM SHERMAN ECONOMIC DEVELOPMENT CORPORATION PRESIDENT KENT SHARP

SEDCO QUARTERLY REPORT

Kent Sharp, President of Sherman Economic Development Corporation, presented their quarterly progress report. He said their mission remains the same, to grow and diversify the economy of Sherman and the surrounding area through the addition of new jobs and investment of primary employers.

He listed accomplishments this quarter, such as, a Letter of Intent for Project Wrap in Progress Park VI; authorized a reimbursement to the City for a contract with Pacheco Koch Consulting Engineers for professional services to extend Flanary Road, from Progress Drive to Shepherd Road; and being recognized by Governor Greg Abbott for receiving the 2021 Technology Impact Award.

He also outlined activities they attended such as trade shows, and forums and events they sponsor locally, such as the Plant Manager and Safety Leader Forum, the Leadership Breakfast, the launch of a new website, and the RISE Challenge Awards Ceremony.

SEDCO is currently working 10 active projects, with an estimated \$6.5 billion, with approximately 4,695 new jobs, and 200 retained jobs.

They are working with the media on a new video and concentrating on social media results. They are using social media, mainly to attract workforce, instead of companies.

APPROVE QUARTERLY INVESTMENT REPORT FOR QUARTER ENDED MARCH 31, 2022

QUARTERLY INVESTMENT REPORT

The City Council approved the City's Quarterly Investment Report for the quarter ended March 31, 2022. As of that date, the portfolios were in compliance with applicable State laws and the Investment Policy.

The operating investment portfolio had a book value of about \$23.2 million, an increase of about \$3 million from the prior quarter of \$20.2 million. The increase was due to purchases of \$3 million in U.S. Agencies and \$0.5 million in Texas political subdivision securities.

The underlying investments were adequately diversified among six different types of securities. This portfolio is appropriately liquid, and its weighted-average maturity was about 467 days, an increase from 400 days at the end of last quarter. The portfolio yield of 0.57% is below the benchmark yield of 1.63%. Market value approximates book value.

The debt proceeds portfolio balance of \$35.4 million was invested in Local Government Investment Pools, an FDIC insured investment account, and U.S. Agency securities. Transactions in this portfolio consist of payments for capital projects and the receipt of interest income. The yield of 0.13% was above the benchmark yield of 0.17%. Market value approximates book value.
CONSENT AGENDA.

CONSIDER REQUEST OF THE SHERMAN ISD POLICE DEPARTMENT TO TEMPORARILY CLOSE CERTAIN STREETS FOR THE SHATTERED DREAMS EVENT ON FRIDAY, APRIL 29, 2022

The City Council approved the request of the Sherman Independent School District Police Department, to temporarily close certain streets for the Shattered Dreams event on April 29, 2022.

CLOSE STREETS
FOR SHATTERED
DREAMS EVENT
(APRIL 29, 2022)

The Student Council will be hosting the two-day, school-based program that promotes responsible decision-making among high school students. A staged head-on-collision will be used as part of this event.

They are requesting to close Moore Street, from Park Street to Travis Street, from 8:30 a.m. until 12:00 p.m. Barricade placement and removal will be provided by the City's Street Department.
CONSENT AGENDA.

REPLAT APPROVAL OF LOTS 1 THRU 4, BLOCK 1, OF LAS CASITAS ADDITION, BEING 0.826 ACRES IN THE J.B. McANAI SURVEY, ABSTRACT NO. 763, AND BEING ALL OF LOTS 1 THRU 4, BLOCK 1, LAS CASITAS ADDITION; ROBERTO MERAZ, OWNER; LISSETH LARA, REPRESENTATIVE AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (600 BLOCK NORTH FRISCO ROAD)

The City Council approved the Replat of Las Casitas Addition, a 0.826 acre tract, located in the 600 block of North Frisco Road. The property is zoned an R-1 (One-Family Residential) District, and the owner would like to replat the property into five lots to build single-family homes.

APPROVE REPLAT
LAS CASITAS
ADDITION
(600 BLOCK OF
N. FRISCO RD)

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF TUCK STREET SECOND ADDITION, BEING A REPLAT OF PART OF LOTS 1, 2, AND 3, BLOCK 4 MILDRED HEIGHTS ADDITION AND BEING 0.321 ACRES AND BEING PART OF LOTS 1, 2 AND 3, BLOCK 4, MILDRED HEIGHTS ADDITION; EVOLUTION REALTY LLC, OWNER; JACOB CRAFT, REPRESENTATIVE; SIAS DRAFTING & DESIGN, DRAFTING AND DESIGN; AND COPLEY LAND SURVEYING, SURVEYOR (1321 AND 1327 EAST TUCK STREET)

The City Council approved the Replat of Tuck Street, Second Addition, a 0.321 acre tract, located at 1321 and 1327 East Tuck Street. The property is zoned an R-1 (One-Family Residential) District, and the owner would like to replat the property into two 50' lots for residential development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE REPLAT
TUCK STREET
SECOND ADDITION
(1321 & 1327 E.
TUCK ST)

FINAL PLAT APPROVAL OF THE DIXON ADDITION IN THE CITY OF SHERMAN'S EXTRATERRITORIAL JURISDICTION (ETJ), BEING 11.445 ACRES IN THE AARON BURLESON SURVEY, ABSTRACT NO. 61; KAREN AND BILLY DIXON, OWNERS; AND COPLEY LAND SURVEYING, SURVEYOR (371 MITCHELL ROAD)

The City Council approved the Final Plat of the Dixon Addition, an 11.445 acre tract located at 371 Mitchell Road, in the City's Extraterritorial Jurisdiction. The owner would like to plat the property into two lots.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE FINAL PLAT
DIXON ADDITION
IN THE ETJ
(371 MITCHELL RD)

FINAL PLAT APPROVAL OF THE RHODES ADDITION IN THE CITY OF SHERMAN'S EXTRATERRITORIAL JURISDICTION (ETJ), BEING 10.048 ACRES AND BEING PART OF THE WILLIAM WATKINS SURVEY, ABSTRACT NO. 1325, AND BEING ALL OF 5.00-ACRE TRACT 34 AND A 5.00 ACRE TRACT 34; TOMMIE AND TAMMY RHODES, OWNERS; AND COPLEY LAND SURVEYING, SURVEYOR (415 VALLEY RANCH ROAD)

The City Council approved the Final Plat of the Rhodes Addition, a 5 acre tract, located at 415 Valley Ranch Road, in the City's Extraterritorial Jurisdiction. The owner would like to plat the property into two lots.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE FINAL PLAT
RHODES ADDITION
IN THE ETJ
(415 VALLEY RANCH
RD)

REPLAT APPROVAL OF LOTS 4 & 5, BLOCK 1, R.E. SHANNON SECOND ADDITION, BEING 0.624 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, ALSO BEING ALL OF LOTS 4 AND 5, BLOCK 1, OF R.E. SHANNON SECOND ADDITION; ROBERT AND KELLIE LaPRELLE, OWNER AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (403 WEST BELDEN STREET)

The City Council approved the Replat of the R.E. Shannon Second Addition, a 0.624 acre tract, located at 403 West Belden Street. The

APPROVE REPLAT
SHANNON SECOND
ADDITON
(403 W. BELDEN ST)

owner is requesting a 2' side yard setback and a 5' setback from the main structure for an existing non-conforming building.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.

CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF BROGAN'S ADDITION, BEING A REPLAT OF LOTS 7 AND 8, AND THE NORTH ONE-HALF OF LOT 9, BLOCK 33 OF THE REPLAT OF COLLEGE PARK ADDITION, BEING 0.454 ACRES IN THE G.B. PILANT SURVEY, ABSTRACT 963, ALSO BEING ALL OF LOTS 7 AND 8, AND THE NORTH ONE-HALF OF LOT 9, BLOCK 33, OF THE REPLAT OF COLLEGE PARK ADDITION; BROGAN H. VICKREY, OWNER AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (214 NORTH HARRISON AVENUE)
The City Council approved the Replat of Brogan's Addition, a 0.454 acre tract, located at 214 North Harrison Avenue. The owner would like to replat the property into two lots.

APPROVE REPLAT
BROGAN'S ADDITION
(214 N. HARRISON
AVE)

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.

CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

FINAL PLAT APPROVAL OF ALVARADO-VELA ADDITION, BEING 0.859 ACRES IN THE ROBERT THOMPSON SURVEY, ABSTRACT 1200; RICCI ALVARADO, OWNER AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYOR (2400 SOUTH FIRST STREET)
The City Council approved the Final Plat of Alvarado-Vela Addition, a 0.859 acre tract located at 2400 South First Street. The property is zoned R-1 (One Family Residential) District, and the owner would like to plat the property into two lots for residential development.

APPROVE FINAL PLAT
ALVARADO-VELA
ADDITION
(2400 S. FIRST ST)

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.

CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF LOT 51 AND THE NORTH 30' OF BELMONT ADDITION, BEING 0.241 ACRES IN THE CHARLES CARTER SURVEY, ABSTRACT 229, ALSO BEING ALL OF LOT 51 AND THE NORTH 30' OF BELMONT ADDITION; JOSE ANTONIO MENJIVAR, OWNER AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (511 NORTH BURDETTE AVENUE)
The City Council approved the Replat of Belmont Addition, a 0.241 acre tract, located at 511 North Burdette Avenue. The property is zoned R-1 (One Family Residential) District, and the owner would like to replat all of one lot and part of another into one property for residential development.

APPROVE REPLAT
BELMONT ADDITION
(511 N. BURDETTE
AVE)

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.

CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL FOR NGUYEN'S ADDITION, A REPLAT OF PART OF LOT 4, BLOCK 1 OF DR. J.H. CARRAWAY SUBDIVISION, BEING 0.54 ACRES, AND BEING PART OF LOT 4, BLOCK 1 OF THE DR. J.H. CARRAWAY SUBDIVISION; AMERISTATE BANK, OWNER;

APPROVE REPLAT
NGUYEN'S ADDITION
(702 E. LAMBERTH RD)

RON WESTERVELT, REPRESENTATIVE; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYOR (702 EAST LAMBERTH ROAD)

The City Council approved the Replat of Nguyen's Addition, a 0.54 acre tract, located at 702 East Lamberth Road. The property is zoned C-1 (Retail Business) District, and the owner would like to plat the property into one lot for commercial development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.

CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

COUNCIL COMMENTS

There were no Council comments.

COUNCIL COMMENTS

ANNOUNCEMENTS

Mayor Plyler announced the following:

- Applications for Program Year 2022 Community Development Block Grant Project are due by April 29, 2022. There are two forms to be completed – CDBG Application for Funding and Organization Information CDBG PY22 Application. Both forms are on the City's website.
- The Annual Texoma Earth Day Festival will be held on April 23, 2022, in Kidd-Key Park. There will be lots of vendors and activities for the family.
- Parks and Recreation will hold their Touch a Truck event on April 30, 2022, at 10:00 a.m.
- The Sherman Symphony Orchestra's final concert of the season will be held on April 30, 2022, at 7:30 p.m., in Kidd-Key Auditorium.

ANNOUNCEMENTS

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

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

EXECUTIVE SESSION

TEX. GOV'T CODE § 551.071 --

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

TEX. GOV'T CODE § 551.072 --

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

TEX. GOV'T CODE § 551.073 --

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

TEX. GOV'T CODE § 551.074 --

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

TEX. GOV'T CODE § 551.076 --

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

TEX. GOV'T CODE § 551.087 --

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

- (a) Shepherd's Place**
- (b) Project Boston**
- (c) Sherman Hospital Project**

TEX. GOV'T CODE § 551.089 --

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

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:57 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:25 p.m. and reconvened in Open Meeting.

OPEN MEETING

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

OPEN MEETING

COUNCIL MINUTES – APRIL 18, 2022

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:27.

ADJOURNMENT

MAYOR

CITY CLERK



City Council Regular Meeting

C. 1.

Meeting Date: 05/02/2022

Approved By: Robby Hefton, City Manager

Caption:

CONSENT AGENDA

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

Issue:

E. 7. * RESOLUTION NO. 6884

Awarding a Bid to and Authorizing Execution of a Contract with Professional Turf Products for the Purchase of a Toro Groundsmaster 4500 Sports Field Mower

E. 8. * RESOLUTION NO. 6885

Authorizing the Purchase of a New 2022 Ram 2500 Crew Cab 4 x 4 from Donaldson Chrysler Dodge Jeep Ram for the Parks Maintenance Mowing Crew through TIPS.

E. 9. * RESOLUTION NO. 6886

Authorizing the Purchase of a New Chevrolet Silverado 3500 from Silsbee for the Street Department Through TIPS

F. 1. * REQUEST TO ADVERTISE

Purchase and Install Shading Structures at Pecan Grove West Athletic Complex

H. 2. * OTHER BUSINESS

Approval of the 2021 Ad Valorem Tax Roll Value and Tax Levy



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

D. 1.

Meeting Date: 05/02/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6476

Establishing a Tax Increment Reinvestment Zone #8 (Along U.S. Hwy 82 and between Plainview Road and Travis Street); Providing for Findings of Fact; Providing for a Preliminary Financing Plan; Providing for a Board of Directors; Providing for Severability

Issue:

This ordinance creates a tax increment reinvestment zone along U.S. Hwy 82 between Plainview Road and Travis Street, which will be the residential part of the Heritage Ranch planned development.

Background:

By state law, the City Council may designate an area as a Tax Reinvestment Zone for the purpose of promoting development that would not occur solely through private investment in the reasonably foreseeable future. At the April 18, 2022 meeting, the City Council approved a resolution to take the necessary steps to create Sherman Tax Increment Reinvestment Zone (TIRZ) #8. State law requires a public hearing on the creation of the zone prior to adoption of the ordinance creating the zone. If the Council adopts this ordinance, the next steps will be approval of the Interlocal Agreement for County participation and naming the TIRZ board. A Final Project and Financing Plan will be prepared after the development plans are approved by the City and will also require City Council adoption.

Origination:

City Council

Financial Consideration:

A portion of the increases in taxable value in the zone after the 2022 tax year will be dedicated to reimbursing the developer for the public infrastructure in the zone. The preliminary financing plan calls for reimbursement up to the amount of increment generated by the zone.

Staff Recommendation:

The staff recommends adopting this ordinance.

Alternatives:

The City Council could direct the staff to abandon the process to create this zone or recommend changes to the Preliminary Financing Plan.

Attachments

Ordinance No. 6476

TIRZ #8 Preliminary Financing Plan

Petition - inclusion in TIRZ 8

TIRZ 8 Aerial

ORDINANCE NO. 6476

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ESTABLISHING A TAX INCREMENT REINVESTMENT ZONE #8 (ALONG U.S. HWY 82 AND BETWEEN PLAINVIEW ROAD AND TRAVIS STREET); PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR A PRELIMINARY FINANCING PLAN; PROVIDING FOR A BOARD OF DIRECTORS; PROVIDING FOR SEVERABILITY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That there is hereby created a reinvestment zone to be named the Sherman Tax Increment Reinvestment Zone #8 (“TIRZ #8”) to take effect immediately from and after the final passage of this ordinance, the boundaries of which are fully described in the Preliminary Financing Plan attached hereto and made a part hereof for all purposes.

SECTION 2. That the City Council hereby makes the following findings and determinations which are true and correct:

- (a) That the development of the area within the TIRZ #8 would not occur in the foreseeable future solely through private investment.
- (b) That the area’s present condition substantially impairs the city’s growth, retards the provision of housing, or constitutes an economic or social liability to the public health, safety, morals, or welfare. Further, this condition exists because of the presence of one or more of the following conditions: a substantial number of substandard or deteriorating structures, inadequate sidewalks or street layout, faulty lot layouts, unsanitary or unsafe conditions, a tax or special assessment delinquency that exceeds the fair market value of the land, defective or unusual conditions of title, or that endanger life or property by fire or other cause; or be predominantly open or undeveloped and, because of obsolete platting, deterioration of the structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality.
- (c) That the Owners of the property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located have petitioned the City requesting to be designated as a reinvestment zone.
- (d) That the Sherman Tax Increment Reinvestment Zone #8 is in full compliance and meets all of the requirements of Section 311.005 of the Texas Tax Code.
- (e) That the improvements in the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the municipality and its citizens.

SECTION 3. That the attached Preliminary Financing Plan – Tax Increment Reinvestment Zone #8 is hereby approved in its entirety.

SECTION 3. That there is hereby established a tax increment fund for the Zone to be styled Sherman Tax Increment Reinvestment Zone #8 (“TIRZ #8”).

SECTION 4. That there is hereby established a five (5) member Board of Directors for the TIRZ #8 to be composed of three (3) members of the City Council, one (1) member of the City staff and one (1) representative from Grayson County, all to be chosen by the City Council for terms of two (2) years, with no term limitations, in accordance with Section 311.009 of the Texas Tax Code. The City Council does not delegate or grant any of its powers or authority to the Board of Directors. The City Council hereby restricts the authority of the Board of Directors under Chapter 311 of the Texas Tax Code to an advisory board to the City Council.

SECTION 5. The Zone shall terminate upon all City bonded indebtedness, interest on those bonds and project costs pertaining to the Zone being paid in full.

SECTION 6. That the provisions of this ordinance are severable and the invalidity of any word, phrase, sentence or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 7. 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 2nd day of May, 2022.

ADOPTED on this the 2nd day of May, 2022.

EFFECTIVE DATE on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Field Notes

Sherman Tax Increment Reinvestment Zone #8 ("TIRZ #8")

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the J. Jennings Survey, Abstract No. 657, and the U. Burns Survey, Abstract No. 121, City of Sherman, Grayson County, Texas, being all of Tract 1, conveyed to TPJ Properties, Ltd., by deed recorded in Volume 3203, Page 464 of the Deed Records, Grayson County, Texas (DRGCT), with the subject tract being more particularly described as follows:

BEGINNING at a concrete nail found in Canyon Grove Road, a public road, for the southwest corner of a tract conveyed to Zoe Life Outreach, Inc., recorded in Volume 5581, Page 396 DRGCT, for the southeast corner of Tract 1;

THENCE S 74°34'26" W, 1286.18 feet along said road to a MAG nail with a flasher found for the intersection of said road with the north line of U.S. Highway 82, a variable width public right-of-way;

THENCE along the north line thereof, the following:

N 03°25'22" W, 17.20 feet;

S 75°01'01" W, 778.89 feet to a concrete monument found;

Around a non-tangent curve to the right having a central angle of 04°45'50", a radius of 5579.68 feet, a chord of N 87°05'05" W - 463.79 feet, an arc length of 463.93 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

And N 84°42'10" W, 916.60 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

THENCE departing said right-of-way, the following:

N 06°19'24" W, 542.26 feet;

A tangent curve to the left having a central angle of 24°29'33", a radius of 790.00 feet, a chord of N 18°34'10" W - 335.14 feet, an arc length of 337.70 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

N 30°48'56" W, 654.89 feet;

And a tangent curve to the right having a central angle of 12°30'21", a radius of 851.00 feet, a chord of N 24°33'46" W - 185.38 feet, an arc length of 185.75 feet to a point in Plainview Road, a public road;

THENCE N 00°01'05" W, 1664.00 feet along Plainview Road to a 60d nail found for the southwest corner of a tract conveyed to Astoria Homes, LLC, recorded in Document No. 2020-30762, Official Public Records, Grayson County, Texas (OPRGCT);

THENCE S 89°06'19" E, 1495.28 feet along the south line thereof to a point for the northwest corner of a tract conveyed to BMT Global, LLC, recorded in Document No. 2018-12534 OPRGCT, from which a 60d nail found bears S 10°07'33" E, 3.63 feet;

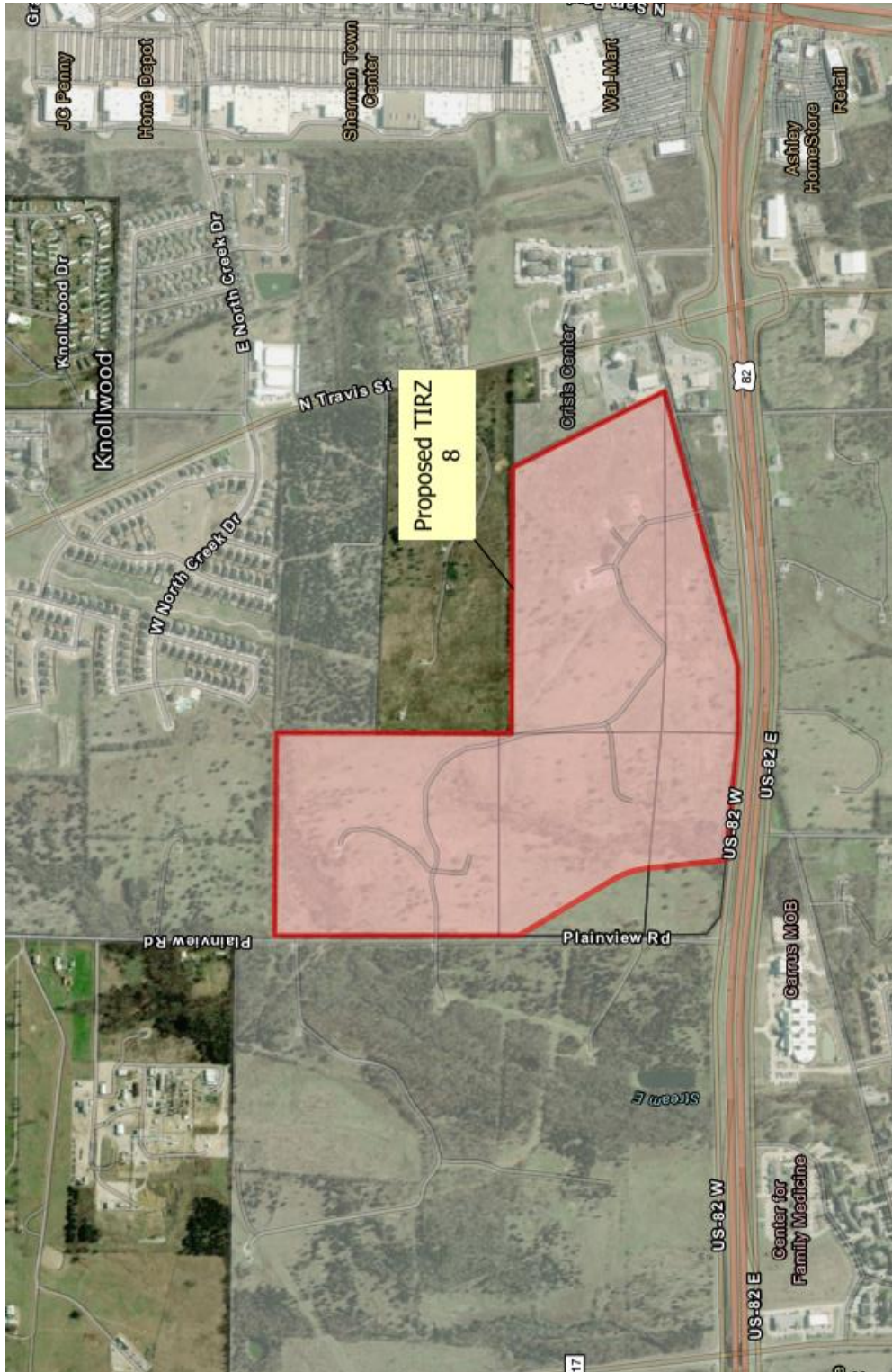
THENCE S 00°19'22" W, 1688.82 feet along the west line thereof, and of a tract conveyed to Melissa Smith Murray, recorded in Volume 4413, Page 186 DRGCT, to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set for the southwest corner thereof;

THENCE S 89°27'10" E, 1908.49 feet along the south line of said Murray tract to a 60d nail found for the northwest corner of said Zoe Life Outreach tract;

THENCE S 26°41'36" E, 1234.81 feet along the west line thereof to the POINT OF BEGINNING with the subject tract containing 7,471,223 square feet or 171.516 acres of land.

Location Map

Sherman Tax Increment Reinvestment Zone #8 (“TIRZ #8”)





Preliminary Financing Plan
Tax Increment Reinvestment Zone #8

April 18, 2022

DESCRIPTION

The proposed location of Tax Increment Reinvestment Zone #8 is located along U.S. Hwy 82 and between Plainview Road and Travis Street. The base is the taxable value for the tax year 2022 estimated at \$6,835 and contains about 172 acres. The area consists of five tracts with the same owner who has petitioned the City requesting the area be designated as a reinvestment zone. See Attachments A and B for a parcel list and map of the proposed zone. Attachment E is a survey.

The area designated as TIRZ #8 is undeveloped. Gas wells and lines are scattered through various tracts. The proposed zone and the adjacent proposed zone are part of a Planned Development that is expected to offer a mix of commercial, retail, office, entertainment and residential opportunities complimented with areas set aside as parks, lakes and other open space amenities. TIRZ #8 will consist of single-family residential housing while the adjacent Zone #9 will be a mix of commercial, retail and multi-family. No changes are proposed to the City's zoning ordinances, master plan, or building codes.

The project plan calls for infrastructure to be added to the site for residential development. Proposed improvements of about \$58 million include streets, storm sewers, detention ponds, retaining walls, landscaping, utility services, an amenity center and the relocation of the gas lines and wells. Attachment C contains a listing of the estimated construction costs. The TIRZ will reimburse the developer for the public improvements up to the amount of increment deposited into the Tax Increment Reinvestment Zone Fund for the duration of the Zone, estimated at about \$15.4 million. Apart from the Project costs, the City will also construct sanitary sewer along Hwy 82 to provide services to the zone. A Municipal Utility District will also fund a portion of the total costs.

The City will contribute 50% (fifty percent) of its maintenance and operations (M&O) property tax rate and the County will contribute 50% (fifty percent) of its tax rate that is allocated to the general fund to the Tax Increment Reinvestment Zone Fund. No other taxing entities will participate.

No persons will be displaced as a result of implementing the plan.

The preliminary Feasibility Study in Attachment F finds the project is feasible.

DEVELOPMENT PLAN

Development is expected to begin in 2023 with a six to ten year build-out.

ESTIMATED BONDED INDEBTEDNESS

The City does not have any plans to issue debt. The City's share of the cost of improvements will be funded solely up to the amount of increment generated by the Zone.

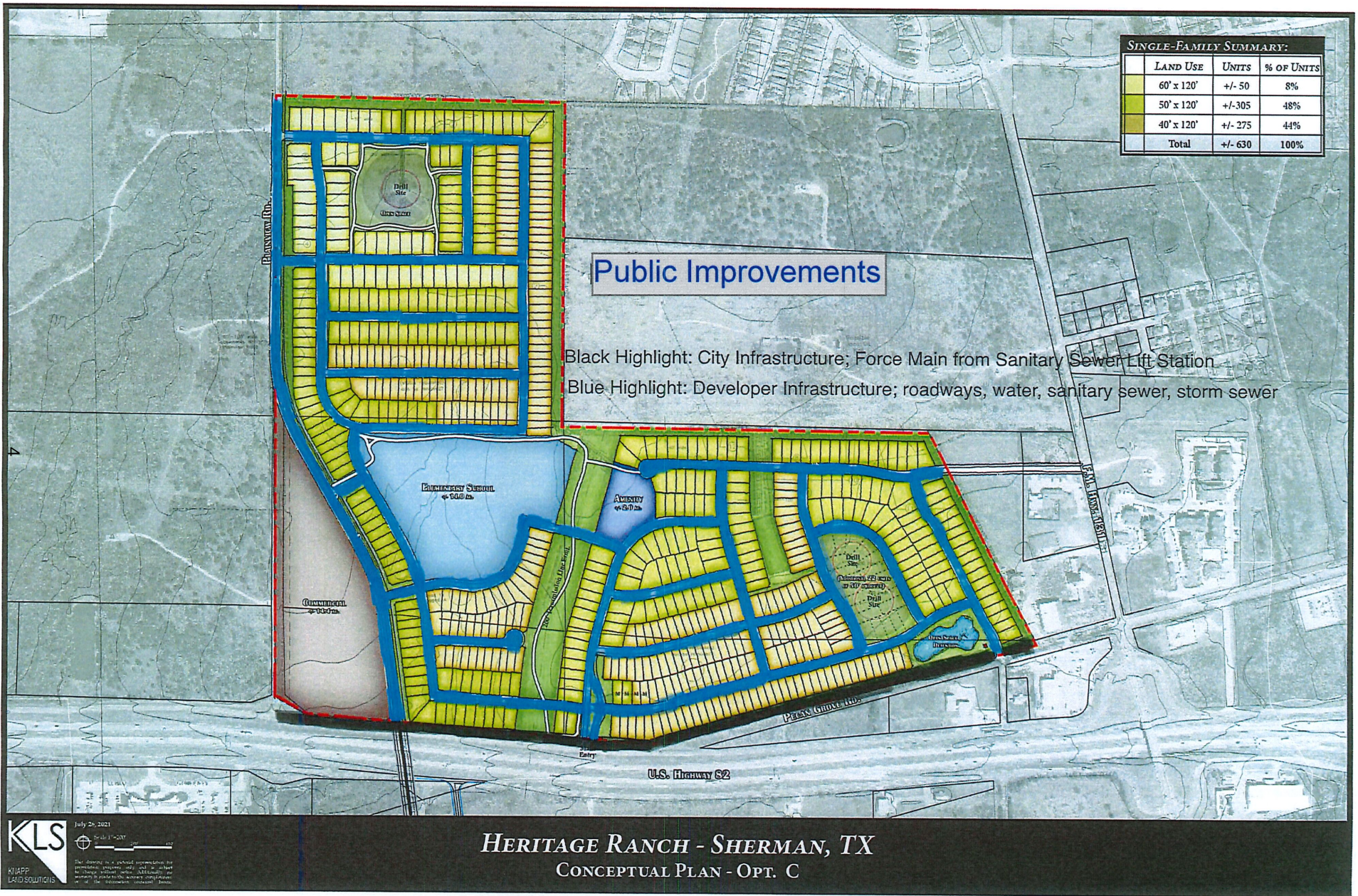
DURATION

The Zone will terminate in 25 years in accordance with Article IV of the Master Development Agreement between the City and RCICD Heritage Ranch LLC (Assigned by TPJ Properties, LTD on February 21, 2022).

City of Sherman
Tax Increment Reinvestment Zone #8
PARCEL LIST
Attachment A

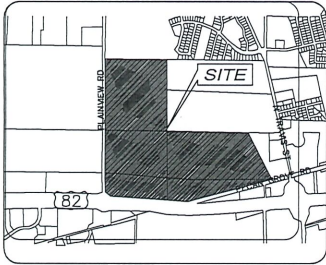
As of 1/1/22 per Master Development Agreement; 1/1/21 values are shown

Parcel ID	Owner	Total Acreage	Assessed Value	Improvements Value	Exempt Property	Acreage in TIRZ	Taxable Value in TIRZ
118818	TPJ Properties LTD	55.62	\$ 2,280	\$ -	-	55.62	\$ 2,280
361816	TPJ Properties LTD	32.21	1,320			32.21	\$ 1,320
118819	TPJ Properties LTD	16.68	684			16.68	\$ 684
118643	TPJ Properties LTD	66.30	1,989			66.30	\$ 1,989
118644	TPJ Properties LTD	13.70	562			13.70	\$ 562
	Replats to Commercial (118819 & 361816)	(12.98)	(532)			(12.98)	\$ (532)
		171.52	\$ 6,303	\$ -	\$ -	171.52	\$ 6,303





200 0 100 200 400
1 inch = 200 ft.



LOCATION MAP

Heritage Ranch Land Holdings, Ltd.
Doc. No. 2020-18932 OPRCCT

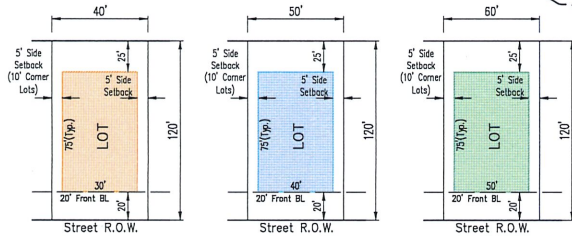
Astoria Homes, LLC
Doc. No. 2020-30782
OPRCCT

BMT Global, LLC
Doc. No. 2018-12534
OPRCCT

Melissa Smith Murray
Vol. 4413, Pg. 165
DRCCT

TPJ Properties, Ltd.
Vol. 3203, Pg. 464 DRCCT
(Tract 1)

Te-Dea Group, Inc.
Vol. 4569, Pg. 585 DRCCT



SINGLE FAMILY TRACTS				
HERITAGE RANCH				
PHASE	40'x120'	50'x120'	60'x120'	TOTAL
1	130	122	1	253
2	60	81	0	141
3	137	103	24	264
4	29	51	21	101
TOTAL	356	357	46	759

SITE PLAN HERITAGE RANCH CITY OF SHERMAN

City of Sherman
Tax Increment Reinvestment Zone #8
CONSTRUCTION COSTS
Attachment C

Description

Estimated MUD and TIRZ Costs

Erosion Control	\$ 700,082
Excavation	6,776,900
Paving	8,441,200
Water	4,296,093
Sanitary Sewer	4,359,200
Storm Sewer	7,421,464
Street Lights	512,200
Street Signs	32,500
Stop Signs	60,450
Detention Ponds	390,000
Retaining Walls	864,500
Engineering/Administrative/Review Costs	3,838,863
Financing Costs	4,031,521
Landscape/Hardscape	1,748,500
Total MUD and TIRZ Costs	<u>43,473,473</u>
TIRZ Costs	<u>15,363,000</u>
MUD Costs	<u>28,110,473</u>

Non-project Costs

Franchise Utility (Gas/Electric/Fiber) Service	2,173,600
Mailboxes	266,760
Amenity Center	3,497,000
Retaining Walls	2,593,500
Relocation of Gatherlines/Wells	1,750,000
Engineering/Administrative/Review Costs	3,838,862
Total Non-project Costs	<u>14,119,722</u>

Total Costs	<u><u>\$ 57,593,195</u></u>
-------------	-----------------------------

City of Sherman
Tax Increment Reinvestment Zone #8
PROJECT COSTS
Attachment D

Fiscal Year	Capital Outlay	Debt Service Principal	Interest Expense	Debt Issuance Costs	Total
2024	-	-	-	-	-
2025	179,000	-	-	-	179,000
2026	292,000	-	-	-	292,000
2027	426,000	-	-	-	426,000
2028	561,000	-	-	-	561,000
2029	695,000	-	-	-	695,000
2030	695,000	-	-	-	695,000
2031	696,000	-	-	-	696,000
2032	695,000	-	-	-	695,000
2033	695,000	-	-	-	695,000
2034	695,000	-	-	-	695,000
2035	696,000	-	-	-	696,000
2036	695,000	-	-	-	695,000
2037	695,000	-	-	-	695,000
2038	696,000	-	-	-	696,000
2039	695,000	-	-	-	695,000
2040	695,000	-	-	-	695,000
2041	695,000	-	-	-	695,000
2042	696,000	-	-	-	696,000
2043	695,000	-	-	-	695,000
2044	695,000	-	-	-	695,000
2045	696,000	-	-	-	696,000
2046	695,000	-	-	-	695,000
2047	695,000	-	-	-	695,000
2048	695,000	-	-	-	695,000
	<u>\$ 15,363,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 15,363,000</u>

Tax Increment Reinvestment Zone #8

Attachment E

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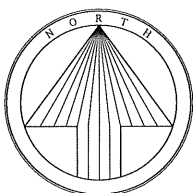
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THENCE $S 00^{\circ}19'22'' W$, 1688.82 feet along the west line thereof, and of a tract conveyed to Melissa Smith Murray, recorded in Volume 4413, Page 186 DRGCT, to a $1/2''$ iron rod with plastic cap stamped "SPIARSENG" set for the southwest corner thereof;

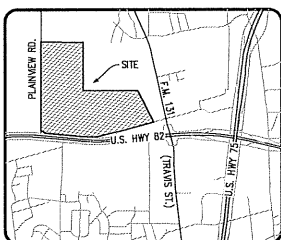
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200 0 100 200 400
1 inch = 200 ft.

Basis of bearing: State Plane
Coordinate System, Texas North
Central Zone 4202, North American
Datum of 1983, Adjustment
Realization 2011.



LOCATION MAP
1" = 3000'

SURVEY NOTES:

Zoning - Planned Development (PD)
(setbacks to be determined when platting)

With regard to Table A, item 11, source information from above ground markings, when available, will be combined with observed evidence of utilities to develop a view of those underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely and reliably depicted. Where additional or more detailed information is required, the client is advised that excavation may be necessary.

There is no observed evidence of recent earth moving work, building construction, or building additions observed in the process of conducting the fieldwork.

The surveyor is not aware of any proposed changes in street right of way lines and did not observe any evidence of recent street or sidewalk construction or repairs in the process of conducting the fieldwork.

There are no gaps, strips, or gores, and that the legal description presented in the survey mathematically closes.

LEGEND	
○	1/2" IRON ROD W/ PLASTIC CAP STAMPED "SPARSING" SET, UNLESS OTHERWISE NOTED.
IRF	IRON ROD FOUND
CRF	CAPPED IRON ROD FOUND
✱	POWER POLE
⊙	SAN SEWER MANHOLE
⋈	GUY WIRE ANCHOR
⊥	SIGNPOST
⊕	FIRE HYDRANT
⊙	GAS MARKER
UGC	UNDERGROUND ELECTRIC LINE MARKER
UGC	UNDERGROUND CABLE MARKER
GLT	GAS TEST LEAD
GM	GAS METER
W	WATER VALVE
—	BARBED WIRE FENCE
—	OVERHEAD POWER LINE
CM	CONTROL MONUMENT

Astoria Homes, LLC
Doc. No. 2020-30762
OPRGCT

BMT Global, LLC
Doc. No. 2018-12534
OPRGCT

Melissa Smith Murray
Vol. 4413, Pg. 186
DRGCT

171.516 Acres
(7,471,223 S.F.)

TPJ Properties, Ltd.
Vol. 3203, Pg. 464 DRGCT
(Tract 1)

U. BURNS SURVEY
ABSTRACT NO. 121

J. JENNINGS SU
ABSTRACT NO.

TPJ Properties, Ltd.
Vol. 3203, Pg. 464 DRGCT

U.S. HIGHWAY 82
var. width public ROW

JOB # 21-110

City of Sherman
Tax Increment Reinvestment Zone #8
FEASIBILITY STUDY
Attachment F

Fiscal Year	Captured Value	City Property Tax	County Property Tax	Sale Proceeds/Debt Proceeds	Interest Income	Total Inflow	Capital Outlay	Debt Service	Bond Issue Costs	Total Outflow	Net Cashflow	Cumulative Cash Position
2024	7,500,000	11,459	10,969	-	-	22,428	-	-	-	-	22,428	22,428
2025	52,500,000	80,214	76,785	-	287	157,286	179,000	-	-	179,000	(21,714)	715
2026	97,500,000	148,969	142,602	-	9	291,579	292,000	-	-	292,000	(421)	294
2027	142,500,000	217,724	208,418	-	4	426,145	426,000	-	-	426,000	145	440
2028	187,500,000	286,478	274,234	-	6	560,718	561,000	-	-	561,000	(282)	157
2029	232,500,000	355,233	340,050	-	2	695,285	695,000	-	-	695,000	285	442
2030	232,500,000	355,233	340,050	-	6	695,289	695,000	-	-	695,000	289	731
2031	232,500,000	355,233	340,050	-	9	695,292	696,000	-	-	696,000	(708)	24
2032	232,500,000	355,233	340,050	-	0	695,283	695,000	-	-	695,000	283	307
2033	232,500,000	355,233	340,050	-	4	695,287	695,000	-	-	695,000	287	594
2034	232,500,000	355,233	340,050	-	8	695,291	695,000	-	-	695,000	291	885
2035	232,500,000	355,233	340,050	-	11	695,294	696,000	-	-	696,000	(706)	179
2036	232,500,000	355,233	340,050	-	2	695,285	695,000	-	-	695,000	285	465
2037	232,500,000	355,233	340,050	-	6	695,289	695,000	-	-	695,000	289	754
2038	232,500,000	355,233	340,050	-	10	695,293	696,000	-	-	696,000	(707)	47
2039	232,500,000	355,233	340,050	-	1	695,284	695,000	-	-	695,000	284	330
2040	232,500,000	355,233	340,050	-	4	695,287	695,000	-	-	695,000	287	618
2041	232,500,000	355,233	340,050	-	8	695,291	695,000	-	-	695,000	291	909
2042	232,500,000	355,233	340,050	-	12	695,295	696,000	-	-	696,000	(705)	203
2043	232,500,000	355,233	340,050	-	3	695,286	695,000	-	-	695,000	286	489
2044	232,500,000	355,233	340,050	-	6	695,289	695,000	-	-	695,000	289	778
2045	232,500,000	355,233	340,050	-	10	695,293	696,000	-	-	696,000	(707)	72
2046	232,500,000	355,233	340,050	-	1	695,284	695,000	-	-	695,000	284	356
2047	232,500,000	355,233	340,050	-	5	695,288	695,000	-	-	695,000	288	643
2048	232,500,000	355,233	340,050	-	8	695,291	695,000	-	-	695,000	291	935
		<u>\$ 7,849,509</u>	<u>\$ 7,514,005</u>	<u>\$ -</u>	<u>\$ 421</u>	<u>\$ 15,363,935</u>	<u>\$ 15,363,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 15,363,000</u>		

City of Sherman
Tax Increment Reinvestment Zone #8
PROJECT REVENUE
Attachment G

Fiscal Year	Captured Value	Taxes On Captured Value	Interest Income	Total Revenue
2024	7,500,000	22,428	-	22,428
2025	52,500,000	156,999	287	157,286
2026	97,500,000	291,570	9	291,579
2027	142,500,000	426,141	4	426,145
2028	187,500,000	560,712	6	560,718
2029	232,500,000	695,283	2	695,285
2030	232,500,000	695,283	6	695,289
2031	232,500,000	695,283	9	695,292
2032	232,500,000	695,283	0	695,283
2033	232,500,000	695,283	4	695,287
2034	232,500,000	695,283	8	695,291
2035	232,500,000	695,283	11	695,294
2036	232,500,000	695,283	2	695,285
2037	232,500,000	695,283	6	695,289
2038	232,500,000	695,283	10	695,293
2039	232,500,000	695,283	1	695,284
2040	232,500,000	695,283	4	695,287
2041	232,500,000	695,283	8	695,291
2042	232,500,000	695,283	12	695,295
2043	232,500,000	695,283	3	695,286
2044	232,500,000	695,283	6	695,289
2045	232,500,000	695,283	10	695,293
2046	232,500,000	695,283	1	695,284
2047	232,500,000	695,283	5	695,288
2048	232,500,000	695,283	8	695,291
		\$ 15,363,514	\$ 421	\$ 15,363,935

City of Sherman
Tax Increment Reinvestment Zone #8
ESTIMATED CAPTURED APPRAISED VALUE
Attachment H

Fiscal Year	Estimated Captured Value
2024	7,500,000
2025	52,500,000
2026	97,500,000
2027	142,500,000
2028	187,500,000
2029	232,500,000
2030	232,500,000
2031	232,500,000
2032	232,500,000
2033	232,500,000
2034	232,500,000
2035	232,500,000
2036	232,500,000
2037	232,500,000
2038	232,500,000
2039	232,500,000
2040	232,500,000
2041	232,500,000
2042	232,500,000
2043	232,500,000
2044	232,500,000
2045	232,500,000
2046	232,500,000
2047	232,500,000
2048	232,500,000

TPJ Properties, Ltd.
PO Box 670
Sherman, Texas 75091

April 12, 2022

David Plyer, Mayor
City of Sherman, Texas

Dear Mayor Plyer,

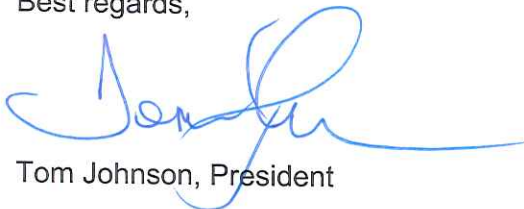
The undersigned hereby petitions the City in accordance with Tax Code 311.005(a)(4) for creation of a Tax Increment Reinvestment Zone consisting of the following parcels as identified by the Grayson Central Appraisal District and owned by TPJ Properties, LTD: 118818, 361816, 118643, 118819, and 118644.

