CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, MAY 1, 2023
5:00 P.M.

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

A. 2. **PLEDGE OF ALLEGIANCE LED BY DEPUTY MAYOR JOSH STEVENSON**

A. 3. **INVOCATION BY DEPUTY MAYOR JOSH STEVENSON**

A. 4. **APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF APRIL 17, 2023**

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. 6589**
Authorizing the City's Participation in the Texas Enterprise Zone Program Pursuant to the Texas Enterprise Zone Act, Chapter 2303, Texas Government Code, Describing Availability of Certain Local Incentives, Designating a Liaison for Communication with Interested Parties, and Nominating GlobalWafers America, LLC to the Office of the Governor Economic Development & Tourism through the Economic Development Bank for Designation as a Qualified Business and Enterprise Project; Providing a Repealing/Savings Clause, Severability Clause and an Effective Date

Close Public Hearing and Consider Adoption of Ordinances

D. 2. **ADOPTION OF ORDINANCES**
Consider Adoption of Ordinance Numbers 6589

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

Resolutions

E. 1. **RESOLUTION NO. 7059**

Authorizing Execution of an Agreement with David Downtain, d/b/a RP Sherman Properties II, LLC under the City of Sherman's Downtown Building Improvement Grant Program for Renovations at 124 S Crockett Street

E. 2. **RESOLUTION NO. 7060**

Authorizing the City Manager or His Designee to Finalize Negotiations and to Finalize and Execute Documents for the Conveyance of Real Property from Young Enterprises, LP, Located at Lot 3R-A of North Creek Park Addition, as Shown in Plat of Record in Document No. 2023-79, Plat Records, Grayson County, Texas

E. 3. **RESOLUTION NO. 7061**

Authorizing Execution of a Contract with Hunter Knepshield of Texas, Inc. for the Purchase and Installation of Playground and Park Equipment at the Northcreek Subdivision through the Buyboard Purchasing Cooperative

E. 4. **RESOLUTION NO. 7062**

Authorizing Execution of an Agreement to Contribute Right of Way Funds with the Texas Department of Transportation to Acquire Right of Way and Easements along U.S. Highway 75 in the City of Sherman

E. 5. **RESOLUTION NO. 7063**

Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for design of the Terminal Storage Reservoir and Pump Station

E. 6. **RESOLUTION NO. 7064**

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Burgess & Niple, Inc. for the Downtown Wastewater Improvements, Phase 1 Project

E. 7. **RESOLUTION NO. 7065**

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Plummer Associates, Inc. for Engineering Services for Design of the Wastewater Treatment and Water Reuse Master Plan Project

E. 8. **RESOLUTION NO. 7066**

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Garver, LLC for the Design of the Sherman Water Treatment Plant Expansion Project

E. 9. **RESOLUTION NO. 7067**

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Pape-Dawson Engineers, Inc. for Sherman Water Treatment Plant - Concentrate Discharge and Outfall Design Services

E. 10. **** RESOLUTION NO. 7068***

Consenting to Assignment by Panda Sherman Power, LLC to Rayburn Energy Station LLC of Water Services Agreement Dated October 26, 2011 and Tax Abatement Agreement Dated October 3, 2011 between the City of Sherman, Texas and Panda Sherman Power, LLC

E. 11. ***RESOLUTION NO. 7069***

Authorizing Submission of an Application to the Texas Department of Transportation's 2023 Transportation Alternatives Set-Aside Program for Projects

E. 12. **** RESOLUTION NO. 7070***

Awarding a Bid to and Authorizing Execution of a Contract with Water Works Metrology, LLC for an Annual Supply of Water Meters for the Customer and Utility Services Department

E. 13. **** RESOLUTION NO. 7071***

Authorizing the Purchase of a New GTH-5519 Telehandler from Terex Government Programs for the Water Treatment Plant through the U.S. General Services Administration (GSA) Multiple Award Schedule Cooperative Purchasing Program

E. 14. ***RESOLUTION NO. 7072***

Authorizing the purchase of a 2023 Frazer Type I 14' Module Ambulance for Sherman Fire-Rescue from Rush Trucks of Ohio and Frazer Ltd. through BuyBoard.

Requests to Advertise

F. 1. **** REQUEST TO ADVERTISE***

Services to Perform the Annual Audit for the Period Ending September 30, 2023

Other Business

G. 1. **OTHER BUSINESS**

Consider Approval of the Annexation Scheduling Plan for Adoption of Approximately 78 acres of land located North of Post Oak Creek, South of Three Oaks, Phase II, and along the Burlington Santa Fe Railroad, adjacent to the Sherman City Limits and in the City of Sherman's Extraterritorial Jurisdiction; and Directing the Department of Engineering Services to Develop a Service Plan for the Area to be Annexed Upon Approval of the Annexation Scheduling Plan

G. 2. **OTHER BUSINESS**

Consider Approval of the Annexation Scheduling Plan for Adoption of Approximately 25.08 acres of land located North of Post Oak Creek, East of U.S. Highway 75 and South of Three Oaks, Phase II, adjacent to the Sherman City Limits and in the City of Sherman's Extraterritorial Jurisdiction; and Directing the Department of Engineering Services to Develop a Service Plan for the Area to be Annexed Upon Approval of the Annexation Scheduling Plan

G. 3. **** OTHER BUSINESS***

Consider Request to Temporarily Close Certain Streets for the "Cinco de Mayo Festival" on Friday, May 5, 2023

H. **COUNCIL COMMENTS**

Executive Session

I. 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. (a) Receive legal advice regarding wastewater treatment agreement dated November 2, 2009 and related issues
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) Economic development prospect
Tex. Gov't Code § 551.089	Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices.

The Council reconvenes into General Session

J. 1. OPEN MEETING

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

K. ADJOURNMENT

COUNCIL CALENDAR

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

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 Thursday, April 27, 2023 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 27th day of April 2023.
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	Deputy Mayor	Council Members	
David Plyler	Josh Stevenson	Henry Marroquin, Council-At-Large, PL #1	Josh Stevenson, Council – District #2
		Juston Dobbs, Council-At-Large, PL #2	Pamela L. Howeth, Council – District #3
		Shawn C. Teamann, Council – District #1	Daron Holland, Council – District #4

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **A. 4.**

Meeting Date: 05/01/2023

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF APRIL 17, 2023

Attachments

April 17, 2023

STATE OF TEXAS §

April 17, 2023

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 17, 2023.

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

MEMBERS ABSENT: **NONE.**

CALL TO ORDER — **CALL TO ORDER**

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

APPROVE MINUTES — **APPROVE MINUTES**

The Council reviewed the Minutes of the Regular City Council Meeting of April 3, 2023. Council Member Howeth moved to approve the Minutes, as presented; Second by Council Member Dobbs; All present voted AYE.
MOTION CARRIED.

SPECIAL PRESENTATION — **SPECIAL PRESENTATION SENDING A COMPETITOR TO OLYMPICS**

THE CAMP PRESENTATION OF SENDING A POTENTIAL COMPETITOR TO THE NEXT OLYMPICS

Andre Luper, owner and founder of The Camp, a faith-based 501c3 non-profit organization formed in 2013, spoke about the possibility of sending a competitor to the next Olympics. Mr. Luper said The Camp is a tool for him to help underprivileged kids to stay "on track" in life.

Mr. Luper currently has a fighter that has the possibility to be a competitor in the next Olympic games. The boxer is a two-time Golden Glove champion, in 2017 and 2019. The young man is currently in training and must first participate in 15 pre-qualification matches located in multiple cities and states to earn the selection.

Latrica Lagway, Manager of The Camp, asked the City Council about the possibility of sponsoring this young man in his quest. The fundraising goal to cover the expenses associated with the pre-qualification matches is $16,338.48. Funds will be used for travel, lodging, food, and registration fees.

CITIZEN'S COMMENTS — **CITIZENS COMMENTS**

There were no citizen's comments.

CONSENT AGENDA — **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.

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

CONSENT AGENDA

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.

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 Dobbs. All present voted AYE.

Mayor Plyler introduced Ordinance No. 6583 and called for a public hearing:

ORD 6583 ABANDONING SANITARY SEWER EASEMENT (CITY ETJ)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) TWENTY FOOT (20') SANITARY SEWER EASEMENT LOCATED IN THE S. DUNMAN SURVEY, ABSTRACT NO. 329 AND THE W. BAILEY SURVEY, ABSTRACT NO. 64, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH SANITARY SEWER EASEMENT IS ESTABLISHED IN VOLUME 1042, PAGE 429 OF THE DEED RECORDS OF GRAYSON COUNTY, TEXAS.

Wayne Lee, Director of Engineering, explained that the easement hasn't been used since 1997, and the property owner requested that the easement be abandoned. The staff has no objection to the easement being abandoned.

No citizens appeared before the City Council to discuss Ordinance No. 6583.

Mayor Plyler introduced Ordinance No. 6584 and called for a public hearing:

ORD 6584 CLOSE & ABANDON ALLEY IN PARKVIEW ADDITION (INCLUDE IN REPLAT OF SURROUNDING PROPERTY)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CLOSING AND ABANDONING A PLATTED ALLEY ADJACENT TO LOTS 8-13 OF PARKVIEW ADDITION IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, SAID ALLEY BEING ESTABLISHED IN VOL. 306, PG. 155, DEED RECORDS, GRAYSON COUNTY, TEXAS, SAID PROPERTY SHALL BE RESERVED AS AN EASEMENT FOR PUBLIC AND FRANCHISE UTILITIES FOR THE RIGHT OF INGRESS AND EGRESS TO SAME FOR PURPOSES OF OPERATION, MAINTENANCE, OR REMOVAL OF SUCH UTILITIES OR UNTIL SUCH UTILITIES SHALL BE ABANDONED OR RELOCATED.

Mr. Lee said the property owner adjacent to the platted alley has requested that it be abandoned. There are utilities in the alley, so it will convert to an easement. The staff has no objection to the alley being abandoned.

No citizens appeared before the City Council to discuss Ordinance No. 6584.

Mayor Plyler introduced Ordinance No. 6585 and called for a public hearing:

ORD 6585 ZONE CHANGE FOR DUPLEX (800 MAXEY ST)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.238 ACRES, BEING A PART OF GEORGE B. PILANT SURVEY, ABSTRACT NO. 963, BEING ALL OF LOTS 13, 14, AND 15 IN BLOCK 14 OF CONTINUATION OF W. ELLIOTTS ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 800 MAXEY STREET, HERETOFORE ZONED C-1 (RETAIL BUSINESS) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-2F (DUPLEX RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, (MANUEL DeJESUS OCHOA, OWNER AND UNDERWOOD DRAFTING & SURVEYING, INC., SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Rob Rae, Director of Development Services, said the property is currently zoned C-1. The owner of the property would like to rezone it to R-2F (Duplex Residential) District, so a duplex can be constructed on the property.

The Planning and Zoning Commission recommended approval of the Zone Change. The request is compatible with the City of Sherman Comprehensive Master Plan.

No citizens appeared before the City Council to discuss Ordinance No. 6585.

Mayor Plyler introduced Ordinance No. 6586 and called for a public hearing:

ORD 6586 SPECIFIC USE PERMIT FOR AUTO LAUNDRY, CAR WASH (2901 BLOCK TEXOMA PKWY)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14 AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE LAUNDRY, CARWASH IN A C-2 (GENERAL COMMERCIAL) DISTRICT/75 & 82 OVERLAY DISTRICT, LOCATED AT 2901 BLOCK TEXOMA PARKWAY, CONSISTING OF 1.119 ACRES IN THE REUBEN HENDRIX SURVEY, ABSTRACT 504, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS (SHERMAN NEC TEXOMA & 82, LP OWNER, CLAY CRISTY REPRESENTATIVE; AND EAGLE SURVEYING, LLC., SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Mr. Rae said this request is for a Specific Use Permit to allow a car wash. The Planning and Zoning Commission recommended approval of the Specific Use Permit.

No citizens appeared before the City Council to discuss Ordinance No. 6586.

ORD 6587
ZONE CHANGE
FOR SCHOOL
(4800 TEXOMA PKWY)

Mayor Plyler introduced Ordinance No. 6587 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14 AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A SCHOOL, COMMERCIAL OR TRADE IN A M-1 (LIGHT MANUFACTURING) DISTRICT, LOCATED AT 4800 TEXOMA PARKWAY, CONSISTING OF 42.8134 ACRES IN THE JOHN HENDRIX SURVEY, ABSTRACT NO. 503, THE W.F. PATTERSON SURVEY, ABSTRACT NO. 969, THE DANIEL SHELP SURVEY, ABSTRACT NO. 1097 AND THE T.J. SHANNON SURVEY, ABSTRACT NO. 1136, LOTS 1 AND 3, BLOCK 1, MIDWAY MALL, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS (STAR MIDWAY, LLC, OWNER, ADAM McGREGOR PASSAGE EDUCATION, LLC), TENANT/REPRESENTATIVE; AND DAVID PETREE, SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Mr. Rae said the request is for a Specific Use Permit at the back of the Midway Mall.

The Planning and Zoning Commission recommended approval of the Zone Change. However, they did tie the SUP to the requesting company, so it is not transferable.

No citizens appeared before the City Council to discuss Ordinance No. 6587.

ORD 6588
ZONE CHANGE
FOR MULTI-FAMILY
DEVELOPMENT
(4441 W. HOUSTON ST)

Mayor Plyler introduced Ordinance No. 6588 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 28.665 ACRES IN THE FIELDING BACON SURVEY, ABSTRACT NO. 119, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 4441 WEST HOUSTON STREET, HERETOFORE ZONED R-A (RESIDENTIAL AGRICULTURE) DISTRICT; REZONING AND PLACING THE TRACT IN THE MF-15 (MULTI-FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, (CHARLES BRANCH, OWNERS; AND UNDERWOOD DRAFTING & SURVEYING, INC., SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said this request was for a Zone Change from R-A (Residential Agriculture) District to MF-15 (Multi-Family Residential) District, which is the low-density (Multi-Family) zoning district. The applicant would like to build 420 units at this location. It would be a single-family for rent community, which would be low density duplexes, townhomes, and single-family residences on low lots.

There were two citizens in opposition when the item was heard by the Planning and Zoning Commission. However, the Planning and

Zoning Commission recommended approval of the Zone Change. The request is compatible with the City of Sherman Comprehensive Master Plan.

Matthew Lee, 2910 Dallas Parkway, Suite 400, Plano, Texas 75093
Mr. Lee appeared representing Westwood Professional Services, Inc, Civil Engineering for the site. He said they had been working on the project for the last few months, and he wanted to be sure they had a viable project for the City. He was available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6588.

The Public Hearing was closed.

Ordinance 6583
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) TWENTY FOOT (20') SANITARY SEWER EASEMENT LOCATED IN THE S. DUNMAN SURVEY, ABSTRACT NO. 329 AND THE W. BAILEY SURVEY, ABSTRACT NO. 64, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH SANITARY SEWER EASEMENT IS ESTABLISHED IN VOLUME 1042, PAGE 429 OF THE DEED RECORDS OF GRAYSON COUNTY, TEXAS.

ORD 6583
ABANDONING SANITARY SEWER EASEMENT (CITY ETJ)

Ordinance 6584
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CLOSING AND ABANDONING A PLATTED ALLEY ADJACENT TO LOTS 8-13 OF PARKVIEW ADDITION IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, SAID ALLEY BEING ESTABLISHED IN VOL. 306, PG. 155, DEED RECORDS, GRAYSON COUNTY, TEXAS, SAID PROPERTY SHALL BE RESERVED AS AN EASEMENT FOR PUBLIC AND FRANCHISE UTILITIES FOR THE RIGHT OF INGRESS AND EGRESS TO SAME FOR PURPOSES OF OPERATION, MAINTENANCE, OR REMOVAL OF SUCH UTILITIES OR UNTIL SUCH UTILITIES SHALL BE ABANDONED OR RELOCATED.

ORD 6584
CLOSE & ABANDON ALLEY IN PARKVIEW ADDITION (INCLUDE IN REPLAT OF SURROUNDING PROPERTY)

Ordinance 6585
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.238 ACRES, BEING A PART OF GEORGE B. PILANT SURVEY, ABSTRACT NO. 963, BEING ALL OF LOTS 13, 14, AND 15 IN BLOCK 14 OF CONTINUATION OF W. ELLIOTTS ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 800 MAXEY STREET, HERETOFORE ZONED C-1 (RETAIL BUSINESS) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-2F (DUPLEX RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, (MANUEL DeJESUS OCHOA, OWNER AND UNDERWOOD DRAFTING & SURVEYING, INC., SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6585
ZONE CHANGE FOR DUPLEX (800 MAXEY ST)

Ordinance 6586 — **ORD 6586 SPECIFIC USE PERMIT FOR AUTO LAUNDRY, CAR WASH (2901 BLOCK TEXOMA PKWY)**

AN ORDINANCE OF THE CITY COUNCL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14 AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE LAUNDRY, CARWASH IN A C-2 (GENERAL COMMERCIAL) DISTRICT/75 & 82 OVERLAY DISTRICT, LOCATED AT 2901 BLOCK TEXOMA PARKWAY, CONSISTING OF 1.119 ACRES IN THE REUBEN HENDRIX SURVEY, ABSTRACT 504, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS (SHERMAN NEC TEXOMA & 82, LP OWNER, CLAY CRISTY REPRESENTATIVE; AND EAGLE SURVEYING, LLC., SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Ordinance 6587 — **ORD 6587 ZONE CHANGE FOR SCHOOL (4800 TEXOMA PKWY)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14 AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A SCHOOL, COMMERCIAL OR TRADE IN A M-1 (LIGHT MANUFACTURING) DISTRICT, LOCATED AT 4800 TEXOMA PARKWAY, CONSISTING OF 42.8134 ACRES IN THE JOHN HENDRIX SURVEY, ABSTRACT NO. 503, THE W.F. PATTERSON SURVEY, ABSTRACT NO. 969, THE DANIEL SHELP SURVEY, ABSTRACT NO. 1097 AND THE T.J. SHANNON SURVEY, ABSTRACT NO. 1136, LOTS 1 AND 3, BLOCK 1, MIDWAY MALL, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS (STAR MIDWAY, LLC, OWNER, ADAM McGREGOR PASSAGE EDUCATION, LLC), TENANT/REPRESENTATIVE; AND DAVID PETREE, SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Council Member Howeth asked why the zoning district was manufacturing.

Mr. Rae said the applicant was not requesting a zone change. Midway Mall is currently in two different zoning districts. The front side of the Mall, on Texoma Parkway, is zoned C-2, and the back side of the Mall is zoned M-1. The M-1 District does allow for that type of driving school.

Council Member Teamann said the request is for the entire building, other than Burlington and Dillard's. He asked if they were using the rest of the building. Mr. Rae said the Specific Use Permit does specify the parking lot and a location inside the Mall that they will be using.

Council Member Teamann asked if there were any requirements for 18-wheelers parking in the parking lot. He asked if any fencing or cover was required. Mr. Rae said, since the property was zoned M-1, it is a compatible use for truck storage, and would be permitted. The owner for the Mall did indicate that he doesn't want semi-trucks driving all over the parking lot, because it would tear it up. He would like them on City streets as soon as possible.

ORD 6588
ZONE CHANGE FOR MULTI-FAMILY DEVELOPMENT (4441 W. HOUSTON ST)

Ordinance 6588

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF BEING 28.665 ACRES IN THE FIELDING BACON SURVEY, ABSTRACT NO. 119, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 4441 WEST HOUSTON STREET, HERETOFORE ZONED R-A (RESIDENTIAL AGRICULTURE) DISTRICT; REZONING AND PLACING THE TRACT IN THE MF-15 (MULTI-FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, (CHARLES BRANCH, OWNERS; AND UNDERWOOD DRAFTING & SURVEYING, INC., SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Council Member Howeth asked about the two citizens that expressed concerns about the traffic from this zone change, during the Planning and Zoning Commission Meeting. She said it is close to a school, and asked if the staff was concerned.

Mr. Rae said they did ask the applicant to provide a traffic study, and they did. Matthew Lee said an in-house traffic study was completed. It determined that a deceleration lane was needed, which would be a left turning lane entering the development. He said they would need to coordinate with the Texas Department of Transportation, because they control that highway. The developer will have to do whatever they require.

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to adopt Ordinance Nos. 6583, 6584, 6585, 6586, 6587, and 6588, as presented. Second by Council Member Holland.

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

RES 7056
36" WEST SHERMAN WATER MAIN PROJECT

RESOLUTION NO. 7056 -- APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO AWARD THE GUARANTEED MAXIMUM PRICE ONE (GMP 1.00) FOR GARNEY COMPANIES, INC. FOR THE 36-INCH WEST SHERMAN WATER MAIN PROJECT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO AWARD THE GUARANTEED MAXIMUM PRICE ONE (GMP 1.00) FOR GARNEY COMPANIES, INC. FOR THE 36-INCH WEST SHERMAN WATE MAIN.

Tom Pruitt, Utility Engineer, said bids were open on two pre-bid packages, to move forward with the 36" West Sherman Water Main Project as quickly as possible. This would allow the contractor to move forward with construction.
The City will concur with the Greater Texoma Utility Authority, which met earlier today to award the bid.

Council Member Holland asked about the expected timeline for the project. Mr. Pruitt said the procurement will be immediately.

Deputy Mayor Stevenson asked how many bids there were. Mr. Pruitt said there were two bidders on the procurement.

Clint Philpott, Assistant City Manager, said they also bid the pipe, however there was only one bidder that could meet the schedule. The other two bidders could not meet the schedule. It was determined that the City could afford a little longer schedule, so they decided not to award the pipe bid. Those are being rebid, in the hope of obtaining better competitive bids, to save some money.

He added that these are "big contracts" so they are spreading out the costs to get the project done in time, but to also save money.

Council Member Marroquin asked how long the bids last, since the price is changing so quickly. Mr. Pruitt said Garney Companies has assured the City that would not be happening. He said, normally a bid is guaranteed for 69 days. Mr. Philpott said they would order the supplies as soon as it is approved.

Council Member Teamann said the price was originally $1.1 million, and the elevated price is $1.6 million. Mr. Pruitt said the original price with Garney was $588,000, and they are adding the price of materials, at $1.1 million.

ACTION TAKEN.
Motion by Deputy Mayor Stevenson to approve Resolution No. 7056, as presented. Second by Council Member Dobbs.
VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RES 7057 FIRST AMENDMENT TO BEL AIR VILLAGE PID PHASE #1 REIMBURSEMENT AGREEMENT

RESOLUTION NO. 7057 -- AUTHORIZING EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE BEL AIR VILLAGE PUBLIC IMPROVEMENT DISTRICT, INCLUDING, WITHOUT LIMITATION, FIRST AMENDMENT TO BEL AIR VILLAGE PUBLIC IMPROVEMENT DISTRICT PHASE #1 REIMBURSEMENT AGREEMENT

A RESOLUTION OF THE CITY COUNCIL OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE BEL AIR VILLAGE PUBLIC IMPROVEMENT DISTRICT, INCLUDING, WITHOUT LIMITATION, FIRST AMENDMENT TO BEL AIR VILLAGE PUBLIC IMPROVEMENT DISTRICT PHASE #1 REIMBURSEMENT AGREEMENT.

Mr. Philpott said the Bel Air Village Public Improvement District was originally created in December of 2020, and reimburses the developer for public infrastructure costs, through a tax assessment.

Based on market conditions, they calculated that they could afford about $7.2 million of reimbursement, out of the PID for improvements. The total PID was almost $9 million, so in April

2022, with home prices increasing, the Council approved an ordinance that allowed the PID to collect those taxes, up to $9.1 million.

This amendment is the reimbursement agreement that allows the PID to reimburse the developer for those costs. Basically, it's a "clean-up" on those items.

ACTION TAKEN.

Motion by Council Member Dobbs to approve Resolution No. 7057, as presented. Second by Council Member Teamann.

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

RES 7058 GRANT FOR PURCHASE OF POLICE K-9

RESOLUTION NO. 7058 -- AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE AKC REUNITE ADOPT A K-9 COP MATCHING GRANT FOR THE FUNDING PURCHASE OF A K-9 DOG FOR THE SHERMAN POLICE DEPARTMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO AKC REUNITE ADOPT A K-9 COP MATCHING GRANT FOR FUNDING THE PURCHASE OF A K-9 DOG FOR THE SHERMAN POLICE DEPARTMENT.

CONSENT AGENDA.

REQ TO ADVERTISE SALE OF PROPERTY IN ETJ (2400-2500 BLOCKS OF S. EAST ST)

REQUEST TO ADVERTISE SALE OF APPROXIMATELY 12 ACRES OF LAND LOCATED IN THE 2400-2500 BLOCKS OF SOUTH EAST STREET IN SHERMAN'S EXTRA-TERRITORIAL JURISDICTION (ETJ)

Mr. Rae said there is approximately 12 acres that the City owns, in the southeast portion of Sherman, adjacent to the old police shooting range. Development is now occurring around it, and the staff feels it would be a good time to post the land for sale.

If approved, the staff will wait until the property is annexed and the survey is complete, to advertise it for sale.

Deputy Mayor Stevenson confirmed that the property is owned by the City, but we still must request annexation from "ourselves." Mr. Rae confirmed that the property is in the vicinity of Shark Tooth Park.

ACTION TAKEN.

Motion by Council Member Howeth to approve the Request to Advertise for the sale of approximately 12 acres of land, located in the 2400 to 2500 blocks of South East Street, in Sherman's Extra-Territorial Jurisdiction, as presented. Second by Council Member Dobbs.

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

CHANGE ORDER

CHANGE ORDER NO. 1 FOR PROFESSIONAL SERVICES AGREEMENT WITH M. ARTHUR GENSLER JR. & ASSOCIATES, INC FOR ADDITIONAL SERVICES

CHANGE ORDER CITY HALL NEEDS ASSESSMENT

Zach Flores, Executive Director of Public Safety, said on the original contract with Gensler, they worked together to narrow the scope down tremendously because they were on a "fact-finding" mission to determine the feasibility of building a new City Hall, not actually building a new City Hall. They were trying to get enough information for the Council to make a decision.

They reached a point where they need to increase the scope of the project, to bring back the project for the Council's discussion in June 2023.

Council Member Dobbs confirmed that the City has paid $137,000 so far, and this change order would increase it by about $48,000.

Council Member Teamann said they were doing a needs assessment, so the Council can make an educated discussion on whether or not a new City Hall is needed. He said there is a need, but where does that need lie. He said the Council hasn't heard back from them yet, and he asked if there was really a "change of scope" or did they run out of time and money to make it happen.

Mr. Flores said there is a change of scope. The staff talked to them about the need, and they have discussed the number of people and the space needed within the building, but now they are looking at a "campus environment," which might include some streets that might close or move, and things outside the building. Previously they were looking at the building itself, now it includes things outside the building, such as streets and park issues.

Deputy Mayor Stevenson asked that, if the Council approves this additional $48,000, they will have an opinion for the Council in June 2023. Mr. Flores said they will give the City a number, based upon the needs that are determined. Then the Council will consider whether or not that number is palpable.

Council Member Teamann said he thought they would assess the space needs for the number of people needed. Robby Hefton, City Manager, said they are currently "scoping the project now, both the building and the campus. The intention is to have the information available for the Council at the Budget Workshop.

ACTION TAKEN.

Motion by Council Member Howeth to approve Change Order No. 1, with M. Arthur Gensler Jr. & Associates, Inc, for a Professional Services Agreement, to include additional information in the space needs assessment for a new City Hall, as presented. Second by Council Member Holland.

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

CHANGE ORDER
OLD POLICE DEPT
ELEVATOR REPAIR

CHANGE ORDER NO. 1 FOR CONTRACT WITH EMR ELEVATOR FOR CYLINDER REPLACEMENT

Chuck Carlisle, Facilities Manager, said this change order relates to the modernization of the elevator at the old Police Department. The project was originally approved on August 1, 2022. They were nearing the end of the project and testing the elevator, when it dropped, indicating a weakened cylinder. During the test, they overloaded the elevator, and it was a "slow drop."

Mr. Carlisle contacted several elevator repair companies and received one response, from EMR Elevator. The change order for the repair is $50,025. Mayor Plyler asked about the procedure for repair of the cylinder.

Deputy Mayor Stevenson asked about the turnaround time for the repair. Mr. Carlisle said it should be repaired by the end of April 2023.

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to approve Change Order No. 1, with EMR Elevator, for the Cylinder Replacement of the Elevator at the old Police Department, as presented. Second by Council Member Teamann.

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

OTHER BUSINESS

SEDCO QUARTERLY
PROGRESS REPORT

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

Kent Sharp, Sherman Economic Development President, presented the quarterly progress report on their activities. He introduced April Day, Executive Assistant, and said they are fully staffed again.

He reiterated that the mission of SEDCO is to grow and diversify the economy of Sherman and the surrounding area, through the addition of new jobs and investment of primary employers.

SEDCO received the Texas Economic Development Council's 2022 Economic Excellence Recognition Award, which is a really big award. There are approximately 780 Economic Development Council's in Texas, and about 40 awards were given out.

Mr. Sharp said he and Mark England, President of GlobiTech and GlobalWafers, visited the Governor's Mansion in recognition of Governor Greg Abbott receiving the 11th consecutive Governor's Cup.

SEDCO also hosted the Sherman Women-Owned and Minority-Owned kick-off event, to compile a directory, network, and make connections with new resources. He said 84 people attended, and they were extremely pleased with that number.

There were nine applicants for the 2023 Raising Innovative Sherman Entrepreneurs (RISE) Challenge. Program partners with SEDCO for the event, include Austin College, PQD Design & Manufacturing, and Grayson Small Business Center for Development. Four of the nine applicants advanced to Round 2, and then Round 3.

Three finalists were chosen to receive a RISE award, and the winners, and their award amounts, will be announced April 21, 2023, at the RISE Awards ceremony at Austin College.

During the next quarter, SEDCO will continue with business attraction, and business retention and expansion. A representative will attend the Industrial Asset Management Council's Spring Forum, and the staff will attend a Taiwan Delegation Meeting, hosted by the Dallas Regional Chamber. SEDCO will also co-host the AMP End of Year Event and the RISE Awards Ceremony. Mr. Sharp outlined other conferences the staff would attend, and briefed the Council on the status of other projects.

Mr. Sharp added that they are currently working five active projects, and if those projects come to fruition, they will represent about $4 billion in capital expenditures, and generate about 5,200 jobs.

They have also restarted business retention and expansion efforts since COVID shut them down.

During the last quarter, SEDCO approved the following projects, s Second Amendment and Restated Performance Agreement for 903 Brewers; an amended and Restated Performance Agreement with GlobalWafers; the sale of land in Progress Park III to Arctic Bracing, LLC; authorizing and approving a real estate sales contract, right of first refusal, and right of repurchase for the sale and conveyance of property at the corner of Howe Drive and Dorsett Drive, to HPI Acquisition, LLC; and a $109,702.88 incentive to Eaton B-Line for a $1,990,096 capital investment in a new hydraulic turret and tooling, which will create up to 35 new jobs over five years.

QUARTERLY INVESTMENT REPORT

APPROVE QUARTERLY INVESTMENT REPORT FOR QUARTER ENDED MARCH 31, 2023

The City Council approved the Quarterly Investment Report for the quarter ended March 31, 2023. A separate report was also included for the debt proceeds, which is required by the Investment Policy.

The total operating portfolio book value of about $41.6 million increased by about $12.5 million from the previous quarter, due to purchases of $3 million in U.S. Agency Securities, $1 million in U.S. Treasury Notes, $4.8 million in State of Texas political subdivision obligations, $1.5 million in Certificates of Deposit, $2.5 million in Local Government Investment Pools (LGIP), and $0.5 million in deposits into an FDIC Insured Investment Account, combined with maturities of $0.8 million of State of Texas political subdivision obligations.

The underlying investments were adequately diversified among six different types of securities. The portfolio's weighted-average maturity of 412 days increased from 397 days last quarter. The portfolio yield of 3.35% was 129 basis points below our benchmark 1-year Constant Maturity Treasury Index. Book value slightly exceeds market value ($0.6 million).

The debt proceeds portfolio balance of $13.2 million had decreased by about $3.3 million due to payments for capital projects. The portfolio includes a Local Government Investment Pool, and FDIC insured investment account and U.S. Agencies. The portfolio's weighted-average maturity of 86 days increased form 80 days last quarter. The portfolio yield of 3.62% was 112 basis points below the benchmark yield for this portfolio, the 4-week Constant Maturity Index of 4.74%. Book value approximated market value.
CONSENT AGENDA.

FINAL PLAT OF TEXOMA VET HOSPITAL, CONSISTING OF 2.354 ACRES IN THE A. HUME SURVEY, ABSTRACT NO. 522, AND CURRENTLY ZONED C-2 (GENERAL COMMERCIAL) DISTRICT; KENNETH AND MARY LAWRENCE, OWNER AND WINDROSE LAND SERVICES, SURVEYOR (5005 NORTH FM 1417 (HERITAGE PARKWAY))

APPROVE FINAL PLAT TEXOMA VET HOSPITAL (5005 N. FM 1417)

The City Council approved the Final Plat of Texoma Vet Hospital, a 2.354 acre tract, located at 5005 North FM 1417. The property is currently zone C-2 (General Commercial) 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 Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT OF ROCKHILL CORNER ADDITION, CONSISTING OF 1.985 ACRES, BEING A PART OF THE WILLIAM C. ATCHISON SURVEY, ABSTRACT NO. 23, BEING ALL OF LOT 7, BLOCK ONE OF CHOCTAW ESTATES NO. II AND CURRENTLY IN THE ETJ (EXTRATERRITORIAL JURISDICTION); ROBERT AND NANCY DOBBS, OWNER; HELVEY-WAGNER SURVEYING, INC., SURVEYOR (121 ROCKPORT ROAD)

APPROVE REPLAT ROCKHILL CORNER ADDITION (ETJ)

The City Council approved the Replat of Rockhill Corner Addition, a 1.985 acre tract, located at 121 Rockport Road, in the City's Extraterritorial Jurisdiction. The owner would like to plat the property into two 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.

FINAL PLAT OF HICKORY HILL GARDEN APARTMENTS ADDITION, LOTS 1 AND 2, BLOCK 1, CONSISTING OF 22.330 ACRES IN THE RALSTON W. ADAMS SURVEY, ABSTRACT NO. 18 AND CURRENTLY ZONED PD (PLANNED DEVELOPMENT) DISTRICT; SHERMAN HICKORY HILL, LLC, OWNER AND BOHLER ENGINEERING, SURVEYOR (2100-2300 BLOCK WEST LAMBERTH ROAD)

APPROVE FINAL PLAT HICKORY HILL GARDEN APARTMENTS ADDITION (2100-2300 BLOCK W. LAMBERTH RD)

The City Council approved the Final Plat of Hickory Hill Garden Apartments Addition, a 22.330 acre tract, located in the 2100 to 2300 blocks of West Lamberth Road. The property is currently zoned PD (Planned Development) 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 Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA. SUBJECT TO STAFF REVIEW LETTER.

PUBLIC HEARING AND REPLAT FOR FIELDER ADDITION, CONSISTING OF 0.492 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, BEING A PART OF BLOCK 29, CHAFFIN'S SECOND ADDITION AND CURRENTLY ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; PAUL TERRELL, LA CIMA CONTRACTING, OWNER; AND COPLEY LAND SURVEYING, SURVEYOR (1104 EAST CHAFFIN STREET)
The City Council approved the Replat for Fielder Addition, a 0.492 acre tract, located at 1104 East Chaffin Street. The property is currently zoned R-6(Single-Family Residential) District. The owner would like to Plat the property into two 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.

REPLAT OF OCHOA ADDITION, CONSISTING OF 0.238 ACRES, BEING A PART OF GEORGE B. PILANT SURVEY, ABSTRACT NO. 963, BEING ALL OF LOTS 13, 14, AND 15 IN BLOCK 14 OF CONTINUATION OF W. ELLIOTTS ADDITION AND CURRENTLY ZONED C-1 (RETAIL BUSINESS) DISTRICT; MANUEL DEJESUS OCHOA, OWNER; UNDERWOOD DRAFTING & SURVEYING, INC., SURVEYOR (800 MAXEY STREET)

APPROVE REPLAT OCHOA ADDITION & W. ELLIOTTS ADDITION (800 MAXEY ST)

The City Council approved the Replat of Ochoa Addition, a 0.238 tract, located at 800 Maxey Street. The property is currently zoned C-1 (Retail Business) District. The owner is requesting a zone change to an R-2F (Duplex Residential) District, and to Plat the property into one lot to build a duplex.

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

HAPPY BIRTHDAY TO COUNCIL MEMBER DOBBS

HAPPY BIRTHDAY TO COUNCIL MEMBER DOBBS

Council Member Marroquin wished Council Member Dobbs a happy birthday.

HAPPY BIRTHDAY TO COUNCIL MEMBER DOBBS

HAPPY BIRTHDAY TO COUNCIL MEMBER DOBBS

Council Member Teamann wished Council Member Dobbs a happy birthday.

MENTAL HEALTH AWARENESS MONTH — **MENTAL HEALTH AWARENESS MONTH**

Council Member Teamann recognized a recent meeting for the Mental Health Awareness Month and encouraged people to become involved and learn more about the organization.

THE CAMP AND POTENTIAL OLYMPIC CONTENDER — **THE CAMP & POTENTIAL OLYMPIC CONTENDER**

Council Member Howeth thanked Mr. Luper and Ms. Lagway for their presentation about The Camp and the young man that is working to compete in the Olympics. She also thanked all their members for their attendance at the Council Meeting.

THE CAMP AND POTENTIAL OLYMPIC CONTENDER — **THE CAMP & POTENTIAL OLYMPIC CONTENDER**

Council Member Holland also thanked Mr. Luper and Ms. Lagway for their presentation. He urged them to continue their work with the young people of Sherman.

SEDCO'S ECONOMIC EXCELLENCE RECOGNITION AWARD — **SEDCO RECOGNITION AWARD**

Council Member Dobbs congratulated SEDCO on receiving the Texas Economic Development Council's 2022 Economic Excellence Recognition Award.

THE CAMP AND POTENTIAL OLYMPIC CONTENDER — **THE CAMP & POTENTIAL OLYMPIC CONTENDER**

Council Member Dobbs recognized The Camp and wished them well in the future.

ANNOUNCEMENTS — **ANNOUNCEMENTS**

Mayor Plyler announced the following:

- **The Sherman Symphony Orchestra will host the Annual Spring Concert on April 29, 2023, with a performance of "Carmen."**
- **Sherman's first annual Cinco de Mayo event will be held on May 5, 2023, at 6:00 p.m., in downtown Sherman. The event will feature live music, food, and drink options.**
- **Craft the Night Away will be held in downtown Sherman on May 14, 2023, at 5:00 p.m. The event will feature adult beverages from area breweries.**

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

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

TEX. GOV'T CODE § 551.071 --
SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

a) **Received legal advice regarding the possible expansion of the Grayson County Jail**

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) Hospital Project

TEXAS 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 5:50 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:28 p.m. and reconvened in Open Meeting.

OPEN MEETING **OPEN MEETING**

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

ADJOURNMENT **ADJOURNMENT**

On Motion duly made and carried, the meeting adjourned at 6:29 p.m.

MAYOR

CITY CLERK

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **C. 1.**

Meeting Date: 05/01/2023

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. 10. ***RESOLUTION NO. 7068***
Consenting to Assignment by Panda Sherman Power, LLC to Rayburn Energy Station LLC of Water Services Agreement Dated October 26, 2011 and Tax Abatement Agreement Dated October 3, 2011 between the City of Sherman, Texas and Panda Sherman Power, LLC

E. 11. ***RESOLUTION NO. 7069***
Authorizing Submission of an Application to the Texas Department of Transportation's 2023 Transportation Alternatives Set-Aside Program for Projects

E. 12. ***RESOLUTION NO. 7070***
Awarding a Bid to and Authorizing Execution of a Contract with Water Works Metrology, LLC for an Annual Supply of Water Meters for the Customer and Utility Services Department

E. 13. ***RESOLUTION NO. 7071***
Authorizing the Purchase of a New GTH-5519 Telehandler from Terex Government Programs for the Water Treatment Plant through the U.S. General Services Administration (GSA) Multiple Award Schedule Cooperative Purchasing Program

E. 14. ***RESOLUTION NO. 7072***
Authorizing the purchase of a 2023 Frazer Type I 14' Module Ambulance for Sherman Fire-Rescue from Rush Trucks of Ohio and Frazer Ltd. through BuyBoard.

F. 1. ***REQUEST TO ADVERTISE***
Services to Perform the Annual Audit for the Period Ending September 30, 2023

G. 3. ***OTHER BUSINESS***
Consider Request to Temporarily Close Certain Streets for the "Cinco de Mayo Festival" on Friday, May 5, 2023

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 1.**

Meeting Date: 05/01/2023

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6589

Authorizing the City's Participation in the Texas Enterprise Zone Program Pursuant to the Texas Enterprise Zone Act, Chapter 2303, Texas Government Code, Describing Availability of Certain Local Incentives, Designating a Liaison for Communication with Interested Parties, and Nominating GlobalWafers America, LLC to the Office of the Governor Economic Development & Tourism through the Economic Development Bank for Designation as a Qualified Business and Enterprise Project; Providing a Repealing/Savings Clause, Severability Clause and an Effective Date

Issue:

Holding a public hearing on the City's nomination of GlobalWafers America, LLC in the Texas Enterprise Zone Program.

Background:

On September 6th, the Council authorized the City's participation in the Texas Enterprise Zone Program by nominating GlobalWafers America, LLC to the Office of the Governor. The Office of the Governor has requested the City approve another ordinance to update the type of designation being sought by GlobalWafers, America, LLC (GWA), and update the zone description according to the most recent map.

In June, GlobalWafers America, LLC announced its intention to bring a silicon manufacturing plant to Sherman. This phased project would bring up to 1,500 jobs and about $5 billion in total investment. In order to be considered for the State's designation as an Enterprise Zone Project, this nomination from the City Council is required. Designation as an Enterprise Zone project qualifies a business for state sales tax refunds based on amount of capital investment and number of jobs created.

Origination:

GlobalWafers America, LLC

Financial Consideration:

There is no financial consideration to the City of Sherman in the recommended course of action. All refunds as a result of the program are from State revenues only.

Staff Recommendation:

The staff recommends adoption of this ordinance in order to secure incentives from the State of Texas.

Alternatives:

The City Council could deny the ordinance.

Attachments

Ordinance No. 6589

Global Wafers Enterprise Zone Map

ORDINANCE NO. 6589

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY'S PARTICIPATION IN THE TEXAS ENTERPRISE ZONE PROGRAM PURSUANT TO THE TEXAS ENTERPRISE ZONE ACT, CHAPTER 2303, TEXAS GOVERNMENT CODE; DESCRIBING AVAILABILITY OF CERTAIN LOCAL INCENTIVES; DESIGNATING A LIAISON FOR COMMUNICATION WITH INTERESTED PARTIES; AND NOMINATING GLOBALWAFERS AMERICA, LLC TO THE OFFICE OF THE GOVERNOR ECONOMIC DEVELOPMENT & TOURISM THROUGH THE ECONOMIC DEVELOPMENT BANK FOR DESIGNATION AS A QUALIFIED BUSINESS AND ENTERPRISE PROJECT; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas ("City") desires to create the proper economic and social environment to induce the investment of private resources in productive business enterprises located in certain areas of the City and to provide employment to residents of such areas; and

WHEREAS, pursuant to the Texas Enterprise Zone Act, Chapter 2303, Subchapter F of the Texas Government Code ("Act"), GlobalWafers America, LLC has applied to the City for designation as an enterprise project; and

WHEREAS, the Act provides for refund of states sales and use tax for capital investment with job creation and/or employment retention efforts and programs of qualifying businesses pursuant to Section 2303.504 of the Act; and

WHEREAS, the project or activity described in this Ordinance is located in an area designated as an enterprise zone; and

WHEREAS, the City finds that GlobalWafers America, LLC meets the criteria for tax relief and other incentives adopted by the City on the grounds that it will be located at a qualified business site, and will create a higher level of employment, economic activity and stability; and

WHEREAS, with proper notice to the public, the City Council held a public hearing to consider this Ordinance on May 1, 2023, during which all interested persons were allowed to appear and be heard;

WHEREAS, tax incentives were discussed at the public hearing;

WHEREAS, GlobalWafers America, LLC is seeking the Triple Jumbo designation, and

WHEREAS, the City Council finds that all other requirements for adoption of this Ordinance have been satisfied.

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

SECTION 1. That the City nominates GlobalWafers America, LLC for enterprise project status under the Act.

SECTION 2. That in accordance with Section 2303.4051 of the Act, the following local incentives, at the election of the City Council, are or will be made available to GlobalWafers America, LLC:

(a) The City may abate taxes on the increase in value of real property improvements and eligible personal property that locate in a designated enterprise zone. The level of abatement shall be based upon the extent to which the business receiving the abatement creates jobs for qualified employees, in accordance with the City of Sherman Tax Abatement Policy, with the term "qualified employee" being defined by the Act.

(b) The City may provide programs to improve and increase the value of real estate and new investment, including:
- (1) Chapter 380 grants;
- (2) local sales tax refunds;
- (3) tax increment financing; or
- (4) tax abatement.

(c) The City may provide regulatory relief to businesses, including:
- (1) zoning changes or variances;
- (2) exemptions from unnecessary building code requirements, impact fees, or inspection fees; or
- (3) streamlined permitting.

(d) The City may provide enhanced municipal services to business, including:
- (1) improved police and fire protection.

(e) The City may provide improvements in community facilities, including:
- (1) capital improvements in water and sewer facilities;
- (2) road repair; or
- (3) creation or improvement of parks.

(f) The City may provide business and industrial development services, including:
- (1) low-interest loans for businesses;
- (2) provision of publicly owned land for development purposes, including residential, commercial, or industrial development;

(3) creation of special one-stop permitting and problem resolution centers or ombudsmen; or
(4) promotion and marketing services.

(g) The City may provide job training and employment services to businesses, including:
(1) job training and employment services;
(2) retraining programs;
(2) literacy and employment skills programs;
(3) vocational education: or
(4) customized job training

SECTION 3. That the City Council finds that GlobalWafers America, LLC meets the criteria for designation as an enterprise project under the Act on the following grounds:

(a) GlobalWafers America, LLC is a "qualified business" under Section 2303.402 of the Act because it is engaged in the active conduct of a trade or business at a qualified business site within the City Council's jurisdiction, located inside of an enterprise zone and at least twenty-five percent (25%) of the new employees at the qualified business site will be residents of an enterprise zone in this state or economically disadvantaged individuals or veterans; and

(b) The GlobalWafers America, LLC project is qualified under Section 2303.404 of the Act because (1) it involves an expansion, renovation or new construction; (2) it will be completed within a predetermined period not to exceed five years; and (3) GlobalWafers America, LLC maintains separate books and records for operations in the City; and

(c) There has been and will continue to be a high level of cooperation between public, private and neighborhood entities within the jurisdiction of the City; and

(d) The designation of GlobalWafers America, LLC as an enterprise project will contribute significantly to the achievement of the plans of the City for development and revitalization of the area in which the enterprise project will be located.

SECTION 4. That the City Council directs and designates its City Manager as the City's liaison to oversee enterprise projects and communicate with the Office of the Governor Economic Development & Tourism ("EDT") through the Texas Economic Development Bank ("Bank") with respect to nominated enterprise projects and to perform the other duties described in Section 2303.204 of the Act. Further, the City Manager is authorized and directed to file an application requesting designation of GlobalWafers America as an enterprise project with the Bank, and to execute all documents and agreements necessary to process the application, including that required by Section 2303.4052 of the Act.

SECTION 5. That the enterprise project shall take effect on the date of designation of the enterprise project by the EDT and shall terminate five (5) years from that date.

SECTION 6. That this Ordinance shall take effect from and after its passage as the law and charter provides.

SECTION 7. That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 8. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 9. That it is hereby officially found and determined that the meeting at which this Ordinance was introduced and passed was open to the public and that public notice of the time, place and purpose of said meeting was given all as required by law.

INTRODUCED on this the 1st day of May 2023.

ADOPTED on this the 1st day of May 2023.

EFFECTIVE DATE on this the 1st day of May 2023.

CITY OF SHERMAN, TEXAS

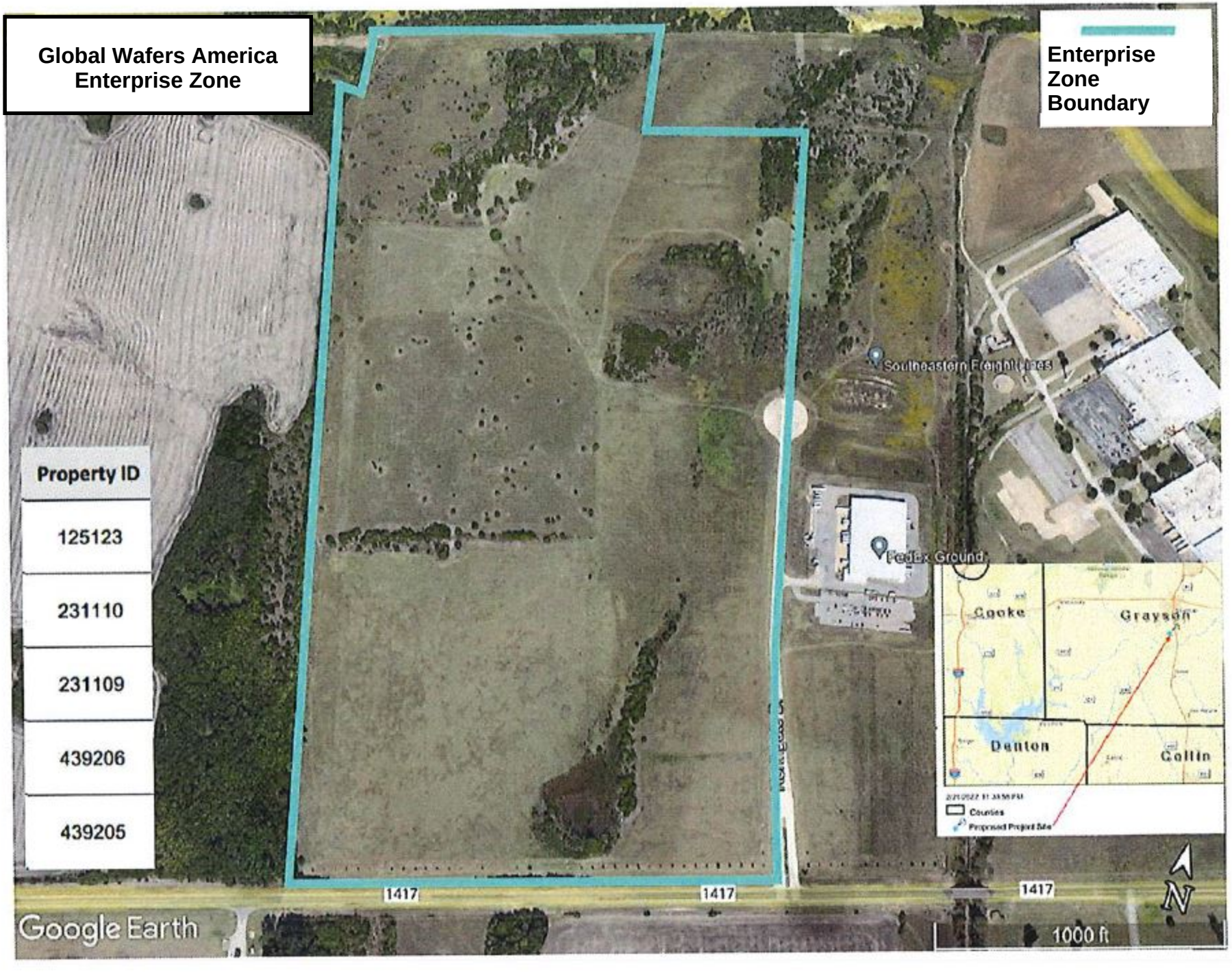
BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM:
ABERNATHY, ROEDER,
BOYD & HULLETT PC

BY: _____
RYAN PITTMAN, CITY ATTORNEY


Global Wafers America
Enterprise Zone
Enterprise
Zone
Boundary
Property ID
125123
231110
231109
439206
439205
Southeastern Freight Lines
FedEx Ground
Cooke
Grayson
Denton
Collin
Counties
Proposed Project Site
1417
1417
1417
N
Google Earth
1000 ft

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 2.**

Meeting Date: 05/01/2023

Approved By: Robby Hefton, City Manager

Caption:

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers 6589

Issue:

D. 1. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6589**

Authorizing the City's Participation in the Texas Enterprise Zone Program Pursuant to the Texas Enterprise Zone Act, Chapter 2303, Texas Government Code, Describing Availability of Certain Local Incentives, Designating a Liaison for Communication with Interested Parties, and Nominating GlobalWafers America, LLC to the Office of the Governor Economic Development & Tourism through the Economic Development Bank for Designation as a Qualified Business and Enterprise Project; Providing a Repealing/Savings Clause, Severability Clause and an Effective Date

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 1.**

Meeting Date: 05/01/2023

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7059

Authorizing Execution of an Agreement with David Downtain, d/b/a RP Sherman Properties II, LLC under the City of Sherman's Downtown Building Improvement Grant Program for Renovations at 124 S Crockett Street

Issue:

An agreement with David Downtain, d/b/a RP Sherman Properties II, LLC for a Downtown Building Improvement Grant for renovations to a historically significant property in the downtown Tax Increment Reinvestment Zone, located at 124 South Crockett Street (formerly Sherman Marketplace)

Background:

The Downtown Building Improvement Grant is designed to stimulate substantial, visible, and permanent improvements to historically significant buildings and to spur interest in vacant and underutilized buildings of historical value in the downtown TIRZ. Grants under the program are awarded at the City Council's sole discretion, in the maximum amount of $50,000 per project, per year.

This application is the sixth received under the new program. The project is to restore the historic structure established in approximately 1920 and located at 124 South Crockett Street in Downtown Sherman. The project will restore and renovate the interior and exterior of the 3,300-square-foot structure. A new restaurant tenant has already leased the space, with an expected opening in the fall of 2023. The qualified costs for the proposed renovation work are approximately $303,000. The project qualifies for a matching grant of $50,000.

Origination:

Community and Support Services Manager Nate Strauch

Financial Consideration:

The project is eligible for a DBIG grant in the amount of $50,000.

Staff Recommendation:

As the application meets the requirements of the program, it is recommended that the City Council consider an award to David Downtain, d/b/a RP Sherman Properties II, LLC, in the amount of $50,000.

Alternatives:

As directed by Council

Attachments

Resolution No. 7059

Agreement

RESOLUTION NO. 7059

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH DAVID DOWNTAIN, D/B/A RP SHERMAN PROPERTIES II, LLC UNDER THE CITY OF SHERMAN'S DOWNTOWN BUILDING IMPROVEMENT GRANT PROGRAM FOR RENOVATIONS TO 124 S CROCKETT STREET; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That 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 an agreement with David Downtain, d/b/a RP Sherman Properties II, LLC for improvements to 124 S. Crockett under the City of Sherman's Downtown Building Improvement Grant Program, 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 1st day of May 2023.

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

Downtown Building Improvement Grant Application and Agreement

The information requested below will be used to process your application under the terms and conditions of the City of Sherman's Downtown Building Improvement Grant. All grant applications must include pictures of the current building, designs or renderings of the finished product, and historical pictures, if available.

I. Applicant Information

1. Applicant(s) name: RP Sherman Properties II, LLC

   Mailing address: 1200 N East Street

   City: Sherman State: TX Zip: 75090

2. Applicant's daytime telephone number: 972-832-8011

   E-mail address: ddowntain@risenproperties.com

3. Status of applicant (please check one)
   - _X_ Property owner with vacant facility
   - ____ Property owner with tenant business
   - ____ Property owner/operator of existing business on property
   - ____ Property tenant with property owner consent
   - ____ Property deed, lease, or other document evidencing applicant's status

5. Length of ownership/ lease: 1 year, 8 months
   Date purchased/ leased: 7/22/2021

II. Property Information

1. Address of property to be improved: 124 Crockett St. Sherman TX 75090

2. Legal description of subject property:
   OTP SHERMAN, BLOCK 4, LOT PT 6, 31.9X125(C) 3987.5 SF

3. Grayson County Tax Assessor Parcel Number(s):
   Property ID: 161869

4. Year built: Early 1900's Square footage: 6,570
   (Eligible buildings must be at least 50 years of age.)

6. What are the current types of businesses or other uses occupying the building?
   None Presently

7. Name and phone number of tenant(s), if applicable: Radoniqi, LLC – Nick (318-537-5657)

(Attach additional names/numbers, if needed)

8. Use of building after construction: ___La Piazza Ristorante Italiano ____

9. Number of parking spaces provided: 0_____ Proposed: __0_____ Total:_____0_____

10. Current zoning:_____Central Business District C-1_____

11. Is a zoning amendment required? Yes___ No_ _X_

III. Project Description

1. Description of Proposed Improvements. Please provide a detailed description of your proposed improvements. Attach a copy of your architectural or design plans.