In support of the said Petition, Petitioner alleges that the petitioner owns at least fifty percent (50%) of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

The property is currently undeveloped and would benefit from public infrastructure improvements. A concept plan to construct a residential planned development has already been approved by the City's Planning and Zoning Board. The approximately 172 acres will include a minimum of 650 single-family homes, an amenity center, and green space.

Please advise if you require additional information.

Best regards,

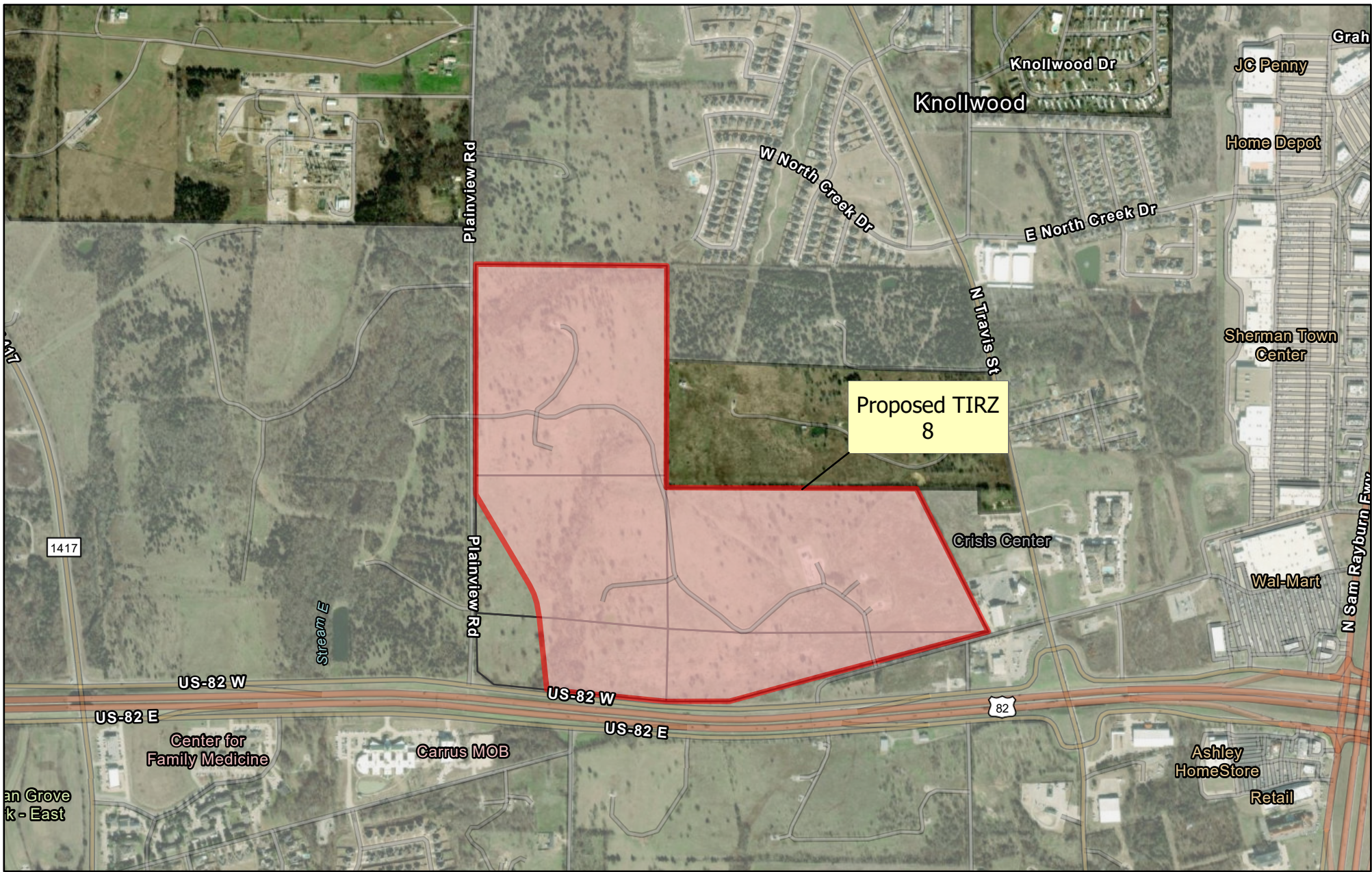


Tom Johnson, President

Johnson River, LLC, General Partner

TPJ Property, LTD

diagrone H:\ENGINEER\GIS\ArcGIS Pro Projects\Finance\TIRZ Maps.aprx



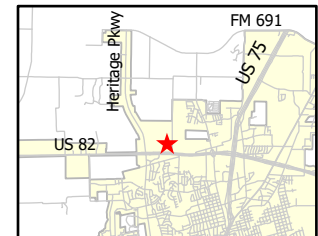
Sherman
CLASSIC TOWN. BROAD HORIZON.

-  Proposed TIRZ
-  Parcels
-  City Limits

CITY OF SHERMAN

Proposed TIRZ 8

4/27/2022





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

D. 2.

Meeting Date: 05/02/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6477

Establishing a Tax Increment Reinvestment Zone #9 (Along U.S. Hwy 82 and Between Plainview Road and F.M. 1417 (Heritage Parkway); Providing for Findings of Fact; Providing for a Preliminary Financing Plan; Providing for a Board of Directors; Providing for a Preliminary Financing Plan; Planning for Severability

Issue:

This ordinance creates a tax increment reinvestment zone along U.S. Hwy 82 between F.M. 1417 (Heritage Parkway) and Plainview Road, which will be the commercial part of the Heritage Ranch planned development.

Background:

By state law, the City Council may designate an area as a Tax Reinvestment Zone for the purpose of promoting development that would not occur solely through private investment in the reasonably foreseeable future. At the April 18, 2022 meeting, the City Council approved a resolution to take the necessary steps to create Sherman Tax Increment Reinvestment Zone (TIRZ) #9. State law requires a public hearing on the creation of the zone prior to adoption of the ordinance creating the zone. If the Council adopts this ordinance, the next steps will be approval of the Interlocal Agreement for County participation and naming the TIRZ board. A Final Project and Financing Plan will be prepared after the development plans are approved by the City and will also require City Council adoption.

Origination:

City Council

Financial Consideration:

A portion of the increases in taxable value in the zone after the 2022 tax year will be dedicated to reimbursing the developer for the public infrastructure in the zone. The preliminary financing plan calls for reimbursement up to the amount of increment generated by the zone.

Staff Recommendation:

The staff recommends adopting this ordinance.

Alternatives:

The City Council could direct the staff to abandon the process to create this zone or recommend changes to the Preliminary Financing Plan.

Attachments

Ordinance No. 6477

TIRZ 9 Preliminary Financing Plan

TIRZ 9 Aerial

ORDINANCE NO. 6477

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ESTABLISHING A TAX INCREMENT REINVESTMENT ZONE #9 (ALONG U.S. HWY 82 AND BETWEEN PLAINVIEW ROAD AND F.M. 1417 (HERITAGE PARKWAY)); PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR A BOARD OF DIRECTORS; PROVIDING FOR A PRELIMINARY FINANCING PLAN; PROVIDING FOR SEVERABILITY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That there is hereby created a reinvestment zone to be named the Sherman Tax Increment Reinvestment Zone #9 (“TIRZ #9”) to take effect immediately from and after the final passage of this ordinance, the boundaries of which are fully described in the Preliminary Financing Plan attached hereto and made a part hereof for all purposes.

SECTION 2. That the City Council hereby makes the following findings and determinations which are true and correct:

- (a) That the development of the area within the TIRZ #9 would not occur in the foreseeable future solely through private investment.
- (b) That the area’s present condition substantially impairs the city’s growth, retards the provision of housing, or constitutes an economic or social liability to the public health, safety, morals, or welfare. Further, this condition exists because of the presence of one or more of the following conditions: a substantial number of substandard or deteriorating structures, inadequate sidewalks or street layout, faulty lot layouts, unsanitary or unsafe conditions, a tax or special assessment delinquency that exceeds the fair market value of the land, defective or unusual conditions of title, or that endanger life or property by fire or other cause; or be predominantly open or undeveloped and, because of obsolete platting, deterioration of the structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality.
- (c) That the Sherman Tax Increment Reinvestment Zone #9 is in full compliance and meets all of the requirements of Section 311.005 of the Texas Tax Code.
- (d) That the improvements in the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the municipality and its citizens.

SECTION 3. That the attached Preliminary Financing Plan – Tax Increment Reinvestment Zone #9 is hereby approved in its entirety.

SECTION 3. That there is hereby established a tax increment fund for the Zone to be styled Sherman Tax Increment Reinvestment Zone #9 (“TIRZ #9”).

SECTION 4. That there is hereby established a five (5) member Board of Directors for the TIRZ #9 to be composed of three (3) members of the City Council, one (1) member of the City staff and one (1) representative from Grayson County, all to be chosen by the City Council for terms of two (2) years, with no term limitations, in accordance with Section 311.009 of the Texas Tax Code. The City Council does not delegate or grant any of its powers or authority to the Board of Directors. The City Council hereby restricts the authority of the Board of Directors under Chapter 311 of the Texas Tax Code to an advisory board to the City Council.

SECTION 5. The Zone shall terminate upon all City bonded indebtedness, interest on those bonds and project costs pertaining to the Zone being paid in full.

SECTION 6. That the provisions of this ordinance are severable and the invalidity of any word, phrase, sentence or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 7. 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 2nd day of May, 2022.

ADOPTED on this the 2nd day of May, 2022.

EFFECTIVE DATE on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Field Notes
Sherman Tax Increment Reinvestment Zone #9 ("TIRZ #9")

Survey (1 of 2)

Situated in the County of Grayson, State of Texas, being a part of the Uriah Burns Survey, Abstract No. 121, and being a part of the same tract of land described as 356 acres conveyed by Glenn Dennis Woodson et al to A. L. Coffman by deed dated November 9, 1945, recorded in Volume 484, Page 416, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a railroad spike found maintaining the Northeast corner of the said Coffman tract in the center of a public road locally known as Plainview Road running along or near the East line of the said Burns Survey and West line of both the Alexander & Richards Survey, Abstract No. 42, and the same tract of land described as 156.904 acres conveyed by First Texoma National Bank to Stonehollow Homes, LLC by deed dated May 20, 2014, recorded in Volume 5466, Page 40, Official Public Records, Grayson County, Texas, said spike also maintaining the Southeast corner of the same tract of land described as 4.55 acres conveyed by Jeffrey Keith Sallaz and Christy E. Sallaz to Nathan T. Mitchell by deed dated December 3, 2013, recorded in Volume 5397, Page 25, said Official Public Records;

Thence South 00°41'10" West with said center of road a distance of 270.78 feet to a 1/2" steel rod found maintaining and inside "L" corner to the said Burns Survey, the Southwest corner of both the said Alexander & Richards Survey and 156.904 acre tract, and the Northwest corner of the same tract of land described as 184.50 acres and referred to as Tract One as conveyed by John H. Becker, Jr. Trustee and Amy H. Fennell, Co-Trustee to TPJ Properties Ltd. by deed dated November 15, 2002, recorded in Volume 3203, Page 464, said Official Public Records;

Thence South 00°01'01" East continuing with said center of road and East line of the Coffman tract, at a distance of 3122.42 passing a spike nail at the called for Southwest corner of the said 184.50 acre tract and continuing for a total distance of 3122.89 feet to a point for the Southeast corner of the herein described tract at the intersection of said East line of the Coffman tract with the North right-of-way line of U. S. Highway No. 82;

Thence North 84°39'56" West with said North right-of-way line a distance of 25.68 feet to an angle point from which a concrete monument bears South 64°50' East a distance of 1.2 feet;

Thence South 76°37'33" West continuing with said North right-of-way line a distance of 156.73 feet to a concrete monument found at an angle point;

Thence in a Westerly direction continuing with said North right-of-way line along a curve to the left having a radius of 5904.58 feet, (chord bears North 88°05'57" West, 593.96 feet), an arc distance of 594.21 feet to a concrete monument marking the end of said curve;

Thence South 86°57'06" West continuing with said North right-of-way line a distance of 277.38 feet to a concrete monument at an angle point;

Thence South 89°01'04" West continuing with said North right-of-way line a distance of 1000.00 feet to a concrete monument at an angle point;

Thence North 88°07'12" West continuing with said North right-of-way line a distance of 300.37 feet to a concrete monument at an angle point;

Thence South 89°01'04" West a distance of 425.10 feet to a concrete monument at the intersection of said North right-of-way line of Highway No. 82 with the Southerly West line of the said Coffman tract and East line of the same tract of land described as 84.15 acres conveyed by Lucile Schleuse Wilson et vir to Joseph E. Wilson, Jr. by deed dated February 5, 1974, recorded in Volume 1273, Page 45, said Deed Records;

Thence North 05°15'15" West a distance of 1373.66 feet to a 1/2" steel rod set marking an inside "L" corner to the said Coffman tract and the Northeast corner of the said Wilson tract;

Thence North 88°01'43" West a distance of 185.60 feet to a 1/2" steel rod set for the most Westerly Southwest corner of the herein described tract at the intersection of the Westerly South line of the said Coffman tract and North line of the said Wilson tract with the East right-of-way line of F. M. Highway No. 1417;

Thence in a Northerly direction with said East right-of-way line of Highway No. 1417 along a curve to the left having a radius of 2901.79 feet, (chord bears North 18°57'02" West, 1203.61 feet), an arc distance of 1212.41 feet to a concrete monument at the end of said curve;

Thence North 30°55'12" West continuing with said East right-of-way line a distance of 405.37 feet to a concrete monument at an angle point;

Thence North 28°03'26" West continuing with said East right-of-way line a distance of 300.37 feet to a 1/2" steel rod set at an angle point;

Thence North 30°55'12" West continuing with said East right-of-way line a distance of 162.00 feet to a 1/2" steel rod found at the intersection of said East right-of-way line with the most Westerly West line of the said Coffman tract, said rod also maintaining the South corner of the same tract of land described as 0.55 acres and referred to in Exhibit "B" as conveyed by Estes Properties, Inc. to Ted Holdings, Ltd. by deed dated December 12, 2002, recorded in Volume 3369, Page 43, said Official Public Records;

Thence North 22°41'44" East a distance of 233.97 feet to a 1/2" steel rod found maintaining the Northwest corner of the said Coffman tract and the Northeast corner of the said 0.55 acre tract in the South line of the same tract of land described as 119.69 acres conveyed by said Estes Properties, Inc. to said Ted Holdings, Ltd. by deed dated December 12, 2002, recorded in Volume 3369, Page 31, said Official Public Records;

Thence South 89°26'27" East with the general course of a fence along the North line of the said Coffman tract a distance of 679.68 feet to a 1" steel rod found maintaining the Southeast corner of the said 119.69 acre tract and the Southwest corner of the same tract of land described as 31.00 acres conveyed by R. V. Clinton Jr. et ux to Timothy W. Dhane et ux by deed dated July 22, 2005, recorded in Volume 3897, Page 799, said Official Public Records;

Thence South 89°42'44" East continuing with said general course of fence a distance of 892.45 feet to a 1/2" steel rod found maintaining the Southeast corner of the said Dhane tract and the Southwest corner of the same tract of land described as 26.135 acres conveyed by XTO Energy Inc. to SemGas, L.P. by deed dated March 12, 2014, recorded in Volume 5433, Page 610, said Official Public Records;

Thence South 88°41'53" East a distance of 566.43 feet to a 3/4" steel rod found at an angle point;

Thence South 89°35'04" East continuing with said general course of fence, passing the Southeast corner of the said 26.135 acre tract and the Southwest corner of the same tract of land described as 10.40 acres conveyed by Dornick Hills Midstream, Ltd. to said SemGas, L.P. by deed dated October 6, 2006, recorded in Volume 4134, Page 899, said Official Public Records, and continuing for a total distance of 799.64 feet to a metal corner post maintaining the Southeast corner of the said 10.40 acre tract and the Southwest corner of the same tract of land described as 14.82 acres conveyed by said R. V. Clinton, Jr. et ux to B. F. Shellenberger by deed dated October 29, 1965, recorded in Volume 1040, Page 223, said Deed Records;

Thence South 89°07'55" East continuing with said fence, passing the most Southerly Southeast corner of the said Shellenberger tract and the Southwest corner of the said 4.55 acre tract and continuing, passing a 1/2" steel rod found in the West line of said Plainview road at 855.6 feet and continuing for a total distance of 882.90 feet to the Point of Beginning

and containing 254.489 acres of land more or less.....

Survey (2 of 2)

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the U. Burns Survey, Abstract No. 121, City of Sherman, Grayson County, Texas, being part of Tract 1, conveyed to TPJ Properties, Ltd., by deed recorded in Volume 3203, Page 464 of the Deed Records, Grayson County, Texas (DRGCT), with the subject tract being more particularly described as follows:

BEGINNING at a concrete nail with flasher found in the intersection of the north line of U.S. Highway 82, a variable width public right-of-way, with Plainview Road, a public road, for the southwest corner of said TPJ tract;

THENCE N 00°01'05" W, 1458.40 feet along Plainview Road;

THENCE departing said road, the following:

A non-tangent curve to the left having a central angle of 12°30'21", a radius of 851.00 feet, a chord of S 24°33'46" E - 185.38 feet, an arc length of 185.75 feet;

S 30°48'56" E, 654.89 feet;

A tangent curve to the right having a central angle of 24°29'33", a radius of 790.00 feet, a chord of S 18°34'10" E - 335.14 feet, an arc length of 337.70 feet;

And S 06°19'24" E, 542.26 feet to a point on the north line of said highway;

THENCE along the north line thereof, the following:

N 84°42'10" W, 414.70 feet to a TxDOT concrete monument found;

N 59°06'13" W, 176.25 feet to a TxDOT concrete monument found;

And N 88°00'50" W, 14.37 feet to the POINT OF BEGINNING with the subject tract containing 568,765 square feet or 13.057 acres of land.

Location Map
Sherman Tax Increment Reinvestment Zone #9 ("TIRZ #9")





**Preliminary Financing Plan
Tax Increment Reinvestment Zone #9**

April 18, 2022

DESCRIPTION

The proposed location of Tax Increment Reinvestment Zone #9 is located along U.S. Hwy 82 and between Plainview Road and F.M. 1417 (Heritage Parkway). The base is the taxable value for the tax year 2022 estimated at \$9,089 and contains about 267 acres. See Attachments A and B for a parcel list and map of the proposed zone. Attachment E is a survey.

The area designated as TIRZ #9 is undeveloped. Gas wells and lines are scattered through various tracts. The proposed zone and the adjacent proposed zone are a Planned Development that is expected to offer a mix of commercial, retail, office, entertainment and residential opportunities complimented with areas set aside as parks, lakes and other open space amenities. TIRZ #9 will be commercial and multi-family while the adjacent TIRZ #8 will primarily consist of single-family residential housing. No changes are proposed to the City's zoning ordinances, master plan, or building codes.

The project plan calls for infrastructure to be added to the site for mixed-use development. Proposed improvements of about \$34 million include streets, storm sewers, retention lakes, retaining walls, landscaping, utility services, and the relocation of the gas lines and wells. Attachment C contains a listing of the estimated construction costs. The TIRZ will reimburse the developer for the public improvements up to the amount of increment deposited into the Tax Increment Reinvestment Zone Fund for the duration of the Zone, estimated at about \$8.1 million. Apart from the Project costs, the City will also construct sanitary sewer along Hwy 82 to provide services to the zone.

The City will contribute 50% (fifty percent) of its maintenance and operations (M&O) property tax rate and the County will contribute 50% (fifty percent) of its tax rate that is allocated to the general fund to the Tax Increment Reinvestment Zone Fund. No other taxing entities will participate.

No persons will be displaced as a result of implementing the plan.

The preliminary Feasibility Study in Attachment F finds the project is feasible.

DEVELOPMENT PLAN

Development is expected to begin in 2023 with a seven year build-out.

ESTIMATED BONDED INDEBTEDNESS

The City does not have any plans to issue debt. The City's share of the cost of improvements will be funded solely up to the amount of increment generated by the Zone.

DURATION

The Zone will terminate in 25 years in accordance with Article IX of the Master Development Agreement between the City and Heritage Ranch Holdings, LTD.

City of Sherman
Tax Increment Reinvestment Zone #9
PARCEL LIST
Attachment A

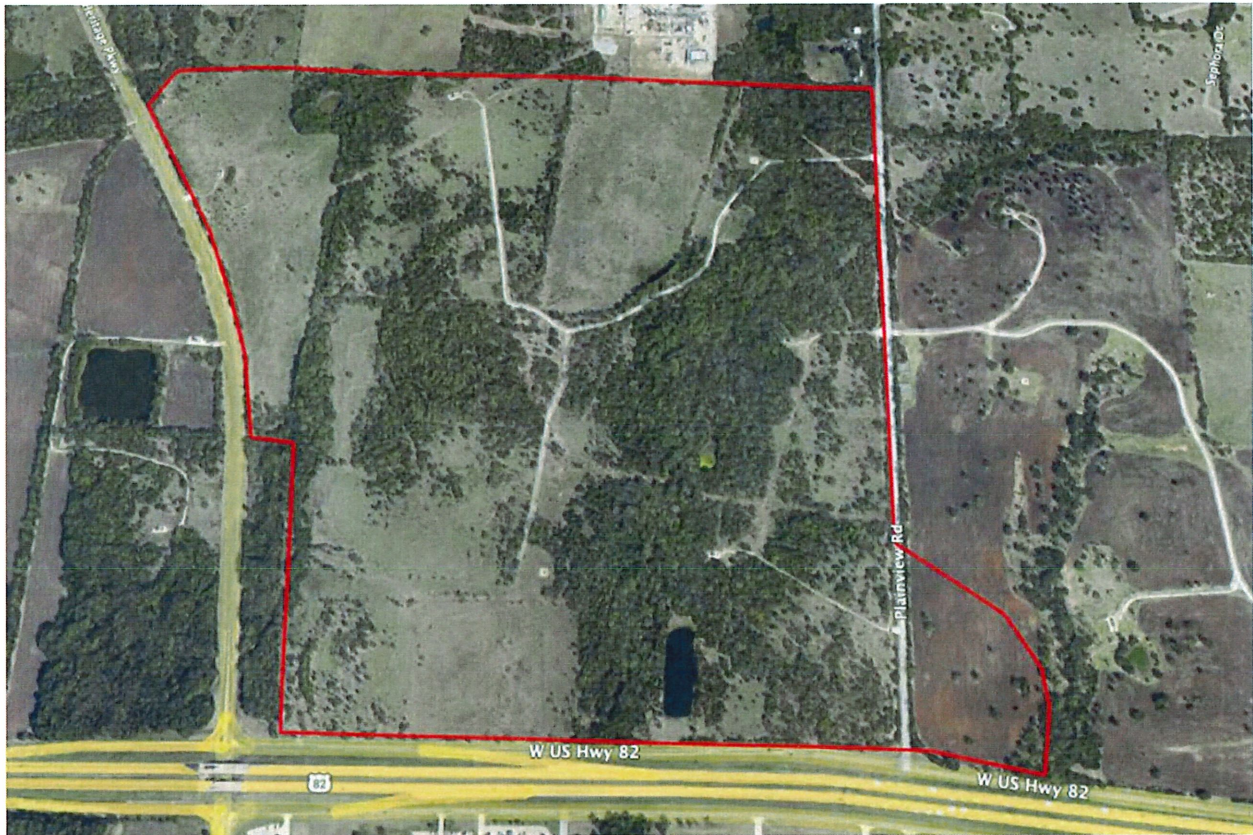
As of 1/1/22 per Master Development Agreement; 1/1/21 values are shown

Parcel ID	Owner	Total Acreage	Assessed Value	Improvements Value	Exempt Property	Acreage in TIRZ	Taxable Value in TIRZ
118808	Heritage Ranch Land Holdings LTD	137.70	\$ 4,756	\$ -	-	137.70	\$ 4,756
361829	Heritage Ranch Land Holdings LTD	55.64	1,669			55.64	1,669
118812	Heritage Ranch Land Holdings LTD	16.53	612			16.53	612
118810	Heritage Ranch Land Holdings LTD	44.62	1,520			44.62	1,520
8118819 & 361816							
	partials TPJ Properties LTD	13.06	532			13.06	532
Total		267.55	\$ 9,089	-	-	267.55	\$ 9,089

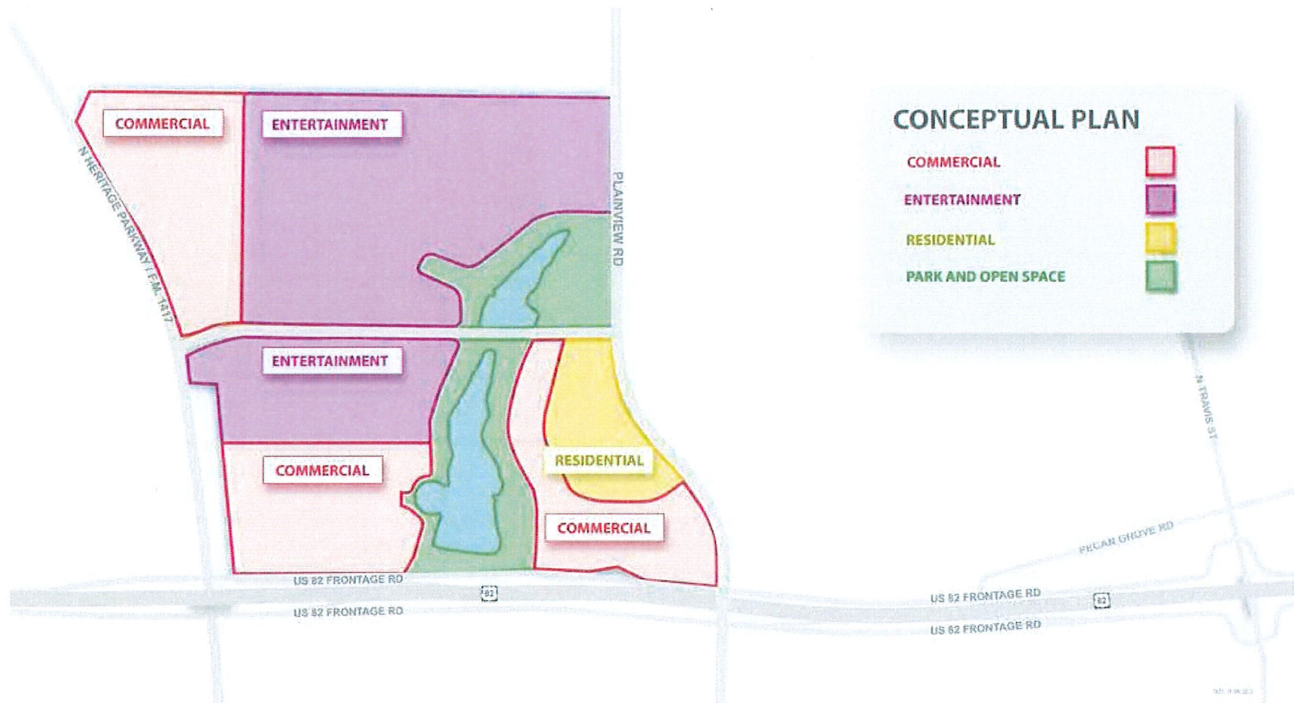
Tax Increment Reinvestment Zone #9

Attachment B

Proposed Zone Map



Attachment B-1
PROPOSED USE MAPS





City of Sherman
Tax Increment Reinvestment Zone #9
CONSTRUCTION COSTS
Attachment C

Description

Estimated TIRZ Costs

Erosion Control	\$	352,485
Excavation		4,150,695
Paving		4,950,694
Water		3,345,893
Sanitary Sewer		3,699,000
Storm Sewer		4,952,421
Street Lights		375,000
Street Signs		28,950
Landscape/Hardscape		975,343
Retention Lakes		2,560,896
Retaining Walls		501,958
Engineering/ Administrative/Review Costs		1,119,770
Total TIRZ Costs	\$	27,013,104

Non-project Costs

Franchise Utility (Gas/Electric/Fiber)		
Service		2,200,000
Landscape/Hardscape		975,343
Retaining Walls		752,937
Relocation of Gathering Lines		1,550,000
Engineering/Administrative/Review Costs		1,119,770
Tota Non-project Costs		6,598,050

Total Costs	\$	33,611,154
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City of Sherman
Tax Increment Reinvestment Zone #9
PROJECT COSTS
Attachment D

Fiscal Year	Capital Outlay	Debt Service Principal	Interest Expense	Debt Issuance Costs	Total
2024	-	-	-	-	-
2025	-	-	-	-	-
2026	48,000	-	-	-	48,000
2027	71,000	-	-	-	71,000
2028	144,000	-	-	-	144,000
2029	287,000	-	-	-	287,000
2030	398,000	-	-	-	398,000
2031	399,000	-	-	-	399,000
2032	398,000	-	-	-	398,000
2033	398,000	-	-	-	398,000
2034	397,000	-	-	-	397,000
2035	398,000	-	-	-	398,000
2036	398,000	-	-	-	398,000
2037	398,000	-	-	-	398,000
2038	397,000	-	-	-	397,000
2039	398,000	-	-	-	398,000
2040	398,000	-	-	-	398,000
2041	398,000	-	-	-	398,000
2042	397,000	-	-	-	397,000
2043	398,000	-	-	-	398,000
2044	398,000	-	-	-	398,000
2045	398,000	-	-	-	398,000
2046	397,000	-	-	-	397,000
2047	398,000	-	-	-	398,000
2048	398,000	-	-	-	398,000
	\$ 8,109,000	\$ -	\$ -	\$ -	\$ 8,109,000

Tax Increment Reinvestment Zone #9
Attachment E
Survey (1 of 2)

Situated in the County of Grayson, State of Texas, being a part of the Uriah Burns Survey, Abstract No. 121, and being a part of the same tract of land described as 356 acres conveyed by Glenn Dennis Woodson et al to A. L. Coffman by deed dated November 9, 1945, recorded in Volume 484, Page 416, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a railroad spike found maintaining the Northeast corner of the said Coffman tract in the center of a public road locally known as Plainview Road running along or near the East line of the said Burns Survey and West line of both the Alexander & Richards Survey, Abstract No. 42, and the same tract of land described as 156.904 acres conveyed by First Texoma National Bank to Stonehollow Homes, LLC by deed dated May 20, 2014, recorded in Volume 5466, Page 40, Official Public Records, Grayson County, Texas, said spike also maintaining the Southeast corner of the same tract of land described as 4.55 acres conveyed by Jeffrey Keith Sallaz and Christy E. Sallaz to Nathan T. Mitchell by deed dated December 3, 2013, recorded in Volume 5397, Page 25, said Official Public Records;

Thence South 00°41'10" West with said center of road a distance of 270.78 feet to a 1/2" steel rod found maintaining and inside "L" corner to the said Burns Survey, the Southwest corner of both the said Alexander & Richards Survey and 156.904 acre tract, and the Northwest corner of the same tract of land described as 184.50 acres and referred to as Tract One as conveyed by John H. Becker, Jr. Trustee and Amy H. Fennell, Co-Trustee to TPJ Properties Ltd. by deed dated November 15, 2002, recorded in Volume 3203, Page 464, said Official Public Records;

Thence South 00°01'01" East continuing with said center of road and East line of the Coffman tract, at a distance of 3122.42 passing a spike nail at the called for Southwest corner of the said 184.50 acre tract and continuing for a total distance of 3122.89 feet to a point for the Southeast corner of the herein described tract at the intersection of said East line of the Coffman tract with the North right-of-way line of U. S. Highway No. 82;

Thence North 84°39'56" West with said North right-of-way line a distance of 25.68 feet to an angle point from which a concrete monument bears South 64°50' East a distance of 1.2 feet;

Thence South 76°37'33" West continuing with said North right-of-way line a distance of 156.73 feet to a concrete monument found at an angle point;

Thence in a Westerly direction continuing with said North right-of-way line along a curve to the left having a radius of 5904.58 feet, (chord bears North 88°05'57" West, 593.96 feet), an arc distance of 594.21 feet to a concrete monument marking the end of said curve;

Thence South 86°57'06" West continuing with said North right-of-way line a distance of 277.38 feet to a concrete monument at an angle point;

Thence South 89°01'04" West continuing with said North right-of-way line a distance of 1000.00 feet to a concrete monument at an angle point;

Thence North 88°07'12" West continuing with said North right-of-way line a distance of 300.37 feet to a concrete monument at an angle point;

Thence South 89°01'04" West a distance of 425.10 feet to a concrete monument at the intersection of said North right-of-way line of Highway No. 82 with the Southerly West line of the said Coffman tract and East line of the same tract of land described as 84.15 acres conveyed by Lucile Schleuse Wilson et vir to Joseph E. Wilson, Jr. by deed dated February 5, 1974, recorded in Volume 1273, Page 45, said Deed Records;

Thence North 05°15'15" West a distance of 1373.66 feet to a 1/2" steel rod set marking an inside "L" corner to the said Coffman tract and the Northeast corner of the said Wilson tract;

Thence North 88°01'43" West a distance of 185.60 feet to a 1/2" steel rod set for the most Westerly Southwest corner of the herein described tract at the intersection of the Westerly South line of the said Coffman tract and North line of the said Wilson tract with the East right-of-way line of F. M. Highway No. 1417;

Thence in a Northerly direction with said East right-of-way line of Highway No. 1417 along a curve to the left having a radius of 2901.79 feet, (chord bears North 18°57'02" West, 1203.61 feet), an arc distance of 1212.41 feet to a concrete monument at the end of said curve;

Thence North 30°55'12" West continuing with said East right-of-way line a distance of 405.37 feet to a concrete monument at an angle point;

Thence North 28°03'26" West continuing with said East right-of-way line a distance of 300.37 feet to a 1/2" steel rod set at an angle point;

Thence North 30°55'12" West continuing with said East right-of-way line a distance of 162.00 feet to a 1/2" steel rod found at the intersection of said East right-of-way line with the most Westerly West line of the said Coffman tract, said rod also maintaining the South corner of the same tract of land described as 0.55 acres and referred to in Exhibit "B" as conveyed by Estes Properties, Inc. to Ted Holdings, Ltd. by deed dated December 12, 2002, recorded in Volume 3369, Page 43, said Official Public Records;

Thence North 22°41'44" East a distance of 233.97 feet to a 1/2" steel rod found maintaining the Northwest corner of the said Coffman tract and the Northeast corner of the said 0.55 acre tract in the South line of the same tract of land described as 119.69 acres conveyed by said Estes Properties, Inc. to said Ted Holdings, Ltd. by deed dated December 12, 2002, recorded in Volume 3369, Page 31, said Official Public Records;

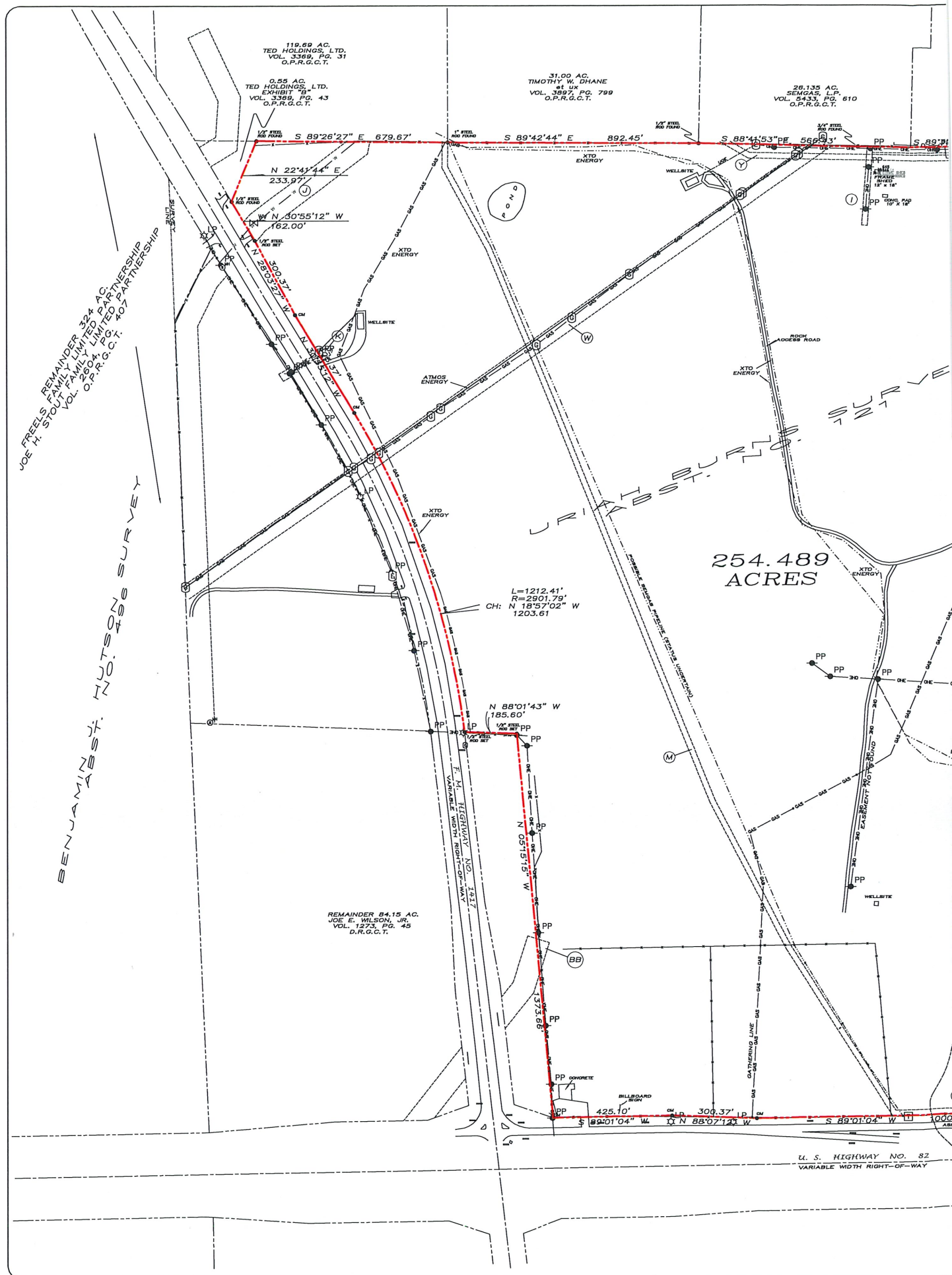
Thence South 89°26'27" East with the general course of a fence along the North line of the said Coffman tract a distance of 679.68 feet to a 1" steel rod found maintaining the Southeast corner of the said 119.69 acre tract and the Southwest corner of the same tract of land described as 31.00 acres conveyed by R. V. Clinton Jr. et ux to Timothy W. Dhane et ux by deed dated July 22, 2005, recorded in Volume 3897, Page 799, said Official Public Records;

Thence South 89°42'44" East continuing with said general course of fence a distance of 892.45 feet to a 1/2" steel rod found maintaining the Southeast corner of the said Dhane tract and the Southwest corner of the same tract of land described as 26.135 acres conveyed by XTO Energy Inc. to SemGas, L.P. by deed dated March 12, 2014, recorded in Volume 5433, Page 610, said Official Public Records;

Thence South 88°41'53" East a distance of 566.43 feet to a 3/4" steel rod found at an angle point;

Thence South 89°35'04" East continuing with said general course of fence, passing the Southeast corner of the said 26.135 acre tract and the Southwest corner of the same tract of land described as 10.40 acres conveyed by Dornick Hills Midstream, Ltd. to said SemGas, L.P. by deed dated October 6, 2006, recorded in Volume 4134, Page 899, said Official Public Records, and continuing for a total distance of 799.64 feet to a metal corner post maintaining the Southeast corner of the said 10.40 acre tract and the Southwest corner of the same tract of land described as 14.82 acres conveyed by said R. V. Clinton, Jr. et ux to B. F. Shellenberger by deed dated October 29, 1965, recorded in Volume 1040, Page 223, said Deed Records;

Thence South 89°07'55" East continuing with said fence, passing the most Southerly Southeast corner of the said Shellenberger tract and the Southwest corner of the said 4.55 acre tract and continuing, passing a 1/2" steel rod found in the West line of said Plainview road at 855.6 feet and continuing for a total distance of 882.90 feet to the Point of Beginning and containing 254.489 acres of land more or less.....



10.40 AC.
SEM GAS LP.
VOL. 4134, PG. 899
O.P.R.G.C.T.

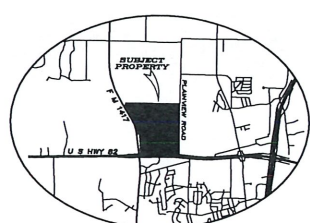
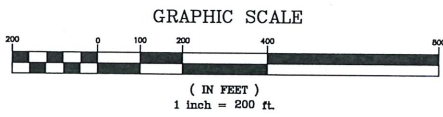
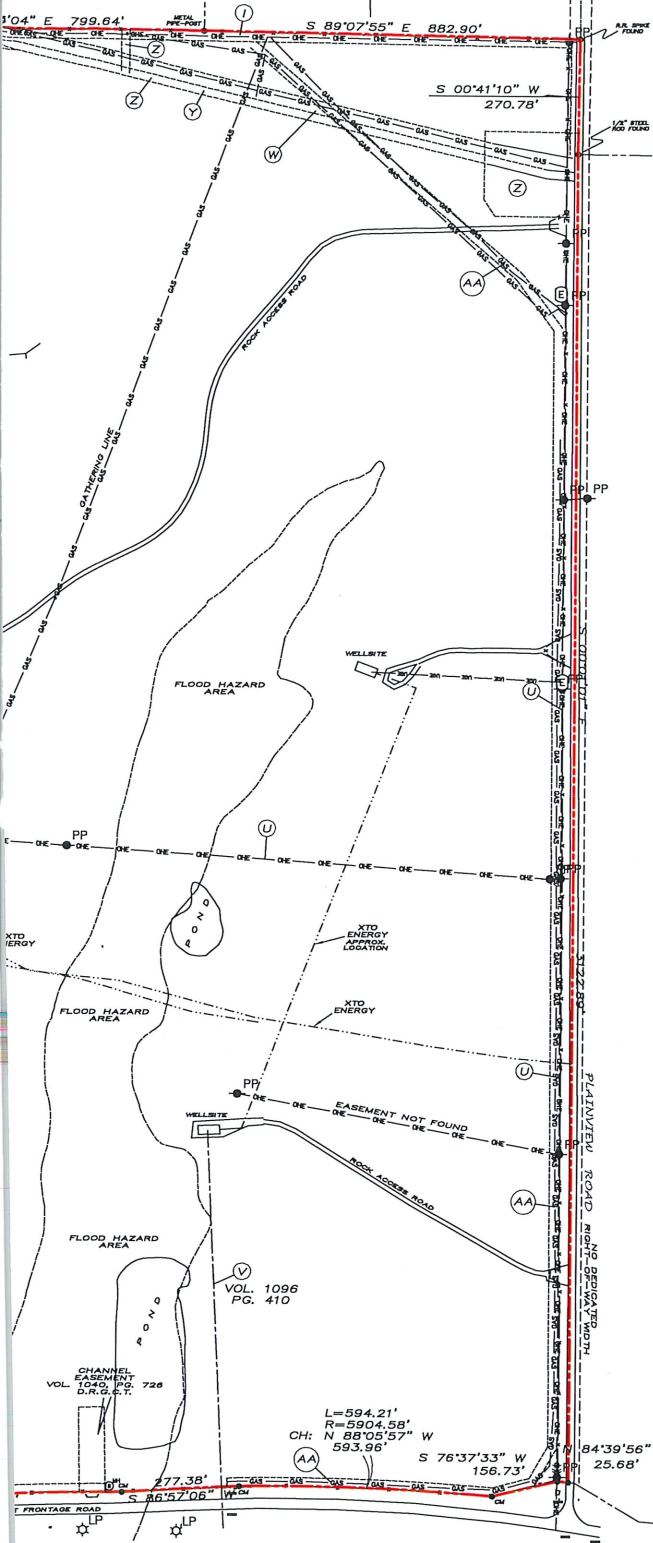
14.82 AC.
B. F. SHELLENBERGER
VOL. 1040, PG. 223
D.R.G.C.T.