Description:_____This building has been various things in the past. Most recently a retail outlet, previously law offices for several decades. We are pleased to have signed a lease with an exciting Italian restaurant with roots dating back to in Little Italy in New York.
_____The building requires major updates to Electrical, Plumbing (including Grease Trap) and Mechanical systems. Additionally, a Fire Sprinkler will be added while new Kitchen, Restrooms and Dining Room renovations are completed.

___ Designs Attached	**__ "Before" Picture(s) Attached**

2. How many jobs will be **retained** once the project is completed? _____

_____ Full-time positions _____ Part-time positions

3. How many **new positions** will result from this project? __14___

_8_____ Full-time positions ___6____ Part-time positions

IV. Work Estimates

Please attach a minimum of two (2) independent contractor estimates for the proposed improvements. Please note that grant funding shall be based on the lowest bid. Eligible costs shall be the cost of materials, equipment, and contracted labor to complete eligible improvements.

1. Name/Company and Phone Number of Preferred Contractor:
_____D2 Builders, LP 940-289-0200_____

Amount:_____$303,000_____

2. Name/Company and Phone Number of Second Contractor:
_____Joe Tully, PintrailRestoration.com 469-642-9910_____

Amount: ____$356,800_____

3. Additional Estimates/Comments: (Please attach additional quotes, as required)

4. Total estimated costs of your improvements: $310,000

5. Estimated completion date for your improvements? 11/2023

VI. Agreement of Applicant and Property Owner

I/We, RP Sherman Properties II, LLC, of the City of Sherman, County of Grayson, State of Texas, declare under penalty of perjury that the information contained in this application is true and correct and that the information contained in the documents that accompany this application is true, correct, and complete. I/We certify and warrant that the proposed work described in this Application meets the eligibility requirements of the City of Sherman Downtown Building Improvement Grant Program. In exchange for the City of Sherman's consideration of this application, I/We hereby agree to the following:

I/We hereby authorize City of Sherman employees and agents to perform inspections of my/our property if granted funds under the City of Sherman Downtown Building Improvement Grant Program, both before and during the work for which funds are granted under this Program and after completion of the work to ensure compliance with the terms and conditions of the Program and all other applicable ordinances and other laws.

I/We acknowledge that any work carried out prior to written confirmation of grant approval may not be eligible for reimbursement.

I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Downtown Building Improvement Grant Program, and agree to fully comply with the same along with all other applicable ordinances and other laws, all of which are incorporated herein by reference, if granted funds under the Program. I agree that the City of Sherman is entitled to the immediate return or reimbursement of any and all funds paid to the Applicant or other persons under the Program, plus interest and collection costs, in the event the Applicant fails to complete the work for which the grant was approved or otherwise fails to comply with all applicable Program guidelines and requirements, ordinances and other laws. I/We Applicants further acknowledge and agree that, if funds provided by the City to the Applicant under the Program are determined at any time not to comply with applicable state laws relating to the authorized uses of such funds, all funds paid to the Applicant or other persons under the Program shall be immediately returned or reimbursed to the City.

Chapter 2264 Certification: Pursuant to Chapter 2264 of the Texas Local Government Code, I/We hereby certifies that the Applicant's business, or a branch, division, or department of the Applicant's business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this grant from the City of Sherman, Applicant, or a branch, division, or department of Applicant's business, is convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the grant with interest, at the rate and according to the terms provided by this Agreement under Section 2264.053 of the Texas Local Government Code, not later than the 120th day after the date the Applicant is notified of the violation. I/We agree that this document serves as an agreement under Chapter 380 of the Texas Local Government Code.

I/We agree to indemnify, release, defend and hold harmless the City of Sherman and its officers, employees and agents, from and against all claims, losses, liabilities, damages, suits, actions, or proceedings asserted or brought by any person, including Applicant and the property owner and their respective officers, employees, agents, contractors, and subcontractors, arising out of personal injury,

death or property damage from any cause whatsoever in whole or in part arising out of this Agreement or the activities completed hereunder.

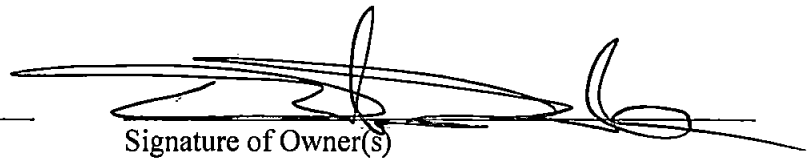
Applicant or Authorized Agent of Applicant

Property Owner (if different from Applicant)
or Authorized Agent of Property Owner

VII. Consent of the Owner to the Use and Disclosure of Information

I/We, RP Sherman Properties II, LLC, am the owner of the land that is the subject of this Application, and I/we authorize and consent to the use by or the disclosure to any person or public body, including the City of Sherman, of any personal or other information that is collected for the purposes of processing this application and administering the grant program. *(Note: Information provided in this application will become a public record, subject to disclosure under the Texas Public Information Act and/or Texas Open Meetings Act.)*

4/24/23
Date



Signature of Owner(s)

124 S. Crockett - Improvements

Plans/Permits	12,200
Demolition	8,800
Plumbing	26,100
Grease Trap	32,000
Electrical	31,500
HVAC	38,000
Fire Sprinklers	37,000
Restrooms	18,000
Kitchen	24,000
Interior	21,000
Mechanical	7,500
Refigeration	19,000
Common	13,700
Misc.	14200
	303,000

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 2.**

Meeting Date: 05/01/2023

Prepared By: Clint Philpott, Assistant City Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7060

Authorizing the City Manager or His Designee to Finalize Negotiations and to Finalize and Execute Documents for the Conveyance of Real Property from Young Enterprises, LP, Located at Lot 3R-A of North Creek Park Addition, as Shown in Plat of Record in Document No. 2023-79, Plat Records, Grayson County, Texas

Issue:

Authorizing the conveyance of Real Property from Young Enterprises, LP, Located at Lot 3R-A of North Creek Park Addition for park space in the City of Sherman, Texas

Background:

The acquisition of conveyance of Real Property from Young Enterprises, LP, Located at Lot 3R-A of North Creek Park Addition for park space in the City of Sherman, Texas. The property is to be donated and dedicated by Young Enterprises, LP. for future use by the City's Parks Department.

Origination:

City Manager's Office

Financial Consideration:

The total costs for this portion of land is only the cost to run a title report and platting.

Staff Recommendation:

Staff recommends that the City Council approve the resolution to authorize the conveyance of the subject property.

Alternatives:

As may be directed by City Council

Attachments

Resolution No. 7060
Special Warranty Deed
Plat
Location Map

RESOLUTION NO. 7060

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO FINALIZE NEGOTIATIONS AND TO FINALIZE AND EXECUTE CONTRACT DOCUMENTS FOR THE CONVEYANCE OF REAL PROPERTY FROM YOUNG ENTERPRISES, LP, LOCATED AT LOT 3R-A OF NORTH CREEK PARK ADDITION, AS SHOWN IN PLAT OF RECORD IN DOCUMENT NO. 2023-79, PLAT RECORDS, GRAYSON COUNTY, TEXAS; 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 finalize negotiations and to finalize and execute contract documents for the conveyance of real property from Young Enterprises, LP, located at Lot 3R-A of North Creek Park Addition, as shown in plat of record of document no. 2023-79, Plat Records, Grayson County, Texas.

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 1st day of May 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

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

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

SPECIAL WARRANTY DEED

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

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

Effective Date: _____ _____, 20____

Grantor: **YOUNG ENTERPRISES, LP,** a Texas limited partnership

Grantor's Mailing Address: 5414 Hwy. 1417 North
Sherman, TX 75092

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

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

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

Property (including any improvements):

Lot 3R-A of North Creek Park Addition, City of Sherman, Grayson County, Texas, being filed of record in Instrument No. 2023-79 of the Plat Records of Grayson County, Texas as being shown and depicted in Exhibit A, attached hereto and incorporated herein for all purposes ("Property").

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

Reservations from and Exceptions to Conveyance and Warranty:

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

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

Each individual executing this instrument on behalf of Grantor represents that all appropriate and necessary actions have been taken to authorize the individual who is executing this instrument to do so for and on behalf of Grantor, that there are no other parties or entities required to execute this instrument in order for the same to be an authorized and binding agreement on Grantor and that the individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

It is understood and agreed that the consideration received by Grantor hereunder includes adequate compensation for the grant of the rights hereunder and for all damages arising out of the construction, reconstruction, repair, operation and maintenance of roadway or other public facilities.

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

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

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

[*Signature pages follow*.]

EXECUTED on the dates of the acknowledgments, but to be EFFECTIVE on the _____ day of _____, 20__.

GRANTOR:

YOUNG ENTERPRISES LP,
a Texas limited partnership

By: _____

Printed Name: _____

Its: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

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

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

_____
Notary Public, State of Texas
My Commission Expires:_____

AGREED AND ACCEPTED:

CITY OF SHERMAN, TEXAS

By: _____
Robby Hefton, City Manager

STATE OF TEXAS §
§
COUNTY OF GRAYSON §

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

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

_____
Notary Public, State of Texas
My Commission Expires:_____

ATTEST:

BY: _____
Linda Ashby, City Clerk

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

By: _____

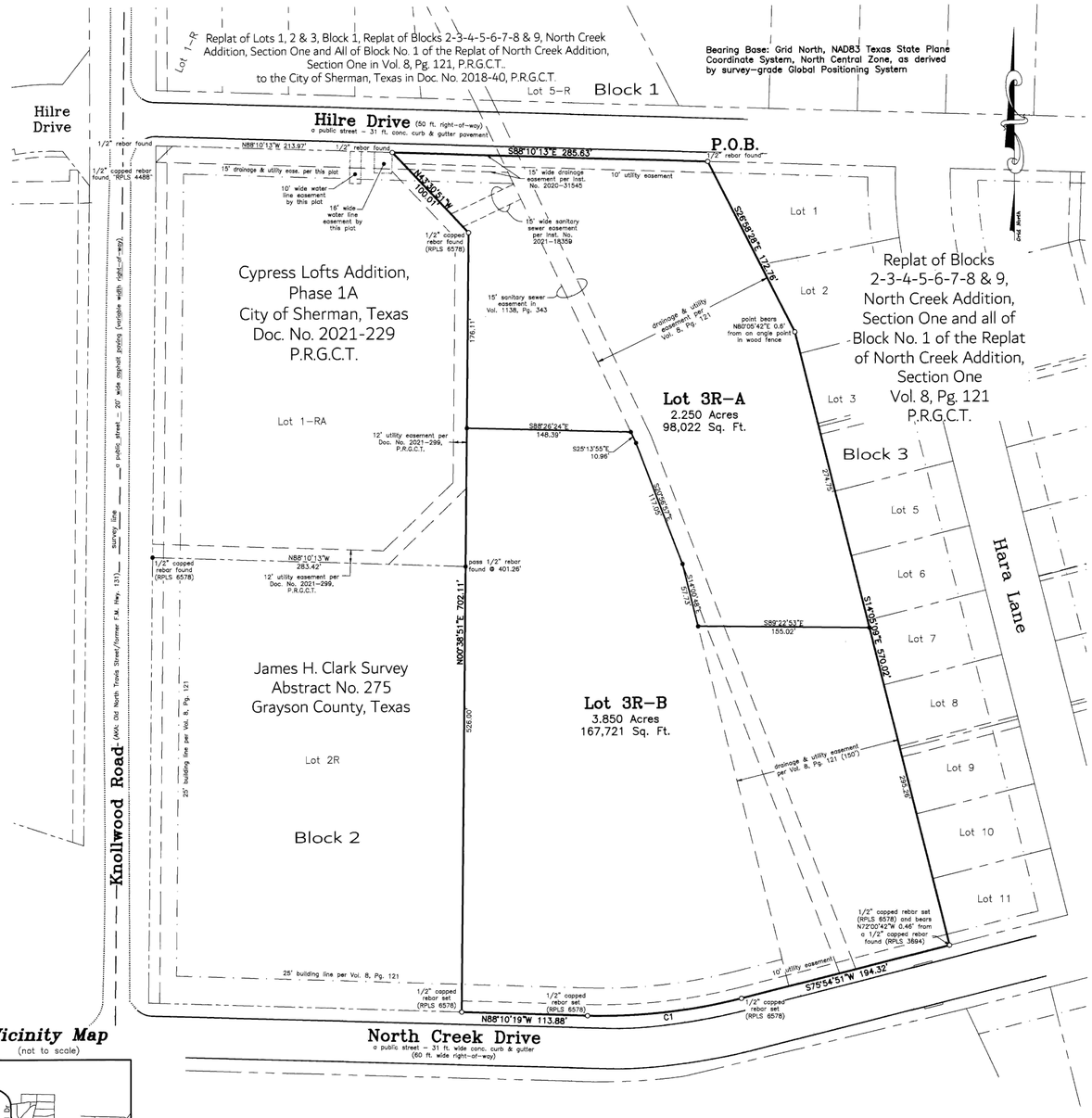
Name: _____
City Attorney

EXHIBIT A

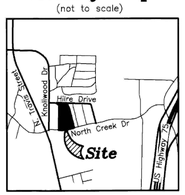
Replat
Lot 3R-A & 3R-B, Block 2
North Creek Park Addition
(being a Replat of Lot 3R, Block 2, Cypress Lofts Addition, Phase 1A)
to the
City of Sherman, Grayson County, Texas
6.101 Acres
in the
James H. Clark Survey, Abstract No. 275
FIELD NOTES
Vicinity Map
Knollwood Road
Hilre Drive
Hara Lane
North Creek Drive
Cypress Lofts Addition, Phase 1A
City of Sherman, Texas
Doc No. 2021-229
P.R.G.C.T.
Block 2
Block 3
Block 1
Lot 3R-A
98,022 Sq. Ft.
Lot 3R-B
167,721 Sq. Ft.
P.O.B.
GRAPHIC SCALE
General Notes:
Owner:
Young Enterprises, LP
5414 N. Heritage Parkway
Sherman, Texas 75091
Helvey-Wagner Surveying, Inc.
222 W. Main, Sherman, Texas 75090
Ph. (903) 463-6191
TBPELS Firm Registration No. 10088100
Job No. C05460123
2224-7

Exhibit B
Permitted Exceptions

1. Grantor specifically reserves from this conveyance all its rights, title and interest in all oil, gas and other minerals in and under the Property, provided that Grantor shall not be permitted to, and shall not allow any party to, drill or excavate for oil, gas and other minerals on or from the surface of the Property, but Grantor may extract oil, gas or other minerals from and under the Property by directional drilling or other means that do not interfere with or disturb Grantee's use of the Property



Vicinity Map
(not to scale)



GRAPHIC SCALE

60 0 30 60 120 240

(IN FEET)
1 inch = 60 ft.

Curve Table				
Curve #	Length	Radius	Delta	Chord
C1	140.60'	506.22'	15°54'50"	S83°52'16"W, 140.15'

General Notes:

1. Water Supply to be provided by City of Sherman.
2. Sewer service to be provided by City of Sherman.
3. Electrical service is provided by Oncor Electric Delivery Co.
4. Blocking the flow of water or construction of improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Sherman will not be responsible for the maintenance and operation of said drainage ways or for the control of erosion.
7. The property shown on the plat hereon lies within a Zone "X" (areas determined to be outside 500-year floodplain) Designation, as shown on the Flood Insurance Rate Map for Grayson County, Texas and Incorporated Areas, Map No. 48181C0290 F, Revised Date: September 29, 2010.
8. Neither the City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
9. The owners and builders must comply with all other state and federal regulations regarding developments of this type.

22247
Job No. CGS460123

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Ph (903) 463-6191
Email: kate@helveywagnersurvey.net
TBPELS Firm Registration No. 10088100

Owner:
Young Enterprises, LP
5414 N. Heritage Parkway
Sherman, Texas 75091

X:\Shared Projects\Cypress-Loft-Addition\Drawings\Replat Of Lot 3R-Cypress Lofts Add.dwg 1/23/2023 9:50 AM

FIELD NOTES

SITUATED in the City of Sherman, County of Grayson, State of Texas, and being a part of the James H. Clark Survey, Abstract No. 275, and being all of Lot 3R, Block 2, Cypress Lofts Addition, Phase 1A to the City of Sherman, Texas as per plat of record in Doc. No. 2021-229, Plat Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows to-wit:

BEGINNING at a 1/2 inch rebar found in the South line of Hilre Drive, a public street, being the Northwest corner of Lot 1 of the Replat of Blocks 2-3-4-5-6-7-8 & 9, North Creek Addition, Section One and all of Block No. 1 of the Replat of North Creek Addition, Section One, as recorded in Volume 8, Page 121, said Plat Records, and being the Northeast corner of both said Lot 3R and the herein described tract;

THENCE South 26 deg. 58 min. 28 sec. East, with the East line of said Lot 3R and the West line of said Block 3, a distance of 172.76 ft. to an angle point, SAID point bears North 80 deg. 05 min. 42 sec. East, 0.6 ft. from an angle point in a wood fence;

THENCE South 14 deg. 05 min. 09 sec. East, continuing with the East line of said Lot 3R and the West line of said Block 3, a distance of 570.02 ft. to a point in the North line of North Creek Drive, a public street, at the Southwest corner of Lot 11, said Block 3 and the Southeast corner of both said Lot 3R and the herein described tract;

THENCE South 75 deg. 54 min. 51 sec. West, with the North line of said North Creek Drive and the South line of said Lot 3R, a distance of 194.32 ft. to a 1/2 inch capped rebar set (RPLS 6578) at the beginning of a curve;

THENCE Southwesterly, continuing along with the North line of said North Creek Drive and the South line of said Lot 3R, with a curve to the right, having a radius of 506.22 ft., a central angle of 15 deg. 54 min. 50 sec. (chord bears: South 83 deg. 52 min. 16 sec. West, 140.15 ft.) and an arc length of 140.60 ft. to a 1/2 inch capped rebar set (RPLS 6578) at the end of said curve;

THENCE North 88 deg. 10 min. 19 sec. West, continuing along the North line of said North Creek Drive and the South line of said Lot 3R, a distance of 113.88 ft. to a 1/2 inch capped rebar set (RPLS 6578) at the Southeast corner of Lot 2R, being the Southwest corner of both said Lot 3R and the herein described tract;

THENCE North 00 deg. 38 min. 51 sec. East, with the East line of said Lots 2R and 1-RA and the West line of said Lot 3R, a distance of 702.11 ft. to a 1/2 inch capped rebar found (RPLS 6578) at at an angle point;

THENCE North 43 deg. 30 min. 51 sec. East, with the East line of said Lot 1-RA and the West line of said Lot 3R, a dostance of 100.01 ft. to a 1/2 inch capped rebar found (RPLS 6578) the Northeast corner of said Lot 1-RA and being the Northwest corner of both said Lot 3R and the herein described tract;

THENCE South 88 deg. 10 min. 13 sec. East, with the South line of said Hilre Drive and the North line of said Lot 3R, a distance of 285.63 ft. to the **PLACE OF BEGINNING** and containing **6.101 ACRES** of land.

KNOW ALL MEN BY THESE PRESENTS:

THAT I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Sherman, Texas.

3/7/2023
Kate A. Wagner, R. P. L. S. No. 6578 Date:

STATE OF TEXAS REGISTERED KATE A. WAGNER 6578 PRELIMINARY FOR REVIEW PURPOSES ONLY

We, Young Enterprises LP, sole owner of North Creek Park Addition to The City of Sherman, do hereby dedicate the streets, easements, alleys, rights-of-way, parks, school sites and other public places shown hereon to the public use forever.

Todd Young, Authorized Representative for Young Enterprises

Before me the undersigned, a notary public in and for said County and State, on this day personally appeared Todd Young, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 28th day of March, 2023.

Notary Public, Grayson County, Texas

TISH D SMITH Notary Public, State of Texas Comm. Expires 10-22-2025 Notary ID 3786763

Sherman CLASSIC TOWN. BROAD HORIZON.

This, the final plat of North Creek Park Addition to the City of Sherman, is hereby approved this 21st day of February 2023, by the Planning and Zoning Commission of the City of Sherman, Texas.

Chairman Secretary

This, the final plat of North Creek Park Addition to the City of Sherman, is hereby approved this 20th day of March, 2023, by the City Council of the City of Sherman, Texas.

ACCEPTED BY THE CITY COUNCIL OF SHERMAN, TEXAS: 03/30/2023
MAYOR, CITY OF SHERMAN, TEXAS DATE

The undersigned, the City Clerk of the City of Sherman, Texas, does hereby certify that the foregoing final plat of Final Plat of North Creek Park Addition to the City of Sherman, was submitted to the City Council of Sherman, Texas, on the 20th day of March, 2023, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements and public places, as shown and set forth in and upon said map or plat, and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as hereinabove subscribed.

WITNESS MY HAND THIS 30th DAY OF March, 2023, BY Linda Ashby
CITY CLERK, CITY OF SHERMAN, TEXAS

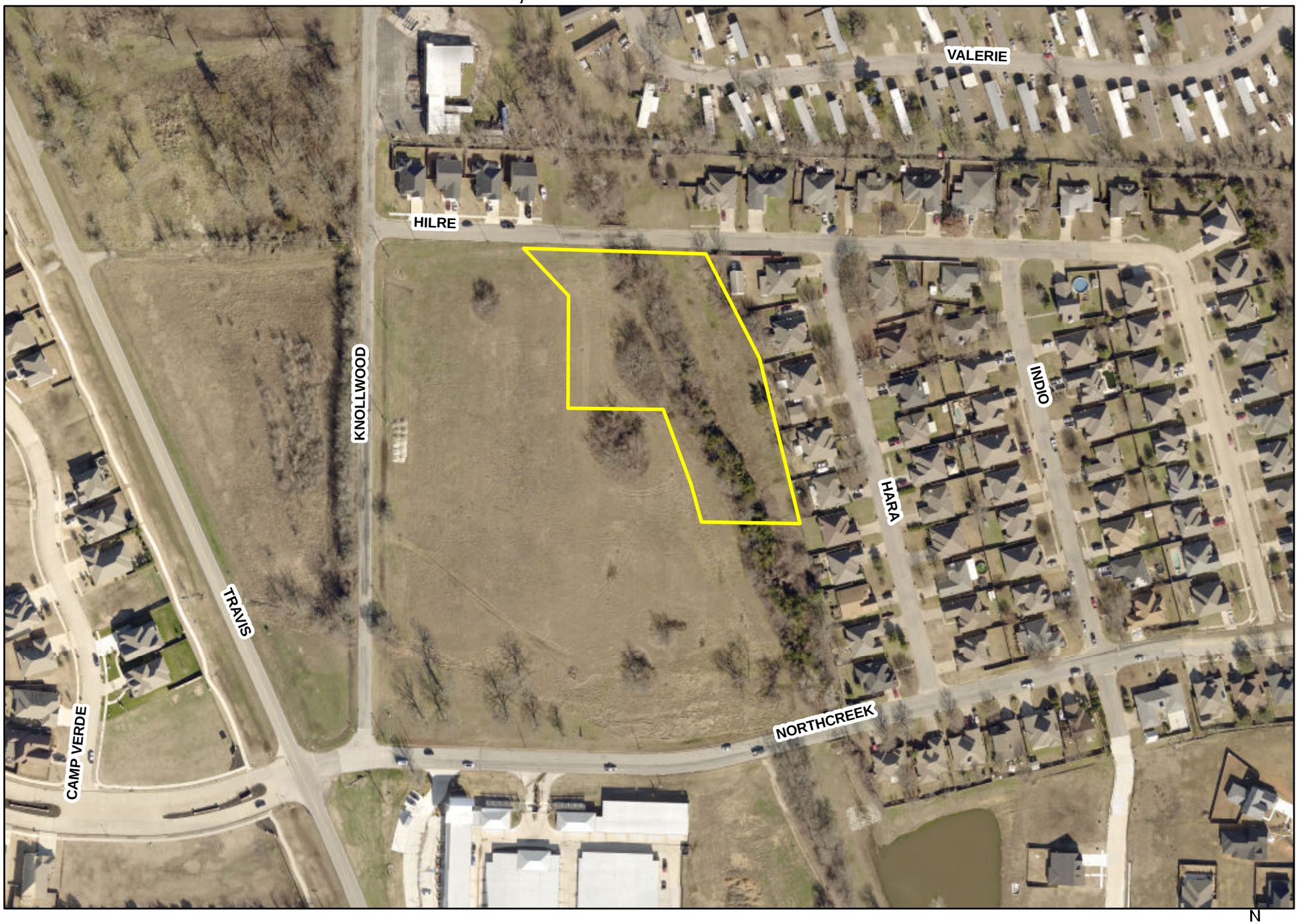
CITY OF SHERMAN, TEXAS

Filed for Record
in the Official Records Of:
Grayson County Clerk
On: 4/20/2023 2:56:42 PM
In the PLAT Records
NORTH CREEK PARK ADDN
Doc Number: 2023-79
Number of Pages: 1
Amount: 43.00
Order#: 20230420000171
By: CT

GRAYSON COUNTY, TEXAS

Replat
Lot 3R-A & 3R-B, Block 2
North Creek Park Addition
(being a Replat of Lot 3R, Block 2, Cypress Lofts Addition, Phase 1A)
to the
City of Sherman, Grayson County, Texas
6.101 Acres
in the
James H. Clark Survey, Abstract No. 275

Lot 3R-2, North Creek Park Addition



SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 3.**

Meeting Date: 05/01/2023

Prepared By: Theresa Hutchinson, Parks & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7061

Authorizing Execution of a Contract with Hunter Knepshield of Texas, Inc. for the Purchase and Installation of Playground and Park Equipment at the Northcreek Subdivision through the Buyboard Purchasing Cooperative

Issue:

To consider approval of the purchase and installation of playground and park equipment for the Northcreek Subdivision Park from Hunter Knepshield of Texas, Inc. through the Buyboard purchasing cooperative.

Background:

City staff is requesting to purchase playground equipment, pavilion, tables, benches, and a water fountain to be installed at the park located in the Northcreek Subdivision. This project will also utilize donations to provide a park for the subdivision and is consistent with the Comprehensive Master Plan.

Purchasing through the Buyboard purchasing cooperative satisfies competitive bidding requirements under Texas Local Government Code Chapter 271.

Origination:

Parks and Recreation

Financial Consideration:

The cost of the equipment, including installation, is $153,935.67. Funding was approved in the fiscal year 2022-2023 Capital Improvement Program. The Sherman Rotary Club is also contributing $10,000 toward the project.

Staff Recommendation:

It is recommended that staff be authorized for the purchase and installation of playground and park equipment from Hunter Knepshield of Texas, Inc. through the Buyboard purchasing cooperative.

Alternatives:

As may be recommended by the City Council.

Attachments

Resolution No. 7061
HK Quote
Agreement
City Insurance Req
Affidavit of Prohibitive Interest
CIQ
Aerial Location Map

RESOLUTION NO. 7061

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONTRACT WITH HUNTER KNEPSHIELD OF TEXAS, INC. FOR THE PURCHASE AND INSTALLATION OF PLAYGROUND AND PARK EQUIPMENT AT THE NORTHCREEK SUBDIVISION THROUGH THE BUYBOARD PURCHASING COOPERATIVE; 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 execute a contract with Hunter Knepshield of Texas, Inc., of Van Alstyne, Texas, through the Buyboard purchasing cooperative for the purchase and installation of playground and park equipment at the Northcreek Subdivision for a total purchase price of One Hundred Fifty-Three Thousand Nine Hundred Thirty-Five Dollars and Sixty Seven Cents ($153,935.67). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2022-2023 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 1st day of May 2023.

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

Hunter Knepshield of Texas, Inc.

Quotation

www.hkparkandplay.com
P.O. Box 759 Van Alstyne, TX 75495
1.800.451.4138 * 972.867.5739 * Fax: 972.867.7250

DATE April 26, 2023
Quotation # 23-1280

Bill To:
City of Sherman

Ship To:
Northcreek

Sherman TX 75090

Quotation valid until: May 16, 2023
Prepared by: Shanna Hartsfield

Comments or special instructions:

Quanity	Catalog #	Description	Unit	Extended
1	Shelter	Superior 20' Hexagonal Shelter, 6:12 Roof Pitch, 7'-6" Eave	$ 18,270.00	18,270.00
		Height, 6 Standard Column Design, Standard 6" Sub Surface Mt		-
		With External Hardware, Pre Fabricated Ready To Assemble		-
		Framework, Polyester TGIC 6 Mil Thick Powder Coated Frame,		-
		24 Gauge 36" Wide x 1-1/4" Deep R Panel 50 KSI Multi Rib Kynar		-
		500 Coated Pre Cut Metal Roofing		-
1	Anchors	Anchor Hardware and Templates	600.00	600.00
1	Drawings	Engineer Sealed Drawings	1,250.00	1,250.00
1	Freight	Freigt for Superior Shelter	3,250.00	3,250.00
1	Installation	Installation of Superior Shelter	9,400.00	9,400.00
1	PS3-70243	Superior Custom Playground	50,041.00	50,041.00
1	TFR3501XX	Superior Arch Swing Frame 3.5" 1 Bay	2,138.50	2,138.50
1	90015108XX	Superior Belt Seat Bay	213.00	213.00
1	RC-2000-FSR	Superior Web Whirl 10'	18,291.00	18,291.00
55	90022004XX	Superior 4' Border w/ Stake	71.50	3,932.50
1	TFR0591XX	Superior Half ADA Ramp	897.00	897.00
1	Freight	Freigt for Superior Playground	4,657.67	4,657.67
1	Installation	Installation of Superior Playground Equipment	27,200.00	27,200.00
Grading of Area, Concrete Curb and Drainage by Others			**Sub TOTAL**	$ 140,140.67
			Freight	
			Tax	
			TOTAL	$ 140,140.67

If installation is required, the following will prevail. The customer is responsible for the offloading of equipment. The above quotation is based upon site access for heavy equipment and normal soil conditions of 2000 PSF. If during excavation of foundations necessary per manufacture specifications, condition exceed normal, our contractor shall notify the owner immediately. This shall include all types of rock vegetation and/or any unforeseen hazards. There will be additional charges incurred to clear the area and/or the abutment hole so that installation can be completed. No soil tests, licenses or permits included.

***NOTE: IF APPLICABLE SALES TAX IS NOT INCLUDED.

Copy of tax exempt certificate must accompany all exempt orders. Customer is responsible for paying applicable sales tax direct to their state, or submits copy of tax exempt certificate with order.

***TERMS: NET 30 DAYS (UPON APPROVED CREDIT).

Service charge of 2% per month added to all costs, including attorney fees.

Quote is valid for 30 days.
THANK YOU FOR YOUR BUSINESS!

Authorized Signature Shanna Hartsfield **Date:** 4/26/23

Authorized Signature of Purchaser _____ **Date:** _____

Hunter Knepshield of Texas, Inc.

Quotation

www.hkparkandplay.com
P.O. Box 759 Van Alstyne, TX 75495
1.800.451.4138 * 972.867.5739 * Fax: 972.867.7250

DATE April 26, 2023
Quotation # 23-1280A

Bill To:
City of Sherman

Ship To:
Northcreek

Sherman TX 75090

Quotation valid until: May 16, 2023
Prepared by: Shanna Hartsfield

Comments or special instructions:

Quanity	Catalog #	Description	Unit	Extended
1	Wood Fiber	Engineered Wood Fiber and Fabric Delivered and Installed	$ 8,487.50	8,487.50
5	B6WBPERFSM	Superior 6' Bench w/ Back, Large Hole 11 gauge Punched Steel,	929.00	4,645.00
		Rounded Corners, Two 2-3/8" Legs, Surface Mt, Laser Lettering		-
		"SHERMAN ROTARY CLUB"		-
1	Freight	Freight for Superior Benches	662.50	662.50
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
****Grading of Area, Concrete Curb and Drainage by Others****			**Sub TOTAL**	$ 13,795.00
			Freight	
			Tax	
			TOTAL	$ 13,795.00

If installation is required, the following will prevail. The customer is responsible for the offloading of equipment. The above quotation is based upon site access for heavy equipment and normal soil conditions of 2000 PSF. If during excavation of foundations necessary per manufacture specifications, condition exceed normal, our contractor shall notify the owner immediately. This shall include all types of rock vegetation and/or any unforeseen hazards. There will be additional charges incurred to clear the area and/or the abutment hole so that installation can be completed. No soil tests, licenses or permits included.

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***TERMS: NET 30 DAYS (UPON APPROVED CREDIT).

Service charge of 2% per month added to all costs, including attorney fees.

Quote is valid for 30 days.
THANK YOU FOR YOUR BUSINESS!

Authorized Signature Shanna Hartsfield **Date:** 4/26/23

Authorized Signature of Purchaser _____ **Date:** _____

CONSTRUCTION AGREEMENT BETWEEN THE CITY OF SHERMAN, TEXAS AND HUNTER KNEPSHIELD OF TEXAS, INC.

The **City of SHERMAN, Texas**, a home-rule municipality ("SHERMAN"), and Hunter Knepshield of Texas, Inc. a Texas Corporation ("Contractor"), enter into this Construction Agreement ("Agreement") for the purchase and installation of playground and park equipment for the Northcreek Subdivision Park. SHERMAN and Contractor are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, SHERMAN desires to engage Contractor to provide services in connection with the purchase and installation of playground and park equipment for the Northcreek Subdivision Park under the terms and conditions of this Agreement ("Project");

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

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

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

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

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

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

2. Term.

Contractor shall mobilize on-site and commence performance of the Project (the "Mobilization Date") within Ninety (90) calendar days of the Effective Date of this Agreement (hereinafter defined) and shall complete the Services within Sixty (60) calendar days of the Mobilization Date. All obligations relating to time set forth herein are material and are of the essence of this Agreement. This Agreement shall remain in full force and effect until completion of the Project to SHERMAN's satisfaction. The obligations listed hereunder shall be fulfilled upon the completion of the Project to SHERMAN's satisfaction.

3. Compensation.

In exchange for the Services as described in the Agreement Documents, SHERMAN agrees to pay the Contractor in an amount not to exceed One Hundred Fifty-Three Thousand Nine Hundred Thirty-Five and 67/100 dollars ($153,935.67) for the completion of the Project contemplated by and in accordance with the Agreement Documents as follows:

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

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

4. Agreement Documents.

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

a. This Agreement;

c. The Quote, attached hereto as Exhibit A;

d. SHERMAN's Insurance Requirements, attached hereto as Exhibit B;

d. City of SHERMAN's Standard Construction Details (which is on file in with the City Engineering Department);

e. The Standard Specifications for Public Works Construction (North Central Texas Third Edition 1998) as amended and supplemented by the City of SHERMAN's Special Provisions to said Standard Specification, as amended (which is on file in the City Engineering Department);

f. Affidavit of No Prohibited Interested, attached hereto as Exhibit C;

g. Conflict of Interest Questionnaire, attached hereto as Exhibit D;

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

5. Liquidated Damages.
Contractor acknowledges and agrees that if Contractor fails to timely perform or complete any of the Services required under the terms of the Agreement Documents, SHERMAN will sustain actual damages as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the parties agree that if Contractor fails to timely perform or complete any of the Services required under the terms of the Agreement Documents, then Contractor shall pay SHERMAN the sum of one thousand and 00/100 dollars ($1,000.00) for each calendar day in which the Services are not completed, not as a penalty but as liquidated damages for the damages that would be suffered by SHERMAN as a result of delay for each and every calendar day that the Contractor shall have failed to have completed the Services as required herein.

6. Payment, Performance and Maintenance Bonds.
Prior to commencing work under this Agreement, Contractor shall furnish to SHERMAN a payment bond and a performance bond, each of which shall be in an amount equal to one hundred percent (100%) of the total cost of the Project to ensure SHERMAN is indemnified: (i) against any claims for nonpayment of any part of the construction or work performed in connection with the Project; and (ii) for the completion of the Project in accordance with this Agreement. Prior to SHERMAN's final acceptance of the Project, Contractor shall furnish to SHERMAN a two (2) year maintenance bond in an amount equal to one hundred percent (100%) of the total cost of the Project to ensure the repair or

remedy of any maintenance issues SHERMAN may have regarding the Project after SHERMAN finally accepts the same.

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

7. Entire Agreement.

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

8. Required Insurance.

Contractor shall not start work under this Agreement until Contractor has obtained, at Contractor's expense, all of the insurance specified in, and required by, the Agreement Documents. Contractor shall procure and keep in full force and effect the types and amounts of insurance specified in SHERMAN's Insurance Requirements, attached hereto as Exhibit B and incorporated herein for all purposes, for and during all aspects and phases of Contractor's work throughout the term of this Agreement at no expense to SHERMAN. Contractor also shall comply with all other requirements set forth in Exhibit B.

9. No Prohibited Interest; Vendor Disclosure.

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

10. Indemnity.

CONTRACTOR HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SHERMAN AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "SHERMAN" FOR PURPOSES OF

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

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

SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY SHERMAN.

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

11. Liability.

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

12. Compliance with Laws; Standard of Care.

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

13. Termination.

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

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

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

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

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

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

16. No Waiver of Immunity.
The parties acknowledge and agree that, in executing and performing this Agreement, SHERMAN has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

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

18. Consideration.
This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

19. Attorneys' Fees.
If either party files any action or brings any proceeding against the other arising from this Agreement, then as between SHERMAN and Contractor, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.

20. Governing Law; Venue.
The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.

21. Binding Effect.
This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

22. No Waiver.
Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

23. Headings.
The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

24. Indemnity.
The parties agree that the indemnity provision set forth in Section 10 herein is conspicuous and the parties have read and understood the same.

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

If to Contractor, to: _____
_____
_____
_____
Telephone: _____
Email: _____

If to SHERMAN, to: City of SHERMAN
Attn: Robby Hefton, City Manager
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7201
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

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

26. Representations.
Each party states that they have carefully read this Agreement, know the contents hereof, have consulted with an attorney of their choice regarding the meaning and effect hereof and is signing the same solely of their own judgment.

27. Independent Contractor.
Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of SHERMAN; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between SHERMAN and Contractor, its officers, agents, employees, contractors, subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between SHERMAN and Contractor.

28. Incorporation of Recitals.
The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of SHERMAN and the authorized representative of Contractor.

29. Reference to Contractor.

When referring to "Contractor" herein, this Agreement shall refer to and be binding upon Contractor, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Contractor is legally responsible.

30. Reference to SHERMAN.
When referring to "SHERMAN" herein, this Agreement shall refer to and be binding upon SHERMAN, its Council Members, officers, agents, representatives, employees and/or any other authorized third parties for whom SHERMAN is legally responsible.

31. Certifications Required by Texas Law.
In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Contractor hereby certifies that Contractor does not boycott Israel and will not boycott Israel during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 809 of the Texas Government Code (to the extent applicable), Contractor hereby certifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 2274 of the Texas Government Code (to the extent applicable), Contractor hereby certifies that Contractor does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of any contract with City, including during the term of this Agreement. The foregoing terms in this Section have the meanings ascribed to them in the referenced statutes if defined therein.

32. Debarment/Suspension.
SHERMAN is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. SHERMAN, Contractor and Contractor's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Contractor shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.

33. Restrictions on Lobbying.
SHERMAN and Contractor are prohibited from using funds awarded under the Agreement for lobbying purposes. Contractor shall include a statement of compliance with this provision in applicable procurement solicitations and third-party agreements for work on the Project.

34. Miscellaneous Drafting Provisions.
This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party

shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

35. Multiple Counterparts.
This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

[*Signature page follows*.]

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

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager

Date: _____

ATTEST:

_____
Linda Ashby, City Clerk

APPROVED AS TO FORM:

_____
Abernathy, Roeder, Boyd & Hullett, PC
Ryan D. Pittman, City Attorneys

Hunter Knepshield of Texas, Inc.
a Texas Corporation

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

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be one of the persons whose names are subscribed to the foregoing instrument; that he acknowledged to me he is the _____ and duly authorized representative for Hunter Knepshield of Texas, 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 _____, 2023.

_____
Notary Public in and for the State of _____
My Commission Expires: _____

Exhibit B
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
_X_	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
_X_	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.

_X_ 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.

_X_ 7. General Liability Insurance provides for a Waiver of Subrogation against 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 C

Affidavit of No Prohibited Interest

THE STATE OF _____ §

THE COUNTY OF _____ §

I, _____, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

_____ Ownership of ten percent (10%) or more of the voting shares of the business entity.

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars ($25,000) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars ($25,000).

_____ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.

_____ Other:_____.

_____ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

Signed this ___ day of _____, 202_.

_____
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared _____, and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this _____ day of _____, 202_.

_____
Notary Public in and for the State of _____
My commission expires: _____

EXHIBIT D

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

_____

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

_____ _____

Signature of vendor doing business with the governmental entity Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

***

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

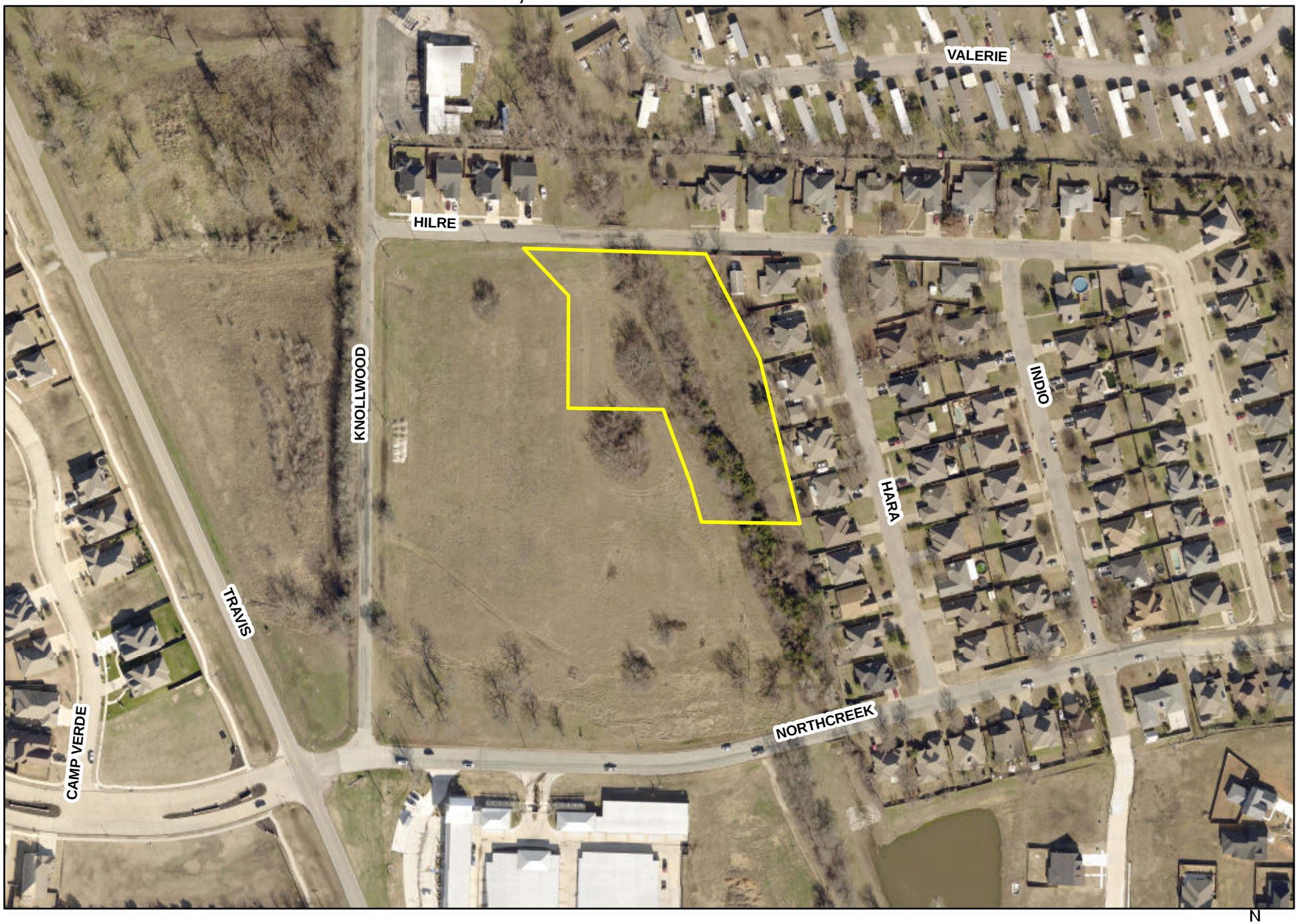
(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Lot 3R-2, North Creek Park Addition



SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 4.**

Meeting Date: 05/01/2023

Prepared By: Clint Philpott, Assistant City Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7062

Authorizing Execution of an Agreement to Contribute Right of Way Funds with the Texas Department of Transportation to Acquire Right of Way and Easements along U.S. Highway 75 in the City of Sherman

Issue:

To execute an Agreement to Contribute Right of Way Funds with the Texas Department of Transportation (TxDOT)

Background:

In December 2017, the Texas Transportation Commission awarded funding to finalize and reconstruct a section of the US 75 thru town. The project included improving the US 75 and US 82 intersection and reconstruction and widening of US 75 from a 4-lane to a 6-lane On-system Highway from FM 1417 north to SH 91. The next phase of this project will widen US 75 from SH 91 north to US 82. The current estimated project cost is about $114 Million. As a part of this project, an Agreement to Contribute Right of Way Funds is required in order to specify the financial requirement for each party in regards to Drainage Easements and Railroad Right of Way acquisition within the project area. The total estimated cost for the needed easements and utility relocation is $152,242 of which the City of Sherman is required to contribute $15,224.20 (10% of total amount).

Once the design is finalized, we expect TXDOT to ask for additional funding for construction costs similar to the previous US 75 project. Once those details are finalized, the Advance Funding Agreement will be brought back to Council for approval. TXDOT is working to have the project ready for construction by 2025.

Origination:

Engineering Department

Financial Consideration:

The maximum amount payable is $15,224.20 for completion of this Agreement. This amount includes right of way acquisition and drainage easements as noted in the Agreement. Funds for this project will be from 2023 Certificates of Obligation Bond issuance.

Staff Recommendation:

It is the staff's recommendation that the Council authorize the execution of the Agreement to Contribute Right of Way Funds with TxDOT.

Alternatives:

As may be directed by City Council

Attachments

Resolution No. 7062

Agreement to Contribute ROW Funds

Location Map

RESOLUTION NO. 7062

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS WITH THE TEXAS DEPARTMENT OF TRANSPORTATION TO ACQUIRE RIGHT OF WAY AND EASEMENTS ALONG U.S. HIGHWAY 75 IN THE CITY OF SHERMAN; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Agreement to Contribute Right of Way Funds with the Texas Department of Transportation to Acquire Right of Way and Easements along U.S. Highway 75 in the City of Sherman, 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 1st day of May 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____

LINDA ASHBY, CITY CLERK **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

County: Grayson
District: Paris
ROW CSJ # 0047-18-097
CCSJ # 0047-18-088
Federal Project #:_____
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS (FIXED PRICE)

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, (the "**State**"), and City of Sherman, Texas, acting through its duly authorized officials (the "**Local Government**").

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway US 75 from US 82 to SH 91 (Texoma Parkway), and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the "**Project**"); and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to enter into a fixed price joint participation agreement pursuant to 43 TAC §15.52 to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

County: Grayson
District: Paris
ROW CSJ # 0047-18-097
CCSJ # 0047-18-088
Federal Project #:_____
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

AGREEMENT

1. Agreement Period

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Termination

This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

A. The agreement is terminated in writing with the mutual consent of the parties;

B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or

C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. Local Project Sources and Uses of Funds

A. The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall pay to the State the amount shown in Attachment C as its required contribution of the total cost of the Project and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C.

B. The Local Government's fixed price contribution set forth in Attachment C is not subject to adjustment unless:

- **1.** site conditions change;
- **2.** work requested by the Local Government is ineligible for federal participation; or
- **3.** the adjustment is mutually agreed on by the State and the Local Government.

C. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local

Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.

E. Notwithstanding that this is a fixed price agreement, the Local Government agrees that in the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.

F. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

G. If the Project has been approved for an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.

B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.

C. Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.

D. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

Local Government:	**State:**
Mayor	Director of Right of Way Division
City of Sherman	Texas Department of Transportation
220 W Mulberry Street	125 E. 11th Street
Sherman, Texas 75090	Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

13. Inspection of Books and Records

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway Administration

(FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

16. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled “Equal Employment Opportunity,” as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Applicability of Federal Provisions

Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

18. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

19. Disadvantaged Business Enterprise (DBE) Program Requirements

A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.

B. The Local Government shall adopt, in its totality, the State’s federally approved DBE program.

C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.

E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this

contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

22. Federal Funding Accountability and Transparency Act Requirements

A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf and http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf.

B. The Local Government agrees that it shall:

1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than $25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: https://www.sam.gov/portal/public/SAM/

2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the

distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website http://fedgov.dnb.com/webform; and

3. Report the total compensation and names of its top five (5) executives to the State if:

i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and

ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission**.**

23. Single Audit Report

A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

B. If threshold expenditures of $750,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://txdot.gov/inside-txdot/office/audit/contact.html

C. If expenditures are less than $750,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the $750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

County: Grayson
District: Paris
ROW CSJ # 0047-18-097
CCSJ # 0047-18-088
Federal Project #:_____
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

_____
Signature

_____
Typed or Printed Name

_____
Title

_____
Date

THE STATE OF TEXAS

_____
Rose Wheeler
Contracts and Finance Director
Right of Way Division
Texas Department of Transportation

_____
Date

County: Grayson
District: Paris
ROW CSJ # 0047-18-097
CCSJ # 0047-18-088
Federal Project #:_____
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT A
RESOLUTION OR ORDINANCE

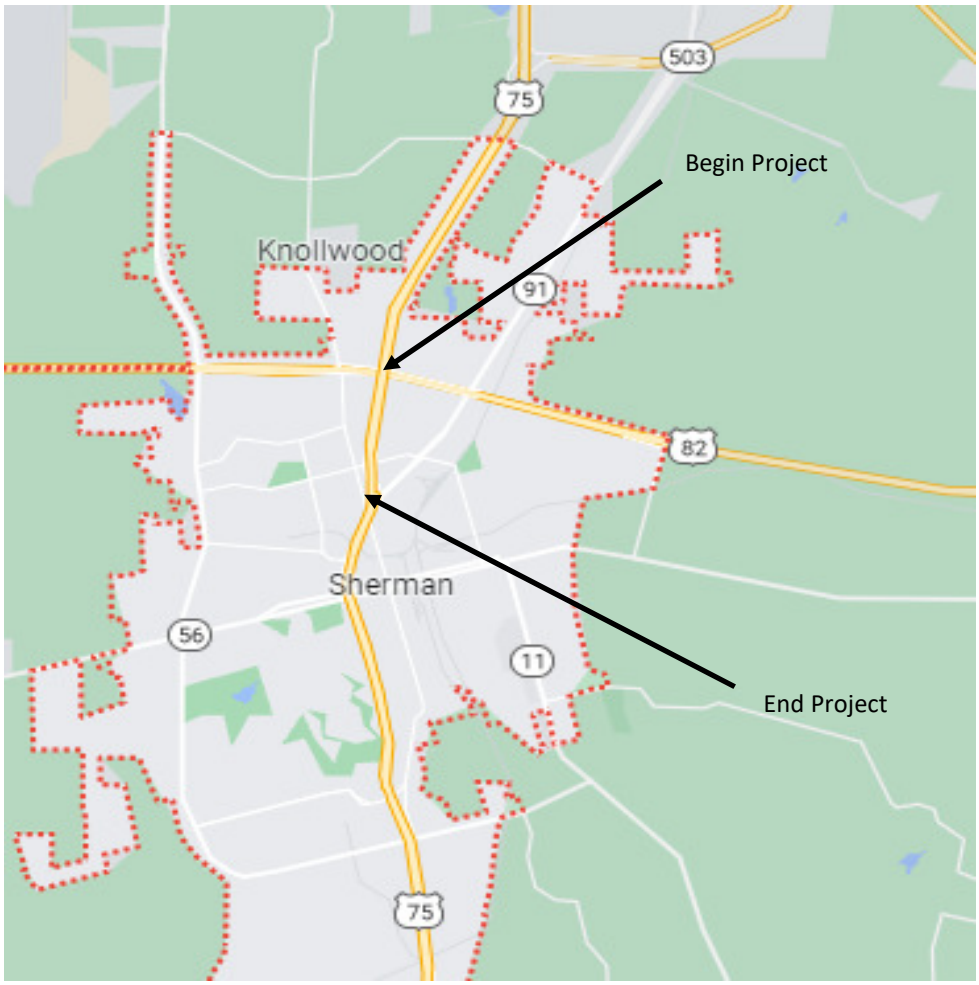
County: Grayson
District: Paris
ROW CSJ # 0047-18-097
CCSJ # 0047-18-088
Federal Project #:_____
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT B
LOCATION MAP SHOWING PROJECT

US 75

Limits: from US 82 to SH 91 (Texoma Parkway)

CSJ 0047-18-088



ATTACHMENT C
PROJECT BUDGET ESTIMATE

Texas Department of Transportation

County	Grayson
District	Paris District
ROW CSJ #	0047-18-097
CCSJ #	0047-18-088

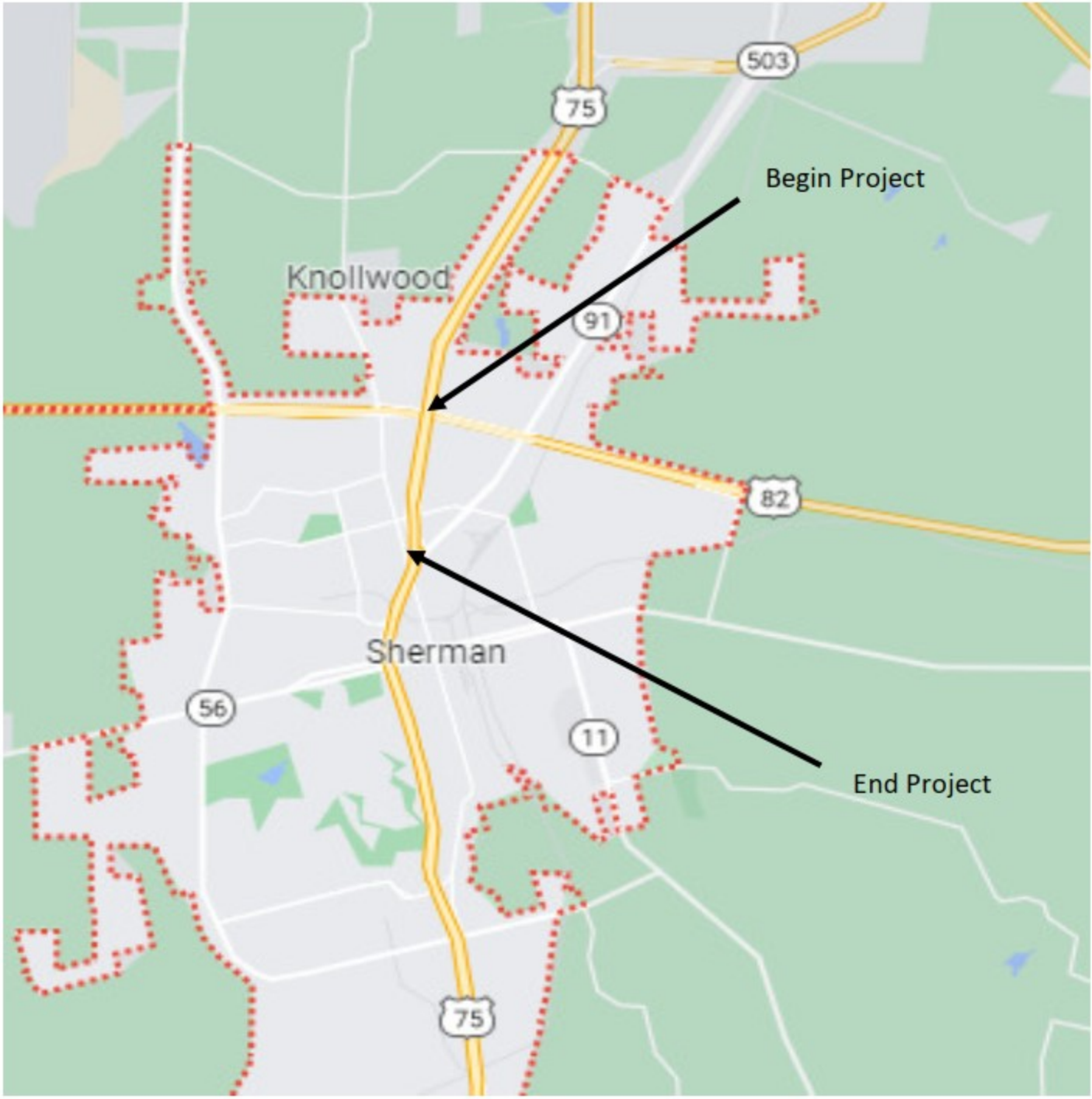
US75 US 82 to SH 91 (Texoma Parkway)

Federal Project #	
CFDA Title: Highway Planning and Construction	
FHWA CFDA # 20.205	
Federal Highway Administration	
Not Research and Development	

Standard Agreement to Contribute
State Performs Work
Attachment C

Description	Total Estimated Cost	Participation				Total % (should be 100%)
		State		Local		
		%	Cost	%	Cost	
Right of Way Acquisition	$152,242.00	90.0%	$137,017.80	10.0%	$15,224.20	100.0%
Reimbursable Utility Adjustments						0.0%
Joint Bid - Reimbursable Utility Adjustments						0.0%
TOTAL	$152,242.00		$137,017.80		$15,224.20	

Fixed Amount
Except as otherwise provided in the Agreement, the fixed amount of Local Government participation will be that amount provided above.


503
75
Begin Project
Knollwood
91
82
Sherman
56
11
End Project
75

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 5.**

Meeting Date: 05/01/2023
Prepared By: Tom Pruitt, Utility Engineer
Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7063
Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for design of the Terminal Storage Reservoir and Pump Station

Issue:

To consider a contract for professional services with Freese and Nichols, Inc. for design of the Terminal Storage Reservoir and Pump Station project.

Background:

The purpose of this terminal storage reservoir is to provide approximately 100 million gallons of raw water storage for the water treatment plant. In the event of an emergency, raw water transmission line break, power failure, or other raw water disruption, this reservoir will be able to provide about 10-million gallons a day for 10 days

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this contract is $2,173,000. This will be funded by GTUA Bond Funds.

Staff Recommendation:

Council approve the design services in the aforementioned amount to Freese-Nichols Engineering.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7063
Agreement
Location Map

RESOLUTION NO. 7063

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 THE TERMINAL STORAGE RESERVOIR AND PUMP STATION; 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 the Terminal Storage Reservoir and Pump Station, 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 1st day of May 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____

LINDA ASHBY, CITY CLERK **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

FREESE AND NICHOLS, INC.

FOR

PROFESSIONAL SERVICES

Made as of the_____day of_____, 2023:

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) 924-9201

for the following Project: **Terminal Storage Reservoir and Pump Station**

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 services for the Terminal Storage Reservoir and Pump Station ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1
CONSULTANT'S SERVICES

1.1 **Employment of Consultant** – City hereby agrees to retain Consultant to perform the Services in connection with the Project. Consultant agrees to perform the Services in accordance with the terms and conditions of this Agreement. Consultant further agrees that if any employee of Consultant who is performing the day-to-day Services under this Agreement for the Project is separated, for any reason, from employment with Consultant, Consultant shall provide City with written notice thereof at least five (5) business days' prior to said separation unless circumstances reasonably warrant a shorter notice period, which shall not exceed two (2) business days following the separation.

1.2 **Scope of Services** – The parties agree that Consultant shall perform the Services as are set forth and described in **Exhibit A**, attached hereto and incorporated herein by reference for all purposes ("Scope of Services"). The parties understand and agree that deviations or modifications to the Scope of Services described in **Exhibit A**, in the form of a written amendment to this Agreement, may be authorized from time to time by City ("Amendment").

1.2.1 **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.

1.2.2 **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 Million Eight Hundred Eighty Five Thousand Three Hundred Fifty Dollars ($1,885,350.00);** and (b) for Special Services, in an amount not to exceed **Two Hundred Eighty Seven Thousand Six Hundred Fifty Dollars ($287,650.00)** (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in **Exhibit B**.

3.3.1 **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." Record Documents and/or "As-Built" documents shall be prepared based on information provided by the Construction Contactor who is solely responsible for their accuracy. 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.

3.3.2 **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.

3.3.3 **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.

3.2 **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**.

3.3.3 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**.

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

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

3.3.6 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
Professional 1	$89 – 157
Professional 2	$117 – 183
Professional 3	$112 – 256
Professional 4	$177 – 267
Professional 5	$210 – 375
Professional 6	$227 – 443
Construction Manager 1	$111 – 144
Construction Manager 2	$97 – 185
Construction Manager 3	$142 – 174
Construction Manager 4	$166 – 227
Construction Manager 5	$205 – 286
Construction Manager 6	$253 – 322
Construction Representative 1	$90 – 92
Construction Representative 2	$93 – 101
Construction Representative 3	$106 – 170
Construction Representative 4	$123 – 194
CAD Technician/Designer 1	$73 – 154
CAD Technician/Designer 2	$120 – 179
CAD Technician/Designer 3	$157 – 228
Corporate Project Support 1	$61 – 125
Corporate Project Support 2	$80 – 199
Corporate Project Support 3	$126 – 298
Intern/Coop	$53 – 90

3.2 **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.

3.3 **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.

3.4 **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.

3.5 **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.

3.6 **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.

3.7 **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

3.8 **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 this Agreement. 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 TSR Project, not including the pump station, be in excess of 130% of $(20,610,600) due to the negligence or other fault 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.

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" 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 Services. 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 only if termination is based on default, otherwise Consultant shall receive payment at or near time of delivery.

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, Texas 75034
Telephone: (972) 924-9201
Email: clayton.barnard@freese.com

ARTICLE 12
MISCELLANEOUS

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

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

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

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

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

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

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

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

12.2 **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.

12.3 **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, as allowed by law and subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.

12.4 **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.

12.5 **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.

12.6 **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.

12.7 **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.

12.8 **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 current 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 current fiscal year unless and until such funds are budgeted.

12.23 **Certifications Required by Texas Law** – In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott Israel and will not boycott Israel during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 809 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott energy companies and will not boycott energy companies during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 2274 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of any contract with City, including during the term of this Agreement. The foregoing

terms have the meanings ascribed to them in the referenced statutes if defined therein.

12.24 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

12.25 **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.

12.26 **Duty to Facilitate Compliance with Public Information Act**

(a) The obligations in this provision apply if this Agreement (1) has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by City; or (2) results in the expenditure of at least $1 million in public funds for the purchase of goods or services by City in a fiscal year of the Sherman City Council.

(b) If this Agreement is described in subsection (a) above, Consultant shall comply with the following obligations, which are set forth in Subchapter J, Chapter 552, Texas Government Code:

(1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to City for the duration of this Agreement;

(2) promptly provide to City any contracting information related to this Agreement that is in the custody or possession of Consultant on request of City; and

(3) on completion of this Agreement, either: (1) provide at no cost to City all contracting information related to the contract that is in the custody or possession of Consultant; or (2) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to City.

(c) As used in this provision, the term "contracting information" shall have the same meaning as that term is defined in Section 552.003, Texas Government Code.

(d) The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement, and the Consultant agrees that this Agreement can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

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

By: _____
Robby Hefton, City Manager

CONSULTANT:

Freese and Nichols, Inc.
a Texas corporation

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

APPROVED AS TO FORM:

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

STATE OF TEXAS §
§
COUNTY OF Dallas §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **CLAYTON 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 3rd DAY OF February 2023.

APRIL DENISE CRANE
Notary Public, State of Texas
Comm. Expires 02-02-2024
Notary ID 12300507-6

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 2-2-2024

I. PROJECT DESCRIPTION

This project will consist of both the proposed Terminal Storage Reservoir (TSR) and associated pump station and piping, jointly known as the Project. The TSR will be located near the City's Water Treatment Plant that is located along La Cima Road, south of Grayson Drive (FM 691). The piping will convey the water from the existing NTMWD Texoma Raw Water line into the TSR and from the TSR the pump station into the headworks of the water treatment plant. The TSR will be sized to account for approximately 10 days of the City's projected minimum demand. This scope of services consists of a study/conceptual design for the pump station. The scope of work for the TSR will consist of preliminary and final design, construction contract documents, bid phase assistance and construction phase services. The facility will generally include.

i Dual cell terminal storage reservoir with approximately 50 MG of storage in each cell.

ii Inlet connection to the City's proposed 36" water transmission line.

iii Outlet connection to the pump station and headworks of the Sherman Water Treatment Plant (WTP).

iv Overflow outlet that discharges from the cells into the creek along the west side of the project site.

II. PROJECT ASSUMPTIONS

- The City has procured a Program Manager that will act as the City's representative for the design of the project.
- Construction Contract Documents will be provided by the Consultant to the Program Manager for use for project bidding and construction.
- The two-celled TSR will consist of earthen embankments with one shared embankment. The embankments and the floor of the TSR will be covered with a clay liner and an HDPE liner. Erosion protection will be provided along portions of the interior slopes.
- The outlet of the pump station will be designed to a connection point upstream of the existing raw water flow meter into the WTP.
- All permitting and survey work needed for the design will be performed as a part of this agreement.
- The preferred top and bottom elevations for the operating range for the TSR will be analyzed based on the WTP and pump station operating ranges.
- The project will use the construction manager-at-risk (CMAR) delivery method. This scope of services will include coordination with the CMAR for

pre-construction, procurement, and construction phase services associated with the Project.

III. GENERAL REQUIREMENTS

A. Engineer will perform General Requirements during the Conceptual, Preliminary and Final Design phases of the Project, which is estimated to be 9 months in duration.

B. 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.

C. Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which have facilities within or adjacent to the Project.

D. Each time the Consultant submits memoranda or reports to City, electronic PDF versions will be submitted and a maximum of two (2) half-sized (11"x17") hard copies 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 memoranda or reports are returned to City, the original and reviewed memoranda or reports shall also be returned to City. All memoranda, reports, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

E. 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.

F. Communications and Reporting:
   - i Attend a 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 update review meeting with the City as outlined in the specific tasks below.
   - 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, monthly 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 up to six (6), if needed.

IV. TASK SUMMARY, BASIC SERVICES

A. Task 1 – Pump Station Conceptual Study Phase

a. Conduct one meeting with the City to confirm the goals, schedule, and deliverables for the project.

b. Advise City as to the necessity of City's providing or obtaining data or services from others and assist City in connection with any such services. Collect and review existing data, reports, mapping, and records from City. Review documents associated with the Project. Provide analyses of City's requirements for the Project, including planning, survey, site evaluations and comparative studies of prospective alternatives.

c. Pump and System Hydraulic Analysis
   i. Determine pump station system capacity and head requirements. System curves will be developed for minimum head and maximum head conditions.
   ii. Determine type, number and size of pumps based upon hydraulic conditions, ease of operations, site conditions and cost.
   iii. Evaluate available pump selections from manufacturers. Coordinate with pump manufacturers for pump selection, current cost and delivery schedule estimates.
   iv. Determine size of pipelines and related facilities. Scope includes preliminary design of flow control valves, pipe and valve selection and miscellaneous appurtenances.

d. Pump Station Alternatives
   i. Conduct a workshop with Program Manager and Owner's staff to discuss layouts, equipment selection, construction materials, accessibility requirements, operation and maintenance criteria, Owner's preferences and alternatives to be studied.
   ii. Provide an evaluation of up to two possible alternatives for the arrangement of the pump station and develop a schematic conceptual layout for each. Evaluation criteria for pump station arrangement will include siting, differences in construction cost, accessibility, and O&M considerations.

e. Conceptual Pump Station Suction and Discharge Pipe
   i. Identify alignment, connections and valve concepts for the proposed TSR piping.

ii. Prepare horizontal alignment for the TSR piping. Obtain GIS mapping, proposed design and record drawing data of the WTP and project site, where available.

f. Conceptual Pump Station Electrical, Instrumentation and Controls Design
   i. Design criteria will be established for the electrical design of the pump station.
   ii. Determine preliminary motor loads. Evaluate motor starting restrictions provided by Power provider and determine options for meeting the limits.
   iii. Determine allowable VFD manufacturers and general design requirements. Coordinate with hydraulic design for recommendations on variable speed pumps.
   iv. Determine the service voltage for the pump station.
   v. Determine power feed equipment required inside the pump station including transformers and switchgear.
   vi. Determine the type of motor to be used.
   vii. Determine controls for pumps, valves, etc. with general description of controls. No control schematics will be provided in this phase.
   viii. Determine instrumentation required at the pump station.
   ix. Develop an electrical equipment layout. Determine general cable routing from pumps to electrical equipment and to the utility's service transformers.
   x. Develop a concept plan for communication integrated with the Owner's existing SCADA system. Coordinate with the Owner's SCADA system integrator for information on the existing system.
   xi. Provide general evaluation of manufacturers' equipment and list of those that will be specified.
   xii. Determine size of diesel generator required to provide emergency back-up power to the pump station.

g. Pump Station Workshop
   i. Present the analysis and recommendations for the pump station at a series of design workshops. Conduct up to three (3) preliminary design workshops to cover:
      1. Design Preferences meeting to identify Design Criteria
      2. Hydraulic Analysis, Site and Pump Station Layout Concepts
      3. Electrical, Instrumentation and Controls Concepts

h. Prepare preliminary floor plan layouts and sections for selected pump station layout and flow control structures. Include conceptual design and layout of structural, electrical, HVAC, and architectural renderings.

i. Prepare preliminary overall one-line diagrams of power systems. Meet with electric utility company to coordinate electric utility system design and power contracts. Contractor will perform final power systems study

j. Prepare preliminary overall process diagrams.

k. Prepare preliminary site layout for pump station, connections, including facilities, roads, fencing, and site piping.

l. Prepare a Preliminary Design Report containing recommended pipeline route, facility locations, pipeline and pump station schematic layouts, pump station floor plan conceptual layouts and conceptual design criteria with appropriate exhibits to indicate the considerations involved and alternative solutions (where indicated), codes and standards, permitting requirements, project phasing, and setting forth FNI's findings and recommendations with opinions of probable construction costs for the Project.

m. Furnish electronic and hard copies of the PDR.

n. Receive Program Manager and Owner comments, create responses and/or make modifications to the PDR and issue Final copies.

B. <u>Task 2 – TSR Preliminary Design</u>

a. Based on available mapping, develop a preliminary layout and configuration for the TSR, including the embankment, inlet and outlet, and associated piping. Initially, this will be assumed to be an earthen embankment using material from within the reservoir for embankment construction, a clay liner and an HDPE liner. Perform flood study of the adjacent unnamed creek to determine impact on proposed layout of TSR. Develop design storm hydrology and develop a configuration for emergency overflow capacity. This is assumed to be an outlet that will discharge into the creek located close to the western boundary of the project site. Summarize the results of this preliminary effort in the Preliminary Engineering Report including; schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved in the recommended solution and setting forth FNI's findings and recommendations with opinions of probable construction costs for the TSR.

b. Coordinate Geotechnical Field exploration and lab testing, listed as a Special Service.

c. Prepare a report detailing the findings of the activities performed in the Preliminary Design Phase for the proposed TSR. Establish major design parameters for the project. Obtain concurrence with the City staff on all provisions of the report before proceeding with Final Design.

d. Submit to the Program Manager and City for review, electronic and hard copies of the report.

e. Meet with the Program Manager and City and obtain comments on the Preliminary Design Report. Resolve any questions and resubmit final version of the report following completion of the Final Design Phase.

f. Submit the Engineer's probable cost opinion for the recommended pipeline alignment and Preliminary Engineering Report recommendations.

C. **Task 3 – TSR Final Design**

a. Coordinate with the CMAR as required.

b. FNI will perform the geotechnical engineering analysis and prepare a report summarizing the geotechnical investigation, which will include:
   i. Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
   ii. Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
   iii. Foundation recommendations for the support of the proposed structures, including bearing capacity of soils, suitable bearing material, etc. applicable for the recommended foundation or foundation options.
   iv. Provide recommendations for subgrade modification, if required to control settlement or expansive soil movement.
   v. Lateral earth pressures
   vi. Perform analyses on the TSR demonstrate adequate safety factors as required by TCEQ for the following conditions:
      1. Embankment slope stability
         a. End-of-construction
         b. Steady-State
         c. Rapid drawdown
         d. Earthquake under steady-state seepage conditions
      2. Embankment seepage analysis – steady-state conditions
      3. Dynamic seepage for Rapid Drawdown
   vii. General discussion of expected construction related issues.
   viii. Earthwork and site preparation related recommendations for use during development of plans and specifications.

c. 60% Reservoir Design
   i. Prepare reservoir plan sheets using available Survey, and Geotechnical data detailing the embankment, internal drainage if needed, the inlet, and outlet, associated piping, and slope protection.
   ii. Prepare a table of contents of anticipated technical specifications for the project.
   iii. 60% plans, specification table of contents and the draft Geotechnical Design Report will be submitted to Program Manager, City and the CMAR for review.
   iv. Update the opinion of probable construction costs developed during the Preliminary Design Phase based on new information obtained during the 60% Design Phase.
   v. Program Manager will consolidate their submittal review comments

and provide to Engineer at the Review Meeting.

vi. Meet with the Project Team and obtain comments on the 60% Design Submittal. Resolve comments and address prior to the 90% submittal or prepare a written response of disagreement.

d. Perform a breach analysis for the TSR in its final design configuration. Develop a single Emergency Action Plan (EAP), suitable for submission to the TCEQ.

e. 90% (Draft Final) Reservoir Design
   i. Prepare reservoir plan sheets detailing the embankment, internal drainage if needed, the inlet, and outlet, associated piping, slope protection, and all details.
   ii. Prepare required technical specifications for the project.
   iii. Submit 90% documents to the Project Team for review.
   iv. Update the opinion of probable construction costs developed during the 60% Design Phase based on new information obtained during the 90% Design Phase.
   v. Program Manager will consolidate their submittal review comments and provide to Engineer at the Review Meeting.
   vi. Meet with the Project Team and obtain comments on the 90% Design Submittal. Resolve comments and address prior to the Final Bid Documents submittal or prepare a written response of disagreement.
   vii. Incorporate City comments and prepare final sealed documents for review by the Dam Safety Team of TCEQ for review and approval. Incorporate TCEQ comments as needed. This package will include the breach analysis and EAP for TCEQ approval. Coordination and approval for the design and the EAP will be handled separately with TCEQ.
   viii. After TCEQ comments are incorporated, a total of ten (10) sets of half-size (11"x17") Final Bid Documents will be submitted to the District.

D. Task 4 – TSR CMAR Coordination during Design Phase

a. The following services will be provided for coordination with the CMAR selected by the City. This effort is by the TSR design team and is intended as technical input regarding the TSR only. The exact details of the CMAR team's approach are not fully known at this time, but the following tasks are intended to be consistent with the CMAR's approach.
   i. Participate in informal meetings with the CMAR team to resolve technical issues outside of the regular monthly progress meetings identified above. These are estimated to be up to 6 video-conference or similar remote meetings to supplement the formal monthly progress meetings identified above.
   ii. Conduct a site visit to jobsite location during design with the CMAR

and City staff to work through design questions that come up during final design.

iii. Provide technical input on the bid packages for long-lead items and other work recommended by the CMAR team to meet the City's schedule.

iv. Provide technical input on the bid packages for long-lead items and other work recommended by the CMAR team to meet the City's schedule.

v. Provide detailed design phase schedule for use by the CMAR in the overall project schedule. Coordinate as needed with CMAR team for updating this schedule.

vi. Provide technical review of the CMAR team's project cost estimates. If estimates do not meet the City's budget, the design team will review the recommendations provided by the CMAR on how to meet the City's budget. Design team will implement design changes after approval by the City during the 60% design phase. Major design changes recommended by the CMAR that not identified until after the 60% design phase may require additional services.

E. Task 5 - TSR Bid Phase Services

a. The CMAR will be responsible for bid invitations, advertisements, maintaining bidder lists, providing access to contract documents, and other related pre-award services.

b. Provide construction contract documents for bidding purposes and distribute electronic versions (PDF) of contract documents to the CMAR team.

c. Prepare and issue addenda to the construction contract documents when required.

d. Engineer will attend pre-bid meetings organized by the CMAR team.

e. The CMAR will be responsible for opening bids, bid tabulation, reviewing bids for compliance with GMP and schedule, other related bid processing services.

f. Engineer will review and evaluate the qualifications of the bidders and the proposed major or specialty subcontractors. The review and evaluation will include such factors as work previously completed, equipment that is available for the work, technical experience, and responses from references. Engineer will participate in meetings for evaluation of proposals with each bid package and provide technical review and input for the City and CMAR.

g. Prepare and distribute conforming (with all addenda posted) ten (10) copies of the construction contract documents. Conformed drawings will also be provided in electronic format (PDF).

F. Task 6 – TSR Construction Phase Services

a. Project Administration - Engineer will perform Project Administration Services during the construction phase of the Project, which is estimated to be 14 months in duration. By performing these services, Engineer shall not have authority or responsibility to supervise, direct, or control the CMAR's work or the CMAR's means, methods, techniques, sequences, or procedures of construction. Engineer shall not have authority or responsibility for safety precautions and programs incident to the CMAR's work or failure of the CMAR to comply with laws, regulations, rules, ordinances, codes or orders applicable to the CMAR furnishing and performing the work. Specific services to be performed by Engineer are as follows:

   i. Pre-construction Conference - At a date and time selected by City and at a facility provided by City, attend up to three pre-construction conferences and assist City during the conferences. With assistance from Engineer, CMAR shall prepare an agenda for the conference, and prepare and distribute minutes. The pre-construction conference shall include a discussion of the CMAR's tentative schedules, procedures for transmittal and review of the CMAR's submittals, processing payment applications, critical work sequencing, change orders, record documents, and the CMAR's responsibilities for safety and first aid.

   ii. Construction Schedule Review - Review and comment on the CMAR's initial and updated construction schedule and advise City as to acceptability.

   iii. Construction Sequence Review - Review and comment on the CMAR's construction schedule, schedule of values, activity sequence, and construction procedures.

   iv. Review CMAR's Estimated Monthly Payments - Review the CMAR's initial and updated schedule of estimated monthly payments and advise City as to acceptability.

   v. Site Visits - Make periodic visits to the construction site to observe progress of the work, and consult with the City and the CMAR concerning problems and progress of the work. Up to twelve (12) monthly site visits are included in these services.

   vi. Submittal Review - Review drawings and other data submitted by the CMAR as required by the construction contract documents. Engineer's review shall be for general conformity to the construction contract documents and shall not relieve the CMAR of any of his contractual responsibilities. Such reviews shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions and programs incident thereto. Engineer shall maintain a log of all submittals. The log shall include the submittal number, title, date received, review comments, date returned, date

resubmitted, etc. The CMAR's submittals shall generally be in electronic format only (PDF or similar). Submittals will be compiled in an online document tracking system (Project Mates) with access provided for the CMAR and the City.

vii. Warrantee and Test Review - Receive and review guarantees, bonds and certificates of inspection, and tests and approvals which are to be assembled by the CMAR in accordance with the construction contract documents and transmit them to City.

viii. Request for Information - Interpret construction contract documents when requested by City or the CMAR. The Engineer shall maintain a log of the requests for information (RFI log). The log will include the date of the request, a brief description, reviewer, and date of response.

ix. Review CMAR's Monthly Payment Requests – During each monthly visit to the Project site, evaluate the construction progress. Review and sign the CMAR's monthly estimate (see Task 504). Engineer's review shall be for the purpose of making a full independent mathematical check of the CMAR's payment request. The City is responsible for verifying the quantities of work which are the basis of the payment requests.

x. Evaluation of Change Orders - Provide documentation and administer the processing of change orders, including applications for extension of construction time. Evaluate the cost and scheduling aspects of all changes.

xi. Claims Assistance - Act on claims of City and the CMAR relating to the acceptability of the work or the interpretation of the requirements of the construction contract documents. Work related to unusually complex or unreasonably numerous claims are considered Additional Services.

xii. Performance Test Review - Analyze data from performance testing of equipment by the CMAR or supplier when the construction contract documents require the equipment to be tested after installation. Submit conclusions to City.

xiii. Operations and Maintenance Manual – Prepare an Operations and Maintenance (O&M) manual including O&M manuals for all equipment provided by the Contractor as well as recommended O&M procedures for the TSR.

xiv. Substantial Completion Inspection - Upon substantial completion, work with City to inspect the construction work and prepare a punch-list of those items to be completed or corrected before final completion of the project. Submit results of the inspection to City and the CMAR.

xv. Final Inspection - Upon completion or correction of the items of work on the punch-list, conduct a final inspection with City and CMAR to determine if the work is completed. Provide written recommendations

concerning final payment to City, including a list of items, if any, to be completed prior to making such payment.

G. Task 7 - TSR Record Documents

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 full size set and one pdf file of the Record Documents.

b. Provide GIS shape files of the record drawings to the City.

V. TASK SUMMARY, SPECIAL SERVICES

A. Task 8 – Geotechnical

a. FNI will select appropriate locations for exploratory borings within the vicinity of the proposed site according to the following:
    i. TSR - 20 borings: 7 borings to a depth of 50 feet and 6 borings to a depth of 40 feet and 7 borings to a depth of 30 feet; Pump Station – 4 borings to a depth of 50 feet.

b. Travel to the site to select location for exploratory borings. Engineer will check visually for underground utility markers, other existing construction, and accessibility. Engineer, in coordination with the Surveying subcontractor, will locate and stake the borings.

c. Call the Texas 811 utility system, the City, and other appropriate providers to mark utilities within an appropriate radius of the boring locations.

d. Subcontract with a drilling contractor to drill the borings in accordance with the schedule shown above.

e. Subsurface samples shall be obtained at 2.5-foot intervals within the upper 10 feet and at 5-foot intervals thereafter using 3-inch diameter Shelby 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 using an NX core barrel for 12 of the borings. Insitu testing (SPT or the Texas Cone Penetration Test) will be performed between core runs with poor recovery (less than 75 percent) and in borings where coring will not be performed.

f. Groundwater observations within the borings will be recorded at the time of drilling and at the completion of drilling and sampling.

g. Perform packer tests in the bedrock in selected borings to determine the rock permeability.

h. FNI will provide an engineer or geologist experienced in logging borings to direct the drilling, log the borings, record the blow counts of insitu

testing, and handle the samples. Visual classification of the subsurface stratigraphy shall be provided according to the Unified Soil Classification System (USCS).

i. The borings will be backfilled with cement-bentonite grout to the ground surface at the completion of drilling and sampling.
j. Since the location for the TSR has not been finalized, this scope does not include the clearing of any brush or trees to access borings. It is not anticipated clearing will be required based on aerial views of the site.
k. Testing shall be performed by FNI's subconsultant for lab testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials.
l. FNI will select samples for laboratory testing, assign tests, and review the test results.
m. Laboratory tests will be appropriately assigned for the specific subsurface materials encountered during exploration, but are expected to include:
    i. Classification tests (liquid and plastic limits and percent passing the no. 200 sieve)
    ii. Moisture content
    iii. Dry unit weight
    iv. Moisture-density tests
    v. Crumb dispersion and double hydrometer tests
    vi. Permeability tests
    vii. Strength tests (unconfined compressive strength, UU and CU triaxial tests, direct shear tests and consolidation tests)
    viii. One-dimensional swell, if needed
n. FNI will prepare a geotechnical data report that includes a brief description of the project and the field and laboratory investigation, boring logs and laboratory test results.

B. <u>Task 9 – Topographical Survey</u>

Consultant will subcontract with a surveying firm to provide surveying services for the project. The services listed below are based upon survey the area for the TSR, pump station and piping. 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 deed plot of all ownerships, subdivisions, and rights-of-way.

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 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 project area 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 at 1,000-ft intervals throughout the project area 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.

C. Task 10 – Environmental Permitting Evaluation

Consultant understands that the City is proposing to construct a TSR located near the City's Water Treatment Plant that is located along La Cima Road. The overflow outlet will outfall to a stream located along the west side of the proposed TSR. This scope assumes that the proposed project can be designed to meet the terms and conditions of Nationwide Permit (NWP) 58, *Utility Lines for Water and Other Substances,* without requiring the preparation and submittal of pre-construction notification (PCN) to the U.S. Army Corps of Engineers (USACE).

a. Compile Information – Once the limits of construction (LOC) including the outfall location have been defined, Consultant will assemble data such as aerial photos, USGS topographic maps, U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory maps, U.S. Geological Survey (USGS) National Hydrography Dataset (NHD), and LOC in digital format for developing field maps and uploading to the GPS unit.

b. Site Visit – Consultant environmental scientists will conduct a pedestrian survey within the proposed LOC. Boundaries of potential waters of the U.S., including wetlands, will be identified with a GPS unit within the LOC. Consultant scientists will also assess habitat within the proposed LOC to determine if potential habitat for federally listed threatened or endangered species is present.

c. Prepare Technical Memorandum – Consultant Environmental Scientists will review the plans with the design team and prepare a technical memorandum documenting the results of the site visit and an opinion as to whether or not the project has been designed to meet the terms and conditions of NWP 58,

without requiring the preparation and submittal of a PCN.

d. Cultural Resources Coordination – Consultant will subcontract with a cultural resources firm to conduct the survey, coordinate project information with the subcontractor, and review subcontractor's draft reports.

e. Project Team Coordination – Consultant Environmental Scientists will coordinate with the project team (Client and design team) on the findings of the environmental permitting evaluation and provide environmental input during design to avoid potential PCN triggers or other environmental concerns.

D. <u>Task 11 – Archeological Investigation</u>

a. The cultural resources survey will inventory resources and assess potential effects to archeological and non- archeological resources within the Area of Potential Effect (APE). This includes inventory and assessment of any extant buildings within the property limits. The survey will also consider indirect effects the project may have on eligible or listed non-archeological resources on adjacent properties.

b. Prior to field investigations Acacia will conduct research through the Texas online historic and archeological Site Atlases to determine whether any previously recorded cultural resources are known near the APE. This research will also include a review of historic maps, aerial photographs, soil and geologic maps and other relevant sources to assess potential for archeological and non-archeological eligible properties to occur in the APE. The results of desktop research will be integrated into an Antiquities Permit Scope of Work and Application and then submitted to the Texas Historical Commission (THC) for review and approval.

c. The cultural resources field survey will include intensive survey of the entire 72-acre tract The survey will involve visual inspection and shovel testing as appropriate within the APE. Subsurface shovel testing will conform to current guidance set forth by the Council of Texas Archeologists. Those guidelines recommend 50 shovel tests for the first 25 acres and one test every 5 acres after that, where there is potential for buried archeological resources, plus additional shovel tests to define archeological sites (if they are encountered). This scope and fee estimate assumes that about 52-55 shovel tests could be excavated for the project. Additional tests will be excavated at 10 m intervals in all directions to define site boundaries, if any artifacts are found on the surface or in shovel tests. Acacia assumes that up to approximately 65 tests could be required to survey the entire 72-acre property. Each shovel test will be manually excavated to a maximum depth of 80 centimeters, clearly disturbed soils, or sterile subsoils (whichever is reached first) and all soil will be screened through ¼-inch hardware cloth. All shovel tests will then be backfilled following recording. Any artifacts that are identified will be recorded in the field, photographed, then returned to their

find location.

d. All subsurface tests will be recorded using a hand-held GPS device or tablet. Archeological sites will be defined and recorded based on USACE and THC survey standards to assure they are assessed for their potential for inclusion in the NRHP and as a SAL. For a project in this location and of this size, Acacia estimates recording not more than one archeological site, and up to four non-archeological resources. Following field survey, field-recorded archeological sites will be submitted to TARL for trinomials. Artifacts found in the field will not be collected, but will be photographed and inventoried, then returned to their original location.

e. Sub-consultant will prepare a draft cultural resource survey report that will summarize cultural background data, previous investigations, current investigation findings, and regulatory recommendations. This report will be submitted electronically for review to the client and then revised according to that review. Following any revisions, the report will be submitted to the THC for review under the Antiquities Code Permit. Following review, Acacia will address comments from the THC and make final reports. All notes and records will then be prepared and submitted to the Texas Archeological Research Laboratory (TARL) for curation.

VI. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

A. **Additional Services are those services not included in the Scope of Services which may be provided by Engineer if so authorized by the City.**

1. Field layouts or the furnishing of construction line and grade surveys.
2. Investigations involving detailed consideration of operations, maintenance and overhead expenses, and the preparation of rate schedules, earnings, and expense statements, feasibility studies, appraisals, evaluations, assessment schedules and materials audits or inventories required for certification of force account construction performed by the City.
3. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
4. Providing shop, mill, or laboratory inspections of materials and equipment outside of the budgetary hours established above for on-site representatives. Cost for retaining an independent testing laboratory for conducting quality assurance testing to verify Contractor quality control testing. Specialty Observation for factory inspection of manufactured components designated by the City.
5. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Projects, including the preparation of engineering data and reports for assistance to the City.

6. Performing extensive, non-routine investigations, studies and analyses of work proposed by construction Contractors to correct defective work.
7. Performing extensive, non-routine investigations, studies and analyses of substitutions of materials or equipment or deviations from the plans and specifications.
8. Assisting the City with, preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal or administrative proceedings in the defense or prosecution of proceedings in connection with this Project.
9. Additional Services that are required to comply with local, State or Federal regulations that become effective after the date of this Agreement.
10. Additional Services required as a result of the failure of the Contractor to complete the work for any reason within the contract time.
11. Preparation of a pre-construction notification for Section 404 NWP authorization.
12. Preparation of a formal written request for USACE authorization under a letter of permission procedure.
13. Preparation of a standard individual Section 404 permit application.
14. Conducting a tree survey and preparing permit application for compliance with City tree ordinance requirements.
15. Phase I/II Environmental Site Assessment.
16. Preparation of Environmental Information Document, Environmental Assessment, or an Environmental Impact Statement.
17. Meetings or consultation with the USACE or other resource agencies, except as specifically noted in the scope of services.
18. Presence/absence surveys for federally listed threatened/endangered species.
19. Preparation of a mitigation plan to compensate for impacts to waters of the U.S.
20. Application to Texas Commission on Environmental Quality for individual 401 Water Quality Certification.
21. Application for General Land Office easements.
22. Application for Texas Parks & Wildlife Department Sand and Gravel Permit.
23. Texas Parks & Wildlife Department Aquatic Resource Relocation Plan.
24. Freshwater mussel survey.
25. Additional field investigations or analysis required to respond to public or regulatory agency comments.
26. Consultation with the U. S. Fish and Wildlife Service under Section 7 of the Endangered Species act.
27. Expert representation at legal proceedings or at contested hearings.
28. Monitoring for compliance with permit conditions.
29. Stormwater permitting and Storm Water Pollution Prevention Plan (SWPPP) preparation.

EXHIBIT B
PROJECT BUDGET SUMMARY

I. Basic Services

A. Pump Station Conceptual Study (Expected Completion: May 2023)	$331,850.00
B. TSR Preliminary Design (Expected Completion: May 2023)	$297,800.00
C. TSR Final Design (Expected Completion: March 2024)	$950,350.00
D. TSR CMAR Coordination (Expected Completion: March 2024)	$48,250.00
E. TSR Bid Phase (Expected Completion: May 2024)	$39,150.00
F. TSR Construction Phase (Expected Completion: May 2025)	$201,150.00
G. TSR Record Documents (Expected Completion: June 2025)	$16,800.00
Total Basic Services (Lump Sum)	***$1,885,350.00***

II. Special Services

A. Geotechnical (Expected Completion: July 2023)	$217,300.00
B. Topographical Survey (Expected Completion: May 2023)	$38,150.00
C. Environmental Permitting Evaluation (Expected Completion: July 2024)	$15,100.00
D. Archeological Investigation (Expected Completion: August 2024)	$17,100.00
Total Authorized Special Services	***$287,650.00***

Project Budget, Grand Total (Not-To-Exceed) ***$2,173,000.00***

1. Files shall 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.

Text should not be smaller than 0.08" on a full size sheet, and should be a font such at 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

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.

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.

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
X	1.	Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
X	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

X	4.	Professional Liability	▪ Minimum $1,000,000.00 each claim; ▪ Minimum $2,000,000.00 in the aggregate
X	5.	Umbrella Coverage of Excess Liability Coverage	▪ An amount of $2,000,000.00 ▪ Minimum $2,000,000.00 in the aggregate

X 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.

X 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.

X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

X 10. The Certificate of Insurance must state the project title and bid number.

___ 11. Other Insurance Requirements (State Below):

EXHIBIT E
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor doing business with local governmental entity

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

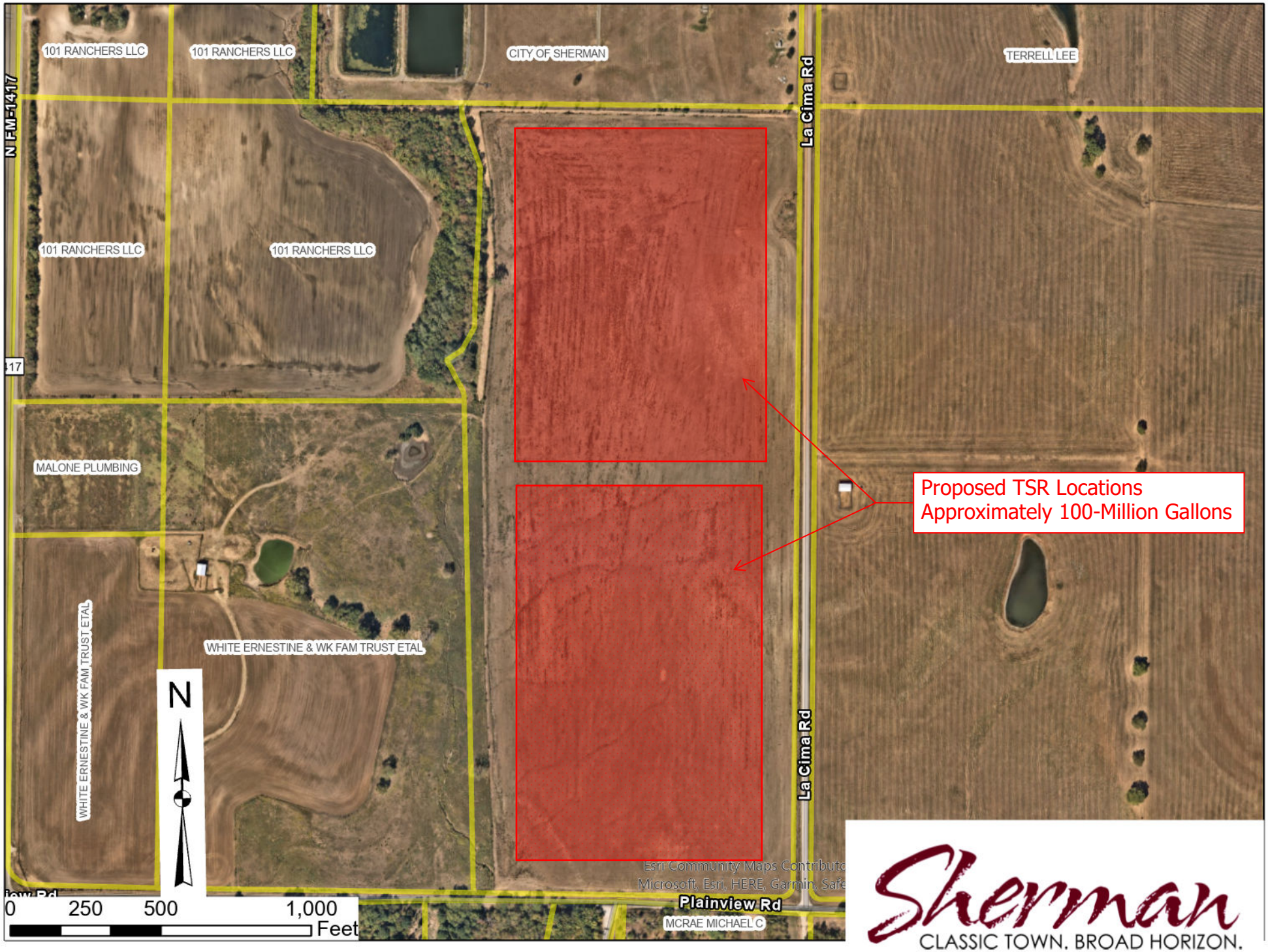
5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

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 Clayton C Barnard
Signature of vendor doing business with the governmental entity

2-3-2023
Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 1/1/2021


101 RANCHERS LLC
101 RANCHERS LLC
CITY OF SHERMAN
TERRELL LEE
N FM 1417
La Cima Rd
101 RANCHERS LLC
101 RANCHERS LLC
MALONE PLUMBING
WHITE ERNESTINE & WK FAM TRUST ETAL
WHITE ERNESTINE & WK FAM TRUST ETAL
Proposed TSR Locations
Approximately 100-Million Gallons
La Cima Rd
Plainview Rd
MCRAE MICHAEL C
N
0 250 500 1,000
Feet
Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 6.**

Meeting Date: 05/01/2023

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7064

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Burgess & Niple, Inc. for the Downtown Wastewater Improvements, Phase 1 Project

Issue:

To consider an amendment to the professional services agreement with Burgess & Niple, Inc. for the Downtown Wastewater Improvements, Phase 1 Project

Background:

The property owners in the downtown central business district have expressed concern about odors they believe are coming from the sanitary sewer system. On March 1, 2021, City Council approved a Sanitary Sewer Evaluation Study (SSES) to be performed by Burgess & Niple. In October 2021, Burgess & Niple delivered their results of the SSES with a geographical three phase improvement project to address the infrastructure defects they identified. On February 7, 2022, City Council approved a design services contract with Burgess & Niple to evaluate how those defects would be best rehabilitated or replaced. In January 2023, Burgess & Niple submitted their recommendations to City staff. This Amendment No. 1, provides the scope and funding to provide final construction drawings for the Downtown Wastewater Improvements, Phase 1.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this Amendment No. 1 is $104,600.00, making a contract total of $289,010. Money is still available in 2021 fiscal year budget allocation within TIRZ #2 to be used towards utility improvements within the downtown, central business district.

Staff Recommendation:

It is recommended that Amendment No. 1 to the professional services with Burgess & Niple, Inc. for the Downtown Wastewater Improvements, Phase 1 Project be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7064
Unsigned - Amendment No. 1
Original Agreement
Location Map

RESOLUTION NO. 7064

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH BURGESS & NIPLE, INC. FOR THE DOWNTOWN WASTEWATER IMPROVEMENTS, PHASE 1 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 Amendment No. 1 to the Professional Services Agreement with Burgess & Niple, Inc. for the Downtown Wastewater Improvements, Phase 1 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 1st day of May 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

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

AMENDMENT NO. 1

TO THE AGREEMENT FOR PROFESSIONAL ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN (OWNER) AND BURGESS & NIPLE, INC. (ENGINEER)
FOR THE DOWNTOWN WASTEWATER IMPROVEMENTS, PHASE 1 PROJECT

Dated February 7, 2022 ("Original Agreement")

Owner and Engineer desire to amend the Original Agreement for the purpose of: (a) extending and/or clarifying the Scope of Services for the Project (defined in the Original Agreement); (ii) revising the individual line items in the Project Budget Summary (defined in the Original Agreement); (iii) revising Engineer's Fee (defined in the Original Agreement); and (iv) making other necessary amendments as follows:

The following is added to and incorporated into the Scope of Services under the Original Agreement:

Basic Services		
Intermediate Design (65%)	$	45,000
Final Design	$	10,000
Bid Phase Services	$	7,000
Construction Phase	$	3,000
Special Services		
Design Surveying	$	8,085
Level "A" SUE (10 holes @ $2145 ea)	($	21,450)
Level "A" SUE (9 holes 0'-4' @ $1,045 ea)	$	9,405
Level "A: SUE (3 holes 4'-8' @ $1,375 ea)	$	4,125
Level "A" SUE (2 holes 8'-12' @ $1,705 ea)	$	3,410
Level "A" SUE (1 hole 12'-18' @ $2,530 ea)	$	2,530
Level "B" SUE	$	15,000
Dye Flood Testing	$	7,750
Permanent Easement Exhibits (5 @ $385 ea)	$	1,925
CCTV Wastewater Mains	$	7,500
Refresh Survey Control	$	1,320
TOTAL FEE INCREASE (NOT TO EXCEED):	**$**	**104,600**

[Rest of page left intentionally blank]

This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The OWNER and ENGINEER hereby agree to amend Section VI.C. of this Original Agreement to read as follows:

C. It is agreed by both the OWNER and the ENGINEER that the total fees paid under this "Agreement for Professional Engineering Design Services" shall not exceed the following budgeted total without OWNER approval. This fee shall be the only amounts due from OWNER, and ENGINEER shall not be reimbursed for expenses in addition to the fee.

Basic Services		
Preliminary Engineering Study	$	71,000
Intermediate Design (65%)	$	45,000
Final Design	$	10,000
Construction Phase	$	3,000
Total Basic Engineering Services Fee:	**$**	**129,000**
Special Services		
Design Surveying	$	41,085
Bid Phase Services	$	7,000
Geotechnical Investigation & Report	$	8,910
Level "A" SUE (9 holes 0'-4' @ $1,045 ea)	$	9,405
Level "A: SUE (3 holes 4'-8' @ $1,375 ea)	$	4,125
Level "A" SUE (2 holes 8'-12' @ $1,705 ea)	$	3,410
Level "A" SUE (1 hole 12'-18' @ $2,530 ea)	$	2,530
Level "B" SUE	$	65,050
Dye Flood Testing	$	7,750
Permanent Easement Exhibits (5 @ $385 ea)	$	1,925
CCTV Wastewater Mains	$	7,500
Refresh Survey Control	$	1,320
Total Authorized Special Services	**$**	**160,730**
TOTAL FEE INCREASE (NOT TO EXCEED):	**$**	**289,010**

The BUDGETED TOTAL (including Preliminary Engineering Study as shown in Exhibit A) is a maximum of $289,010.00 and shall not be exceeded without OWNER approval.

[Rest of page left intentionally blank]

The OWNER and ENGINEER hereby agree to amend and replace Section II of this Original Agreement to read as follows:

SECTION II
CHARACTER AND EXTENT OF SERVICES

The Basic Engineering Services to be rendered by ENGINEER are to be considered distinguishable from other services and shall be performed as required during the following phases of the PROJECT:

A. PRELIMINARY ENGINEERING STUDY
B. DESIGN PHASE
C. CONSTRUCTION PHASE

In addition to the Basic Services, other services related to the PROJECT that may be included by specific authorization are identified herein as "D. SPECIAL SERVICES."

These various services that ENGINEER will perform are more fully described in Exhibit "A" and as follows:

A. PRELIMINARY ENGINEERING STUDY

1. If the OWNER determines that a preliminary engineering study is needed, the ENGINEER will attend a conference with OWNER regarding the scope and requirements of the study needed for the PROJECT.

2. Prepare a preliminary engineering study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the OWNER, to include preliminary layouts, a right-of-way map, sketches, and cost estimates for the PROJECT, and to set forth clearly the ENGINEER's recommendations. Such estimates for probable costs shall be made on the basis of ENGINEER's knowledge, experience and qualifications and represent ENGINEER's judgment as an experienced professional engineer. ENGINEER does not guarantee that proposals, bids, or actual total project costs or total construction costs will not vary from the opinions provided by ENGINEER.

3. Furnish the OWNER all necessary copies of the preliminary engineering report, including preliminary layouts, a right-of-way map, sketches, and cost estimates. All reports in excess of ten (10) copies are to be paid for separately as provided hereinafter.

4. Schedule and attend a preliminary engineering study review meeting with OWNER.

B. INTERMEDIATE DESIGN (65%)

1. Prepare intermediate plans, construction manual and construction cost estimates based on PDR. Plans to include:
   a) Cover Sheet

b) General Notes
c) Quantity Sheet
d) Project Layout Sheet
e) Sanitary Sewer Plan & Profile Sheets
f) Standard Details

2. Discuss dye flood locations with City of Sherman. Testing to be completed by Burgess & Niple. CCTV of the sanitary sewer line during the dye flood testing process is not included.

3. Furnish the OWNER all necessary copies of the intermediate design plans.

4. 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. The ENGINEER shall not be required to guarantee the accuracy of these estimates.

5. Identify property acquisition needs. Begin preparation of easement exhibits based on discussions.

C. FINAL DESIGN

1. Prepare final plans, construction manual and construction cost estimates that address all comments from the intermediate review.

2. Assist the City of Sherman with TXDOT permitting.

3. Provide coordination and document preparation with rail road company permitting.

4. Provide necessary copies of sealed easement exhibits.

5. Furnish the OWNER all necessary copies of the final plans and updated cost estimates.

6. 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. The ENGINEER shall not be required to guarantee the accuracy of these estimates, but may be required to provide additional services at no cost to the OWNER if bids for the PROJECT exceed the fixed budget limit for the Construction Cost.

7. The ENGINEER will attend one (1) review meeting with the OWNER. The ENGINEER will be responsible for compiling all the comments from this review to create a list of all comments to be addressed in the sealed plans.

8. Upon completion of the final design review, the ENGINEER shall furnish to the OWNER the necessary copies of the construction drawings to be forwarded to the utility companies.

C. CONSTRUCTION PHASE

1. Attend pre-construction meeting and provide responses to requests for information or clarification to the City or Contractor.

2. Review required shop drawings and material submittals.

3. Provide periodic site visits.

4. Provide assistance during final observation and acceptance of project.

5. After final acceptance of the Project, B&N will provide as-builts in digital PDF format and ACAD 2018 drawing files.

D. SPECIAL SERVICES

Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by A., B., and C. preceding, which may be performed or arranged for separately by OWNER, or may be added to the ENGINEER's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following:

1. Field surveys to collect information required for design, including photogrammetry, 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.

2. Land surveys, establishment of boundaries and monuments, and related office computations and drafting.

3. Staking of the centerline of the proposed PROJECT for utility coordination. The ENGINEER or its surveyor shall stake the centerline throughout the extent of the PROJECT. The beginning and the end of the PROJECT shall be designated. The points of intersection, points of curvature, and points of tangency of all horizontal curves shall be designated. Stations and half-stations (50-foot and 100-foot) shall be designated throughout the entire PROJECT, on tangential and curvilinear portions. Said centerline control is to be established in a timely fashion as directed by City staff. Said centerline control markings are to be a one-time event and shall be of a nature to last a minimum of eight months.

4. Furnish descriptive instruments related to the acquisition of easements and/or rights-of-way. The description of these parcels should be rotated to match the bearings of the individual deeds. The payment for these instruments will be made on a per parcel basis unless otherwise indicated in Section VI. C. As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the acquisition after construction is complete. Appearances before hearings for eminent domain proceedings are specifically <u>not</u> included in the specified per parcel payment.

5. Appearances before regulatory agencies.

6. Assistance to the OWNER as an expert witness in any litigation or claim, arising from, or in connection with, the PROJECT.

7. 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 OWNER.

8. Detailed mill, shop, and/or laboratory inspection of materials or equipment.

9. Assist the OWNER in obtaining the services of a qualified geotechnical engineering laboratory to conduct soil and foundation investigations, including test borings, soil tests, and analyses of test results.

10. Travel required of the ENGINEER to perform these Special Services in connection with the PROJECT.

11. Additional reports and Contract Documents in excess of fifteen (15) copies as required for the initiation, bidding, and administration of the PROJECT.

12. Preparation of applications and supporting documents for government grants or planning advances for public works projects.

13. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.

14. Revision of reports and Construction Contract Documents after specific approval by OWNER, as provided in Section VII.

15. Subsurface Utility Engineering that involves level “A” identification of a utility will be paid per each utility location identified.

16. Subsurface Utility Engineering that involves level “B” identification of a utility will be paid per linear foot.

17. Provide engineering surveys to refresh and re-establish benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. This does not include construction staking.

18. Project Bidding
    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 OWNER 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 fifteen (15) copies are to be paid for separately as provided hereinafter.

c. ENGINEER will submit the project plans to the State of Texas for the TAS/ADA review, if required for the PROJECT. ENGINEER will prepare the application and make the submittal. The OWNER will provide a check for the fee based on the construction cost of pedestrian improvements per the submittal requirements. ENGINEER will address comments from the review and revise plans if necessary.
d. Assist the OWNER in the advertisement of the PROJECT for competitive bids.
e. Assist the OWNER with any Pre-Bidders meetings.
f. Assist the OWNER in the opening and tabulation of bids for construction of the PROJECT and recommend to the OWNER as to the proper action on all proposals received.
g. 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.

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The OWNER and ENGINEER hereby agree to amend and add to Task 300 of Exhibit "A" of this Original Agreement as follows:

12. Additional design survey is required if dye test flooding discovers the need for additional sanitary sewer mains needed to route flows to the main line and for additional survey that is needed for Lines I, E and D at the upstream locations.

The OWNER and ENGINEER hereby agree to amend and replace Task 400 of Exhibit "A" of this Original Agreement as follows:

Task 400: Subsurface Utility Engineer

If and as authorized by OWNER, the subsurface utility engineering services will include the following:

1. A Quality Level "B" SUE whereas Quality Level "B" is defined as two-dimensional (x,y) information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as "designating" this quality level provides the horizontal position of subsurface utilities within approximately one-foot. Utilities to be designated include gas, telecommunications, electric, traffic signals, storm, water and sanitary sewer.
2. A Quality Level "A" SUE whereas Quality Level "A" is defined as three-dimensional (x,y,z) utility information obtained utilizing non-destructive vacuum excavation equipment to expose utilities at critical points which are then tied down by surveying. Also known as "locating", this quality level provides precise horizontal and vertical positioning of utilities within approximately 0.05 feet. Up to fifteen (15) Quality Level "A" test holes between zero (0) and eighteen (18) feet deep at varying cost as shown in the fee schedule and determined by the ENGINEER and coordinated with and authorized by the OWNER.
3. Additional SUE is required if dye test flooding discovers the need for additional sanitary sewer mains needed to route flows to the main line and for potholing of existing utilities throughout the project.

[Rest of page left intentionally blank]

The OWNER and ENGINEER hereby agree to amend and add to Exhibit "A" of this Original Agreement the following:

Task 500: Dye Flood Testing

1. This task consists of identifying sanitary system service line connections to main lines using a traditional dye flooding method. The testing is completed by forcing a non-toxic, non-staining dye into sanitary service origin points (toilets, sinks, etc.) in identified structures. The main lines are then observed at manholes for presence of the dye to confirm if service connection to the sanitary system.

Task 600: Permanent Easements

1. Provide up to Five (5) easement exhibits to the City of Sherman if required.
2. Locations for all easements will be discussed with OWNER prior to beginning any easement exhibits.

Task 700: CCTV of Wastewater Mains

1. This task consists of televising sanitary sewer lines that were not originally televised during the sanitary sewer inspection.

Task 800: Refresh Survey Control

1. Provide engineering survey to refresh and re-establish benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. This does not include construction staking.

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement. This Amendment No. 1 and the Original Agreement contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 1 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto. Any term not defined herein shall be deemed to have the meaning ascribed to it under the Original Agreement.

[Rest of page left intentionally blank]

EXECUTED on behalf of ENGINEER as shown below, and on behalf of the OWNER by its City Manager (thereunto duly authorized) this _____ day of _____, 2023.

OWNER:
CITY OF SHERMAN, TEXAS

Robby Hefton, City Manager

ATTEST:

Linda Ashby
City Clerk

ENGINEER:
BURGESS & NIPLE, INC.

Edwin J. Muccillo, Chairman

ATTEST:

APPROVAL RECOMMENDED:

Wayne E. Lee, P.E., CFM / Director Engineering

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

BY:
Ryan D. Pittman
City Attorney

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Edwin J. Muccillo of Burgess & Niple, Inc. known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Burgess & Niple, Inc, a corporation, that (s)he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D. 2023.