4.55 AC.
NATHAN T. MITCHELL
VOL. 5397, PG. 25
O.P.R.G.C.T.

ALEXANDER & RICHARDS SURVEY ABST. NO. 42

156.804 AC.
STONEHOLLOW HOMES, LLC
VOL. 2468, PG. 40
O.P.R.G.C.T.

184.50 AC.
TPJ PROPERTIES, LTD.
TRACT ONE
VOL. 3203, PG. 464
O.P.R.G.C.T.



ALTA/NSPS LAND TITLE SURVEY

UNDERWOOD
DRAFTING & SURVEYING

3404 INTERURBAN ROAD
DENISON, TEXAS 75021
PHONE (903)465-2151
FAX (903)465-2152

Project Location SHERMAN, TEXAS	Prepared For: LEE TERRELL REAL ESTATE
Project Address 136 PLAINVIEW ROAD	
Project Name	
Job Number 19050314	

Sheet 1 of 2

Date	Revisions	Date
06-10-2019		
Dwn. By JRM		
Aprvd. By DWJ		
Dwg. No. 19050314		
Scale 1" = 200'		

FLOOD ZONE NOTES

AS SHOWN, A PORTION OF THE SUBJECT PROPERTY LIES WITHIN A ZONE "A" FLOOD HAZARD AREA ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP FOR GRAYSON COUNTY, TEXAS AND INCORPORATED AREAS, MAP NO. 48181C0270 F, REVISED DATE SEPTEMBER 29, 2010.

GENERAL NOTES

1. Bearings are based on GPS observation, Texas State Plane Coordinate system, NAD83, North Central Zone.
2. Water & Sewer locations obtained from observed evidence and information from utility maps obtained from the City of Sherman, Texas; some locations are approximate.
3. There is no observed evidence of current earth moving work, building construction or building additions.
4. There is currently pavement renovation and construction being performed on F. M. Highway No. 1417.
5. There is no observed evidence of site being used as a solid waste dump, sump, or sanitary landfill.
6. U. S. Highway No. 82 and F. M. Highway No. 1417 are public rights-of-way maintained by the State of Texas. Plainview Road is a public road maintained by Grayson County.

~ NOTE ~

Exact status and completeness of locations of all pipelines on the subject property cannot be certified to.

ZONING NOTES

A Southerly portion of the subject property lies within the Highway 75 & 82 Overlay District. A Westerly portion of the subject property lies within the F M 1417 Overlay District. Current Zoning is undetermined.

CERTIFICATION

To:

This is to certify that this map or plat and the survey on which it is based were made in accordance with 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 1, 2, 3, 4, 7(a), 8, 13, 16, and 19 of Table A thereof. The field work was completed on June 7, 2019.

Date of Plat 6/10/19

DW. Underwood
Douglas W. Underwood
Registered Professional
Land Surveyor No. 4709
FIRM NO. 10006300



LEGEND

● 1/2" STEEL ROD SET	Ⓢ CABLE MARKER	— BOUNDARY LINE
○ 1/2" STEEL ROD FOUND	Ⓣ TV PEDISTAL	— PROPERTY LINE
CM ● CONCRETE MONUMENT	Ⓢ S EWER MANHOLE	— EASEMENT LINE
▲ "X" CUT IN CONCRETE	Ⓢ FIRE HYDRANT	— BUILDING LINE
△ FOUND P/K NAIL	Ⓢ WATER METER	— BARB WIRE FENCE
PP POWER POLE	Ⓢ LIGHT POLE	— CHAINLINK FENCE
W WATER METER	Ⓢ DRAINAGE INLET	— STOCKADE FENCE
G GAS METER	Ⓢ TELEPHONE MANHOLE	— GAS LINE
T TELEPHONE PEDISTAL	Ⓢ SIGN	— SEWER LINE
E ELECTRIC TRANSFORMER		— WATER LINE
S S EWER CLEANOUT		— TELEPHONE LINE
Ⓢ AEROBIC SYSTEM		— OVERHEAD ELECTRIC LINE
		— UNDERGROUND ELECTRIC LINE
		— FIBER OPTIC LINE

ALTA/NSPS LAND TITLE SURVEY

UNDERWOOD
DRAFTING & SURVEYING

3404 INTERURBAN ROAD
DENISON, TEXAS 75021
PHONE (903)465-2151
FAX (903)465-2152

Project Location
SHERMAN, TEXAS

Prepared For:

Project Address
136 PLAINVIEW ROAD

LEE TERRELL REAL ESTATE

Project Name

Job Number 19050314

Sheet 1 of 2

Date	Revisions	Date
06-10-2019		
Dwn. By JRM		
Aprvd. By DWU		
Dwg. No. 19050314		
Scale 1" = 200'		

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the Uriah Burns Survey, Abstract No. 121, and being a part of the same tract of land described as 356 acres conveyed by Glenn Dennis Woodson et al to A. L. Coffman by deed dated November 9, 1945, recorded in Volume 484, Page 416, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a railroad spike found maintaining the Northeast corner of the said Coffman tract in the center of a public road locally known as Plainview Road running along or near the East line of the said Burns Survey and West line of both the Alexander & Richards Survey, Abstract No. 42, and the same tract of land described as 156.904 acres conveyed by First Texoma National Bank to Stonehollow Homes, LLC by deed dated May 20, 2014, recorded in Volume 5466, Page 40, Official Public Records, Grayson County, Texas, said spike also maintaining the Southeast corner of the same tract of land described as 4.55 acres conveyed by Jeffrey Keith Salatz and Chrlety E. Salatz to Nathan T. Mitchell by deed dated December 3, 2013, recorded in Volume 5397, Page 25, said Official Public Records;

Thence South 00°41'10" West with said center of road a distance of 270.78 feet to a 1/2" steel rod found maintaining and inside "L" corner to the said Burns Survey, the Southwest corner of both the said Alexander & Richards Survey and 156.904 acre tract and the Northwest corner of the same tract of land described as 154.50 acres and referred to as Tract One as conveyed by John H. Becker, Jr. Trustee and Amy H. Fennell, Co-Trustee to TPJ Properties Ltr by deed dated November 15, 2002, recorded in Volume 5203, Page 46, said Official Public Records;

Thence South 00°01'01" East continuing with said center of road and East line of the said Coffman tract, at the distance of 3122.42 passing a spike nail at the called for Southwest corner of the said 154.50 acre tract and continuing for a total distance of 3122.89 feet to the Southeast corner of the same tract of land herein described tract at the intersection of said East line of the Coffman tract with the North right-of-way line of U. S. Highway No. 82;

Thence North 84°39'56" West with said North right-of-way line a distance of 25.68 feet to an angle point from which a concrete monument bears South 84°50' East a distance of 1.2 feet;

Thence South 76°37'33" West continuing with said North right-of-way line a distance of 156.73 feet to a concrete monument found at an angle point;

Thence in a Westerly direction continuing with said North right-of-way line along a curve to the left having a radius of 5804.58 feet, (chord bears North 88°05'57" West, 593.96 feet), an arc distance of 594.21 feet to a concrete monument marking the end of said curve;

Thence South 88°57'06" West continuing with said North right-of-way line a distance of 277.35 feet to a concrete monument at an angle point;

Thence South 89°01'04" West continuing with said North right-of-way line a distance of 1000.00 feet to a concrete monument at an angle point;

Thence North 88°07'12" West continuing with said North right-of-way line a distance of 300.37 feet to a concrete monument at an angle point;

Thence South 88°01'04" West a distance of 425.10 feet to a concrete monument at the intersection of said North right-of-way line of Highway No. 82 with the Southerly West line of the said Coffman tract and East line of the same tract land described as 84.15 acres conveyed by Lucile Schleuse Wilson et vir to Joseph E. Wilson, Jr. by deed dated February 5, 1974, recorded in Volume 1256, Page 45, said Deed Records;

Thence North 05°15'15" West a distance of 1373.66 feet to a 1/2" steel rod set marking an inside "L" corner to the said Coffman tract and the Northeast corner of the said Wilson tract;

Thence North 88°01'45" West a distance of 185.60 feet to a 1/2" steel rod set for the most Westerly Southwest corner of the herein described tract at the intersection of the Westerly South line of the said Coffman tract and North line of the said Wilson tract with the East right-of-way line of F. M. Highway No. 1417;

Thence in a Northerly direction with said East right-of-way line of Highway No. 1417 along a curve to the left having a radius of 2901.79 feet, (chord bears North 18°57'02" West, 1203.81 feet), an arc distance of 1212.41 feet to a concrete monument at the end of said curve;

Thence North 30°55'12" West continuing with said East right-of-way line a distance of 405.37 feet to a concrete monument at an angle point;

Thence North 28°03'26" West continuing with said East right-of-way line a distance of 300.37 feet to a 1/2" steel rod set at an angle point;

Thence North 30°55'12" West continuing with said East right-of-way line a distance of 162.00 feet to a 1/2" steel rod found at the intersection of said East right-of-way line with the most Westerly West line of the said Coffman tract, said rod also maintaining the South corner of the same tract of land described as 0.55 acres and referred to in Exhibit "B" as conveyed by Estes Properties, Inc. to Ted Holdings, Ltd. by deed dated December 12, 2002, recorded in Volume 3369, Page 31, said Official Public Records;

Thence North 22°41'44" East a distance of 233.97 feet to a 1/2" steel rod found maintaining the Northwest corner of the said Coffman tract and the Northeast corner of the said 0.55 acre tract in the South line of the same tract of land described as 119.69 acres conveyed by said Estes Properties, Inc. to said Ted Holdings, Ltd. by deed dated December 12, 2002, recorded in Volume 3369, Page 31, said Official Public Records;

Thence South 89°26'27" East with the general course of a fence along the North line of the said Coffman tract a distance of 679.68 feet to a 1" steel rod found maintaining the Southeast corner of the said 119.69 acre tract and the Southwest corner of the same tract of land described as 31.00 acres conveyed by R. V. Clinton Jr. et ux to Timothy W. Dhane et ux by deed dated July 22, 2005, recorded in Volume 3897, Page 799, said Official Public Records;

Thence South 89°42'44" East continuing with said general course of fence a distance of 892.45 feet to a 1/2" steel rod found maintaining the Southeast corner of the said Dhane tract and the Southwest corner of the same tract of land described as 26.135 acres conveyed by XTO Energy Inc. to SemGas, L.P. by deed dated March 12, 2014, recorded in Volume 5433, Page 610, said Official Public Records;

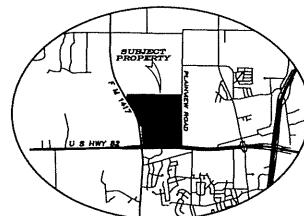
Thence South 88°41'53" East a distance of 566.43 feet to a 3/4" steel rod found at an angle point;

Thence South 89°35'04" East continuing with said general course of fence passing the Southeast corner of the said 26.135 acre tract and the Southwest corner of the same tract of land described as 10.40 acres conveyed by Dornick Hills Midstream, Ltd. to said SemGas, L.P. by deed dated October 6, 2008, recorded in Volume 4134, Page 689, said Official Public Records, and continuing for a total distance of 799.64 feet to a metal corner post maintaining the Southeast corner of the said 10.40 acre tract and the Southwest corner of the same tract of land described as 14.82 acres conveyed by said R. V. Clinton, Jr. et ux to B. F. Shellenberger by deed dated October 29, 1965, recorded in Volume 1040, Page 223, said Deed Records;

Thence South 89°07'55" East continuing with said fence, passing the most Southerly Southeast corner of the said Shellenberger tract and the Southwest corner of the said 4.55 acre tract and continuing, passing a 1/2" steel rod found in the West line of said Plainview road at 855.6 feet and continuing for a total distance of 882.90 feet to the Point of Beginning and containing 254.489 acres of land more or less.....

EASEMENT NOTES

- G. Easement to The Texas Pipeline Company, of record in Volume 1279 at Page 199 of the Deed Records of Grayson County, Texas.
- Affects the subject property.
- I. Easement and Right of Way to Texas Power & Light Company and General Telephone Company of the Southwest, of record in Volume 1980 at Page 199 of the Real Property Records of Grayson County, Texas.
- Affects the subject property as shown.
- J. Easement for Right of Way to North Texas Municipal Water District, The Greater Texoma Utility Authority and the City of Sherman, of record in Volume 2023 at Page 682 of the Real Property Records of Grayson County, Texas.
- Affects the subject property as shown.
- K. Easement and Right of Way to Texas Power and Light Company a division of Texas Utilities Electric Company of record in Volume 2050 at Page 120 of the Real Property Records of Grayson County, Texas.
- Affects the subject property as shown.
- L. Right of Way to Koch Gathering Systems, Inc., in Volume 2140, Page 464, Real Property Records, Grayson County, Texas.
- Affects the subject property as a blanket easement.
- M. Easement to City of Sherman for utility purposes, of record in Volume 2237 at Page 940 of the Real Property Records of Grayson County, Texas.
- U. Easements and rights of way in favor of Texas Power and Light Company of record in Volume 396, Page 466; Volume 434, Page 84; and Volume 808, Page 311, all of the Deed Records, Grayson County, Texas.
- V. Rights of way for pipeline in favor of Standard Oil Company, of record in Volume 817, Page 545; Volume 899, Page 888; and Volume 1086, Page 410, all of the Deed Records, Grayson County, Texas.
- Affect the subject property. (All lines of reference not fully determined)
- W. Rights of way in favor of Lone Star Gas Company of record in Volume 825, Page 235, (partially released by instrument of record in Volume 1276, Page 348) and in Volume 941, Page 239, (partially released by instrument of record in Volume 1276, Page 350) all of the Deed Records, Grayson County, Texas.
- Affect the subject property as shown.
- X. Easement in favor of Texas Power and Light Company and General Telephone Company of the Southwest of record in Volume 1033, Page 51, of the Deed Records, Grayson County, Texas.
- Does not affect the subject property.
- Y. Right of way in favor of The Texas Pipe Line Company of record in Volume 739, Page 28; Right of way in favor of Koch Industries of record in Volume 1132, Page 662; partially released by instrument of record in Volume 1278, Page 127, thereafter assigned by Metador Pipelines, Inc. by instrument of record in Volume 1424, Page 631, and Volume 2557, Page 798, all of the Deed Records, Grayson County, Texas. Agreement describing easement of record in Volume 1478, Page 51, of the Deed Records, Grayson County, Texas.
- Affects the subject property as shown.
- Z. Right of way grant in favor of Matador Pipelines, Inc. of record in Volume 1474, Page 648, and Volume 1479, Page 51, of the Deed Records, Grayson County, Texas.
- Affects the subject property as shown.
- AA. Right of way in favor of Chevron U.S.A., Inc. of record in Volume 1498, page 10, of the Deed Records, Grayson County, Texas.
- Affects the subject property as shown.
- BB. Channel easement granted to State of Texas in Cause No. 182B; a certified copy of same appears of record in Volume 947, Page 397, of the Deed Records, Grayson County, Texas.
- Affects the subject property as shown.



VICINITY MAP
(NO SCALE)

Tax Increment Reinvestment Zone #9

Attachment E-1

Survey (2 of 2)

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the U. Burns Survey, Abstract No. 121, City of Sherman, Grayson County, Texas, being part of Tract 1, conveyed to TPJ Properties, Ltd., by deed recorded in Volume 3203, Page 464 of the Deed Records, Grayson County, Texas (DRGCT), with the subject tract being more particularly described as follows:

BEGINNING at a concrete nail with flasher found in the intersection of the north line of U.S. Highway 82, a variable width public right-of-way, with Plainview Road, a public road, for the southwest corner of said TPJ tract;

THENCE N 00°01'05" W, 1458.40 feet along Plainview Road;

THENCE departing said road, the following:

A non-tangent curve to the left having a central angle of 12°30'21", a radius of 851.00 feet, a chord of S 24°33'46" E - 185.38 feet, an arc length of 185.75 feet;

S 30°48'56" E, 654.89 feet;

A tangent curve to the right having a central angle of 24°29'33", a radius of 790.00 feet, a chord of S 18°34'10" E - 335.14 feet, an arc length of 337.70 feet;

And S 06°19'24" E, 542.26 feet to a point on the north line of said highway;

THENCE along the north line thereof, the following:

N 84°42'10" W, 414.70 feet to a TxDOT concrete monument found;

N 59°06'13" W, 176.25 feet to a TxDOT concrete monument found;

And N 88°00'50" W, 14.37 feet to the POINT OF BEGINNING with the subject tract containing 568,765 square feet or 13.057 acres of land.

**City of Sherman
Tax Increment Reinvestment Zone #9
FEASIBILITY STUDY
Attachment F**

Fiscal Year	Sale								Bond Issue		Cumulative	
	Captured Value	City Property Tax	County Property Tax	Proceeds/Debt Proceeds	Interest Income	Total Inflow	Capital Outlay	Debt Service	Costs	Total Outflow	Net Cashflow	Cash Position
2024	-	-	-	-	-	-	-	-	-	-	-	-
2025	4,000,000	6,112	5,850	-	-	11,962	-	-	-	-	11,962	11,962
2026	12,000,000	18,336	17,550	-	153	36,039	48,000	-	-	48,000	(11,961)	1
2027	24,000,000	36,672	35,100	-	0	71,772	71,000	-	-	71,000	772	773
2028	48,000,000	73,344	70,200	-	10	143,554	144,000	-	-	144,000	(446)	327
2029	96,000,000	146,688	140,400	-	4	287,092	287,000	-	-	287,000	92	419
2030	133,200,000	203,530	194,805	-	5	398,340	398,000	-	-	398,000	340	759
2031	133,200,000	203,530	194,805	-	10	398,344	399,000	-	-	399,000	(656)	103
2032	133,200,000	203,530	194,805	-	1	398,336	398,000	-	-	398,000	336	439
2033	133,000,000	203,224	194,513	-	6	397,742	398,000	-	-	398,000	(258)	182
2034	133,000,000	203,224	194,513	-	2	397,739	397,000	-	-	397,000	739	920
2035	133,000,000	203,224	194,513	-	12	397,748	398,000	-	-	398,000	(252)	669
2036	133,000,000	203,224	194,513	-	9	397,745	398,000	-	-	398,000	(255)	414
2037	133,000,000	203,224	194,513	-	5	397,742	398,000	-	-	398,000	(258)	156
2038	133,000,000	203,224	194,513	-	2	397,738	397,000	-	-	397,000	738	894
2039	133,000,000	203,224	194,513	-	11	397,748	398,000	-	-	398,000	(252)	642
2040	133,000,000	203,224	194,513	-	8	397,745	398,000	-	-	398,000	(255)	387
2041	133,000,000	203,224	194,513	-	5	397,741	398,000	-	-	398,000	(259)	128
2042	133,000,000	203,224	194,513	-	2	397,738	397,000	-	-	397,000	738	866
2043	133,000,000	203,224	194,513	-	11	397,748	398,000	-	-	398,000	(252)	614
2044	133,000,000	203,224	194,513	-	8	397,744	398,000	-	-	398,000	(256)	358
2045	133,000,000	203,224	194,513	-	5	397,741	398,000	-	-	398,000	(259)	99
2046	133,000,000	203,224	194,513	-	1	397,738	397,000	-	-	397,000	738	837
2047	133,000,000	203,224	194,513	-	11	397,747	398,000	-	-	398,000	(253)	584
2048	133,000,000	203,224	194,513	-	7	397,744	398,000	-	-	398,000	(256)	328
		\$ 4,143,325	\$ 3,965,715	\$ -	\$ 288	\$ 8,109,328	\$ 8,109,000	\$ -	\$ -	\$ 8,109,000		

City of Sherman
Tax Increment Reinvestment Zone #8
PROJECT REVENUE
Attachment G

Fiscal Year	Captured Value	Taxes On Captured Value	Interest Income	Total Revenue
2024	-	-	-	-
2025	4,000,000	11,962	-	11,962
2026	12,000,000	35,886	153	36,039
2027	24,000,000	71,772	0	71,772
2028	48,000,000	143,544	10	143,554
2029	96,000,000	287,088	4	287,092
2030	133,200,000	398,335	5	398,340
2031	133,200,000	398,335	10	398,344
2032	133,200,000	398,335	1	398,336
2033	133,000,000	397,737	6	397,742
2034	133,000,000	397,737	2	397,739
2035	133,000,000	397,737	12	397,748
2036	133,000,000	397,737	9	397,745
2037	133,000,000	397,737	5	397,742
2038	133,000,000	397,737	2	397,738
2039	133,000,000	397,737	11	397,748
2040	133,000,000	397,737	8	397,745
2041	133,000,000	397,737	5	397,741
2042	133,000,000	397,737	2	397,738
2043	133,000,000	397,737	11	397,748
2044	133,000,000	397,737	8	397,744
2045	133,000,000	397,737	5	397,741
2046	133,000,000	397,737	1	397,738
2047	133,000,000	397,737	11	397,747
2048	133,000,000	397,737	7	397,744
		\$ 8,109,040	\$ 288	\$ 8,109,328

City of Sherman
Tax Increment Reinvestment Zone #8
ESTIMATED CAPTURED APPRAISED VALUE
Attachment H

Fiscal Year	Estimated Captured Value
2024	-
2025	4,000,000
2026	12,000,000
2027	24,000,000
2028	48,000,000
2029	96,000,000
2030	133,200,000
2031	133,200,000
2032	133,200,000
2033	133,000,000
2034	133,000,000
2035	133,000,000
2036	133,000,000
2037	133,000,000

TIRZ #9 Aerial





City Council Regular Meeting

D. 3.

Meeting Date: 05/02/2022

Approved By: Robby Hefton, City Manager

Caption:

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers 6476 & 6477

Issue:

D. 1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6476

Establishing a Tax Increment Reinvestment Zone #8 (Along U.S. Hwy 82 and between Plainview Road and Travis Street); Providing for Findings of Fact; Providing for a Preliminary Financing Plan; Providing for a Board of Directors; Providing for Severability

D. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6477

Establishing a Tax Increment Reinvestment Zone #9 (Along U.S. Hwy 82 and Between Plainview Road and F.M. 1417 (Heritage Parkway)); Providing for Findings of Fact; Providing for a Preliminary Financing Plan; Providing for a Board of Directors; Providing for a Preliminary Financing Plan; Planing for Severability



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 1.

Meeting Date: 05/02/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6878

Authorizing Execution of an Interlocal Agreement Between the City of Sherman and Grayson County to Participate in the Sherman Tax Increment Reinvestment Zone #8

Issue:

Approving an Agreement with Grayson County for participation in the Tax Increment Reinvestment Zone #8

Background:

Tax Code Chapter 311 permits the participation of a taxing unit other than the municipality that designated a tax increment reinvestment zone if both entities enter into a written agreement to do so. Grayson County is expected to participate by contributing 50% of their property tax rate that is allocated to its General Fund to the TIRZ #8 Fund. The City will be contributing 50% of its Maintenance and Operations tax rate.

The County will sign the Interlocal Agreement after the Zone is established.

Origination:

City Council

Financial Consideration:

There is no cost associated with this Agreement.

Staff Recommendation:

The staff recommends approval of this Agreement.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6878

Interlocal - Grayson Co TIRZ 8

TIRZ 8 Aerial

RESOLUTION NO. 6878

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND GRAYSON COUNTY TO PARTICIPATE IN THE SHERMAN TAX INCREMENT REINVESTMENT ZONE #8; 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 Agreement with Grayson County for the County's participation in the Sherman Tax Increment Reinvestment Zone #8, in accordance with the terms and provisions of the Agreement 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.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

**City of Sherman and Grayson County
Agreement to Participate
in the
Sherman Tax Increment Reinvestment Zone Number Eight**

THIS *City of Sherman and Grayson County Agreement to Participate in the Sherman Tax Increment Reinvestment Zone Number Eight* (this "Agreement") is made and entered into by and between the City of Sherman, Texas, a municipal corporation (the "City"), and Grayson County, Texas (the "County") under the authority of Texas Government Code Chapter 791.

WITNESSETH:

WHEREAS, in accordance with the provisions of the Tax Increment Financing Act, Chapter 311, Texas Tax Code, as amended (the "Act"), and after due notice to the Grayson County Commissioners Court, the City Council of the City, pursuant to Ordinance No.____ (the "Zone Ordinance") adopted on May 2, 2022 created, established, and designated Reinvestment Zone Number Eight, City of Sherman, Texas (the "Reinvestment Zone") under the Act; and

WHEREAS, the Act provides that each taxing unit levying taxes on real property in a reinvestment zone is not required to pay into the tax increment fund created for the zone any of the unit's tax increment produced from property in the zone unless the taxing unit enters into a tax participation agreement to do so with the governing body of the municipality that created the zone; and

WHEREAS, a tax participation agreement under the Act may be entered into any time before or after the zone is created, and such tax participation agreement may include any conditions for payment of the tax increment into the tax increment fund and must specify the portion of the tax increment to be paid into the tax increment fund and the years for which the tax increment is to be paid into the tax increment fund.

NOW THEREFORE, the City and the County, in consideration of the terms, conditions, and covenants contained herein, hereby agree as follows:

Section 1. The County agrees to pay to the City for deposit into the tax increment fund created by the City for the Reinvestment Zone (the "TIRZ Fund") over the term of the Reinvestment Zone the County's tax increment calculated as a millage rate per \$100 of captured appraised value in the Reinvestment Zone that equals 50% of the County's tax rate allocated to the general fund (excluding only that portion of the County's tax rate allocated to the County's Road & Bridge and Improvement Fund) (the "County Increment") subject to the following terms and conditions:

- a. Boundary: The boundaries of the Reinvestment Zone are and shall be those described in the Zone Ordinance, as amended upon recommendation of the Board of Directors of the Reinvestment Zone (the "Board") and approved by the City Council of the City in accordance with the *Reinvestment Zone Number Eight, City of Sherman, Texas, Final Project and Financing Plan*, as amended (the "Final Plan"), and in accordance with the *MASTER DEVELOPMENT AGREEMENT*, between the City and the owner of the property in the Reinvestment Zone (the "Development Agreement").
- b. Development in the Zone: Property within the boundaries of the Reinvestment Zone shall to be developed as nearly as possible in conformity with the Final Plan.
- c. Taxable Value: The captured appraised value of the property in the Reinvestment Zone (the "Property") taxable by the County for a year is the total taxable value of the Property for that year less the tax increment base of the Property. The tax increment base of the Property is the total taxable value of the Property for the year 2022. The actual captured appraised value of the Property will be used to calculate the annual County Increment paid to the City and deposited in the TIRZ Fund pursuant to this Agreement.
- d. Bond Limit: No bonded indebtedness issued by the County or the City and secured by the TIRZ Fund is contemplated.

- e. Use of the County Increment: All amounts paid into the TIRZ Fund shall first be used to pay the administrative costs incurred by the County and the City in connection with the creation of the Reinvestment Zone and the organization and operation of the Board ("Administrative Costs") and then to pay "Project Costs" approved by the City as defined in, and in accordance with, the Final Plan and Master Development Agreement.

Section 2. For and in consideration of the agreement of the parties set forth herein, and subject to the provisions of this Agreement, the County agrees to participate in the Reinvestment Zone by contributing Fifty percent (50%) of the County Increment to the City to be deposited into the TIRZ Fund to first reimburse Administrative Costs and then to pay Project Costs. Payment of the County Increment shall be due from actual property tax revenue received within sixty (60) days of receipt and shall be payable to the City for immediate deposit into the TIRZ Fund. No interest or penalty will be charged to the County for any late payment received from the County. However, the penalty and interest received by the County on any delinquent taxes from the County shall be paid to the City and deposited into the TIRZ Fund, less any collection fees incurred by the County. The County is not obligated to pay the County Increment from any source other than the real property taxes collected by the County in the Reinvestment Zone. For and during the term of this Agreement the County shall not enter into any agreements that would reduce the County Increment (including, but not limited to, tax abatement agreements and Texas Local Government Code "381 Economic Development Agreements") without the consent of the City and the "Owner" under the Master Development Agreement. Likewise, the City agrees to contribute 50% of the M&O tax rate from the increment of the City of Sherman to the TIRZ Fund.

Section 3. The term of this Agreement, unless extended by mutual agreement of the County and the City, shall commence upon execution by the last party and shall terminate upon termination of the Reinvestment Zone.

Section 4. This Agreement and the TIRZ Fund shall be administered by the City Manager or his designees. The City shall account separately for the TIRZ Fund at a depository selected by the City, which TIRZ Fund shall be secured in the manner prescribed by law for funds of Texas cities. The City shall not charge an administration fee for oversight of the TIRZ Fund. The TIRZ Fund shall be a separate fund into which the City shall deposit the County Increment, the City tax increment (as defined in the Zone Ordinance and Final Plan), and all accrued interest earned on the fund. The County shall participate in the oversight of the TIRZ Fund through its representation on the Board.

Section 6. Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the consent, approval, notice, request, proposal or demand must be in writing to be effective and shall be delivered to the party intended to receive it at the addresses shown below (or to such other addresses as the parties may request, in writing, from time to time):

If intended for the City, to:

City Manager
City of Sherman
220 West Mulberry
Sherman, TX 75090

If intended for the County, to:

County Judge
Grayson County
Grayson County Courthouse
100 W. Houston
Sherman, TX 75090

Section 7. Venue shall be exclusively in Grayson County, Texas.

Section 8. This Agreement embodies the complete understanding of City and the County superseding all oral or written previous and contemporary agreements between the parties relating to matters herein. This Agreement may be amended, modified, or supplemented only by an instrument in writing executed by City and the County. The provisions of this Agreement that obligate the County to pay annually to the City the County Increment for deposit into the TIRZ Fund for the term of the Reinvestment Zone may only be amended, modified, or supplemented by an instrument in writing executed by the "Owner" under the Development Agreement. Any amendments to this Agreement required by changes in state or federal law will be

automatically incorporated into this Agreement without written amendment, and shall become effective on the date designated by such law.

EXECUTED this ____ day of , 2022, by the City signing by and through the City Manager as its duly authorized official; and

EXECUTED this ____ day of , 2022, by Grayson County signing by and through the County Judge as its duly authorized official.

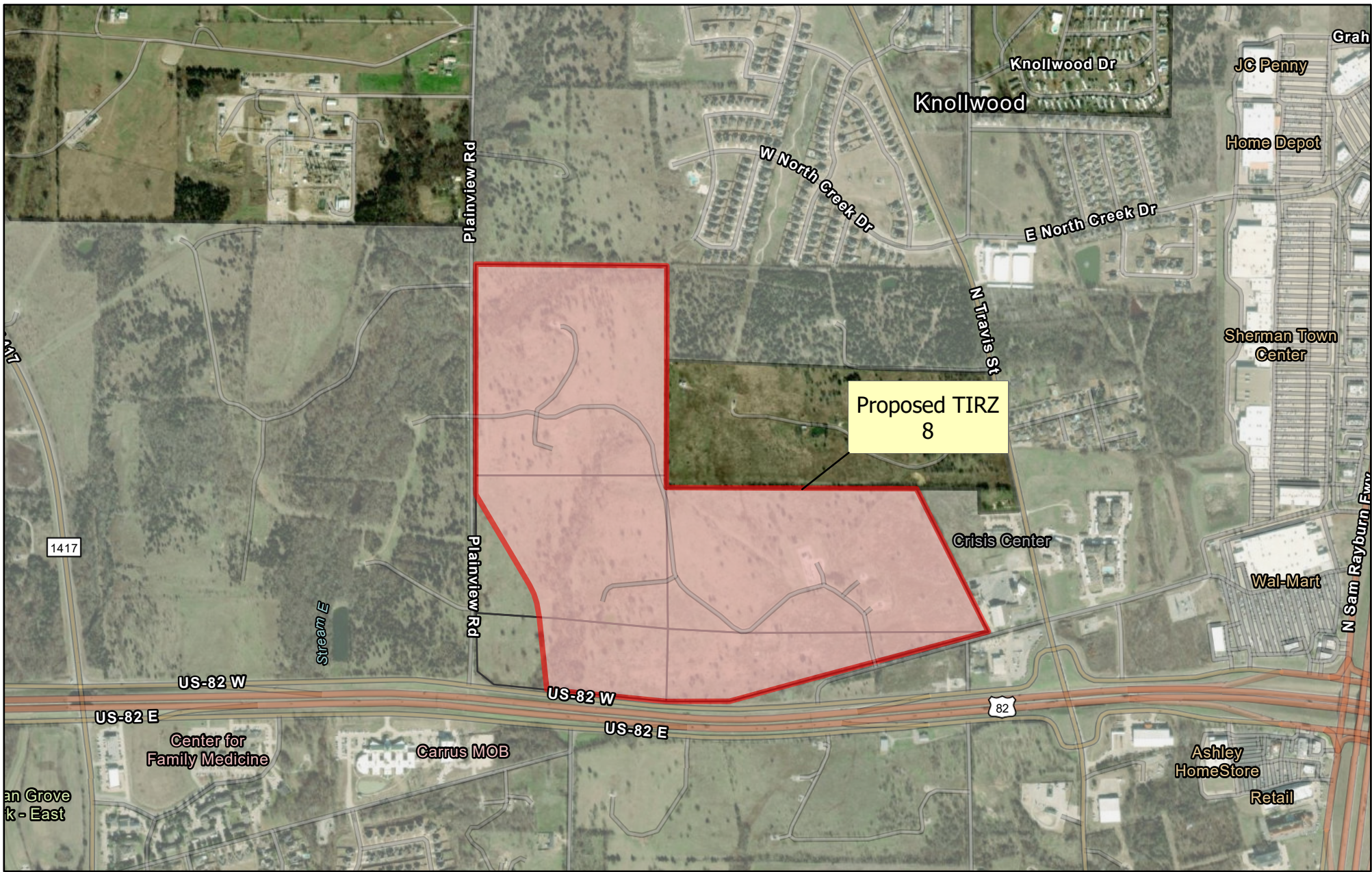
CITY OF SHERMAN

GRAYSON COUNTY

Robby Hefton, City Manager

Bill Magers, County Judge

diagrone H:\ENGINEER\GIS\ArcGIS Pro Projects\Finance\TIRZ Maps.aprx



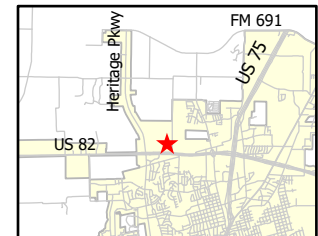
Sherman
CLASSIC TOWN. BROAD HORIZON.

-  Proposed TIRZ
-  Parcels
-  City Limits

CITY OF SHERMAN

Proposed TIRZ 8

4/27/2022





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 2.

Meeting Date: 05/02/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6879

Authorizing Execution of an Interlocal Agreement Between the City of Sherman and Grayson County to Participate in the Sherman Tax Increment Reinvestment Zone #9

Issue:

Approving an Agreement with Grayson County for participation in the Tax Increment Reinvestment Zone #9

Background:

Tax Code Chapter 311 permits the participation of a taxing unit other than the municipality that designated a tax increment reinvestment zone if both entities enter into a written agreement to do so. Grayson County is expected to participate by contributing 50% of their property tax rate that is allocated to its General Fund to the TIRZ #9 Fund. The City will be contributing 50% of its Maintenance and Operations tax rate.

Origination:

City Council

Financial Consideration:

There is no cost associated with this Agreement.

Staff Recommendation:

The staff recommends approval of this Agreement.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6879

Interlocal Grayson County TIRZ 9

TIRZ 9 Aerial

RESOLUTION NO. 6879

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND GRAYSON COUNTY TO PARTICIPATE IN THE SHERMAN TAX INCREMENT REINVESTMENT ZONE #9; 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 Grayson County for the County's participation in the Sherman Tax Increment Reinvestment Zone #9, as set forth below and in accordance with the terms and provisions of the Agreement 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.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

**City of Sherman and Grayson County
Agreement to Participate
in the
Sherman Tax Increment Reinvestment Zone Number Nine**

THIS *City of Sherman and Grayson County Agreement to Participate in the Sherman Tax Increment Reinvestment Zone Number Nine* (this "Agreement") is made and entered into by and between the City of Sherman, Texas, a municipal corporation (the "City"), and Grayson County, Texas (the "County") under the authority of Texas Government Code Chapter 791.

WITNESSETH:

WHEREAS, in accordance with the provisions of the Tax Increment Financing Act, Chapter 311, Texas Tax Code, as amended (the "Act"), and after due notice to the Grayson County Commissioners Court, the City Council of the City, pursuant to Ordinance No.____ (the "Zone Ordinance") adopted on May 2, 2022 created, established, and designated Reinvestment Zone Number Nine, City of Sherman, Texas (the "Reinvestment Zone") under the Act; and

WHEREAS, the Act provides that each taxing unit levying taxes on real property in a reinvestment zone is not required to pay into the tax increment fund created for the zone any of the unit's tax increment produced from property in the zone unless the taxing unit enters into a tax participation agreement to do so with the governing body of the municipality that created the zone; and

WHEREAS, a tax participation agreement under the Act may be entered into any time before or after the zone is created, and such tax participation agreement may include any conditions for payment of the tax increment into the tax increment fund and must specify the portion of the tax increment to be paid into the tax increment fund and the years for which the tax increment is to be paid into the tax increment fund.

NOW THEREFORE, the City and the County, in consideration of the terms, conditions, and covenants contained herein, hereby agree as follows:

Section 1. The County agrees to pay to the City for deposit into the tax increment fund created by the City for the Reinvestment Zone (the "TIRZ Fund") over the term of the Reinvestment Zone the County's tax increment calculated as a millage rate per \$100 of captured appraised value in the Reinvestment Zone that equals 50% of the County's tax rate allocated to the general fund (excluding only that portion of the County's tax rate allocated to the County's Road & Bridge and Improvement Fund) (the "County Increment") subject to the following terms and conditions:

- a. Boundary: The boundaries of the Reinvestment Zone are and shall be those described in the Zone Ordinance, as amended upon recommendation of the Board of Directors of the Reinvestment Zone (the "Board") and approved by the City Council of the City in accordance with the *Reinvestment Zone Number Nine, City of Sherman, Texas, Final Project and Financing Plan*, as amended (the "Final Plan"), and in accordance with the *MASTER DEVELOPMENT AGREEMENT*, between the City and the owner of the property in the Reinvestment Zone (the "Development Agreement").
- b. Development in the Zone: Property within the boundaries of the Reinvestment Zone shall to be developed as nearly as possible in conformity with the Final Plan.
- c. Taxable Value: The captured appraised value of the property in the Reinvestment Zone (the "Property") taxable by the County for a year is the total taxable value of the Property for that year less the tax increment base of the Property. The tax increment base of the Property is the total taxable value of the Property for the year 2022. The actual captured appraised value of the Property will be used to calculate the annual County Increment paid to the City and deposited in the TIRZ Fund pursuant to this Agreement.
- d. Bond Limit: No bonded indebtedness issued by the County or the City and secured by the TIRZ Fund is contemplated.

- e. Use of the County Increment: All amounts paid into the TIRZ Fund shall first be used to pay the administrative costs incurred by the County and the City in connection with the creation of the Reinvestment Zone and the organization and operation of the Board ("Administrative Costs") and then to pay "Project Costs" approved by the City as defined in, and in accordance with, the Final Plan and Master Development Agreement.

Section 2. For and in consideration of the agreement of the parties set forth herein, and subject to the provisions of this Agreement, the County agrees to participate in the Reinvestment Zone by contributing Fifty percent (50%) of the County Increment to the City to be deposited into the TIRZ Fund to first reimburse Administrative Costs and then to pay Project Costs. Payment of the County Increment shall be due from actual property tax revenue received within sixty (60) days of receipt and shall be payable to the City for immediate deposit into the TIRZ Fund. No interest or penalty will be charged to the County for any late payment received from the County. However, the penalty and interest received by the County on any delinquent taxes from the County shall be paid to the City and deposited into the TIRZ Fund, less any collection fees incurred by the County. The County is not obligated to pay the County Increment from any source other than the real property taxes collected by the County in the Reinvestment Zone. For and during the term of this Agreement the County shall not enter into any agreements that would reduce the County Increment (including, but not limited to, tax abatement agreements and Texas Local Government Code "381 Economic Development Agreements") without the consent of the City and the "Owner" under the Master Development Agreement. Likewise, the City agrees to contribute 50% of the M&O tax rate from the increment of the City of Sherman to the TIRZ Fund.

Section 3. The term of this Agreement, unless extended by mutual agreement of the County and the City, shall commence upon execution by the last party and shall terminate upon termination of the Reinvestment Zone.

Section 4. This Agreement and the TIRZ Fund shall be administered by the City Manager or his designees. The City shall account separately for the TIRZ Fund at a depository selected by the City, which TIRZ Fund shall be secured in the manner prescribed by law for funds of Texas cities. The City shall not charge an administration fee for oversight of the TIRZ Fund. The TIRZ Fund shall be a separate fund into which the City shall deposit the County Increment, the City tax increment (as defined in the Zone Ordinance and Final Plan), and all accrued interest earned on the fund. The County shall participate in the oversight of the TIRZ Fund through its representation on the Board.

Section 6. Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the consent, approval, notice, request, proposal or demand must be in writing to be effective and shall be delivered to the party intended to receive it at the addresses shown below (or to such other addresses as the parties may request, in writing, from time to time):

If intended for the City, to:

City Manager
City of Sherman
220 West Mulberry
Sherman, TX 75090

If intended for the County, to:

County Judge
Grayson County
Grayson County Courthouse
100 W. Houston
Sherman, TX 75090

Section 7. Venue shall be exclusively in Grayson County, Texas.

Section 8. This Agreement embodies the complete understanding of City and the County superseding all oral or written previous and contemporary agreements between the parties relating to matters herein. This Agreement may be amended, modified, or supplemented only by an instrument in writing executed by City and the County. The provisions of this Agreement that obligate the County to pay annually to the City the County Increment for deposit into the TIRZ Fund for the term of the Reinvestment Zone may only be amended, modified, or supplemented by an instrument in writing executed by the "Owner" under the Development Agreement. Any amendments to this Agreement required by changes in state or federal law will be

automatically incorporated into this Agreement without written amendment, and shall become effective on the date designated by such law.

EXECUTED this ____ day of , 2022, by the City signing by and through the City Manager as its duly authorized official; and

EXECUTED this ____ day of , 2022, by Grayson County signing by and through the County Judge as its duly authorized official.

CITY OF SHERMAN

GRAYSON COUNTY

Robby Hefton, City Manager

Bill Magers, County Judge

TIRZ #9 Aerial





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 3.