_____

Notary Public In and For _____ County, Texas

My Commission Expires:

_____

RESOLUTION NO. 6842

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH BURGESS & NIPLE, INC. FOR THE DOWNTOWN WASTEWATER IMPROVEMENTS, PHASE 1 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 Burgess & Niple, Inc. for the Downtown Wastewater Improvements, Phase 1 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 7th day of February, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

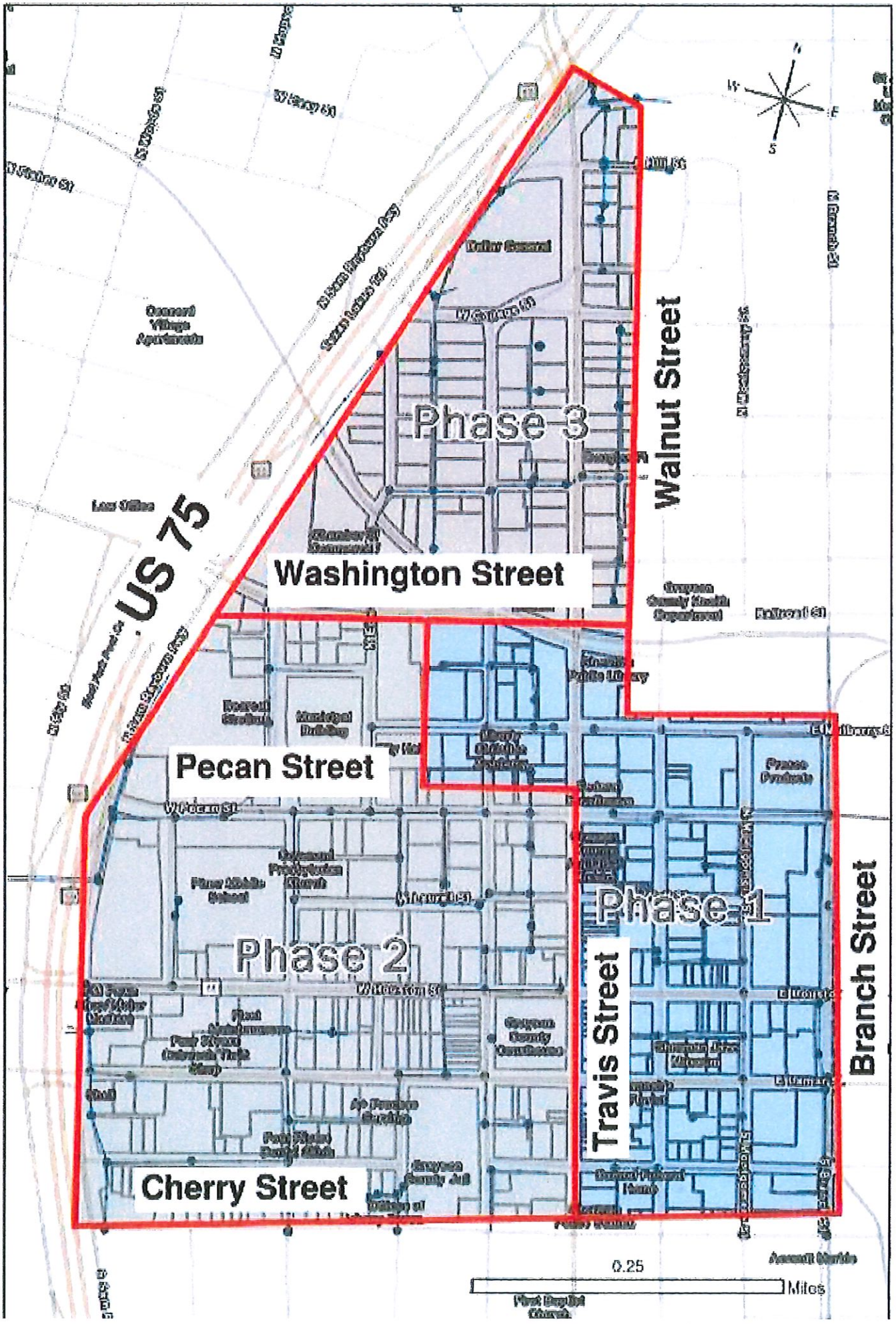
BY: Ryan D. Pittman
RYAN D. PITTMAN, CITY ATTORNEY

CERTIFIED COPY- DOCUMENT
THIS IS CERTIFIED TO BE A TRUE COPY OF THE PERMANENT RECORD AS FILED IN THE OFFICE OF THE CITY CLERK.

Linda Ashby
CITY CLERK, SHERMAN, TEXAS

ISSUED: 2-15-2022

7.1 Phased Rehabilitation



AGREEMENT FOR PROFESSIONAL ENGINEERING DESIGN SERVICES

This AGREEMENT or CONTRACT is made and entered into this 7th day of February, 2022, by and between the City of Sherman, Texas hereinafter called the OWNER, and Burgess & Niple, Inc., hereinafter called the ENGINEER.

RECITALS

WHEREAS, the OWNER intends to construct Downtown Wastewater Improvements, Phase 1, hereinafter referred to as the PROJECT; and

WHEREAS, the OWNER desires to obtain engineering services in connection with the PROJECT and set forth in the Scope of Services attached hereto as Exhibit "A"; and

WHEREAS, the ENGINEER is acceptable to the OWNER, and is willing to enter into an Agreement with the OWNER to perform such services; and

NOW, in consideration of the premises and mutual covenants contained herein, the OWNER and the ENGINEER agree as follows:

CONTRACTUAL UNDERTAKINGS

SECTION I
EMPLOYMENT OF ENGINEER

The OWNER agrees to employ the ENGINEER and the ENGINEER agrees to furnish engineering design services in connection with the PROJECT as stated in Section II, and for having rendered such services, the OWNER agrees to pay to the ENGINEER compensation as stated in Section VI.

ENGINEER agrees to furnish engineering design services in accordance with the terms and conditions of this AGREEMENT (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

SECTION II
CHARACTER AND EXTENT OF SERVICES

The Basic Engineering Services to be rendered by ENGINEER are to be considered distinguishable from other services and shall be performed as required during the following phases of the PROJECT:

A. PRELIMINARY ENGINEERING STUDY
B. DESIGN PHASE – N/A
C. CONSTRUCTION PHASE – N/A

In addition to the Basic Services, other services related to the PROJECT that may be included by specific authorization are identified herein as "D. SPECIAL SERVICES."

These various services that ENGINEER will perform are more fully described in Exhibit "A" and as follows:

A. PRELIMINARY ENGINEERING STUDY

1. If the OWNER determines that a preliminary engineering study is needed, the ENGINEER will attend a conference with OWNER regarding the scope and requirements of the study needed for the PROJECT.

2. Prepare a preliminary engineering study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the OWNER, to include preliminary layouts, a right-of-way map, sketches, and cost estimates for the PROJECT, and to set forth clearly the ENGINEER's recommendations. Such estimates for probable costs shall be made on the basis of ENGINEER's knowledge, experience and qualifications and represent ENGINEER's judgment as an experienced professional engineer. ENGINEER does not guarantee that proposals, bids, or actual total project costs or total construction costs will not vary from the opinions provided by ENGINEER.

3. Furnish the OWNER all necessary copies of the preliminary engineering report, including preliminary layouts, a right-of-way map, sketches, and cost estimates. All reports in excess of ten (10) copies are to be paid for separately as provided hereinafter.

4. Schedule and attend a preliminary engineering study review meeting with OWNER.

B. DESIGN PHASE

C. CONSTRUCTION PHASE

D. SPECIAL SERVICES

Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by A., B., and C. preceding, which may be performed or arranged for separately by OWNER, or may be added to the ENGINEER's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following:

1. Field surveys to collect information required for design, including photogrammetry, 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.

2. Land surveys, establishment of boundaries and monuments, and related office computations and drafting.

3. Staking of the centerline of the proposed PROJECT for utility coordination. The ENGINEER or its surveyor shall stake the centerline throughout the extent of the PROJECT. The beginning and the end of the PROJECT shall be designated. The points of intersection, points of curvature, and points of tangency of all horizontal curves shall be designated. Stations and half-stations (50-foot and 100-foot) shall be designated throughout the entire PROJECT, on tangential and curvilinear portions. Said centerline control is to be established in a timely fashion as directed by City staff. Said centerline control markings are to be a one-time event and shall be of a nature to last a minimum of eight months.

4. Furnish descriptive instruments related to the acquisition of easements and/or rights-of-way. The description of these parcels should be rotated to match the bearings of the individual deeds. The payment for these instruments will be made on a per parcel basis unless otherwise indicated in Section VI. C. As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the acquisition after construction is complete. Appearances before hearings for eminent domain proceedings are specifically <u>not</u> included in the specified per parcel payment.

5. Appearances before regulatory agencies.

6. Assistance to the OWNER as an expert witness in any litigation or claim, arising from, or in connection with, the PROJECT.

7. 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 OWNER.

8. Detailed mill, shop, and/or laboratory inspection of materials or equipment.

9. Assist the OWNER in obtaining the services of a qualified geotechnical engineering laboratory to conduct soil and foundation investigations, including test borings, soil tests, and analyses of test results.

10. Travel required of the ENGINEER to perform these Special Services in connection with the PROJECT.

11. Additional reports and Contract Documents in excess of fifteen (15) copies as required for the initiation, bidding, and administration of the PROJECT.

12. Preparation of applications and supporting documents for government grants or planning advances for public works projects.

13. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.

14. Revision of reports and Construction Contract Documents after specific approval by OWNER, as provided in Section VII.

15. Subsurface Utility Engineering that involves level "A" identification of a utility will be paid per each utility location identified.

16. Subsurface Utility Engineering that involves level "B" identification of a utility will be paid per linear foot.

17. Provide engineering surveys to refresh and re-establish benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. This does not include construction staking.

18. Project Bidding
    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 OWNER 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 fifteen (15) copies are to be paid for separately as provided hereinafter.
    c. ENGINEER will submit the project plans to the State of Texas for the TAS/ADA review, if required for the PROJECT. ENGINEER will prepare the application and make the submittal. The OWNER will provide a check for the fee based on the construction cost of pedestrian improvements per the submittal requirements. ENGINEER will address comments from the review and revise plans if necessary.
    d. Assist the OWNER in the advertisement of the PROJECT for competitive bids.
    e. Assist the OWNER with any Pre-Bidders meetings.
    f. Assist the OWNER in the opening and tabulation of bids for construction of the PROJECT and recommend to the OWNER as to the proper action on all proposals received.
    g. 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.

SECTION III
AUTHORIZATION OF SERVICES

No professional services of any nature shall be undertaken by the ENGINEER under this agreement without written authorization from the OWNER.

SECTION IV
PERIOD OF SERVICE

This AGREEMENT shall be effective upon execution by the OWNER and the ENGINEER and shall remain in force until terminated under the provisions hereinafter provided in Section IX.

SECTION V
COORDINATION WITH THE OWNER

The ENGINEER shall hold periodic conferences with the OWNER, or its representatives, to the end that the PROJECT, as perfected, shall have full benefit of the OWNER's experience and knowledge of existing needs and facilities and be consistent with its current policies and construction standards. To implement this coordination, the OWNER shall make available to the ENGINEER for use in planning the PROJECT, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and to the PROJECT.

SECTION VI
THE ENGINEER'S COMPENSATION

For and in consideration of the services to be rendered by the ENGINEER, the OWNER shall pay and the ENGINEER shall receive the compensation hereinafter set forth for the PREPLIMANARY ENGINEERING STUDY of the work and additionally for SPECIAL SERVICES that are in addition to the Basic Engineering Services. All remittances by OWNER of such compensation shall either be mailed or delivered to the ENGINEER's home office as identified in the work authorization.

"Salary Cost" used herein is defined as the cost of salaries of engineers, draftsmen, stenographers, surveymen, clerks, laborers, etc., for time directly chargeable to the PROJECT plus social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

A. Payment for a PRELIMINARY ENGINEERING STUDY shall be due within thirty (30) days after submission and acceptance by the OWNER of the PRELIMINARY STUDY and any applicable reports, sketches, estimates, opinions, etc. This fee shall be the only amount due from OWNER, and ENGINEER shall not be reimbursed for expenses in addition to this fee.

   Compensation for the Basic Engineering Services (PRELIMINARY ENGINEERING STUDY, DESIGN, and CONSTRUCTION PHASES) on the work covered by the PROJECT shall not be increased without City Council approved resolution. This fee shall be the only amount due for Basic Engineering Services from OWNER, and ENGINEER shall not be reimbursed for expenses in addition to the fee.

B. Compensation for SPECIAL SERVICES not covered by the PRELIMINARY ENGINEERING STUDY of Basic Engineering Services provided hereinabove shall be as follows:

For all of ENGINEER's personnel time applied to the SPECIAL SERVICES, on an hourly basis, shall be per Engineer's established hourly rates included as Exhibit "B" to this AGREEMENT.

For all direct non-labor and/or subcontract expense, including mileage, travel and living expenses, invoice or internal office cost plus a ten percent (10%) service charge, provided that all reimbursable expenses are pre-authorized by the OWNER.

Payments to the ENGINEER for authorized SPECIAL SERVICES will be due monthly, upon presentation of monthly statements by the ENGINEER for such services.

C. It is agreed by both the OWNER and the ENGINEER that the total fees paid under this "Agreement for Professional Engineering Design Services" shall not exceed the following budgeted total without OWNER approval. This fee shall be the only amounts due from OWNER, and ENGINEER shall not be reimbursed for expenses in addition to the fee.

ENGINEERING FEES:

Basic Engineering Services:		
Preliminary Engineering Study	$	71,000.00
Design Phase	$	N/A
Construction Phase	$	N/A
Total Basic Engineering Services Fee:	**$**	**71,000.00**
Authorized Special Services:		
Design Surveying	$	33,000.00
Level "A" Subsurface Utility Engineering Investigation up to 10 Test Holes:	$	21,450.00
Level "B" Subsurface Utility Engineering Designating utilities within area not-to-exceed:	$	50,050.00
Geotechnical Investigation & Report:	$	8,910.00
Total Authorized Special Services	**$**	**113,410.00**
BUDGETED TOTAL:	**$**	**184,410.00**

The BUDGETED TOTAL (including Preliminary Engineering Study as shown in Exhibit A) is a maximum of $184,410.00 and shall not be exceeded without OWNER approval.

SECTION VII
REVISION OF REPORTS, PLANS, SPECIFICATIONS AND OTHER DOCUMENTS

The revision and rework of reports, plans, specifications, and other documents during the formative stages as an orderly process in the development of the PROJECT to meet the needs of the OWNER shall be considered as part of the Basic Engineering Services. After a definite plan has been approved by the OWNER, if a decision is subsequently made by the OWNER, which, for its proper execution involves extra services and expenses for changes in, or additions to the drawings, specifications or other documents, or if the ENGINEER is put to labor or expense by delays imposed on him from causes not within its control, such as, but not limited to the re-advertisement of bids or by the delinquency or insolvency of Contractors, the ENGINEER shall be compensated for such extra expense which shall be considered as Special Services, unless the revisions were required due to bids for construction of the PROJECT exceeding the fixed budget limit for the Construction Cost per Section VI.

SECTION VIII
OWNERSHIP OF DOCUMENTS

The OWNER shall have unlimited right for the benefit of the OWNER for use in future projects to all drawings, designs, specifications, ENGINEER's designs and structures, notes and other pertinent consultant-engineer work procured in the performance of this AGREEMENT or in contemplation thereof, and all "Record Drawings" produced after completion of the PROJECT work, if any, including the right to use same on any other OWNER work without additional cost to the OWNER. Any use of the aforementioned documents for future projects shall be without use of ENGINEER's name or registration seal and without any liability to the ENGINEER, its agents, employees, subcontractors and consultants. In the event this PROJECT is terminated at any point, plans, drawings, structural designs, specifications and other pertinent consultant-engineer work shall become the property of the OWNER.

SECTION IX
TERMINATION

Either party to this AGREEMENT may terminate the AGREEMENT by giving to the other party thirty (30) days notice in writing. Upon delivery of such notice by the OWNER to the ENGINEER, the ENGINEER shall discontinue all services in connection with the performance of the AGREEMENT and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the AGREEMENT. As soon as practicable after receipt of notice of termination, the ENGINEER shall submit a statement, showing in detail the services performed under the AGREEMENT less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, plans and reports prepared under this AGREEMENT shall be delivered to the OWNER when and if this AGREEMENT is terminated, but subject to the restrictions as to their use, as set forth in Section VIII.

If the AGREEMENT is terminated because of a material breach of this AGREEMENT by the ENGINEER, the OWNER may have the remaining work and services to be performed by the ENGINEER performed by another, and the ENGINEER shall be liable to the OWNER for any additional costs over the contract amount accrued by the OWNER associated with the breach of AGREEMENT.

SECTION X
SUCCESSORS AND ASSIGNMENTS

The OWNER and the ENGINEER each binds itself and its successors, executors, administrators and assigns to any other party of the AGREEMENT and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this AGREEMENT. Except as noted above, neither the OWNER nor the ENGINEER shall assign, sublet or transfer its interest in this AGREEMENT without the written consent of the other. Nothing herein shall be constituted as creating any personal liability on the part of any officer or agent of any public body which may be a party thereto.

SECTION XI
SPECIAL CONDITIONS

SPECIAL CONDITIONS CONTAINED IN "AUTHORIZATION OF SERVICES" ISSUED BY OWNER AND ACCEPTED BY ENGINEER WITH SPECIFIC REFERENCE TO THIS AGREEMENT SHALL BECOME A PART HEREOF:

1. SPECIAL SERVICES shall be authorized only by the City Engineer or his duly authorized designee for this AGREEMENT.

2. The total budgeted fee shall not be exceeded without specific written authorization by the City.

SECTION XII
TIME OF COMPLETION

The prompt completion of this PROJECT is critical and time is of the essence. Unnecessary delays to the PROJECT shall be grounds for dismissal of the ENGINEER and the termination of this contract without any or further liability to the OWNER other than a prorated payment for necessary and timely work done on the PROJECT to the time of termination. ENGINEER proposes to complete the PRELIMINARY ENGINEERING STUDY if required, PRELIMINARY DESIGN PHASE, INTERMEDIATE DESIGN PHASE, and FINAL DESIGN PHASE for the entire PROJECT within 150 calendar days of the date of the City Council resolution approving the AGREEMENT. This time frame, shall not, except for cause, be exceeded by ENGINEER.

SECTION XIII
PROFESSIONAL LIABILITY INSURANCE

Prior to the commencement of design under this AGREEMENT, ENGINEER shall obtain standard comprehensive professional liability insurance coverage in an amount of at least $1,000,000.00 per occurrence with a $2,000,000.00 aggregate policy limit per year, covering the services provided under this AGREEMENT, including contractual liability under this AGREEMENT. A "claims made" policy is acceptable subject to coverage being maintained during the course of the PROJECT and up to two (2) years after completion and acceptance of PROJECT by the City. ENGINEER shall maintain such coverage during all phases of engineering services and for two (2) years after substantial completion of the PROJECT. The OWNER shall be supplied with a certificate of such coverage which shall provide for a thirty (30) day notice of cancellation, non-renewal, or change in limits by endorsement, to the OWNER by certified mail.

SECTION XIV
INDEMNITY

ENGINEER 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 XIV) 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 ENGINEER, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM ENGINEER IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "ENGINEER" 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 ENGINEER 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 ENGINEER AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE ENGINEER, 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. ENGINEER 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 ENGINEER 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 ENGINEER FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY ENGINEER 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 ENGINEER'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 ENGINEER 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 OFENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER 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 ENGINEER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

SECTION XV
GENERAL INSURANCE

The ENGINEER shall have $2,000,000.00 CSL of Automobile Liability Insurance coverage; Statutory Workers' Compensation as required by the Texas Labor Code; $100,000 per accident, $300,000 per disease, and $100,000 per occupational disease per employee of Employer's Liability Insurance; and $2,000,000 per occurrence with a $2,000,000.00 aggregate policy limit per PROJECT of Commercial General Liability Insurance with a CG2503. In lieu of the $2,000,000.00 Commercial General Liability Insurance and the CG2503, the ENGINEER and OWNER may mutually agree to OWNER's and Contractor's Protective Liability Coverage.

The OWNER, City of Sherman, including its officers, officials, employees, Boards and Commissions, and volunteers shall be named as an additional insured by endorsement to the professional and general insurance coverage listed in this CONTRACT, excluding Workers' Compensation and Employers' Liability (for which a waiver of subrogation is required to be issued in favor of the OWNER), with regard to the ENGINEER's activities as required by this CONTRACT. The coverage shall contain no special limitations on the scope of protection afforded to the OWNER, and all premiums arising from the coverage herein shall be the responsibility of the ENGINEER.

SECTION XVI
ENGINEER'S SEAL

The ENGINEER shall place a Texas Professional Engineer's seal of endorsement on documents and engineering data furnished by ENGINEER to the OWNER as required by the Board of Professional Engineers rules.

SECTION XVII
VENUE

Venue for all purposes shall be exclusively in Grayson County, Texas.

SECTION XVIII
CHOICE OF STATE

This AGREEMENT shall be governed by the law of the State of Texas.

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EXECUTED in three (3) counterparts (each of which is an original) on behalf of ENGINEER shown below, and on behalf of the OWNER this 10th day of February, 2022.

OWNER:
CITY OF SHERMAN, TEXAS

Robby Hefton, City Manager

ATTEST:

ENGINEER:
BURGESS & NIPLE, INC.

Steven Sanders, Ph.D., P.E., Vice President

ATTEST:

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

BY: _____

NAME: Ryan D. Pittman

CITY ATTORNEY

EXHIBIT "A"
SCOPE OF SERVICES

Scope of services as authorized for the PROJECT shall include:

Task 100: Preliminary Engineering Study

ENGINEER will provide engineering services including, but not limited to, the following:

1. Prepare a preliminary engineering study and report of the PROJECT in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the OWNER, to include preliminary layouts, a right-of-way map, sketches, and cost estimates for the PROJECT, and to set forth clearly the ENGINEER's recommendations.
2. Compilation of information and data collected from the Geotechnical Engineering Report, Site Survey, and Subsurface Utility Engineer summary.
3. Evaluation of and recommendation for sanitary sewer rehabilitation methods for the PROJECT, specifically CIPP, pipe-bursting, and open-cut trench method
4. ENGINEER's opinion of probable construction cost estimate for recommendation. Such estimates for probable costs shall be made on the basis of ENGINEER's knowledge, experience and qualifications and represent ENGINEER's judgment as an experienced professional engineer. ENGINEER does not guarantee that proposals, bids, or actual total project costs or total construction costs will not vary from the opinions provided by ENGINEER.
5. Preliminary Design Report review meeting with the OWNER.
6. Furnish the OWNER all necessary copies of the preliminary engineering study and report, including preliminary layouts, a right-of-way map, sketches, and cost estimates. All reports in excess of ten (10) copies are to be paid for separately at cost by the OWNER.

Task 200: Geotechnical Engineering Services

If and as authorized by OWNER, the Geotechnical Engineering Services will include three (3) 20-foot soil borings within the Project Area for laboratory testing and report preparation. ENGINEER and its geotechnical engineering subcontractor will perform the following services:

1. Initial Project Coordination, Utility Coordination and Field Services
    a. Review and discussion of initial plans with OWNER for test locations
    b. Review of utility plans and call Texas One Call for utility markings
    c. Review of available geologic mapping of Project Area
    d. Provide drilling services for field testing and obtain soils samples for laboratory testing
    e. Obtain depth of water table if any is found
2. Laboratory Testing and Report Preparation
    a. Evaluate and visually classify soil samples
    b. Evaluate soil samples through a series of laboratory tests to determine engineering properties

c. Review and analyze the results of the soil testing
d. Determine engineering properties of the soils and prepare foundation and/or pavement recommendations
e. Provide an electronic copy and two printed copies of engineering report

Task 300: Site Survey

If and as authorized by OWNER, the Site Survey scope of work for this Project shall include the following:

1. Location of visible franchise utilities (Gas, Telephone/FOC, Electric, Cable, etc.) and associated appurtenances including but not limited to: power poles, guy anchors, manholes, meters, valves, test stations, vaults, handholds, pull boxes, pedestals, controllers, etc. If available, the size, material type, pressure rating, line voltage and utility owner as applicable will be denoted. Visible Texas 811 markings will be shown on the survey. ENGINEER and its surveyor will not be responsible for showing any underground lines that are not marked.
2. Location of visible public utilities (water, wastewater, storm sewer, and telephone/fiber) and associated appurtenances including but not limited to: manholes, cleanouts, meters, services, isolation valves, blow-offs, fire hydrants, inlets, junction boxes, headwalls, wingwalls, rip-rap, aprons and all other appurtenances. Survey will denote size, material type and flow direction, where accessible. Survey will locate top of operation nut elevations for visible utility valves. Accessible utility manholes will be detailed identifying: structure size, material type, rim elevations, measure downs and corresponding flow line and top of pipe elevations for visible pipe wall penetrations. Those accessible upstream and downstream sanitary and storm sewer rim and invert data will be shown.
3. The limits of structure, ground elevation adjacent to those limits, visible roof drain outfalls and finished floor elevation will be shown for all buildings and structures within the proposed survey limits.
4. Provide location, height and material type for fences located within the project limits. Provide the location and material type for retaining walls and provide top and bottom of wall elevations along its length at grade changes.
5. Survey will locate and tie existing right-of-way, property lines and easements, including type, size, volume and page, where applicable. Survey to show lot, block, abstract number, adjacent street names and property address. City and County boundaries will be shown where applicable. Property owner and business names will be shown on the survey. Easements will be shown that are filed of record or those that ENGINEER and its surveyor has been made aware of.
6. Roadways, driveways, alleys and sidewalks will be located and identified on the survey. Existing width and composition of improved surfaces will be shown on the survey. Existing lane markings and signage will be identified on the survey.
7. Survey will locate and tie top, toe and flow lines of existing swales, channels and creeks with the project limits. Survey will locate headwall and wingwalls and denote number, size, material type, flow line and top of pipe elevation for culvert conduit(s).

8. Survey will locate trees 6" or larger in diameter, shrubs and landscaping features and provide identification notes accordingly. Survey will attempt to provide tree common name and caliper as measured approximately four feet off the ground. Major tree and brush lines will be delineated on the survey. Existing visible irrigation structures and planters will be located on this survey.
9. Ponds and waterways within project areas will be detailed and shown on the survey. Survey will attempt to capture the toe of each feature. This estimate includes floating each feature to determine bottom shots.
10. Set permanent and temporary bench marks to be utilized by the contractor. Benchmark and Control Point descriptions shall be provided in the delivered CADD file. The description will include the Horizontal location, measurements to other permanent on-site infrastructure such as telephone poles, water valves, manhole lids, etc. Additionally, the Vertical elevation (as described below) will be included. Control Points shall be properly described and labeled in the CADD drawings.
11. Deliverables shall be in AutoCAD 2021 format Civil 3D CAD files with existing surface created in the file.

Task 400: Subsurface Utility Engineer

If and as authorized by OWNER, the subsurface utility engineering services will include the following:

1. A Quality Level "B" SUE whereas Quality Level "B" is defined as two-dimensional (x,y) information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as "designating" this quality level provides the horizontal position of subsurface utilities within approximately one-foot. Utilities to be designated include gas, telecommunications, electric, traffic signals, storm, water and sanitary sewer.
2. A Quality Level "A" SUE whereas Quality Level "A" is defined as three-dimensional (x,y,z) utility information obtained utilizing non-destructive vacuum excavation equipment to expose utilities at critical points which are then tied down by surveying. Also known as "locating", this quality level provides precise horizontal and vertical positioning of utilities within approximately 0.05 feet. Up to ten (10) Quality Level "A" test holes will be included in the scope of services as determined by the ENGINEER and coordinated with the OWNER.

EXHIBIT B
RATE SCHEDULE

Rates Schedule

Burgess and Niple, Inc.
2021 – 2022

Classification	Hourly Rate Range
Principal	$265
Senior Project Manager	$245 - $255
Project Engineer	$125 - $165
Designer	$100 - $130
Clerical	$90 - $115

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF Tarrant §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Steven Sanders of Burgess Niple known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Burgess Niple, a corporation, that (s)he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 5 day of February, A.D. 2022.

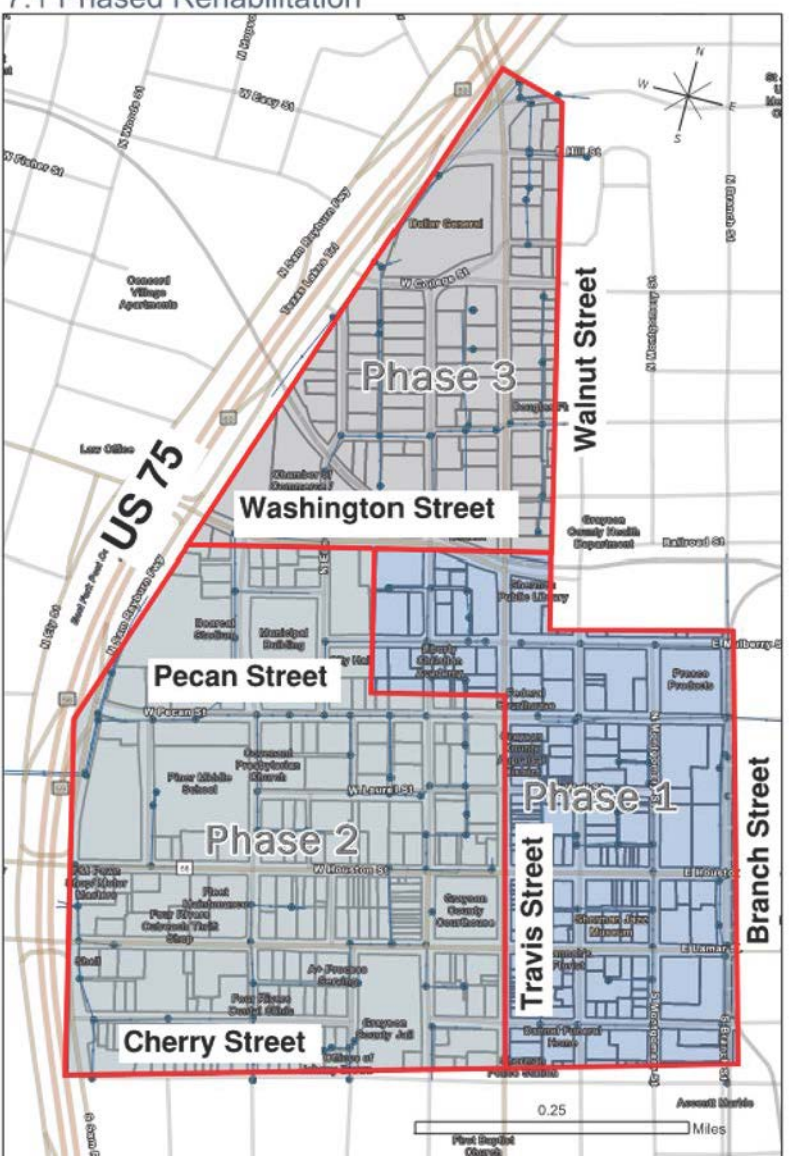
Notary Public In and For Tarrant County, Texas

My Commission Expires:

07-12-2025

RAFAEL ALEXANDER NOLASCO
Notary Public, State of Texas
Comm. Expires 07-12-2025
Notary ID 133207037

7.1 Phased Rehabilitation



SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 7.**

Meeting Date: 05/01/2023

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7065

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Plummer Associates, Inc. for Engineering Services for Design of the Wastewater Treatment and Water Reuse Master Plan Project

Issue:

To consider an amendment to the agreement for professional services with Plummer Associates, Inc. for the design of the Wastewater Treatment and Water Reuse Master Plan Project

Background:

On June 6, 2022, the City Council awarded engineering consulting services to Plummer Associates, Inc. (Plummer) to provide planning, treatability and capacity analysis associated with the wastewater treatment and water reuse facilities needed to support the industrial manufacturing facility expansions and continued growth of the domestic wastewater system in the City.

Phase 1 of this effort, master planning services, is ongoing and includes data analysis and wastewater process modeling. Results from preliminary modeling indicate that the increases in industrial wastewater flows and loads, in conjunction with projected increases in domestic wastewater flows, may exceed the capacity of the Post Oak WWTP as early as 2025.

This Amendment No. 1 engages Plummer to complete engineering drawings for an initial expansion of the WWTP and coordinate their design with a future CMAR contractor to preprocure long lead equipment and construct the proposed WWTP expansion. This Amendment No. 1 also provides for construction phase services.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this contract is $11,369,931. This will be funded by GTUA 2023 Bond Funds.

Staff Recommendation:

It is recommended that Council approves the design services in the aforementioned amount to Plummer Associates, Inc.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7065
Amendment No. 1
Original Agreement
Location Map

RESOLUTION NO. 7065

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR DESIGN OF THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN 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 Amendment No. 1 to the Professional Services Agreement with Plummer Associates, Inc. for engineering services for the design of the Wastewater Treatment and Water Reuse Master Plan 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 1st day of May 2023.

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

AMENDMENT NO. 1

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN (OWNER) AND PLUMMER ASSOCIATES, INC. (ENGINEER)
FOR THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT

Dated June 6, 2022 ("Original Agreement")

This Amendment No. 1 serves to increase the original contract fees under the Original $2,073,011 Agreement based on the following **additional** work to the project scope as detailed in the attached Exhibit A1: "Amendment 1 - Scope of Services." The new total professional services shall now be $13,442,942.

The contract amount under the Original Agreement shall be increased by a fee not to exceed $11,369,931 as presented in the attached Exhibit B1: "Amendment 1 – Project Design Budget Summary."

I. Basic Services

	Scope Item – Post Oak WWTP Improvements	**Fee**
A	Preliminary Design	$ 1,083,059
B	Equipment Preselection	$ 346,557
C	CMAR Coordination	$ 337,530
D	Final Design	$ 4,143,375
E	PM & Meetings	$ 1,109,023
F	Regulatory & Permitting	$ 137,274
Total Basic Services Amendment No. 1:		**$ 7,156,818**

II. Special Services

	Scope Item – Post Oak WWTP Improvements	**Fee**
G	Construction Administration	$ 4,000,000
H	Support Services - Geotech, Survey, SUE	$ 213,113
Total Special Services Amendment No. 1:		**$ 4,213,113**

TOTAL AMENDMENT NO. 1 NOT TO EXCEED (LUMP SUM)	**$ 11,369,931**

The contract completion date shall be extended to March 31, 2026.
[Rest of page left intentionally blank]

This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The OWNER and ENGINEER hereby agree to amend the Proposed Fees section of this Original Agreement to read as follows:

Proposed Fees

Engineer shall be compensated on the following lump sum basis. Additional Services shall be performed based on the attached 2023 rate schedule.

Basic Services	**Fee**
Wastewater Treatment and Water Reuse Master Plan	$ 1,488,011
Amendment 1 -Post Oak WWTP Improvements	$ 7,156,818
Total Basic Services:	**$ 8,644,829**

Special Services	**Fee**
Wastewater Treatment and Water Reuse Master Plan	$ 585,000
Amendment 1 – Post Oak WWTP Improvements	$ 4,213,113
Total Special Services:	**$ 4,798,113**

TOTAL NOT TO EXCEED (LUMP SUM)	**$ 13,442,942**

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement. This Amendment No. 1 and the Original Agreement contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 1 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

[Rest of page left intentionally blank]

EXECUTED in three (3) counterparts (each of which is an original) on behalf of ENGINEER shown below, and on behalf of the OWNER by its City Manager (thereunto duly authorized) this _____ day of _____,2023.

OWNER:	**ENGINEER:**
CITY OF SHERMAN, TEXAS	**PLUMMER ASSOCIATES, INC**
	Ellen McDonald
Robby Hefton, City Manager	**Ellen McDonald, Principal**
ATTEST:	**ATTEST:**
Linda Ashby **City Clerk**	

APPROVAL RECOMMENDED:

Wayne E. Lee, P.E., CFM / Director Engineering

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

BY: _____

NAME: _____
CITY ATTORNEY

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Ellen McDonald of Plummer Associates, Inc. known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Plummer Associates, Inc., a corporation, that (s)he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30 day of March, A.D. 2023.

Cylena Eason

Notary Public In and For Tarrant County, Texas

My Commission Expires:

July 5, 2025

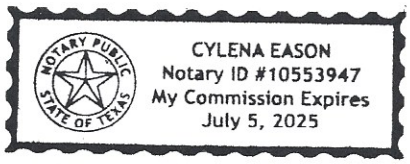


EXHIBIT A1
AMENDMENT NO. 1 - SCOPE OF SERVICES

PROJECT DESCRIPTION

The City has selected Plummer Associates, Inc. (Plummer) to provide engineering consulting services for planning, design and construction administration associated with the wastewater treatment and water reuse facilities needed to support the Texas Instruments (TI) semiconductor chip manufacturing facility expansion and continued growth of the industrial and domestic wastewater system in the City. Phase 1 of this effort, master planning services, is ongoing and includes data analysis and wastewater process modeling. Results from preliminary modeling indicate that the increases in industrial wastewater (from the TI facility and the GlobalWafer facility) flows and loads, in conjunction with projected increases in domestic wastewater flows, may exceed the capacity of the Post Oak WWTP as early as 2025. To complete an expansion of the Post Oak facilities in 2025, the initial design, acquisition of long-lead equipment, and procurement of a construction manager at risk (CMAR) need to begin and proceed concurrently with the completion of the master plan project. This Phase 2 scope of services includes the following tasks specifically associated with the Post Oak WWTP expansion:

- Preliminary Design
- Equipment Preselection
- Construction Manager at Risk (CMAR) Coordination
- Final Design
- Meetings, Workshops, and Project Management
- Regulatory & Permitting
- Construction Administration
- Support Services (e.g. Survey, Geotech, Subsurface Utility Engineering)

I. ASSUMPTIONS

A. Size facilities at Post Oak for 2025 flows and loads (less than 16 mgd).

B. Beyond 2025 flows and loads (by 2026) additional facilities will be brought online, likely as a dedicated Industrial Wastewater Treatment Plant with location to be determined.

C. CMAR approach will be utilized for both facilities.

D. This amendment is for design and construction phase services of the Post Oak WWTP and does not include the Industrial Treatment Plant facilities.

E. A separate amendment will be developed for the Industrial Treatment Plant discharge permit efforts. The permit could be associated with a new location or an amendment to existing permit.

F. The Post Oak facilities will be designed to treat wastewater flows and loads through 16 MGD of projected industrial and municipal contributions to meet the current discharge permit requirements.

G. Solids disposal is assumed to be via landfill.

H. The Post Oak facility design will consider 210 reuse potential, cooling water reuse, and reuse via discharge that flows to a downstream reservoir, but it will not reflect or include any advanced treatment (TDS treatment, advanced oxidations, adsorption, etc).

I. Major equipment will have early procurement packages based on equipment pre-selection. Front end documents for pre-selection to be coordinated with CMAR.

J. Initial Conceptual Opinion of Probable Construction Cost (OPCC) will be developed by the Design Engineer for the Post Oak facility improvements. A cost model will be prepared by the Construction Manager at Risk (CMAR). Engineer will provide an updated OPCC at the 60% and 90% design milestones.

K. The construction of the electrical upgrades currently under design under a separate contract for the Post Oak WWTP will be included in the work performed for this project:

II. TASK SUMMARY, BASIC SERVICES

A. TASK A: PRELIMINARY DESIGN

a. Evaluate and select an approach for the additional facilities by considering the following three alternatives:
   i. Conventional treatment within the footprint of the existing process facilities (i.e. adding new basins adjacent to the existing basins).
   ii. Conventional treatment train located south of Post Oak Rd. that could be incorporated into the process train of a future industrial facility.
   iii. Conversion of the existing process to an integrated fixed film activated sludge (IFAS) - or other similar technology. If this alternative is selected as the preferred approach, new basins for primary clarifiers, aeration basins, and final clarifiers may not be required for treating the flows and loads in 2025.

b. Perform Post Oak Wastewater Treatment Plant preliminary and process design for the following facilities:
   i. Primary Clarifiers (PC) – rehab existing PC3 and design new PC4. Evaluate chemical addition to support silica removal. Provide odor control for the primary clarifier weir areas. PC4 may not be required for IFAS alternative.
   ii. Daily Flow Equalization Basin – new basin with mixing. Assumes the existing basin is reserved for wet weather – peak flow storage.
   iii. Equalization Basin Blower Building – rehab existing blower building and mixing for the existing EQ/Peak Storage basin.
   iv. Anaerobic/Anoxic Basins – Demolish Trickling Filters and construct new basins at that location for the purpose of improving biological system performance.

v. Aeration Basins (AB) – new ABs or modified ABs for IFAS. Evaluate increasing air supply to existing ABs.
vi. Blowers for new AB – Evaluate increasing air to existing ABs and air to new AB.
vii. Biological Clarifier – new Biological Clarifier if required.
viii. RAS for anoxic zone/WAS for new Biological Clarifier and Primary sludge for new Primary Clarifier if required. Evaluate new sludge pump station for PC3 & PC4 if required.
ix. Disc Filters – new filters for 16 MGD design flow and the associated peak flowrate, design will include considerations Biological Clarifier loadings, reuse potential, and silica removal.
x. Grit Building – NFPA improvements per Condition Assessment.
xi. UV and Headworks Lift Station (HLS) – No improvements are identified for this project. The capacity of the system will be evaluated during preliminary design.
xii. WAS Thickening – Add thickener w/polymer system, feed pump and thickened sludge pump.
xiii. Anaerobic Digester (AD) – Rehabilitate two (2) ADs per Condition Assessment with mixing system and auxiliary facilities. Evaluate the capacity of the dewatering system. No improvements to the solids dewatering capacity are assumed for this phase of the project.
xiv. Raw Wastewater Pump Station, Bar Screens, Fine Screens and Grit Removal Units, and dewatering equipment – No capacity improvements are identified for these facilities. The capacity of the existing facilities will be evaluated during preliminary design.

c. Develop liquids and solids process drawings based on above scope. Include process design information. Develop liquids and solids mass balance and incorporate recycle streams into liquids process. Utilize biological model results developed in the master plan project.
d. Develop P&ID's, Operating and Control descriptions, and equipment lists for above facilities. Up to 25 P&ID's are estimated.
e. Develop equipment list with electrical loads. Coordinate electrical loads with the ongoing electrical rehabilitation project.
f. Develop preliminary sizing and layouts for facilities in above list. Determine new buildings needed for mechanical equipment and electrical equipment. The City will provide input on building space criteria for operations and maintenance.
g. Develop Piping Schedule with pipe sizes and materials for all piping systems based on process and peak flow capacities.
h. Develop Site Plan based on above facilities with roads, parking areas, and drainage concepts.

i. Perform hydraulic modeling for the plant and develop a hydraulic profile drawing. Assess flow splitting for new facilities. Develop system head curves for each modified pump station and perform pump selections. Determine piping sizes and materials. Develop plant drain and plant water schematics.
j. Perform alternative evaluations for the following items – other facility's equipment will be designed to match existing facilities.
    i. Blowers for Aeration Basins (Turbo vs Multi-stage vs Single stage)
    ii. Cloth Disc Filters (Four manufacturers)
    iii. Anaerobic Digester – mixing system, gas utilization
k. Prepare Preliminary Design Report
    i. Include wastewater flow, concentration, and load analysis from Master Plan.
    ii. Include biological model inputs, results, and assumptions from Master Plan.
    iii. Incorporate other selected Immediate and Near-term improvements recommended in the Condition Assessment.
    iv. Assist City with the phasing of improvements in coordination with the funding available for improvements.
l. Prepare Basis of Design Memorandum.

Deliverables: *Draft and Final Preliminary Design Report*

B. TASK B: EQUIPMENT PRESELECTION

a. In conjunction with Task C below, develop up to four equipment preselection or early procurement front-end document packages in coordination with City and CMAR to assist in obtaining equipment proposals for up to 13 equipment packages, including the following equipment. Additional packages may be added to the list based on input from the CMAR relative to market conditions at the time of design.
    i. Preselection Package:
        a. Primary clarifier mechanisms
        b. Precast Wire Wound Prestressed Concrete Tanks
        c. Aeration Blowers
        d. Electrical Switchgear
        e. Variable Speed Drives
        f. Mixing system for EQ Basin
        g. Mixing system for Anoxic Basins
        h. Mixing system for Sludge Storage Tanks
        i. Sludge Pumps (Centrifugal)
        j. Sludge Pumps (Positive Displacement)
        k. Mixing system for Digesters.

l. Programmable Logic Controller (PLC) Panels

b. Develop equipment specifications for above equipment items. Develop performance requirements and information necessary for evaluation of proposals.
c. Assist the City and CMAR during advertisement of equipment proposals. Respond to requests for information and prepare addendum items.
d. Attend prebid meeting and proposal evaluation meeting with the City.
e. Perform proposal reviews for conformance with the specifications and contract documents.
f. Prepare proposal review summary and selection recommendation letters for each equipment item.
g. Prepare notice of award letters and notice to proceed for shop drawing preparation and coordinate award with the CMAR.
h. Incorporate preselected equipment in the plans and specifications for the expansion.

Deliverables: *Preprocurement Packages, RFI Response Documents, Proposal Review Summaries, Vendor Recommendation Letters, Notice of Award/Notice to Proceed Letters, Meeting Minutes, Decision Logs.*

C. TASK C: CMAR COORDINATION, EARLY OUT PACKAGES/SEQUENCING

a. It is the City's intent based on Engineer's recommendation to deliver the Project using the CMAR delivery method. The CMAR will be initially contracted to provide pre-construction phase [Design Phase] services, including but not necessarily limited to the following efforts:

i. CMAR will develop and progressively update a detailed "open book" cost model based on current market conditions to confirm budgets and help guide design decisions.

ii. CMAR will develop a construction management plan and schedule in advance of construction.

iii. CMAR will perform evaluations of cost, constructability, schedule, materials availability, etc. to be included in alternative system evaluations and provide constructability reviews.

iv. CMAR will develop long-lead procurement strategies, including the pre-selected equipment, and initiate early procurement of these long-lead items in conjunction with Task B above).

v. CMAR will provide any potholing or laser scanning activities required to support development of accurate design information, as identified by the Engineer.

vi. CMAR will assist in the design and construction phase permitting processes, as required.

vii. CMAR will provide procurement services for selection of key subcontractors and suppliers.

viii. CMAR will develop a guaranteed maximum price (GMP) for construction for City review and consideration.

b. Assuming City acceptance of the GMP, the CMAR will then provide all services required of a general contractor, including self-performance and subcontractor procurement and management, during subsequent construction and post-construction phases of the Project.

c. The relationship between the CMAR and Engineer is intended to be collaborative and proactive, with both participating as advisors to the City during the pre-construction phase [Design Phase]. It is the City's desire and Engineer's recommendation to incorporate a contractor's perspective and input into the Project planning and design decisions, and to leverage the ability for early procurement and phased construction prior to full completion of design.

d. CMAR Design Phase – The following tasks define the specific efforts to be performed and completed by the Engineer during the pre-construction phase [Design Phase] of the Project.

i. Cost Model and GMP Review.

a. Coordinate with CMAR, Program Manager, and City to provide input and information on materials, appurtenances and other major capital cost items throughout design phase. Review and comment on the initial cost model and subsequent cost model updates (based on 60% and 90% design submittals) developed by CMAR. Cost review activities will include a review of direct and indirect costs, CMAR fee and CMAR contingency; review supplier and subcontractor quotes and request supplemental quotes, as necessary; compare costs with other applicable projects; and perform review of risk analysis model and/or cost contingencies developed by the CMAR. Indirect costs included in the CMAR cost model will include applicable general conditions and general requirements, bonds, insurance and sales tax. Using the cost models and GMP(s) as the basis for the total construction cost(s), coordinate with the City and program manager regarding additional City administrative costs, engineering fees,

construction administration and inspection fees, and (if applicable) City contingency to develop a Total Construction Cost Estimate (TCCE).

b. A parallel opinion of probable construction cost will be prepared by the Engineer at the 60% and 90% design milestones. Written recommendation(s) to City regarding opinion of GMP(s) acceptance (Electronic format only) will be provided by the Engineer.

e. Early Procurement Activities: Coordinate with CMAR and City to develop an equipment and materials procurement plan, including identification of items to be selected and/or procured early based on "best value" or low-bid strategies, and define the parameters associated with "best value" selection as applicable. For those items selected for early procurement, specify the acceptable manufacturers, and identify associated Bid Document requirements and incorporate into the preselected equipment packages.

i. Coordinate with CMAR to develop the preselection equipment packages and supporting design drawings for early procurement of major long-lead equipment items with the specific acceptable manufacturers. Coordinate with CMAR as part of the bidding process and prepare any addenda as required. Assist the City and CMAR with the review of the supplier proposals and bid packages and the subsequent selection process.

ii. CMAR shall be responsible for the packaging of front-end documents, technical specifications and applicable design drawings developed by Engineer; submittal of packages to applicable manufacturers and/or vendors; coordination of vendor proposals; pre- selection of equipment and appurtenances (with City and Engineer input); delivery of detailed design criteria and documents of selected equipment to Engineer for further use and incorporation into detailed design documents; and coordination of delivery, storage, and payment of procured items accordingly.

iii. Early Procurement Design Document Packages (Electronic "PDF" format only) will be provided by the Engineer. Eight "early-out" packages are included in this scope of service.

f. General CMAR Coordination: In addition to efforts above, general coordination with CMAR during the pre-construction phase [Design Phase] will include, but not necessarily be limited to:

i. Coordination with City and Program Manager regarding development of the CMAR Construction and/or Post- Construction Phase contract and applicable City front-end documents and Engineer's Division 1 specifications.

ii. Soliciting input from CMAR during design development as appropriate.

iii. Coordinating any potholing or laser scanning activities by the CMAR required to support accurate development of design documents.

iv. Providing input to construction management plan and schedule development.

v. Evaluating alternative systems and materials proposed or suggested by CMAR.

vi. Responding to constructability review comments.

vii. Providing input to Maintenance of Plant Operations (MOPO) plan and schedule; and

viii. Attending subcontractor pre-selection meetings conducted by CMAR as appropriate.

ix. NOTE: Should the City be unable or unwilling to accept the CMAR GMP and instead decide to procure and deliver the Project using a traditional "design-bid-build" delivery method, subsequent modifications to the front-end documents, technical specifications, and associated design drawings specifically applicable to the City delivery method will be handled under Additional Services, if desired by the City. Additional services for bidding, including preparation of Bid Document sets, participation on a pre-bid conference, responding to Bidder questions, preparing applicable addenda, attendance at the Bid opening, assistance in evaluation of Bids, and participation in a pre-construction conference with the selected General Contractor will also be handled under Additional Services, if desired by the City.

g. CMAR Advertisement/Selection Phase: Provide assistance and support City and Program Manager in selecting a CMAR.

i. Request for Qualifications: The Engineer shall review the CMAR Request for Qualifications (RFQ) document as part one of the two-step CMAR procurement process. This task includes one (1) coordination meeting with City to finalize the documents and establish minimum contractor qualifications.

ii. Request For Proposals: The Engineer shall review the CMAR Request For Proposals (RFP) document and scoring rubric as part two of the two-step CMAR procurement process. This task includes one (1) coordination meeting with City to

finalize the documents and establish selection criteria by which to evaluate the submitted CMAR proposals.

iii. Selection Assistance: The Engineer shall provide City technical assistance for the two-step CMAR procurement process to support City in the review and selection of the CMAR. This task includes one (1) coordination meeting with City to review the scoring of submittals.

iv. Contract Development: The Engineer shall review the CMAR contract document using the Engineers Joint Contract Documents Committee (EJCDC) contract template as a basis. This task includes one (1) coordination meeting with City to review the documents. City will provide legal review of the contract documents and provide the Engineer with any applicable legal opinions needed during the contract development process.

v. Negotiation Assistance: The Engineer shall provide assistance in negotiations for the initial CMAR contract. This task includes one (1) negotiation meeting with the City and CMAR.

D. TASK D: FINAL DESIGN

a. Based on the Preliminary Design, Equipment Preselection, and Coordination with the CMAR, the Engineer shall prepare for approval by the City Drawings and Specifications that set forth in detail the requirements for the construction of the Project and comply with applicable laws, statutes, ordinances, codes, and regulations.

b. Contract Documents: The Engineer shall assist the City and CMAR in preparation of necessary bidding information, bidding forms, the conditions of the contract, and the form of agreement between the City and general contractor. Engineer will use the City's "front-end" documents for the Project. Engineer will use the Engineer's technical specifications.

c. Opinion of Probable Construction Cost: The Engineer shall provide updates to the opinions of cost prepared during preliminary design and compare it with the opinion of cost prepared by the CMAR prior to early out packages and at the 60-percent and 90-percent phases.

d. Submit plans, specifications, and contract documents to the applicable federal and state agency(s) for approval, where required.

e. Coordinate with utility companies and furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.

Deliverables*: 60%, 90% and 100% (Issued for Construction/IFC) documents, Engineer review comments on CMAR cost estimates, meeting minutes, decision logs***.**

E. TASK E: MEETINGS AND WORKSHOPS AND PROJECT MANAGEMENT

a. Meetings and Workshops:

i. Schedule and direct regular coordination meetings with the design team to coordinate project task assignments, action items, and to prepare for progress meetings with the City. Engineer will maintain an Action Item Log and Decision Log to monitor project activity. Coordinate with subconsultants to confirm all project elements are compatible, integrated, and meet City performance requirements.

ii. Schedule and direct progress weekly meetings with the City, Program Manager, and design team to review and discuss design development progress with plant operations staff, discuss deliverable status, schedule, outstanding action items, and decisions made. Coordinate with the selected CMAR contractor during progress meetings. Engineer will prepare draft meeting minutes to include action lists and decision lists.

iii. QC Review Meetings: plan and participate in two internal QC meetings with the design team. The meetings will be held at approximately the 60 percent and 90 percent project completion stages. Review Workshops: Plan and participate in two (2) review workshops with the design team, Program Manager, and City to review the 60 percent and 90 percent deliverables.

b. Project Management:

i. Project administration will include but not be limited to developing and implementing a project management plan; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the City on a regular basis. A standard monthly invoice and progress reports will be prepared for all services.

F. TASK F: REGULATORY & PERMITTING

a. Coordinate with ongoing permitting projects and comply with any applicable state and local limits.

b. Coordinate with the City, CMAR, Program Manager and the TCEQ to expedite review and approval of design packages. This coordination will require both formal and informal meetings, by phone, virtual "MSTEAMS" meetings or in-person meetings. This activity includes the following tasks:

c. Coordination with City and Program Manager

   i. Meet with the City and Program Manager at the initiation of the project and, at the discretion of the City and Program Manager, periodically during the duration of the project. The purpose of the initial meeting is to present the regulatory approach for coordinating with the TCEQ and obtaining approval of the plans and specifications. Subsequent meetings will be conducted to discuss status of approvals and to prepare for meetings with the TCEQ. Meetings may be convened either by phone, MS, Teams or in-person. In-person meetings will occur at the City's offices.

d. Coordination with TCEQ

   i. Prepare for and attend one review meeting with the TCEQ's Plan Review Team in Austin. The TCEQ review meeting will be held when the process design for the new facilities is approximately 90% complete and will include a review of the project design criteria, projected wastewater flow and load increases, and potential variances to TCEQ design criteria for wastewater treatment plants. The purpose of the meeting will be to inform TCEQ of the treatment plant improvement scope and schedule, and prepare the TCEQ for an unconventional project delivery method (CMAR) of the facilities.

   ii. The scope of work also includes up to four (4) additional coordination meetings with the TCEQ during the design and construction phases corresponding with the CMAR's phases of construction (e.g. facilities requiring early completion, facilities requiring normal completion, and the remaining facilities). The purpose of the review meetings is to coordinate and answer questions related to the design packages and the overall schedule of the construction project. Meetings will be convened either by phone, MS Teams, or in person. In-person meetings will be convened at the TCEQ offices in Austin.

e. Coordination with the CMAR

i. Prepare for and attend periodic meetings with the CMAR to coordinate regulatory approval for construction. Meetings will be convened either by phone, MS Teams, or in-person. Coordinate meetings with the City and Program Manager.