Meeting Date: 05/02/2022

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6880

Authorizing Execution of a Professional Services Agreement with Garver, LLC for design of the Sherman Water Treatment Plant Expansion Project

Issue:

To consider a contract for professional services with Garver, LLC for the design of the Sherman Water Treatment Plant Expansion project.

Background:

As a result of major industrial developments and large planned developments across the City, capacity improvements are needed for the water treatment plant to properly serve these developments. This professional services contract will provide construction drawings to increase the treatment capacity of the existing facility by 5 Million Gallons per Day (MGD), and construction drawings to increase the high pressure pumping capacity of the pump station to at least 25 MGD. This contract will also perform an entire plant assessment and master planning to increase the existing water treatment plant capacity from 25 MGD to 45 MGD. These improvements will allow the City to adequately supply water for future development throughout the City. This contract will also provide construction inspection services as needed.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this contract is \$1,915,559.00. This will be funded by 2022 GTUA Bond Funds.

Staff Recommendation:

Garver, LLC was one of seven engineering firms interviewed for this work and was determined to be the most qualified to perform these services. Staff has negotiated a reasonable fee for these services. It is recommended that the contract for professional services with Garver, LLC for the design of the Sherman Water Treatment Plant Expansion project be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6880

Unsigned - Agreement

Location Map

RESOLUTION NO. 6880

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH GARVER, LLC FOR DESIGN OF THE SHERMAN WATER TREATMENT PLANT EXPANSION PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Garver, LLC for Design of the Sherman Water Treatment Plant Expansion Project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

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

**BY: _____
DAVID PLYLER, MAYOR**

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
GARVER, LLC
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2022:

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

and Consultant: **Garver, LLC**
 3010 Gaylord Parkway, Suite 190
 Frisco, TX 75034
 Telephone: (972) 377-7480

for the following Project: **Sherman WTP Expansion**

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

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

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a lump sum basis in an amount not to exceed **ONE MILLION NINE HUNDRED FIFTEEN THOUSAND FIVE HUNDRED FIFTY-NINE AND 00/100 DOLLARS (\$1,915,559)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Project Design Budget Summary as set forth in Exhibit B.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in Exhibit C, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a recommendation to the City whether, in Consultant's professional opinion

as an engineering and architectural entity, that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

- 313 Aside from Consultant's direct subconsultants, Consultant shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any such contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's services. Consultant shall not be responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents applicable to the contractor's work, even when Consultant is performing construction phase services.
- 314 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be solely responsible for identifying and analyzing the requirements of governmental agencies and all known franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City. In no event is Consultant responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement.
- 315 Notwithstanding anything in this Agreement, in no event is Consultant acting as a "municipal advisor" as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission. Consequently, Consultant's Services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services.

- 3.2 **Direct Expenses** – Direct Expenses (“Direct Expenses”) are included in Consultant’s Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant’s employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant’s subsequent payment for Services; provided, however, that this shall not be City’s sole and exclusive remedy for said over-payment.
- 3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph (“Additional Services”) and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:
- 331 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.
 - 332 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 333 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 334 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 335 Compensation for Additional Services authorized by City shall be in addition to Consultant’s Fee and shall be based on direct billable labor rates and expenses.
 - 336 Compensation for Additional Services authorized by City shall be in addition to Consultant’s Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to

reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Position	Hourly Rate
E-1- Project Engineer	\$114.00
E-2 – Project Engineer	\$133.00
E-3 – Project Manager	\$160.00
E-4 – Project Manager	\$187.00
E-5 – Senior Project Manager	\$228.00
E-6 – Senior Project Manager	\$280.00
D-1 – Designer	\$106.00
D-2 – Designer	\$124.00
D-3 – Senior Designer	\$148.00
D-4 – Senior Designer	\$172.00
T-1 – Technician	\$83.00
T-2 – Technician	\$105.00
T-3 – Senior Technician	\$128.00

- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit B**. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the

date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

- 3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter “D” of the TEX. GOV’T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project (“Scope of the Project”) or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant’s compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant’s compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.
- 3.10 **Fixed Budget Limit for Construction Cost** – If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make

reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in the following paragraph. All adjustments in the scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of \$1,915,559 due to the negligence of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the Services defined in Exhibit A, as required, for each of the new phases created by splitting the Project. Absent negligence on the part of the Consultant in making its estimates of probable Construction Cost, providing Services as defined in Exhibit A shall be the limit of the Consultant's liability arising from the establishment of such fixed limitation of Construction Costs. The Consultant shall be entitled to compensation for all other services performed in accordance with this Agreement.

Notwithstanding the foregoing, since Consultant has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Consultant's opinions of Project costs or construction costs provided pursuant to Exhibit A, if any, are to be made on the basis of Consultant's experience and qualifications and represent Consultant's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. Consultant cannot and does not guarantee that proposals, bids, or actual Project or construction costs will not vary from estimates prepared by Consultant.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in **Exhibit A**. Upon completion of the work, or any earlier termination of this Agreement under **Article 3** and/or **Article 8** of this Agreement, Consultant will revise plans, data, documents, maps, and any other

information as defined in **Exhibit A** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under **Article 3** and/or **Article 8** of this Agreement, and promptly furnish the same to City in an acceptable electronic format. All such reproductions shall be the property of City who may use them without Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at City's own risk.

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

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

omissions) insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation or non-renewal of any policies, evidenced by return receipt or E- Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project and shall provide thirty (30) days prior notice of material change.

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

ARTICLE 6 CONSULTANT’S ACCOUNTING RECORDS

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

ARTICLE 7

AUDITS AND RECORDS/VENDOR DISCLOSURE

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

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

ARTICLE 8

TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10 INDEMNITY

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

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

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT

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

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

Lance Klement, P.E.
North Texas Water Team Leader
Garver, LLC
3010 Gaylord Parkway, Suite 190
Frisco, TX 75034
Telephone: 972-377-7480
Email: LPKlement@GarverUSA.com

ARTICLE 12 MISCELLANEOUS

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

- 12.1.1 **Exhibit A**, Scope of Services.
- 12.1.2 **Exhibit B**, Project Engineering Budget Summary.
- 12.1.3 **Exhibit C**, Guidelines for Computer Aided Design and Drafting (CADD).
- 12.1.4 **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.
- 12.1.5 **Exhibit E**, Contractor Insurance Guidelines.
- 12.1.6 **Exhibit F**, Conflict of Interest Questionnaire, Form CIQ.

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

this Agreement, then the provisions of **Exhibit C**, **Exhibit D**, **Exhibit E**, **Exhibit F**, **Exhibit B** or **Exhibit A** shall prevail in that order.

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

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

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

- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2020-2021 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2020-2021 fiscal year unless and until such funds are budgeted.
- 12.23 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees,

trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

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

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

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

CONSULTANT:
Garver, LLC
a Texas corporation

By: _____
Robby Hefton, City Manager

By: _____
Lance Klement, P.E.
North Texas Water Team Leader

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

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

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

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

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

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

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

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

Generally, the scope of services includes professional services necessary for design, bidding services, and construction administration for improvements to the membrane treatment train and high-service pump station (HSPS) at the **Sherman Water Treatment Plant (WTP)**. Improvements will consist primarily of expansions to increase the capacity of the existing WTP. The City of Sherman has identified the following improvements to be included in this scope of services:

- A.** Package 1 – Design and construction services for expansion of the ultrafiltration (UF) and reverse osmosis (RO) system within the existing membrane building, along with the expansion of the existing treated water high-service pump station.
- B.** Package 2 – Conceptual Evaluations to develop a plan for phased improvements to increase the capacity of the water treatment plant.

II. GENERAL REQUIREMENTS

- A.** Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval.
- B.** Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
- C.** The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
- D.** Communications and Reporting:
 - i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
 - ii Attend review meeting with the City at the end of each design phase.
 - iii Prepare and submit monthly invoices in the format acceptable to the City.
 - iv Prepare and submit monthly progress reports.
 - v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
 - vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.

EXHIBIT A SCOPE OF SERVICES

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

III. TASK SUMMARY, BASIC SERVICES

A. Project Management

Consultant will manage all efforts of the project team, individual team members, and maintain appropriate records and documentation of project decisions, modifications, activities, communication, correspondence, and schedules.

a. Kick-Off Meeting and Site Visit

Consultant will hold a kick-off meeting with the Owner to discuss project scope, introduce teams, establish lines of communication, and present the project schedule. At that time, up to four (4) Consultant members will conduct a site visit.

b. Progress Reports and Invoices

Consultant will prepare and provide up to twenty-one (21) monthly progress/status reports, sufficient to support monthly billings. Monthly status reports shall be submitted with monthly invoices and project updates.

c. Project Management and Quality Control/Assurance Plan

Consultant will develop a Project Management Plan (PMP) for internal use. This will include the development of a detailed schedule to communicate key deadline to the design teams. Consultant will also develop a Quality Control/Assurance Plan and perform internal Quality Assurance/Quality Control (QA/QC) reviews of all major deliverables.

d. Summary of Deliverables

- i. Up to twenty-one (21) progress reports and invoices.

e. Summary of Meetings

- i. Kick-off meeting with up to four (4) Consultant members attending in person.

EXHIBIT A SCOPE OF SERVICES

B. Survey

- a. Consultant will oversee survey tasks that are accomplished by a survey consultant outside of this contract. Consultant will provide a general description of the scope of surveying work, along with an exhibit of the areas to be surveyed. Upon receipt of the deliverables from the surveyor, the Consultant will review the content and incorporate the survey information into the design plans as needed.

C. Package 1 Preliminary Design Phase

The scope of work within the existing membrane treatment train to increase the capacity by 5 MGD includes the addition of the following items:

- i. Two (2) UF skids
- ii. One (1) RO skid
- iii. Disc filters
- iv. UF and RO feed pumps and backwash pumps (if needed)
- v. Associated piping modifications
- vi. Associated electrical improvements, including coordination with the electrical utility provider for the site
- vii. Associated instrumentation and integration to SCADA
- viii. Evaluation of pre-treatment systems, including chemical feeds and pre-oxidation basin capacity
- ix. Compressed air systems (if needed)

The scope of work within the existing high-service pump station includes the addition of the following items:

- i. Sufficient pumps to increase the firm pumping capacity to 25 MGD
- ii. Associated piping modifications
- iii. Associated electrical improvements
- iv. Associated piping modifications
- v. Associated structural modifications (as needed to retrofit the existing structure for the additional pump capacity. No new electrical room is anticipated.)

EXHIBIT A SCOPE OF SERVICES

a. Preliminary Design Documents

- i. The preliminary design phase will represent approximately 30 percent of final construction documents for one (1) construction contract. The preliminary design phase submittal will include a submittal of preliminary plans and an opinion of probable construction cost. This submittal will not include technical specifications or “front end” contract documents. Consultant will not begin final design until the preliminary design is approved by the Owner in writing. Preliminary design will include:
 - a. Preliminary Design Report
 - b. Opinion of Probable Construction Cost – Preliminary Design Phase (OPCC)
 - c. Preliminary Drawings
 - d. Equipment Data Sheets and Manufacturer Information
- ii. Consultant anticipates the preliminary design drawings will include a site plan, yard piping plan, hydraulic profile, demolition details, preliminary process and instrumentation diagrams (P&IDs), preliminary layouts of the proposed improvements such as liquid treatment process units, associated equipment, major piping and valves, and preliminary electrical one-line diagrams.
- iii. A Preliminary Design Report (PDR) will detail the following:
 - a. Process design criteria
 - b. Opinion of probable construction costs
 - c. Equipment data sheets and manufacturer information
 - d. Specification Table of Contents
 - e. Piping schedule
 - f. Construction sequencing
 - g. Draft control narratives
- iv. The Equipment Data Sheets and Manufacturer Information section will provide information on the major items of process equipment selected for the plant based on Consultant’s experience and Owner preference. Equipment data sheets that summarize operating conditions and key components will be provided along with manufacturer catalog information.

EXHIBIT A SCOPE OF SERVICES

- v. Consultant will lead and participate in a Preliminary Design Workshop. The workshop will be held at the Owner's location and major items of discussion will include:
 - a. Review and refinement of process design criteria.
 - b. Review and refinement of preliminary P&IDs and preliminary selection of instrumentation.
 - c. Review and refinement of preliminary electrical one-line drawings.
 - d. Review and refinement of preliminary SCADA design approach and system architecture.
 - e. Review and refinement of the preliminary site plan, hydraulic profile, and facilities layouts.
 - f. Review and preliminary selection of major equipment items.
 - g. Review of proposed construction sequencing.
 - h. Process Control and SCADA workshop module.
 - i. Preliminary Design Phase OPCC
- vi. As part of the Preliminary Design Workshop, Consultant will conduct an O&M focused discussion to determine process control parameters and equipment preferences. The WTP staff preferences will be documented within the preliminary design documents. The O&M discussion and SCADA integration discussions will be a component module of the Preliminary Design Workshop in this scope of work.
- vii. Consultant will prepare copies of the Preliminary Design Submittal (both hard and pdf electronic files) and submit for review by Owner. Consultant anticipates two weeks for Owner review and comment time once the Preliminary Design submittal is delivered.
- viii. Consultant will prepare and transmit a written documentation of "mutually agreed to" responses to the Owner's review comments of the Preliminary Design Documents.
- ix. As part of the Preliminary Design Phase, Consultant will:
 - a. Coordinate with TCEQ via telephone on project status and design criteria.

EXHIBIT A
SCOPE OF SERVICES

- b. Submit the Preliminary Design Report to TCEQ for review.
- c. Coordinate with the Owner's input, any responses to TCEQ review comments.
- b. Summary of Deliverables
 - i. Draft Preliminary Design Report – one (1) electronic (pdf) copy to the Owner
 - ii. Preliminary Design Drawings – one (1) electronic (pdf) set and one (1) full-sized (24" x 36") set to the Owner
 - iii. Final Preliminary Design Report – one (1) electronic (pdf) copy to the Owner
 - iv. Final Preliminary Design Report – one (1) electronic copy and one (1) hard copy to TCEQ
 - v. Preliminary Design Drawings – one (1) electronic (pdf) and one (1) half-sized (11"x17") hard copy set to TCEQ
- c. Summary of Meetings
 - i. Monthly Progress Meetings – In-person meetings with up to three (3) Consultant members attending
 - ii. Preliminary Design Workshop – In-person workshop with up to three (3) Consultant members attending

D. Package 1 Final Design/Construction Plans (90%, 100%)

- a. Final Design Documents
 - i. During the final design phase of the project, Consultant will conduct final designs to prepare construction plans and specifications for one (1) construction contract, including final construction details and quantities, special provisions, and opinion of probable construction cost. These will be developed in accordance with the phasing plan detailed at the introduction of this scope.
 - ii. The final design phase is anticipated to have two major submittals: a 90% and 100%. The contract documents will consist of drawings and specifications that set forth requirements for construction of the improvements, and shall include proposal forms, notice to bidders, bid forms, bond forms, and other information as required by Owner to competitively bid the work.

EXHIBIT A SCOPE OF SERVICES

- iii. Consultant's standard contract forms including documents from the Engineers Joint Contract Documents Committee (EJCDC) will be used, along with Consultant's standard drawing format and technical specifications. Consultant will utilize the EJCDC standard documents as a base for developing the project's front-end documents. EJCDC's standard General Conditions shall be utilized with edits being provided by the Supplemental Conditions. Standard forms, as required by the funding source, will be incorporated.
 - iv. Consultant will review potential construction sequencing and the overall approach to project implementation to minimize disruption of the plant operation during construction. This review will occur at the design submittal workshops.
 - v. During final design, Consultant will host an O&M workshop at the WTP to solicit input from staff on the final design documents.
 - vi. Consultant will lead review workshops for the 90% design phase. This workshop will be held to solicit comments and feedback from the Owner.
 - vii. The Process Control and SCADA workshop will be a component module of the 90% Design Workshop. The purpose of this module will be to coordinate the Owner's desired method and level of process control and remote operation capabilities.
 - viii. The Preliminary Design Workshop module will include an overview of the current and proposed SCADA system architecture along with a basis of design for expected improvements. The Owner's IT staff, WTP's Operations staff and WTP's Maintenance staff may attend as needed. The 90% Design Workshop module will include a review of the Preliminary Design Workshop module action items, an update regarding the proposed SCADA system components, advanced design concepts, the path forward to completion of the project, and programming services.
- b. Contact Time (CT) Study Update and Regulatory Review and Coordination
- i. Consultant will conduct a revised CT profile based on previous CT studies conducted by the Owner. Consultant will develop proposed CT profiles to reflect an anticipated re-rating of the membrane treatment train following the expansion to reflect an increased rating of the plant from 20 MGD to 25 MGD.
 - ii. Consultant will submit the revised CT profiles for approval along with submittal of the 90% complete documents to TCEQ for regulatory compliance review and comments.

EXHIBIT A SCOPE OF SERVICES

- iii. Consultant will coordinate and develop responses to regulatory review comments as directed by Owner.
- iv. Any additional TCEQ permitting will be considered Extra Work.
- v. In addition to the CT Study document, Consultant will document the capacity of each process unit within the WTP in a technical memorandum in order to justify the plant re-rating to TCEQ.
- c. Summary of Deliverables
 - i. The 90% design submission will include all information from the 30% drawings with Owner review comments incorporated as well as structural details, electrical schematics and diagrams, standard details, all process details, and technical specifications, as well as any final details required. The 90% design submission will include all information from the 30% drawings with Owner review comments incorporated as well as any final details required. The deliverables for this phase are as follows:
 - a. 90% design drawings – One (1) electronic (PDF) set and one (1) full-sized (24" x 36") set to the Owner
 - b. 90% technical specifications with front-end documents – One (1) electronic (PDF)
 - c. 90% design OPCC – One (1) electronic (PDF) copy
 - d. 90% design drawings – One (1) electronic (PDF) copy and one (1) half-sized (11"x17") hard copy to TCEQ
 - e. Plant Capacity and Rating Technical Memorandum and CT profile – One (1) electronic (PDF) copy to TCEQ
 - ii. The 100% design submission will include all information from the 90% drawings with Owner review comments incorporated. The deliverables for this phase are as follows:
 - a. 100% design drawings – One (1) electronic (PDF) copy
 - b. 100% design technical specifications with front-end documents – One electronic (PDF)
 - c. 100% design OPCC – One electronic (PDF) copy of the OPCC

EXHIBIT A SCOPE OF SERVICES

- d. Summary of Meetings
 - i. Monthly Progress Meetings – In-person meetings with up to three (3) Consultant members attending
 - ii. 90% Design Workshop – In-person workshop attended by up to three (3) Consultant members

E. Package 1 Bid Phase Services

- a. Bid Pre-Purchase Development
 - i. Consultant will assist the Owner in developing a bid pre-purchase to select the preferred equipment manufacturer's products to serve as a basis for the final design documents. The following tasks will be conducted:
 - a. Develop and confirm a pre-qualified manufacturers list with the Owner at 30% design. Up to three manufacturers will be evaluated for pre-qualification.
 - b. Develop a listing of information, in conjunction with the Owner, to be requested in the proposal. The manufacturer will be selected based best value to the Owner. Consultant will coordinate the final selection criteria with the Owner. The criteria may include capital cost, life cycle cost, footprint, compatibility with existing system, similar equipment, or others as determined by the Owner. Consultant will communicate and obtain information from the pre-qualified manufacturers.
 - c. Develop a competitive pre-purchase bid package that will be completed by the submitting, pre-qualified manufacturers. These documents will be composed generally of the manufacturer's stated operation and maintenance requirements and preliminary design documents including preliminary layouts and preliminary specifications.
 - d. Coordinate with the Owner's procurement requirements to properly advertise the pre-purchase process and include the necessary contractual and procurement documents in the pre-purchase package.
 - e. Assist the Owner in responding to questions, issuing any addenda, and receiving the proposals.
 - f. Assist the Owner in evaluating the submittals and documenting a recommendation for the pre-purchased manufacturer.

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b. Bidding Assistance

- i. The bidding period for prospective bidders of the Construction Package 1 construction package is a 45-day duration period. During the bidding period phase of the project, Consultant will:
 - a. Prepare and submit Advertisement for Bids to newspaper(s) for publication as directed by the Owner. Owner will pay advertising costs outside of this contract.
 - b. Post advertisement for bids, construction contract documents, and any associated information to Consultant's online plan room for download by prospective bidders (at an appropriate cost for handling).
 - c. Support the contract documents by preparing addenda as appropriate and posting on Consultant's online plan room.
 - d. Prepare conformed construction documents to reflect the adjustments during the bid phase.
 - e. Participate in one pre-bid meeting.
 - f. Prepare a pre-bid meeting agenda. Following Owner authorization, post the pre-bid meeting memorandum with attendance record on Consultant's online plan room.
 - g. Participate and chair a construction site tour following the pre-bid meeting by interested pre-bid meeting attendees and other interested parties.
 - h. Host, attend, and manage the bid opening process.
 - i. Prepare bid tabulation.
 - j. Evaluate bids and recommend award.
 - k. Attend and participate in reporting recommendation of award to Owner Council.
 - l. Prepare construction contracts.
 - m. Distribute as required to state agencies and funding agencies.

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F. Package 1 Construction Phase Services

a. Construction Administration

- i. During the construction phase of work, Consultant will accomplish the following:
 - a. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
 - b. Prepare for and attend utilities coordination meeting.
 - c. Attend progress/coordination meetings with the Owner/Contractor.
 - d. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by Consultant on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. Consultant's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Consultant shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents. Consultant will review up to 100 submittals.
 - e. Issue instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents. Consultant will respond to up to 50 RFIs.
 - f. Review the Contractor's progress payment requests based on the actual quantities of contract items completed and accepted and will make a recommendation to the Owner regarding payment. Consultant's recommendation for payment shall not be a representation that Consultant has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's

EXHIBIT A SCOPE OF SERVICES

right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.

- g. Maintain a set of working drawings and prepare and furnish record drawings.
- h. When authorized by the Owner, prepare change orders for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the Owner will pay Consultant an additional fee to be agreed upon by the Owner and Consultant.
- i. Participate in final project inspection, prepare punch list, review final project closing documents, and submit final pay request.
- ii. Construction observation services will be provided by Consultant's Resident Project Representative, who will provide or accomplish the following:
 - a. Consult with and advise the Owner during the construction period.
 - b. Coordinate with the firm providing construction materials quality assurance testing under separate contract with the Owner.
 - c. Maintain a file of quantities incorporated into the work, test reports, certifications, shop drawings and submittals, and other appropriate information.
 - d. Maintain a project diary which will contain information pertinent to each site visit.
- iii. The proposed fee for Construction Phase Services is based on a 270-calendar-day construction contract performance time. If the construction time extends beyond the time established in this agreement, and the Owner wants Consultant to continue the applicable Construction Phase Services, the Owner will pay Consultant an additional fee agreed to by the Owner and Consultant.
- iv. In performing construction observation services, Consultant will endeavor to protect the Owner against defects and deficiencies in the work of the Contractor(s); but Consultant cannot guarantee the performance of the Contractor(s), nor be responsible for the actual supervision of construction operations or for the safety measures that the Contractor(s) takes or should take. However, if at any time during construction Consultant observes that the Contractor's work does not comply with the construction contract

EXHIBIT A SCOPE OF SERVICES

documents, Consultant will notify the Contractor of such non-compliance and instruct him to correct the deficiency and/or stop work, as appropriate for the situation. Consultant will also record the observance, the discussion, and the actions taken. If the Contractor continues without satisfactory corrective action, Consultant will notify the Owner immediately, so that appropriate action under the Owner's contract with the Contractor can be taken.

b. Construction Observation

- i. Resident construction observation services will be provided by Consultant's Resident Project Representative(s) for the nine (9) month (270 day) construction contract performance time. The proposed fee is based on one (1) full time observer working approximately eight (8) hours per day, five (5) days per week.
- ii. Construction observation services will be provided by Consultant's Resident Project Representative(s), who will provide or accomplish the following:
 - a. Consult with and advise the Owner during the construction period with significant changes/issues during the construction period.
 - b. Coordinate with the Owner's contracted firm that is providing construction materials quality assurance testing under separate contract with the Owner.
 - c. Maintain a file of quantities incorporated into the work, test reports, certifications, shop drawings and submittals, and other appropriate information.
 - d. Maintain a project diary which will contain information pertinent to each site visit.
- iii. In performing construction observation services, Consultant will endeavor to protect the Owner against defects and deficiencies in the work of the Contractor(s); but Consultant cannot guarantee the performance of the Contractor(s), nor be responsible for the actual supervision of construction operations or for the safety measures that the Contractor(s) takes or should take. However, if at any time during construction Consultant observes that the Contractor's work does not comply with the construction contract documents, Consultant will notify the Contractor of such non-compliance and instruct him to correct the deficiency and/or stop work, as appropriate for the situation. Consultant will also record the observance, the discussion, and the actions taken. If the Contractor continues without

EXHIBIT A SCOPE OF SERVICES

satisfactory corrective action, Consultant will notify the Owner immediately, so that appropriate action under the Owner's contract with the Contractor can be taken.

- iv. The proposed fee for construction services is based on a 270-calendar-day construction contract performance time. If the construction time to substantial completion extends beyond the time established in this agreement, and the Owner wants Consultant to continue the applicable Construction Phase Services, the Owner will pay Consultant an additional fee agreed to by the Owner and Consultant.

G. Package 2 Conceptual Evaluation

a. Field Investigations

- i. As a part of Task 1, Consultant will send up to four (4) members to visit the site to evaluate the existing water treatment facilities. This assessment will include multi-discipline engineers (process, mechanical, electrical, and civil). With this Task 7, following the completion of the condition assessment site visit, Consultant will prepare a technical memorandum (TM) to document the site visit findings. This TM will include an observation summary and overall condition of each process.
- ii. Consultant will also conduct a structural assessment of the existing pre-oxidation basin structure to document existing conditions. The condition assessment site visit will be conducted by two (2) Consultant team members. The structural assessment will be visual only and will include only the structural components of the basin. Consultant will collect photos and complete Consultant-standard assessment forms. On the day of assessment, the City shall have prepared the facilities for complete access of the exterior and interior of the basin including draining, cleaning, and lock-out/tag-out.
- iii. Following the completion of the condition assessment site visit, Consultant will prepare a technical memorandum (TM) to document the pre-oxidation assessment findings and recommendations. This TM will include an observation summary, list of recorded observations, determination of the severity of each observation, recommendations for repairs (if needed), and an OPCC for the recommended repairs.

b. Historical Data Review

- i. Consultant will request and review relevant documents including:
 - a. Previous studies and reports

EXHIBIT A SCOPE OF SERVICES

- b. Process data, water quality data, and daily monitoring reports for a three-year period
 - c. Operations and maintenance (O&M) manuals
- ii. It is assumed that operational data for the membrane treatment plant will be accessible through H2O Innovation's System Performance Monitoring Center (SPMC). Consultant will request Sherman's login for that system.
- c. Disinfection Byproducts Formation Study
 - i. Following review of the City's historical process testing data, Consultant will develop a test plan and protocol for the testing of water samples for disinfection byproducts. Consultant will conduct a site visit to identify sampling points and sampling frequency necessary for a disinfection byproducts (DBP) formation study. Consultant will coordinate with Sherman WTP operations staff during the testing to establish the proper operating conditions for sample collection. Consultant will identify five (5) blend percentages of UF and RO water to be sampled.
 - ii. The City will be responsible for collection and shipping the samples to a third-party laboratory for testing. The laboratory will be suggested by the City and approved by Consultant prior to shipping of the samples. Consultant will instruct the laboratory to conduct the tests in accordance with the test protocol. Following the receipt of the test results, Consultant will document the findings in a Water Quality Technical Memorandum. The results of this study will be applied to the Package 1 and Package 2 designs.
- d. Corrosion Study
 - i. Consultant will conduct a Corrosion Study in accordance with TCEQ requirements. The study will use existing water quality data and the results from the chemical feed evaluations and Disinfection Byproduct Formation Study to assess product water stabilization goals and corrosion mitigation approaches for the facility.
 - ii. During the assessment, Consultant will use spreadsheet-based calculations (including RTW or WaterPro programs) to assess typical corrosion indices and expected performance of orthophosphate corrosion inhibitors for various blended water qualities that the plant can produce. The results of this study will be incorporated into a technical memorandum that can be incorporated as an appendix to the Conceptual Design Report (Task 7.5).

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e. Conceptual Design Report

- i. Consultant will conduct plant-wide, conceptual evaluations to develop a plan for phased improvements to increase the capacity of the water treatment plant. As part of this evaluation, Consultant will develop a Conceptual Design Report (CDR) to address the following:
 - a. Existing system evaluation and capacity rating, including evaluating the existing pre-oxidation basin of the conventional train to be used for the future membrane train
 - b. Identification of equipment with long lead times that may require preselection/prenegotiation to meet the project schedule
 - c. Integration of raw water delivery and terminal storage basin
 - d. Footprint and locations of proposed facilities
 - e. Hydraulic profile through existing and proposed facilities
 - f. Water quality factors including Total Organic Carbon (TOC), Disinfection Byproducts (DBPs), and Disinfection Contact Time (CT) and associated processes to achieve identified goals
 - g. Chemical feed evaluations, including determination of feed locations, optimization for best treatment efficacy and mixing, minimization of counterproductive interactions, and the improvement of water quality
 - h. Phasing of improvements to meet anticipated flow needs
 - i. OPCC associated with each phase
- ii. The CDR will propose phased improvements for the WTP to increase capacity of the WTP. This conceptual submittal will be for the purpose of coordinating the proposed improvements with the City and the Texas Commission of Environmental Quality (TCEQ) and to develop an order of magnitude cost estimate for the proposed projects. Consultant will conduct a conceptual design workshop to present the results of the draft alternatives evaluation.

f. Summary of Deliverables

- i. Site Assessment TM – one (1) electronic (pdf) copy
- ii. Structural Assessments TM – one (1) electronic (pdf) copy

EXHIBIT A SCOPE OF SERVICES

- iii. Water Quality TM – one (1) electronic (pdf) copy
- iv. Draft Conceptual Design Report – one (1) electronic (pdf) copy
- v. Final Conceptual Design Report – one (1) electronic (pdf) and one (1) hard copy

g. **Summary of Meetings**

- i. Field Investigations – One (1) site visit with up to four (4) Consultant members attending
- ii. Structural Assessments – One (1) site visit with one (1) Consultant member attending
- iii. Water Sampling Site Visit – One (1) site visit with up to two (2) Consultant members attending
- iv. Conceptual Design Workshop – In person workshop with up to four (4) Consultant members attending

H. Package 2 Geotechnical Services

- a. Consultant will conduct geotechnical evaluations of up to ten (10) borings of 30-foot depth and four (4) borings of 45-ft depth to determine structural recommendations for the construction of the future membrane building, clearwell and pump station, and pre-oxidation basin.

I. Extra Work

- a. The following items are not included under this agreement but will be considered as extra work:
 - i. Any improvements facilities outside of the WTP property.
 - ii. Any improvements to the conventional water treatment train, including but not limited to the pre-oxidation basin, the flocculation/sedimentation basins, the media filters, and the EDR facilities.
 - iii. Any improvements to the up- or down-stream facilities from the existing membrane building or existing high-service pump station, including but not limited to the pre-oxidation basin, the clearwell, and the sedimentation lagoons as a result of Package 1 improvements.
 - iv. Development of an Environmental Information Document.

EXHIBIT A SCOPE OF SERVICES

- v. Structural assessment utilizing any means in addition to those listed herein, including the use of instrumentation.
- vi. Assessment of hazardous materials (e.g., asbestos, black mold, etc.) will not be included in the structural assessment.
- vii. Assessments of structures in addition to those listed herein.
- viii. Assessments of other discipline categories, including but not limited to mechanical, electrical, and process operation.
- ix. Submittals or deliverables in addition to those listed herein.
- x. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
- xi. Construction materials testing.
- xii. Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
- xiii. Development of or updates to a utility rate study.
- xiv. Development of or updates to a water conservation plan.
- xv. Development of or updates to a drought management plan.
- b. Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and Consultant.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

A **Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

- 1. **Corrosion Coupon Testing**
 - i. If the results of the Corrosion Study indicate that different blending goals should be used for the facility, Consultant can help the City evaluate the actual corrosion mitigation through coupon testing. If the scope of those

EXHIBIT A

SCOPE OF SERVICES

improvements is added to Consultant's scope by mutual agreement and with written authorization from the Owner, Consultant will prepare a coupon test plan and will design a coupon test skid for the City. It is anticipated that the City would be responsible for constructing the coupon test skid. Once the test skid is built and installed, Consultant will review the performance of the test. Consultant also assumes that if performed, the City will evaluate multiple orthophosphate corrosion control products to allow the City to competitively procure these treatment chemicals.

EXHIBIT B
PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

A. Project Management (Expected Completion: December 2023)	\$29,618.00 – Lump Sum
B. Survey (Expected Completion: May 2022)	\$7,252.00 – T&M, NTE
C. Preliminary Design (30%) (Expected Completion: June 2022)	\$368,581.00 – Lump Sum
D. Final Design (90%, 100%) (Expected Completion: November 2022)	\$509,789.00 – Lump Sum
E. Bidding Services (Expected Completion: February 2023)	\$117,636.00 – T&M, NTE
F. Construction Phase Services (Expected Completion: December 2023)	\$459,059.00 – T&M, NTE
G. Conceptual Design (Expected Completion: October 2022)	\$323,188.00 – Lump Sum
H. Geotechnical Services (Expected Completion: June 2022)	\$50,436.00 – T&M, NTE
<i>Total Basic Services</i>	<u><i>\$1,865,599.00</i></u>

II. Additional Services

Corrosion Coupon Testing/Contingency	\$50,000 – T&M, NTE
<i>Total Authorized Special Services</i>	<i>\$50,000.00</i>

Project Budget, Grand Total (Not-To-Exceed) ***\$1,915,559.00***

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

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

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

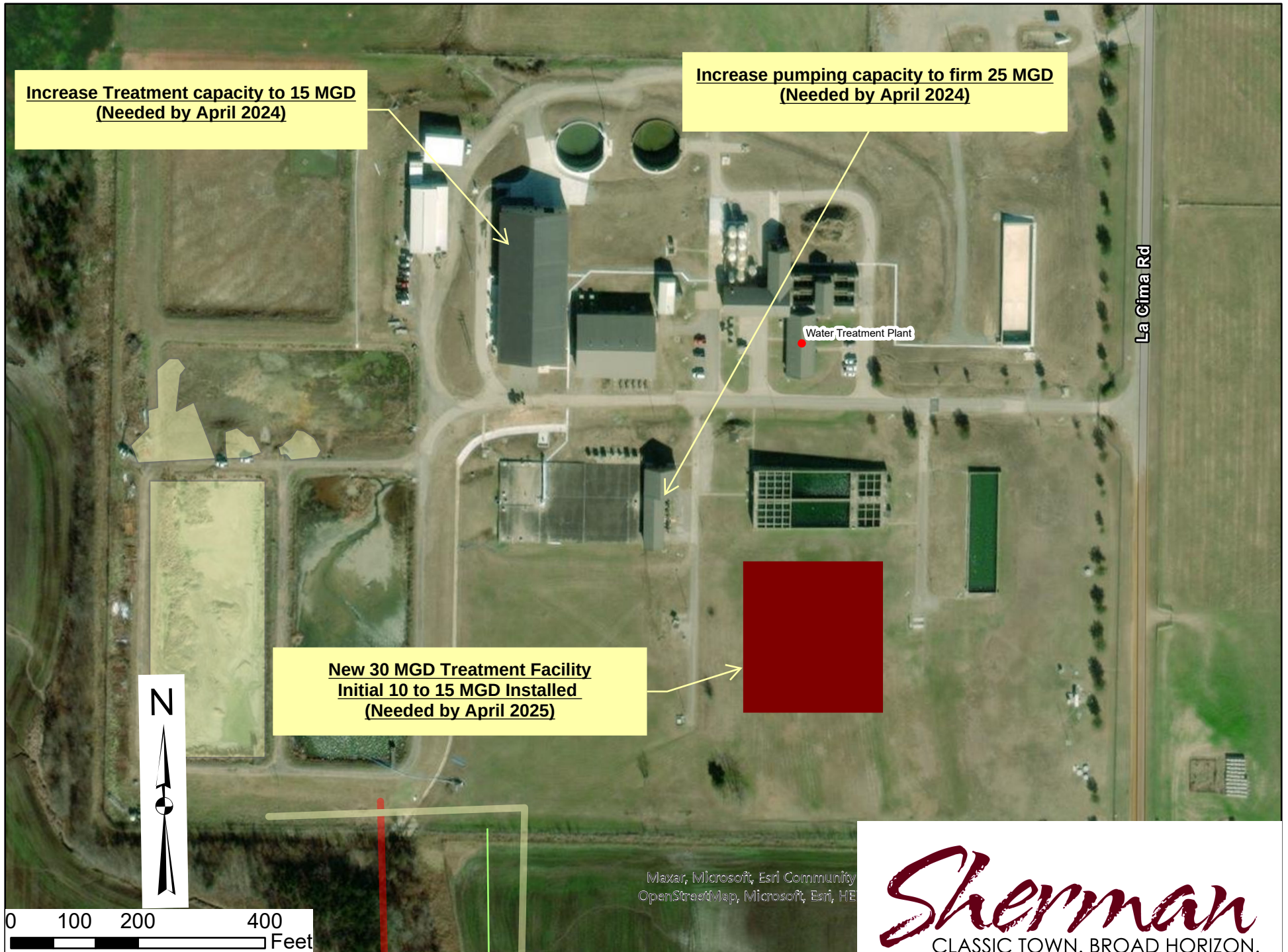
EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

-
- | | | | |
|---------------|-----|---|--|
| <u> X </u> | 4. | Professional Liability | <ul style="list-style-type: none">▪ Minimum \$1,000,000.00 each claim;▪ Minimum \$2,000,000.00 in the aggregate |
| <u> X </u> | 5. | Umbrella Coverage of Excess Liability Coverage | <ul style="list-style-type: none">▪ An amount of \$2,000,000.00▪ Minimum \$2,000,000.00 in the aggregate |
| <u> X </u> | 6. | City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess. | |
| <u> X </u> | 7. | General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance. | |
| <u> X </u> | 8. | Thirty (30) days' notice of cancellation, non-renewal, or material change required, said notice to be provided by Consultant. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates. NTD: Garver's carriers will not provide notice of material change for the coverage requested and will not provide notice via certified mail. Garver is happy to accommodate the requests. | |
| <u> X </u> | 9. | Insurance company has a minimum rating of "A- (minus)" by A.M. Best's Key Rating Guide, or other equivalent rating service(s). | |
| <u> X </u> | 10. | The Certificate of Insurance must state the project title and bid number. | |
| <u> </u> | 11. | Other Insurance Requirements (State Below): | |

EXHIBIT F

CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY Date Received	
1 Name of vendor who has a business relationship with local governmental entity.		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 Signature of vendor doing business with the governmental entity Date		





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 4.

Meeting Date: 05/02/2022

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6881

Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for Design of the Shepherd 2.0 Million Gallon Elevated Storage Tank Project

Issue:

To consider a contract for professional services with Freese and Nichols, Inc. for design of the Shepherd 2.0 Million Gallon Elevated Storage Tank project.

Background:

As a result of major industrial development and planned developments in the southern portion of the City, capacity improvement are needed for the Shepherd Elevated Storage Tank (EST) to properly serve these developments. The existing Shepherd EST has a storage capacity of 750,000 gallons and needs to be increased to 2.0 million gallons. To keep the existing tank in service while constructing a new tank, this professional services contract will provide a preliminary study to determine a new site for the Shepherd EST and construction drawings for the new tank site. This contract will also assist with the acquisition of the land for the new site as well as plans for the demolition of the existing tank. These improvements will allow the City to adequately supply water and pressure for future development in the southern portion of the City. This contract will also provide construction inspection services.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this contract is \$695,730.00. This will be funded by 2022 GTUA Bond Funds.

Staff Recommendation:

Freese and Nichols, Inc. was one of seven engineering firms interviewed for this work and was determined to be the most qualified to perform these services. Staff has negotiated a reasonable fee for these services. It is recommended that the contract for professional services with Freese and Nichols, Inc. for the design of the Shepherd 2.0 Million Gallon EST project be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6881

Agreement

RESOLUTION NO. 6881

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. FOR DESIGN OF THE SHEPHERD 2.0 MILLION GALLON ELEVATED STORAGE TANK PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Freese and Nichols, Inc. for design of the Shepherd 2.0 Million Gallon Elevated Storage Tank project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

**BY: _____
DAVID PLYLER, MAYOR**

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

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
FREESE AND NICHOLS, INC.
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2022:

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

and Consultant: **Freese and Nichols, Inc.**
 5805 Main Street, Suite B
 Frisco, Texas 75034
 Telephone: (972) 624-9201
 Facsimile: (972) 624-9202

for the following Project: **Shepherd 2.0 MG Elevated Storage Tank**

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

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Shepherd 2.0 MG Elevated Storage Tank Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a lump sum basis in an amount not to exceed **Four Hundred Eighteen Thousand Three Hundred Five Dollars (\$418,305)**; (b) for Special Services, on a cost-plus basis in an amount not to exceed **Two Hundred Seventy-Seven Thousand Four Hundred Twenty Five Dollars (\$277,425)** (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Design Budget Summary as set forth in Exhibit B.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in Exhibit C, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a

determination whether or not to certify that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

- 3.13 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be solely responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City.
- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in Exhibit B, and consistent with Exhibit D, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.
- 3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in Exhibit A of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly

basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:

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

Hourly Billable Rates by Position

Position	Hourly Rate Range	
Professional 1	85	159
Professional 2	107	168
Professional 3	131	244
Professional 4	163	262
Professional 5	199	375
Professional 6	211	427
Construction Manager 1	95	189
Construction Manager 2	116	204
Construction Manager 3	179	240
Construction Manager 4	219	310
CAD Technician/Designer 1	77	158
CAD Technician/Designer 2	112	169
CAD Technician/Designer 3	143	223
Corporate Project Support 1	56	135
Corporate Project Support 2	78	188
Corporate Project Support 3	112	285
Intern/Coop	45	115

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

or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

- 3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter “D” of the TEX. GOV’T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project (“Scope of the Project”) or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant’s compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant’s compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

- 3.10 **Fixed Budget Limit for Construction Cost** - If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in the following paragraph. All adjustments in the scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of \$10,160,500 due to the negligence of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project. Absent negligence on the part of the Consultant in making estimates of probable Construction Cost, providing services as defined in Exhibit A shall be the limit of the Consultant's Services related to the establishment of such fixed limitation of Construction Costs. The Consultant shall be entitled to compensation for all other services performed in accordance with this Agreement.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

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

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

required endorsement(s) evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials,

payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance

of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S

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

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

ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

**ARTICLE 11
NOTICES**

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:
Clayton C. Barnard, P.E.
Principal / Vice President
Freese and Nichols, Inc.
5805 Main Street, Suite B
Frisco, Texas 75034
Telephone: (972) 624-9207
Email: ccb@freese.com

ARTICLE 12 MISCELLANEOUS

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

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

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

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

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

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

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

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

122 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

123 **Attorney's Fees** – If either party files any action or brings any proceeding against

the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.

- 124 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 126 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 127 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 128 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 129 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 1210 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

- 1211 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 1212 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 1213 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 1214 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 1215 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 1216 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 1217 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 1218 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 1219 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship

between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

- 1220 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 1221 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 1222 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2021-2022 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.
- 1223 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.
- 1224 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

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

CONSULTANT:
Freese and Nichols, Inc.
a Texas corporation

By: _____
Robby Hefton, City Manager

By:  _____
Clayton C. Barnard, P.E.
Principal / Vice President

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

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

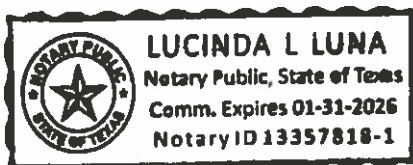
GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY
OF _____ 2022.