Deliverables: *Meeting agendas, draft meeting notes, revised meeting notes.*

III. TASK SUMMARY, ADDITIONAL SERVICES

G. TASK G: CONSTRUCTION ADMINISTRATION

a. General Construction Administration Phase services

i. The scope of Construction Administration Services is based on a construction timeframe of twenty-four (24) months from construction Notice to Proceed to construction substantial completion and thirty (30) months from construction Notice to Proceed to construction final completion.

ii. Construction Phase duties, responsibilities, and limitations of the ENGINEER shall not be restricted, modified, or extended without agreement of the City and Engineer in writing.

iii. The City's approval, acceptance, use of, or payments for all or any part of Engineer's services hereunder or the Project itself shall in no way alter the Engineer's obligations to the City's rights herein.

iv. The Engineer shall be a representative of and shall advise and consult the City during construction. The Engineer shall have the authority to act on behalf of the City only to the extent provided in this Agreement, unless otherwise modified by written instrument.

b. Engineer's Personnel at the Construction Site

i. The presence and duties of Engineer 's personnel at a construction site, whether as onsite representative or otherwise, do not make the Engineer or its personnel in any way responsible for those duties that belong to the City and/or construction contractors or other entities, and do not relieve the construction contractors or any other entity from their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the contract documents and any health and/or safety precautions related to such construction work.

ii. Engineer and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health and/or safety precautions related to such work and have no duty for inspecting, noting, observing, correcting, or reporting on health and/or safety deficiencies of the construction contractors or other persons at the site except Engineer ‘s own personnel.

iii. The presence of the Engineer ‘s personnel at a construction site is for the purpose of providing the Engineer and the City a greater degree of confidence that the completed work will conform generally to the contract documents and that the integrity of the design concept, as reflected in the contract documents, has been implemented and preserved. The Engineer neither guarantees the performance of any construction contractor nor assumes responsibility for contractor’s failure to perform the work in accordance with the contract documents.

c. Internet-based Construction Management

i. The Engineer will provide, for use by the City and the selected contractor, an internet-based construction management system, including the following items:

ii. Establish and maintain the project construction management 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. Produce monthly reports indicating the status of all submittals in the review process.

iii. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.

d. Pre-Construction Conference

i. The Engineer shall conduct a pre-construction conference for the Project. Meeting shall be conducted with the City and contractor at the City’s facility. At a minimum, the following items will be discussed at the pre- construction conference:

a. The construction schedules prepared by the contractor;

b. Schedule of values and payment procedures and schedules;

c. Designation of key personnel and their duties; and

d. Procedures for the construction administration of the Project.

e. Construction Progress Meetings

   i. The Engineer ‘s project manager and project engineer will participate in monthly construction progress meetings for the Project.

   ii. The Engineer will prepare and distribute agendas and meetings notes for each meeting.

   iii. Additional site visits beyond those listed will be a Special Service and the Engineer shall be entitled to additional compensation.

f. Shop Drawings and Submittal Review

   i. The Engineer will review samples; catalog data; schedules; shop drawings; laboratory, shop, and mill tests of materials and equipment; and other data pursuant to the general conditions of the construction contract. Review quality related documents provided by the contractor such as test reports, equipment installation reports, or other documentation required by the construction contract documents. This review is for the benefit of the City and covers only general compliance with the information given by the construction contract documents. This review does not relieve the contractor of any responsibilities such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect the workers and the public, or the necessary to construct and complete a workable facility in accordance with the construction contract documents.

   ii. The fee is based on review of up to five hundred (500) submittals.

   iii. Additional submittal reviews beyond those listed will be a Special Service and the Engineer shall be entitled to additional compensation.

g. Requests for Information

   i. The Engineer will interpret the intent of the plans and specifications and respond to requests for information (RFIs) for the City and contractors.

   ii. The fee is based on processing up to four hundred (400) RFIs.

   iii. Additional RFI responses beyond those listed will be a Special service and the Engineer shall be entitled to additional compensation.

h. Contract Modifications

i. The Engineer will review contract modification request (CMRs) and prepare proposed contract modifications (PCMs) for items identified during construction that are necessary or requested by the City or contractor but are not in accordance with the construction documents.

ii. The Engineer will prepare documentation for construction modifications required to implement modifications in the design of the Project.

iii. The fee is based on processing up to a total of one hundred twenty (120) CMRs, PCMs, and field/change orders.

iv. Additional contract modifications beyond those listed will be a Special service and the Engineer shall be entitled to additional compensation.

v. Investigations, analyses, studies, or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the City are a Special Service. Substitutions of materials or equipment or design modifications requested by the City are a Special Service and the Engineer shall be entitled to additional compensation.

i. Pay Estimates

i. The Engineer will review and comment on a maximum of thirty (30) estimates for payment to contractor, pursuant to the general conditions of the construction contract. Recommendations by the Engineer to the City for periodic construction progress payments to the construction contractor will be based on the Engineer's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent: that continuous or detailed examinations have been made by the Engineer to ascertain that the construction contractor has completed the work in exact accordance with the contract documents; that the final work will be acceptable in all aspects; that the Engineer has made an examination to ascertain how or for what purpose the construction contractor has used the monies paid; that title to any of the work, materials, or equipment passed to the City free and clear of liens, claims, security interested, or encumbrances; or that there are no other matters at issue between the City and the construction contractor that affect the amount that should be paid.

j. Substantial and Final Review

i. The Engineer will conduct, in the company of the City's representative, a substantial completion review for the project for conformance with the design concept of the project and general compliance with the contract documents and provide a list of deficiencies to the contractor. Three (3) interim phase and one overall substantial review site visits are anticipated.

ii. The Engineer will conduct, in the company of the City's representative, a final review for the project for conformance with the design concept of the project and general compliance with the contract documents, verify that items identified on the deficiency list from the substantial completion review have been completed, and make recommendation for final payment to the contractor. Three (3) interim phase and one overall final review site visits are anticipated.

k. Record ("As-Built") Drawings

i. The contractor will provide to the Engineer red-line drawings for use in the development of the record drawings. In the event that the contractor does not provide adequate red-line drawings and the Engineer must develop the record drawings based on in-depth investigation and research will be considered a Special Service.

ii. The Engineer will revise the construction drawings in accordance with the information furnished by the contractor reflecting changes to the project made during construction. Record drawings are defined as the drawings produced by the Engineer's modifications to the original design drawings to reflect the changes during the construction.

iii. The Engineer prepare record drawings, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the project was finally constructed.

iv. The Engineer is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

v. Record drawings for the project will be issued by the ENGINEER within sixty (60) days after the comments and markups are provided by the contractor, and the City.

vi. The Engineer will provide the City with digital copies in Adobe PDF on compact disc five (5) half-sized (11" x 17") sets of plans (bound, bond), and two (2) full-

sized (22" x 34") sets of plans (bound, bond) to the City. No technical specification books will be provided.

H. TASK H: SUPPORT SERVICES – SURVEY, SUE, AND GEOTECH (IF NEEDED FOR EXISTING SITE)

a. Surveying Services: Engineer with coordinate surveying services for the following:

   i. Engineer will provide and coordinate land survey at location for the WWTP sites as required to perform the design.

   ii. The survey will base horizontal and vertical control on the treatment plant benchmark coordinates and datum. Survey measurements will be based on NAD 83 state plane coordinates.

   iii. Survey will produce a topographical survey of project area to map utilities and existing structures. The survey will include contours shown at one-foot intervals, plotted locations of structures, paving, visible improvements, and utility information based on surface evidence.

   iv. CCTV inspection of the biological clarifier effluent piping.

b. Geotechnical Engineering: Engineer will coordinate and subcontract Geotechnical services for the collection and analysis of up to twelve (12) locations and provide a geotechnical report for foundation design recommendations.

c. Subsurface Utility Engineering

   i. Engineer will perform up to twenty (15) nondestructive SUE Quality Level A "locates" of up to 15 feet deep for use within the project construction limits.

EXHIBIT B1

AMENDMENT NO. 1 - PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

	Scope Item	Fee (Lump Sum)
A	Preliminary Design	$ 1,083,059
B	Equipment Preselection	$ 346,557
C	CMAR Coordination	$ 337,530
D	Final Design	$ 4,143,375
E	PM & Meetings	$ 1,109,023
F	Regulatory & Permitting	$ 137,274
Total Basic Services Amendment No. 1:		**$ 7,156,818**

II. Special Services

	Scope Item	Fee
G	Construction Administration	$ 4,000,000
H	Support Services - Geotech, Survey, SUE	$ 213,113
Total Special Services Amendment No. 1:		**$ 4,213,113**

TOTAL AMENDMENT NO. 1 NOT TO EXCEED (LUMP SUM)	**$ 11,369,931**

EXHIBIT B1
PLUMMER ASSOCIATES, INC.
HOURLY FEE SCHEDULE
2023

Staff Description	Staff Code	Range of Billing Rates
Admin Staff	A1-A3	$ 85.00 - $ 115.00
Senior Admin Staff	A4	$ 100.00 - $ 125.00
Designer/Technician	C1-C2	$ 80.00 - $ 120.00
Designer/Technician III	C3	$ 110.00 - $ 140.00
Senior Designer/Technician	C4	$ 130.00 - $ 180.00
Engineer/Scientist Intern	ES0	$ 50.00 - $ 95.00
Engineer-in-Training/Scientist-in-Training	ES1-ES2	$ 95.00 - $ 150.00
Engineer-in-Training/Scientist-in-Training III	ES3	$ 100.00 - $ 170.00
Project Engineer/Scientist	ES4	$ 120.00 - $ 190.00
Senior Project Engineer/Scientist	ES5	$ 135.00 - $ 210.00
Project Manager	ES6	$ 180.00 - $ 290.00
Senior Project Manager	ES7	$ 220.00 - $ 300.00
Principal I	ES8	$ 275.00 - $ 350.00
Principal II	ES9	$ 325.00 - $ 430.00
Electrical Engineer in Training I	EE1	$ 95.00 - $ 130.00
Electrical Engineer in Training II	EE2	$ 110.00 - $ 150.00
Electrical Engineer in Training III	EE3	$ 130.00 - $ 180.00
Electrical Specialist	EE4	$ 150.00 - $ 210.00
Programmer	EE5	$ 165.00 - $ 240.00
Programmer II	EE6	$ 170.00 - $ 260.00
Senior Electrical Engineer	EE7	$ 260.00 - $ 330.00

RESOLUTION NO. 6902

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR DESIGN OF THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN 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 Plummer Associates, Inc. for engineering services for the design of the Wastewater Treatment and Water Reuse Master Plan 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 6th day of June, 2022.

CITY OF SHERMAN, TEXAS

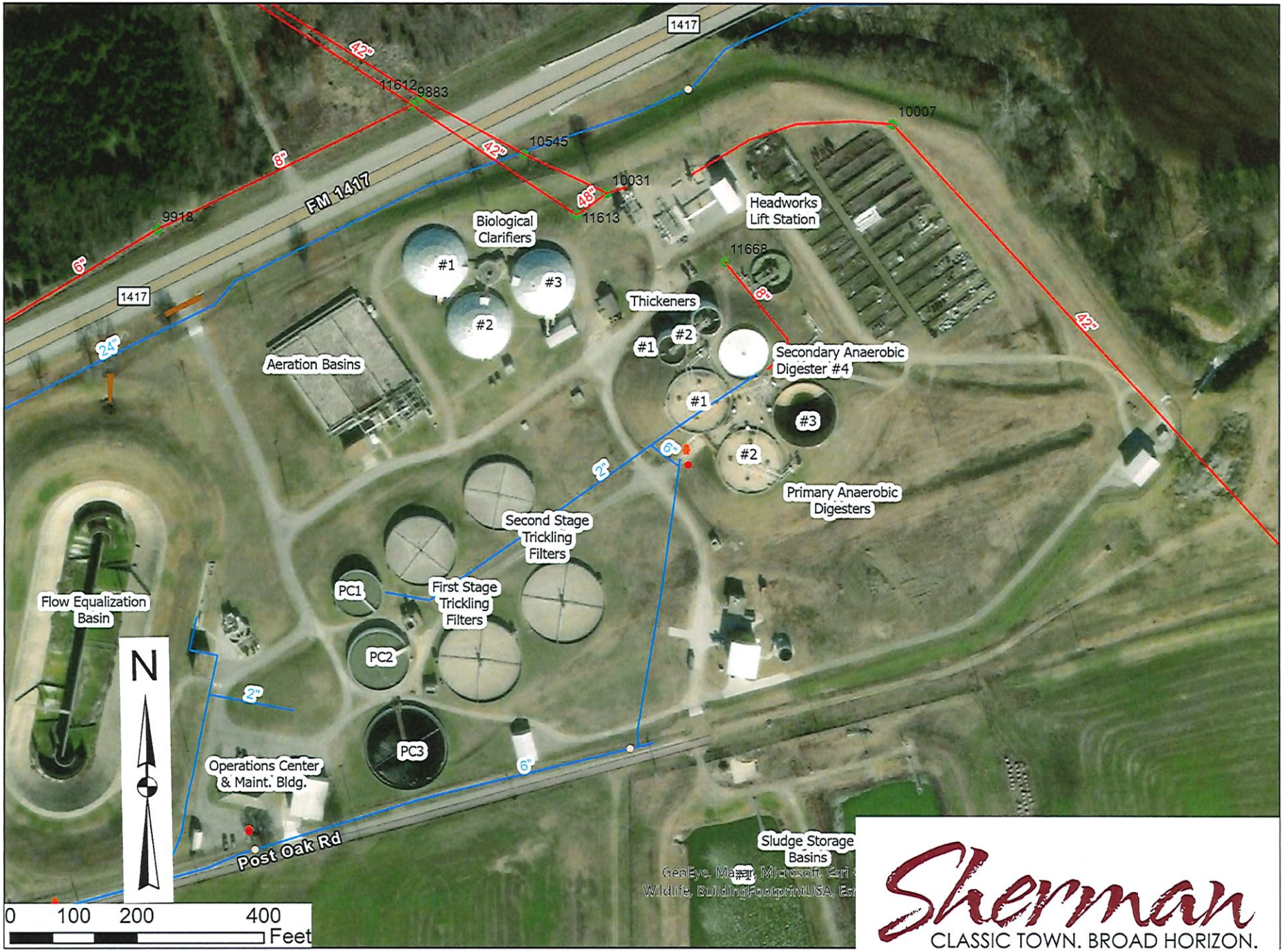
ATTEST:

BY: Linda Ashby
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


1417
42"
11612
9883
10007
10545
8"
42"
FM 1417
10031
48"
11613
Headworks
Lift Station
9918
Biological
Clarifiers
#1
#3
#2
11668
6"
1417
Thickeners
#2
#1
8"
24"
Aeration Basins
Secondary Anaerobic
Digester #4
42"
#1
#3
6"
#2
2"
Primary Anaerobic
Digesters
Second Stage
Trickling
Filters
PC1
First Stage
Trickling
Filters
Flow Equalization
Basin
N
PC2
2"
PC3
6"
Operations Center
& Maint. Bldg.
Post Oak Rd
Sludge Storage
Basins
0 100 200 400
Feet
Sherman
CLASSIC TOWN. BROAD HORIZON.

AGREEMENT

BETWEEN

THE CITY OF SHERMAN, TEXAS AND

PLUMMER ASSOCIATES, INC.

FOR

PROFESSIONAL SERVICES

Made as of the 6th day of June, 2022:

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

and Consultant: **Plummer Associates, Inc.**
1320 South University Dr. Suite 300
Fort Worth, TX 76182
Telephone: 817.806.1700

for the following Project: **Wastewater Treatment and Water Reuse Master Plan**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Plummer Associates, 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 Wastewater Treatment and Water Reuse Master Plan 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)").

1.2.1 **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.

1.2.2 **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 million four hundred eighty-eight thousand eleven dollars **($1,488,011.00)**; (b) for Special Services, on a cost-plus basis in an amount not to exceed five hundred eighty-five thousand dollars **($585,000.00)** (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.

3.1.3 **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 assist the City in obtaining all applicable 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. City shall be responsible for permitting and approval fees.

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**.

3.3.3 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**.

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

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

3.3.6 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

Staff Description	Range of Billing Rates
Admin Staff	$ 85.00 - $ 105.00
Senior Admin Staff	$ 90.00 - $ 130.00
Designer/Technician	$ 75.00 - $ 115.00
Designer/Technician III	$ 100.00 - $ 130.00
Senior Designer/Technician	$ 125.00 - $ 160.00
Engineer/Scientist Intern	$ 50.00 - $ 95.00
Engineer-in-Training/Scientist-in-Training	$ 95.00 - $ 130.00
Engineer-in-Training/Scientist-in-Training III	$ 115.00 - $ 145.00
Project Engineer/Scientist	$ 120.00 - $ 155.00
Senior Project Engineer/Scientist	$ 135.00 - $ 195.00
Project Manager	$ 180.00 - $ 250.00
Senior Project Manager	$ 225.00 - $ 295.00
Principal I	$ 250.00 - $ 330.00
Principal II	$ 290.00 - $ 400.00
Electrical Engineer in Training I	$ 85.00 - $ 110.00
Electrical Engineer in Training II	$ 100.00 - $ 115.00
Electrical Engineer in Training III	$ 120.00 - $ 150.00
Electrical Specialist	$ 130.00 - $ 165.00
Programmer	$ 135.00 - $ 170.00
Programmer II	$ 140.00 - $ 175.00
Senior Electrical Engineer	$ 260.00 - $ 295.00

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.

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" 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 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 or non-renewal 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 or non-renewal 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 or non-renewal, 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:

Alan E. Davis
Principal
Plummer Associates, Inc
1320 South University Dr.
Fort Worth, TX 76182
Telephone: 817.806.1700
Email: adavis@plummer.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.

12.2 **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.

12.3 **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.

12.4 **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.

12.5 **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.

12.6 **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.

12.7 **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.

12.8 **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.

12.2.1 **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.

12.2.2 **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.

12.2.3 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

12.2.4 **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

By: _____
Robby Hefton, City Manager

CONSULTANT:
Plummer Associates, Inc.
a Texas corporation

By: _____
Alan Davis, Principal

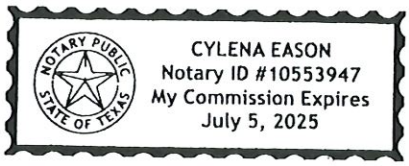
APPROVED AS TO FORM:

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

STATE OF TEXAS §
§
COUNTY OF Tarrant §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **ALAN DAVIS**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS A PRINCIPAL AND DULY AUTHORIZED REPRESENTATIVE FOR **PLUMMER ASSOCIATES, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 1 DAY OF June 2022.



Cylena Eason
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: July 5, 2025

I. PROJECT DESCRIPTION

With the recent announcement of a new $30 Billion Texas Instruments (TI) semiconductor chip manufacturing campus to be located in the City of Sherman (City), the City is developing a comprehensive infrastructure plan to serve the facility and the associated growth. The City has selected Plummer Associates, Inc. (Plummer) to provide engineering consulting services for planning, design and construction administration associated with the wastewater treatment and water reuse facilities needed to support the TI facility and continued growth. It is anticipated that these services will be performed in phases. The first phase will include the initial data/information gathering and master planning that will provide a road map for subsequent design and construction phases. The remainder of this document defines the scope of work for the Phase 1 master planning services.

II. GENERAL REQUIREMENTS

A. Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.

B. Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.

C. Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

D. The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.

E. Communications and Reporting:
   i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.

ii Attend review meeting with the City at the end of each design phase.
iii Prepare and submit monthly invoices in the format acceptable to the City.
iv Prepare and submit monthly progress reports.
v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
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. Task A: Information Gathering and Review

a. Kickoff Meeting: Prepare for and facilitate an in-person kickoff meeting in Sherman to review the scope and schedule; identify critical success factors and potential risks; and discuss data/information that will be used in the planning process. Data currently available to Plummer will be identified.

b. Information Request: Prepare and submit to City a request for information. The City will provide available requested information, and any other related information City is aware of that may benefit the project team. Information to be provided may include, but not be limited to: customer water usage data; historical flow and water quality data, previous design and master plan reports; development and planning information, population and flow projection information, water supply cost and rate information, GIS data layers, existing TPDES permits, and water rights information. A separate information request will also be provided summarizing desired information and data to be obtained from TI. Data to be requested will include information from existing TI facilities with similarities to the one to be constructed in Sherman. In addition, information on the quality of the existing TI discharges and timing of the planned phase-out of the existing TI facility will be requested. Information related to individual process streams and the opportunities for reuse at the TI facility will be requested, such as water quality requirements, potential uses, and reuse water quantity. It is assumed that all data and information will be provided in electronic format. If data from existing TI facilities are not available, special sampling may be required and is included as a special service.

c. Tour of Existing TI Facilities: Plummer (up to 3 team members) will accompany City of Sherman staff on up to two site visits to facilities that are similar to the facility to be constructed in Sherman. The budget allocated to this task only covers time and travel expenses for Plummer team staff. City staff expenses are not included. Plummer will document information obtained from the site visits. Plummer will contact the municipalities where these facilities are located to schedule a meeting with wastewater and pretreatment staff before each site visit. Plummer will request a copy of the technically based local limits from these municipalities.

d. Information Review: Review and summarize the information provided by Sherman and TI.

e. Information Gathering/Review Meetings:
   i. Coordinate with the City to meet with representatives of TI to obtain additional information and insight into plans for design and operation of the TI facility.

   ii. Meet with the City to discuss questions related to information provided and any outstanding information needed for completion of the Master Plan.

Deliverables: Summaries to be included in final report, as appropriate; meeting notes.

B. Capacity and Treatability Study

a. Task B: Wastewater Flow Projections and Quality Characteristics

   i. Evaluate/Confirm Wastewater Flow Projections: Evaluate flow projections provided in Task A. Modify and augment as appropriate based on information obtained from discussions with TI and any other updated information provided by the City. Flows to be developed include annual average daily; maximum month; peak two-hour; average daily minimum; and extended wet weather influent. Variability in TI flows will be evaluated and documented, including the timing of phasing out the existing TI facility. If required by individual treatment processes, maximum and minimum weekly flows shall also be included. Flow peaking factors (peak two-hour, maximum month, etc.) will be established using available data. The evaluation period for the flow projections will be consistent with the period used in the City's most recent Wastewater Master Plan.

   ii. Wastewater Characteristics (Quality and Quantity):

      a. Review five years of historical quality data for biochemical oxygen demand (BOD), ammonia (NH3), total suspended solids (TSS) and

potential of hydrogen (pH) from the Post Oak WWTP. This will include all recorded data and sampling locations at the plant.

b. Predict wastewater characteristics received at Post Oak WWTP after the water purification facility ceases discharging to the collection system.

c. Identify potential pollutants of concern that are typically regulated/monitored in facilities with processes similar to the proposed TI facility. Obtain historical water quality and flow data from similar operational TI facilities and summarize water quality characteristics.

d. Evaluate water quality from the existing TI facility in Sherman and based on information provided by TI, evaluate the impact of phasing out this facility on the water quality characteristics.

e. Based on the evaluation above and other information provided by TI, estimate projected water quality characteristics and quantity for the pollutants of concern for each internal waste stream and the final wastewater discharges from the new TI facility; identify water quality characteristics associated with the new TI discharge that may impact treatment processes and discharge permitting (e.g. biocides, nitrification inhibitors, dissolved solids, potentially hazardous wastes, etc.).

f. Identify types of new industries that may come to the City to support TI. Determine if any of the new industries could have significant flows or discharge pollutants of concern at levels that could be problematic.

g. Identify direct and indirect industrial users that are located in the vicinity of the new TI facility. Review five years of historical discharge data obtained through the City's pretreatment program or available through EPA Enforcement and Compliance History Online for the industries. Obtain information related to changes that have occurred in the past five years or changes that are proposed for the industrial user's facilities that have or may cause an impact to the characteristics of the discharges to the City's treatment works. The impacts of COVID on the industrial user discharges will be considered in the review.

h. Review wastewater quality data with respect to the potable water source (groundwater or surface water). The typical wastewater characteristics for domestic and commercial sources that receive potable water from each source will be reviewed. Any other available relevant water quality data for the Post Oak WWTP will be reviewed.

i. Define concentrations and loads to be used in projecting future wastewater quality. Loads will include annual average daily; maximum month average daily; peak two-hour; and average daily minimum. If required by the individual treatment processes, maximum and minimum weekly loads shall also be included.

j. Separately characterize wastewater quality for the following scenarios:

- Post Oak WWTP commingled with wastewater from the TI facility
- Post Oak WWTP without wastewater from the TI facility
- TI facility + nearby industrial dischargers (for potential treatment at a separate industrial treatment facility)
- Post Oak WWTP without TI facility and without nearby industrial dischargers

iii. Task B Meetings: The following meetings are anticipated to support Task B activities:

a. Prepare for and facilitate one in-person meeting with the City in Sherman to review the results of the Task B evaluation. A PowerPoint summary of results will be provided at the meeting and will serve as the intermediate documentation of the Task B results.

b. Prepare for and facilitate up to 3 virtual meetings (with the City and/or TI) to review task progress or obtain additional input/information.

Deliverable: PowerPoint slides summarizing flow projections and water quality characterization; meeting notes.

b. Task C: Treatment Alternatives Screening Evaluation (Note: This task will be coordinated with and conducted concurrently with Tasks D and E.)

i. Treatment Alternative Development: Develop conceptual planning-level treatment scenarios for up to 5 treatment alternatives. Perform a process evaluation and assessment for each alternative. Prepare treatment process diagrams and descriptions for each alternative. Alternatives to be included will be finalized following completion of Task B but may include:

a. All flow is commingled and treated at the existing Post Oak WWTP site for the entire planning period.

b. Flow is initially commingled and treated at the Post Oak WWTP until capacity of the existing WWTP is reached; A separate industrial

treatment train will be constructed at the Post Oak WWTP site to treat flows from TI (and potentially other nearby industries).

c. Flow is initially commingled and treated at the Post Oak WWTP until capacity of the existing WWTP is reached; A separate industrial treatment plant will be constructed at a new site located near TI to treat flows from TI (and potentially other nearby industries).

d. TI flows are not commingled at the Post Oak WWTP. A separate industrial treatment plant will be constructed at a new site located near TI to treat flows from TI (and potentially other nearby industries) and will be operational when the TI facility comes online.

ii. Permitting: Identify the type(s) of permits required and the regulations that apply to the discharge/waste streams generated by each alternative. The difficulty of and anticipated schedule for obtaining each authorization will be identified.

iii. Discharge Locations and Permit Limits: Perform a desktop evaluation of potential discharge location(s) for each alternative. Using default QUAL-TX model assumptions (for dissolved oxygen), TCEQ screening procedures, and applicable federal industrial regulations, the potential Texas Pollutant Discharge Elimination System (TPDES) permit limits for each alternative will be predicted.

iv. Residuals Disposal: If reverse osmosis treatment is required to manage dissolved solids, perform a desktop evaluation of residual disposal options and identification of potential waste stream segregation needs. Options to be considered will include surface water discharge, deep well injection, and up to two other options that may include high recovery options to minimize the amount of liquid waste or emerging technologies. Coordinate with the City's consultant evaluating water treatment plant improvements to determine whether a combined residuals disposal option for water and wastewater treatment is viable.

v. Conveyance Evaluation: Determine conveyance improvements required for each treatment alternative

a. Coordinate with City's conveyance consultant to define collection system improvements needed for each alternative.

b. Define conveyance system improvements required for discharge of treated effluent and residuals disposal for each alternative.

vi. Planning-Level Costs: Develop planning-level opinions of probable construction cost (OPCCs), operation and maintenance (O&M), and life cycle costs for each alternative. Costs will be developed for the following elements:

   a. Wastewater collection system and treated effluent conveyance. Conveyance costs will be based on planning level (AACE Level 5) unit cost factors (e.g. $/linear foot for pipelines or $/MGD for lift stations) and will be coordinated with the unit cost factors used by the City's conveyance consultant. For operating costs, unit cost factors will be based on linear feet of pipe and pipe type (gravity vs. force main), and $/HP for lift stations.

   b. Treatment facility improvements. Facility improvement costs will be based on planning-level unit cost factors (e.g. $/MGD) for each treatment process category (e.g. conventional treatment, advanced treatment, biosolids treatment, odor control, etc.). For operational costs, unit cost factors generally will be based on gallons of wastewater treated.

vii. Non-Cost Factors: Define non-cost considerations associated with each alternative. The review of non-cost factors will include legal, regulatory, environmental, social, institutional and public acceptance issues.

viii. Pretreatment Program: Identify the impacts to the established Pretreatment Program that implementing each alternative will have. This evaluation may involve comparing the predicted loadings discharged to Post Oak WWTP to the allowable headworks loadings and allowable industrial loadings developed for the City's approved and/or proposed pretreatment program. The objective of the evaluation is to determine if and what type of modifications to the program will be required.

ix. Develop Evaluation Criteria and Matrix: Develop proposed evaluation criteria and scoring matrix to be used to evaluate alternatives. Populate draft scoring matrix.

x. Task C Meetings: The following meetings are anticipated to support Task C activities:

   a. Prepare for and facilitate an in-person alternative screening workshop with the City in Sherman. Summary descriptions of each alternative will be provided prior to the workshop. At the workshop, evaluation criteria, weights and scoring will be reviewed and confirmed with the City. The scoring matrix will then be used to rank the alternatives and

select which alternative(s) will move forward with a more detailed evaluation.

b. Prepare for and facilitate up to 3 virtual meetings (with the City and/or TI) to review task progress or obtain additional input/information.

Deliverables: Summary descriptions of each alternative; final screening scoring matrix; meeting notes.

C. **Task D: Water Reuse Alternatives Screening Evaluation**

a. Existing Customer Identification: Identify potential customers for non-potable reclaimed water in the vicinity of the new TI facility and in the vicinity of the Post Oak WWTP.

i. Analyze monthly metered water usage data to be provided by the City, to include any separate irrigation meters. For customers with no irrigation meter, seasonal water usage will be used to estimate potential irrigation usage. Rank customers in order of largest likely non-potable water usage. Cross-check with desktop review of aerial imagery to confirm likely irrigated areas.

ii. Prepare for and facilitate a meeting with the City to review ranked list of potential largest nonpotable water users and obtain input and feedback.

iii. Prepare for and attend up to 5 meetings with potential customers to evaluate interest in using reclaimed water and determine any special water quality or pressure/delivery requirements. If desired by the City, one meeting could be coordinated with pretreatment program customers.

b. Future Customer Identification: Using available planning and development information, together with other information available from the City, identify potential future development areas that may be candidates for receiving reclaimed water. Estimates of potential demands for future development will be based on available information and are likely to be very approximate.

c. Reclaimed Water Supply and Water Quality: Summarize reclaimed water supply and water quality requirements.

i. Using historical flow data and projections from Task B and in coordination with Task C, document existing and future reclaimed water supply, both from the Post Oak WWTP and a potential future industrial WWTP, as appropriate.

ii. Prepare a summary of existing treated effluent quality from the Post Oak WWTP and expected water quality requirements to serve potential reclaimed water customers. Treatment process improvements needed to meet

expected quality requirements will be included in the treatment alternatives for Task C.

d. Evaluate Reclaimed Water Delivery Options for Nonpotable Reuse: In coordination with Task C, evaluate delivery options for nonpotable reuse for each treatment alternative.

   i. A hydraulic model will be developed for each alternative. Planning- level demands will be estimated from the information developed in Tasks D.a. and D.b. The model will be used to evaluate pipeline sizing and pumping/storage requirements.

   ii. GIS maps will be prepared for presentation of each alternative.

   iii. OPCCs, together with estimated O&M and life cycle costs, will be developed for each alternative.

   iv. Non-cost considerations, such as regulatory or institutional issues, permitting requirements, barriers to implementation or other similar issues will be summarized.

e. Summarize Reclaimed Water Delivery Alternatives: In coordination with Task C, prepare a summary of each reclaimed water delivery alternative. Summaries will be incorporated into treatment alternative summaries and included as part of the Task C screening workshop.

Deliverables: Prioritized list of potential customers; hydraulic model of each alternative; summary of reclaimed water delivery alternatives; meeting notes.

D. Task E: Indirect Potable Reuse Alternatives Screening Evaluation

a. Screening of Potential Discharge Locations:

   i. In coordination with previous tasks, estimate the quantity of water that may be available for discharge to the Lake Texoma, Lake Ray Roberts, Lake Lewisville, or Lake Lavon watersheds for subsequent indirect reuse.

   ii. Perform a desktop evaluation of potential discharge locations to evaluate the viability of discharging to other watersheds. Using default QUAL-TX model assumptions (for dissolved oxygen) and TCEQ screening procedures, estimate projected TPDES permit limits for each potential location.

b. Water Provider Meetings: Working with the City, prepare for and facilitate up to 3 meetings with regional water providers to discuss their interest in purchasing and/or trading return flows from the City. It is anticipated that meetings would be with some or all of North Texas Municipal Water District (NTMWD), Greater Texoma Utility Authority (GTUA), and Dallas Water Utilities (DWU).

c. Evaluate Indirect Potable Reuse (IPR) Alternatives: Based on input received from meetings in Task E2, develop up to 3 IPR alternatives.

   i. Develop conceptual plans of required conveyance infrastructure and display on a GIS map.

   ii. Develop OPCCs together with estimated O&M and life cycle costs for each alternative.

   iii. Summarize non-cost considerations, such as regulatory or institutional issues, permitting requirements, barriers to implementation or other similar issues.

d. Summarize IPR Alternatives: In coordination with Task C, prepare a summary of each IPR alternative. Summaries will be incorporated into treatment alternative summaries and included as part of the Task C screening workshop.

Deliverables: Summary of IPR alternatives including maps, costs and review of non-cost factors; meeting notes.

E. Task F: Alternative Evaluation

a. Alternative Development: Based on the results of the Task C Screening Workshop, evaluate one alternative, including items to address Post Oak WWTP condition assessment needs, treatment alternatives for the TI project, and infrastructure needs associated with water reuse. Evaluation of a second alternative is included as a Special Service.

   i. Perform treatment process modeling for the alternative.

   ii. For each proposed discharge location (including discharge of RO concentrate, as appropriate), develop a refined water quality model and assessment of potential TPDES permit limits.

   iii. Prepare conceptual design:

      a. Prepare design concept memorandum defining raw wastewater flow and quality characteristics, effluent discharge flow and quality characteristics, odor control concepts, biosolids and residual handling concepts. Develop a conceptual process design drawing including all treatment process units with flow rates.

      b. Prepare desktop evaluation of potential new WWTP sites near the TI facility. A detail selection of a site would occur in a subsequent project. The desktop evaluation would include up to three sites and criteria such as property size, ownership, and current use, known geology,

proximity to power, vehicle access, proximity to the TI facility, and proximity to discharge locations.

c. Develop conceptual electrical loads for the plant. Coordinate with power company for electrical service for new sites.

d. Update conceptual conveyance infrastructure plan based on the selected alternative and selected treatment site and display on a GIS map.

e. Identify conceptual communication strategy to other city facilities and plant security requirements.

b. Alternative Conceptual Costs: Develop OPCCs, O&M, and life cycle costs for each alternative.

c. Task F Meetings: The following meetings are anticipated to support Task F activities:

i. Prepare for and facilitate an in-person alternative review meeting with the City in Sherman. If more than one alternative has been evaluated, a similar scoring exercise as performed in Task C will be used to rank the alternatives and select the preferred option.

ii. Prepare for and facilitate up to 3 virtual meetings to review task progress or obtain additional input/information.

d. Finalize Conceptual Alternatives: Incorporate feedback received from City from Task F alternative review meeting and finalize alternative(s) and cost(s).

Deliverables: Conceptual design memorandum and opinions of cost; meeting notes.

F. Task G: Implementation Plan

a. Document CIP Projects: Document and summarize CIP projects associated with the recommended alternative. Projects will also include the improvements identified during the Post Oak WWTP condition assessment project.

b. Prepare Implementation Plan: Implementation steps for the recommended alternative identified in Task F will be documented, together with a proposed schedule for implementation.

Deliverables: CIP projects and implementation plan for the recommended alternative.

G. **Task H: Report**

a. Draft Report: Document the results of the previous tasks in a draft report. One electronic copy of the report will be provided to the City for review.

b. Final Report: Prepare a final report that incorporates comments received from City. An electronic (pdf) copy of the final report, together with 3 hard copies, will be provided to City.

Deliverables: Draft and final report.

H. **Task I: Project Administration and Additional Meetings**

a. Project Administration: Project administration will include but not be limited to developing and implementing a project management plan; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the City on a regular basis. A standard monthly invoice and progress reports will be prepared for all services.

Deliverables: Monthly progress reports and invoices

I. **Task J: Additional Meetings:**

a. Prepare for and attend up to 2 additional in-person meetings (not included in other tasks) with City staff, TI, City Council or other stakeholders. For budgeting purposes, each meeting will be 4 hours and include 10 people from the consultant team plus meeting preparation, meeting documentation, and travel.

Deliverables: Meeting notes for each meeting.

J. **Special Services**

a. Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by basic services, 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 items. The scope and compensation for these services will be further defined and agreed to prior to authorization:
   i. Additional Sampling: Additional sampling at the City's Post Oak WWTP, or an existing TI facility to obtain additional water quality data to support the evaluation.

ii. Additional alternative evaluation: In accordance with scope Task F: Alternative Evaluation, perform a alternative evaluation, including conceptual design tasks and costs for a second alternative.
iii. Additional data collection or analysis not included in Basic Services.
iv. Additional model development or evaluations not included in Basic Services.
v. Additional meetings not included in Basic Services.
vi. Design surveying and utility locations:
    a. Perform preliminary surveying for the wastewater treatment plant sites. These services are based upon survey of the City's Post Oak WWTP and a new plant site. A detailed scope of work will be provided prior to authorization by the City. Perform subsurface utility engineering (SUE) Quality Level A or B services at critical locations.
vii. Geotechnical Investigation & Report: These services are based upon geotechnical engineering at the City's Post Oak WWTP and a new WWTP site. A detailed scope of work will be provided prior to authorization by the.
    a. Perform soil borings and install piezometers at select locations on plant site(s)
viii. Preparation of site visits, report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations. A detailed scope of work will be provided prior to authorization by the City once the pipeline routes and plant site have been established.

EXHIBIT B

PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

A.	Information Gathering and Review	$ 117,221
B.	Capacity and Treatability Study	$ 190,251
C.	Treatment Alternatives Screening Evaluation	$ 339,260
D.	Water Reuse Alternatives Screening Evaluation	$ 102,919
E.	Indirect Potable Reuse Alternatives Screening Evaluation	$ 55,212
F.	Detailed Alternative Evaluation	$ 337,909
G.	Implementation Plan	$ 37,341
H.	Report	$ 117,765
I.	Project Administration	$ 154,053
J.	Additional Meetings	$ 36,080
Total Basic Services (Lump Sum)		***$ 1,488,011***

II. Special Services

A.	Additional Sampling	$ 20,000
B.	Additional Detailed Alternative Evaluation	$ 340,000
C.	Additional Data Collection and Analysis	$ 30,000
D.	Additional Model Development & Screening	$ 50,000
E.	Additional Meetings	$ 50,000
F.	Surveying, Easement Preparation, and SUE	$ 50,000
G.	Geotechnical Engineering	$ 25,000
H.	Environmental and Architectural Investigation Services	$ 20,000
Total Authorized Special Services		***$ 585,000***

Project Budget, Grand Total (Not-To-Exceed) ***$ 2,073,011***

1. Files shall 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 at 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

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.

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 or non-renewal 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
X	1.	Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
X	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

X	4.	Professional Liability	▪ Minimum $1,000,000.00 each claim; ▪ Minimum $2,000,000.00 in the aggregate
X	5.	Umbrella Coverage of Excess Liability Coverage	▪ An amount of $2,000,000.00 ▪ Minimum $2,000,000.00 in the aggregate

X 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.

X 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.

X 8. Thirty (30) days' notice of cancellation or non-renewal. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

X 10. The Certificate of Insurance must state the project title and bid number.

___ 11. Other Insurance Requirements (State Below):

EXHIBIT F
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ
For vendor doing business with local governmental entity

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.**

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

5-30-2022
Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 1/1/2021

1417
42"
11612
9883
10545
42"
10007
8"
FM 1417
48"
10031
11613
9918
6"
Biological Clarifiers
#1
#3
#2
Headworks Lift Station
11668
8"
Thickeners
#2
#1
Secondary Anaerobic Digester #4
42"
1417
24"
Aeration Basins
#1
#3
#2
6"
2"
Primary Anaerobic Digesters
Second Stage Trickling Filters
PC1
First Stage Trickling Filters
Flow Equalization Basin
PC2
N
2"
PC3
6"
Operations Center & Maint. Bldg.
Post Oak Rd
Sludge Storage Basins
#1
0
100
200
400
Feet
Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 8.**

Meeting Date: 05/01/2023
Prepared By: Tom Pruitt, Utility Engineer
Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7066
Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Garver, LLC for the Design of the Sherman Water Treatment Plant Expansion Project

Issue:

To consider an amendment to the agreement for professional services with Garver, LLC for the design of the Sherman Water Treatment Plant Expansion project.

Background:

In response to recent growth in municipal and industrial water demands, engineering design for proposed improvements will consist of construction of new water treatment facilities to increase the capacity of the existing water treatment plant (WTP).

On May 2, 2022, City Council awarded Garver, LLC a professional services contract to design construction plans to install an additional 5-million gallons a day (MGD) treatment capacity to the existing building facilities.

This Addendum No. 1 will provide master planning and engineered construction drawings for a new building and other needed facilities and appurtanances that will incorporate space for Ultrafiltration (UF) and reverse osmosis (RO) membrane up to an additional 30 (MGD) of treatment capacity. Space shall incorporate modular growth sections for major components.

This Addendum No. 1 also includes testing, bidding, and award services, and State regulatory coordination (commissioning).

Origination:

Engineering Department

Financial Consideration:

This Addendum No. 1 increases the contract $14,261,369.00 for a total $16,176,928.00 of funding needed for this contract. This will be funded by GTUA 2023 Bond Funds

Staff Recommendation:

It is recommended Council approves the design services in the aforementioned contract amendment amount to Garver, LLC, to proceed with the design.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7066
Amendment No. 1
Original Agreement
Location Map

RESOLUTION NO. 7066

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE 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 Amendment No. 1 to the 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 1st day of May 2023.

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

AMENDMENT NO. 1

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN (CITY) AND GARVER, LLC (CONSULTANT)
FOR THE SHERMAN WTP EXPANSION PROJECT
Dated May 2, 2022 ("Original Agreement")

City and Consultant desire to amend the Original Agreement for the purpose of: (a) extending and/or clarifying the Scope of Services for the Project (defined in the Original Agreement); (ii) revising the individual line items in the Project Budget Summary (defined in the Original Agreement); (iii) revising Consultant's Fee (defined in the Original Agreement); and (iv) making other necessary amendments as follows:

The following additional services are added to and incorporated into the Scope of Services under the Original Agreement:

1. **PROJECT DESCRIPTION**
    a. Generally, the scope of services includes professional services necessary for design and bidding of a new membrane treatment train at the Sherman Water Treatment Plant (WTP). A future amendment is anticipated for construction administration. Improvements will consist of construction of new facilities as well as retrofits of existing facilities 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:
        i. Addition of a new membrane building with space for ultrafiltration (UF) and reverse osmosis (RO) membrane equipment to treat up to 30 MGD. The initial installation will provide 15 MGD of treatment. Elements for future integration, such as equipment footprints, conduits, piping, electrical feeds, will be designed to simplify construction for the 30 MGD buildout. The building will be designed such that it can be expanded to the north, to accommodate up to 40 MGD of treatment equipment. The scope of the membrane building design will include:
            1. Site civil design, including excavation and stormwater management
            2. Structural design of the shallow spread and continuous spread footings foundation, based on recommendations from the 2022 geotechnical report
            3. Structural design of the steel column support members
            4. Architectural design of the interior and exterior, including the following:
                a. Membrane equipment space
                b. Chemical storage and feed
                c. UF electrical room
                d. RO electrical room
                e. Restrooms (male and female)
                f. Control room with laboratory, including noise reduction and wooden studs in these rooms
                g. Loading docks and doors

h. Pipe trenches, including metal grating of HS-20 rating in areas of vehicular traffic and permanent stairs for access into trenches
i. Fire protection as required by the International Building Code (IBC), or authority having jurisdiction (AHJ)

5. Electrical designs of the power feeds, electrical room equipment, electrical conduit routing, and interior and exterior lighting
6. Building mechanical design of the HVAC systems
7. Design of a plant lift station for wastewater flow to an existing 12" sewer line
8. Design of drainage systems and routing
9. Process and process mechanical design of all process piping and equipment
    a. UF feed pumps
    b. Disk Filters
    c. UF units
    d. UF backwash pumps
    e. UF chemical makeup supply pumps
    f. RO feed pumps
    g. RO trains
    h. RO flush pumps
    i. Break tank
    j. Clean-in-place (CIP) for UF units and RO trains and associated chemical storage and feed systems
    k. UF blowers
    l. Air compressors
10. Instrumentation and control design of the piping and instrumentation diagrams (P&IDs) and the process control description for the SCADA system

ii. Addition of a new clearwell (3.4 MG) and new high service pump station (HSPS) with capacity for up to 45 MGD when combined with the existing high service pump station. The scope of the clearwell and HSPS design will include:

1. Site civil design, including excavation and stormwater management
2. Structural design of the foundation, based on recommendations from the 2022 geotechnical report
3. Structural design of the support members and baffling
4. Architectural design of the interior and exterior
5. Electrical designs of the power feeds, electrical rooms, electrical conduit routing, and interior and exterior lighting
6. Building mechanical design of the HVAC systems
7. Process mechanical design of all process piping and equipment, including National Sanitation Foundation (NSF)-certified pumps
8. Process design of the equipment to be included
9. Instrumentation and control design of the piping and instrumentation diagrams (P&IDs) and the process control description for the SCADA system

10. Fire protection as required by the International Building Code (IBC), or authority having jurisdiction (AHJ)

iii. Addition of a new chemical facility to serve the new membrane building facilities. The scope of the chemical facility design will include:
    1. Site civil design, including excavation and stormwater management
    2. Structural design of the foundation, based on recommendations from the 2022 geotechnical report
    3. Structural design of the support members
    4. Architectural design of the interior and exterior
    5. Electrical designs of the power feeds, electrical rooms, electrical conduit routing, and interior and exterior lighting
    6. Building mechanical design of the HVAC systems
    7. Process mechanical design of all process piping and equipment
    8. Process design of the equipment to be included and supplementary injection points across the process flow for the following chemicals
        a. Chlorine dioxide (generated from sodium hypochlorite) for pre-oxidation
        b. Sodium hypochlorite for primary disinfection
        c. Hydrochloric acid
        d. Sodium bisulfite
        e. Scale inhibitor
        f. Fluoride
        g. Orthophosphate blend
        h. Sodium hydroxide
        i. Liquid ammonium sulfate
    9. Instrumentation and control design of the piping and instrumentation diagrams (P&IDs) and the process control description for the SCADA system
    10. Chemical containment and neutralization design
    11. Fire protection as required by the International Building Code (IBC), or authority having jurisdiction (AHJ)

iv. Rehabilitation of the existing chemical facilities, including:
    1. Replacement of storage tanks, pumps, and controls systems
    2. Addition of containment structures
    3. Modifications to chlorine room to covert to liquid sodium hypochlorite

v. Addition of an additional pre-oxidation basin immediately adjacent to the existing, south pre-oxidation basin. The scope of this design includes:
    1. Site civil design, including excavation and stormwater management
    2. Structural design of the foundation and walls, based on recommendations from the 2022 geotechnical report
    3. Electrical designs of the power feeds, electrical conduit routing, and lighting
    4. Instrumentation and control design of the piping and instrumentation diagrams (P&IDs) and the process control description for the SCADA system
    5. Decommissioning of the existing flocculation/sedimentation basins

vi. Site-wide electrical design including:
    1. Design of power distribution
    2. Coordination with the electrical utility
    3. Selection of a generator and automatic transfer switch (ATS) as required
    4. Consideration during design for power factor required from utility
    5. Evaluation of lightning and surge protection at the building and process levels
    6. Design of site lighting for the South Plant
    7. Design of fiber loop for the South Plant
vii. Coordination with others for design of the concentrate discharge and outfall design services project
viii. Possible decommissioning of the existing media filters, dependent on direction from the City.
ix. Possible conversion of the existing filter building or EDR building to office space, dependent on direction from the City. The scope of design for this conversion includes:
    1. Demolition of equipment
    2. Architectural design of the interior, including lighting plan
    3. Building mechanical design of the HVAC systems
x. Possible conversion of existing administration building and laboratory, dependent on direction from the City, including:
    1. Migration of existing laboratory equipment to the new membrane building, as much as is feasible
    2. Conversion of the existing laboratory space to administrative space
    3. Architectural design of the interior
xi. Coordination with the local fire department to verify turning radii of driveways, hydrant placement, and other considerations

2. <u>GENERAL REQUIREMENTS</u>

a. Specific design goals shall be obtained from the City of Sherman and the City's Program Manager, Pape-Dawson Engineers (P-D). 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 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. Communication and Reporting shall follow the requirements set forth in the Program Management Plan provided by City's Program Manager, Pape-Dawson Engineers, for the Major Infrastructure Improvements Program.
    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, followed by Project Schedule updates 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.

e. Consultant shall copy the City's Program Manager, Pape-Dawson Consultants, on communication and reporting related to this project and any related projects or sub-projects that are part of the Major Infrastructure Improvements Program.

3. 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 consistent with the requirements of the Program Manager, Pape-Dawson Engineers.

i. Project Management and Quality Control/Assurance Plan
   1. Consultant will update the Project Management Plan (PMP) from the original contract for internal use. This will include the development of a detailed schedule to communicate key deadline to the design teams. Consultant will also update the Quality Control/Assurance Plan and perform internal Quality Assurance/Quality Control (QA/QC) reviews of all major deliverables.
   2. Consultant will prepare monthly invoices and progress reports for the additional six (6) months added by this amendment.

ii. City's Program Manager Coordination
   1. Consultant will provide the following documentation as requested by the City's Program Manager:
      a. Monthly invoices and progress reports in the templates provided by the City's Program Manager
      b. Monthly cash flow diagrams
      c. Monthly schedule updates
      d. Decision Log items as needed
      e. Permit Log items as needed
      f. Risk Register items as needed
   2. Six (6) additional months are added by this amendment. Twenty-one (21) months of enhanced reporting (as described in the General Requirements) that were conducted during the original contract period are now included.

b. Package 2 Preliminary Design

i. Preliminary (30%) Design Documents

1. Upon approval of the Conceptual Design by the City, Consultant will commence the Preliminary Design phase.
2. The preliminary design phase will represent approximately 30 percent of final construction documents. The preliminary design will be based upon the conceptual design as agreed to by the City. 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 City in writing. Preliminary design will include:
3. Preliminary Design Report
    a. Opinion of Probable Construction Cost
    b. Preliminary Drawings
    c. Equipment Data Sheets and Manufacturer Information
4. 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.
5. A Preliminary Design Report (PDR) will detail the following:
    a. Process design criteria
    b. Equipment data sheets and approved manufacturer list
    c. Lead times for major equipment
    d. Corrosion evaluation (would apply to both the North and South plants)
    e. Specification Table of Contents
    f. Piping schedule
    g. Construction sequencing
    h. Draft control narratives
6. 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 City preference. Equipment data sheets that summarize operating conditions and key components will be provided along with manufacturer catalog information.
7. Consultant will conduct weekly, internal meetings to discuss project objectives and directives.
8. Consultant will lead and participate in a Preliminary Design Workshop. The workshop will be held at the City'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.

9. 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.
10. Consultant will prepare copies of the Preliminary Design Submittal (both hard and pdf electronic files) and submit for review by City. Consultant anticipates two weeks for City review and comment time once the Preliminary Design submittal is delivered.
11. Consultant will prepare and transmit a written documentation of "mutually agreed to" responses to the City's review comments of the Preliminary Design Documents.
12. As part of the Preliminary Design Phase, Consultant will:
    a. Coordinate with TCEQ virtually on project status and design criteria, specifically regarding the acceptability of applying the approval of the previous membrane pilot study results to Package 2.
    b. Submit the Preliminary Design Report to TCEQ for review.
    c. Coordinate with the City's input, any responses to TCEQ review comments.

ii. Geotechnical Services
1. Consultant will conduct geotechnical evaluations of up to seven (7) borings of 30-foot depth to determine structural recommendations for the construction of the Package 2 structures.

iii. Summary of Deliverables
1. Draft Preliminary Design Report – one (1) electronic (pdf) copy to the City
2. Preliminary Design Drawings – one (1) electronic (pdf) set and one (1) full-sized (24" x 36") set to the City, and one (1) half-sized (11"x17") hard copy set to TCEQ
3. Final Preliminary Design Report – one (1) electronic (pdf) copy to the City, and one (1) electronic copy and one (1) hard copy to TCEQ

iv. Summary of Meetings
1. Bi-Weekly Progress Meetings – Virtual meetings with up to ten (10) Consultant members attending
2. Preliminary Design Workshop – In-person workshop with up to ten (10) Consultant members attending

c. Package 2 Disinfection Testing

i. TCEQ Coordination
   1. During the Preliminary Design phase, Consultant will draft a letter to notify TCEQ of the proposed pilot testing and respond to TCEQ questions.

ii. Chlorine Dioxide Procurement and Testing Assistance
   1. Consultant will determine the capacity of the chlorine dioxide generator needed.
   2. Consultant will assist in identifying the location for the temporary generation and feed equipment.
   3. Consultant will coordinate with one (1) equipment supplier to assist the City in acquiring a temporary chlorine dioxide generator. It is assumed that the equipment supplier will provide the generator without signing a contract during the validation test period. It is assumed that City staff will install the generator and piping connections.
   4. Consultant will assist with one day of start-up.
   5. Once the temporary chlorine dioxide generator is operational, Consultant will monitor the data that is collected by City staff.
   6. Upon completion of the validation test period, Consultant will develop a test report, which will be incorporated into the Preliminary Design Report and issued to TCEQ. If successful and agreed to by the City, the permanent design will then be incorporated into the final design.

iii. Chloramine Pretreatment Full Scale Demonstration Testing
   1. Consultant will determine the dosage rates for chloramine.
   2. Consultant will determine the chemical feed line rerouting for the chloramine feed.
   3. It is assumed that the City staff will install piping to the discharge point.
   4. Consultant will monitor the data that is collected by City staff. If successful and agreed to by the City, the permanent design will then be incorporated into the final design.

iv. Summary of Deliverables
   1. Pilot Testing Proposal Letter – one (1) electronic (pdf) copy to TCEQ and the City
   2. Chlorine Dioxide Test Report – one (1) electronic (pdf) copy to TCEQ and the City
   3. Chloramine Pretreatment Memorandum – one (1) electronic (pdf) copy to TCEQ and the City

v. Summary of Meetings
   1. Start-Up Assistance – In-person site visit with up to three (3) Consultant members attending up to eight (8) hours

d. Package 2 Final Design (60%, 90%, 100%)

i. Final Design Documents
   1. Upon approval of the Preliminary Design by the City, Consultant will commence the Final Design phase.

2. During the final design phase of the project, Consultant will conduct final designs to prepare construction plans and specifications, 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.
3. The final design phase is anticipated to have three major submittals: a 60%, 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 City to competitively bid the work.
4. Consultant's standard contract forms including documents from the Engineers Joint Contract Documents Committee (EJCDC), 2018 edition, will be used, along with Consultant's standard drawing format and technical specifications. Front-end documents and Division 01 specifications will be included.
5. At each design phase (60%, 90%, 100%), Consultant update the OPCC.
6. 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.
7. Consultant will submit electrical designs to equipment manufacturers to solicit review and approval of the power correction and surge protection designs.
8. Consultant will conduct weekly, internal meetings to discuss project objectives and directives.
9. Consultant will conduct bi-weekly progress meetings. These will include progress updates and more detailed technical discussions as needed.
10. Consultant will lead review workshops for the 60% and 90% design phases. These workshops will be held to solicit comments and feedback from the City.
11. The Process Control and SCADA workshop will be a component module of the 60% Design Workshop. The purpose of this module will be to coordinate the City's desired method and level of process control and remote operation capabilities.
12. 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 City's IT staff, WTP's Operations staff, WTP's Maintenance staff, and City's Integrator may attend as needed. The 60% 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.

ii. Concentration-Time (CT) Study Update and Regulatory Review and Coordination

1. Consultant will develop a revised CT profile based on previous CT studies conducted by the City. Consultant will develop the proposed CT profile to reflect the following:
    a. Decommissioning of the conventional (10 MGD) plant
    b. Construction of a new 15 MGD south membrane plant
    c. Rerouting of the existing yard piping for the effluent of the north membrane building
2. 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.
3. Consultant will coordinate and develop responses to regulatory review comments as directed by City.
4. 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.

iii. Summary of Deliverables

1. The 60% design submission will include all information from the 30% drawings with City review comments incorporated as well as structural details, electrical schematics and diagrams, standard details, all process details, and technical specifications. The 60% design submission will include all information from the 30% drawings with City review comments incorporated as well as any final details required. The deliverables for this phase are as follows:
    a. 60% design drawings – One (1) electronic (PDF) set and one (1) full-sized (24" x 36") set to the City
    b. 60% technical specifications with front-end documents – One (1) electronic (PDF) to the City
    c. 60% OPCC – One (1) electronic (PDF) to the City
2. The 90% design submission will include all information from the 60% drawings with City 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 60% drawings with City 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 City
    b. 90% technical specifications with front-end documents – One (1) electronic (PDF) to the City
    c. 90% OPCC – One (1) electronic (PDF) to the City
    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 and to the City

3. The 100% design submission will include all information from the 90% drawings with City review comments incorporated. The deliverables for this phase are as follows:
    a. 100% design drawings – One (1) electronic (PDF) copy to the City
    b. 100% design technical specifications with front-end documents – One electronic (PDF) to the City
    c. 100% OPCC – One (1) electronic (PDF) to the City

iv. Summary of Meetings

1. Bi-Weekly Progress Meetings – Virtual meetings with up to ten (10) Consultant members attending
2. 60% Design Workshop – In-person workshop attended by up to five (5) Consultant members
3. 90% Design Workshop – In-person workshop attended by up to five (5) Consultant members

e. Package 2 Bid Phase Services

i. Construction Package Bidding Support Services

1. Upon receipt of the design approval letter from TCEQ and approval to advertise from the City, Consultant will commence the Bid Phase Services.
2. The bidding period for prospective bidders of the Construction Package 2 construction package is assumed to be a 60-day duration period. During the bidding period phase of the project, Consultant will:
    a. Prepare and submit Advertisement for Bids to Greater Texoma Utility Authority (GTUA) per their requirements. GTUA will submit the advertisement to newspapers and 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. Respond to questions submitted on Consultant's online plan room as appropriate.
    e. Prepare conformed construction documents to reflect the adjustments during the bid phase.
    f. Conduct one pre-bid meeting.
    g. Prepare a pre-bid meeting agenda. Following City authorization, post the pre-bid meeting presentation with attendance record on Consultant's online plan room.

h. Conduct a construction site tour following the pre-bid meeting by interested pre-bid meeting attendees and other interested parties.
i. Host, attend, and manage the bid opening process.
j. Prepare bid tabulation.
k. Evaluate bids and recommend award.
l. Attend and participate in reporting recommendation of award to City Council.
m. Prepare construction contracts.
n. Distribute as required to state agencies and funding agencies.

ii. Summary of Deliverables
1. Bid packages – One (1) electronic (PDF) copy uploaded to Consultant's online plan room
2. Conformed documents – A total of four (4) full-sized (24" x 36") sets and six (6) half-sized (11" x 17") sets to the contractor and to the City, as well as electronic (PDF) copies
3. Recommendation of Award Letter – One (1) electronic (PDF) copy

iii. Summary of Meetings
1. Pre-Bid Meeting –In-person meeting with up to three (3) Consultant members attending
2. Bid Openings – In-person meeting with two (2) Consultant members attending
3. City Council Meetings –In-person meeting with up to two (2) Consultant members attending

f. Package 1 Regulatory Coordination

i. Revision of Concentration-Time (CT) Study
1. Upon reaching 90% completion of construction, Consultant will revise the plant's CT study and submit to TCEQ's Corrosion Control and Disinfection Protocol Team.
2. The revised CT Study will include any change orders approved during construction.
3. Consultant will respond to questions from TCEQ during the review period.
4. TCEQ's approval of the revised CT Study must be provided prior to placing the new membrane filters into production.

ii. Texas Optimization Program (TOP) Onsite Evaluation
1. Upon completion of construction but prior to startup, Consultant will contact TCEQ's Texas Operation Program (TOP) within the Water Supply Division to schedule an onsite evaluation of the plant.
2. Consultant will attend the onsite evaluation and provide responses to TCEQ to facilitate completion of the Membrane Treatment Plant Checklist.
3. Should TCEQ require redesign of any portion of the system based on the onsite evaluation, this redesign will be considered Extra Work and subject to negotiation of the associate scope and fee as part of a contract amendment.