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

STATE OF TEXAS §
 §
COUNTY OF Collin §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **CLAYTON C. BARNARD**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **FREESE AND NICHOLS, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 27 DAY
OF April 2022.



Lucinda L. Luna
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 01-31-2026

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

- A.** The City of Sherman is proceeding with the design and construction of the Shepherd 2.0 MG Elevated Storage Tank (EST) Project. The project will increase storage capacity and water supply within the City's Southwest Zone (930') in anticipation for growth and increased demands noted in the City's ongoing Water Capital Improvements Plan updates. This project will include the following facilities and/or design aspects:
- i 2.0 MG composite EST.
 - ii EST site improvements including site water and wastewater piping, supporting piping appurtenances, valves, site power distribution, site lighting, fencing, grading and drainage, driveway and parking, and supporting EST electrical/instrumentation aspects.
 - iii EST security aspects including access control and cameras.
 - iv Demolition of the existing 0.75 MG Shepherd EST (Steel Spheroid) and correlating appurtenances / site aspects.
- B.** The following facilities are not part of The Project, and will be provided by others or can be provided as an Additional Service:
- i 36" pipeline aspects beyond the EST site boundary.
 - ii Off-site SCADA improvements and/or control facilities at the City's operations center.
 - iii On-site septic sanitary sewer design and implementation.
 - iv Detailed stormwater analysis and/or design for conveyance of overflow discharge.
 - v Electric power service to the proposed 2.0 MG EST site, which will be provided by the electric utility company. Connection will be on the secondary side of the utility transformer(s). Consultant will design underground duct banks, and concrete equipment pads for electric utility equipment, if required.
 - vi Environmental mitigation required for the project.
- C.** The Project will include the following construction bid package:
- i Industrial Park 2.0 MG EST
- D.** The Project procurement method will include conventional bid procurement.
- E.** It is understood that the overall program will be delivered via CMAR procurement methods. Limited CMAR coordination is included with this scope and up to one bid package to be provided. Additional CMAR coordination and bid packages can be provided as an additional service, if found necessary.

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II. GENERAL REQUIREMENTS

- A.** Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B.** Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
- C.** Each time the Consultant submits plans and/or specifications to City, two (2) half-sized (11"x17") copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
- D.** The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
- E. Communications and Reporting:**
 - a.** Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
 - b.** Attend review meeting with the City at the end of each design phase.
 - c.** Attend up to two (2) meetings in support of P&Z approval.
 - d.** Attend up to three (3) meetings in coordination with preliminary and final platting aspects. One for Planning and Zoning during Preliminary, One for Planning and Zoning during Final and One for Council for Final.
 - e.** Prepare and submit monthly invoices in the format acceptable to the City.
 - f.** Prepare and submit monthly progress reports.
 - g.** Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
 - h.** Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare

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the design.

- i. With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements. It is assumed that coordination with the FAA and TCEQ will be required for this project. Coordination with other permitting authorities can be provided as an Additional Service, if needed.
- j. Attend additional project coordination meetings (up to four (4)), if needed.

III. TASK SUMMARY. BASIC SERVICES

A. Task 1 – Study / EST Siting Assessment Phase

- a. Utilize the City's existing water model to evaluate supply to the Shepherd area based on near-term and long-term water needs in relation to each potential EST site location. Analysis will include considerations for regulatory compliance, transmission capacity, pumping, storage facilities, and connections to existing water lines for determining the optimal placement of the proposed EST.
- b. Collect and review existing data, development plans, reports, mapping/contours, and records from the City. Review documents associated with the project. Provide analyses of City's requirements for the Project, including planning, surveys, site evaluations and comparative studies of prospective sites and solutions.
- c. Water, sanitary sewer, and storm drains will be shown on the plans based on field information and surveys collected by the Consultant and from existing "Record Drawings" provided by the City of Sherman, including available GIS information. Other utilities should be shown on the plans based on field information and surveys collected by the Consultant, utility locates requested by the Consultant, and any available "Record Drawings" that the Consultant can obtain from other utilities.
- d. The Consultant will consult with the City, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. Consultant will design City facilities to avoid or minimize conflicts with existing utilities, and where known and possible, consider potential future utilities in designs.
- e. Evaluate up to three (3) potential tank sites based on:
 - i. Above noted hydraulics and site elevations
 - ii. Land availability
 - iii. Proximity to existing and/or proposed infrastructure

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- iv. Proximity to power sources
- v. FAA restrictions
- vi. Empirical radio path study for connecting each site to the existing SCADA network
- vii. Desktop level environmental and archeological aspects.
- viii. Desktop geologic study of alternate EST sites. Geotechnical field investigations are not included within this phase of the work.
 - a. Review relevant published geologic and soils information from publicly available literature – U.S.G.S. Bureau of Economic Geology Geologic Maps; NRCS Soils Maps; Google Earth and aerial photography.
 - b. Review previous geotechnical investigations performed by FNI in the vicinity of the study area.
 - c. Summarize in the siting report regional and local geology and soils and identify potential geotechnical and geologic issues that could impact development of an EST at each alternative site.
- f. Prepare a desktop route study for the pipelines. Obtain GIS mapping of the route corridors, where available. Up to three routes will be evaluated (one route per EST site option). Study shall include analysis of hydraulics, construction costs, conflicts with existing infrastructure, land costs (to be provided by the City)), and environmental considerations. Study will include one (1) site visit to points of public access.
- g. Prepare a Report containing recommended EST schematic site layouts, supporting pipeline route, existing facility locations, conceptual design criteria with appropriate exhibits to indicate the considerations involved and setting forth Consultant's findings and recommendations with opinions of probable construction costs for the Project, which includes Tank Manufacturer coordination. Environmental and archeological considerations will be outlined in the report for each potential site and pipeline route alternative. Estimates of the cost of land and rights of way, compensation for damages to properties and interest and financing charges will be provided by City or others so designated by City. In arriving at its opinion of probable construction cost for the Project, the Consultant will include the estimates furnished by City and will have no responsibility to determine the accuracy or validity of these provided estimates.
- h. Furnish three (3) copies of the Report and present and review it with the City. Receive and address City's comments and issue the final Report to the City and initiate the Surveyor.

B. Task 2 - Intermediate Design Plans (60%)

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- a. Upon completion of the EST site selection, Consultant will coordinate offsite supply piping needs with City staff and correlating effort required to complete.
- b. Initiate the survey sub-consultant to complete the boundary and topo surveying efforts for preparation of the Intermediate Design Plans.
- c. Conduct a technical design preference meeting with City staff to cover tank operation preferences, security, layout, logos, lighting, accessibility, mixing system, etc.
- d. Consultant will advise the City of any geotechnical, soil, foundation, or other subsurface investigations or any special surveys, Level B or A SUE, or special testing which, in the opinion of the Consultant, may be required for the proper execution of the project, and assist the City in arranging for the conduct of such investigations and tests. The performance of geotechnical investigations and tests will not be a part of the Consultant's Basic Engineering Services and will not be included unless specifically authorized in writing under "F. Special Services."
- e. Prepare intermediate engineering review drawings that address all comments from the EST siting assessment review, including detailed construction-related notes. A general notes sheet(s), coordinate control sheet(s), and detail sheet(s) will be required for all projects. Civil and Electrical site layouts, yard piping, EST section and elevations layout views, and correlating details for City confirmation of the various site and EST layouts ahead of the Final Design Phase. In addition, the Consultant will provide site layouts for the demolition aspects of the Shepherd 0.75 MG EST.
- f. Prepare miscellaneous plan sheets, including cover sheet, index, general notes, project control (1"=100' scale), and applicable City standard details.
- g. Prepare front end documents (using City's available standard documents), including bid documents, general conditions, special conditions for the construction and equipment packages. Meet with City to resolve review comments and revise documents accordingly.
- h. Prepare revised opinion of probable construction cost at the 60% submittal.
- i. 60% Documents: Prepare drawings, specification table of contents, construction contract documents, designs, and layouts of improvements to be constructed. Furnish City two (2) half-sized (11"x17") sets and one (1) electronic copy of drawings and specification table of contents marked "Preliminary" for approval by City. Consultant will meet with the City to present the plans and specifications and receive comments. Review documents will include plan and profile sheets, pipeline appurtenances, and typical details. Consultant will receive comments from City and address comments in the 90% Review.

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C. Task 3 – Final Design/Construction Plans (90%, 100%)

- a. Prepare final engineering review drawings that address all comments from the intermediate review.
- b. Provide layout, elevation, details, and specifications for the proposed elevated storage tank, showing tank and pedestal, inlet and outlet lines, drains, overflow, interior and yard piping, access ladders, valves, re-circulation arrangement, man ways, coating system selection, basic logo, access roadway, fencing, and site drainage. Provide adequate detail to enable the tank manufacturer to prepare final design and shop drawings for the tank foundation and complete tank. It is assumed the structure will be classified for zero occupancy and no vehicle storage; therefore no AIA/ADA aspects, HVAC, or fire suppression system items are to be provided.
- c. Provide plans, profiles, details, and specifications for the yard piping. Provide details for connection of the yard piping to proposed transmission pipeline extensions. Limit of any yard piping plans will be the tank site property line. Submit construction drawings at a scale of 1"=20' horizontal and 1"=5' vertical.
- d. Provide electrical / mechanical design and details for an active tank mixing system or other mixing system as selected by City during workshop. The selected mixing system will need to be hydraulically compatible with the existing pressure plane infrastructure. In addition to mixing system, design tank inlet / outlet piping to provide additional mixing. Consultant will research the availability of correlating package chemical boosting assemblies from the mixing system manufacturers. This scope will provide the manufacturer coordination, power supply, and supporting piping/tapping aspects. Detailed chemical booster design is not included.
- e. Provide electrical plans, details, and specifications for the elevated storage tank electrical equipment, instrumentation, controls, site lighting, and related appurtenances. It is anticipated the design will include a SCADA operated control valve inside of the tank pedestal. Coordinate with local power utility provider for EST site power that will be required.
- f. Accommodations for future cellular phone antennas will be discussed during preliminary design and provided as part of the EST design. This will include conduit runs and infrastructure for cellular equipment.
- g. Provide plans and specifications for the demolition of the existing Shepherd 0.75 MG EST. Coordinate demolition plans and available methods with appropriate specialty contractors. See task in Special Services related to field

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investigation and reporting on existing coatings.

- h. 90% Documents: Furnish one (1) electronic copy of drawings, specifications, and bid forms marked "Preliminary" for approval by City. Consultant will meet with the City to present the plans and specifications and receive comments. Review documents will include all plans and specifications with minor corrections and notes remaining. Consultant will receive comments from City and address comments in the 100% documents. Upon final approval by City, Consultant will provide two (2) half-sized (11"x17") and one (1) electronic copy of "Final" plans and specifications.
- i. 100% Documents: Furnish one (1) electronic copy of drawings, specifications, and bid forms marked "Final" for approval by City. Consultant will meet with the City to present the plans and specifications and receive comments. Review documents will include all final plans and specifications. Consultant will receive comments from City and address comments in the "Sealed" Issued for Bid documents. Upon final approval by City, Consultant will provide City one (1) electronic copy of "Final" plans and specifications. The Consultant shall furnish to the City up to four (4) additional half-sized (11"x17") copies and a pdf of the construction drawings in preparation for advertisement.
- j. With each submittal, prepare detailed opinion of probable construction costs based on current unit prices from the proposal of authorized construction, which shall include summaries of bid items and quantities on the unit price system of bidding, wherever practical.
- k. When required by the nature of the project, the Consultant shall provide necessary exhibits and attend a public meeting with the City, up to (2) meetings.
- l. Upon completion of the final design review, the Consultant shall furnish to the City, where required by the circumstances of the assignment, the engineering data, construction plans, completed forms, and reports necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid or for planning advances not included in Basic Engineering Services).
- m. Consultant will submit the project documents to the TCEQ for review and approval. The project may be advertised and reviewed by the TCEQ concurrently as directed by City, however the project cannot start construction until TCEQ approval.

D. Task 4 – Bid Phase Services

- a. Furnish to the City all necessary copies of approved Construction Contract

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Documents needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of Construction Contract Documents in excess of eight (8) half-sized (11"x17") copies are to be paid for separately as provided hereinafter.

- b. Assist City in securing bids. Provide a copy of the notice to bidders for City to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by City.
- c. Assist City by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents if necessary.
- d. Assist the City in conducting pre-bid conferences for the construction projects and coordinate responses with the City. Response to the pre-bid conference will be in the form of addenda issued after the conference .
- e. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.
- f. Assist the City in the opening and tabulation of bids for construction of the Project.
- g. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the award of the construction contract.
- h. Assist in the preparation of formal Construction Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.
- i. The Consultant shall not be required to guarantee the accuracy of the final design Cost of Construction, but may be required to provide additional services at no cost to the City if bids for the Project exceed the fixed budget limit for the Construction Cost as provided in Article 3.

E. Task 5 – Construction Administration Services

Upon completion of the bid or negotiation phase services, Consultant will proceed with the performance of construction phase services. Detailed part-time construction inspection will be performed by as described within Special Services. Construction Administration services provided by Consultant will include the following:

- a. Conformed Document submittal:
 - i. Update the Bid Documents (plans and Project Manual) to incorporate bid addenda items

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- ii. Print up to ten (10) sets 11"x17" plans and Project Manuals for issuance at the Pre-Construction Conference.
- iii. Package and submit CAD base files upon request.
- b. *Monthly Site Visits.* Make monthly visits to the construction site over the construction period to observe progress of the work and consult with the City concerning problems and progress of the work. Sixteen (16) site visits are planned for construction.
- c. *Pre-Construction Meeting.* Assist the City in conducting the pre-construction conference. City shall prepare an agenda for the conference and prepare and distribute minutes. The pre-construction conference shall include a discussion of the Contractor's tentative schedules, procedures for transmittal and review of the Contractor's submittals, processing payment applications, critical work sequencing, change orders, record documents, and the Contractor's responsibilities for safety and first aid.
- d. *Franchise Utility Coordination.* Assist the City with franchise utility coordination efforts and conflict resolution during construction.
- e. *Requests for information.* Coordinate with Contractor and issue clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by City.
- f. *Change Orders.* Recommend Change Orders to City, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor. Task includes preparing plan sheet revisions.
- g. *Establish and Maintain Project Documentation System.* Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- h. *Shop Drawings, Samples, and Submittals.* Review and approve or take other appropriate action in respect to Shop Drawings, Samples, Submittals and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences,

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schedules, or procedures of construction or to related safety precautions and programs.

- i. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- j. *Disagreements between City and Contractor.* As necessary, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- k. *Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.
- l. *Commissioning.* Provide field observation during testing/commissioning, up to two (2) days.
- m. *Final Walkthrough.* Conduct, in company with City's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.

F. Task 6 – Record Drawings

- a. Consultant shall prepare construction Record Documents based on the information received from Contractor within 30 days of final completion in accordance with the Agreement. Consultant shall submit one (1) full size set and one (1) pdf file of the Record Documents.
- b. Provide GIS shape files of the record drawing yard piping alignments to the City.

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IV. TASK SUMMARY, SPECIAL SERVICES

A. Task 7 – Topographical Survey

Consultant will subcontract with a surveying firm to provide surveying services for the project. The services listed below are based upon survey of the proposed EST Site, up to 2.5 acres, to be owned by the City of Sherman, along with boundary and topo survey of the existing Shepherd 0.75 MG EST to be demolished. A detailed scope of work is described below:

- a. **Ownership Data** – Research property ownership of the affected parcels and obtain copies of deeds, subdivision plats, right-of-way maps and ownership addresses along the route. Prepare a landowners Excel spreadsheet to include parcel number and landowner's name and address. Prepare a deed plot of all ownerships, subdivisions, and rights-of-way within one hundred feet either side of the proposed alignment. All properties shall be numbered to match the corresponding list of landowners in the Excel spreadsheet.
- b. **Ownership Map** – Locate property corners of parcels that are affected by the proposed improvements. Calculate property lines, easement lines, and right-of-way lines of existing streets and utilities. A digital property map will be prepared showing lot numbers, property lines, right-of-way lines, existing easements, and ownership with recording information.
- c. **Existing Underground Utilities** – Locate underground utilities horizontally with existing visible features and those marked by Texas811.
- d. **Topographical/Design Survey** – Gather design survey within the limits of the proposed EST site as selected within Basic Services. Survey will gather the locations of pavement edges, curb and gutter, driveways, culverts, fences and gates, walls, signs, mailboxes, tops and toes of slopes, spot elevations, trees six (6) inches and greater, surface locations of utilities and flowline of elevations of sanitary and storm sewer manholes where accessible, and other surface features as encountered. The digital survey drawing will be delivered in AutoCAD format showing visible surface features located, an ASCII point file, and a copy of field notes and field sketches.
- e. **Control Points** – Establish project control for the proposed EST site using Global Positioning System (GPS) methodology. Horizontal values will be based on the Texas State Plane Coordinate System, North American Datum of 1983 utilizing control monuments established withing the City of Sherman. This also includes refreshing and re-establishing benchmarks and reference points on NAD 93 CORDS Grid coordinate system for construction of the project, one time only.
- f. **Construction Staking** – Staking of the site of the proposed Project for utility coordination. The Consultant or its surveyor shall stake the center point of the

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proposed EST, site control/benchmark points, and EST site boundary corners. Said control staking is to be established in a timely fashion as directed by City staff. Said control markings are to be a one-time event and shall be of a nature to last a minimum of eight months.

B. Task 8 – EST Site Plat

- a. Prepare a preliminary and final plat of the tract of land for the EST property, signed and sealed by a Registered Professional Land Surveyor.
- b. Plat application fees, submittal fees, filing fees, tax certificates, or any additional fees related to filing the preliminary or plat are not included, but can be provided as an additional service.

C. Task 9 – Fee Parcel Acquisition Services

- a. Right-of-Entry and Fee Parcel Acquisition Services will be performed for a maximum of one (1) site or parcel, approximately sized at 2.5 acres.
- b. Pre-Acquisition Services
 - i. Confirm ownership and easement information for a maximum of three (3) parcels during preliminary design.
 - ii. Attendance of public information meetings, project design meetings, route development field visits by land manager are considered an additional service.
- c. Title/Curative Services
 - i. Review preliminary title commitment for properties where fee parcel is to be obtained.
 - ii. Secure title commitments and updates in accordance with insurance rules and requirements for parcel payment submissions for properties which will be acquired in fee simple.
 - iii. Secure title insurance for all fee simple properties. Cure all exceptions on Schedule C, when applicable. Written approval by the City will be required for any exceptions to coverage.
- d. Right-of-Entry
 - i. Prepare Right-of-Entry packets to include Landowner Bill of Rights, maps and paperwork to be executed.
 - ii. The agent will initiate and participate in landowner meetings for ROE documents.
 - iii. Upload Right-of-Entry executed documents to central location for access by City, its agents and employees.
- e. Negotiation Services
 - i. Determine values for TCE's based on the Tax Appraisal Value x 10% with negotiations up to Tax Appraisal Value x 1.5 x 10%. In this scenario, a floor for a minimum amount to be offered of \$500.00 will be used. If TCE's cannot be acquired using this method within 30 days of the initial offer

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- letter, an appraisal will be ordered by the City.
- ii. Request Appraisals to be ordered for all permanent offers.
- iii. Prepare the initial offer letter and any other documents required or requested by the City in an acceptable form.
- iv. Contact each property owner or owner's designated representative and present the written offer in person where practical. When owners do not wish to have offers delivered in person, they will be mailed via certified mail with return receipt for documentation of delivery/receipt. Maintain follow-up contacts and secure the necessary instruments upon acceptance of the offer for the closing.
- v. Provide a copy of the appraisal report for the subject property exclusively to the property owner or authorized representative at the time of the offer for permanent easements.
- vi. Provide a compensation summary to the property owner or authorized representative at the time of the offer for temporary easements.
- vii. Respond to property owner inquiries verbally and/or in writing within two business days.
- viii. Prepare a separate negotiator contact report for each parcel file for each contact.
- ix. Maintain parcel files of original documentation related to the purchase of the real property or property interests/acquisition of the Easement.
- x. Present counteroffers in a form as directed by the City. Transmit any written counteroffer from property owners including supporting documentation, and Agent's recommendation with regard to the counteroffer.
- xi. Prepare Final Offer letter, as necessary. Appraisals will be done by the City's chosen appraiser for Temporary Construction Easements prior to Final Offer letters.
- f. Acquisition/Closing Services
 - i. Prepare check request, review closing documents facilitate execution of all necessary documents. Attend closings and provide closing services in conjunction with Title Company for all permanent offers.
 - ii. Record or cause to be recorded all original instruments immediately after closing at the respective County Clerk's Office.
 - iii. Review Title Policy and give to City for permanent storage.
- g. Project/Document Administration
 - i. Maintain current status reports of all parcel and project activities and provide monthly or as requested to the City.
 - ii. Participate in project review meetings as requested.
 - iii. Provide copies of all incoming and outgoing correspondence as generated if requested.
 - iv. Maintain copies of all correspondence and contacts with property owners.
 - v. Update database with current status information and documentation.
- h. Initiate and coordinate appraisal with City approved appraisers

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- i. Secure written permission from owner to enter the property from which land is to be acquired. Maintain permission letters with appraisal reports.
 - ii. Prepare and conduct personal pre-appraisal contact with interest owner(s) for each parcel wherein an appraisal is needed.
 - iii. Contact property owners or their designated representative to offer opportunity to accompany the appraiser on the appraiser's inspection of subject property. Maintain record of contact in file.
 - iv. All completed appraisals will be administratively reviewed and approved by the City.
- i. Condemnation Support
 - i. Condemnation support and Appearing as Expert Witness is considered an additional service.

D. Task 10 – Existing EST Paint Analysis:

- a. Consultant will review data from previous tank inspections and coatings investigations to determine appropriate testing for tank removal.
- b. Consultant will collect up to eight samples of paint from the exterior wall and/or legs of the elevated storage tank.
- c. Consultant will submit paint samples to an environmental laboratory for analysis for total Resource Conservation and Recovery Act (RCRA) 8 heavy metals and Toxicity Characteristic Leaching Procedure for RCRA 8 heavy metals. Samples will be analyzed for total and leachable heavy metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver) for waste classification and worker safety purposes.
- d. Consultant will collect up to eight surface soil samples in the vicinity of the water storage tank. These samples will be tested for total lead to determine existing lead content in soils surrounding the tank to verify existing conditions prior to tank demolition.
- e. Consultant will prepare a sampling report documenting the results of our findings. Sample results will be compared to relevant waste disposal standards and construction worker safety criteria.
- f. Consultant will prepare heavy metals abatement and waste handling specifications for inclusion in the construction documents.

E. Task 11 – Geotechnical Investigations

- a. Field Exploration:
 - i. Select appropriate locations for exploratory borings within the vicinity of the proposed EST. The Engineer will coordinate with the City and notify Texas

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811 of the planned borings prior to commencement of the field exploration activities in order to locate existing underground utilities within the area. It is assumed the proposed EST site will be accessible using a truck-mounted drill rig. If clearing is required to access the selected site or if an all-terrain drill rig is required to access the boring locations, these activities will be included as Additional Services.

- ii. Subcontract with a drilling contractor to drill four (4) borings within the footprint of the proposed EST: three (3) to an approximate depth of 45 feet and one (1) to a depth of approximately 65 feet. The boring depths are intended to provide a 15- to 30-foot profile of the bedrock below the EST and may be adjusted based on in situ conditions to achieve this penetration.
 - a. The borings will be advanced using standard rotary drilling equipment with continuous-flight augers (solid or hollow stem) or rotary wash methods. Subsurface samples will be collected using 3-inch diameter push tubes for cohesive soils and a 2-inch diameter split-spoon sampler in conjunction with the Standard Penetration Test (SPT) for intermediate and non-cohesive soils. Rock and rock-like materials will be cored and/or tested in situ using the Texas Cone Penetration (TCP) Test or the SPT, as appropriate for the material.
 - b. Groundwater observations within the borings will be recorded at the time of drilling and at the completion of drilling and sampling.
 - c. The borings will be backfilled with auger cuttings upon completion of drilling and sampling.
 - iii. Conduct a site visit prior to drilling to locate and mark the boring locations, coordinate with the City, and determine accessibility, as required.
 - iv. An Engineer or Geologist experienced in logging borings will direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided according to ASTM D2488 and the Unified Soil Classification System (USCS) during drilling and sampling.
- b. Laboratory Testing:
- i. Testing shall be performed on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials.
 - ii. The Engineer will select samples for laboratory testing, assign tests, and review the test results. Testing will be performed by a geotechnical testing subcontractor.
 - iii. Laboratory tests will be appropriately assigned for the specific subsurface materials encountered during exploration, but are expected to include:

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- a. Classification tests (liquid and plastic limits and percent passing the no. 200 sieve or gradation)
- b. Moisture content
- c. Unit dry weight
- d. Unconfined compressive strength
- e. One-dimensional swell (restrained and unrestrained)
- c. **Engineering Analysis and Reporting:**
 - i. The Engineer will perform the geotechnical engineering analysis and prepare a Geotechnical Investigation Report summarizing the investigation. The report will include the following:
 - a. Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
 - b. Discussion of subsurface conditions and soil properties indicated by the field and laboratory work and the implications for design.
 - c. Foundation recommendations for support of the proposed EST, including bearing capacity of soils, suitable bearing material, lateral and overturning resistance, etc. applicable for the recommended foundation or foundation options.
 - d. General discussion of expected construction related issues.
 - e. Earthwork related recommendations for use during development of plans and specifications.

F. Task 12 – Environmental Services

- a. Consultant's environmental scientists will compile existing study information and review pertinent data to the project area, such as soils maps, topographic maps, floodplain maps, National Wetland Inventory and National Hydrography Dataset information, to guide the pedestrian survey described below.
- b. Consultant's environmental scientists will conduct a pedestrian survey of the proposed tank location to document existing conditions of the site, and identify environmental constraints. This investigation will include: (1) Identification of "waters of the U.S." as defined by U.S. Army Corps Engineers regulations. FNI environmental scientists will document the presence of jurisdictional waters such as streams, wetlands, or open water bodies, and will GPS map the boundaries of these features. Wetlands will be delineated per the Corps of Engineers 1987 Wetlands Delineation Manual; and (2) identification of potential habitat for any federally listed threatened or endangered species.
- c. Consultant's environmental scientists will prepare a technical memorandum documenting the findings of the pedestrian survey, an estimate of potential

EXHIBIT A SCOPE OF SERVICES

impact to waters of the U.S., and a discussion of potential Section 404 permitting options. This scope assumes that the proposed tank can be designed to meet the terms and conditions of Nationwide Permit (NWP) 58, Utility Line Activities for Water and Other Substances, without requiring the submittal of a pre-construction notification (PCN) to the USACE. In the event a PCN is required, consultant can prepare a PCN as an additional service. This scope assumes that mitigation services will not be required by the project since a PCN would be avoided. If mitigation services are required, they will be considered an additional service.

- d. Consultant's environmental scientist will prepare and submit a coordination letter to the Texas Historical Commission (THC) requesting concurrence that no cultural resources survey is required. In the event the THC requests a cultural resources survey, hiring and coordination with a subconsultant to conduct an archeological field survey and draft a comprehensive report of the survey's finding, will be considered an additional service
- e. All permit conditions and requirements will be included in the construction contract documents, and the construction contractor will be required to abide by these during construction.

G. Task 13 – Tank Logo Concepts and Rendering

- a. If the City desires to pursue enhanced logo treatments to steel bowl of the proposed EST, the Consultant will perform the following tasks;
- b. Conduct one (1), half day (up to four hours) tank logo concept meeting with City staff. At this meeting the Consultant project manager and 3-D rendering technician will discuss with City staff the City's ideas and concepts for the steel bowl paint scheme.
 - i. Consultant will provide past examples of other composite elevated tanks that have received or concepts that show aesthetic treatments to the bowl.
 - ii. Consultant will provide tank "worksheets" for the group to sketch ideas
 - iii. At the conclusion of the meeting City staff will provide Consultant up to three (3) options for logo concepts that will be developed further.
 - iv. On the same day as this meeting, Consultant will take photographs of the site to be used in the 3-D rendering of the logo options.
- c. Consultant will develop one 3-D rendering for each of the options (3 renderings total) and submit the renderings electronically to City staff for comment. These renderings will only focus on the tank aesthetics options developed in the logo concept meeting.
- d. Upon receipt of City comments on the renderings, Consultant will make the agreed upon changes and resubmit electronic versions of the renderings.
- e. Consultant will consult with two (2) tank manufacturers to identify any

EXHIBIT A SCOPE OF SERVICES

constructability issues with the proposed layouts and develop budgetary cost estimates for the three (3) options to be used in the City's decision-making process. These discussions and associated issues will be summarized in one memorandum to City staff. City staff will provide Consultant direction on the preferred option.

- f. Consultant will take the City's preferred option revise the 3-D renderings into a final tank concept rendering to be used in public meetings, City promotions, and design. Consultant will provide the City electronic files of the rendering.
- g. Upon City direction, Consultant will proceed with the final design of the tank.

H. Task 14 – Bowl Lighting Analysis / Design

- a. Provide lighting study and design for pole or bowl mounted lighting for the EST. Correlating details and study results will be provided.

I. Task 15 – Part-Time Resident Representation Services

- a. Consultant will furnish the services of a field representative to perform specialty observations of the tank construction at the intervals detailed below. Each site visit will be documented with a site visit report and project photos. Consultant will notify the City and Contractor of defective work found. Consultant will endeavor to protect City in providing these services however, it is understood that Consultant does not guarantee the Contractor's performance, nor is Consultant responsible for supervision of the Contractor's operation and employees. Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. Consultant shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project. Specifically, Consultant will provide the following:
 - b. Concrete Shallow Mat Foundation – Number of visits and durations as depicted in below bullets (Additional visits may be required if drilled foundation is selected):
 - i. Observe soil compaction efforts of Contractor to verify that specified fill and lift requirements are being followed. Approximately 3 visits of 6 hours on site plus site visit documentation.
 - ii. Observe reinforcement material, sizing, location placement, and cover. Approximately 4 visits of 6 hours on site plus site visit documentation.
 - iii. Observe concrete pours to verify independent testing laboratory retained by the City is performing checks for slump, air entrainment, and concrete strength. Approximately 2 visits of 6 hours plus site visit documentation for

EXHIBIT A SCOPE OF SERVICES

mud slab and foundation pours.

- iv. Provide up to 2 site visits for geotechnical engineer to visit the site and excavation activities.
- c. Concrete Pedestal – Approximately 25 visits of 4 hours on site plus site visit documentation:
 - i. Assumed pedestal will be poured in a maximum of 20 lifts. The first 5 lifts, and the last upper lift will require additional visits to inspect rebar the day before each pour due to the large amount of rebar located in these lifts. Remaining intermediate lifts (15) will be inspected the day of the pour since there is no rebar to inspect, only steel mesh reinforcement.
 - ii. Inspect steel reinforcement in wall section prior to concrete placement for correct size, location, and separation distance between steel mats to allow for proper placement of concrete
 - iii. Observe concrete pours/verify that the independent testing laboratory retained by the City is performing checks for slump, air entrainment, and concrete strength
 - iv. Observe removal of forms and check for voids, and monitor repair of air void holes
- d. Steel Bowl Erection and Welding – See Task 16.
- e. Protective Coatings – See Task 17.
- f. Electrical / Instrumentation Inspection – Approximately 4 site visits 8 hours on site plus site visit documentation:
 - i. Inspect placement of electrical accessories and conduit. City to provide their own inspection services for pertinent code / building permit aspects. Consultant shall coordinate inspection with City staff and the Contractor, and shall assign a Consultant representative to accompany the City staff and Contractor's representative during the scheduled inspection.
- g. General Meetings:
 - i. Field representative will attend up to eight (8) monthly construction progress meetings with the Design Engineers and City's staff.
 - ii. Consultant will not provide a testing laboratory. This scope assumed the City will engage their own construction materials testing laboratory for soil density and concrete strength.
 - iii. This scope assumes City will provide their own inspection staff to inspect tank site work, yard piping, building permit and standard code inspections.

J. Task 16 – Welding Inspection Services: Consultant will retain Boswell & Reyes International as a subconsultant and perform the following tasks:

EXHIBIT A SCOPE OF SERVICES

- a. Provide welding inspection services during the tank construction. Resident representation or full time inspection services are an additional service.
- b. Visit the project 1 time to attend a Preconstruction Meeting in Sherman, Texas. No report will be provided by BRI for attendance of the meeting.
- c. Inspector shall perform inspection and testing per AWWA D107.
- d. Visit project up to 8 times over a 12 week period for steel erection and welding inspection. Certified Welding Inspector, Inspection to include:
 - i. Inspection of tank construction for compliance with approved plans and specification.
 - ii. Inspection welding electrodes.
 - iii. Inspection of weld joint fit up.
 - iv. Inspection of weld root passes, weld filler passes and cap weld passes.
 - v. One site visit to witness X-ray testing performed by prime contractor's 3rd party X-ray company.
 - vi. Provide reports for inspection visits that include photos once per week.
- e. Project manager, attend online construction meetings 1 per month, for 4 months.
- f. Project management and administration, does not include site visits.

K. Task 17 – Thresh-hold Spot Surface Preparation and Coating Inspection

Services: Consultant will retain Boswell & Reyes International as a subconsultant and perform the following tasks:

- a. Provide Thresh-hold/Part Time Spot Surface Preparation and Coating Inspection Service during the interior and exterior coating processes for the elevated tank. Resident representation or full time inspection services are an additional service.
- b. Visit project up to 56 times for painting inspection of the steel tank. NACE Level I Inspector, Inspection to include:
 - i. Verify shrouded containment of abrasive blasting process.
 - ii. Verify abrasive blasting materials.
 - iii. Inspection of abrasive quality of prepared surfaces.
 - iv. Inspection of anchor profile of prepared surfaces.
 - v. Verify coating batch numbers and manufacture dates - shelf life.
 - vi. Verify mixing of coatings for application.
 - vii. Inspection and measure application of coating.

EXHIBIT A SCOPE OF SERVICES

- viii. Witness the contractor perform tank interior Holiday testing.
- ix. Provide reports for inspection visits that include photos once per week.
- c. Project manager, attend one pre-paint meeting at the project site.
- d. Project manager, attend construction meetings 1 per month, for 4 months.
- e. Project management and administration, does not include site visits.

EXHIBIT A SCOPE OF SERVICES

V. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

- A. Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:
- a. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
 - b. Appearances before regulatory agencies.
 - c. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.
 - d. Special investigations involving detailed consideration of operation, maintenance, and overhead expense; preparation of rate schedules; preparation of special reports and an engineer's certificate as required for marketing bonds; earnings and expense statements; preparation of assessment rolls; special feasibility studies; appraisals; valuations; and material audits or inventories required for certification of force account construction performed by the City.
 - e. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
 - f. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
 - g. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
 - h. Revision of reports and Construction Contract Documents after specific approval by City.
 - i. Subsurface Utility Engineering that involves Level "A" or "B" identification of a utility.
 - j. Landscaping and/or irrigation design services for the site.
 - k. Design of onsite generator or portable generator provisions.
 - l. Coordination with existing or future cellular providers.
 - m. Geotechnical additional services:
 - i. Additional exploratory drilling and associated laboratory testing due to soft or loose soil conditions, other unexpected site conditions, or additional

EXHIBIT A SCOPE OF SERVICES

- structures.
- ii. Detailed settlement studies or other engineering issues resulting from soft and/or loose soil conditions, or other unexpected site conditions.
 - iii. Site clearing required for access relating to geotechnical drilling and exploration.
 - iv. Landowner or agency site access coordination or permitting relating to geotechnical drilling and exploration.
 - n. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by Consultant as an Additional Service.
 - o. Provide follow-up professional services during Contractor's warranty period.
 - p. Preparation of the following: a detailed jurisdictional determination report; pre-construction notification for nationwide or regional general 404 permit coverage; a formal written request for USACE authorization under a letter of permission procedure; a standard individual Section 404 permit application; an Environmental Information Document, Environmental Assessment, or an Environmental Impact Statement; and meetings or consultation with the USACE or other resource agencies, except as specifically noted in the scope of services.
 - q. Phase I/II Environmental Site Assessment.
 - r. Archeological Field Survey.
 - s. Scope of Services for the Project in Relation to Article 3, Section 3.1.4 of the Standard Form Agreement – Relating to the Project, the parties agree that at the time of the execution of the Agreement, the requirements of the Barriers Act are not applicable to the Scope of Services to be performed by Consultant under this Agreement.
 - t. Detailed construction staking.
 - u. Full time construction inspection services.
 - v. Trench excavation safety plan.
 - w. Public Meetings, unless noted in the scope of services.
 - x. Tree Survey, unless noted in the scope of services.
 - y. Storm Water Pollution Prevention Plans.

EXHIBIT B
PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

A. Study / EST Siting Assessment (Expected Completion: June 2022)	\$64,900
B. Intermediate Design Plans (60%) (Expected Completion: September 2022)	\$50,850
C. Final Design Plans (90% and 100%) (Expected Completion: March 2023)	\$159,210
D. Bid Phase Services (Expected Completion: June 2023)	\$22,150
E. Construction Administration (Expected Completion: October 2024)	\$110,605
F. Record Drawings (Expected Completion: November 2024)	\$10,590
<u>Total Basic Services (Lump Sum)</u>	<u>\$418,305</u>

II. Special Services

A. Topographic Survey (Expected Completion: July 2022)	\$15,290
B. EST Site Platting (Expected Completion: October 2022)	\$7,870
C. Site Acquisition Services (Expected Completion: February 2023)	\$16,320
D. Existing EST Paint Analysis (Expected Completion: May 2022)	\$12,990
E. Geotechnical Investigations (Expected Completion: October 2022)	\$37,915
F. Environmental Services (Expected Completion: September 2022)	\$9,560
G. Tank Logo Concepts / Rendering (Expected Completion: September 2022)	\$24,050
H. Bowl Lighting Analysis / Design (Expected Completion: December 2022)	\$9,620

I. Part-Time Resident Representation Services (Expected Completion: October 2024)	\$50,380
J. Welding Inspection (Expected Completion: April 2024)	\$18,340
K. Coating System Inspection (Expected Completion: July 2024)	\$75,090

<u>Total Authorized Special Services</u>	<u>\$277,425</u>
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<i>Project Budget, Grand Total (Not-To-Exceed)</i>	<i>\$695,730</i>
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EXHIBIT C
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

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

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

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

II. **GUIDELINES FOR DIRECT EXPENSES.**

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

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

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

**EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES**

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

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

EXHIBIT F

CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY Date Received	
1 Name of vendor who has a business relationship with local governmental entity.	N/A	
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed.		
N/A Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 Signature of vendor doing business with the governmental entity 4-27-2022 Date		



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 5.

Meeting Date: 05/02/2022

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6882

Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for the Lake Texoma Pump Station Expansion Preliminary Design Project

Issue:

To consider a contract for professional services with Freese and Nichols, Inc. for Lake Texoma Pump Station Expansion Preliminary Design project.

Background:

As a result of major industrial developments and large planned developments in the City, pumping capacity improvements are needed at the Texoma Lake Pump Station to properly serve the City. This professional services contract will provide a preliminary study and assessment of the existing pumps to determine the most economical means of increasing the pumping capacity at the site. This contract will provide a technical memo and preliminary design of the recommended improvements.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this contract is \$154,000.00. This will be funded by 2022 GTUA Bond Funds.

Staff Recommendation:

Freese and Nichols, Inc. was one of seven engineering firms interviewed for this work and was determined to be the most qualified to perform these services. Staff has negotiated a reasonable fee for these services. It is recommended that the contract for professional services with Freese and Nichols, Inc. for the design of the Lake Texoma Pump Station Expansion Preliminary Design project be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6882

Agreement

Location Map

RESOLUTION NO. 6882

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. FOR DESIGN OF THE LAKE TEXOMA PUMP STATION EXPANSION PRELIMINARY DESIGN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Freese and Nichols, Inc. for design of the Lake Texoma Pump Station Expansion Preliminary Design project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

**BY: _____
DAVID PLYLER, MAYOR**

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

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
FREESE AND NICHOLS, INC
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2022:

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

and Consultant: **Freese and Nichols, Inc.**
 5805 Main Street, Suite B
 Frisco, Texas 75034
 Telephone: (972) 624-9201

for the following Project: **Lake Texoma Pump Station Expansion Preliminary Design**

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

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Lake Texoma Pump Station Expansion Preliminary Design Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a lump sum basis in an amount not to exceed **one hundred fifty-four thousand dollars (\$154,000.00)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Project Design Budget Summary as set forth in Exhibit B.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in Exhibit C, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written

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

- 3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be solely responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City.
- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in Exhibit B, and consistent with Exhibit D, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.
- 3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in Exhibit A of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly

basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:

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

Hourly Billable Rates by Position

Position	Hourly Rate Range	
Professional 1	85	159
Professional 2	107	168
Professional 3	131	244
Professional 4	163	262
Professional 5	199	375
Professional 6	211	427
Construction Manager 1	95	189
Construction Manager 2	116	204
Construction Manager 3	179	240
Construction Manager 4	219	310
CAD Technician/Designer 1	77	158
CAD Technician/Designer 2	112	169
CAD Technician/Designer 3	143	223
Corporate Project Support 1	56	135
Corporate Project Support 2	78	188
Corporate Project Support 3	112	285
Intern/Coop	45	115

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

or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

- 3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter “D” of the TEX. GOV’T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project (“Scope of the Project”) or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant’s compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant’s compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

- 3.10 **Fixed Budget Limit for Construction Cost** - If a fixed budget limit for the

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

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

relating to the Project shall be at City's own risk.

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

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and

will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance

of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S

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

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF

CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:
Clayton C. Barnard, P.E.
Principal/ Vice President
Freese and Nichols, Inc.
5805 Main Street, Suite B
Frisco, TX 75034
Telephone: (972) 624-9207
Email: ccb@freese.com

ARTICLE 12 MISCELLANEOUS

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

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

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

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

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

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

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

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

122 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

123 **Attorney's Fees** – If either party files any action or brings any proceeding against

the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.

- 124 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 126 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 127 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 128 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 129 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 1210 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

- 1211 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 1212 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 1213 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 1214 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 1215 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 1216 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 1217 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 1218 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 1219 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship

between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

- 1220 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 1221 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 1222 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2021-2022 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.
- 1223 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.
- 1224 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

CITY:

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

CONSULTANT:

Freese and Nichols, Inc.
a Texas corporation

By: _____

Robby Hefton, City Manager

By: _____



Clayton C. Barnard
Principal / Vice President

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

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

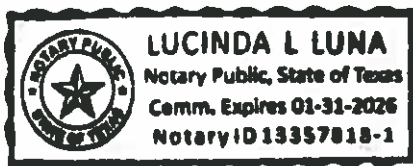
GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY
OF _____ 2022.

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

STATE OF TEXAS §
 §
COUNTY OF Collin §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **CLAYTON C. BARNARD**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **FREESE AND NICHOLS, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 27 DAY
OF April 2022.