4. TCEQ's approval of the system based on the TOP onsite evaluation must be provided prior to startup of the system.

iii. Commissioning Data Submission

1. Upon completion of construction, Consultant will monitor the commissioning data that is collected by City staff and ensure that the data satisfies the *Conventional Surface Water Plant Use (Step 2)* checklist provided by TCEQ.
2. Consultant will assist City's staff in organizing the collected data and submitting to TCEQ.
3. Consultant will respond to questions from TCEQ during the review period.
4. TCEQ's approval of the commissioning data must be provided prior to sending produced water to the distribution system.

iv. Preliminary Design Report Update

1. Upon completion of construction, Consultant will develop an addendum to the previously submitted Preliminary Design Report. This addendum will be submitted to TCEQ's Plan Review Team and will include the following data:
    a. Initial baseline performance of the plant including the net driving pressure, normalized permeate flow, salt rejection (or salt passage)
    b. Frequency of cleaning or membrane replacement based on a set time interval or a set point relative to baseline performance of the units
    c. Verification of the model's accuracy (if modeling is used as the basis for the design)
    d. Verification of plant capacity
    e. Complete physical and chemical analysis of the raw water, membrane system effluent water, and post-treatment water
    f. Calculations for sizing feed pumps and chemical storage tanks
    g. Final blending report showing compliance to all maximum contaminant levels (MCL) and secondary contaminant level (SCL)
2. Sampling Plan and Testing Protocol
    a. To support the physical and chemical water analysis, Consultant will develop a Draft Sampling Plan and Testing Protocol to advise the City staff in collecting the necessary samples and instruct the third-party laboratory in testing the samples.
    b. Consultant will incorporate comments from the City and the laboratory into a Final Sampling Plan and Testing Protocol.
    c. It is assumed that the City staff will collect all samples and pay for the testing.
    d. It is assumed that the laboratory will provide transportation of the samples to the laboratory.

v. Summary of Deliverables

1. Revised CT Study – One (1) electronic (PDF) copy to TCEQ and to the City
2. Commissioning Data Submittal – One (1) electronic (PDF) copy to TCEQ and to the City
3. Draft Sampling Plan and Testing Protocol – One (1) electronic (PDF) copy to the third-party laboratory and to the City
4. Final Sampling Plan and Testing Protocol – One (1) electronic (PDF) copy to the third-party laboratory and to the City

vi. Summary of Meetings

1. TOP Onsite Evaluation – In-person site evaluation with up to five (5) Consultant members attending

g. Extra Work

i. The following items are not included under this agreement but will be considered as extra work:

1. Any survey services.
2. Any geotechnical services.
3. Bidding services beyond those listed above.
4. Any construction phase services, including the disposal or sale of existing EDR equipment and electrical power study.
5. Any improvements facilities outside of the WTP property.
6. Design of the terminal storage reservoir or associated pumping systems.
7. Development of an Environmental Information Document.
8. Assessments of equipment or structures.
9. Assessment of hazardous materials (e.g., asbestos, black mold, etc.) will not be included in the structural assessment.
10. Assessments of other discipline categories, including but not limited to mechanical, electrical, and process operation.
11. Submittals or deliverables in addition to those listed herein.
12. Redesign for the City's convenience or due to changed conditions after previous alternate direction and/or approval.
13. Construction materials testing.
14. Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
15. Development of or updates to a utility rate study.
16. Development of or updates to a water conservation plan.
17. Development of or updates to a drought management plan.

ii. Extra Work will be as directed by the City in writing for an additional fee as agreed upon by the City and Consultant.

4. 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:

i. No additional services are anticipated for this scope of work.

The Consultant's Fees under the Original Agreement shall be increased in amounts not to exceed the following:

1. Project Management .....…$218,576 (Lump Sum)
2. Package 2 Preliminary Design .....$3,457,261(Lump Sum)
3. Package 2 Disinfection Testing .....…$220,094 (Lump Sum)
4. Package 2 Final Design.....$9,704,583 (Lump Sum)
5. Package 2 Bid Phase Services.....….$394,307 (Lump Sum)
6. Package 1 Regulatory Coordination .....….$266,548 (Lump Sum)

TOTAL FEE INCREASE (NOT TO EXCEED): $14,261,369

TERM

1. Completion dates for each task under this Amendment No. 1 shall be as follows:
    a. Project Management .....June 2024
    b. Package 2 Preliminary Design .....May 2023
    c. Package 2 Disinfection Testing .....March 2024
    d. Package 2 Final Design.....March 2024
    e. Package 2 Bid Phase Services.....June 2024
    f. Package 1 Regulatory Coordination .....March 2024

[Rest of page left intentionally blank]

This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The CITY and CONSULTANT hereby agree to amend the amount of the Consultant's Fees as follows:

Consultant shall be compensated on the following basis:

1. Original Agreement $1,915,559
2. Amendment No. 1 .....$14,261,369

CONTRACT TOTAL (NOT TO EXCEED): $16,176,928

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement. This Amendment No. 1 and the Original Agreement contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 1 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto. Any term not defined herein shall be deemed to have the meaning ascribed to it under the Original Agreement.

[Rest of page left intentionally blank]

EXECUTED in on behalf of CONSULTANT as shown below, and on behalf of the CITY by its City Manager (thereunto duly authorized) this _____ day of _____, 2023.

CITY:
CITY OF SHERMAN, TEXAS

Robby Hefton, City Manager

CONSULTANT:
GARVER, LLC

Lance Klement, P.E.
North Texas Water Team Leader

ATTEST:

Linda Ashby
City Clerk

ATTEST:

APPROVAL RECOMMENDED:

Wayne E. Lee, P.E., CFM / Director Engineering

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

BY: _____

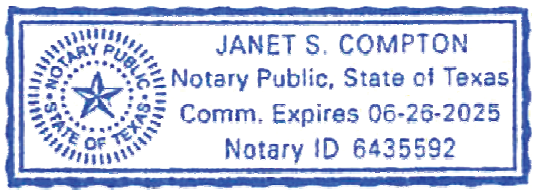
Ryan D. Pittman
City Attorney

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF Collin §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Lance Klement of Garver, LLC known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Garver, LLC, a corporation, that (s)he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 4th day of April, A.D. 2023.



Notary Public In and For Collin County, Texas

My Commission Expires:

6/26/2025

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

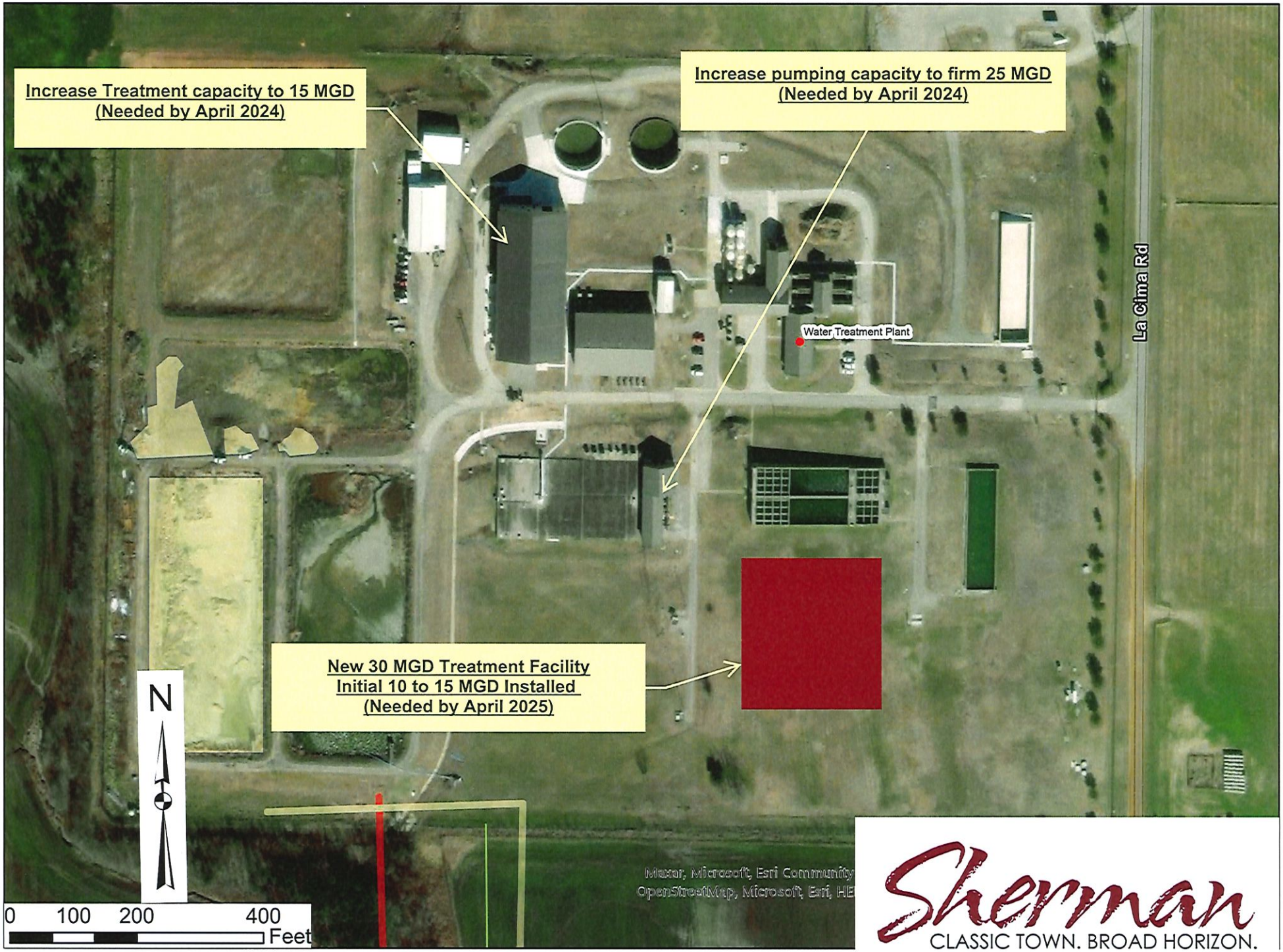
ATTEST:

BY: Linda Ashby
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


Increase Treatment capacity to 15 MGD
(Needed by April 2024)
Increase pumping capacity to firm 25 MGD
(Needed by April 2024)
Water Treatment Plant
La Cima Rd
New 30 MGD Treatment Facility
Initial 10 to 15 MGD Installed
(Needed by April 2025)
N
0 100 200 400
Feet
Maxar, Microsoft, Esri Community
OpenStreetMap, Microsoft, Esri, HE
Sherman
CLASSIC TOWN. BROAD HORIZON.

AGREEMENT

BETWEEN

THE CITY OF SHERMAN, TEXAS AND

GARVER, LLC

FOR

PROFESSIONAL SERVICES

Made as of the 2nd day of May, 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)").

1.2.1 **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.

1.2.2 **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.

3.1.3 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.

3.1.4 **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.

3.1.5 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:

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**.

3.3.3 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**.

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

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

3.3.6 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 (10^{th}) 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 THETEXAS 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.

12.2 **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.

12.3 **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.

12.4 **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.

12.5 **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.

12.6 **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.

12.7 **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.

12.8 **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

By: _____
Robby Hefton, City Manager

CONSULTANT:
Garver, LLC
a Texas corporation

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 6th DAY OF May 2022.

LINDA ASHBY
NOTARY PUBLIC
STATE OF TEXAS
ID # 382275-0
My Comm. Expires 06-06-2022

Linda Ashby
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 6/6/2022

STATE OF TEXAS §
§
COUNTY OF Collin §

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 25 DAY OF April 2022.

Jessica ReAnn Williams
My Commission Expires
1/31/2026
Notary ID
133562170

Jessica R. Williams
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 01/31/2026

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.

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.

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.)

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.

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.

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.

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.

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

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.

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.

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

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

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

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

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).

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

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.

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

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**
Total Basic Services	***$1,865,599.00***

II. Additional Services

Corrosion Coupon Testing/Contingency	$50,000 – T&M, NTE
Total Authorized Special Services	***$50,000.00***
Project Budget, Grand Total (Not-To-Exceed)	***$1,915,559.00***

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

1. Files shall 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 at 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

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.

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
X	1.	Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
X	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

X	4.	Professional Liability	▪ Minimum $1,000,000.00 each claim; ▪ Minimum $2,000,000.00 in the aggregate
X	5.	Umbrella Coverage of Excess Liability Coverage	▪ An amount of $2,000,000.00 ▪ Minimum $2,000,000.00 in the aggregate

X 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.

X 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.

X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required, 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.

X 9. Insurance company has a minimum rating of "A- (minus)" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

X 10. The Certificate of Insurance must state the project title and bid number.

___ 11. Other Insurance Requirements (State Below):

EXHIBIT F
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor doing business with local governmental entity

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.**

Garver, LLC

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.**

N/A

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

N/A

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

7

Signature of vendor doing business with the governmental entity

4/25/2022

Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 1/1/2021

Pre-Oxidation
Chemical Building
South
Pre-Oxidation Basin
South Clearwell
South High Service
Pump Station
South Membrane
Building
South Chemical
Building

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 9.**

Meeting Date: 05/01/2023

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7067

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Pape-Dawson Engineers, Inc. for Sherman Water Treatment Plant - Concentrate Discharge and Outfall Design Services

Issue:

To consider an amendment to the contract for professional engineering services with Pape-Dawson Engineers, Inc. for Sherman Water Treatment Plant - Concentrate Discharge and Outfall Design Services

Background:

The original contract was presented and approved by City Council on 12/05/2022. The project scope to prepare plans and specifications suitable for bidding to construct a new brine lift station and force main. This is to discharge the concentrate from the Sherman Water Treatment Plant.

The original engineering services fee for $890,300.00 funded through the 2023 GTUA open market funds.

This amendment is needed to:

- Accelerate design
- Assign survey work to Pape-Dawson Engineers and terminate surveying services with existing surveyors that could not meet schedule
- Additional engineering as required to pick up flows from north pond at the water treatment plant settling ponds and route into the new concentrate lift station
- Relocate outfall discharge point approximately 2,000 feet west of the originally-proposed point.

Origination:

Engineering Department

Financial Consideration:

This Amendment No. 1 increases the contract $153,480.00 for a total funding of $1,043,780.00 needed for this contract. This will be funded by GTUA 2023 Bond Funds.

Staff Recommendation:

To prevent possible delays in completing the design, it is recommended that Council approve the services for the aforementioned additional amount to Pape-Dawson Engineers, Inc.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7067
Amendment No. 1
Original Agreement
Location Map

RESOLUTION NO. 7067

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PAPE-DAWSON ENGINEERS, INC. FOR SHERMAN WATER TREATMENT PLANT – CONCENTRATE DISCHARGE AND OUTFALL DESIGN SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute Amendment No. 1 to the Professional Services Agreement with Pape-Dawson Engineers, Inc. for Sherman Water Treatment Plant – Concentrate Discharge and Outfall Design Services, 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 1st day of May 2023.

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

AMENDMENT NO. 1

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN (OWNER) AND PAPE-DAWSON ENGINEERS, INC. (ENGINEER)
FOR THE CONCENTRATE DISCHARGE AND OUTFALL DESIGN SERVICES

Dated December 8, 2022 ("Original Agreement")

This Amendment No. 1 serves to increase the original contract fees under the Original Agreement based on the following **additional** work to the project scope as detailed in the attached Exhibit A1: "Amendment 1 - Scope of Services."

The contract amount under the Original Agreement shall be increased by a fee not to exceed $153,480 as presented in the attached Exhibit B1: "Amendment 1 – Project Design Budget Summary."

I. Basic Services

	Scope Item		Fee
1.0	Preliminary Design (30%)	$	66,200
2.0	Construction Documents (90% and 100%)	$	69,000
3.0	Additional PD Surveying Services	$	18,280
Total Design Services Amendment No. 1:		**$**	**153,480**

TOTAL AMENDMENT NO. 1 NOT TO EXCEED (TIME AND MATERIAL)	**$**	**153,480**

The Design Services contract completion date shall be extended to June 30th, 2023.
[Rest of page left intentionally blank]

This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The OWNER and ENGINEER hereby agree to amend the Proposed Fees section of this Original Agreement to read as follows:

Basic Services	**Fee**
Concentrate Discharge and Outfall Design Services	$661,700.00
Amendment No. 1 Design Services	$135,200.00
Amendment No. 1 Additional PD Surveying Services	$18,280.00
Total Basic Services	**$815,180.00**
Support Services	
Subconsultant Services	$228,600.00
Total Support Services	**$228,600.00**
Total Not to Exceed (T&M)	**$1,043,780.00**

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement. This Amendment No. 1 and the Original Agreement contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 1 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

[Rest of page left intentionally blank]

EXECUTED in three (3) counterparts (each of which is an original) on behalf of ENGINEER shown below, and on behalf of the OWNER by its City Manager (thereunto duly authorized) this _____ day of _____,2023.

OWNER:
CITY OF SHERMAN, TEXAS

_____
Robby Hefton, City Manager

ENGINEER:
PAPE-DAWSON CONSULTING ENGINEERS, LLC

_____
Cara C. Tackett, P.E.
Managing Principal, Water Resources

ATTEST:

_____
Linda Ashby
City Clerk

ATTEST:

_____
Gabriele H. Dooley
Office Coordinator

APPROVAL RECOMMENDED:

_____
Wayne E. Lee, P.E., CFM / Director Engineering

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

BY: _____

NAME: _____
CITY ATTORNEY

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Cara C. Tackett of Pape-Dawson Consulting Engineers, LLC known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Pape-Dawson Consulting Engineers, LLC, a Texas limited liability company, that (s)he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of April, A.D. 2023.

NOTARY PUBLIC STATE OF TEXAS
ROSIE PEREZ
My Notary ID # 130517485
Expires January 29, 2024

Rosie Perez
Notary Public In and For Bexar County, Texas

My Commission Expires:

January 29, 2024

PROJECT DESCRIPTION

The City has selected Pape-Dawson Consulting Engineers, LLC (PD) to provide engineering consulting services for planning, design and construction administration associated with the concentrate discharge system within the water treatment plant in the City. 30% design documents were submitted to the City on schedule in January 2023. PD is currently working on the 90% construction documents design phase. This amendment to the scope of services includes the following tasks specifically associated with the concentrate discharge system:

- One of the City's comments on the 30% design submittal was to include flows from the north pond to the new pump station
- Additional design service included research and study of the existing as-built drawings and other information related to the north pond, its existing discharge structure, and its drain piping.
- Modifications to the design calculations of flows to the proposed weir structure from the three ponds.
- Modifications to the force main design and it plan/profile drawings per the revised location of its outlet structure into the proposed discharge channel.
- Additional design service also included increased length (additional 2,000LF) of the discharge channel, per TCEQ draft discharge permit.
- Design a culvert to provide access across an existing driveway within a private property to due to the extended discharge channel through that property.
- Additional coordination with the City and the additional number of affected property owners for ROEs.
- Increase in scope of support Services (Survey, Geotech, Subsurface Utility Engineering).

I. ASSUMPTIONS

A. Size all the proposed modifications at the existing discharge structures and drainage piping from each of the three ponds to be 5MGD flows.

B. Size all the components of the concentrate discharge system downstream of the chamber where the three drainage pipes meet for 10MGD flows. These system components include the weir that regulates the flows from the three ponds, the wet well, pumps, discharge header piping, force main, discharge outlet structure, and discharge channel will be sized to handle 10MGD flows.

C. This amendment is for the design phase services of the concentrate discharge system.

D. The work performed for this project:

II. TASK SUMMARY, BASIC SERVICES

A. TASK A: PRELIMINARY DESIGN (30%)

a. Perform the preliminary design for the following facilities:
   i. Preliminary design of the alignment plan and profile of the drainpipe from the north pond to the weir structure at the pump station.
   ii. Required modifications to the existing discharge structure of the north pond to accommodate the increased size of the drainpipe.
   iii. Revise the force main design due to the increase in length and change in its discharge outlet structure location.
   iv. Revise the discharge channel design due to change in location of the force main's discharge outlet structure and increase in the channel length by approximately 2,000LF.
   v. Provide preliminary culvert design across the proposed discharge channel at the existing access road within White's property.
b. Research and study of the existing as-built drawings and other information related to the north pond, its existing discharge structure, and its drain piping.
c. Additional survey and SUE investigations at the north pond locations to determine any existing conflicts.
d. Design calculations to determine size of the drainpipe to convey 5MGD flows to the pump station with least head loss and minimal operational challenge of the weir control to regulate flows from the three ponds
e. Coordination with Garver to establish the alignment of the drainpipe from the north pond to the proposed pump station site, to avoid conflicts with their proposed piping and splitter box designs for the plant expansion project.

Deliverables: *Revised Preliminary Engineering Report during 90% submission*

B. TASK B: CONSTRUCTION DOCUMENTS (90% AND 100%)

a. Based on the Preliminary Design the Engineer shall prepare for approval by the City Drawings and Specifications that set forth in detail the requirements for the construction of the Project and comply with applicable laws, statutes, ordinances, codes, and regulations.

b. Contract Documents: The Engineer shall assist the City in preparation of necessary bidding information, bidding forms, the conditions of the contract, and the form of agreement between the City and general contractor. Engineer will use the City's "front-end" documents for the Project. Engineer will use the Engineer's technical specifications.

c. Opinion of Probable Construction Cost: The Engineer shall develop opinion of probable construction costs (OPCC) at the 90-percent phases.

d. Submit plans, specifications, and contract documents to the applicable federal and state agency(s) for approval, where required.

e. Coordinate with utility companies and furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.

Deliverables: *90% and 100% (Issued for Construction/IFC) documents, Engineer review comments on CMAR cost estimates, meeting minutes, decision logs*.

III. TASK SUMMARY, SUPPORT SERVICES

C. TASK C: SURVEY

Pape Dawson was compelled to terminate the survey task contract with Bowman, as they were unresponsive, missed meetings and deadlines, and did not provide any project related deliverables. Their original budget for the work was $10,500/-, but they provided a change order of $13,850/- as soon as they were requested to proceed with their survey work. If that change order was accepted, then their total budget would have been $24,350/-. Pape-Dawson's survey team was engaged who provided a "not to exceed" budget of $29,880/-, to include survey work at the north pond location, revised and increased force main and the extended discharge channel.

For the survey tasks, we are proposing to add the following survey categories to the Rate Table:

2-man Crew	$ 224
3-man crew	$ 287
Survey Manager	$ 252
Project Surveyor	$ 202
Survey Tech	$ 145
Field Coordinator	$ 145

EXHIBIT B1

AMENDMENT NO. 1 - PROJECT DESIGN BUDGET SUMMARY

II. Basic Services

	Scope Item	Fee (Lump Sum)
A	Preliminary Design (30%)	$66,200
B	Construction Documents (90% and 100%)	$69,000
C	Additional PD Survey Services	$18,280
Total Basic Services Amendment No. 1:		**$153,480**

TOTAL AMENDMENT NO. 1 NOT TO EXCEED (T&M)	**$153,480**

RESOLUTION NO. 6999

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PAPE-DAWSON ENGINEERS, INC. FOR SHERMAN WATER TREATMENT PLANT – CONCENTRATE DISCHARGE AND OUTFALL DESIGN SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Pape-Dawson Engineers, Inc. for Sherman Water Treatment Plant – Concentrate Discharge and Outfall Design Services, 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 5th day of December 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
NAME: Ryan D. Pittman
CITY ATTORNEY

CERTIFIED COPY - DOCUMENT THIS IS CERTIFIED TO BE A TRUE COPY OF THE PERMANENT RECORD AS FILED IN THE OFFICE OF THE CITY CLERK.

Linda Ashby
CITY CLERK, SHERMAN, TEXAS

ISSUED: 12·13·2022

AGREEMENT

BETWEEN

THE CITY OF SHERMAN, TEXAS AND

PAPE-DAWSON ENGINEERS, INC.

FOR

PROFESSIONAL SERVICES

Made as of the 5th day of December ,2022:

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

and Consultant: **Pape-Dawson Engineers, Inc.**
5810 Tennyson Parkway, Suite 425
Plano, TX 75024
Telephone: (210) 420-8494

for the following Project: **Sherman Water Treatment Plant – Concentrate Discharge and Outfall Design Services**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Pape-Dawson Engineers, 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 program management services for major infrastructure ("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 key personnel of Consultant who is performing the day-to-day Services under this Agreement for the Project is separated, for anyreason, from employment with Consultant, Consultant shall provide City with written notice thereof at least five (5) business days' prior to said separation unlesscircumstances 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 authorizedfrom time to time by City ("Amendment(s)").

12.1 **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.

12.2 **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 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, andConsultant 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 the Services, in an amount not to exceed eight hundred and ninety thousand, three hundred and 00/100 dollars **($890,300.00)** ("Consultant's Fee") on a Time and Material basis as set forth in **Exhibit B;** and
(b) paid in accordance with this Article 3 and the Project Budget Summary as set forth in **Exhibit B.**

3.1.1 **Completion of Program Documents** City and Consultant agree that the completion of Program Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Program 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 ("GADD"), 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, the Design Consultantshall 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 in writing, 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.

3.2 **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.**

3.3.3 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.**

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A.**

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

expenses.

3.3.6 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
Administrative Assistant	$175
Construction Inspector	$196
CADD Technician	$165
Data Analyst	$185
Design Leader	$371
Document Manager	$175
Engineer	$206
Environmental Scientist	$175
Geospatial Staff	$185
GIS Analyst	$216
GIS Manager	$340
GIS Specialist	$149
GIS Web Developer	$216
IT / PMIS Support	$288
Legal Counsel	$438
Partnering Facilitator	$438
Principal In Charge	$386
Program Controls Manager	$371
Program Manager	$386
Project Engineer	$227
Project Manager	$288
Scheduler	$268
Sr. Construction Manager	$386
Sr. Environmental Manager	$371
Sr. Project Engineer	$288
Sr. Project Manager	$371
Sr. Vice President	$397
Technical Manager (QA/QC)	$386
Technical Practice Leader	$386

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 direct charges on said invoice. Upon request, additional background material may include, but is not limited to, 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 via electronic fund transfer for said invoices within thirty (30) days following receipt and acceptance thereof.

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 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.

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" 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 KeyRating 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 RECORDSNENDOR 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 thisconnection, 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 remaining 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 anydefault 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:

Cara Tackett, P.E,
Managing Principal, Water Resources
Pape-Dawson Engineers, Inc
5810 Tennyson Parkway, Suite 425
Plano, TX 75024
Telephone: (210) 420-8494
Email: ctackett@pape-dawson.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 Budget Summary.

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

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

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

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

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

12.2 **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.

12.3 **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. Loe. Gov'T CODE§ 271.153, as it exists or may be amended, if applicable.

12.4 **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.

12.5 **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.

12.6 **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.

12.7 **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.

12.8 **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 thereare no other parties or entities required to execute this Agreement in order for thesame to be an authorized and binding agreement on the other party for whom theindividual 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 lime, 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 **Key Personnel** - The following Consultant staff are identified as key personnel: Program Manager, Technical Manager (QA/QC), Program Controls/Scheduler, Water Treatment Plant (WTP) Expert, Reverse Osmosis (RO) Expert, and Alternative Delivery & Construction Liaison.

12.20 **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.

12.21 **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.

12.22 **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.

12.23 **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 paymentof any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.

12.24 **Reference to Consultant-** When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

12.25 **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.

12.26 **Duty to Facilitate Compliance with Public Information Act-**

(a) The obligations in this provision apply if this Agreement (1) has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by City; or (2) results in the expenditure of at least $1 million in public funds for the purchase of goods or services by City in a fiscal year of the Sherman City Council.

(b) If this Agreement is described in subsection (a) above, Consultant shall comply with the following obligations, which are set forth in Subchapter J, Chapter 552, Texas Government Code:

(1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to Sherman for the duration of this Agreement;

(2) promptly provide to Sherman any contracting information related to this Agreement that is in the custody or possession of Consultant on request of Sherman; and

(3) on completion of this Agreement, either: (1) provide at no cost to City all contracting information related to the contract that is in the custody or possession of Consultant; or (2) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to City.

(c) As used in this provision, the term "contracting information" shall have the same meaning as that term is defined in Section 552.003, Texas Government Code.

(d) The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Consultant agrees that this Agreement can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

[Signature page follows.]

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

By: _____
Robby Hefton, City Manager

CONSULTANT:
Pape-Dawson Engineers, Inc.
a Texas corporation

By: _____
Cara C. Tackett, P.E,
Managing Principal, Water Resources

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 5th DAY OF December 2022.

LINDA ASHBY
NOTARY PUBLIC
STATE OF TEXAS
ID # 382275-0
My Comm. Expires 06-06-2026

Linda Ashby

NOTARY PUBLIC IN AND FO THE STATE OF TEXAS
My commission expires: 6/6/2026

STATE OF TEXAS §
§
COUNTY OF Bexar §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **Cara Tackett,** 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 **Pape-Dawson Engineers, Inc,** AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 29th DAY OF November 2022.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: January 29, 2024

ROSIE PEREZ
My Notary ID # 130517485
Expires January 29, 2024

Rosie Perez

PAPE-DAWSON ENGINEERS

Sherman
CLASSIC TOWN. BROAD HORIZON.

EXHIBIT A

November 3, 2022

Mr. Tom Pruitt, P.E.
Utility Engineer
City of Sherman
220 W Mulberry Street
Sherman, Texas 75091

Re: Sherman Water Treatment Plant – Concentrate Discharge and Outfall Design Services

Dear Mr. Pruitt:

We are pleased to present this proposal for providing design services in connection with the above referenced project. The scope of work for the design services for the brine discharge outfall at the Water Treatment Plant (WTP) is to install a pump station to convey the effluent from the final settling ponds to the Texas Commission on Environmental Quality (TCEQ) permitted outfall. The WTP is located west of LaCima Road and south of Grayson Drive in the City of Sherman. The proposed pump station would be located at the southern end of the WTP site, at the southeast corner of the existing final settling ponds. The project includes the following design and construction activities:

- Approximately 2,500-feet of force main. The City requires the design to size the force main to service current and future flows. The proposed alignment of the force main is to install the pipe from the pump station, go past the existing final settling ponds, through a private property, go across N. Heritage Parkway (FM 1417), and discharge into the proposed outfall infrastructure and a discharge channel. The discharge channel shall be earthen-lined and erosion protected. Necessary survey, easement acquisitions, and geotechnical studies required for the force main and its discharge channel are included in this scope. It is assumed that a bore will be required to install the force main under FM 1417.
- The design and construction of a proposed, pump station to be located just east of the final settling ponds. The pump station and force main system design includes the capability to convey a future flow of approximately 7.0 million gallons per day (MGD, ultimate) to the discharge outfall infrastructure. The proposed pump station will consist of outfall structures at the final settling ponds, piping to convey the flows to the pump station, a cast-in-place wet well with anti-vortex baffle walls, pumps, an electrical building to house the electrical equipment, a backup generator, a SCADA system, associated grading and drainage improvements, an all-weather access drive, yard lighting poles, and security fencing. The pump station and force main design will be based on the TCEQ Lift Station Design and Construction Guidelines.

Our proposed scope of services and associated fees are as follows:

1.0 PROJECT MANAGEMENT (TASK 501)

This task includes overall management of the project's design and construction, coordination of subconsultants, the City of Sherman (the City) and public agencies and property owners. Project Management services will be provided over an 18-month period to include design, bidding and construction administration.

1.1 PROJECT OVERSIGHT

1. Coordinate regular meetings and project participants as appropriate.
2. Maintain communications with the City throughout the process.

1.2 PROJECT COORDINATION WITH SUBCONSULTANTS

Coordinate subconsultant services in support of the project:

1. Topographic Survey
2. Subsurface Utility Engineering (SUE)
3. Geotechnical Investigation and Reports
4. Pump Station Electrical and Instrumentation Design Consultant
5. Pump Station Structural Design Consultant

2.0 OFF-SITE FORCEMAIN EASEMENT ACQUISITIONS

This task includes overall management of project's easement acquisitions for the off-site force main alignment from the pump station to convey the brine effluent to the discharge infrastructure. The current alignment includes four (4) properties. The task is broken down as follows:

2.1. FIELD SURVEY DEVELOPMENT (TASK 190)

1. Obtain right of entry survey permission from landowners for tracts and support survey in required documentation.
2. Prepare preliminary and final field survey for each property parcel, including field note descriptions, survey exhibits, and aerial photo exhibits for use by the City in easement acquisition and securing rights-of-access.

2.2 EASEMENT DOCUMENTS (TAXABLE)(TASK 109)

This item represents allowance for preparation of field notes, exhibits, and related documents and includes the following:

1. Provide support services to aid in securing four (4) sets of appropriate permanent and temporary construction easements for the off-site water force main and its discharge infrastructure.
2. Included is all appropriate documentation, agent logs and records of communication, and fully executed easement documents.
3. With regards to the crossing at N. Heritage Parkway (FM 1417), provide support and/or engage with Texas Department of Transportation (TxDOT) in obtaining any permit(s) and/or agreements as applicable under the Texas Administrative Code, Title 43, Rule §21.36, "Rights of Utilities".

2.3. RIGHT-OF-WAY (ROW) ACQUISITION SUPPORT (TAXABLE)(TASK 108)

1. Provide support services for ROW acquisition, title research, and certificates for the four (4) tracts for off-site water force main and its discharge infrastructure.
2. Review project scope and prepare Initial Offer Letters (IOL).
3. Research ownership for the subject tracts and prepare run-sheets and Limited Certificate of Title (LCT).
4. ROW acquisition and negotiations process following the Eminent Domain laws in Texas.
5. Complete ROW documentation, agent logs, notes, and fully executed easement documents.

2.4. APPRAISAL SERVICES (TASK 390)

1. Provide opinion of market value for the four (4) tracts for the off-site water force main.

2.5 EASEMENT ACQUISITION LEGAL SUPPORT (TASK 391)

1. Provide negotiation support services.
2. All acquisition support services will adhere to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Uniform Act) and the Code of Federal Regulations (CFR) Section 49, Part 24. Each property owner will be provided the Landowners Bill of Rights as prescribed by the Texas Legislature in Texas Government Code Section 402.031 and Chapter 21 of the Texas Property Code.
3. Drafting original documents.

3.0 30% DESIGN PHASE

3.1 30% DESIGN SERVICES (TASK 202)

This task includes evaluation of pump station site location and finalize the off-site force main alignment and its discharge infrastructure. The analysis includes the evaluation of the influent infrastructure, pipes and pump station sizing necessary to convey the estimated flows through the proposed system. The design will be based on ultimate flows to be treated at the WTP.

<u>General Design:</u>

1. Conduct up to two (2) site visits as required to become familiar with the project and surrounding area.
2. Prepare meeting documents and conduct a kick-off meeting with City staff on design of the different components required for this project.
3. Conduct regular meetings City staff. Prepare meeting agenda and summarize action items and pending decisions resulting from the meeting. This scope assumes a total of four (4) virtual meetings.
4. Gather information (e.g. as-built documents, block maps, engineering reports, etc.) for the project. Coordinate with City and other utility providers as needed.

5. Develop schematic layouts and drawings in sufficient detail to finalize the on and off-site force main alignment, the influent and discharge infrastructures, and the pump station site plan.
6. Coordinate with SUE and utility agencies to identify potential conflicts with existing underground utilities.
7. Determine if any existing utility conflicts occur along the proposed force main alignment (both on and off site) and propose alternatives required to avoid these conflicts.
8. Identify permitting agencies and key stakeholders (e.g. City of Sherman, Collin County, TCEQ, TxDOT, and others as appropriate), develop a plan for coordination activities with various stakeholders during the design. This scope assumes one (1) meeting with each of the permitting agencies.
9. Identify permitting requirements and prepare a permit log including all permits required for the project.
10. Coordinate the design with federal, state, and local agencies to abide by all of the latest applicable rules, regulations, ordinances, and codes for development of the design plans and supporting documents.
11. Recommend additional required field investigation to include geotechnical investigation, environmental, archaeological, topographic survey, subsurface utility (SUE), and any other field investigation as needed.
12. Conduct preliminary evaluation of construction methods (open cut, boring, trenchless, etc.) for the force main.
13. Prepare 30% construction plans based on the design tasks above.
14. Prepare 30% Opinion of Probable Construction Costs (OPCC), AACE Level 4.
15. Perform internal quality management prior to submitting the plans to City for review.
16. Update the project schedule.

Pump Station Design:

1. Prepare schematic pump station plans and force main alignment, listing anticipated details, and listing of anticipated specification section headings.
2. Provide draft Electrical, Instrumentation, and SCADA sections of the Engineering Report.
3. Provide electric one line diagram, P&ID, and preliminary site plan.
4. Prepare a preliminary site plan to include grading and drainage design, analysis of TCEQ storm water quality treatment requirements, analysis of how the site will be accessed, utility service connections and routing, and permitting implications. This includes coordination of geotechnical boring locations.
5. Prepare 30% preliminary documents.
6. Prepare 30% OPCC, AACE Level 4 for the pump station infrastructure.

Subconsultants:

1. Provide necessary field survey services and site reconnaissance to develop schematic layouts and drawings in sufficient detail to finalize the on and off-site

force main alignment, the influent and discharge infrastructures, and the pump station site plans.

2. Coordinate with the utility agencies as needed, conduct utility investigation, and locate all the existing underground utilities within the project scope as identified and required to install the pump station and its appurtenances.
3. Coordinate with the geotechnical, structural, electrical, and instrumentation subconsultants to establish the 30% design requirements.

3.2 JURISDICTIONAL WATERS DELINEATION (TASK 233)

This task includes a Section 404 (Clean Water Act) preliminary jurisdictional determination for the proposed project area to confirm the presence or absence of wetlands and/or other "waters of the US" and applicable permitting requirements as related to Section 404 of the Clean Water Act. This determination will be conducted according to the methodology prescribed by the 1987 US Army Corps of Engineer (USACE) Wetland Delineation Manual and applicable Regional Supplement and will include a literature review, as well as a detailed field reconnaissance to gather necessary information for future delineation efforts. A report is to be prepared with a map of areas that would potentially be under the jurisdiction of the USACE according to the most recent guidance, data forms, soils, vegetation, and hydrology analysis. A summary of impacts, if known, to jurisdictional waters as defined in the Federal Wetland Regulations 33 Code of Federal Regulations (CFR) Part 328 and the Clean Water Act as was done prior to the 2015 rule, including the Supreme Court decision in Rapanos v. United States, 547 U.S. 715 (EPA & USACE 2008), which requires application of the "significant nexus" standard by the USACE and Environmental Protection Agency joint guidance on jurisdictional determinations is also to be provided.

3.3 ENDANGERED SPECIES ASSESSMENTS (TASK 322)

An endangered species habitat assessment for compliance with the Endangered Species Act will be conducted on the site and reviewed by a USFWS-permitted biologist. Pape-Dawson will also coordinate with the Texas Parks and Wildlife Department to determine if there are any previously recorded federally listed or rare species on the site. A delineation of any habitat for any of the species listed by the US Fish and Wildlife Service as having the potential to occur in the project site county will be included in a summary memo.

**Site Visit is to be conducted at the same time as the WOUS Delineation; if not additional fees could accrue.*

3.4 ARCHAEOLOGICAL PERMIT ACQUISITION (TASK 239)

For projects located on land owned by a public entity or otherwise granted to a political subdivision of the state, compliance with the Antiquities Code of Texas as implemented by the Texas Historical Commission (THC) is required. As the proposed project area is to be granted to City of Sherman and potentially anticipates federal

permitting through the USACE, the following scope of work is intended to provide compliance with the ACT, and Section 106 of the NHPA.

Prior to project construction and initiating fieldwork, Pape-Dawson archaeologists to obtain an Antiquities Permit from the Texas Historical Commission (THC) in compliance with the Antiquities Code of Texas. This permit to include a research design detailing the project approach and proposed archaeological methods. Data gathered from the cultural resources background study to be included in the research design accompanying the permit application. Background study to include a literature and records review to determine if the proposed project area was previously investigated for cultural resources and to identify any cultural resources recorded within a review area not to exceed a 1-kilometer (0.6-mile) radius from the proposed project area. The background study to include data from the Texas Historical Commission (THC) online Historic and Archaeological Sites Atlas to identify previously recorded archaeological sites, National Register of Historic Places-listed properties and districts, State Antiquities Landmarks, Official Texas Historical Markers, Recorded Texas Historic Landmarks, National Park Service Historic Trails, and cemeteries within the review area. In addition, Pape-Dawson cultural resources staff to examine soil, geological, and environmental data, as well as recent and historic-age maps and aerial photographs available online (as applicable).

3.5 CULTURAL/ARCHEOLOGICAL RESOURCES SURVEY (TASK 240)

Should the THC require that Pape-Dawson archaeologists conduct an intensive archaeological survey of the approximately 2,500 linear feet of project area, the results of a cursory review for scoping purposes only suggests that archaeological deposits, if present, would be located near the surface or shallowly buried at depths reachable by shovel test excavations.

A. Survey – Shovel Testing (up to 1 day)

Pape-Dawson archaeologists to perform a pedestrian survey of the project area supplemented by systematic shovel testing. Archaeologists to observe the ground surface along evenly spaced transects and erosional exposures along drainage features for cultural materials, archaeological features, and historic structures. Archaeologists to excavate a maximum of 17 shovel tests. Shovel tests to be approximately 30 centimeters in diameter, and to be excavated to sterile substrate, bedrock, water table, compaction, or to a maximum of 80 centimeters below the ground surface. Excavated shovel tests to follow the Council of Texas Archeologists' 2020 (CTA) survey standards and guidelines; however, shovel testing may be precluded by soil conditions, natural features, or disturbances. Soils to be screened through 1/4" hardware mesh unless otherwise dominated by clay. Clay soils to be finely divided and hand sorted. Shovel tests to be described, mapped using a submeter accurate GPS, and backfilled upon completion with excavated spoil and compacted by hand; no additional compaction or fill to be necessary.

If archaeological sites are found on the property, site boundaries are to be defined to the extent possible within the project area according to appropriate delineation techniques. Surficial and shallowly buried sites require a minimum of nine shovel tests, unless precluded by project limits or extent of landforms per CTA standards. Newly identified and/or revisited sites to be recorded on TexSite forms and filed with the Texas Archeological Research Laboratory (TARL) in accordance with CTA guidelines.

Diagnostic artifacts (for example projectile points or glass bottles) to be collected. A representative sample of non-diagnostic artifacts (for example lithic debitage or window glass shards) observed during the survey to be photographed and documented in the field but are not intended to be collected. At the discretion of the Principal Investigator, non-diagnostic artifacts may be collected during the survey.

Notes:

i. *If additional compliance not outlined above arises subsequent to this proposal, additional services may be necessary.*
ii. *Project area not to exceed approximately 2,500 linear feet in length and a 50-foot wide corridor (2.92 acres total).*
iii. *If proposed project limits change after the initiation of the investigation, additional services may be required.*
iv. *Right-of-entry to be obtained prior to field investigation.*
v. *Assumes one continuous field mobilization with unfettered project area access. If more than one field mobilization is required due to denial of right-of-entry, additional services may be required.*
vi. *Field costs are based on estimated maximum total of one (1) business day of survey for a crew of two; if additional investigation is required, additional services may be necessary.*
vii. *Assumes a 10-hour day for field investigations.*
viii. *Archival research may be necessary if historic archaeological sites and/or historic-age resources are located within the project area. Archival research to be negotiated under a separate scope and fee.*
ix. *Assumes one (1) archaeological site to be recorded or revisited that does not exceed 0.75 acre in size. If more than one (1) site or a site greater than 0.75 acre in area is encountered, additional services may be necessary.*
x. *Assumes that none of the project area has been previously inventoried in compliance with current CTA standards.*
xi. *A maximum of two (2) archaeological features to be observed and documented in the field. If more than two (2) archaeological features are encountered, additional services may be necessary.*
xii. *Feature documentation to consist of standard excavation and documentation techniques (GPS mapping, photography, measurements, and description). If features are determined to be potentially significant, additional*

documentation (TDS, LiDAR, and/or 3D modeling) may be required and additional services may be necessary.

xiii. *If a potentially significant archaeological site is located during survey that cannot be preserved and buffered, any required archaeological testing and/or data recovery (hand-excavated units and/or column samples) would be covered under an additional services request.*

xiv. *Human burials or other physical manifestations of graves are NOT likely to be encountered during the field work. If found, additional regulatory requirements and fees may apply if the area cannot be avoided and buffered.*

xv. *No special analyses (e.g. flotation, macrobotanical analysis, and radiocarbon dating) to be conducted as part of this work. If artifacts encountered that require special analyses, additional services may be necessary.*

B. Report

Following the completion of fieldwork and analysis, Pape-Dawson to produce a report per the CTA guidelines. This field data, along with soils and geology for the project area, and background literature review to be included in the report. The report to also detail the methods and results of the field efforts and include maps showing the location of recorded archaeological site and/or historic-age structure(s). In addition, the report to include eligibility assessments of significance if archaeological sites are present within the project area. Pape-Dawson to produce the required number of reports and distribute them to the appropriate regulatory agency(s) for review and approval. One round of agency comments to be addressed, if necessary.

C. Artifact Analysis and Curation

Collected artifacts to be washed in water and air-dried on drying racks or dry-brushed prior to analysis. Archaeologists to review and categorize the artifacts according to class and material type and include results in the report. Analysis costs are estimates only; actual costs vary according to the number of artifacts recovered and the amount of paperwork generated. Select collected materials and field-generated paperwork to be prepared in accordance with THC requirements for State Held-in-Trust collections and submitted to the Center for Archeological Research at the University of Texas at San Antonio upon acceptance of the final report pursuant to requirements in the permit.

Notes:

i. *A maximum of 10 artifacts to be collected for laboratory analysis. If more than 10 artifacts are collected, additional services may be necessary.*

ii. *A maximum of 30 artifacts to be observed and documented in the field without collection. If more than 30 artifacts are encountered, additional services may be necessary.*

3.6 DIRECT EXPENSES (REIMBURASABLES) (TASK 503)

Reimbursable expenses include GPS unit, digital camera, field vehicle, materials/reproduction, and TARL site form fee(s).

3.7 PUMP STATION AND FORCE MAIN DESIGN REPORT (TASK 901)

1. A pump station and force main design report to be prepared in general conformance with TCEQ Chapter 290 pump station design guidelines.
2. Prepare and provide preliminary calculations for pump station and force main sizing including pump requirements, design head, sizing, flow determination, force main velocities, surge pressures, storage requirements buoyancy calculations, detention and cycle times, flush times, pump station and force main alignment maps, pump cut sheets, and system vs. pump curves.
3. Prepare and provide preliminary design documents and necessary calculations for sizing the influent infrastructure at the final settling ponds to convey flows to the pump station.
4. Prepare and provide preliminary design documents and necessary calculations for sizing the outfall infrastructure at the force main discharge location.
5. Incorporate City comments from 30% design review.

3.8 PERMITTING (TASK 390)

1. Prepare and submit Collin County Right-of-Way permit for the crossing.
2. Prepare engineering report for submittal with construction drawings for review and approval.
3. Provide regular communications and teleconference as appropriate during permitting process.

3.9 SUPPLEMENTAL SERVICES

Pre-Construction Notice (Task 290)

Pape-Dawson proposes to prepare a Pre-construction Notice Application submittal package, if needed, in accordance with the USACE Ft. Worth District permits released March 19, 2017 and all necessary supporting material as per "Part IV: Attachments" of the referenced forms. This scope of work assumes impacts will be under 0.5 acres, under 300 linear feet of stream, and no mitigation required.

Note: If impacts are over 0.5 acres, over 300 linear feet, or if mitigation is required, additional coordination with the USACE and additional services will *be required along with mitigation fees.*

4.0 CONSTRUCTION DOCUMENTS DESIGN PHASE

4.1 90% DESIGN SERVICES

This task will not begin until the City has accepted the proposed 30% construction plans developed in Task 3.

General Design:

1. Develop final 90% construction drawings for the proposed Brine discharge infrastructure per City requirements including:
   a) General Notes, quantities, existing and proposed easements, project control map, contractor access and staging plan, abandonment plan (if any), Plan and profile drawings, boring plans and details, preliminary tree permit and tree protection, standard details, and any project specific details.
2. Prepare 90% OPCC for the project.

Pump Station and Force Main Design:

1. Prepare 90% construction plans including includes coversheet, general notes, overall alignment, influent infrastructure, pump station site, paving, dimensional control, utility, grading and drainage plans, force main plans and profiles, discharge outfall structure, and construction details. Specifications include coversheet, index, and specifications.
2. Prepare 90% OPCC.
3. Provide the mechanical, electrical, instrumentation, and SCADA sections of the Engineering Report.
4. Prepare documents for City and TCEQ submittals.

Subconsultants:

1. Coordinate with the surveyors, SUE, and geotech subs for any additional information required during this design phase. Coordinate 90% design input from the structural, electrical, and instrumentation subconsultants.

4.2 100% DESIGN SERVICES (TASK 202)

This task assumes that the influent structure, pump station, force main and the outfall structure will be constructed under one construction contract. This task will commence after receiving the City's and TCEQ's comments from the submitted 90% construction documents. This task includes services to address one round of comments received from TCEQ and the City from the 90% submittal.

1. Develop final 100% construction drawings for the proposed Brine discharge infrastructure per City requirements.
2. Incorporate the 90% design review comments by the City and TCEQ, if any.
3. Coordinate 100% design input from geotech, structural, electrical, and instrumentation subconsultants.
4. Prepare final 100% OPCC for the project.

4.3 BIDDING AND AWARD PHASE SERVICES (TASK 401)

This task anticipates a public bidding process for one (1) construction package procured through the City.

1. **Bidding Services**
   a) Prepare bid documents for advertisement and bidding by City.
   b) Coordinate with City on advertisement of project.

c) Attend and participate in pre-bid conference with City.
d) Prepare addenda, bid clarification responses as appropriate for distribution to bidders. Prepare revisions to plans, details, and/or specifications as appropriate.
e) Attend bid opening.

2. Award Services

a) Prepare an evaluation of bid proposals and develop recommendations for award, as appropriate.

5.0 CONSTRUCTION PHASE SERVICES (TASK 301)

This task anticipates a single, construction contract for the project. It is anticipated that construction will require approximately 12 months.

5.1 Pre-Construction Coordination

a) Coordinate Pre-Construction Conference for construction project. Provide written summaries and directives as appropriate.
b) Coordinate with the contractor for a one-time placement of a maximum of ten (10) project control points providing horizontal and vertical control for development of cut sheets and construction staking by the contractor to be used for the construction of the proposed force main.
c) Provide contractors with a project control and information drawing with project coordinates, control points and benchmark elevations, in hard copy and electronic (AutoCAD) formats.

5.2 Construction Observation Services

<u>General Civil:</u>

a) Make twelve (12) site visits during the construction period to review progress and construction procedures. Prepare and distribute a construction observation report for the site visits.
b) Review contractor submittals; provide comments and/or acknowledgements as appropriate.
c) Review contractor's shop drawings, requests for information, change order requests, and construction staking information and calculations.
d) Attend bi-weekly meetings for the project with contractors, and City representatives. Prepare written summaries of meetings and distribute to attendees.
e) Review contractors' applications for payment with accompanying data and updated schedule adjustments, and recommend amounts for payment, and amounts of retainage. Forward updated construction schedules and payment applications to City for processing and payment.
f) Attend substantial completion walkthrough and prepare punchlist for contractor.

Subconsultants:

a) Make six (6) visits during the construction period to site to review progress and construction procedures. Prepare and distribute a construction observation report for the site visits.
b) Review contractor submittals; provide comments and/or acknowledgements as appropriate.
c) Review contractor's shop drawings, requests for information, change order requests, and requests for information and calculations.
d) Attend substantial completion walkthrough and prepare punchlist for contractor.
e) Provide 1 day of on-site commissioning support during startup and testing. Provide guidance as needed. Programming to be done by City. Adjustment /installation of equipment, testing and start-up services to be provided by Contractor.

5.3 Record Drawing Services

a) Review interim and final record drawing information prepared by Contractor. Provide comments to Contractor as appropriate for correction and resubmittal. This is limited to one (1) round of review and comments for final record drawings.
b) Prepare record drawings in City-approved format of completed improvements, based on information provided by Contractor, and submit to City in Mylar and AutoCAD electronic format.

SUBCONSULTANTS

A. Electrical Subconsultant	*(Scope by Gupta Associates Inc.; attached)*
B. Structural Subconsultant	*(Scope by JQ Infrastructure; attached)*
C. Geotechnical Subconsultant	*(Scope by D&S Engineering; attached)*
D. Subsurface Utility Consultant	*(Scope by The Rios Group; attached)*
E. Surveying Subconsultant	*(Scope by Bowman; attached)*

THIS PROPOSAL ASSUMES AND/OR EXCLUDES THE FOLLOWING:

- *Agency review fees, impact fees, and platting fees are not included herein.*
- *Construction staking is not included herein, unless otherwise stated. A fee for said services may be provided, if requested, once the entire construction staking scope is known.*
- *Additional services required by the City which may arise, and are not outlined above, to be compensated for on an hourly basis or negotiated to a lump sum fee.*
- *Changes made to the force main alignment after design has begun will constitute a change of scope and additional fees will be required.*

We appreciate the opportunity to work with you on this project.

Sincerely,
Pape-Dawson Engineers, Inc.

CITY OF SHERMAN

Matt Garcia
Vice-President

Signature: _____
Name: _____
Title: _____
Date: _____

Cara C. Tackett, P.E.
Managing Principal, Water Resources

W:\projects\703\68\01\Contracts\Brine Discharge Design\Revised Nov 14\Exhibit A - Sherman concentrate discharge and outfall design services - Scope of Workrev111422.docx

EXHIBIT B

PAPE-DAWSON ENGINEERS

Project Name: Concentrate Discharge and Outfall Design Services

Date of Estimate: 10/21/2022

Date (revised): 11/11/2022

Estimator's Initials: SSG/KSK

		Design Fees	Construction Services
Task 1.0	Project Management	$ 44,000.00	
Task 2.0	Off-Site Force main Easement Acquisitions	$ 68,000.00	
Task 3.0	30% Design Phase	$ 165,000.00	
Task 4.0	Construction Documents Design Phase	$ 175,000.00	
Task 5.0	Construction Phase		$ 175,000.00
	Subtotal- Pape-Dawson Engineers	***$ 452,000.00***	***$ 175,000.00***
Sub-Consultants			
	Survey (Bowman)	$ 11,600.00	
	Electrical and I&C (Gupta & Associates, Inc)	$ 90,800.00	$ 32,500.00
	Geotechnical (D&S Engineering Labs)	$ 8,000.00	
	Structural (JQ Infrastructure)	$ 80,600.00	$ 21,100.00
	SUE (The Rios Group)	$ 18,700.00	
	Subtotal- Subconsultants	***$ 209,700.00***	***$ 53,600.00***
	Estimated Project Fees =	**$ 661,700.00**	**$ 228,600.00**
Total Estimated Design + Construction Services Fees =		**$ 890,300.00**	

EXHIBIT F

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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.**

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.**

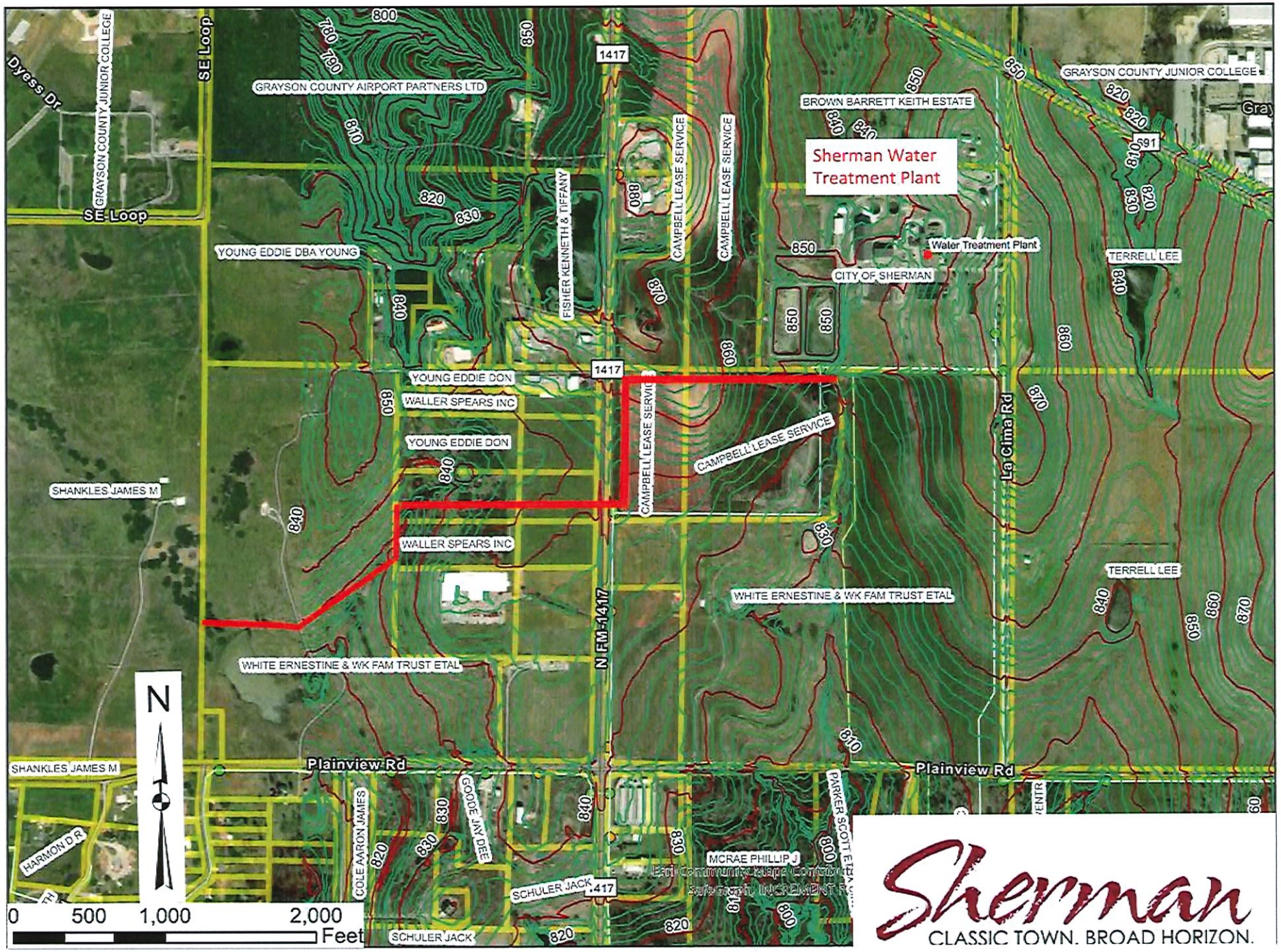
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

11/03/2022

Date


Sherman Water Treatment Plant
Water Treatment Plant
CITY OF SHERMAN
GRAYSON COUNTY AIRPORT PARTNERS LTD
GRAYSON COUNTY JUNIOR COLLEGE
BROWN BARRETT KEITH ESTATE
YOUNG EDDIE DBA YOUNG
YOUNG EDDIE DON
WALLER SPEARS INC
SHANKLES JAMES M
WHITE ERNESTINE & WK FAM TRUST ETAL
TERRELL LEE
CAMPBELL LEASE SERVICE
FISHER KENNETH & TIFFANY
MCRAE PHILLIP J
SCHULER JACK
COLE AARON JAMES
GOODE JAY DEE
PARKER SCOTT ETRA
HARMON D R
Dyess Dr
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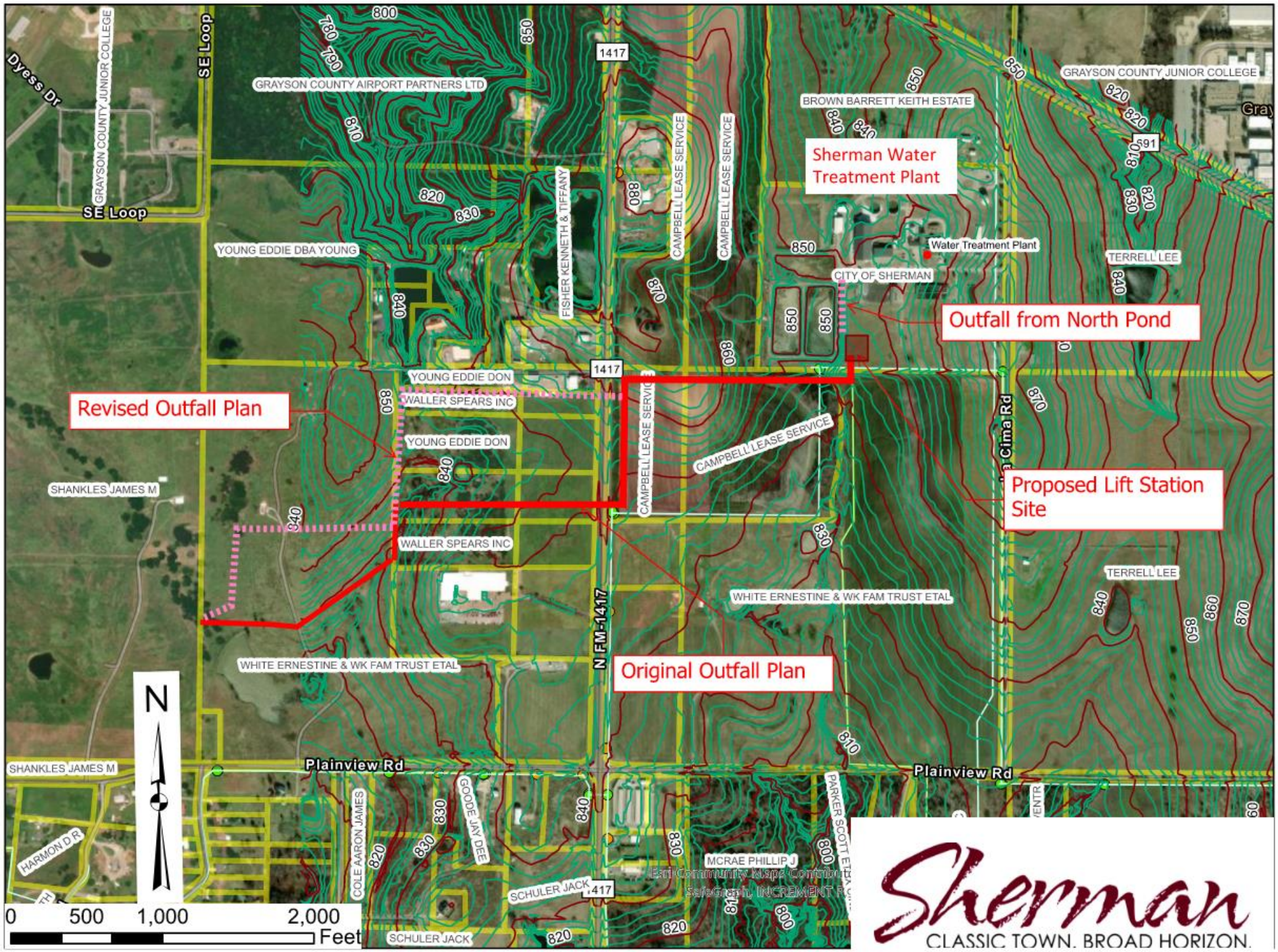
Sherman
CLASSIC TOWN. BROAD HORIZON.


Sherman Water Treatment Plant
Outfall from North Pond
Revised Outfall Plan
Proposed Lift Station Site
Original Outfall Plan
Water Treatment Plant
CITY OF SHERMAN
GRAYSON COUNTY AIRPORT PARTNERS LTD
BROWN BARRETT KEITH ESTATE
GRAYSON COUNTY JUNIOR COLLEGE
YOUNG EDDIE DBA YOUNG
YOUNG EDDIE DON
WALLER SPEARS INC
CAMPBELL LEASE SERVICE
FISHER KENNETH & TIFFANY
TERRELL LEE
SHANKLES JAMES M
WHITE ERNESTINE & WK FAM TRUST ETAL
MCRAE PHILLIP J
Plainview Rd
SCHULER JACK
N FM-1417
SE Loop
Dyess Dr
Cima Rd
1417
N
0 500 1,000 2,000 Feet
Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 10.**

Meeting Date: 05/01/2023

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7068***

Consenting to Assignment by Panda Sherman Power, LLC to Rayburn Energy Station LLC of Water Services Agreement Dated October 26, 2011 and Tax Abatement Agreement Dated October 3, 2011 between the City of Sherman, Texas and Panda Sherman Power, LLC

Issue:

Request for consent to Assignment by Panda Sherman Power, LLC to Rayburn Energy Station LLC of Water Services Agreement and Tax Abatement Agreement between the City of Sherman, Texas and Panda Sherman Power, LLC

Background:

The City and Panda Sherman Power, LLC ("Panda") entered into an agreement dated October 26, 2011 to supply raw water from Lake Texoma to Panda in connection with operations at Panda's power plant. The City and Panda also entered into a tax abatement agreement dated October 3, 2011, relating to the power plant property. Panda intends to enter into a transaction pursuant to which Rayburn Energy Station LLC will acquire all or substantially all of the assets of Panda to be consummated in the near future. Panda is requesting the City's consent to assign all of its rights and delegate all of its obligations under the Water Services Agreement and Tax Abatement Agreement to Rayburn Energy Station LLC.

Origination:

City Manager's Office

Financial Consideration:

There's no financial cost to assigning the contracts.

Staff Recommendation:

It is recommended that the Council consent to the assignment as presented.

Alternatives:

As directed by Council

Attachments

Resolution No. 7068
Request from Panda for Assignment
Water Services Agreement
Tax Abatement Agreement

RESOLUTION NO. 7068

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CONSENTING TO ASSIGNMENT BY PANDA SHERMAN POWER, LLC TO RAYBURN ENERGY STATION LLC OF WATER SERVICES AGREEMENT DATED OCTOBER 26, 2011 AND TAX ABATEMENT AGREEMENT DATED OCTOBER 3, 2011 BETWEEN THE CITY OF SHERMAN, TEXAS AND PANDA SHERMAN POWER, LLC; 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 is authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute the consent to assignment by Panda Sherman Power, LLC to Rayburn Energy Station LLC of the Water Services Agreement dated October 26, 2011 and the Tax Abatement Agreement dated October 3, 2011 between the City of Sherman, Texas and Panda Sherman Power, LLC, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of May 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Panda Sherman Power, LLC
An affiliate of Panda Power Funds

City Manager
City of Sherman, Texas
220 West Mulberry Street
P.O. Box 1106
Sherman, Texas 75091
Facsimile: (903) 892-7355

April 21, 2023

STRICTLY CONFIDENTIAL

RE: Consent Requested for Assignment of Contract

To Whom it May Concern:

Reference is hereby made to (i) that certain Water Services Agreement by and between the City of Sherman, Texas ("***you***"), and Panda Sherman Power, LLC ("***Panda***") dated October 26, 2011; and (ii) that certain Tax Abatement Agreement by and between you and Panda dated October 3, 2011 (the "***Agreements***").

Panda intends to enter into a transaction pursuant to which Rayburn Energy Station LLC (the "***Purchaser***") will acquire all or substantially all of the assets of Panda (the "***Transaction***"), to be consummated in the near future. In connection with the Transaction, Panda intends to assign all of its rights and delegate all of its obligations under the Agreements to the Purchaser (the "***Assignment***").

Panda hereby provides you notice of the Assignment and respectfully requests your consent. By returning a signed copy of this letter, the undersigned acknowledges and agrees that they (i) waive any default or breach under the Agreements that may be caused by the Assignment, and (ii) consent to the Assignment for all purposes under the Agreements.

Please return a signed copy of this letter in PDF format via email to scampbell@pandafunds.com with a copy to colin.mize@wickphillips.com at your earliest convenience, but in no event later than May 1, 2023.

Thank you for your prompt attention to this matter. If you have any questions, please contact the undersigned at (214) 766 - 2879 or via email to scampbell@pandafunds.com.

Sincerely yours,

PANDA SHERMAN POWER, LLC

By: _____
Name: Stephen Campbell
Title: Secretary

Acknowledged, accepted and agreed to this ___ day of _____, 2023.

CITY OF SHERMAN, TEXAS

By: _____
Name:
Title:

579853

Acknowledged, accepted and agreed to
this ___ day of _____, 2023.

PPG FUND I, LLC

By: _____
Name:
Title:

RAYBURN ENERGY STATION LLC

By: _____
Name:
Title:

RESOLUTION NO. 5627

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR WATER SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the Mayor 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 Panda Sherman Power, LLC, a Delaware Limited Liability Corporation, for Water Services in accordance with the terms and provisions of the contract documents attached hereto and incorporated herein for all purposes.

SECTION 3. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the 17th day of October, 2011.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
BRANDON S. SHELBY, CITY ATTORNEY

WATER SERVICES AGREEMENT

between

THE CITY OF SHERMAN, TEXAS

and

PANDA SHERMAN POWER, LLC

October 17, 2011

WATER SERVICES AGREEMENT

This Water Services Agreement (this "Agreement") is entered into as of this 17th day of October, 2011, by and between the CITY OF SHERMAN, TEXAS, a municipal corporation in the County of Grayson, Texas (the "City"), and PANDA SHERMAN POWER, LLC, a Delaware limited liability company authorized to conduct business in the State of Texas ("Panda"). Each of the City and Panda is referred to herein, individually, as a "Party" and, collectively, as the "Parties."

Recitals

WHEREAS, Panda is developing for construction and operation an approximately five hundred (500) megawatt power plant and related infrastructure as may be expanded and/or upgraded (the "Plant") to be located exclusively in the city limits of Sherman, Texas as further described on Exhibit A (the "Property"); and

WHEREAS, Panda requires a supply of water for the construction, testing and operation of such Plant at an initial estimated average rate of approximately four million (4,000,000) gallons per day on an annualized basis; and

WHEREAS, the City obtains a water supply from the GTUA (as defined below), pursuant to a certain "Contract for Water Supply and Sewer Service" dated March 1, 1985, between GTUA and the City ("Water Supply Contract"); and

WHEREAS, the City desires to make available to Panda a supply of water in connection with its operations at the Plant according to the terms and conditions set forth in this Agreement; and

WHEREAS, prior to the Effective Date, Panda is under no obligation to purchase water from the City, and the City is under no obligation to sell water to Panda; and

WHEREAS, the Parties desire to enter into a water services agreement for Project Water, whereby the City will provide to Panda, and Panda will purchase from the City, Project Water on a take or pay basis, according to the terms and conditions in this Agreement; and

WHEREAS, the Sherman City Council, at its October 6, 2008 City Council meeting, approved the delivery of water to the Plant on the terms and subject to the conditions set forth in this Agreement by Resolution No. 5280 on October 6, 2008, in accordance with City Code; and

WHEREAS, the Parties enter into this Agreement with the understanding and intent that City will be under no duty to provide Panda with water once this Agreement terminates as set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

Article I.
DEFINITIONS

1.1 Defined Terms. The following capitalized terms used in this Agreement and in any exhibit or attachment that is or is made a part of this Agreement, and not otherwise defined herein, shall have the following meanings:

(a) "Affected Party" has the meaning ascribed to such term in Section 1.1(u) of this Agreement.

(b) "Affiliate" means, in relation to any Person, any Person (i) who directly or indirectly controls, or is controlled by, or is under common control with, such other Person; or (ii) who directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock of such other Person; or (iii) who has fifty percent (50%) or more of any class of voting stock that is directly or indirectly beneficially owned or held by such other Person; or (iv) who either holds a general partnership interest in such other Person or such other Person holds a general partnership interest in the Person.

(c) "Agreement" has the meaning ascribed to such term in the Preamble hereto.

(d) "Business Day" means any Day other than Saturdays, Sundays and Days on which banks in the City of Sherman, Texas are required or permitted to be closed for all or part of their customary hours of operation.

(e) "Calendar Year" shall mean January 1 through December 31 of any given year.

(f) "City" has the meaning ascribed to such term in the Preamble hereto.

(g) "City Code" means the Sherman municipal code and all other Requirements of Law of the City, as the same may be amended from time to time.

(h) "City System" means the infrastructure owned and operated by the City pursuant to which it delivers Project Water to the Plant and includes all of the City's facilities, infrastructure, properties, and any interests it may hold in GTUA or NTMWD (as defined below) infrastructure and facilities, insofar as they are related to the City providing Project Water to the Plant, together with all future extensions, improvements, enlargements, additions to and replacements of such systems.

(i) "Claim" means any claim, action, cause of action, suit or proceeding before any Governmental Authority (as defined below) or arbitral tribunal.

(j) "Commission" or "TCEQ" means the Texas Commission on Environmental Quality, or its successor agencies.

(k) "Commencement Date" has the meaning ascribed to such term in Section 2.1(c) of this Agreement.

(l) "Confidential Information" means certain information relating to Panda, its contractors and Affiliates, that includes aspects of their respective businesses or operations, including designs and/or patented process, if such information is expressly and specifically labeled as Confidential Information.

(m) "Daily Requirement" has the meaning ascribed to such term in Section 2.1(a) of this Agreement.

(n) "Day" means a 24-hour period commencing at 0:00:00 hours each Day and ending at 23:59:59 hours on the same Day, determined by reference to prevailing Central time.

(o) "Discharge Permit" means the Texas Pollutant Discharge Elimination System Permit No. WQ0010329001, issued by the State of Texas to the City for the Post Oak Wastewater Treatment Facility.

(p) "Economic Indicators" means the annual change in costs as reflected in the US Army Corps of Engineers' *Civil Works Construction Cost Index System (CSCCIS), Table A-2, Yearly Cost Indexes by CWBS Feature Code.* The change shall be calculated as the weighted-average change in the following feature codes, as reflected in Table A-2:

(i) Relocations (02)
(ii) Reservoirs (03)
(iii) Dams (04)
(iv) Roads, Railroads & Bridges (08)
(v) Levees & Floodwalls (11)
(vi) Buildings, Grounds & Utilities (19)
(vii) Permanent Operating Equipment (20)

An example of the calculation and use of the Economic Indicator is attached hereto as Exhibit C.

(q) "Effective Date" has the meaning ascribed to such term in Section 12.15 of this Agreement.

(r) "Encumbrance" means any lien, claim, interest, security interest, charge or other encumbrance.

(s) "Event of Default" has the meaning ascribed to such term in Section 8.1 of this Agreement.

(t) "Financing Party" means one or more Person or Persons providing debt and/or equity contributions, commitments or financing in connection with Panda property or Plant, including any Person or Persons providing credit enhancement for Panda or its Affiliates, refinancing or take-out of any financing with respect to the Property or Plant, and any trustee, agent or authorized representative of such Person or Persons.

(u) "Force Majeure" means and shall be limited to any event or circumstance which is beyond the reasonable control of, without the fault or negligence of, and should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by, the Party asserting Force Majeure (the "Affected Party"), and which delays or prevents the Affected Party from timely performing any obligation hereunder, including, without limitation: (i) acts of God, earthquakes, fire, storms, severe droughts, floods, lightning, hurricanes, tornadoes, and severe snow storms; (ii) explosions, wars, civil insurrections, acts of the public enemy, acts of civil or military authority, sabotage, and terrorism; (iii) strikes, lockouts or other labor disputes with respect to which the Affected Party has not been determined by the National Labor Relations Board to have engaged in any unfair labor practices; (iv) any event which would require either Party to act illegally in order to remain in conformance with this Agreement; (v) an event that would prohibit the City from utilizing any City, NTMWD or GTUA utility infrastructure in the delivery of Project Water to Panda; and (vi) any change in any Requirement of Law or the interpretation thereof by a responsible Governmental Authority which shall in any circumstances under this Subsection; and (vi) require or prevent any change in the development, construction, ownership, operation or financing of the Plant or related real property (including, without limitation, Panda's inability, despite due diligence, to obtain any Permit of any Governmental Authority required for the development, construction, ownership, operation or financing of the Property or the Plant); provided that "Force Majeure" shall not include (a) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic or (b) inability of a Party to make payment when due under this Agreement, unless the cause of such inability is an event that physically prevents payment and that would otherwise constitute Force Majeure as described above.

(v) "Forced Outage" means a shut down by the City in the operation of that portion of the City System such that no Project Water is delivered to any Interconnection Point(s): (i) which shut down is in the reasonable opinion of the City, and consistent with Prudent Water Industry Practice, necessary or required to protect Persons or property (including such water and wastewater system) from contamination or releases that could reasonably result in harm, injury or material damage; (ii) with respect to which the City has notified Panda in accordance with Subsection 2.3(b); (iii) which is of no more than five (5) Days in duration; and (iv) has an impact on operations at the Plant.

(w) "Governmental Authority" means any federal, state, local or other governmental body; any governmental or quasi-governmental, regulatory or administrative agency commission, body or other authority exercising or entitled to

exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

(x) "GTUA" means the Greater Texoma Utility Authority, a conservation and reclamation authority created by the Texas Legislature or any successor agency.

(y) "Interconnection Point" means the location where Project Water from the City System passes through a Master Meter and enters Panda's water infrastructure as more specifically described in Exhibit B hereto.

(z) "Loss(es)" means any loss, cost, expense, Claim, demand, damage, fine, liability, obligation or penalty (including court costs and reasonable attorney's fees and expenses).

(aa) "Master Meter" means the necessary metering equipment, including a meter house or pit, and any other required devices of standard type, for properly measuring the quantity of Project Water traveling through the Interconnection Point.

(ab) "Minimum Annual Fee" has them meaning ascribed to such term in Section 6.1(a) of this Agreement.

(ac) "Notice of Supply" has the meaning ascribed to such term in Section 3.3 of this Agreement.

(ad) "NTMWD" means the North Texas Municipal Water District, a conservation and reclamation authority created by the Texas Legislature or any successor agency.

(ae) "Panda" has the meaning ascribed to such term in the Preamble hereto.

(af) "Permit" means any permit, order, license, declaration, consent, waiver, approval, registration or filing with or other requirement of any Governmental Authority.

(ag) "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other legally recognized entity of whatever nature.

(ah) "Planned Outage" means a shut down by the City in the operations the City System such that no Project Water is delivered to the Interconnection Point: (i) which shut down is scheduled by the City in order to carry out foreseeable preventive, corrective and other maintenance activities on such system; (ii) for which the City has notified Panda in accordance with Section 2.3(a); (iii) which lasts for no more than seven (7) Days; and (iv) has a negative impact on operations at the Plant.

(ai) "Plant" has the meaning ascribed to such term in the Recitals hereto.

(aj) "Post Oak Facility" has the meaning ascribed to such term in Section 2.4 of this Agreement.

(ak) "Project Water" means a supply of untreated raw water received by the City pursuant to the Water Supply Contract from a NTMWD water line extending from Lake Texoma and delivered by the City to Plant at the Interconnection Point.

(al) "Project Water Fee" has the meaning ascribed to such term in Section 6.1(a) of this Agreement.

(am) "Property" has the meaning ascribed to such term in the Recitals hereto.

(an) "Prudent Water Industry Practice" means those practices, methods, standards and acts engaged in or approved by a significant portion of the water supply industry in the United States that, during the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable Requirements of Law (as defined below).

(ao) "Requirement of Law" means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any Permit or any other binding determination of any Governmental Authority.

(ap) "Reservation Fee" has the meaning ascribed to such term in Section 6.1(b) of this Agreement.

(aq) "Term" has the meaning ascribed to such term in Section 11.1 of this Agreement.

(ar) "Termination Fee" has the meaning ascribed to such term in Section 11.8 of this Agreement.

(as) "Water Infrastructure" means (i) the planning, siting, development, design, engineering, procurement, construction and testing; (ii) all pipes, pumps, mains, trunk lines, junctions, extensions, and other infrastructure, improvements and facilities, including but not limited to the Master Meter and the Interconnection Point; and (iii) easements and rights-of-way acquisitions required for the City to deliver Project Water to the Interconnection Point.

(at) "Water Pipelines" means (i) the planning, siting, development, design, engineering, procurement, construction and testing; (ii) all pipes, interconnects, pumps, mains, trunk lines, junctions, extensions, and other infrastructure, equipment,

improvements and facilities; and (iii) the easements and right-of-way acquisitions required for Panda to transport the Project Water from the Interconnection Point.

(au) "Water Supply Contract" has the meaning ascribed to such term in the Recitals hereto.

1.2 Rules of Construction. In this Agreement:

(a) unless the context otherwise clearly requires, (i) references to the plural include the singular, and references to the singular include the plural, (ii) references to the masculine, feminine or neuter include all such forms, (iii) the words "include," "includes," and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation," (iv) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement, (v) "or" is used in the inclusive sense of "and/or," (vi) unless otherwise specified, the terms "day" and "days" mean and refer to calendar day(s), and (vii) the terms "year" and "years" mean and refer to year(s);

(b) unless otherwise specified, any reference to any document, instrument or agreement (i) includes and incorporates all exhibits, schedules and other attachments thereto, (ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof, and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time;

(c) unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement; and

(d) the headings are for reference purposes only and shall not affect in any way the meaning or interpretation of such agreement.

1.3 Recitals. All of the above recitals of this Agreement are incorporated and made a part of this Agreement.

1.4 Captions. All titles of the Sections of this Agreement have been inserted for reference only, and shall in no way affect the interpretation of any provisions of this Agreement.

Article II.
SUPPLY OF PROJECT WATER

2.1 Supply.

(a) **Delivery**. Beginning on the Commencement Date and each Day thereafter during the Term, the City agrees to make available and deliver to the Interconnection

Point the Project Water in amounts needed by Panda on any given Day to operate the Plant (the "Daily Requirement"), not to exceed in the aggregate Four Thousand Five Hundred (4,500) acre-feet per year. Accordingly, for the Term of this Agreement, the City agrees to reserve a supply of Four Thousand Five Hundred (4,500) acre-feet per year of Project Water for exclusive use by Panda.

(b) **Specifications.** The City shall deliver the Project Water to the Interconnection Point located in the City limits with a peak rate of not less than Four Thousand (4,000) gallons per minute and not more than Four Thousand Five Hundred (4,500) gallons per minute at the Master Meter. Panda agrees that the City is under no obligation to increase any of its water utility infrastructure or capacity to satisfy any of the provisions of the Agreement, except as otherwise expressly stated herein. The Parties may agree in writing to relocate the Interconnection Point or to add additional Interconnection Points within the City limits, as necessary, and at Panda's sole expense, within the City limits.

(c) **Commencement of Water Services.** Following the completion of the construction of the Water Infrastructure and Water Pipelines in accordance with the requirements of Article III herein, and the City's delivery of the Notice of Supply pursuant to Section 3.3 herein, the City shall commence supplying Project Water to the Interconnection Point on the date set forth in a written notice from Panda to commence water services (the "Commencement Date"). From and following the Commencement Date, the City will use its best efforts to ensure a continuous flow of Project Water to the Interconnection Point.

(d) **Water Conservation and Drought Contingency Planning.** Panda shall comply with the provisions of any water conservation and drought contingency plan adopted by the City which is prescribed or approved by the TCEQ, including implementation of any necessary rationing plan or program which the City adopts for implementation. In lieu of adopting the City's water conservation and drought contingency plans, Panda may implement alternative water conservation and drought contingency plans, provided those plans comply with Title 30 Texas Administrative Code, Chapter 288 and will conserve the same or a greater amount of water as under the plans implemented by the City, and further provided the alternative plans are approved by the City within thirty (30) Days after the Effective Date. Such water conservation and/or drought contingency plans shall be applicable to Project Water accepted by Panda from the City. At all times, the City shall provide Panda with an updated copy of any applicable water conservation and drought contingency plans.

(e) **Resale of Water.** Except as provided in Section 12.3, Panda shall have no right to transfer, transport, reallocate, or resell any water received under this Agreement without the prior written authorization by the City. If the Agreement is assigned to another party pursuant to Section 12.3, once the Agreement is assigned, any subsequent assignees shall have no right to transfer, transport, reallocate, or resell any water received under this Agreement without the prior written authorization by the City.

(f) **WATER QUALITY AND "AS IS" SALE.** OTHER THAN THE REPRESENTATION, WARRANTIES AND COVENANTS PROVIDED FOR HEREIN, THE PARTIES ACKNOWLEDGE THAT THERE IS NO WARRANTY WITH RESPECT TO THE QUALITY OF THE PROJECT WATER UNDER THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, AND THAT PROJECT WATER IS PROVIDED TO PANDA BY THE CITY "AS IS", WITHOUT WARRANTY OF ANY KIND AS TO QUALITY, SUFFICIENCY, ADEQUACY OR USEFULNESS FOR ANY INTENDED PURPOSE; PROVIDED, THAT THE CITY HAS NOT AND SHALL NOT ALTER, TREAT OR OTHERWISE MODIFY THE PROJECT WATER IN ANY WAY BEFORE SUCH PROJECT WATER PASSES THROUGH THE INTERCONNECTION POINT.

2.2 Title, Care, Custody and Control; Risk of Loss. As between the Parties, the City shall be deemed to have exclusive title, care, custody and control for all Project Water up to, and shall be responsible for all Losses associated with all Project Water to, the Interconnection Point. The City shall deliver to Panda, at the Interconnection Point, good and marketable title to all Project Water delivered under this Agreement, free and clear of all Encumbrances. Panda shall be deemed to take exclusive title, care, custody and control of all Project Water, and shall be responsible for all Losses associated with all Project Water, from and after the Interconnection Point.

2.3 Maintenance and Outages.

(a) **Planned Outages.** By December 1 of any Calendar Year during the Term, the City shall provide notice to Panda of the number and duration of any Planned Outages to be conducted by the City during the following Calendar Year; provided, however, that the City shall not schedule more than two (2) such Planned Outages in any given Calendar Year. The City shall coordinate the timing of any Planned Outage with Panda and shall cooperate with Panda to minimize the impact of any Planned Outage on the operation and maintenance of the Plant.

(b) **Forced Outages.** When a Forced Outage occurs, curtailing the flow of Project Water to the Interconnection Point, the City shall notify Panda of the existence, nature and expected duration of the Forced Outage as soon as practical. The City shall use its best efforts to ensure that any interruption in Project Water service to the Plant due to a Forced Outage shall continue only for so long as reasonably necessary. The City shall immediately inform Panda of any changes in the nature and expected duration of such Forced Outage for the duration of such Forced Outage.

2.4 Additional Water Services. The Parties acknowledge that, pursuant to its current Discharge Permit, the City is unable to provide effluent as an alternative water source in connection with the operation of the Plant. In the event that the City makes upgrades to its Post Oak Wastewater Treatment Facility, located on the date hereof generally in the southeastern quadrant of the City of Sherman, Texas (the "Post Oak Facility"), and obtains modifications to its Discharge Permit such that (i) Panda would be able to utilize effluent from the Post Oak Facility in connection with its operations at the Plant; and/or (ii) the City would be able to take return wastewater from the Plant at the Post Oak Facility; the Parties hereto agree to negotiate in good faith terms and conditions relating to such water services that may be provided by the City; provided,

that nothing in this Section 2.4 shall require Panda to construct or fund the construction of any additional infrastructure in order to deliver effluent to the Plant or return wastewater to the Post Oak Facility, and nothing in this Section 2.4 shall require the City to accept or treat wastewater from the Plant at the Post Oak Facility or any other City-owned wastewater treatment facility.

Article III.
DESIGN AND CONSTRUCTION OF ADDITIONAL INFRASTRUCTURE FOR DELIVERING PROJECT WATER AND RETURN FLOWS

3.1 Water Infrastructure.

(a) **Design and Construction.** Panda shall be responsible for and shall pay all costs of the Water Infrastructure in accordance with this Agreement. The City shall grant all easements in, through and over real property owned or controlled by the City necessary for the design and construction of the Water Infrastructure. Panda shall design and construct the Water Infrastructure pursuant to Prudent Water Industry Practice and City standards as may be more specifically provided for in the City Code. Upon completion of the Water Infrastructure design, Panda shall submit such designs to the City for approval; and such approval shall not be unreasonably withheld, conditioned or delayed. Upon completion of the Water Infrastructure, Panda shall transfer title to the Water Infrastructure, and any and all real property interests associated with the Water Infrastructure, to the City free and clear of all Encumbrances. In connection with the construction of the Water Infrastructure, Panda shall obtain a warranty from the construction contractor for the Water Infrastructure, which shall extend for a period of at least one (1) year from the final completion of the Water Infrastructure and shall warrant that the construction work furnished or performed by such contractor (i) has been performed in a good and workmanlike manner and is of the quality specified in the applicable construction contract; (ii) has been performed in accordance with and conformed in all respects to the specifications of the applicable construction contract and all Requirements of Laws and applicable Permits; and (iii) is free of defects and deficiencies. In addition, Panda shall use reasonable efforts to obtain a warranty from the construction contractor that the construction work performed by the contractor associated with the Water Infrastructure is fit for its intended purpose.

(b) **Use of Water Infrastructure.** During the Term, the City shall not use the Water Infrastructure for any purpose other than to deliver Project Water to the Plant and perform its obligations under this Agreement without the prior written consent of Panda, which such consent shall be at Panda's sole discretion.

3.2 Additional Infrastructure. Panda shall be responsible for and shall pay all costs associated with the Water Pipelines in accordance with this Agreement. Panda shall design and construct the Water Pipelines pursuant to Prudent Water Industry Practice and City standards as may be more specifically provided for in the City Code.

3.3 Commencement of Design and Construction.

(a) Panda may, at its sole discretion, design and/or construct the Water Infrastructure or Water Pipelines before it has received written notice from the City that GTUA and NTMWD have entered into an agreement providing for the transportation and supply of Project Water to the Interconnection Point (the "Notice of Supply"). Notwithstanding the foregoing, in no event shall the City be required to provide Project Water to Panda until the Notice of Supply has been issued, the design of the Water Infrastructure and Water Pipelines have been approved, and the Water Infrastructure and Water Pipelines have been constructed in accordance with the requirements of this Agreement.

(b) Panda agrees that the construction of the Water Infrastructure and Water Pipelines necessary to provide Project Water on the Commencement Date shall be completed within five (5) years of the Effective Date of this Agreement.

(c) The City agrees that it will, at Panda's request and in accordance with its normal practice, process all City or other regulatory agency permits, approvals, or processes reasonably requested by Panda for its performance under this Agreement. Panda agrees to provide the City with a copy of any licenses, permits, or approvals that are not obtained from the City.

Article IV.
METERING EQUIPMENT

WILL NEED TO GET QUOTE ON INSTALL, CUST RESPONSIBLE FOR COST.

4.1 Master Meter. The City shall furnish, install, operate and maintain, at Panda's sole expense, a Master Meter at the Interconnection Point. The Master Meter shall remain the property of the City at all times and shall be located on the City's property. For the purposes of this Agreement, the volume of water delivered by the City through the Interconnection Point to the Plant shall be determined based upon the data collected at the Master Meter.

4.2 Access to Master Meter. Panda may have access to the Master Meter only upon approval by the City. Such approval shall not be unreasonably withheld or delayed, so long as Panda provides the City with a written request forty-eight (48) hours before such access would occur.

4.3 Regular Testing of the Master Meter. The City shall test the Master Meter for accuracy once each twelve (12) month period in accordance with Prudent Water Industry Practice and in accordance with the American Water Works Association Standards for water meters. In the event the percentage of accuracy of the Master Meter is found to be within the tolerance of two percent (2%), such meter shall be deemed to have correctly measured the quantity of water taken under this Agreement. The City shall provide Panda with five (5) Days' notice of its intent to test the Master Meter; and Panda shall have the right to be present when such testing is conducted. If, however, upon any test of the percentage of accuracy tolerance, such tolerance is found to be in excess of two percent (2%), then the Master Meter shall be adjusted at once to

register correctly and accurately; and the amount of water accepted by Panda shall be corrected in accordance with the percentage of inaccuracies found by such test for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then the correction shall account for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. Any amounts owed to either Party as a result of the testing provided for in this Section 4.3 and Section 4.4 shall be paid in accordance with Section 6.3(b) hereof.

4.4 Additional Testing of the Master Meter(s). Panda shall have the right to request the City to test the Master Meter more frequently than once per year as contemplated by Section 4.3 herein, but no more frequently than once per month. Upon any such request, the City agrees to perform its testing and calibration of the Master Meter in the presence of a representative of Panda; and the Parties shall jointly observe any adjustments that are made to the Master Meter in case any adjustments shall be necessary. For such additional testing requests, the City shall give Panda notice forty-eight (48) hours in advance of the time when any such testing shall occur. The City may proceed with such testing and adjustment, if necessary, in the absence of any representative of Panda. Panda shall pay the cost of any additional test for the Master Meter if the test shows that the Master Meter is accurate [within two percent (2%) registration]; but the City shall pay the costs of the additional test for such if the results indicate that such Master Meter is not accurate [in excess of two percent (2%) registration].

4.5 Maintenance of the Master Meter(s). Except as provided in Section 4.4 above, all maintenance and/or repairs to the Master Meter at the Interconnection Point shall be made by the City or a contractor on behalf of the City, at Panda's sole expense. All expenses thereof shall be the usual and customary expenses in accordance with Prudent Water Industry Practices. The City shall provide repairs to the Master Meter in a prompt and timely manner and in accordance with Prudent Water Industry Practice and in accordance with the American Water Works Association Standards for water meters. If the City cannot make such repairs in a timely manner, then Panda shall have the option of making such repairs at its own expense, subject to prior approval and post-inspection of the repairs by the City Manager or the City Manager's designee.

Article V.
OWNERSHIP, OPERATION AND MAINTENANCE OF WATER INFRASTRUCTURE; COMMENCEMENT OF WATER SERVICE

5.1 Ownership and Operation; Required Permits.

(a) Upon conveyance of the Water Infrastructure and the underlying real property by Panda to the City, the City shall maintain and operate the Water Infrastructure during the Term of this Agreement, in accordance with Prudent Water Industry Practices, all applicable Requirements of Law, and all applicable Permits; and Panda shall reimburse the City for the usual and customary expenses in accordance with

Prudent Water Industry Practices costs associated therewith as provided for in Section 6.2.

(b) Panda, at all times during the Term of this Agreement, shall operate and maintain the Water Pipelines at its sole cost and in accordance with Prudent Water Industry Practices, all applicable Requirements of Law, and all applicable Permits.

(c) During the Term of this Agreement, the City shall obtain and use its best efforts to maintain in full force and effect all Permits and agreements required as of the Effective Date and during the term of this Agreement, for the City to perform its obligations under this Agreement.

5.2 Relationship of the Parties. Each of the Parties undertake performance of this Agreement as an independent contractor. Nothing in this Agreement shall create a relationship of agency, employment, joint venture or partnership between Panda and the City, or their respective officers, directors, employees, agents, subcontractors and representatives for any purpose whatsoever.

Article VI.
BILLING AND PAYMENT FOR SERVICES

6.1 Water Fees. Beginning on the Commencement Date and continuing throughout the duration of this Agreement, unless otherwise provided for herein, Panda agrees to pay to the City the following fees: CAN WE BILL UNDER NORMAL BILLING SCHEDULE?

(a) **Project Water Fee and Minimum Annual Fee.** Panda shall pay the City a fee, which shall initially be set at a rate of sixty-one cents ($0.61) per one thousand (1,000) gallons, for all of the Project Water flowing through the Master Meter at the Interconnection Point (the "Project Water Fee"). In the event that the total amount of Project Water Fees paid by Panda in any given Calendar Year is less than Four Hundred Forty-Six Thousand Dollars and No Cents ($446,000.00) [as may be adjusted pursuant to Section 6.1(c) below] (the "Minimum Annual Fee"), at the end of such Calendar Year, Panda shall pay an amount to the City equal to the Minimum Annual Fee less the actual amount of Project Water Fees paid by Panda in accordance with Section 6.2. If the first and/or last year of the Term of this Agreement shall be less than a full Calendar Year, then the applicable Minimum Annual Fee shall be pro-rated accordingly.

WHAT IS REVENUE CODE FOR RESERVATION FEE? BILL AS SEPARATE LINE ITEM OR CAN WE ADD TO RATE STRUCTURE?

(b) **Reservation Fee.** In addition to any amounts paid pursuant to Section 6.1(a) above, Panda agrees to pay the City a fee in the initial amount of Twenty Thousand Three Hundred Fifty Dollars and No Cents ($20,350.00) per month, in consideration for the City's reservation of Four Thousand Five Hundred (4,500) acre-feet of Project Water per year (the "Reservation Fee"). The Reservation Fee shall be adjusted in accordance with Section 6.1(c) below.

(c) **Modification of the Rates.** The Project Water Fee, the Minimum Annual Fee, and the Reservation Fee shall be adjusted annually starting with the first full Calendar Year during the Term of this Agreement by multiplying the applicable fee by

one plus the Economic Indicator, which shall be calculated for the applicable Calendar Year as shown on Exhibit C hereto. The City shall make any adjustments for the upcoming Calendar Year and shall send written notice of such adjustments to Panda by December 1st of the then current Calendar Year. Additionally, the Parties recognize that the City obtains its water supply from various sources, the costs of which are also subject to change. At each and every instance that the City's direct costs associated with providing the Project Water increase, the Parties agree that the City may further adjust the Project Water Fee once each Calendar Year to reflect such actual proportional cost increases. Panda may dispute any adjustments made in the fees charged by the City in accordance with this Section 6.1(c) and request that such adjustments be reviewed by an independent third-party accounting firm selected by the City and approved by Panda. The City and Panda shall share equally in all costs associated with such independent review; provided, that, if such review results in no changes to the adjustments calculated by the City, Panda shall reimburse the City for all costs relating to such review previously paid by the City and if such review results in changes to the adjustments calculated by the City, the City shall reimburse Panda for all costs relating to such review previously paid by Panda.

(d) **Just and Reasonableness of the Rates.** The Parties recognize that the City is subject to public utility regulations in connection with providing Project Water to the Interconnection Point and, accordingly, the Parties agree that the initial Project Water Fee established in Section 6.1(a), above, is just and reasonable and does not adversely affect the public interest. The Parties further agree that any increases to the Project Water Fee are also just and reasonable and do not adversely affect the public interest, so long as such increases are made in accordance with Section 6.1(c) of this Agreement. Panda agrees not to object, oppose, or contest the Project Water Fee, so long as the Project Water Fee and/or any increases thereto are made in accordance with Section 6.1(c) of this Agreement. Notwithstanding the foregoing, nothing herein shall limit or prohibit Panda from exercising its right to contest and/or dispute any fee as set forth herein.

OK TO BILL END OF MONTH AS LONG AS BILLED BY 15TH OF MONTH. LATE FEES APPLY AFTER 21 DAYS.

6.2 Billing and Payment. The City shall invoice Panda on a monthly basis in an amount equal to the Project Water Fee plus the Reservation Fee; and Panda shall pay all amounts within fifteen (15) Days of its receipt of any such invoice. By January 15th of every year during the Term of this Agreement, the City shall invoice Panda for an amount representing the shortfall, if any, between the total Project Water Fee paid for the prior Calendar Year and the applicable Minimum Annual Fee, as set forth in Section 6.1(a), and any applicable operation and maintenance costs for the Water Infrastructure incurred by the City during the prior Calendar Year. In the event Panda does not pay any amounts in full within thirty (30) Days of each and every invoice date, the City may charge interest on the unpaid balance at a rate of one and one-half percent (1.5%) per month as calculated from the date when the invoice payment is due until the date that such payment is received by the City. If Panda at any time disputes the fees charged by the City or the amount of a monthly invoice, Panda agrees to nevertheless timely make the disputed payment or payments. If it is subsequently determined by agreement or court decision that the disputed amount paid by Panda should have been less, or more,

OK TO APPLY 10% LATE FEE? WHAT ABOUT INTEREST?

the City shall promptly revise the monthly invoice amount in a manner that Panda or the City will recover the amount due and interest, with interest being calculated at the rate of one and one-half percent (1.5%) per month. Notwithstanding the foregoing, in the event Panda has failed to pay an invoice and such non-payment has lasted for at least sixty (60) Days, then the City may immediately stop supplying Project Water pursuant to Section 2.1 until it has received the payment in question and such non-payment shall qualify as an Event of Default by Panda.

6.3 Maintenance and Audit of Records.

(a) During the Term, and for a minimum period of one (1) year from and after the termination or expiration of this Agreement (unless Panda is making payments pursuant to Section 11.8, in which case this Section 6.3 shall stay in full force and effect until twelve (12) months following the last payment made by Panda pursuant to Section 11.8), the City shall keep all books and records necessary for calculation, billing and payment of all fees to be paid by Panda pursuant to this Agreement and shall allow Panda, its Affiliates, lenders, auditors, representatives, agents and advisors reasonable access to those books and records at any time during the period such books and records are required to be maintained, upon request and during normal business hours.

(b) In the event an audit discloses an overpayment by Panda to the City, the City shall reimburse Panda within thirty (30) Days of written notification of such overpayment. If the Parties mutually agree, the overpayment to be reimbursed may be applied to current or future amounts owed by Panda to the City based upon the terms of this Agreement. In the event an audit discloses that an underpayment by Panda was made to the City, Panda shall reimburse the City within thirty (30) Days of written notification of such underpayment.

Article VII.
FORCE MAJEURE

7.1 Procedure for Calling Force Majeure

(a) **Notice of Force Majeure.** The Affected Party shall give prompt notice to the other Party of any event or circumstance of Force Majeure as soon as reasonably practicable after becoming aware of such event or circumstance. Each notice served by an Affected Party to the other Party pursuant to this Section 7.1(a) shall specify the event or circumstance of Force Majeure in respect of which the Affected Party is claiming relief. Noncompliance by the Affected Party with the procedure specified in this Section 7.1(a) shall relieve the other Party from accepting the Affected Party's claim of Force Majeure until the Affected Party so complies; and the Affected Party shall not be excused from performance of any obligation under this Agreement until it so complies.

(b) **Obligations During Pendency of Force Majeure.** The Affected Party shall, by reason of any event or circumstance of Force Majeure in respect of which it has claimed relief under this Section 7.1:

(i) use its best efforts to mitigate the effects of such Force Majeure and to remedy any inability to perform its obligations hereunder due to such event or circumstance as promptly as reasonably practicable;

(ii) furnish weekly reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of Force Majeure; and

(iii) resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the event or circumstance of Force Majeure is remedied or such event or circumstance, or the effect thereof on the Affected Party, ceases to exist.

(iv) If performance is available in part and appropriate under the circumstances of the Force Majeure, then the Party that is claiming the Force Majeure will perform to the performance level not affected by the Force Majeure, with the approval of the other Party. This subparagraph shall not apply if the performance level available under the circumstances of the Force Majeure will interfere with the City's ability to provide necessary water services to the general public.

(c) **Resumption of Performance.** When the Affected Party is able, or would have been able if it had complied with its obligations under this Section 7.1, to resume the performance of any or all of its obligations under this Agreement affected by the occurrence of an event or circumstance of Force Majeure, then the period of Force Majeure relating to such event or circumstance shall be deemed to have ended.

7.2 Effects of Force Majeure

(a) **Relief From Obligation of Performance.** Provided it has complied with its obligations under Section 7.1, the Affected Party shall be relieved from any liability for the non-performance of its obligations under this Agreement where and to the extent that such non-performance is attributable directly to the event or circumstance of Force Majeure asserted.

(b) **Relief From Obligation of Counterperformance.** The non-Affected Party shall not be required to perform or resume performance of its obligations to the Affected Party corresponding to the obligations of the Affected Party excused by reason of Force Majeure.

7.3 Limitations on Force Majeure

(a) **Scope and Duration.** No event or circumstance of Force Majeure shall relieve the Affected Party of any obligation that accrued prior to the commencement of such event or circumstance of Force Majeure; and the suspension of the Affected Party's performance shall be no longer in duration and no greater scope than is required by the event or circumstance of Force Majeure.

(b) **No Extension of Term.** Except as agreed by the Parties, no suspension, delay or failure of performance caused by a Force Majeure event shall extend this Agreement beyond the Term.

Article VIII.
DEFAULT AND REMEDIES; INDEMNITY

8.1 Event of Default.

(a) **By the City.** The following event shall each be an "Event of Default" by the City, immediately upon its occurrence, without requirement of notice or right to cure: any failure to deliver Project Water in the Daily Requirement as set forth in Section 2.1(a) on or after the Commencement Date to the Interconnection Point due to any cause other than a Forced Outage, a Planned Outage, a cessation of Project Water as authorized in Section 6.2 or Section 8.2, or an outage due to Force Majeure, whenever occurring.

(b) **By Either Party.** Except as set forth in Sections 8.1(a), it shall be an "Event of Default" by either Party if such Party shall breach any material covenant, obligation, representation or warranty of such Party under this Agreement, which breach remains uncured for a period of thirty (30) Days after written notice from the non-breaching Party of the existence of such breach; provided, that the non-breaching Party shall extend the cure period for any such breach (and no Event of Default shall occur) if the nature of the default is such that it cannot reasonably be remedied within such thirty (30) Day period, and the breaching Party has diligently commenced corrective action within such thirty (30) Day period and is diligently pursuing such correction thereafter.

8.2 Remedies. Other than as set forth in Section 11.8, if an Event of Default has occurred and is continuing, the non-defaulting Party shall be entitled to the following remedies which shall be cumulative: (i) injunctive relief; (ii) specific performance; (iii) the right to cure the other Party's default; (iv) termination; (v) any of the remedies afforded in this Agreement; and (vi) any other remedies permitted at law or in equity, including damages. In addition to the aforementioned remedies, in the occurrence of an Event of Default by Panda, the City shall also be entitled to stop supplying Panda with Project Water pursuant to Section 2.1 herein until the Event of Default is cured.

8.3 Indemnification by Panda.

(a) **Indemnification by Panda.** IN ADDITION TO THE OTHER REMEDIES AFFORDED TO THE CITY IN THIS AGREEMENT, PANDA SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, ATTORNEYS, CONTRACTORS, OR AGENTS (HEREINAFTER "CITY'S INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART) PANDA'S PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.

(b) **Notice of Indemnified Loss.** The City's Indemnified Party shall promptly notify Panda of any indemnified Losses or Claim for indemnified Losses in respect of which the City's Indemnified Party may be entitled to indemnification under this Section 8.3. Such notice shall be given as soon as reasonably practicable after the City's Indemnified Party becomes aware of the Loss or Claim for Losses.

(c) **Defense of Third Party Claims.** In the event any action or proceeding shall be brought against the City's Indemnified Party by reason of any matter for which the City's Indemnified Party is indemnified hereunder, Panda shall, upon notice from the City's Indemnified Party or its authorized agents or representatives, at Panda's sole cost and expense, resist and defend the same with legal counsel selected by Panda; provided, however, that Panda shall not admit liability in any such matter on behalf of the City's Indemnified Party. Panda's obligation to defend shall apply regardless of whether the City's Indemnified Party is solely or concurrently negligent. Nothing herein shall be deemed to prevent the City's Indemnified Party, at its election and at its own expense, from cooperating with Panda and participating in the defense of any litigation by their own counsel. If Panda fails to retain defense counsel within seven (7) business days after receipt of City's Indemnified Party written notice that the City's Indemnified Party is invoking its right to indemnification under this Agreement, the City's Indemnified Party shall have the right to retain defense counsel on their own behalf; and Panda shall be liable for all usual and customary defense costs incurred by the City's Indemnified Party.

(d) **Limitation on Indemnity.** The amount owing to an indemnified Party will be the amount of the indemnified Party's Losses net of any insurance proceeds received by the indemnified Party following a reasonable effort by the indemnified Party to obtain such insurance proceeds.

8.4 Insurance.

(a) Panda shall, at its sole cost and expense, obtain, maintain and provide, throughout the term of this Contract, insurance in the amounts, types and coverages in accordance with Prudent Water Industry Practices. Such insurance may be in the form

of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

(1) General commercial liability of Two Million Dollars and No Cents ($2,000,000.00) per occurrence and Two Million Dollars and No Cents ($2,000,000.00) in the aggregate.

(2) Automobile liability coverage with a minimum policy limit of One Million Dollars and No Cents ($1,000,000.00) combined single limit. This coverage shall include all owned, hired and non-owned automobiles.

(3) Workers compensation and employers liability coverage. Statutory coverage limits for Coverage A and Five Hundred Thousand Dollars and No Cents ($500,000.00) Coverage B employers' liability is required. Panda must provide the City with a waiver of subrogation for worker's compensation claims.

(b) The insurance coverage required herein must include coverage for work performed by Panda's contractors and subcontractors.

(c) Panda shall provide the City with written proof of insurance at least thirty (30) Days prior to the start of construction of the Water Infrastructure, and such insurance shall list the City as an additional insured, except for the Worker's compensation coverage. Panda shall not be required to furnish separate proof when applying for permits.

Article IX.
REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 City Representations and Warranties. The City hereby represents and warrants to Panda, as of the date hereof, as follows:

(a) The City is a municipal corporation organized under the laws of the State of Texas and has all requisite power and authority to enter into and to perform its obligations hereunder and to carry out the terms hereof and the transactions contemplated hereby.

(b) This Agreement has been duly executed and delivered on behalf of the City by the appropriate officials of the City and constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles.

(c) The execution, delivery and performance of this Agreement by the City have been duly authorized under the Charter, the City Code and all other applicable Requirements of Law of the City and will not contravene any provision of or constitute

a default under any other agreement or instrument to which the City is a party or by which the City or its property may be bound, and do not conflict with any Requirement of Law currently in force and applicable to the City.

(d) There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the City's knowledge) threatened, against the City, whether related to the operation of any City facility that will supply Project Water under this Agreement, or otherwise, before or by any Governmental Authority which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the City of its obligations hereunder, (ii) could have a material adverse affect on the condition (financial or otherwise), business or operations of the City, or (iii) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

9.2 Panda Representations and Warranties. Panda represents and warrants to City, as of the date of this Agreement, as follows:

(a) Panda is a limited liability company organized and in good standing under the laws of the State of Delaware, is authorized to conduct business in Texas, and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(b) This Agreement has been duly executed and delivered on behalf of Panda, and constitutes the legal, valid and binding obligation of Panda, enforceable against Panda in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles.

(c) There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of Panda's knowledge) threatened, against Panda or related to the operation of the Plant before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Panda of its obligations hereunder, (ii) could have a material adverse affect on the condition (financial or otherwise), business or operations of Panda, or (iii) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

(d) No City officer or employee has been or will be compensated in any manner with respect to directly or indirectly bringing the Parties together, agreement negotiations, or the entering into this Agreement. In no event will Panda pay a fee to or in any other manner compensate any City of Sherman Council member, officer, or employee in connection with the acceptance of this Agreement. A breach of this Section 9.2(d) shall result in automatic and immediate termination of this Agreement and shall be an Event of Default.

Article X.
CONFIDENTIALITY

10.1 Confidential Information. The City acknowledges that the City and its officers, directors, employees, contractors, agents and representatives may have access to Confidential Information and that such information constitutes the valuable, special and unique property of Panda, its contractors and affiliates, to the extent that such information is expressly and specifically labeled as "Confidential Information."

10.2 Limitations on Use and Disclosure. The City shall maintain the Confidential Information pursuant to the Public Information Act (formerly known as the Open Records Act), Chapter 552 of the Texas Government Code. In the event a request is made for Confidential Information under such Chapter, the City shall promptly inform Panda of the request and shall seek all protective measures as may be provided by such Chapter in connection with such disclosure.

10.3 Survival. The provisions of this Article X shall survive the dissolution or termination of this Agreement.

Article XI.
TERM, SUSPENSION AND TERMINATION, DISPUTE RESOLUTION

11.1 Term. Unless earlier terminated in accordance with this Agreement, this Agreement shall be effective as of the Effective Date; and the Term of this Agreement shall continue in full force and effect for a period of thirty (30) years from the Commencement Date.

11.2 Termination by Panda for Cause. Panda shall have the right (but not the obligation) to terminate this Agreement upon thirty (30) Days prior written notice to the City upon the occurrence of any Event of Default by the City.