Lucinda L. Luna

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 01-31-2026

EXHIBIT A
SCOPE OF SERVICES

I. PROJECT DESCRIPTION

- A.** The City of Sherman desires to expand the capacity of their pumping at the existing Lake Texoma Pump Station. This project will include a preliminary design phase only to review several options available for this expansion. There are eight pump slots in the pump station. Four of these are filled by large pumps primarily used by NTMWD. Three of the slots are filled by 7 MGD pumps primarily used by City of Sherman when the large pumps are idle. The City of Sherman needs greater capacity to fill the gap in pumping between the existing size of their three pumps and the increasing demand at the Water Treatment Plant (WTP). The expansion may include a new 25 MGD pump in the remaining empty slot. Other alternatives to be evaluated include replacement of one or more of the existing pumps. This preliminary study will be completed with the goal of establishing the required firm capacity for the City of Sherman pumps. The study will include evaluation of variable frequency drives (VFDs) to determine the flow range available from the Lake Texoma Pump Station to the Sherman WTP.
- B.** Our understanding is there are two ongoing projects at the Lake Texoma Pump Station.
- i City of Sherman – Installation of a backup generator, design by Parkhill, Smith and Cooper.
 - ii North Texas Municipal Water District (NTMWD) – Electrical improvements, design by CDM Smith. This project includes replacement of major electrical equipment and expansions on the site for new electrical building.
 - iii Each of these projects will require coordination by Consultant in order to develop a preliminary design.
- C.** An additional professional services agreement will be required for the final design phase, bid phase, and construction phase services by Consultant.

II. GENERAL REQUIREMENTS

- A.** Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B.** Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, NTMWD, Greater Texoma Utility Authority (GTUA), City of Sherman, and any other entity which has facilities within or adjacent to the Project.

EXHIBIT A SCOPE OF SERVICES

- C. Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
- D. The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
- E. Communications and Reporting:
 - i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
 - ii Attend review meeting with the City at the end of each design phase.
 - iii Prepare and submit monthly invoices in the format acceptable to the City.
 - iv Prepare and submit monthly progress reports.
 - v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
 - vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
 - vii With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.
 - viii Attend additional project coordination meetings, if needed.

III. TASK SUMMARY. BASIC SERVICES

A. Preliminary Design Phase

- a. Focused Site Visit:
 - i. CONSULTANT will perform a more detailed site visit to the PS site to document existing conditions and better define specific rehabilitation needs.
 - ii. During the site visit, CONSULTANT will interview City water system Operations staff to better understand system operations and operator preferences.

EXHIBIT A SCOPE OF SERVICES

- b. Hydraulic Analysis: CONSULTANT will coordinate efforts with the ongoing Water Master Plan to identify recommended capacity requirements for the PS.
 - i. Review available pumping records from the past five years to determine pumping from the PS and inflow to the WTP to understanding the seasonal variations. City of Sherman will make available electronic records for daily flow into the WTP. FNI with City's assistance will request daily pumping flow records from NTMWD
 - ii. Review impact of new industrial customer and the expansion planned for the WTP to determine any gaps in the future needs of the PS when NTMWD pumps are idle. Consider that NTMWD pumps may be idle at any time of year and the City must have capacity to meet peak demands from WTP. No changes for the existing delivery flow rates to Panda will be considered.
 - iii. Review the raw water storage planned at the WTP. Analyze the cycle time for the existing constant speed pumps and the proposed variable or constant speed pump. The basis will be on active and total storage volume assumptions agreed upon with the City. This task is not intended as optimization for the sizing of the reservoir but is intended as reviewing the size of pumps and need for variable speed.
 - iv. Using previous analyses on NTMWD system, develop system curves and proposed pump curves for delivery of water from PS to WTP. Potential Pumping Alternatives include:
 - a. Adding one pump, nominally 25 MGD but with the size to be confirmed as part of this study
 - b. Adding two pumps, one in empty slot and one in slot replacing an existing pump
 - c. Adding three pumps to replace existing pumps (see below for condition evaluation)
 - d. Adding constant speed pump or adding variable speed pumps
- c. Condition Assessment of Existing Equipment
 - i. Following the site visit and with input from City staff, review the condition and need for replacement of existing mechanical equipment at the pump station. This will be focused on the City's existing pumps and valves.
 - ii. Condition assessment will not include the structure and building systems.
 - iii. It is assumed that the pump station HVAC systems will be improved as part of the NTMWD project. A detailed HVAC review will not be performed as the City's pumps will be smaller and not running concurrent with the larger NTMWD pumps.
 - iv. It is assumed the pump station electrical system from Oncor to the feeder for the City of Sherman pumps will be improved as part of the NTMWD projects. The existing Motor Control Center (MCC) for the three Sherman pumps will be reviewed and identify means for replacement. This will include coordination with the NTMWD's engineer.
 - v. Coordination with NTMWD's engineer on pump starting requirements. It is

EXHIBIT A SCOPE OF SERVICES

- assumed the improved Oncor system will be all starting of any motors installed at the station. As the proposed pumps are smaller than the existing NTMWD pumps, no direct coordination is planned with Oncor during this phase.
- vi. Review improvements needed for City of Sherman SCADA, PLC and communications to the PS.
- d. Rehabilitation and Expansion Alternatives:
- i. Recommendations for installation of pumps and motors.
 - ii. Recommendations on the pump flow rates, pump operations and instrumentation and controls.
 - iii. Contact various pump manufacturers to determine pumps that are available for the station. Evaluate selections by manufacturers.
 - iv. Recommendation, one-line diagram, and a plan view layout of an electrical building for the City of Sherman's electrical improvements.
 - v. Preliminary layout of the pump station, showing the proposed mechanical and electrical equipment, piping, and valves. The proposed layout would include any necessary electrical room.
 - vi. Consider operational shutdowns as part of the rehabilitation and expansion. Identify information from NTMWD's project team that may require facility shutdown and impact City of Sherman WTP.
- e. Project Coordination Meetings
- i. Attend up to two (2) meetings with NTMWD and their engineering consultant. The purpose of the first meeting will be to confirm the improvements planned in the current phase of the electrical rehabilitation project. The purpose of the second meeting will be to review preliminary design recommendations from this study and the implementation of multiple projects at the facility.
 - ii. Attend up to one (1) meeting with City of Sherman's engineering consultant for the generator project (Parkhill).
 - iii. Attend up to one (1) meeting with GTUA for the project.
 - iv. No separate meetings with USACE, Oncor, or other agencies are planned in this phase.
- f. Develop Opinion of Probable Construction Costs: CONSULTANT will develop an opinion of probable construction cost for recommended capacity and rehabilitation improvements at the PS. The cost estimate will include a line-item summary of construction elements in addition to engineering, survey, contractor overhead and profit, and contingency.
- g. Draft Technical Memorandum: CONSULTANT will draft technical memorandum with a summary of the assumptions, methodology, recommendations, and opinion of probable construction cost (OPCC). CONSULTANT will deliver one electronic PDF copy of the technical memorandum. Technical memorandum will include figures for the recommended alternative for expansion but will not include figures for other alternatives that are not recommended. Figures will include:

EXHIBIT A SCOPE OF SERVICES

- i. Pump room floor plans (upper and lower level)
- ii. Pump room section (proposed pump only)
- iii. Electrical one-line diagram
- iv. Electrical room floor plan
- v. Preliminary process and instrumentation diagram
- vi. Communications architecture diagram
- h. Review Workshop: CONSULTANT will attend a workshop to review the findings and recommendations outlined in the technical memorandum.
- i. Final Technical Memorandum: CONSULTANT will incorporate comments received from the City and finalize the technical memorandum. CONSULTANT will provide one electronic PDF copy and two (2) hard copies of the final technical memorandum.

B. Intermediate Design Plans (60%)

- a. Not included in this authorization.

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

- a. Not included in this authorization.

D. Bid Phase Services

- a. Not included in this authorization.

E. Construction Phase Services

- a. Not included in this authorization.

F. Special Services

- a. None included in this authorization.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

- A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed

**EXHIBIT A
SCOPE OF SERVICES**

upon in writing by both parties before the services are performed. These Additional Services include the following:

1. Final design, bidding, and construction phase services.
2. Site topographic survey.

EXHIBIT B
PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

A. Preliminary Design Technical Memorandum
(Expected Completion: Draft TM within Three Months of NTP, Final TM
within One Month of Review Comments) \$154,000.00

Total Basic Services (Lump Sum) \$154,000.00

II. Special Services

None: \$0.00

Total Authorized Special Services \$0.00

Project Budget, Grand Total (Not-To-Exceed) \$154,000.00

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

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

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

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

II. **GUIDELINES FOR DIRECT EXPENSES.**

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

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

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

**EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES**

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

**EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES**

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

Texoma Pump Station Improvements
(Needed by April 2024)

Description

Increase pumping capacity and pumping backup to existing three 7 MGD pumps with one 25 MGD pump.

Design (Freese & Nichols)

Estimated Design Cost FY22: \$700,000

Estimated Const. Cost FY23: \$6M



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 6.

Meeting Date: 05/02/2022

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO.6883

Authorizing Execution of a Professional Services Agreement with Huitt-Zollars, Inc. for Design of the Post Oak Sanitary Sewer Improvements

Issue:

To consider a contract for professional services with Huitt-Zollars, Inc. for engineering services to design the Post Oak Sanitary Sewer Improvements

Background:

Existing sanitary sewer mains along Post Oak Creek between FM 1417 and Lamberth Road as well as west of Nantucket need to be replaced and relocated due to erosion issues along the creek slopes. Huitt-Zollars, Inc. has already performed an alignment study to determine the most economical location to install the new mains and provide appropriate access for future maintenance. This design contract will provide construction drawings for approximately 5,925 linear feet of 8 to 18-inch sewer mains along Lamberth Road, Nantucket Drive, Vancouver Place cul-de-sac, and Canyon Creek Drive.

Origination:

Engineering Department

Financial Consideration:

The total Engineering Services fee will be \$404,800.00 Funding is in the GTUA Series 2021 Open Market Bonds.

Staff Recommendation:

Huitt-Zollars, Inc. is fully qualified to perform these services and staff has negotiated a reasonable fee for these services. It is recommended that the contract for professional services with Huitt-Zollars, Inc. for engineering services to design the Post Oak Sanitary Sewer Improvements be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6883

Agreement

Location Map

RESOLUTION NO. 6883

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DESIGN OF THE POST OAK SANITARY SEWER IMPROVEMENTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Huitt-Zollars, Inc. for Design of the Post Oak Sanitary Sewer Improvements, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TX on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

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

**BY: _____
DAVID PLYLER, MAYOR**

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
HUITT-ZOLLARS, INC.
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2022:

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

and Consultant: **Huitt-Zollars, Inc.**
 5430 LBJ Freeway
 Suite 1500
 Dallas, Texas 75240
 Telephone: (214) 871-3311
 Facsimile: (214) 871-0757

for the following Project: **Post Oak Sanitary Sewer Improvements**

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

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Post Oak Sanitary Sewer Improvements Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) on a lump sum basis in an amount not to exceed **Four Hundred Four Thousand Eight Hundred Dollars (\$404,800.00)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Project Design Budget Summary as set forth in Exhibit B.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in Exhibit C, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request

from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

- 3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be solely responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City.
- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.
- 3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:
- 3.3.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.
- 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

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

Huitt-Zollars 2022 Hourly Rate Sheet

Position	Hourly Rate
Principal	\$285.00
Sr. Project Manager	\$275.00
QA Manager	\$250.00
Design Principal	\$240.00
Sr. Structural Engineer	\$240.00
Project Manager	\$225.00
Sr. Civil Engineer	\$220.00
Sr. Mechanical Engineer	\$205.00
Sr. Electrical Engineer	\$195.00
Civil Engineer	\$180.00
Structural Engineer	\$195.00
Mechanical Engineer	\$160.00
Electrical Engineer	\$160.00
Plumbing Engineer	\$160.00
EIT	\$130.00
Sr. Architect	\$220.00
Architect	\$165.00
Architect Intern 1	\$100.00
Architect Intern 2	\$115.00
Architect Intern 3	\$145.00
Sr. Landscape Architect	\$195.00
Landscape Architect	\$155.00
Landscape Architect Intern	\$115.00
Sr. Planner	\$255.00
Planner	\$165.00

Planner Intern	\$115.00
Sr. Sustainability Professional	\$175.00
Sustainability Professional	\$145.00
Sr. Designer	\$160.00
Designer	\$140.00
Sr. CADD Technician	\$140.00
CADD Technician	\$110.00
Survey Manager	\$210.00
Sr. Project Surveyor	\$200.00
Project Supervisor	\$150.00
Survey Technician	\$120.00
1-Person Survey Crew	\$120.00
2-Person Survey Crew	\$180.00
3-Person Survey Crew	\$205.00
Construction Manager	\$200.00
Resident Engineer	\$155.00
Sr. Resident Project Representative	\$180.00
Resident Project Representative	\$140.00
Sr. Project Support	\$110.00
Project Support	\$90.00

Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

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

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

parties before the services are performed.

- 3.10 **Fixed Budget Limit for Construction Cost** - If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in the following paragraph. All adjustments in the scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of **\$4,849,000** due to the negligence of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project. Absent negligence on the part of the Consultant in making its estimates of probable Construction Cost, providing services as defined in Exhibit A shall be the limit of the Consultant's liability arising from the establishment of such fixed limitation of Construction Costs. The Consultant shall be entitled to compensation for all other services performed in accordance with this Agreement.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

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

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

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT’S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of City for

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

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance

of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 10 INDEMNITY

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

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

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF

CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

John Ho, P.E.
Vice President
Huitt-Zollars, Inc.
5430 LBJ Freeway
Suite 1500
Dallas, Texas 75240
Telephone: (214) 871-3311
Email: JHo@Huitt-Zollars.com

ARTICLE 12 MISCELLANEOUS

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

- 12.1.1 **Exhibit A**, Scope of Services.
- 12.1.2 **Exhibit B**, Project Engineering Budget Summary.
- 12.1.3 **Exhibit C**, Guidelines for Computer Aided Design and Drafting (CADD).
- 12.1.4 **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.
- 12.1.5 **Exhibit E**, Contractor Insurance Guidelines.
- 12.1.6 **Exhibit F**, Conflict of Interest Questionnaire, Form CIQ.
- 12.1.7 **Exhibit G**, Project Location Map

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

- 122 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting

of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

- 123 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 124 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 126 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 127 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 128 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 129 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of

either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

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

- 1218 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 1219 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 1220 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 1221 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 1222 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2021-2022 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.
- 1223 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

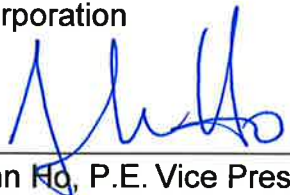
1224 **Reference to City** – When referring to “City,” this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

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

CONSULTANT:
Huitt-Zollars, Inc.
a Texas corporation

By: _____
Robby Hefton, City Manager

By:  _____
John Ho, P.E. Vice President

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

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

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

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

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **JOHN HO**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **HUITT-ZOLLARS, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

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

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

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

The City of Sherman desires to improve the existing sanitary sewer mains in the vicinity of Post Oak Creek area. The new limits of the proposed sanitary sewer is as follows: Line A, starts at the intersection of Post Oak Creek and W. Lamberth Road, traverse north along W. Lamberth, Nantucket and ends at the cul-de-sac of Vancouver Place; approximately 2,500 feet. Line B, also starts at the intersection of Post Oak Creek and W. Lamberth Road, traversing south along W. Lamberth, Canyon Creek and north along FM 1417 (within the Grace Methodist Church property and ends at Post Oak Creek just south of Mimosa Drive, approximately 3,425 feet. Additionally, a 30-foot aerial crossing south of Mimosa will be included. The proposed routes are generally shown on attached **Exhibit G**.

Scope of Services includes design survey, environmental investigation, geotechnical investigation, subsurface utility engineering, design, bidding, and construction administration support.

II. GENERAL REQUIREMENTS

- A.** Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B.** Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
- C.** Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
- D.** The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.

EXHIBIT A
SCOPE OF SERVICES

E. Communications and Reporting:

- i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
- ii Attend review meeting with the City at the end of each design phase.
- iii Prepare and submit monthly invoices in the format acceptable to the City.
- iv Prepare and submit monthly progress reports.
- v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
- vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
- vii With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.
- viii Attend additional project coordination meetings, if needed.

III. TASK SUMMARY, BASIC SERVICES

A. Preliminary Design Phase

- a. Prepare preliminary engineering review drawings to include preliminary horizontal and vertical alignments of all proposed improvements, construction plans on 11" x 17" sheets with a scale of 1" = 40' H and 1" = 5' V on 11" x 17" sheets. If necessary, report in sufficient detail to indicate clearly any of the problems involved and provide alternate solutions available to the City. Include preliminary layouts, a right-of-way map, sketches, and cost estimates for the Project and set forth clearly the Consultant's recommendations for any alternate designs.
- b. Sanitary sewer, water and storm drains will be shown on the plans based on field information and surveys collected by the Consultant and from existing "Record Drawings" provided by the City of Sherman. Other utilities should be shown on the plans based on field information and surveys collected by the Consultant, utility locates requested by the Consultant, and any available "Record Drawings" that the Consultant can obtain from other utilities.
- c. Depending on comments received from the City's review and field investigations, another set of preliminary phase construction drawings may be required.

EXHIBIT A
SCOPE OF SERVICES

- d. Upon completion of the Preliminary Design Phase, the Engineer will advise the City of any geotechnical, soil, foundation, or other subsurface investigations or any special surveys, Level B or A SUE, or special testing which, in the opinion of the Consultant, may be required for the proper execution of the project, and assist the City in arranging for the conduct of such investigations and tests. The performance of geotechnical investigations and tests will not be a part of the Consultant's Basic Engineering Services and will not be included unless specifically authorized in writing under "F. Special Services."
- e. Prior to the Preliminary review meeting with the City, the Consultant shall schedule and attend a project site visit with the City Project Manager and Construction personnel to walk the project. The Consultant shall summarize the City's comments from the field visit and submit this information to the City in writing.
- f. The Consultant will consult with the City, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. Consultant will design City facilities to avoid or minimize conflicts with existing utilities, and where known and possible, consider potential future utilities in designs.

B. Intermediate Design Plans (60%)

- a. Prepare intermediate engineering review drawings that address all comments from the preliminary engineering review, including detailed construction-related notes. A general notes sheet(s), coordinate control sheet(s), proposed erosion control plan sheet(s), sanitary sewer plans/profiles and City Standard detail sheet(s) will be required for the project.
- b. Prepare Preliminary Project Manual, including Bid Form and Special Conditions and technical specifications.

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

- a. Prepare final engineering review drawings that address all comments from the intermediate review.
- b. Prepare detailed cost estimates based on current unit prices from the proposal of authorized construction, which shall include summaries of bid items and quantities on the unit price system of bidding, wherever practical.

EXHIBIT A
SCOPE OF SERVICES

- c. Finalize miscellaneous plan sheets, including cover sheet, index, general notes, project control and applicable City standard details.
- d. Submit three (3) final sealed copies each of any necessary right-of-way or easement documents.
- e. When required by the nature of the project, the Consultant shall provide necessary exhibits and attend a public meeting with the City.
- f. Upon completion of the final design review, the Consultant shall furnish to the City up to four (4) additional copies and a pdf of the construction drawings to be forwarded to the utility companies.
- g. Upon completion of the final design review, the Consultant shall furnish to the City, where required by the circumstances of the assignment, the engineering data, construction plans, completed forms, and reports necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid or for planning advances not included in Basic Engineering Services).

D. Bid Phase Services

- a. Prepare bid set drawings and specifications that address all comments from the final design review and additional information provided by utility relocations and right-of-way negotiations.
- b. Furnish to the City all necessary copies of approved Construction Contract Documents needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of Construction Contract Documents in excess of eight (8) copies are to be paid for separately as provided hereinafter.
- c. Assist the City in the advertisement of the Project for competitive bids.
- d. Assist the City with any Pre-Bidders meetings.
- e. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.
- f. Assist the City in the opening and tabulation of bids for construction of the Project.

EXHIBIT A SCOPE OF SERVICES

- g. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the award of the construction contract.
- h. Assist in the preparation of formal Construction Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.
- i. The Consultant shall not be required to guarantee the accuracy of the final design Cost of Construction, but may be required to provide additional services at no cost to the City if bids for the Project exceed the fixed budget limit for the Construction Cost as provided in Article 3.

E. Construction Phase Services

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

EXHIBIT A SCOPE OF SERVICES

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

F. Special Services

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

- a. **Design Surveying** - to collect information required for design, including topographic surveying, and related office computations and drafting. All surveys and coordinate information shall be based on the NAD 83 CORS Grid Coordinate System utilizing control monuments established within the City of Sherman. This also includes refreshing and re-establishing benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. The streets, and utilities within the adjacent ROW will also be surveyed in order to determine the topography of the site. The survey will include cross-sections and spot elevations taken at 50-foot intervals and at grade breaks in order to produce a topographic map with one foot contours suitable for civil design. Visible above ground improvements such as pavement, utilities, fences, mailboxes, and trees will be located and shown on the survey. Flow-line and pipe size information will be obtained for existing underground utilities that are accessible through manholes and or catch

EXHIBIT A SCOPE OF SERVICES

basins. A CADD-based topographic map will be prepared to show the results of the topographic survey. This does not include construction staking.

- b. **Legal Descriptions** - Furnish six (6) descriptive instruments related to the acquisition of easements. The description of these parcels should be rotated to match the bearings of the individual deeds. The payment for these instruments will be made on a per parcel basis unless otherwise indicated. As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the acquisition.
- c. **Geotechnical Investigation & Report** - obtain the services of a qualified geotechnical engineering laboratory to conduct soil and foundation investigations, including test borings, soil tests, and analyses of test results. Perform twelve (12) borings drilled throughout the project corridor (Phases A and B); 10 borings to a depth of 15 feet and 2 borings in Phase B to a depth of 25 feet. A report will be provided to show a summary of investigation, locations of borings, soil classification, and groundwater conditions.
- d. **Environmental Investigation** – Consultant will provide preliminary environmental investigation as follows:
 - a. Cultural Resources Desktop Analysis and THC Coordination
 - b. Waters of the US Delineation
 - c. Section 404/Nationwide Permit Assessment
- e. **Subsurface Utility Engineering** – Provide two (2) Level A SUE in the vicinity of W. Lamberth Road and Post Oak Creek, using the minimally intrusive excavation techniques that protect the integrity of the existing utilities.

IV. ITEMS NOT INCLUDED IN THE SCOPE OF SERVICES

- A **Additional Services not included in the Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:
 - 1. I&I Study
 - 2. Sewer Capacity Studies
 - 3. USACE Individual Permitting
 - 4. Fee for Permitting
 - 5. Traffic Control Plans

EXHIBIT A
SCOPE OF SERVICES

6. Trench Safety Plans
7. Construction Staking
8. Paving Plans/Profiles
9. Paving and Drainage Plans/Profiles
10. Water Plans/Profiles
11. Construction Inspections
12. Tree Mitigation Plans

EXHIBIT B
PROJECT DESIGN BUDGET SUMMARY

I. Basic Services	LINE A	LINE B
A. Preliminary Design Plans (30%) (Expected Completion: NTP + 120 Days)	\$ 29,800	\$ 34,700
B. Intermediate Design Plans (60%) (Expected Completion: 60 Days after City Review)	\$ 29,800	\$ 34,700
C. Final Design/Construction Plans (90%, 100%) (Expected Completion: 90 Days after City Reviews)	\$ 39,800	\$ 46,300
D. Aerial Crossing Plans	\$ 0	\$ 24,500
E. Bid Phase Services (Expected Completion: 30 Days after Final Approval)	\$ 9,500	\$ 9,500
F. Construction Phase Services	\$ 12,100	\$ 13,900
<i>Total Basic Services (Lump Sum)</i>	<u>\$121,000</u>	<u>\$163,600</u>
II. Special Services		
Design Surveying (Expected Completion: NTP + 60 Days)	\$ 23,700	\$ 35,900
Legal Descriptions, 6 parcels at \$3,600 each: (Expected Completion: 30 Days after 90% Plans)	\$ 0	\$ 21,600
Geotechnical Investigation & Report:	\$ 5,500	\$ 7,500
Environmental Investigation	\$ 0	\$ 7,600
Level "A" Subsurface Utility Engineering	\$ 9,200	\$ 9,200
<i>Total Authorized Special Services</i>	<i>\$38,400</i>	<i>\$ 81,800</i>
<i>Grand Total</i>	<i>\$159,400</i>	<i>\$245,400</i>
<i>Project Budget, Grand Total (Not-To-Exceed)</i>		<i>\$404,800</i>

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

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

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

- ☒ 4. Professional Liability
 - Minimum \$2,000,000.00 in the aggregate
 - Minimum \$1,000,000.00 each claim;
 - Minimum \$2,000,000.00 in the aggregate
- ☒ 5. Umbrella Coverage of Excess Liability Coverage
 - An amount of \$2,000,000.00
 - Minimum \$2,000,000.00 in the aggregate
- ☒ 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.
- ☒ 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- ☒ 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- ☒ 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- ☒ 10. The Certificate of Insurance must state the project title and bid number.
- ☐ 11. Other Insurance Requirements (State Below):

**EXHIBIT F
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ**

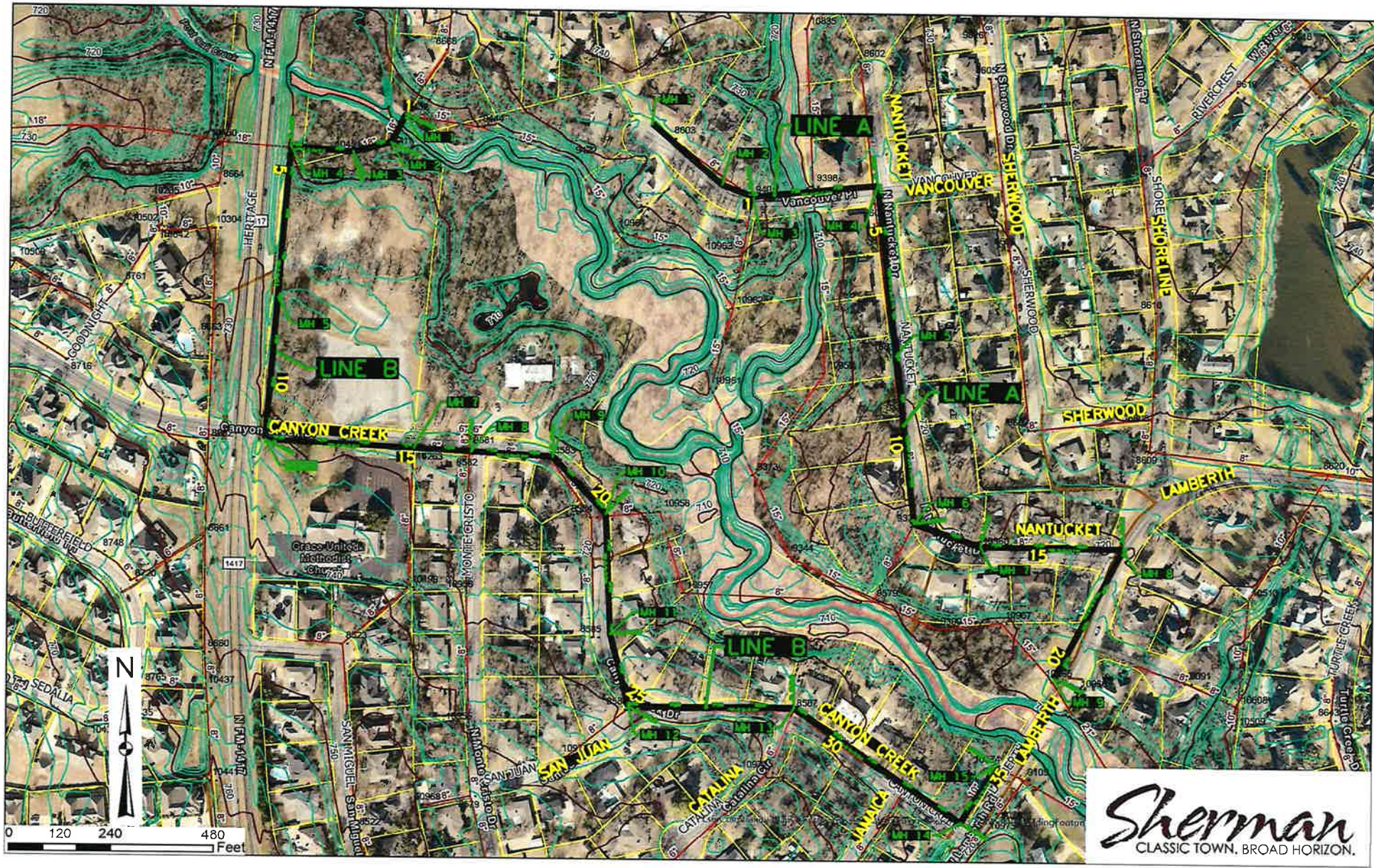
CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY	
1 Name of vendor who has a business relationship with local governmental entity. None		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. None Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☒ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☒ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more. None		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 Signature of vendor doing business with the governmental entity		4/27/2022 Date

Form provided by Texas Ethics Commission

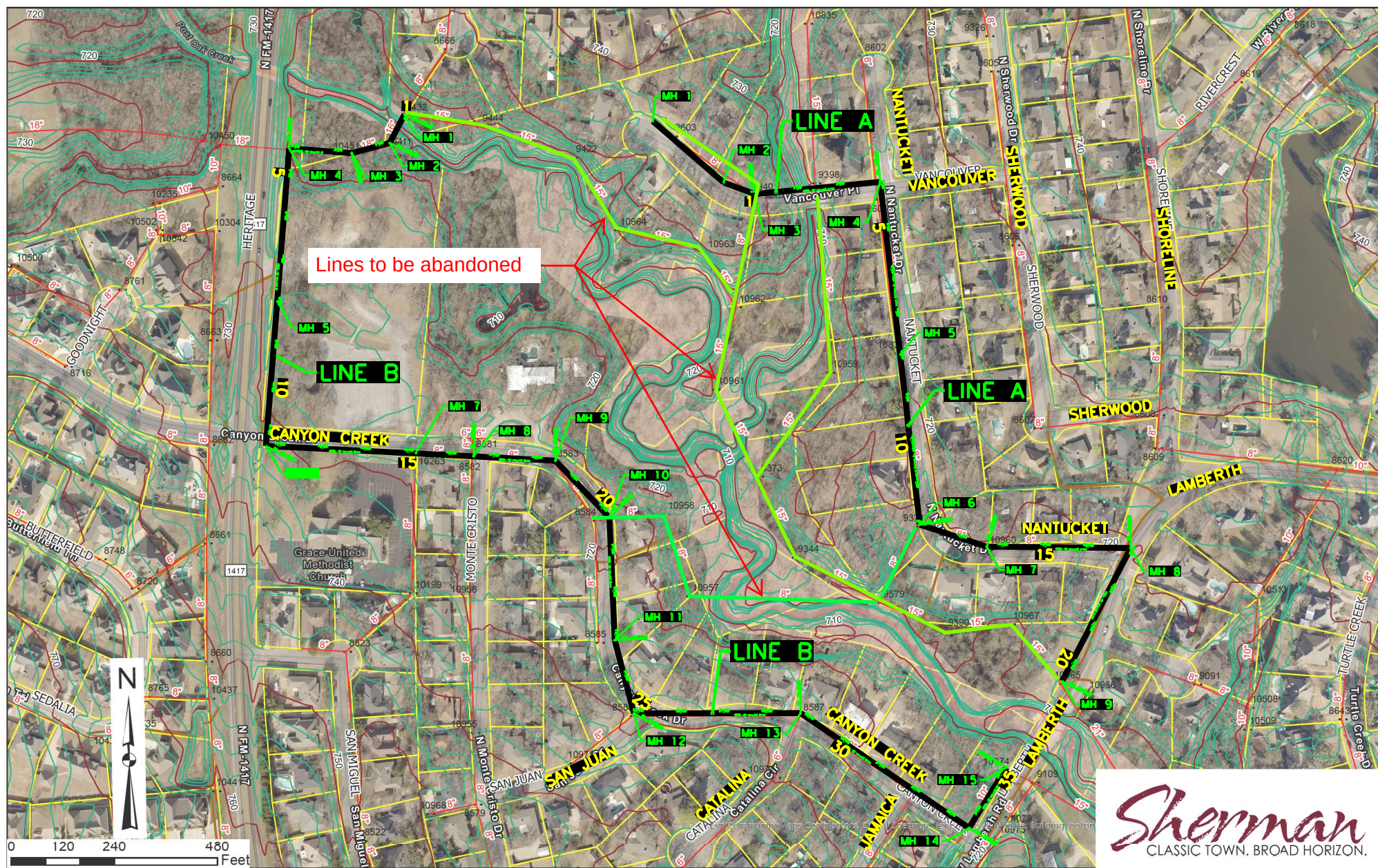
www.ethics.state.tx.us

Revised 1/1/2021

EXHIBIT G



Project Location Map



Sherman
CLASSIC TOWN. BROAD HORIZON.

Project Location Map



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 7.

Meeting Date: 05/02/2022

Prepared By: Theresa Hutchinson, Parks & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6884**

Awarding a Bid to and Authorizing Execution of a Contract with Professional Turf Products for the Purchase of a Toro Groundsmaster 4500 Sports Field Mower

Issue:

To consider awarding a bid to and authorizing execution of a contract to purchase a Toro Groundsmaster 4500 Sports Field Mower from Professional Turf Products of Euless, Texas.

Background:

A request to advertise for public bids was approved by the City Council in its meeting on March 21, 2022. The Invitation to Bid was publicly advertised; and one (1) vendor submitted a bid on April 21, 2022. City staff recommends awarding the contract to purchase a Toro Groundsmaster 4500 Sports Field Mower to Professional Turf Products, of Euless, Texas for \$89,911.91.

Origination:

Parks Maintenance Department

Financial Consideration:

Purchase will be funded by tax notes.

Staff Recommendation:

It is recommended awarding a bid to and execution of a contract with Professional Turf Products for the purchase of a Toro Groundsmaster 4500 Sports Field Mower.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6884

Bid Request and Bid Submittal

Sports Field Mower docs

Bid Tabulation

RESOLUTION NO. 6884

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH PROFESSIONAL TURF PRODUCTS FOR THE PURCHASE OF A TORO GROUNDSMASTER 4500 SPORTS FIELD MOWER; 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 Professional Turf Products of Euless, Texas, is hereby awarded the bid for the purchase of a Toro Groundsmaster 4500 sports field mower in the amount of Eighty-Nine Thousand Nine Hundred Eleven Dollars and Ninety-One Cents (\$89,911.91); and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a contract with Professional Turf Products for the purchase of a Toro Groundsmaster 4500 sports field mower, in accordance with all contract documents attached hereto and made a part hereof for all purposes. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2021-2022 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Invitation to Bid



**City of Sherman
PO Box 1106
Sherman, TX 75091-1106**

Invitation to Bid

For

**PURCHASE OF TORO GROUNDSMASTER 4500 SPORTS FIELD
MOWER
ITB No. 2022-10**

Publication Dates: Sunday April 3, 2022
Sunday April 10, 2022

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CITY OF SHERMAN, TEXAS

FINANCE DEPARTMENT

INVITATION TO BID - BID NO. 2022-10; PURCHASE OF TORO GROUNDSMASTER 4500 SPORTS FIELD MOWER

The enclosed **INVITATION TO BID (ITB)** and accompanying **SPECIFICATIONS** are for your convenience in bidding the enclosed referenced **PURCHASE OF TORO GROUNDSMASTER 4500 SPORTS FIELD MOWER** for the City of Sherman.

Questions may be addressed to the Finance Department at the address listed below. The bids will be opened at **2:00 p.m. on Thursday, April 21, 2022**, at the following address:

**City of Sherman – Finance Department
Municipal Building
405 N. Rusk Street
Sherman, TX
903-892-7215
craigl@cityofsherman.com**

Bids may be submitted by mail to the following address:

**City of Sherman
Finance Dept. – ITB for PURCHASE OF TORO GROUNDSMASTER 4500 SPORTS FIELD MOWER - No.
2022-10**

**P.O. Box 1106
Sherman, TX 75091-1106**

OR

Electronically at www.publicpurchase.com

OR

By delivery at the Municipal Building address listed above.

NOTICE TO BIDDERS

Bids will be received by the City of Sherman, Sherman, Texas, at the Finance Department, Attention: Craig Long, Sherman Municipal Building, 405 N. Rusk, Sherman, Texas 75091 until the hour **2:00 PM on the 21st day of April, 2022**, at which time bids duly delivered and submitted will be considered for supplying the following:

BID NO. 2022-10 – PURCHASE OF TORO GROUNDSMASTER 4500 SPORTS FIELD MOWER

The award is intended to be included on the agenda of a regularly scheduled meeting of the City Council at the following address:

**City Council Chambers
City Hall
220 W. Mulberry
Sherman, TX**

Each bid delivered to the City shall be sealed and clearly marked "PURCHASE OF TORO GROUNDSMASTER 4500 SPORTS FIELD MOWER 2022-10" on the exterior of the bid. Electronic submittals may only be made through Public Purchase at <https://www.publicpurchase.com>. No email or faxed bids will be accepted. Each bid shall be **manually signed and dated by a person having the authority to bind the firm in a contract. Bids that are not signed and dated will be rejected.**

Please note that all bids **must be received at the designated location or through Public Purchase by the deadline shown.** Bids received after the deadline will not be considered for the award of the contract, and shall be considered void and unacceptable. The Opening is scheduled for **2:00 p.m., Thursday, April 21, 2022**, at which time the sealed bids will be opened.

Any bid received after stated closing time will be returned unopened. If bids are sent by mail to the Finance Department, the bidder shall be responsible for actual delivery of the bid before the advertised date and hour for opening of bids. If the mail is delayed by the postal service, courier service, or an ISP (Internet Service Provider), beyond the date and hour set for the bid opening, bids thus delayed will not be considered.

The City of Sherman will receive sealed bids for: **PURCHASE OF TORO GROUNDSMASTER 4500 SPORTS FIELD MOWER.**

Bidders should carefully examine all terms, conditions, specifications and related documents. Should a bidder find discrepancies in or omissions from the specifications or related documents, or should there be doubt as to their meaning, the City of Sherman Finance Department should be notified immediately for clarification prior to submitting the bid. In the event of any conflict between the terms and conditions of these requirements and the specifications, the specifications

shall govern. In the event of any conflict of interpretation of any part of this overall document, the City of Sherman's interpretation shall govern.

Information concerning the bid specifications or bid process/procedures may be submitted in writing to Craig Long, Budget Analyst at craigl@cityofsherman.com, or via phone at (903) 892-7215.

Until the final awarding by the City of Sherman, said City reserves the right to reject any and/or all bids, to waive technicalities, to re-advertise, and proceed otherwise when the best interests of said City will be realized hereby.

[Rest of Page Intentionally Left Blank]

CITY OF SHERMAN GENERAL CONDITIONS

ADDENDA

It is the responsibility of the vendor to check for addenda. Addenda will be posted to: www.ci.sherman.tx.us and to www.publicpurchase.com.

ANNUAL CONTRACT FUNDING

The city operates on a fiscal year that ends on September 30th. Because state law mandates that a municipality may not commit funds beyond a fiscal year, this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

ASSIGNMENT OF BID/CONTRACT

The successful bidder may not assign their rights and duties under and award without the written consent of the City. Such consent shall not relieve the assignor of liability in event of default by their assignee.

BID CONSIDERATION / TABULATION

Until final award of the Contract, the city reserves the right to reject any or all bids, to waive technicalities, and to re-advertise for new bids, or proposed to do the work otherwise in the best interests of the City.

BID SUBMISSION

Bids may be submitted in person, by mail, or electronically at www.publicpurchase.com.

- Submit bids via mail to PO Box 1106, Sherman, TX 75091-1106.
- To submit a bid via mail, all documents must be returned and an original signature provided on the proposal to bidders sheet.
- Bids will not be accepted without a signature.
- Bids submitted by email or fax will not be accepted.
- The City is not responsible for mail service. See page 4, paragraph 2 of the Notice to Bidders.

BRAND NAMES

If items for which bids have been called for have been identified by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products will be considered for award if such products are clearly identified in the bids and are determined by the City to be equal in all material respects to the brand name products referenced. **Unless the bidder clearly indicates in their bid that they are offering an "equal product", their bid shall be considered as offering a brand name product referenced in the Proposal Schedule.**

CHANGES OR ALTERATIONS

No part of this bid may be changed/alterd in any way. Vendors must submit written requests to change any specifications/conditions with their proposal. ***Changes made without submission of a written request to this bid will result in disqualification.***

COMPLETING INFORMATION

Bidder must fill in all information asked for in the blanks provided under each item. Failure to comply may result in rejection of the Bid at the City's option.

CONTRACT CLAUSE

All bidders understand and agree that the vendor's bid response will become a legally binding contract upon acceptance in writing by the City. This contract may be superseded only if replaced with a more extensive contract that is agreed to by both parties.

DEFAULT

In case of default of the successful bidder, the city of Sherman may procure the articles from other sources and hold the bidder responsible for any excess cost occasioned thereby.

DELIVERY

The City reserves the right to demand bond or penalty to guarantee delivery by the date indicated. If order is given and the Bidder fails to furnish the materials by the guaranteed date, the City reserves the right to cancel the order without liability on its part. All prices are to be F.O.B. Sherman, Texas all freight prepaid.

DELIVERY DATE

Delivery date is an important factor to the City and may be required to be a part of each bid. The city of Sherman considers delivery time to be that period elapsing from the time the individual order is placed until that order or work thereunder is received by the City at the specified delivery location. The delivery date indicates a guaranteed delivery at Sherman, Texas. Failure of the bidder to meet guaranteed delivery dates or service performance could affect future City orders.

Whenever the Contractor encounters any difficulty which is delaying or threatens to delay timely performance (including actual or potential labor disputes), the Contractor shall immediately give notice thereof in writing to the City, stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by the City of any rights or remedies to which it is entitled by law or pursuant to provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delivery.

INDEMNIFICATION

In case any action in court is brought against the Owner, or any officer or agent of the Owner, for the failure, omission, or neglect of the vendor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the vendor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, materialmen, or suppliers the vendor shall indemnify and save harmless the Owner and his officers and agents, from all losses, damages, costs, expenses, judgments, or decrees arising out of such action.

INSURANCE

Deductibles, of any type, are the responsibility of the vendor/contractor.

MISCELLANEOUS

Except as to any supplies or components which the specifications provide need not be new, all supplies and components to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production and of the most suitable grade for the purpose intended. If at any time during the performance of this contract the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, they shall notify the City immediately, in writing, including the reasons therefore and proposing any consideration which will flow to the City if authorization to use supplies or components is granted.

The city of Sherman supports a recycling program. Recycled materials are acceptable and will be considered for award. The City desires to use recycled products when a comparable material/product is available. If your company distributes products made of recycled materials please submit an alternate bid for the items requested. All recycled products should meet the minimum standards established in the bid specifications provided. State any exceptions: costs, warranties and percentage of recycle materials used in the manufacture of the material/product. The City will determine the acceptability of the materials/product bid as an alternate.

Successful bidder(s) agrees to extend prices to all entities that have entered into or will enter into joint purchasing inter-local cooperation agreements with the city of Sherman. As such, the city of Sherman has executed an inter-local agreement with certain other governmental entities authorizing participation in a cooperative purchasing program. The successful vendor may be asked to provide product/services, based upon the bid price, to any other participant in the forum.

The City operates on a fiscal year that ends on September 30th. State law mandates that a municipality may not commit funds beyond a fiscal year; this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

PAYMENT TERMS & CONDITIONS

All bids shall specify terms and conditions of payment, which will be considered as part of, but not

control, the award of bid. City review, inspection, and processing procedures ordinarily require thirty (30) days after receipt of invoice, materials or service. Bids which call for payment before 30 days from receipt of invoice, or cash discounts given on such payment, will be considered only if in the opinion of the City the review, inspection and processing procedures can be completed as to the specific purchases within the specified time. It is the intention of the city of Sherman to make payment on completed orders within thirty (30) days of receiving invoicing unless unusual circumstances arise. Invoices shall be fully documented as to labor, materials and equipment provided.

PROVISIONAL CLAUSES

The city of Sherman will not enter into any contract where the cost is provisional upon such clauses as are known as "escalator" or "cost-plus" clauses.

REJECTION OF BIDS

The City reserves the right to reject any or all bids or to waive technicalities at its option when in the best interests of said City. Bids will be considered irregular if they show any omissions, alteration of form, additions, or conditions not called for, unauthorized alternate bids or irregularities of any kind. However, the City reserves the right to waive any irregularities and to make the award in the best interests of the City.

The City reserves the right to reject any or all bids, and all bids submitted are subject to this reservation. Bids may be rejected, among other reasons, for any of the following specific reasons:

- Bids received after the time limit for receiving bids as stated in the advertisement.
- Proposal containing any irregularities.
- Bids submitted via fax or email.
- Unbalanced value of any items.

Bidders may be disqualified and their bids not considered, among other reasons, for any of the following specific reasons:

- Reason for believing collusion exists among the Bidders.
- Reasonable grounds for believing that any Bidder is interested in more than one Proposal for the work contemplated.
- The Bidder being interested in any litigation against the City.
- The Bidder being in arrears on any existing contract or having defaulted on a previous contract.
- Lack of competency as revealed by a financial statement, experience and equipment, questionnaires, etc.
- Uncompleted work, which in the judgment of the City will prevent or hinder the prompt completion of additional work if awarded.

REQUEST FOR NON-CONSIDERATION

Bids deposited with the City cannot be withdrawn prior to the time set for opening bids. Request for non-consideration of bids must be made in writing to the Finance Department and received by the City prior to the time set for opening bids. After other bids are opened and publicly read, the Proposal for

which non-consideration is properly requested may be returned unopened. The Proposal may not be withdrawn after the bids have been opened, and the Bidder, in submitting the same, warrants and guarantees that this bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid will not and cannot be withdrawn because of any mistake committed by the Bidder.

SALES TAX

The total for each bid submitted must include any applicable taxes. Although the City is exempt from most City, State, or Federal taxes, this is not true in all cases. It is suggested that taxes, if any, be separately identified, itemized, and stated on each bid. The City cannot determine for the bidder whether or not the bid is taxable to the City. The bidder through the bidder's attorney or tax consultant must make such determination. Bills submitted for taxes after the bids are awarded will not be honored.

PROPOSAL DEFINITIONS:

"City" is the City of Sherman, Texas.

"Bidder" is an individual or business submitting a bid or proposal to the City of Sherman.

"Independent contractor" or "contractor" is one who contracts to perform work or furnish materials in accordance with a contract.

I. PROPOSAL TERMS

- A. The City of Sherman reserves the right to reject any and all proposals received as a result of this ITB. If a proposal is selected, it will be the most advantageous regarding price, quality of service, the independent contractor's qualifications and capabilities to provide the specified service, and other factors which the City of Sherman may consider. The City does not intend to award a contract fully on the basis of any response made to the proposal: the City reserves the right to consider proposals for modifications at any time before a contract would be awarded; and negotiations would be undertaken with the independent contractor whose proposal is deemed to best meet the City's specifications and needs.
- B. Proposals must be signed by an official authorized to bind the independent contractor to its provisions for a period of at least ninety (90) days. Failure of the successful bidder to accept the obligation of the contract may result in the cancellation of any award.
- C. In the event it becomes necessary to revise any part of the ITB, addenda will be provided. The deadline for submission of proposals may be adjusted to allow for revisions. To be considered, the entire proposal document, with any amendments, should be returned by the specified date, time and method identified on page 2 of this document.
- D. Proposals should be prepared simply and economically providing a straightforward, concise description of the independent contractor's ability to meet the requirements

of the ITB. Proposals shall be written in ink or typewritten. No erasures are permitted. Mistakes may be crossed out and corrected and must be initialed in ink by the person signing the proposal.

- E. The price quotations from the contractor stated in this proposal will not be subject to any price increase from the closing date of this ITB to the mutually agreed to date of contract.
- F. The City of Sherman reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire ITB.

[REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

Exhibit B

Contractor References

Customer Name: N/A

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Customer Name: N/A

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Customer Name: N/A

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Mailing Address (if different):

Phone: 817-785-1900

Fax: _____

Email: SALES@PROTURF.COM / LAUD@PROTURF.COM

Authorized Representative: DAVID LAU

Signature: 

Date: 4/21/2022

Acknowledgement of Addenda (if any): #1 _____ #2 _____ #3 _____

BID FORM

Bidder accepts all of the terms and conditions set forth in the Advertisement for Bid and the Bid Specification Package. Bidder has visited the sites and become familiar with and is satisfied as to the general conditions that may affect cost, progress, and performance of specified work.

Total Price for Toro Groundsmaster 4500
INCLUDING all fees:

\$ 89,911.91

Signature of Bidder 

Bidder (print name) DAVID LAU



Professional Turf Products, L.P.
 1010 North Industrial Blvd.
 Euless, Texas 76039
 Professional Turf Products
 (817) 785-1900
 sales@proturf.com



Count on it.



Ship To	City of Sherman	Date:	4/21/2022
Bill To		Tax Rate	
Contact	Sean Hemperly	Destination	6.00%
Address	1002 N Music, Sherman, TX 75091	Trade-In	
		Finance	
Phone	(903) 892-7344	Account Type	STD
Email		QMS: ID	Standard
Comments:			

Proposal

Qty	Model #	Description	Unit	Extended
1	30885	Groundsmaster 4500	\$ 84,154.20	\$ 84,154.20
5	30836	Leaf Mulching Kit	\$ 64.74	\$ 323.70
1	30408	800 Hour MVP Filter Kit	\$ 344.66	\$ 344.66
		Groundsmaster 4500		\$ 84,822.56

SubTotal	\$	84,822.56
Destination	\$	5,089.35
Tax (Estimated)	\$	-
TOTAL	\$	89,911.91

Comments:

For all New Equipment, Demo units may be available for up to 20% savings.

For all New Equipment, Refurbished units may be available for up to 40% savings.

Due to unexpected issues with much of our supply chain, we are experiencing longer lead times than we have seen in the past. We are doing everything we can to get products to you as quickly as possible.

Terms & Conditions:

- Prices & Finance Rates are subject to change at any time.
- Due to the volatility of inflation, rising transportation costs, and supply shortages, some orders may incur additional cost increases that are beyond the control of PTP and the vendors we represent. These pricing adjustments may be made from the time the order is entered through equipment delivery. Any adjustments will be communicated to customers with orders in the system with a new sale price as they occur.
- Order cancellations are subject to fees up to 10% of the original order value.
- Equipment delivery time is estimated once credit is approved & documents are executed & is contingent on Manufacturer availability.
- Payments by Credit Card are subject to convenience fee.
- Used and Demo equipment is in high demand and availability is subject to change.
 - Upon firm customer commitment to purchase & credit is approved, said equipment availability will be determined.
 - In the event equipment is unavailable at time of order, PTP will employ every resource to secure an acceptable substitute.
 - PTP strongly advises the customer to issue a firm PO as quickly as possible after acceptance of quotation.
- "Trade In Allowances" will be treated as a credit for future parts purchases on PTP account unless other arrangements have been made.

Returns Policy:

1. All returns & Canceled PO's are subject to restocking, refurbishing, usage, and shipping fees.
2. All returns must be able to be sold as new.
3. Items missing parts are non returnable.

Payment:

1. Terms are net 10 unless prior arrangements have been made.
2. Quoted prices are subject to credit approval.
 - A. PTP will work with third party financial institutions to secure leases when requested to do so.
 - B. When using third party financiers, documentation fees & advance payments may be required.
 - C. For convenience, monthly payments are estimated based on third party rate factors in effect at time of the quotation.
 - D. PTP assumes no liability in the event credit becomes unavailable or rates change during the approval process.
3. There will be a service charge equal to 1.5% per month (18% per annum) on all past due invoices.
4. By Law we are required to file a "Notice to Owner" of our intent to file lien in the event of payment default. This notice must be sent within 60 days of the date the original invoice and will happen automatically regardless of any special payment arrangements that may have been made.

Authorized Signature: _____

Date: _____

Exhibit C
City's Insurance Requirements

I. GENERAL INSURANCE REQUIREMENTS --

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

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

III. CERTIFICATE OF INSURANCE -- A Certificate of Insurance and all applicable endorsement(s) evidencing the required insurance shall be submitted prior to commencing work under this Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and all applicable endorsement(s) shall also be provided to City prior to the date the Agreement is renewed or extended.

IV. INSURANCE CHECKLIST -- "X" means that the following coverage is required for this Agreement.

Coverage Required		Limits
<u>X</u>	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
<u>X</u>	2. General Liability	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate.
—	3. XCU Coverage	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate.
—	4. Professional Liability	▪ Minimum \$1,000,000.00 each claim; ▪ Minimum \$2,000,000.00 in the aggregate.
—	5. Umbrella Coverage or Excess Liability Coverage	▪ An amount of \$ 2,000,000.00.
<u>X</u>	6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.	
<u>X</u>	7. General Liability Insurance provides for a Waiver of Subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.	

- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title.
11. Other Insurance Requirements (State Below):

Exhibit D
Affidavit of No Prohibited Interest

THE STATE OF TEXAS §

THE COUNTY OF TARRANT §

I, DAVID LAU, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

_____ Ownership of ten percent (10%) or more of the voting shares of the business entity.

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars (\$25,000) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars (\$25,000).

_____ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.

_____ Other: _____

X None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

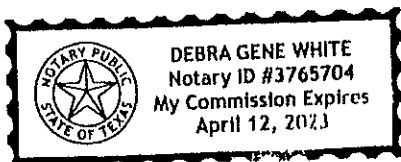
Signed this 21 day of APRIL, 2022.

DP L / CKU
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared DAVID LAU, and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this 21st day of April, 2022.

Debra Gene White
Notary Public in and for the State of TEXAS
My commission expires: 4/12/2023



CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity****OFFICE USE ONLY**

Date Received

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

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

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

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

1 Name of vendor who has a business relationship with local governmental entity.*PROFESSIONAL TURF PRODUCTS LP***2** ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)**3** Name of local government officer about whom the information is being disclosed.*NONE*

Name of Officer

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

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

☐ Yes☐ No

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

☐ Yes☐ No**5** Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).**7** *[Signature]*
Signature of vendor doing business with the governmental entity*7-21-22*
Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

CITY OF SHERMAN
 BID TABULATION
 Requirements for Purchase of Toro Groundsmaster 4500 Mower ITB
 BID OPENING Tuesday, April 21, 2022; 2:00 PM

Vendor	Lump Sum Pricing for Toro Groundsmaster 4500 Mower	NOTES
Professional Turf Prod.	\$89,911.91	



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 8.

Meeting Date: 05/02/2022

Prepared By: Theresa Hutchinson, Parks & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6885**

Authorizing the Purchase of a New 2022 Ram 2500 Crew Cab 4 x 4 from Donaldson Chrysler Dodge Jeep Ram for the Parks Maintenance Mowing Crew through TIPS.

Issue:

To consider approval of a resolution to purchase a new 2022 Ram 2500 Crew Cab Pickup from TIPS for use by the Parks Maintenance Department.

Background:

The requested purchase will be used to transport workers and materials, tools and equipment to job locations throughout the city. Quotes from local vendors were solicited for this purchase.

Origination:

Parks Maintenance Department

Financial Consideration:

The new Ram 2500 Crew Cab will be purchased from Donaldson Chrysler Dodge Jeep Ram for \$55,477.50 through TIPS.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new Ram 2500 Crew Cab through TIPS.

Alternatives:

As may be recommended by the City Council.

Attachments

Resolution No. 6885

Donaldson Ram 2500 Quote

TIPS Interlocal Agreement

RESOLUTION NO. 6885

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2022 RAM 2500 CREW CAB 4 X 4 FROM DONALDSON CHRYSLER DODGE JEEP RAM FOR THE PARKS MAINTENANCE MOWING CREW THROUGH TIPS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase from Donaldson Chrysler Dodge Jeep Ram through TIPS for a new 2022 Ram 2500 Crew Cab 4x4 for the Parks Maintenance Mowing Crew at a total price of Fifty Five Thousand Four Hundred Seventy Seven Dollars and Fifty Cents (\$55,477.50). Any agreements related to the purchase must be approved by the City Attorney.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY



PRODUCT PRICING SUMMARY

TIPS USA 210907 AUTOMOBILES

VENDOR- DONALSON CDJR CDJR, 1305 Hwy 96 BYPASS , Silsbee TX 77656

End User: CITY OF SHERMAN

Prepared by: JARROD RUNNELS

Contact: CLINT DANIEL

Phone: 409-895-3858

Email: clintd@cityofsherman.com

Email: fleetsales@outlook.com

Product Description: RAM 2500 PICK UP

Date: April 20, 2022

A. Bid Item: 2500

A. Base Price: \$ 37,808.00

B. Factory Options

Code	Description	Bid Price	Code	Description	Bid Price
		\$ -		2022 RAM 2500 CREW CAB 4X4	
DK3	ELECTRIC SHIFT ON THE FLY	\$ 295.00		6.4L GASOLINE ENGINE/AUTO TRANS	
XHC	TRAILER BRAKE CONTROLLER	\$ 295.00		SHORT BED	
XEA	TOW HOOKS	\$ -		POWER WINDOWS/LOCKS/ CRUISE	
DSA	LIMITED SLIP DIFFERENTIAL	\$ 495.00			
TCP	ALL TERRAIN TIRES	\$ 295.00			
GPG	TOW MIRRORS	\$ 295.00			
ADB	PROTECTION GROUP	\$ 195.00			

Total of B. Published Options: \$ 1,870.00

Published Option Discount (5%) \$ (93.50)

C. Unpublished Options

Description	Bid Price	Options	Bid Price
CREW CAB UPGRAD	\$ 5,354.00		
4X4 UPGRADE	\$ 5,284.00	180-220 DAYS ARO	
		PRODUCTION PERMITTING	
TOMMYGATE LIFT GATE	\$ 4,302.00		
RECEIVER HITCH	\$ 498.00		

Total of C. Unpublished Options: \$ 15,438.00

D. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

E. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

F. Contract Price Adjustment:

G. Additional Delivery Charge: 260 miles

\$ 455.00

H. Subtotal:

\$ 55,477.50

I. Quantity Ordered 1 x H =

\$ 55,477.50

J. Trade in:

\$ -

K.

L. Total Purchase Price

\$ 55,477.50

INTERLOCAL AGREEMENT
Region VIII Education Service Center
TEXAS PUBLIC ENTITY OR LOCAL GOVERNMENT
(School, College, University, State, City, County, or Other Political Subdivision)

City of Sherman
TEXAS PUBLIC ENTITY

TX 991667
Control Number (TIPS will Assign)

Region VIII Education Service Center
Pittsburg, Texas

225 - 950
County-District Number

Texas Education Code §8.002 permits regional education service centers, at the direction of the Commissioner of Education, to provide services to assist school districts, colleges and universities in improving student performance and increasing the efficiency and effectiveness of school, college and university operations. In addition, authority is granted under Texas Government Code §§ 791.001 *et seq* as amended to enter into Interlocal agreements with said educational entities, as well as, other governmental entities and political subdivisions of Texas and other States. As authorized by applicable statutes and regulations, Cooperative Purchasing Services under this agreement are extended to all Texas State, City or County Government Agencies, or any other Government Entity as defined in the Texas Government Code § 791.003.

This Interlocal Agreement (hereinafter the "Agreement") is effective JUNE 7, 2017 and shall be automatically renewed unless either party gives sixty (60) days prior written notice of non-renewal. This Agreement may be terminated without cause by either party upon (60) days prior written notice, or may also be determined for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

Statement of Services to be Performed:

Region VIII Education Service Center, by this Agreement, agrees to provide cooperative purchasing services to the above-named public entity through a Program known as the The Interlocal Purchasing System (TIPS) Program.

The purpose of the TIPS Program shall be to obtain substantial savings for participating School District, University, College, Community College, City, County or Other Public Agencies through cooperative purchasing.

Roles of the TIPS Purchasing Cooperative:

1. Provide for the organizational structure of the program.
2. Provide staff for efficient operation of the program.
3. Promote marketing of the TIPS Program.
4. Coordinate the Competitively Bid Process for all Vendor Awarded Contracts.
5. Provide members with procedures for placing orders through TIPS PO System.
6. Maintain filing system for Due Diligence Documentation.

Role of the Public Entity:

1. Commit to participate in the program by an authorized signature on membership forms.
2. Designate a Primary Contact and Secondary Contact for entity.
3. Commit to purchase products and services from TIPS Vendors when in the best interest of the entity.

4. Submit Purchase Orders and/or Vendor Contracts through the TIPS PO System by emailing the pdf document to tipspo@tips-usa.com.
5. Accept shipments of products ordered from Awarded Vendors.
6. Process Payments to Awarded Vendors in a timely manner.

General Provisions:

The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.

This Agreement shall be governed by the law of the State of Texas and venue shall be in the county in which the administrative offices of RESC VIII are located which is Camp County, Texas.

This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.

If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

The Parties to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from budgeted available funds for the current fiscal year of each such entity.

Before any party may resort to litigation, any claims, disputes or other matters in question between the Parties to this Agreement shall be submitted to nonbinding mediation.

No Party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

This Agreement may be negotiated and transmitted between the Parties by means of a facsimile machine and the terms and conditions agreed to are binding upon the Parties.

Authorization:

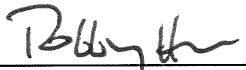
Region VIII Education Service Center and The Interlocal Purchasing System (TIPS) Program have entered into an Agreement to provide cooperative purchasing opportunities to public agencies.

This Agreement was approved by the governing boards of the respective parties at meetings that were posted and held in accordance with the Texas Open Meetings Act, Texas Government Code ch. 551. (If required by the entity.)

The individuals signing below are authorized to do so by the respective parties to this Agreement.

Public Member Entity:

City of Sherman
Entity Name

By: 
Authorized Signature

Title: Robby Hefton – City Manager

June 7, 2017
Date

Purchasing Cooperative Lead Agency:

Region VIII Education Service Center

By: 
Authorized Signature

Title: Executive Director Region VIII ESC

JUNE 7, 2017
Date

Public Entity Contact Information

Craig Long
Primary Purchasing Person Name

405 N. Rusk
Street Address

Sherman, Texas 75091
City, State Zip

903-892-7215
Telephone Number

903-891-0255
Fax Number

craigl@ci.sherman.tx.us
Primary Person Email Address

Tammy Davis
Secondary Person Name

tammyd@ci.sherman.tx.us
Secondary Person Email Address

If your entity does not require you to have an Interlocal Agreement, please go to the TIPS website under Membership and take advantage of online registration. The states of Texas and Arizona **do** require all entities to have an Interlocal Agreement. Other States or governmental jurisdictions may require an Interlocal agreement as well and you are advised to consult your legal counsel to determine the requirements for your entity. Email completed Interlocal Agreement to tips@tips-usa.com.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 9.

Meeting Date: 05/02/2022

Prepared By: Eric Sandberg, Street Maintenance Superintendent

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6886**

Authorizing the Purchase of a New Chevrolet Silverado 3500 from Silsbee for the Street Department Through TIPS

Issue:

To consider approval of a resolution to purchase a new Chevrolet Silverado 3500 from TIPS for use within the Street Maintenance Department.

Background:

The requested purchase is for the new ROW Crew that is part of the Street Maintenance Department. This truck will be used to transport the ROW crew and equipment to and from various job sites.

Origination:

Department of Public Works

Financial Consideration:

The new Chevrolet Silverado 3500 will be purchased from Silsbee for \$62,161.75 through TIPS. Funding for this purchase is being committed out of the City of Sherman fleet budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new Chevrolet Silverado 3500 through TIPS.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 6886

Chevrolet Silverado 3500 Quotation

TIPS Agreement

RESOLUTION NO. 6886

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW CHEVROLET SILVERADO 3500 FROM SILSBEE FOR THE STREET DEPARTMENT THROUGH TIPS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase from Silsbee through TIPS a new Chevrolet Silverado 3500 at a total price of Sixty Two Thousand and One Hundred Sixty One Dollars and Seventy Five Cents (\$62,161.75). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fleet budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

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

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

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



PRODUCT PRICING SUMMARY

TIPS USA 200206 TRANSPORTATION VEHICLES

VENDOR- 5426 LAKE COUNTRY CHEVROLET, 2152 N. WHEELER STREET JASPER, TX 75951

End User: CITY OF SHERMAN

Contact: ERIC SANDBERG

Email: erics@cityofsherman.com / 903-892-7254

Product Description: CHEVRILET SILVERADO 3500

Prepared by: JARROD RUNNELS

Phone: 409-895-3858

Email: jrunnels@silsbeefleet.com

Date: March 28, 2022

A. Bid Item: _____ A. Base Price: \$34,262.00

B. Factory Options

Code	Description	Bid Price	Code	Description	Bid Price
	3500 CAB AND CHASSIS	\$5,795.00	Z82	TRAILERING PACKAGE	INC
	60" CAB TO AXLE	\$-	JL1	TRAILER BRAKE CONTROLLER	\$275.00
L8T	6.6L V8 GAS ENGINE	\$-	5N5	REAR CAMERA KIT	\$73.00
MGM	10 SPEED AUTOMATIC TRANS	\$-	F60	HEAVY DUTY FRONT SPRING	\$45.00
	POWER WINDOWS / LOCKS	\$-			
ZLQ	WT FLEET CONV PACKAGE	\$1,450.00		DUAL REAR WHEELS	
	inc. POWER MIRRORS, KEYLESS				
	ENTRY, CRUISE				

Total of B. Published Options: \$7,638.00

Published Option Discount (5%) \$(210.75)

C. Unpublished Options

\$= 47.0 %

Description	Bid Price	Options	Bid Price
TRUX INSTALL 1037	\$19,685.00	EXTERIOR- WHITE	
		INTERIOR- VINYL HG2	
		ETA DEC 2022 - 1ST QUARTER 2023 **	

Total of C. Unpublished Options: \$19,685.00

D. Floor Plan Interest (for in-stock and/or equipped vehicles): \$-

E. Lot Insurance (for in-stock and/or equipped vehicles): \$350.00

F. Contract Price Adjustment: _____

G. Additional Delivery Charge: 250 miles \$437.50

H. Subtotal: \$62,161.75

I. Quantity Ordered 1 x H = \$62,161.75

J. Trade in: _____ \$-

K. Total Purchase Price \$62,161.75

INTERLOCAL AGREEMENT
Region VIII Education Service Center
TEXAS PUBLIC ENTITY OR LOCAL GOVERNMENT
(School, College, University, State, City, County, or Other Political Subdivision)

City of Sherman
TEXAS PUBLIC ENTITY

TX 991667
Control Number (TIPS will Assign)

Region VIII Education Service Center
Pittsburg, Texas

225 - 950
County-District Number

Texas Education Code §8.002 permits regional education service centers, at the direction of the Commissioner of Education, to provide services to assist school districts, colleges and universities in improving student performance and increasing the efficiency and effectiveness of school, college and university operations. In addition, authority is granted under Texas Government Code §§ 791.001 *et seq* as amended to enter into Interlocal agreements with said educational entities, as well as, other governmental entities and political subdivisions of Texas and other States. As authorized by applicable statutes and regulations, Cooperative Purchasing Services under this agreement are extended to all Texas State, City or County Government Agencies, or any other Government Entity as defined in the Texas Government Code § 791.003.

This Interlocal Agreement (hereinafter the "Agreement") is effective JUNE 7, 2017 and shall be automatically renewed unless either party gives sixty (60) days prior written notice of non-renewal. This Agreement may be terminated without cause by either party upon (60) days prior written notice, or may also be determined for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

Statement of Services to be Performed:

Region VIII Education Service Center, by this Agreement, agrees to provide cooperative purchasing services to the above-named public entity through a Program known as the The Interlocal Purchasing System (TIPS) Program.

The purpose of the TIPS Program shall be to obtain substantial savings for participating School District, University, College, Community College, City, County or Other Public Agencies through cooperative purchasing.

Roles of the TIPS Purchasing Cooperative:

1. Provide for the organizational structure of the program.
2. Provide staff for efficient operation of the program.
3. Promote marketing of the TIPS Program.
4. Coordinate the Competitively Bid Process for all Vendor Awarded Contracts.
5. Provide members with procedures for placing orders through TIPS PO System.
6. Maintain filing system for Due Diligence Documentation.

Role of the Public Entity:

1. Commit to participate in the program by an authorized signature on membership forms.
2. Designate a Primary Contact and Secondary Contact for entity.
3. Commit to purchase products and services from TIPS Vendors when in the best interest of the entity.

4. Submit Purchase Orders and/or Vendor Contracts through the TIPS PO System by emailing the pdf document to tipspo@tips-usa.com.
5. Accept shipments of products ordered from Awarded Vendors.
6. Process Payments to Awarded Vendors in a timely manner.

General Provisions:

The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.

This Agreement shall be governed by the law of the State of Texas and venue shall be in the county in which the administrative offices of RESC VIII are located which is Camp County, Texas.

This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.

If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

The Parties to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from budgeted available funds for the current fiscal year of each such entity.

Before any party may resort to litigation, any claims, disputes or other matters in question between the Parties to this Agreement shall be submitted to nonbinding mediation.

No Party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

This Agreement may be negotiated and transmitted between the Parties by means of a facsimile machine and the terms and conditions agreed to are binding upon the Parties.

Authorization:

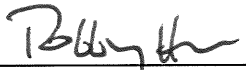
Region VIII Education Service Center and The Interlocal Purchasing System (TIPS) Program have entered into an Agreement to provide cooperative purchasing opportunities to public agencies.

This Agreement was approved by the governing boards of the respective parties at meetings that were posted and held in accordance with the Texas Open Meetings Act, Texas Government Code ch. 551. (If required by the entity.)

The individuals signing below are authorized to do so by the respective parties to this Agreement.

Public Member Entity:

City of Sherman
Entity Name

By: 
Authorized Signature

Title: Robby Hefton – City Manager

June 7, 2017
Date

Purchasing Cooperative Lead Agency:

Region VIII Education Service Center

By: 
Authorized Signature

Title: Executive Director Region VIII ESC

JUNE 7, 2017
Date

Public Entity Contact Information

Craig Long
Primary Purchasing Person Name

405 N. Rusk
Street Address

Sherman, Texas 75091
City, State Zip

903-892-7215
Telephone Number

903-891-0255
Fax Number

craigl@ci.sherman.tx.us
Primary Person Email Address

Tammy Davis
Secondary Person Name

tammyd@ci.sherman.tx.us
Secondary Person Email Address

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SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E. 10.

Meeting Date: 05/02/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6887

Authorizing Payment to Texoma Area Paratransit Systems, Inc. (TAPS) for the City's 2021-2022 Fiscal Year Contribution

Issue:

Authorize Payment of an annual amount to TAPS of \$55,125.00

Background:

Since the 2017 fiscal year, the City of Sherman has helped support TAPS by providing part of the local funding match for Federal Transportation Agency urban services funds. The amount of contribution requested from TAPS for FY 2022 is \$55,125.00, which is the same amount as has been funded since FY2019. Since the amount of funding is greater than \$50,000.00, state law requires Council approval.

Origination:

Finance Department

Financial Consideration:

The amount of contribution this year is \$55,125.00. The funds have been budgeted in the General Fund for FY2022.

Staff Recommendation:

The staff recommends approval of the payment.

Alternatives:

The Council could choose to increase the amount of the support, and the General Fund reserves are adequate to support any increase the Council may approve.

Attachments

Resolution No. 6887

RESOLUTION NO. 6887

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING PAYMENT TO TEXOMA AREA PARATRANSIT SYSTEMS, INC. (TAPS) FOR THE CITY'S 2021-2022 FISCAL YEAR CONTRIBUTION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to pay Texoma Area Paratransit Systems, Inc fifty-five thousand, one-hundred and twenty five dollars and no cents (\$55,125.00) for City's Fiscal Year 2021-2022 contribution.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F. 1.

Meeting Date: 05/02/2022

Prepared By: Theresa Hutchinson, Parks & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

***REQUEST TO ADVERTISE**

Purchase and Install Shading Structures at Pecan Grove West Athletic Complex

Issue:

Requesting to advertise for the purchase and installation of shading structures at Pecan Grove West Athletic Complex.

Background:

Add shading to cover the playground area, spectator area and dugouts at Pecan Grove West Athletic Complex.

Origination:

Parks and Recreation Department

Financial Consideration:

The costs for advertising will be approximately \$400.00.

Funding for these improvements was approved in the FY 2021-2022 budget as part of the Capital Improvement Program.

Staff Recommendation:

It is recommended that the City Council approve the request to advertise.

Alternatives:

As may be directed by the City Council



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

G. 1.

Meeting Date: 05/02/2022

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

CHANGE ORDER NO. 3

Lamberth Road Drainage Improvements Project; Lynn Vessels Construction, LLC; \$65,822.64 increase

Issue:

To consider the approval of Change Order No. 3 with Lynn Vessels Construction, LLC for the Lamberth Road Drainage Improvements Project

Background:

Change Order No. 3 will adjust the project quantities for the Lamberth Road Drainage Improvements Project.

A brick manhole that will be under the pavement east of the new box culverts was discovered to be extremely deteriorated and requires replacement on an emergency basis along with approximately 165 LF of failing sanitary sewer line. This change order also includes the cost of replacing a deteriorated and failing manhole in the Travis Street intersection.

Origination:

Engineering Department

Financial Consideration:

The change order results in a \$65,822.64 increase in the contract amount, yielding a new contract price of \$1,689,569.18. Funding is available in the Utility Improvement Fund.

Staff Recommendation:

It is recommended the Change Order No. 3 for the Lamberth Road Drainage Improvements Project be approved

Alternatives:

As may be directed by the City Council

Attachments

Change Order No.3
Location Map

Change Order

No. 3

Date of Issuance: February 21, 2022

Project: Lamberth Post Oak Drainage Improvements	Project No.: PW #3045; Bid # 2019-17	
Owner: City of Sherman	Date of Contract: 16 December 2019	
Contractor: Lynn Vessels Construction		

The Contract Documents are modified as follows upon execution of this Change Order:

The summary of Change Order items is attached.

Justification:

Replace failing brick manhole and failing 8" sewer line (165lf) along the southern side of Lamberth Street. The replacement of the failing manhole in the intersection of Travis at Lamberth including the pavement replacement.

CHANGE IN CONTRACT PRICE:

Original Base Bid Price:

\$2,288,933.74

Increase/(Decrease) from previously approved
Change Orders No. 0 to No. 2:

\$ (665,187.20)

Contract Price prior to this Change Order:

\$1,623,746.54

Increase/(Decrease) of this Change Order:

\$65,822.64

Contract Price incorporating this Change
Order:

\$1,689,569.18

CHANGE IN CONTRACT TIMES:

Original Contract Times:

Substantial completion days: 240

Substantial completion date: TBD

Increase/(Decrease) from previously approved
Change Orders
No. 0 to No. 2:

Substantial completion days: 0

Substantial completion date: TBD

Contract Times prior to this Change Order:

Substantial completion days: 240

Substantial completion date: TBD

Increase/(Decrease) of this Change Order:

Substantial completion days: 7

Substantial completion date: TBD

Contract Times with all approved Change Orders:

Substantial completion days: 247

Substantial completion date: TBD

RECOMMENDED:

By: [Signature]
Engineer (Authorized Signature)

Date: 28 Feb 2022

ACCEPTED:

By: _____
Owner (Authorized Signature)

Date: _____

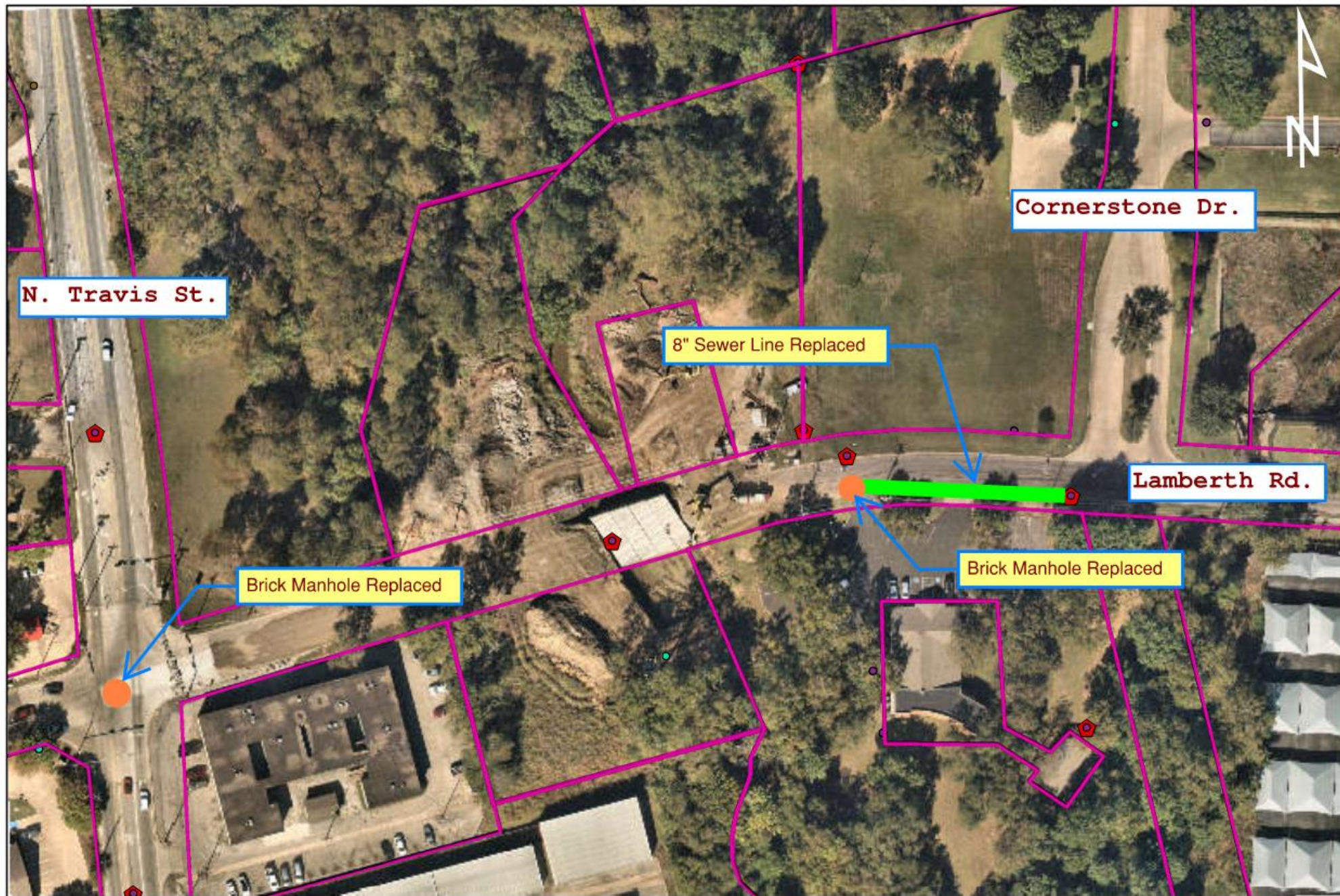
ACCEPTED:

By: [Signature]
Contractor (Authorized Signature)

Date: 2-23-2022

Bid Item Adjustments for Change Order #3

Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.04-03	Preparing Right of Way, for Franchise Utility	1	LS	\$ 3,323.20	\$ 3,323.20
2.23-03	7-Inch Reinforced Concrete Pavement	45	SY	\$ 64.80	\$ 2,916.00
3.11-03	Remove and Replace 4-ft Dia Manhole (9' deep)	1	EA	\$10,834.89	\$ 10,834.89
3.12-03	Remove and Replace 4-ft Dia Manhole (14' deep)	1	EA	\$17,834.89	\$ 17,834.89
3.13-03	Connect Existing Sewer Mains to New Manhole	3	EA	\$1,500.00	\$ 4,500.00
3.14-03	Remove and Replace 8" SDR-35 Sewer Line	182	LF	\$145.13	\$ 26,413.66
Total Above Items					\$ 65,822.64



Sherman
CLASSIC TOWN. BROAD HORIZON.

0 50 100 150 Feet



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

H. 1.

Meeting Date: 05/02/2022

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider Approval of the Annexation Scheduling Plan for Adoption of Approximately 118.87 acres of land located South of FM 1417 and between the Burlington Northern Santa Fe Railroad and Luella Road, adjacent to the Sherman City Limits and in the City of Sherman's Extra Territorial Jurisdiction; and Directing the Department of Engineering Services to Develop a Service Plan for the Area to be Annexed Upon Approval of the Annexation Scheduling Plan

Issue:

To consider approval of the schedule for annexation of approximately 118.87 acres of land located South of FM 1417 and between the Burlington Northern Santa Fe Railroad and Luella Road, adjacent to the Sherman City Limits, and in the City's extra territorial jurisdiction (ETJ), in accordance with state law and the City Charter

Background:

The property owners, Grayson County and HMI-Sherman 2 LLC, have requested annexation into the city limits of approximately 118.87 acres of land located South of FM 1417 and between the Burlington Northern Santa Fe Railroad and Luella Road, adjacent to the Sherman City Limits and in the City's ETJ. The Texas Local Government Code, Section 43.0673 provides the following:

- (a) The governing body of the municipality that elects to annex an area under this subchapter must first negotiate and enter into a written agreement with the owners of land in the area for the provision of services in the area.
- (b) The agreement must include:
 - (1) a list of each service the municipality will provide on the effective date of the annexation; and
 - (2) a schedule that includes the period within which the municipality will provide each service that is not provided on the effective date of the annexation.
- (c) The municipality is not required to provide a service that is not included in the agreement.

City staff recommends the public hearing on its intent to annex be held at the January 3rd meeting and that action on the Annexation Ordinance be taken at the same meeting.

Origination:

Petition for Annexation from Grayson County and HMI-Sherman 2 LLC

Financial Consideration:

City accepts maintenance. A cost benefit analysis will be prepared prior to final action on this item.

Staff Recommendation:

City Staff recommends that the public hearing on the intent to annex be held at the May 16th regular meeting and that action on the Annexation Ordinance be taken at the same meeting.

Alternatives:

None proposed

Attachments

Annexation Scheduling Plan - Luella Crossing

Petition for Annexation

Annexation Service Plan Agreement

Exhibit A

Legal Description

Aerial Location Map

ANNEXATION SCHEDULING PLAN

**Annexation of approximately 118.87 acres of land adjacent to the city limits, located South of FM 1417 and between the Burlington Northern Santa Fe Railroad and Luella Road
being more specifically described as:
Luella Crossing**

- Monday, May 2, 2022.....City Council sets public hearing date and accepts annexation application.
- Wednesday, May 4, 2022.....Send written notice via certified mail, RRR, to property owner(s) in area to be annexed, public or private entities that provide services in the area and any railroads that have ROW in the area to be annexed. Send written notice via certified mail, RRR, to each public school district in the area to be annexed. Such notices must contain the details described in Section 43.0561 of the Local Government Code. Provide draft of proposed annexation service plan agreement in accordance with Section 43.0672 of the Local Government Code.
- Friday, May 6, 2022.....Publish notice of public hearing in the City's official newspaper. Obtain required affidavit of publication from newspaper. Post notice of public hearing on City's website and keep posting up until the date of the hearing.
- Thursday, May 12, 2022Post notice of public hearing as required by Open Meetings Act.
- Monday, May 16, 2022.....Hold public hearing. (Regular Council Meeting)
- Monday, May 16, 2022.....Adopt ordinance. (Regular Council Meeting)

PETITION FOR ANNEXATION

WHEREAS, by General Warranty Deed dated April 15, 1959, and recorded in volume 888, page 591, in the Official Records of Grayson County, Texas, Grayson County is the sole and record owner of approximately 21.5 acres of land located in Grayson County, Texas, and being more particularly described by metes and bounds in Exhibit A;

WHEREAS, by General Warranty Deed dated September 13, 2021, and recorded as Instrument No. 2021-32639 in the Official Records of Grayson County, Texas, HMI-Sherman 2 LLC, is the sole and record owner of approximately 96.216 acres of land located in Grayson County, Texas, and being more particularly described by metes and bounds in Exhibit B;

WHEREAS, the lands described in both Exhibit A and Exhibit B (collectively, the "Property") is located entirely within the extraterritorial jurisdiction of the City of Sherman, Texas (the "City");

WHEREAS, pursuant to Section 43.0671, Texas Local Government Code, the City may annex an area if each owner of land in the area requests the annexation;

WHEREAS, Grayson County and HMI-Sherman 2 LLC (collectively, the "Owners"), desire that the Property be incorporated in and made a part of the City for all purposes.

NOW, THEREFORE, premises considered, the Owners do hereby submit to the City this petition requesting annexation (this "Petition") of the Property and requests that the City: (i) accept this Petition for that purpose; (ii) promptly notice and conduct the requisite public hearings in accordance with Section 43.0673, Texas Local Government Code; (iii) adopt an ordinance annexing the area with an immediate effective date; and (iv) carry out any and all other necessary conditions to complete the annexation of the area.

[Signature pages follow]

Duly executed this 19 day of April, 2022.

GRAYSON COUNTY

By:

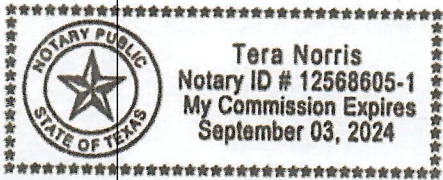
[Signature]
Bill Magers, County Judge

STATE OF TEXAS §
COUNTY OF GRAYSON §

This instrument was acknowledged before me, on the 19 day of April, 2022, by Bill Magers, County Judge of Grayson County, Texas, on behalf of said county.

[S E A L]

[Signature]
Notary Public, State of Texas



Duly executed this 22nd day of April, 2022.

HMI-SHERMAN 2 LLC

a Texas limited liability company

By: [Signature]

Name: Chad Dannheim

Title: Manager

STATE OF TEXAS §
COUNTY OF GRAYSON §

This instrument was acknowledged before me, on the 22nd day of April, 2022, by Chad Dannheim, Manager of HMI-Sherman 2 LLC, on behalf of said limited liability company.

[SEAL]

[Signature]
Notary Public, State of Texas

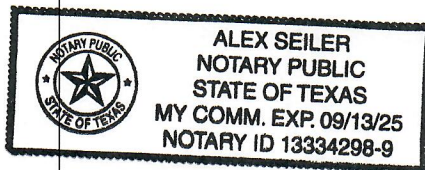


Exhibit A
Grayson County Property Description

GRAYSON COUNTY TRACT

BEING a tract of land situated in the Sharrod Dunman Survey, Abstract No. 329 and the Preston Kitchen Survey, Abstract No. 667, Grayson County, Texas, and being all of a called 21.05-acre tract of land, described in a Warranty Deed to Grayson County, Texas, as recorded in Volume 888, Page 591 of the Deed Records of Grayson County, Texas, and that portion of F. M. 1417, a variable width right of way located between said 21.05-acre tract and a called 11.984-acre tract of land as described in a Warranty Deed to Sherman Elks Lodge, as recorded in Volume 1701, Page 730 of the Deed Records of Grayson County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2-inch iron rod found for the southwest corner of a called 96.216-acre tract of land, described in a General Warranty Deed to HMI-Sherman 2, LLC, as recorded in Instrument No. 2021-32639 of the Official Public Records of Grayson County, Texas, and the northwest corner of a called 379.73-acre tract of land, described in a Warranty Deed to Choctaw Creek Ranch, LLC, as recorded in Volume 5607, Page 293 of the Official Public Records of Grayson County, Texas, same also being on the easterly line of the Burlington Northern Santa Fe Railroad 225' wide right of way;

THENCE North 06°41'12" East, along the westerly line of said 96.216-acre tract, the westerly line of said 21.05-acre tract and the easterly line of said Burlington Northern Santa Fe Railroad right of way, a distance of 2,875.86 feet to the northwest corner of said 96.216-acre tract and the southwest corner of said 21.05-acre tract, and being the **POINT OF BEGINNING** of the herein described tract;

THENCE North 06°41'12" East, along the westerly line of said 21.05-acre tract and the easterly line of said Burlington Northern Santa Fe Railroad right of way, a distance of 652.31 feet to the intersection of the westerly line of said 21.05-acre tract with the southerly right of way line of said F. M. 1417;

THENCE North 15°28'27" East, crossing said F. M. 1417, a distance of 327.30 feet to the southwest corner of aforesaid 11.984-acre tract, same being on the southerly city limit line of the City of Sherman as described in Ordinance No. 3912;

THENCE in an easterly direction, along the southerly line of said 11.984-acre tract, the southerly line of said city limit line and the northerly right of way line of said F.M. 1417, the following:

North 74°18'39" East, a distance of 141.53 feet to a point for corner;

North 84°04'21" East, a distance of 235.92 feet to a point for corner;

North 79°02'28" East, a distance of 352.75 feet to a point for corner;

North 50°33'09" East, a distance of 150.52 feet to a point for corner;

North 68°53'45" East, a distance of 46.60 feet to a point for corner;

North 86°01'45" East, a distance of 17.14 feet to the southeast corner of said 11.984-acre tract and the southwest corner of the city limit line as described in said Ordinance No. 3912;

THENCE South 13°24'13" East, crossing said F. M. 1417, a distance of 219.78 feet to the northeast corner of aforesaid 21.05-acre tract, same being in an asphalt road known as Luella Road, an apparent public use road, no record found;

THENCE South 17°03'50" East, departing the southerly right of way line of said F. M. 1417, along the easterly line of said 21.05-acre tract and along said Luella Road, a distance of 658.29 feet to the southeast corner of said 21.05-acre tract and the northeast corner of aforesaid 92.216-acre tract;

THENCE South 75°23'40" West, departing said Luella Road, along the southerly line of said 21.05-acre tract and the northerly line of said 92.216-acre tract, a distance of 1,351.25 feet to the **POINT OF BEGINNING** and containing 22.71 acres of land, more or less.

This document was prepared under 22 TAC §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

Exhibit B
HMI-Sherman 2 LLC Property Description

HMI-SHERMAN 2 TRACT

BEING a tract of land situated in the Sharrod Dunman Survey, Abstract No. 329 and the Preston Kitchen Survey, Abstract No. 667, Grayson County, Texas, and being all of a called 96.216-acre tract of land, described in a General Warranty Deed to HMI-Sherman 2, LLC, as recorded in Instrument No. 2021-32639 of the Official Public Records of Grayson County, Texas, and that portion of F. M. 1417, a variable width right of way located between said 21.05-acre tract and a called 11.984-acre tract of land as described in a Warranty Deed to Sherman Elks Lodge, as recorded in Volume 1701, Page 730 of the Deed Records of Grayson County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for the southwest corner of said 96.216-acre tract and the northwest corner of a called 379.73-acre tract of land, described in a Warranty Deed to Choctaw Creek Ranch, LLC, as recorded in Volume 5607, Page 293 of the Official Public Records of Grayson County, Texas, same also being on the easterly line of the Burlington Northern Santa Fe Railroad 225' wide right of way;

THENCE North 06°41'12" East, along the westerly line of said 96.216-acre tract, the westerly line of said 21.05-acre tract and the easterly line of said Burlington Northern Santa Fe Railroad right of way, a distance of 2,875.86 feet to the northwest corner of said 96.216-acre tract and the southwest corner of a called 21.05-acre tract of land, described in a Warranty Deed to Grayson County, Texas, as recorded in Volume 888, Page 591 of the Deed Records of Grayson County, Texas;

THENCE North 75°23'40" East, departing the easterly line of said Burlington Northern Santa Fe Railroad right of way, along the northerly line of said 96.216-acre tract and the southerly line of said 21.05-acre tract, a distance of 1,351.25 feet to the northeast corner of said 96.216-acre tract and the southeast corner of said 21.05-acre tract, same being in an asphalt road known as Luella Road, an apparent public use road, no record found;

THENCE in a southerly direction, along the easterly line of said 96.216-acre tract and generally along the center of said Luella Road, the following:

South 15°36'01" East, a distance of 183.95 feet to a point for corner;

South 16°00'51" East, a distance of 478.87 feet to a point for corner;

South 12°06'00" East, a distance of 108.19 feet to a point for corner;

South 05°37'40" West, a distance of 426.89 feet to a point for corner;

South 12°27'14" West, a distance of 86.17 feet to a point for corner;

South 19°41'44" West, a distance of 89.25 feet to a point for corner;

South 31°51'34" West, a distance of 120.10 feet to a point for corner;

South 31°46'43" West, a distance of 97.54 feet to a point for corner;

South 13°36'49" West, a distance of 135.39 feet to a point for corner;

South 14°20'00" East, a distance of 724.35 feet to the easterly, southeast corner of said 96.216-acre tract, same being the northeast corner of a called 2.027-acre tract, described in a Warranty Deed to David L. Pippin and wife, Karen L. Pippin, as recorded in Volume 1718, Page 276 of the Official Public Records of Grayson County, Texas;

THENCE South 74°30'17" West, departing said Luella Road, along a southerly line of said 96.216-acre tract and the northerly line of said 2.027-acre tract, a distance of 228.66 feet to the northwest corner of said 2.027-acre tract;

THENCE South 14°46'55" East, along an easterly line of said 96.216-acre tract and the westerly line of said 2.027-acre tract, a distance of 244.67 feet to the northeast corner of a called 2.76-acre tract of land, described in a Warranty Deed to Johnny and Michelle Castillo, as recorded in Instrument No. 2017-28517 of the Official Public Records of Grayson County, Texas;

THENCE South 76°07'21" West, along a southerly line of said 96.216-acre tract and the northerly line of said 2.76-acre tract, a distance of 809.23 feet to the northwest corner of said 2.76-acre tract;

THENCE South 12°16'22" East, along an easterly line of said 96.216-acre tract and the westerly line of said 2.76-acre tract, a distance of 155.30 feet to the southerly, southeast corner of said 96.216-acre tract and the southwest corner of said 2.76-acre tract, same being on the northerly line of aforesaid 379.73-acre Choctaw Creek Ranch, LLC tract;

THENCE South 75°44'10" West, along the southerly line of said 96.216-acre tract and the northerly line of said 379.73-acre tract, a distance of 899.94 feet to the **POINT OF BEGINNING** and containing 96.16 acres of land, more or less.

This document was prepared under 22 TAC §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

ANNEXATION SERVICE PLAN AGREEMENT

This SERVICE PLAN AGREEMENT (“Agreement”) is made and entered into by and among the CITY OF SHERMAN, TEXAS, a home-rule municipality (“Sherman”), and HMI-Sherman 2 LLC, (“Landowner” or “Developer”). Sherman and Landowner or Developer are each referred to herein as a “party” or collectively as the “parties.”

WHEREAS, Landowner is the sole owner of that certain tract of land consisting of 96.216 ± acres, situated in the Sharrod Dunman Survey, Abstract No. 329, and Preston Kitchen Survey, Abstract No. 667, Grayson County, Texas, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein for all purposes (the “Property” or “Annexed Area”); and

WHEREAS, Landowner submitted to Sherman a voluntary request for annexation of the Property into the corporate limits of Sherman pursuant to Subchapter C-3 of Chapter 43 of the Texas Local Government Code; and

WHEREAS, Landowner acknowledges and agrees that in submitting the voluntary request for annexation of the Property, Landowner has fully investigated and is aware of the rights, duties and obligations that will apply to Landowner and its successors and assigns, as owner of the Property, in the event that the Sherman City Council adopts an ordinance annexing the Property into the corporate limits of Sherman (the “Annexation Ordinance”); and

WHEREAS, Landowner acknowledges and agrees that Sherman has complied or will comply with all requirements for the consideration of Landowner’ request for annexation of the Property pursuant to Chapter 43 of the Texas Local Government Code, including holding a public hearing and providing the required public notices regarding the requested annexation; and

WHEREAS, Landowner acknowledges and agrees that the Property is eligible for annexation in all respects under Texas law; and

WHEREAS, the parties desire to enter into this Agreement pursuant to Section 43.0672 of the Texas Local Government Code to memorialize their agreement regarding the services Sherman will provide to the Property provided that the Sherman City Council adopts the Annexation Ordinance; and

WHEREAS, Landowner acknowledges and agrees that this Agreement fully complies with Section 43.0672 of the Texas Local Government Code; and

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

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

1. **Incorporation of Recitals.** The representations, covenants and recitations set forth in the forth in the foregoing recitals of this Agreement are true and correct, are incorporated into

the body of this Agreement and are adopted as findings of Sherman and Landowner.

2. **Land Subject to Agreement.** The land that is subject to this Agreement is the Property. Landowner represents that he is the sole owner of the Property.
3. **Agreement Conditioned on Annexation.** This Agreement and the rights, duties and obligations herein are subject to and conditioned on the Sherman City Council adopting the Annexation Ordinance within ninety (90) days after the Effective Date (hereinafter defined) of this Agreement. In the event that the Sherman City Council does not adopt the Annexation Ordinance within ninety (90) days after the Effective Date of this Agreement, this Agreement shall not be effective and neither party shall have any rights, duties or obligations of any kind under this Agreement. In the event Landowner argues or claims that a term, condition or provision of this Agreement or the Annexation Ordinance is invalid, illegal, void, unenforceable or unlawful, then Sherman has the option to terminate this Agreement, effective immediately.
4. **Agreed Service Plan.** Subject to the terms and conditions of this Agreement, the parties agree that Sherman shall furnish or provide for the following municipal services to the Property after annexation at the following levels and in accordance with the following schedule:
 - (a) Police Services.
 - (i) Patrolling, responses to calls and other routine police services, within the limits of existing personnel and equipment and in a manner consistent with the methods of Sherman, will be provided in the Annexed Area on the effective date of the Annexation Ordinance.
 - (ii) Upon ultimate development of the Annexed Area, the same level of police services will be provided to the Annexed Area as are furnished throughout Sherman at that time.
 - (b) Fire Services.
 - (i) Fire protection and emergency ambulance services and equipment, within the limits of existing personnel and equipment and the limits of available water and distances from existing fire stations and in a manner consistent with the methods of Sherman, will be provided to the Annexed Area upon the effective date of the Annexation Ordinance.
 - (ii) Upon ultimate development of the Annexed Area, the same level of fire and emergency ambulance services will be provided to the Annexed Area as are furnished throughout Sherman at that time.
 - (c) Environmental Health and Code Enforcement Services.
 - (i) Enforcement of Sherman's environmental health ordinances and

regulations, including but not limited to, weed and brush ordinances, junked and abandoned vehicle ordinances and animal control ordinances, shall be provided within the Annexed Area within sixty (60) days of the effective date of the Annexation Ordinance. Sherman's environmental health ordinances and regulations will be enforced through the use of existing personnel.

- (ii) As development and construction commence in the Annexed Area, sufficient personnel will be provided to furnish the Annexed Area with the same level of environmental health and code enforcement services as are furnished throughout Sherman at that time.

(d) Building Inspections.

- (i) Inspection services, including the review of building plans, the issuance of permits and the inspection of all buildings, plumbing, mechanical and electrical work to ensure compliance with Sherman's codes, regulations and ordinances will be provided within sixty (60) days of the effective date of the Annexation Ordinance. Existing personnel will be used to provide such services.
- (ii) All inspection services furnished by Sherman but not mentioned above will be provided to the Annexed Area beginning within sixty (60) days of the effective date of the Annexation Ordinance.

(e) Planning and Zoning Services.

- (i) The planning and zoning jurisdiction of Sherman will extend to the Annexed Area upon the effective date of the Annexation Ordinance. Sherman city planning will thereafter encompass the Annexed Area, and it shall be entitled to consideration for zoning in accordance with Sherman's Zoning Ordinance and Comprehensive Plan.
- (ii) Sherman's zoning, subdivision, sign and other ordinances shall be enforced in the Annexed Area beginning on the effective date of the Annexation Ordinance.

(f) Park and Recreation Services.

- (i) Inhabitants of the Annexed Area may utilize all existing park and recreational services, facilities and sites throughout Sherman beginning on the effective date of the Annexation Ordinance.
- (ii) Additional facilities and sites to serve the Annexed Area will be acquired, developed and maintained at locations and times provided by applicable plans, policies, programs and decisions of Sherman. The Annexed Area will

be included in all future plans for providing parks and recreation services to Sherman.

- (iii) Existing parks, playgrounds, swimming pools and other recreational facilities within the Annexed Area shall, upon dedication to and acceptance by Sherman, be maintained and operated by Sherman, but not otherwise.

(g) Solid Waste Collection Services.

- (i) Solid waste collection services shall be provided to the Annexed Area in accordance with Sherman's existing policies, beginning on the effective date of the Annexation Ordinance.
- (ii) As development and construction commence in the Annexed Area and population density increases in the Annexed Area, solid waste collection services shall be provided to the Annexed Area in accordance with Sherman's policies regarding frequency, changes and the like as are existing at that time.

(h) Streets.

- (i) Sherman's existing policies with regard to street maintenance, applicable throughout Sherman, shall apply to the Annexed Area beginning on the effective date of the Annexation Ordinance. Unless a street within the Annexed Area has been constructed or is improved to Sherman's standards and specifications, such street will not be maintained by Sherman. Notwithstanding anything to the contrary herein, private streets within the Annexed Area shall remain private streets after annexation and Sherman and the Landowner agree that Sherman shall have no obligation to maintain, repair or improve the private streets or to pay the costs thereof.
- (ii) As development, improvement or construction of streets to Sherman's standards commences within the Annexed Area, the policies of Sherman with regard to participation in the costs thereof, acceptance upon completion thereof and maintenance after completion thereof shall apply as such policies exist at that time.
- (iii) The same level of maintenance shall be provided to streets within the Annexed Area that are accepted by Sherman as is provided to streets throughout Sherman.
- (iv) Street lighting installed on streets improved to Sherman's standards and specifications shall be maintained by the appropriate franchise holder in accordance with existing Sherman policies.

(i) Water Services.

- (i) Connection to existing Sherman water mains for water service for domestic, commercial and industrial use within the Annexed Area will be provided in accordance with existing Sherman policies. Upon connection to existing mains, water will be provided at rates established by Sherman ordinances for such service throughout Sherman.
 - (ii) As development and construction commence on the Annexed Area, Sherman water mains will be extended in accordance with provisions of the Subdivision Ordinance and other applicable ordinances and regulations in effect at that time. Sherman's participation in the costs of such extensions shall be in accordance with the applicable Sherman ordinances and regulations in effect at that time. Such extensions will be commenced in accordance with state law.
 - (iii) Water mains installed or improved to Sherman's standards which are within the Annexed Area and are within dedicated easements shall be maintained by Sherman beginning on the effective date of the Annexation Ordinance.
 - (iv) Private water lines within the Annexed Area shall be maintained by their respective owners in accordance with existing policies applicable throughout Sherman.
- (j) Sanitary Sewer Services.
 - (i) Connections to existing Sherman sanitary sewer mains for sanitary sewer service in the Annexed Area will be provided in accordance with existing Sherman policies. Upon connection, sanitary sewer service will be provided at rates established by Sherman ordinances for such service throughout Sherman.
 - (ii) Sanitary sewer mains and/or lift stations installed or improved to Sherman's standards that are located in dedicated easements, are within the Annexed Area and are connected to Sherman mains will be maintained by Sherman beginning on the effective date of the Annexation Ordinance.
 - (iii) As development and construction commence in the Annexed Area, Sherman sanitary sewer services will be extended in accordance with provisions of the Subdivision Ordinance and other applicable Sherman ordinances and regulations in effect at that time. Sherman's participation in the costs of such extensions shall be in accordance with the applicable Sherman ordinances and regulations in effect at that time. Such extensions will be commenced in accordance with state law.
- (k) Miscellaneous.

- (i) General municipal administration and administrative services of Sherman shall be available to the Annexed Area beginning on the effective date of the Annexation Ordinance.
 - (ii) Notwithstanding anything set forth above, this Service Plan does not require all municipal services be provided as set forth above if different characteristics of topography, land use and population density are considered a sufficient basis for providing different levels of service.
- 5. **Default.** If Sherman fails to comply with the terms and conditions of this Agreement and such failure is not cured within a reasonable period of time after Sherman receives written notice of such failure from Landowner, then Landowner may seek disannexation pursuant to Section 43.141 of the Texas Local Government Code as its sole and exclusive remedy. In no event shall Sherman be liable to Landowner or any other owner or inhabitant of the Annexed Area for any direct, indirect, incidental, special or consequential damages arising out of this Agreement or for the cost of procurement of substitute services.
- 6. **Covenant Running with the Land.** This Agreement shall be a covenant running with the land and Property and shall be binding on Landowner and Landowner's successors and assigns.
- 7. **Limitations of Agreement.** Sherman ordinances covering property taxes, utility rates, permit fees, inspection fees, tree mitigation fees, impact fees, development fees, tap fees, pro-rata fees and the like are not affected by this Agreement. Further, this Agreement does not waive or limit any of the obligations of Landowner to Sherman under any ordinance, whether now existing or in the future arising.
- 8. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested; by facsimile; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Sherman, addressed to it at:

City of Sherman
Attn: Robby Hefton, City Manager
220 West Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7200
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

with a copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4044
Email: rpittman@abernathy-law.com

If to Landowner, addressed to him at:

HMI – Sherman 2, LLC.
Attn: Chad Dannheim
Telephone: (817) 319-9351
Email: chad@cedgroups.com

10. **Release.** LANDOWNER HEREBY RELEASES, WAIVES AND HOLDS HARMLESS SHERMAN AND ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM ALL DAMAGES, INJURIES, CLAIMS, OBJECTIONS, LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS ARISING OUT OF OR RELATED TO SHERMAN'S ANNEXATION OF THE PROPERTY, SHERMAN'S CONSIDERATION OF ANNEXATION OF THE PROPERTY AND SHERMAN'S ADOPTION OF THE ANNEXATION ORDINANCE. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
11. **Vested Rights/Chapter 245 Waiver.** This Agreement shall confer no vested rights on the Property, or any portion thereof. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245 of the Texas Local Government Code, as amended, and nothing in this Agreement provides Sherman with fair notice of any project of Landowner. LANDOWNER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, UNDER THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
12. **Warranties/Representations.** All warranties, representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
13. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties.
14. **Governing Law; Venue.** The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive

venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.

15. **Consideration.** This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
16. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
17. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date (hereinafter defined). Landowner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and **Landowner covenants and agrees to indemnify, hold harmless, and defend Sherman and its Council members, officers, agents, representatives and employees against any and all claims asserted by any person claiming an ownership interest in the Property who has not signed the Agreement that arise in any way from Sherman's reliance on this Agreement.**
18. **Savings; Severability.** In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
19. **Representations.** Each party represents that it has carefully read this Agreement, knows the contents hereof, has consulted with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.
20. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
21. **Immunity.** It is expressly understood and agreed that, in the execution and performance of this Agreement, Sherman has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

22. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

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

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

Attested to by:

Linda Ashby, City Clerk

Approved as to Form and Content:
The Law Firm of Abernathy,
Roeder, Boyd & Hullett, P.C.

By: _____
Name: Ryan D. Pittman
Title: City Attorney

HMI-Sherman 2 LLC

By: 
Printed Name: Chad Dannheim
Title: manager
Date: April 22nd, 2022

STATE OF TEXAS §

COUNTY OF GRAYSON §
 §

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this _____ day of _____, 2021.

Notary Public, State of Texas
My Commission Expires:_____

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this _____ day of _____, 2021.

Notary Public, State of Texas
My Commission Expires:_____

ANNEXATION TRACT

BEING a tract of land situated in the Sharrod Dunman Survey, Abstract No. 329 and the Preston Kitchen Survey, Abstract No. 667, Grayson County, Texas, and being all of a called 96.216-acre tract of land, described in a General Warranty Deed to HMI-Sherman 2, LLC, as recorded in Instrument No. 2021-32639 of the Official Public Records of Grayson County, Texas, all of a called 21.05-acre tract of land, described in a Warranty Deed to Grayson County, Texas, as recorded in Volume 888, Page 591 of the Deed Records of Grayson County, Texas, and that portion of F. M. 1417, a variable width right of way located between said 21.05-acre tract and a called 11.984-acre tract of land as described in a Warranty Deed to Sherman Elks Lodge, as recorded in Volume 1701, Page 730 of the Deed Records of Grayson County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for the southwest corner of said 96.216-acre tract and the northwest corner of a called 379.73-acre tract of land, described in a Warranty Deed to Choctaw Creek Ranch, LLC, as recorded in Volume 5607, Page 293 of the Official Public Records of Grayson County, Texas, same also being on the easterly line of the Burlington Northern Santa Fe Railroad 225' wide right of way;

THENCE North 06°41'12" East, along the westerly line of said 96.216-acre tract, the westerly line of said 21.05-acre tract and the easterly line of said Burlington Northern Santa Fe Railroad right of way, a distance of 3,528.17 feet to the intersection of the westerly line of said 21.05-acre tract with the southerly right of way line of said F. M. 1417;

THENCE North 15°28'27" East, crossing said F. M. 1417, a distance of 327.30 feet to the southwest corner of aforesaid 11.984-acre tract, same being on the southerly city limit line of the City of Sherman as described in Ordinance No. 3912;

THENCE in an easterly direction, along the southerly line of said 11.984-acre tract, the southerly line of said city limit line and the northerly right of way line of said F.M. 1417, the following:

North 74°18'39" East, a distance of 141.53 feet to a point for corner;

North 84°04'21" East, a distance of 235.92 feet to a point for corner;

North 79°02'28" East, a distance of 352.75 feet to a point for corner;

North 50°33'09" East, a distance of 150.52 feet to a point for corner;

North 68°53'45" East, a distance of 46.60 feet to a point for corner;

North 86°01'45" East, a distance of 17.14 feet to the southeast corner of said 11.984-acre tract and the southwest corner of the city limit line as described in said Ordinance No. 3912;

THENCE South 13°24'13" East, crossing said F. M. 1417, a distance of 219.78 feet to the northeast corner of aforesaid 21.05-acre tract, same being in an asphalt road known as Luella Road, an apparent public use road, no record found;

THENCE South 17°03'50" East, departing the southerly right of way line of said F. M. 1417, along the easterly line of said 21.05-acre tract and along said Luella Road, a distance of 658.29 feet to the southeast corner of said 21.05-acre tract and the northeast corner of aforesaid 92.216-acre tract;

THENCE in a southerly direction, along the easterly line of said 96.216-acre tract and generally along the center of said Luella Road, the following:

South 15°36'01" East, a distance of 183.95 feet to a point for corner;

South 16°00'51" East, a distance of 478.87 feet to a point for corner;

South 12°06'00" East, a distance of 108.19 feet to a point for corner;

South 05°37'40" West, a distance of 426.89 feet to a point for corner;

South 12°27'14" West, a distance of 86.17 feet to a point for corner;

South 19°41'44" West, a distance of 89.25 feet to a point for corner;

South 31°51'34" West, a distance of 120.10 feet to a point for corner;

South 31°46'43" West, a distance of 97.54 feet to a point for corner;

South 13°36'49" West, a distance of 135.39 feet to a point for corner;

South 14°20'00" East, a distance of 724.35 feet to the easterly, southeast corner of said 96.216-acre tract, same being the northeast corner of a called 2.027-acre tract, described in a Warranty Deed to David L. Pippin and wife, Karen L. Pippin, as recorded in Volume 1718, Page 276 of the Official Public Records of Grayson County, Texas;

THENCE South 74°30'17" West, departing said Luella Road, along a southerly line of said 96.216-acre tract and the northerly line of said 2.027-acre tract, a distance of 228.66 feet to the northwest corner of said 2.027-acre tract;

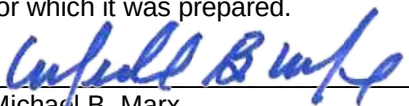
THENCE South 14°46'55" East, along an easterly line of said 96.216-acre tract and the westerly line of said 2.027-acre tract, a distance of 244.67 feet to the northeast corner of a called 2.76-acre tract of land, described in a Warranty Deed to Johnny and Michelle Castillo, as recorded in Instrument No. 2017-28517 of the Official Public Records of Grayson County, Texas;

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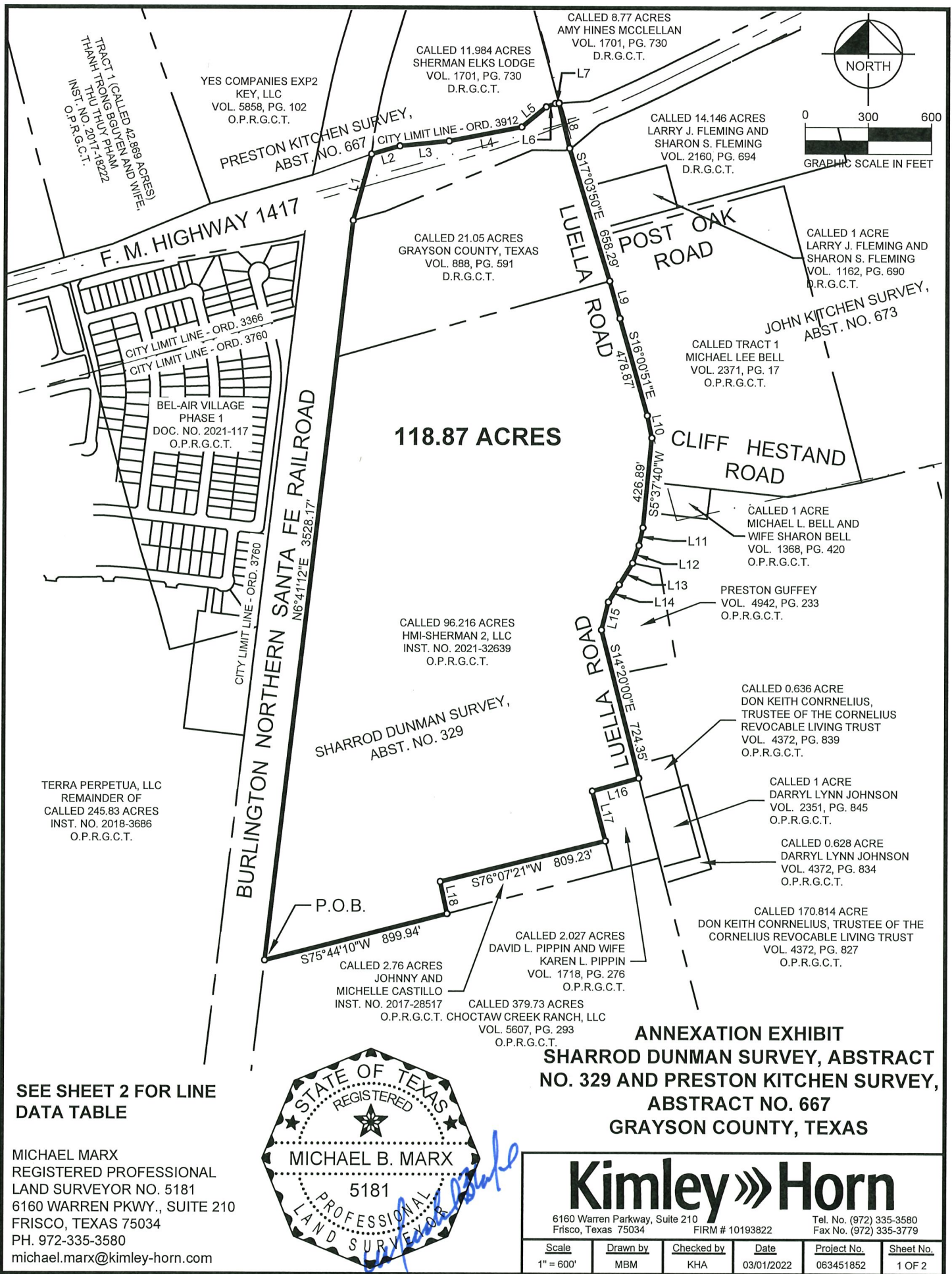
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THENCE South 75°44'10" West, along the southerly line of said 96.216-acre tract and the northerly line of said 379.73-acre tract, a distance of 899.94 feet to the **POINT OF BEGINNING** and containing 118.87 acres of land, more or less.

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DATA TABLE

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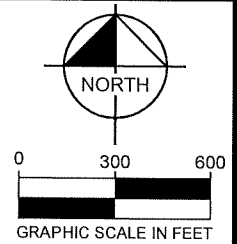
ANNEXATION EXHIBIT
SHARROD DUNMAN SURVEY, ABSTRACT
NO. 329 AND PRESTON KITCHEN SURVEY,
ABSTRACT NO. 667
GRAYSON COUNTY, TEXAS

Kimley»Horn

6160 Warren Parkway, Suite 210
Frisco, Texas 75034 FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 335-3779

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ANNEXATION TRACT

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BEGINNING at a 1/2-inch iron rod found for the southwest corner of said 96.216-acre tract and the northwest corner of a called 379.73-acre tract of land, described in a Warranty Deed to Choctaw Creek Ranch, LLC, as recorded in Volume 5607, Page 293 of the Official Public Records of Grayson County, Texas, same also being on the easterly line of the Burlington Northern Santa Fe Railroad 225' wide right of way;

THENCE North 06°41'12" East, along the westerly line of said 96.216-acre tract, the westerly line of said 21.05-acre tract and the easterly line of said Burlington Northern Santa Fe Railroad right of way, a distance of 3,528.17 feet to the intersection of the westerly line of said 21.05-acre tract with the southerly right of way line of said F. M. 1417;

THENCE North 15°28'27" East, crossing said F. M. 1417, a distance of 327.30 feet to the southwest corner of aforesaid 11.984-acre tract, same being on the southerly city limit line of the City of Sherman as described in Ordinance No. 3912;

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North 68°53'45" East, a distance of 46.60 feet to a point for corner;

North 86°01'45" East, a distance of 17.14 feet to the southeast corner of said 11.984-acre tract and the southwest corner of the city limit line as described in said Ordinance No. 3912;

THENCE South 13°24'13" East, crossing said F. M. 1417, a distance of 219.78 feet to the northeast corner of aforesaid 21.05-acre tract, same being in an asphalt road known as Luella Road, an apparent public use road, no record found;

THENCE South 17°03'50" East, departing the southerly right of way line of said F. M. 1417, along the easterly line of said 21.05-acre tract and along said Luella Road, a distance of 658.29 feet to the southeast corner of said 21.05-acre tract and the northeast corner of aforesaid 92.216-acre tract;

THENCE in a southerly direction, along the easterly line of said 96.216-acre tract and generally along the center of said Luella Road, the following:

South 15°36'01" East, a distance of 183.95 feet to a point for corner;

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South 12°06'00" East, a distance of 108.19 feet to a point for corner;

South 05°37'40" West, a distance of 426.89 feet to a point for corner;

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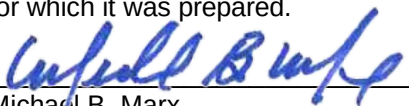
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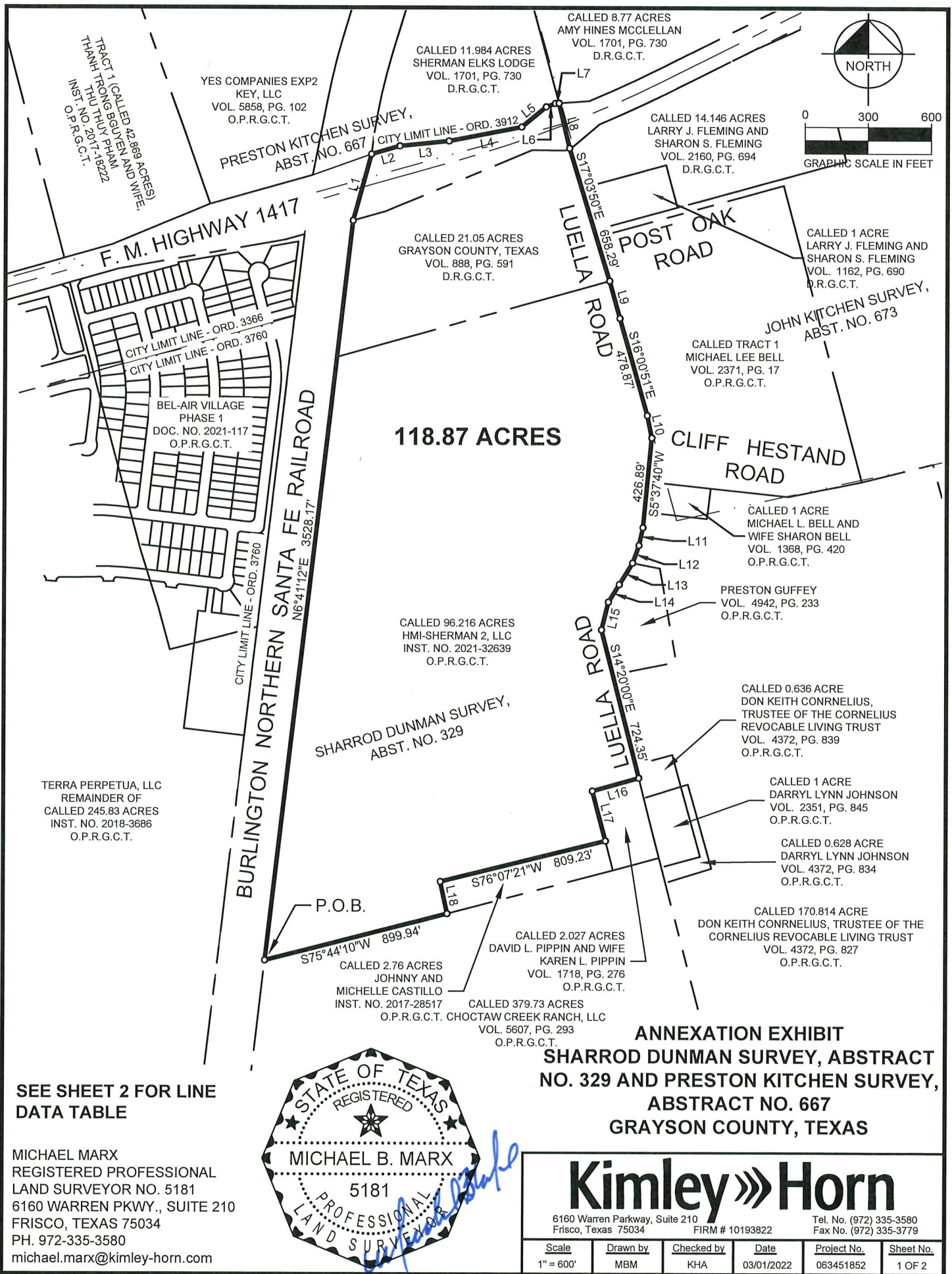
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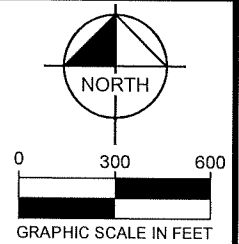
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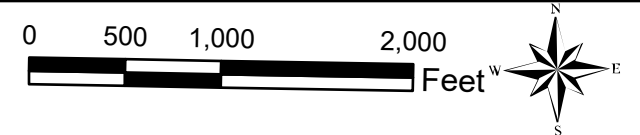
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Luella Crossing





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

H. 2.

Meeting Date: 05/02/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Approval of the 2021 Ad Valorem Tax Roll Value and Tax Levy

Issue:

To consider approval of the Ad Valorem Tax Roll Value and Tax Levy for fiscal year 2021-2022

Background:

In accordance with Texas Property Tax Code Section 26.09(e), the Council must approve the final tax roll value and related tax levy. The 2021 tax year represents taxes that will be collected during the City's 2021-2022 fiscal year. The Grayson County Tax Assessor/Collector's office has provided Sherman's taxable value as \$4,136,787,059 which produces a levy of \$19,227,384.31 based on the City's total tax rate of \$0.489000/\$100.00 valuation.

Origination:

Grayson County Tax Assessor/Collector Bruce Stidham

Financial Consideration:

There is no financial consideration to approving this tax levy.

Staff Recommendation:

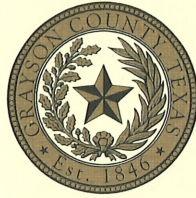
It is recommended that the Council approve the 2021 Tax Roll Value and 2021 Tax Levy at the amounts reflected above.

Alternatives:

As this process is required by the Texas Property Tax Code, there are no alternatives.

Attachments

2021 Tax Roll and Levy



COURTHOUSE
100 W. HOUSTON - SUITE 11
P.O. BOX 2107
SHERMAN, TX 75091

OFFICE OF
BRUCE STIDHAM
TAX ASSESSOR - COLLECTOR
GRAYSON COUNTY
www.co.grayson.tx.us

TAX OFFICE: 903-892-8297
VEHICLE REGISTRATION: 903-813-4225
FAX: 903-893-4973

December 3, 2021

VALUE/LEVY

**Ms. Mary Lawrence
City of Sherman
P O Box 1106
Sherman, Texas 75091**

Dear Ms. Lawrence:

Re: Section 26.09(e) SPTC

Please have your district approve your 2021 Tax Roll Values. Please sign as directed. Make a copy for your files and return the signed original to this office as soon as possible. These figures are actual tax roll value and tax levy billed figures.

2021 Tax Roll Value	\$ 4,136,787,059
2021 Tax Levy	\$ 19,227,384.31
2021 Special Assessment Levy	\$ 29,985.61

If you have any questions, please give us a call.

Very truly yours,

**Bruce Stidham
Tax Assessor-Collector**

BS:vh

City Secretary

City Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

I. 1.

Meeting Date: 05/02/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Tax Increment Reinvestment Zone #8 Board (3)

Issue:

This is a new Board created to make recommendations to the City Council concerning the administration of Tax Code chapter 311 in TIRZ #8. The membership will consist of three City Council Members, the City Manager, and one Grayson County Representative. Their terms are for two years, however they are reviewed annually to assure their service as a City Council Member.

Background:

The Board of Directors makes recommendations to the City Council concerning the administration of Tax Code Chapter 311 in the zone. This includes approving the Project Plan and Financing Plan for the Sherman Tax Increment Reinvestment Zone #8. TIRZ #8 covers the residential area of the Heritage Ranch Planned Development at the northeast corner of F.M. 1417 (Heritage Parkway) and U.S. Hwy 82, between Plainview Road and Travis Street.

Origination:

Director of Finance.

Financial Consideration:

There is no financial consideration.

Staff Recommendation:

It is recommended that the City Council consider appointments to the Tax Increment Reinvestment Zone #8 Board.

Alternatives:

The alternative is to delay the appointment of members to this Board.

Attachments

Fact Sheet- TIRZ 8

FACT SHEET

TAX INCREMENT REINVESTMENT ZONE BOARD #8

Established by ORDINANCE

1. Number of Members: FIVE
2. Term of Appointment: REVIEW ANNUALLY
3. Consecutive Term Rule: N/A
4. Qualifications for Membership: THREE CITY COUNCIL POSITIONS, CITY MANAGER
5. Appointed by: MAYOR AND CITY COUNCIL
6. Board Organization TO MAKE RECOMMENDATION TO THE CITY COUNCIL CONCERNING THE ADMINISTRATION OF TAX CODE CHAPTER 311 WHICH INCLUDES APPROVING THE PROJECT PLAN AND FINANCING PLAN FOR THE SHERMAN TAX INCREMENT REINVESTMENT ZONE NUMBER EIGHT
7. Departmental Responsibility: CITY MANAGER
8. Meeting Date: CALLED AS NECESSARY
9. Attendance Requirements: N/A

=====

PURPOSE:

The Board shall make recommendations to the City council concerning the administration of Tax Code chapter 311 which includes approving the Project Plan and Financing Plan for the Sherman Tax Increment Reinvestment Zone Number Eight.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

I. 2.

Meeting Date: 05/02/2022

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Tax Increment Reinvestment Zone #9 Board (3)

Issue:

This is a new Board created to make recommendations to the City Council concerning the administration of Tax Code chapter 311 in TIRZ #9. The membership will consist of three City Council Members, the City Manager, and one Grayson County Representative. Their terms are for two years, however they are reviewed annually to assure their service as a City Council Member.

Background:

The Board of Directors makes recommendations to the City Council concerning the administration of Tax Code Chapter 311 in the zone. This includes approving the Project Plan and Financing Plan for the Sherman Tax Increment Reinvestment Zone #9. TIRZ #9 covers the commercial area of the Heritage Ranch Planned Development at the northeast corner of F.M. 1417 (Heritage Parkway) and U.S. Hwy 82, between F.M. 1417 and Plainview Road.

Origination:

Director of Finance.

Financial Consideration:

There is no financial consideration.

Staff Recommendation:

It is recommended that the City Council consider appointments to the Tax Increment Reinvestment Zone #9 Board.

Alternatives:

The alternative is to delay the appointment of members to this Board.

Attachments

Fact Sheet - TIRZ 9

FACT SHEET

TAX INCREMENT REINVESTMENT ZONE BOARD #9

Established by ORDINANCE

1. Number of Members: FIVE
2. Term of Appointment: REVIEW ANNUALLY
3. Consecutive Term Rule: N/A
4. Qualifications for Membership: THREE CITY COUNCIL POSITIONS, CITY MANAGER
5. Appointed by: MAYOR AND CITY COUNCIL
6. Board Organization TO MAKE RECOMMENDATION TO THE CITY COUNCIL CONCERNING THE ADMINISTRATION OF TAX CODE CHAPTER 311 WHICH INCLUDES APPROVING THE PROJECT PLAN AND FINANCING PLAN FOR THE SHERMAN TAX INCREMENT REINVESTMENT ZONE NUMBER NINE
7. Departmental Responsibility: CITY MANAGER
8. Meeting Date: CALLED AS NECESSARY
9. Attendance Requirements: N/A

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PURPOSE:

The Board shall make recommendations to the City Council concerning the administration of Tax Code Chapter 311 which includes approving the Project Plan and Financing Plan for the Sherman Tax Increment Reinvestment Zone Number Five.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Meeting Date: 05/02/2022

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2022 Council Calendar

2022

Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

March						
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27	28	29	30	31		

April						
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24	25	26	27	28	29	30

May						
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22	23	24	25	26	27	28
29	30	31				

June						
Su	Mo	Tu	We	Th	Fr	Sa
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July						
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31						

August						
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28	29	30	31			

September						
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25	26	27	28	29	30	

October						
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23	24	25	26	27	28	29
30	31					

November						
Su	Mo	Tu	We	Th	Fr	Sa
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20	21	22	23	24	25	26
27	28	29	30			

December						
Su	Mo	Tu	We	Th	Fr	Sa
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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	City Council Called Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

CALLED MEETINGS	
1/18/2022	Rescheduled - Martin Luther King, Jr. Day
2/9/2022	CIP-Public Works Planning Session
2/23/2022	Joint Meeting - Legal Training (Canceled-Bad Weather)
3/23/2022	Joint Meeting - Legal Training
4/19/2022	Budget Planning Meeting
5/26/2022	Capital Improvement Program Work Session
6/7/2022	Budget Workshop - Day 1
6/8/2022	Budget Workshop - Day 2
7/5/2022	Rescheduled - Independence Day
9/6/2022	Rescheduled - Labor Day