11.3 Termination or Suspension by Panda for Convenience. At any time prior to the Commencement Date, Panda shall have the right, for its sole convenience and without cause, to terminate or suspend, for a period not to exceed three (3) years, in whole or in part, the City's performance of any of its duties or obligations under this Agreement, upon thirty (30) Days prior written notice to the City. If this Agreement is terminated pursuant to this provision or if the suspension of the Agreement exceeds three (3) years, then the City is entitled to all expenses it incurred as a result of this Agreement after the Effective Date of the Agreement.

11.4 Termination by the City for Cause. Except as otherwise provided in this Agreement, the City shall have the right (but not the obligation) to terminate this Agreement (in accordance with the terms of this Agreement) upon any of the following:

(a) the occurrence of any Event of Default by Panda; or

(b) if Panda has not taken delivery of Project Water for a period of twelve (12) consecutive months after the Commencement Date; or

(c) Panda has failed to make or dispute a payment pursuant to Section 6.2 and such non-payment has lasted for more than sixty (60) Days; or

(d) Panda's construction of the Water Infrastructure and Water Pipelines necessary to provide Project Water on the Commencement Date is not completed within five (5) years of the Effective Date of this Agreement.

11.5 Automatic Termination. This Agreement shall automatically terminate in the event that:

(a) the City fails to deliver the Notice of Supply due to failure of the GTUA and NTMWD to execute the transportation agreement referenced in Section 3.3 above (provided that the City has used its best efforts to secure the transportation agreement) within six (6) months after the Effective Date of this Agreement; or

(b) notwithstanding any rights and remedies available to Panda, the City is unable to obtain any necessary Permit, Permit amendment, or other necessary authorization from the TCEQ, such that the City is unable to perform its obligations hereunder and the City is unable to cure such defect for a period of twelve (12) consecutive months; provided it has used its best efforts to remedy such defect and provided, further, that Panda has not terminated this Agreement pursuant to Section 11.2.

11.6 Termination by Either Party for Force Majeure. Either Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) Days prior written notice to the other Party in the event the suspension of any material obligation of the Affected Party resulting from one or more events of Force Majeure continues (i) prior to the Commencement Date, for a period of more than one (1) month, or (ii) from and after the Commencement Date, for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Affected Party shall only be entitled to terminate this Agreement under this Section 11.6 if it has met its obligations under Section 7.1. The Party not claiming Force Majeure may, but shall not be obligated to, extend either such period for such additional period as it deems appropriate if the Affected Party is exercising due diligence in its efforts to cure the Force Majeure event.

11.7 Effect of Termination; Survival. Upon receipt of any notice of termination delivered pursuant to this Article XI, this Agreement shall terminate, effective immediately, and will be of no further force or effect, except with respect to (i) rights and obligations of the Parties arising during or relating to any period prior to termination, and (ii) the covenants and obligations of the Parties set forth in this Agreement intended to survive the expiration or termination of this Agreement, which shall survive the expiration or earlier termination of this Agreement as expressly provided in this Agreement or, if no express survival period is provided for, then until such obligations have been satisfied or, if later, pursuant to any applicable statute of limitations.

11.8 Termination Fee. If, any time following the Commencement Date, this Agreement is terminated by the City pursuant to Section 11.4, Panda shall pay to the City an annual amount of Two Hundred Nineteen Thousand Dollars and No Cents ($219,000.00) as may be adjusted below (the "Termination Fee") until Panda has made such payment for a number of years equal to thirty (30) less the actual Term of the Agreement (taking into account full years only). The Termination Fee shall automatically be reduced by Twenty-Two Dollars and Twenty-Three Cents ($22.23) per every equivalent acre foot of water sold by the City for industrial uses. It is the Parties' intent that the Termination Fee shall only be adjusted downward, with the adjusted Termination Fee carrying forward each year until the City has contracted to sell an equivalent of approximately Four Thousand Five Hundred (4,500) cumulative acre feet of water for industrial uses. The first Termination Fee shall be paid no later than sixty (60) days following the date of termination and on the anniversary of the termination date each year thereafter for the applicable time period set forth in this Section 11.8. The Parties acknowledge that, if Panda should default under this Agreement, the amount of damages to the City would be difficult if not impossible to determine; and the amount specified as liquidated damages in this section that Panda would incur is sufficient and shall represent the City's sole and exclusive remedy and shall be paid in lieu of any Minimum Annual Fee that may be owed at the time of termination pursuant to Section 6.1(c).

11.9 Friendly Consultation and Mediation. Except in circumstances where equitable relief is sought by a Party, any dispute, controversy or claim between the Parties arising out of or relating to this Agreement, or the breach, termination or invalidity thereof (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days, then the Dispute shall be submitted to a senior executive officer of Panda on the one hand and the City Manager on the other hand, with authority to resolve all issues and who shall meet within ten (10) days after the date of a written submission by either Party, describing the Dispute. If such senior executive officer and the City Manager do not resolve the Dispute within five (5) days, then the Parties agree to submit the Dispute to non-binding mediation prior to the initiation of judicial proceedings. If mediation is not conducted within ninety (90) days after the date of written notification of dispute, then either party can initiate judicial proceedings. The Parties agree to provide each other with reasonable access during normal business hours to any and all non-privileged and nonconfidential records, information and data pertaining to any such Dispute, and such other information as the Parties may mutually agree. Notwithstanding each Party's right of reasonable access under this subparagraph, this requirement may be satisfied by supplying copies of such materials to the requesting Party.

Article XII.
MISCELLANEOUS

12.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the Parties.

12.2 Entire Agreement. This Agreement embodies the entire agreement of the Parties on the subjects contained herein and therein and shall supersede all previous

communications, representations, or agreements either verbal or written between the Parties with respect to the same.

12.3 Assignment. Neither Party may assign its rights and duties hereunder, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Panda may assign this Agreement and all of its rights hereunder to any Affiliate. In addition, this Agreement and all rights hereunder may be assigned for the benefit of any Financing Party including, but not limited to, an assignment to such parties upon a foreclosure.

12.4 Financing Parties. The City acknowledges that Panda or its Affiliates will borrow funds for the development, construction, ownership and operation of the Plant from a Financing Party. Any Financing Party, as a condition to making such loans or other payment, may request as a condition to such financing, and certain due diligence or other, documents from the City. In connection therewith, the City agrees to use its best efforts to promptly furnish, at Panda's expense, to such Financing Party, such written information, certificates, opinions, affidavits, and other like documents as Panda or the Financing Party may reasonably request. However, in no event shall the City Attorney be obligated to provide an opinion letter to Panda or a Financing Party concerning the rights or obligations of either Party under this Agreement. The parties shall negotiate, in good faith, changes to this Agreement reasonably requested by a Financing Party; and any amendment will be in accordance with Section 12.8.

12.5 Notice. Unless otherwise stated herein, any notice or other communication required or permitted under this Agreement shall be in writing, may be delivered (and shall be deemed to be received) as follows: (i) when delivered personally or by a nationally recognized overnight courier service that provides written proof of delivery, upon the date of delivery; (ii) when delivered by United States mail, registered or certified, with return receipt requested and postage prepaid, on the date of receipt, refusal or non-delivery as indicated on the return receipt; and (iii) when delivered by facsimile, upon confirmation of receipt from the recipient's fax portal; provided that, in each such case, such notice is sent to the address or fax number of the recipient set forth below:

If to City:

City Manager
City of Sherman, Texas
220 West Mulberry Street
P. O. Box 1106
Sherman, Texas 75091-1106
Facsimile: (903) 892-7355

If to Panda:

Panda Sherman Power, LLC
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
Attention: General Counsel
Facsimile: (972) 455-3890

Any Party may change the address at which it is to receive any notice to be sent under this Agreement by providing notice of such change to the other Party in the manner set forth in this Section 12.5.

12.6 Cooperative Drafting. This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

12.7 Severability. If any provision of this Agreement is held to be in conflict with any applicable Requirement of Law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent.

12.8 Amendment. This Agreement may not be amended, modified, supplemented or revoked except by an instrument in writing signed by the Parties.

12.9 Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal Person other than the Parties, any right, remedy, or Claim under or by reason of this Agreement; or any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreements of any Party with any third Party.

12.10 Deadlines. To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

12.11 No Waiver of Rights.

(a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character or shall be effective unless in writing, duly executed by a duly authorized representative of the Party waiving any such default.

(b) Neither the failure by a Party to insist on any occasion upon the strict performance of the terms, conditions and provisions of this Agreement, nor time or other indulgence granted by one Party to the other, shall act as a waiver of such breach.

12.12 Governing Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Texas, other than with respect to conflicts of law. Jurisdiction and venue shall be proper and exclusive in the state and federal district courts located in the County of Grayson, State of Texas. If the federal district courts are relocated from Grayson County during the pendency of this Agreement, then

venue shall be proper in the federal district court in the Eastern District, Plano Division. Each of the Parties irrevocably submits to the exclusive jurisdiction of such courts in any such proceeding and waives any objection it may now or hereafter have as to venue or to convenience of forum.

12.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may execute this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement and exchange the counterparts of such documents by means of facsimile transmission, and the Parties agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. Thereafter, the Parties shall promptly exchange original versions of this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission.

12.14 Recording. The City shall file a copy of this Agreement with the TCEQ within thirty (30) Days of the Effective Date.

12.15 Effective Date. The Effective Date of this Agreement shall be immediately upon the latter of the date that this Agreement is executed by the City and Panda.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above-written.

PANDA SHERMAN POWER, LLC
a Delaware limited liability company

By: _____
Name: RALPH KILLIAN
Title: SR. VICE PRESIDENT
Date: OCTOBER 26, 2011

CITY OF SHERMAN, TEXAS,
a body corporate and politic

By: _____
Name: Bill Magers
Title: Mayor
Date: October 19, 2011

Exhibit A
to the
Water Services Agreement

Location of the Panda Plant

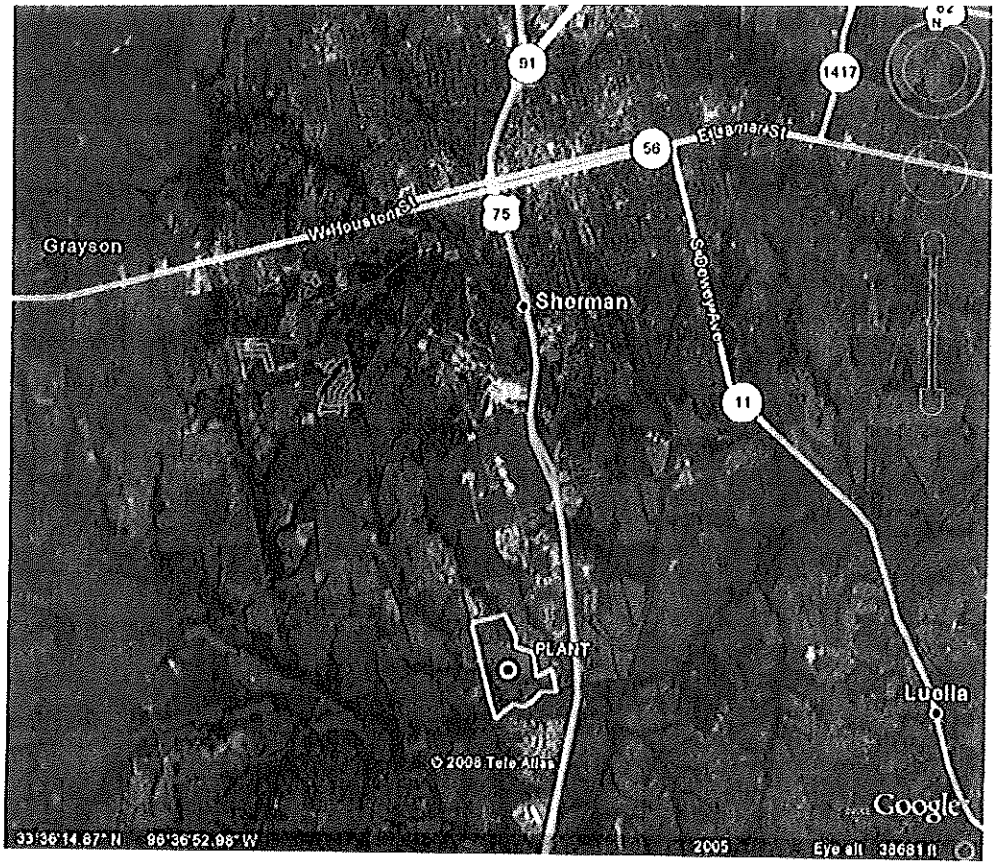


Exhibit B
to the
Water Services Agreement

Location of the Raw Water Interconnection Point

The location of the Raw Water Interconnection will be located between Point A and Point B (To be determined).

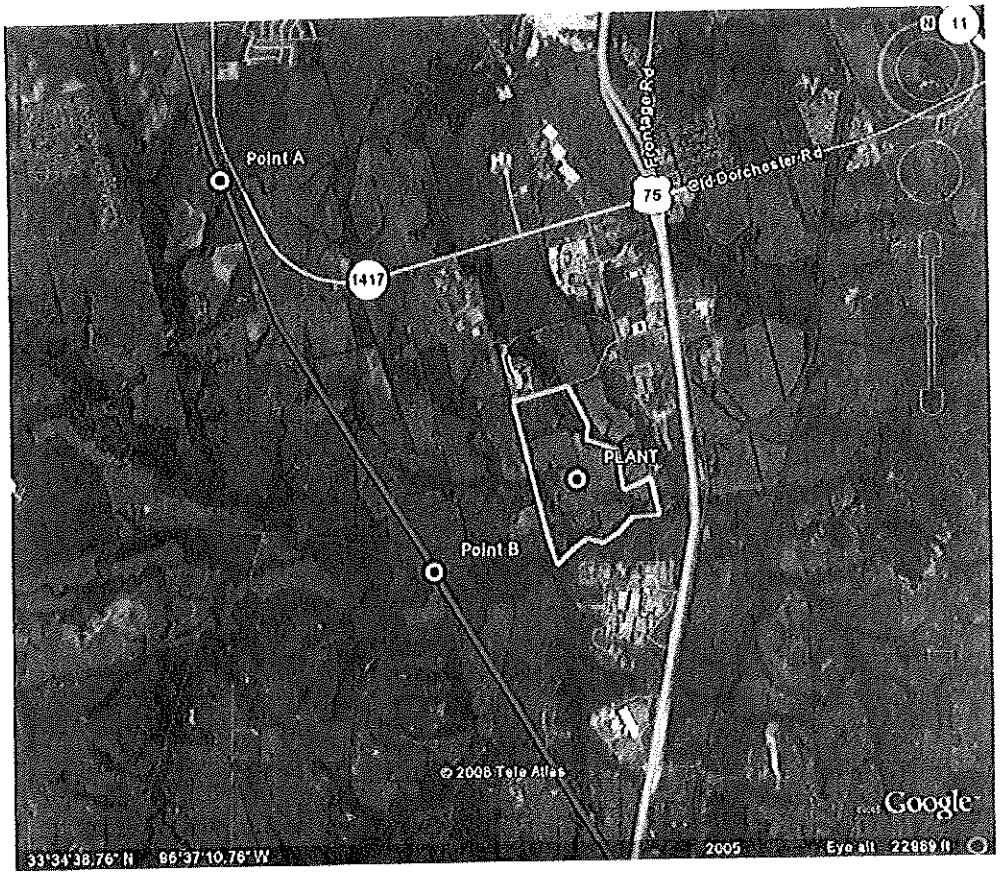


Exhibit "C"

Excerpt from Civil Works Construction Cost Index System

Index Code	Feature Code	Cost Index Year 3	Year 2	Year 1
02	Relocations	690.68	676.51	646.72
03	Reservoirs	726.73	709.45	672.52
04	Dams	685.12	667.25	635.50
08	Roads, Railroads, & Bridges	690.42	676.51	635.39
11	Levees & Floodwalls	702.01	685.57	655.37
19	Buildings, Grounds & Utilities	702.49	681.88	645.52
20	Permanent Operating Equipment	702.49	681.88	645.52
	Total	**4,899.94**	**4,779.05**	**4,536.54**

Percentage Change from Year 1 total to Year 2 total		**5.346%**
Percentage Change from Year 2 total to Year 3 total	**2.530%**	

Calculation of Project Water and Annual Reservation Fee

Project Year	Calculation	Project Water (per 1k gal)
Year 1	Panda Contract Base Amount	$ 0.610
Year 2	$.61 + (5.346% X $.61)	$ 0.643
Year 3	$.643 + (2.53% X $.643)	$ 0.659

Project Year	Calculation	Annual Reservation Fee
Year 1	Panda Contract Base Amount	$ 244,200
Year 2	$244,200 + (5.346% X $244,200)	$ 257,254
Year 3	$257,254 + (2.53% X $257,254)	$ 263,762

RESOLUTION NO. 5617

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES WITHIN INDUSTRIAL REINVESTMENT ZONE NO. 072009-2; 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 Mayor be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from Panda Sherman Power, LLC and subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an agreement with Panda Sherman Power, LLC for the abatement of ad valorem property taxes for a period of ten (10) years, for the development and construction of an approximately 500 Megawatt natural gas fired, combined cycle, electric generation facility, along with other possible improvements, within Industrial Reinvestment Zone, Number 072009-2, City of Sherman, Texas, in the same or substantially same form as the contract documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the 3rd day of October, 2011.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
BRANDON S. SHELBY, CITY ATTORNEY

TAX ABATEMENT AGREEMENT

STATE OF TEXAS §
COUNTY OF GRAYSON §
CITY OF SHERMAN §

This Tax Abatement Agreement ("Agreement") is made and entered into as of the 3rd day of October, 2011 (the "Effective Date"), by and among the City of Sherman, Texas (hereinafter "City"), a home rule city and municipal corporation of Grayson County, Texas, duly acting herein by and through its Mayor, and Panda Sherman Power, LLC, a Delaware limited liability company (hereinafter "Panda"), acting by and through its authorized officers, for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, on the 20th day of July, 2009, the City Council of the City ("City Council"), passed Ordinance No. 5611 ("Ordinance") establishing Tax Abatement Reinvestment Zone No. 072009-2, City of Sherman, Texas ("Zone") for commercial-industrial tax abatement, as authorized by Chapter 312 of the Texas Tax Code, as amended ("Code"); and

WHEREAS, the City has adopted a Comprehensive Policy Statement on Tax Base Enhancement and Economic Development Incentives ("Policy Statement") by the passage of Resolution No. 5494 on the 7th day of June, 2010; and

WHEREAS, the City's current Policy Statement is attached as Exhibit A hereto; and

WHEREAS, the Policy Statement constitutes appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Code, providing for the availability of tax abatement for both new facilities and structures and for the contemplated expansion or modernization of existing facilities or structures; and

WHEREAS, the City has adopted a resolution stating that it elects to be eligible to participate in tax abatement; and

WHEREAS, Panda currently owns the Premises, as hereinafter defined, and Panda expects to develop and construct an approximately 500 Megawatt natural gas fired, combined cycle, electric generation facility (the "Electric Generation Facility") (among other possible improvements) on the Premises. The development and use of the Premises is expected to significantly enhance the economic and employment base of the City; and

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

WHEREAS, the City Council finds that the terms of this Agreement and the Premises and proposed Qualified Facilities, as hereinafter defined, meet the applicable guidelines and criteria heretofore adopted by the City Council; and

WHEREAS, a copy of this Agreement has been furnished, in the manner prescribed by the Code, to the presiding officers of the governing bodies of each of the taxing units in which the Premises is located;

NOW, THEREFORE, the City, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the expansion of primary employment, the attraction of major investment in the Zone, and increased payroll that contributes to the economic development of the City and enhancement of the tax base in the City and Grayson County, and

Panda, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the tax abatement set forth herein below, as authorized by Sections 312.201 through 312.211 of the Code, does hereby contract, covenant and agree as follows:

I.
DEFINITIONS

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

A. "PANDA AFFILIATE" shall mean any Person directly or indirectly controlling, controlled by, or under common control with Panda. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

B. "EFFECTIVE DATE" shall have the meaning given it in the introductory paragraph of this Agreement.

C. "ELIGIBLE PROPERTY VALUE" shall mean (i) with respect to each Qualified Facility for a particular tax year, the value of such Qualified Facility on the tax rolls of the Grayson Appraisal District as of such tax year; and (ii) with respect to business personal property located on the Premises for a particular tax year, the value of such business personal property on the tax rolls of the Grayson Appraisal District as of such tax year.

D. "FINANCING PARTY" shall mean the lenders, security holders, investors, equity providers and others providing financing or refinancing to or on behalf of Panda, for the development, construction, ownership, operation or maintenance of the Electric Generation Facility or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

E. "FORCE MAJEURE" shall mean, without limitation, Acts of God or the public enemy, war, terrorism, criminal acts by unrelated third parties, riot, civil commotion, insurrection, governmental or de facto governmental action other than the City's legislative zoning authority, fire, explosions, floods, strikes, adverse weather, or any other extraordinary event beyond the control of Panda (including, without limitation, broad based extraordinary economic events) that makes it reasonably impracticable to accomplish a desired objective.

F. "PERSON" shall mean an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

G. "PREMISES" shall mean all that parcel of land owned by Panda as hereinafter described in Exhibit B attached hereto.

H. "QUALIFIED FACILITIES" shall mean any building, improvement, structure, fixture, parking or paving constructed on the Premises after the Effective Date.

II.
GENERAL PROVISIONS

A. All procedures followed by the City shall conform to the requirements of the Code and shall be undertaken in coordination with Panda's corporate, public, employee, and business relations requirements.

B. The Premises will be owned by Panda or a Panda Affiliate, which Premises are located solely within the city limits of the City and solely within the Zone.

C. The Premises are not in an improvement project financed by tax increment bonds.

D. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City; provided, however, that this section shall not be construed to create a security interest in the Premises or Qualified Facilities in favor of such holders of outstanding bonds of the City.

E. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of the City or any member of the governing body of any taxing unit joining in or adopting this Agreement.

F. This Agreement is intended to comply with the requirements of Section 312.204 of the Code and is authorized by the Texas Property Redevelopment and Tax Abatement Act of the Texas Tax Code, Chapter 312, by the Policy Statement and by resolution of the City Council authorizing execution of this Agreement.

G. During the period of the tax abatement herein authorized, Panda shall be subject to all applicable City taxation not specifically abated or exempted including, but not limited to, sales tax and ad valorem taxation on land, inventory and supplies.

III.
CONDITION PRECEDENT TO TAX ABATEMENT

As a condition precedent to a tax abatement under this Agreement, Panda or a Panda Affiliate must substantially complete, or cause to be substantially completed, the Electric Generation Facility on or before July 1, 2016 (the "Construction Condition"); provided that Panda or a Panda Affiliate shall have such additional time as may be required by the effects of Force Majeure.

IV.
TERM AND ABATEMENT PERIOD

A ten (10) year tax abatement period permitted by law is hereby granted with respect to each Qualified Facility and all the business personal property located therein or otherwise on the Premises. Each ten (10) year tax abatement period shall commence to run beginning January 1 of the year following the date Panda or a Panda Affiliate obtains a certificate of occupancy with respect to such Qualified Facility (or, beginning January 1 of the year in which such certificate of occupancy is obtained with respect to such Qualified Facility if Panda elects to have the tax abatement term begin on such date by delivering a written notice to the City thereof on or before April 30 of such year).

V.
MINIMUM TAX LIABILITY

A. For the purposes of this agreement, the Premises and any and all improvements thereon shall be assigned a minimum taxable eligible property value of no less than Seventy-Five Million Dollars and Zero Cents ($75,000,000.00).

B. During the period of tax abatement herein authorized, in order to receive the tax abatements hereunder for future years, Panda shall be liable to the City for the minimum taxable value assigned under Sec. V.A.

VI.
RATE, SCOPE, CONDITIONS AND COVENANTS

The rate and scope and additional conditions of tax abatement shall be as follows:

A. Annual Rates of Abatement – The following shall be the annual rates of tax abatement for each Qualified Facility and the business personal property located therein or otherwise on the Premises:

Year	Percentage of City Property Taxes Abated
1	64%
2	62%
3	60%
4	58%
5	56%
6	54%
7	52%
8	50%
9	48%
10	46%

B. Construction Condition. Notwithstanding Section VI.A. above, if the Construction Condition is not met on or before July 1, 2016 (plus any extensions due to Force Majeure), then no tax abatements under this Agreement shall be provided.

C. Operation Covenant. Panda shall continuously operate the Electric Generation Facility (other than as result of Force Majeure) in accordance with prudent industry standards and applicable law.

D. Property Tax Covenant. Throughout the term of this Agreement, Panda shall timely pay all property taxes for the Premises and real and personal property located therein due and owing by it to all relevant taxing jurisdictions.

E. Management Change Notice Covenant. During the term of this Agreement, Panda shall notify the City in writing of any change of the manager of the Electric Generation Facility within seven (7) days of such change.

VII.
RECORDS AND AUDITS

A. Not later than January 31 of each applicable year, Panda shall submit to the City a certification from Panda as to the conditions set forth in Section VI.B., C., D., and E. (provided that once condition B. above is met, then no further certification shall be required with respect to such condition).

B. At all times throughout the term of this Agreement, the City shall have reasonable access to the Premises by City employees (upon prior notice to and reasonable approval of Panda) for the purpose of inspecting same to ensure that the Qualified Facilities are maintained in accordance with the specifications and conditions of this Agreement; provided that Panda shall have the right to accompany City employees on any such

inspection and that such inspection shall be limited to examining only that information necessary to determine the basis for the certifications required by Section VI.B., C., D. and E. and that the City shall use best efforts not to interrupt Panda's activities at the Premises. With respect to any such inspection process, the City shall keep all information obtained by it from Panda or any Panda Affiliate confidential and shall execute and deliver to Panda a commercially reasonable form of confidentiality agreement submitted by Panda (which confidentiality agreement shall be subject to any limits imposed on the City in that regard, e.g., Open Records Act).

C. The Premises at all times shall be used in a manner that is consistent with the general purpose of encouraging development within the reinvestment zone.

VIII.
BREACH/FAILURE TO MEET CERTAIN CONDITIONS

In the event that (i) the condition in Section VI.B. is not timely met; or (ii) Panda breaches any of the terms or conditions of this Agreement, then Panda shall be in default of this Agreement. In the event Panda defaults in its performance (or does not comply with a condition) set forth in (i) or (ii) above, the City shall give Panda written notice of such default/failure of condition and if Panda has not cured such default/failure of condition within sixty (60) days of said written notice, then this Agreement may be terminated by the City; provided, however, that if such default is not reasonably susceptible of cure within such sixty (60) day period and Panda has commenced and is pursuing the cure of same, then, after first advising the City Council of Panda's efforts to cure same, Panda may utilize an additional ninety (90) days for such purposes. Additional time, i.e., time in addition to the foregoing one hundred fifty (150) days, may be authorized by the City Council. City's sole and exclusive remedy against any Person for any breach or failure of condition under this Agreement, in the event of default after the expiration of the applicable notice and cure periods, shall be that this Agreement shall terminate and all future tax abatements under this Agreement shall be void (it being understood that the City shall not be entitled to any repayment of tax abatements under this Agreement, and it being further understood that the failure to meet a covenant set forth in Section VI.C., D. or E. for any year is not a breach and results only in the loss to the right to rebates for such year). Notwithstanding any provision in this Agreement to the contrary, neither Panda nor any other Person shall be required to pay any amounts to the City under this Agreement, with the only remedy being the loss of future tax abatements.

IX.
EFFECT OF SALE, ASSIGNMENT OR LEASE OF PROPERTY

This Agreement shall be binding on and inure to the benefit of the parties and all Panda Affiliates, their respective successors and assigns. Neither Party may assign its rights and duties hereunder, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Panda may assign this Agreement and all of its rights hereunder to any Panda Affiliate. In addition, this Agreement and all rights hereunder may be assigned for the benefit of any Financing Party including, but not limited to, an assignment to such parties upon a foreclosure. Any assignment in violation of this

Section IX shall not affect any rebates with respect to which Panda or any Panda Affiliate is already entitled.

X.
NOTICE

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

Panda:

Panda Sherman Power, LLC
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
Attention: General Counsel

With an additional copy to:

Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Attention: Jeff W. Dorrill

City:

City Manager
City of Sherman
220 W. Mulberry
Sherman, Texas 75091

XI.
CITY COUNCIL AUTHORIZATION

This Agreement was authorized by resolution of the City Council that was approved by the affirmative vote of a majority of the City Council at its regularly scheduled City Council meeting on the 3rd day of October, 2011, authorizing the Mayor to execute this Agreement on behalf of the City.

XII.
PANDA AUTHORIZATION

An authorized representative of Panda entered into this Agreement.

XIII.
SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

XIV.
ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate from another party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which will upon request be addressed to a subsequent purchaser or assignee of Panda, shall include, but not necessarily be limited to, statements (to the actual knowledge of the party providing such) that this Agreement is in full force and effect without default (or if default exists, the nature of default and curative action, which should be undertaken to cure same), the remaining term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the certificate. The City Manager for the City shall provide any such certificate on behalf of the City.

XV.
APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be in a court located in Grayson County, Texas.

XVI.
INDEMIFICATION

A. **IN ADDITION TO THE OTHER REMEDIES AFFORDED TO THE CITY IN THIS AGREEMENT, PANDA SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCIL MEMBERS, OFFICERS, EMPLOYEES, ATTORNEYS, CONTRACTORS, OR AGENTS (HEREINAFTER "CITY'S INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEY'S FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE, OF ANY NATURE, KIND OR DESCRIPTION, OF ANY PERSON OR ENTITY RESULTING FROM PANDA'S CONSTRUCTION AND OPERATION OF THE ELECTRIC GENERATION FACILITY.**

B. Notice of Indemnified Loss. The City's Indemnified Party shall promptly notify Panda of any indemnified Losses or Claim for indemnified Losses in respect of which the City's Indemnified Party may be entitled to indemnification under this Section XVI. Such notice shall be given as soon as reasonably practicable after the City's Indemnified Party becomes aware of the Loss or Claim for Losses.

C. Defense of Third Party Claims. In the event any action or proceeding shall be brought against the City's Indemnified Party by reason of any matter for which the City's Indemnified Party is indemnified hereunder, Panda shall, upon notice from the City's Indemnified Party or its authorized agents or representatives, at Panda's sole cost and expense, resist and defend the same with legal counsel selected by Panda; provided, however, that Panda shall not admit liability in any such matter on behalf of the City's Indemnified Party without the City's express written consent. Nothing herein shall be deemed to prevent the City's Indemnified Party at its election and at its own expense from cooperating with Panda and participating in the defense of any litigation by their own counsel. If Panda fails to retain defense counsel within ten (10) business days after receipt of City's Indemnified Party written notice that the City's Indemnified Party is invoking its right to indemnification under this Agreement, the City's Indemnified Party shall have the right to retain defense counsel on their own behalf, and Panda shall be liable for all usual and customary defense costs incurred by the City's Indemnified Party.

D. Limitation on Indemnity. The amount owing to a City Indemnified Party will be the amount of the City Indemnified Party's losses net of any insurance proceeds received by the City Indemnified Party following a reasonable effort by the City Indemnified Party to obtain such insurance proceeds.

XVII.
ENTIRE AGREEMENT

This Agreement constitutes the entire Tax Abatement Agreement between the parties, supersedes any prior understanding or written or oral tax abatement agreements or representations between the parties, and can be modified only by written instrument subscribed to by all parties. Notwithstanding the foregoing provision, this Agreement does not modify, alter, or amend any other agreement or instrument among the City and Panda relating to matters other than the abatement of real property taxes with respect to the Premises and the Qualified Facilities and business personal property located on the Premises. This Agreement may be executed in multiple counterparts (and may be delivered by telecopy, in addition to other means, with originals to follow), each of which shall be considered an original.

EXECUTED the 3rd day of October, 2011.

CITY OF SHERMAN, TEXAS

By: _____
Bill Magers, Mayor

ATTEST:

Linda Ashby
Linda Ashby, City Clerk

CITY OF SHERMAN, TEXAS
APPROVED AS TO FORM:

Brandon Shelby, City Attorney

PANDA SHERMAN POWER, LLC,
a Delaware limited liability company

By: Ralph Killian
Name: RALPH KILLIAN
Title: SR. VICE PRESIDENT

MAYOR'S ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF GRAYSON §
CITY OF SHERMAN §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Bill Magers, Mayor of the City of Sherman, Texas, a municipal corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sherman, Texas, a municipal corporation, that he was duly authorized to perform the same by appropriate resolution of the City Council for the City of Sherman and that he executed the same as the act of the said City for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3rd day of October, A.D., 2011.

LINDA ASHBY
Notary Public
STATE OF TEXAS
My Comm. Exp. 06-06-2014

Linda Ashby
Notary Public in and for the State of Texas

Linda Ashby
(Typed/Printed Name of Notary)

My Commission Expires:

6/6/2014

PANDA ACKNOWLEDGEMENT

THE STATE OF TEXAS §
§
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Ralph Killian, Sr. Vice President of Panda Sherman Power, LLC, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me he/she executed the same as a duly authorized officer of such corporation, and as the act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12th day of October, A.D., 2011.

Nick M. Payne
Notary Public in and for the State of Texas

NICK M. PAYNE
(Typed/Printed Name of Notary)

NOTARY PUBLIC STATE OF TEXAS
NICK M PAYNE
My Commission Expires
December 23, 2011

My Commission Expires:

12-23-11

EXHIBIT A TO
TAX ABATEMENT AGREEMENT

COMPREHENSIVE POLICY STATEMENT

[Attached]

Renewing guidelines and criteria for the City of Sherman's Industrial Tax Abatement Program

RESOLUTION NO. 5494

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, RENEWING GUIDELINES AND CRITERIA FOR THE CITY OF SHERMAN'S INDUSTRIAL TAX ABATEMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN CERTAIN AREAS OF THE CITY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, by Resolution No. 5224, passed and approved on June 16, 2008, the City of Sherman declared its eligibility and intention to participate in the Tax Abatement Program to promote development/redevelopment in certain areas of the City and adopted Tax Abatement Guidelines and Criteria for use in all Tax Abatement Programs; and

WHEREAS, the City of Sherman is required to renew the guidelines and criteria adopted for this program every two years;

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

SECTION 1. That the City Council of the City of Sherman, Texas, hereby renews the following Tax Abatement Guidelines and Criteria for use in all Tax Abatement Programs, as required by law:

CITY OF SHERMAN'S
RENEWED TAX ABATEMENT GUIDELINES AND CRITERIA

1. A tax abatement agreement must be reasonably likely to contribute to the retention or expansion of primary employment or to attract a primary employer to make a major capital investment that will benefit the City of Sherman's economic development. Primary employers are those companies whose sales, service and shipments are ultimately used in statewide, national or international markets.

2. A tax abatement agreement will not be entered into where a company is only changing its location within Grayson County, without increasing the number of employees, significantly expanding the facilities, or unless failure to grant such abatement would mean the loss of the business operation in Grayson County.

3. Tax abatement agreements will be considered for both new facilities and structures and for the expansion or modernization of existing facilities and structures.

4. The City Council of the City of Sherman will approve or deny a tax abatement request based upon the subjective evaluation of the following guidelines and criteria. The Council may consider any advisory recommendations received from the Tax Reinvestment Advisory Committee as it may choose:

- Employment Impact

  How many jobs will be created by this project?

  How many current jobs will be retained by this project?

  What types of jobs will be created or retained?

  What will the annual total payroll of the created and/or retained jobs be, in current dollars and projected for each of the next five years?

- Fiscal Impact

  How much real and personal property will be added to the tax rolls, for each tax year covered by the abatement agreement?

  What is the economic life to the additional property?

  What effect will this project have on existing businesses or facilities?

  What is the total budget for this project, projected for each year covered by the abatement agreement?

  What capital expenditures will the project require of the City of Sherman?

- Community Impact

  What effect would the project have on the local housing market?

  Is the project compatible with existing long-range or comprehensive plans?

  What is the environmental impact of the project?

SECTION 2. That these Renewed Tax Abatement Guidelines and Criteria shall be effective immediately upon the passage of this resolution.

SECTION 3. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the 7th day of June, 2010.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

CERTIFIED COPY- DOCUMENT
THIS IS CERTIFIED TO BE A TRUE COPY
OF THE PERMANENT RECORD AS FILED IN
THE OFFICE OF THE CITY CLERK.

Linda Ashby
CITY CLERK, SHERMAN, TEXAS

ISSUED: 9/21/2011

EXHIBIT B TO
TAX ABATEMENT AGREEMENT

THE PREMISES

[Attached]

FIELD NOTES – REINVESTMENT ZONE NO. 072009-2

TRACT ONE

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

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

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

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

South 29°38'08" East a distance of 52.73 feet;
South 07°41'27" West a distance of 50.97 feet;
South 10°23'40" East a distance of 190.88 feet;
South 43°02'42" East a distance of 117.85 feet;
North 55°32'33" East a distance of 98.58 feet;
South 49°20'09" East a distance of 53.51 feet;
South 18°07'17" West a distance of 38.00 feet;
South 07°06'09" East a distance of 138.45 feet;
South 38°21'11" East a distance of 176.76 feet;
South 19°26'00" East a distance of 72.46 feet;
North 77°12'24" East a distance of 66.97 feet;
North 23°22'22" East a distance of 64.10 feet;
South 54°32'17" East a distance of 121.05 feet;
South 11°39'13" East a distance of 48.16 feet;
South 36°21'36" East a distance of 35.59 feet;
South 73°22'59" East a distance of 114.32 feet;
South 31°03'16" West a distance of 100.19 feet;
South 00°09'28" West a distance of 64.42 feet;
South 47°26'23" East a distance of 85.75 feet;
North 30°10'37" East a distance of 76.04 feet;
South 84°38'12" East a distance of 66.35 feet;
South 01°40'43" West a distance of 79.47 feet;
South 50°16'00" West a distance of 96.85 feet;
North 57°22'55" West a distance of 45.79 feet;
South 63°16'29" West a distance of 43.89 feet;
South 01°41'19" West a distance of 22.44 feet;

South 02°25'44" West a distance of 43.58 feet;
South 37°45'00" East a distance of 29.17 feet;
South 08°21'33" East a distance of 45.56 feet;
South 04°26'27" East a distance of 51.46 feet;
South 00°50'35" West a distance of 62.57 feet;
South 24°29'48" East a distance of 22.65 feet;
South 87°38'34" East a distance of 81.83 feet;
North 86°58'42" East a distance of 76.97 feet;
South 69°06'08" East a distance of 27.15 feet;
South 38°57'22" East a distance of 60.17 feet;
South 42°11'21" East a distance of 37.74 feet;
South 22°49'34" East a distance of 51.56 feet;
South 43°04'06" East a distance of 74.45 feet;
North 75°10'46" East a distance of 26.87 feet;
North 22°44'42" East a distance of 45.25 feet;
North 82°53'37" East a distance of 29.22 feet;
South 34°11'16" East a distance of 63.18 feet;
South 33°21'17" East a distance of 52.56 feet;
North 88°03'00" East a distance of 15.73 feet;
North 38°15'30" East a distance of 35.39 feet;
North 64°33'50" East a distance of 29.29 feet;
South 57°50'11" East a distance of 13.24 feet;
South 34°26'35" East a distance of 70.92 feet;
South 69°42'17" East a distance of 14.77 feet;
North 61°13'38" East a distance of 14.46 feet;
North 47°06'21" East a distance of 34.11 feet;
South 43°45'37" East a distance of 71.54 feet;
South 83°14'43" East a distance of 65.53 feet;
North 37°01'17" East a distance of 43.53 feet;
North 22°28'00" East a distance of 26.12 feet;
South 86°49'32" East a distance of 11.89 feet;
South 39°32'08" East a distance of 24.06 feet;
South 48°02'49" East a distance of 87.83 feet;
North 53°17'04" East a distance of 43.15 feet;
South 80°11'10" East a distance of 38.20 feet;
South 09°43'07" East a distance of 52.00 feet;
South 07°14'11" West a distance of 78.30 feet;
South 08°18'33" West a distance of 65.33 feet;
South 22°29'44" East a distance of 44.41 feet;
South 68°25'46" East a distance of 48.38 feet;
North 87°52'00" East a distance of 52.17 feet;
South 01°27'35" East a distance of 67.50 feet;
South 19°47'23" West a distance of 46.81 feet;
South 36°22'56" West a distance of 61.15 feet;
South 10°41'37" East a distance of 70.35 feet;
South 46°15'08" West a distance of 57.80 feet;
South 64°21'19" West a distance of 27.36 feet;
South 78°50'20" West a distance of 43.28 feet;
South 33°00'37" West a distance of 34.00 feet;
South 02°43'09" East a distance of 32.65 feet;
South 48°26'47" East a distance of 51.14 feet;

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

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

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

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

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

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

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

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

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

TRACT TWO

SITUATED in the City of Sherman, Grayson County, Texas, being a part of the William Martin Survey, Abstract No. 765, and being all of the (1) 37.22 acre tract of land conveyed to the Sherman Economic Development Corporation by deed of record in Volume 2633, Page 498 of

the Official Public Records, Grayson County, Texas, and all of the (2) 23.63 acre tract of land conveyed to the Sherman Economic Development Corporation by deed of record in Volume 4019, Page 369 of said Official Public Records, and being more particularly described as follows:

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

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

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

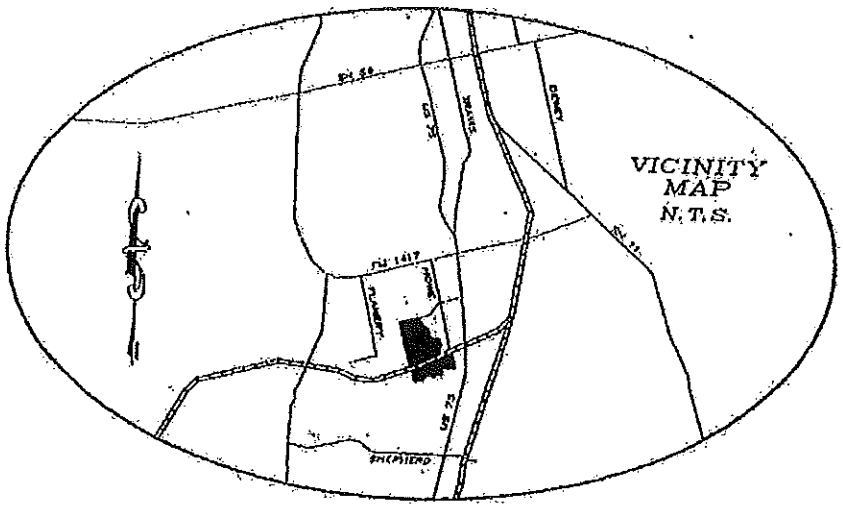
THENCE in a Westerly direction with the meanders of said north bank and the south lines of said 37.22 acre tract and 23.63 acre tract;

North 89°08'07" West a distance of 50.63 feet;
South 61°50'06" West a distance of 129.18 feet;
North 65°31'21" West a distance of 213.45 feet;
South 43°38'09" West a distance of 143.38 feet;
North 76°35'12" West a distance of 305.86 feet;
South 82°00'24" West a distance of 199.24 feet;
South 07°28'29" West a distance of 447.48 feet;
South 28°46'19" West a distance of 60.92 feet;
South 78°00'17" West a distance of 242.38 feet;
South 53°19'01" West a distance of 279.39 feet;
North 81°47'10" West a distance of 158.75 feet;
South 70°57'29" West a distance of 16.05 feet;
North 46°51'54" West a distance of 71.47 feet;
North 64°55'47" West a distance of 89.81 feet;
North 74°52'56" West a distance of 94.21 feet;
South 84°55'33" West a distance of 34.55 feet;
South 65°12'48" West a distance of 69.31 feet;
South 84°39'24" West a distance of 132.97 feet;
South 42°55'42" West a distance of 71.85 feet;
South 31°29'48" West a distance of 63.23 feet;
South 42°51'36" West a distance of 154.98 feet;
South 38°33'13" West a distance of 90.82 feet;
South 27°05'10" West a distance of 74.40 feet;
South 57°08'24" West a distance of 143.66 feet;
North 58°57'02" West a distance of 75.25 feet;
North 47°55'51" West a distance of 74.03 feet;
North 58°06'24" West a distance of 46.14 feet;
South 66°03'24" West a distance of 76.50 feet;

North 70°16'10" West a distance of 22.67 feet;
South 43°33'46" West a distance of 17.61 feet;
South 12°20'55" East a distance of 18.54 feet;
South 22°13'20" West a distance of 49.55 feet;
South 35°23'00" West a distance of 93.28 feet;
South 67°23'43" West a distance of 67.60 feet to a ½" steel rod found at the southwest corner of said 23.63 acre tract and the southeast corner of said 14.270 acre tract;

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

VICINITY MAP – REINVESTMENT ZONE NO. 072009-2



SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 11.**

Meeting Date: 05/01/2023

Prepared By: Theresa Hutchinson, Parks & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7069

Authorizing Submission of an Application to the Texas Department of Transportation's 2023 Transportation Alternatives Set-Aside Program for Projects

Issue:

Seeking approval to submit a Grant Application to Texas Department of Transportation to fund the Construction of an approximately 2.5 mile Multi-Use Trail connecting Sherman High School, Herman Baker Park, Sory Elementary, Center Street Park, Binkley Park and several residential neighborhoods.

Background:

As part of the 2022 City of Sherman Trails Master Plan, the Southwest Trail was identified as a priority due to the ability of this trail to provide connectivity to parks, neighborhoods, and schools.

Origination:

Parks and Recreation, Theresa Hutchinson

Financial Consideration:

If the grant is awarded, there is a 20% match. The preliminary budget for this project is approximately $5 million, therefore, the match would be approximately $1 million.

Staff Recommendation:

Staff recommends submission of the grant application to the Texas Department of Transportation's 2023 Transportation Alternatives Set-Aside Call for Projects.

Alternatives:

The City Council could chose to deny the request for the submission of the grant application.

Attachments

Resolution No. 7069

Program Guide

Map

RESOLUTION NO. 7069

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING SUBMISSION OF AN APPLICATION TO THE TEXAS DEPARTMENT OF TRANSPORTATION'S 2023 TRANSPORTATION ALTERNATIVES SET-ASIDE CALL FOR PROJECTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the Texas Department of Transportation issued a call for projects in December 2022 for communities to apply for funding assistance through the Transportation Alternatives Set-Aside (TA) Program; and

WHEREAS, the grant funds may be used for development of preliminary engineering (plans, specifications, and estimates and environmental documentation) and construction of pedestrian and/or bicycle infrastructure. The grant funds require a local match, comprised of cash or Transportation Development Credits, if eligible. The City of Sherman would be responsible for all non-reimbursable costs and 100% of overruns, if any, for grant funds

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

SECTION 1. That the City Manager is authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to execute the application to the Texas Department of Transportation's 2023 Transportation Alternatives Set-Aside Call for Projects, in accordance with all documents attached hereto and made a part hereof for all purposes. The City Council supports funding the project as described in the 2023 TA Detailed Application (including the preliminary engineering budget, if any, construction budget, the department's direct state cost for oversight, and the required local match, if any) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing. The City is willing and able to enter into an agreement with the department by resolution or ordinance, should the project be selected for funding.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of May, 2023.

CITY OF SHERMAN, TEXAS

BY: _____

DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Texas Department of Transportation

TRANSPORTATION ALTERNATIVES SET-ASIDE PROGRAM

2023 CALL FOR PROJECTS
PROGRAM GUIDE

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A. SUMMARY OF FUNDING OPPORTUNITY

On December 2, 2022, the Texas Department of Transportation (TxDOT or the department) announced a statewide Call for Projects for the **Transportation Alternatives Set-Aside** (**TA**) program (including available and anticipated future funds) for bicyclist and pedestrian infrastructure and planning. TxDOT's 2023 TA Call for Projects features a two-step application process described in this program guide. Additionally, this program guide outlines the requirements of TA funds and the evaluation and selection processes for this competitive Call for Projects. Important dates to remember are provided in Table 1.

What's New for TxDOT's 2023 TA Call for Projects

With the passage of the Infrastructure Investment and Jobs Act (IIJA), funding for the TxDOT TA Program has increased significantly. TxDOT intends to optimize the availability and use of TA funding by implementing a number of changes to its 2023 TA Program call. For the TxDOT 2023 TA Call for Projects, the following changes have been implemented that differ from previous TxDOT TA Program calls.

1. TxDOT has defined four project categories for this Call for Projects: Community-Based Projects, Large Scale Active Transportation Infrastructure, Active Transportation Network Enhancements, and Active Transportation Non-Infrastructure. See Section B for details.
2. Communities of any size may now apply for TA funding from TxDOT. Communities of 200,000 and less in population are eligible to apply for all project categories. Because communities located in Transportation Management Areas (TMAs)—urbanized areas greater than 200,000 in population—are eligible to apply for TA funds from their metropolitan planning organization (MPO), they are only eligible to apply for three of the four project categories. See Section B for details.
3. In past TxDOT TA Calls for Projects, eligible activities were limited to design and construction of bicycle and pedestrian infrastructure. For this Call for Projects, development of active transportation planning documents is also an eligible project activity. See Section B for details.
4. Projects in communities of any size may now request TA funding for preliminary engineering activities, including costs for design and environmental documentation, as part of a construction project. See Section D for details.
5. Projects in communities up to 200,000 in population that meet certain economic criteria or in an economically disadvantaged county may be eligible to use state Transportation Development Credits (TDCs) that allow projects to be funded 100% using federal TA funds rather than requiring a local match. Eligibility for TDCs is based on economic criteria outlined in *Local Match for TA Projects* in Section B.
6. TxDOT's TA program evaluation criteria and weights were updated to accommodate each of the project categories. See Section C for details.

7. The IIJA allows for 5% of TA funds to be used for technical assistance and program administration. TxDOT is developing new technical assistance tools that will assist applicants in developing project applications. These tools will be published on TxDOT's Bicycle and Pedestrian Funding webpage as they correspond with the TxDOT 2023 Call for Projects schedule. Please check the webpage periodically for updates and added tools. These tools may also be used to develop TA applications for MPO calls for projects.

Table 1: TxDOT's 2023 TA Call for Projects Important Dates

Milestones	Date
TxDOT's 2023 TA Call for Projects opens	December 2, 2022
Virtual workshops	November 29 – December 16, 2022
Responses to workshop questions posted	December 21, 2022*
Preliminary Application (PA) deadline	January 27, 2023
District coordination meeting	Before March 17, 2023*
TxDOT PA review complete	March 24, 2023
TxDOT notifies sponsors of eligibility and provides Detailed Application	March 27, 2023
Detailed Application (DA) deadline	June 5, 2023
TxDOT DA review complete	August 18, 2023*
Commission award	October 2023*

*Target dates

TxDOT Focus Areas

For the 2023 TA Call for Projects, the department is particularly interested in projects that reflect a high degree of collaboration and community consensus while directly contributing to the department's safety, mobility, and connectivity goals. Project sponsors are strongly encouraged to submit projects that:

- Improve safety, access, or mobility for people of all ages and abilities, especially bicycle and pedestrian facilities along the state highway system exceeding minimum design requirements, using innovative technologies, or extending beyond the scope of a major highway investment project area.

- Construct segments identified as part of Texas Bicycle Tourism Trails network[1] or implement a locally-preferred alternate route.
- Improve bicycling, wheelchair, and walking safety and access to or between existing bicycle and pedestrian facilities and public transportation. This may include mobility hubs that integrate multiple modes of transportation (such as transit stops, carsharing, bikesharing, micromobility, or other shared-mobility services) leveraging existing facilities and public transit to expand access for non-motorized users.
- Enhance bicycle and pedestrian access and safety to school-related destinations enabling and encouraging children, including those with disabilities, to walk and bicycle to school activities.

Proposed projects may be located on state-maintained roadway right-of-way (on-system) or along on- or off-street property owned by the project sponsor (off-system).

TA Funding Availability

Through TxDOT's 2023 TA Call for Projects, the department intends to make available approximately $252.5 million in TA funds associated with FY 2022 through FY 2025. TxDOT administers TA funding sub-allocated to population areas of 200,000 or less that are outside TMAs. In addition, TxDOT is administering TA funding designated for use anywhere in the state. As such, in TxDOT's 2023 TA Call for Projects, TxDOT is supplementing its traditional community-based project call with three new project categories, described further in Section B.

> **Sub-allocated funds**: Sixty percent of TA funding is suballocated by population. A portion of suballocated funds is administered by MPOs in urbanized areas (200,000 or more in population) that are TMAs. TxDOT administers suballocated funds for population areas that are smaller than 5,000 (nonurban), population areas of 5,000 to 49,999 (small urban), and population areas of 50,000 to 200,000 (medium urban).

Table 2 provides a high-level overview of TA funding available for suballocated areas, as well as anywhere in the state. A minimum of $51.5 million is available for nonurban, small urban, and medium urban communities; the remaining funds are available to communities of any size anywhere in the state. All or some portion of these funds may be awarded as a result of this Call, depending on the actual amount of funding available and the number of suitable TA project applications received by the department. Additionally, depending on the volume and complexity of

[1] For information on the Texas Bicycle Tourism Trails Study, visit: https://www.txdot.gov/inside-txdot/modes-of-travel/bicycle/plan-design/tourism-study.html.

project applications, the department may elect to stagger recommended awards, so that the total funding is not awarded all at once, but issued over a series of months.

At the conclusion of the 2023 TA Call for Projects and a competitive project evaluation process, applicants will be:

- Awarded available TA funding by the Texas Transportation Commission; or
- Eliminated from further consideration in this program call. Project sponsors may resubmit these projects for consideration during future calls for projects.

> Funding types listed in Table 2 may be awarded to projects in any category in this call for projects.

Table 2: TxDOT 2023 TA Program Funding

Funding Type	Population Size	TMA	Anticipated Program Funding for TxDOT TA 2023 Call for Projects
Suballocated*	Nonurban Areas (Less than 5,000)	Outside	$31.5 million
	Small Urban Areas (5,000 to 49,999)		$15 million
	Medium Urban Areas (50,000 to 200,000)		$5 million
Any Area	Any Population Size	Inside or Outside	$201 million

*A portion of suballocated funds associated with FY 22-FY 24 were awarded during TxDOT's 2021 TA program call.
Note: Funding types listed above may be awarded to projects in any category in this Call for Projects

ALTERNATIVE FUNDING OPTION:
TxDOT's priority with this program call is to fund projects using TA funding. However, TxDOT reserves the right to use other federal and/or state resources to implement a project submitted under this program call that is located within TxDOT right-of-way and advances the department's ADA/pedestrian safety, accessibility, and mobility goals. After consultation with the project sponsor, TxDOT may elect to assume oversight of project development and/or construction using TxDOT resources. Projects developed under this option could be identified during either Step 1 or Step 2 of the program call process. A local match may be required for on-system ADA/pedestrian projects advanced by TxDOT under this alternative funding option.

Two-Step Application Process

TxDOT's 2023 TA Call for Projects involves a two-step application process, as depicted in Figure 1. This two-step approach is intended to enhance the quality of project applications and to foster

communication between project sponsors and TxDOT District staff. TxDOT's 2023 TA program call timeline is illustrated in Figure 2. Project sponsors must complete both steps in order for a project to be considered for funding under this program call. Project sponsors are limited to three applications per sponsoring entity.

Step 1 - Preliminary Application: Project sponsors seeking TA funding must complete the Preliminary Application (PA)[2] and submit it to TxDOT as specified in the PA instructions before close of business on **January 27, 2023**. Applications received after this deadline will not be eligible to compete for funding in this program call. The PA provides high-level project information that will allow the department to determine funding eligibility and potential project development issues. As part of Step 1, TA project sponsors are recommended to schedule and attend a meeting (in person or virtually) before end of day on March 17, 2023, with TxDOT District representatives to review the PA and discuss the overall project. TxDOT reserves the right not to advance any project to Step 2 that was not reviewed by the TxDOT District during a coordination meeting with the project sponsor.

On or about March 27, 2023, TxDOT staff will advise all project sponsors of project eligibility based on project location, population size, project type, entity, and initial project readiness. The Detailed Application will be made available to eligible project sponsors at that time. If the project sponsor is eligible and plans to use Transportation Development Credits (TDCs) for local match, this must be identified on the PA. A description of TDCs and criteria for eligibility are described in *Local Match for TA Projects* in Section B of this document.

Step 2 - Detailed Application: All eligible projects will move on to Step 2. The Detailed Application (DA) requires a more comprehensive overview of the proposed project, including a detailed construction budget and demonstration of how the proposed project meets specific TA evaluation criteria. All project sponsors must submit their DA(s) to TxDOT by **June 5, 2023**, as specified in the DA instructions.

*Project sponsors may submit no more than **three applications** in TxDOT's 2023 TA Call for Projects. Additionally, the same project application **cannot** be submitted in multiple project categories.*

[2] The Preliminary Application is available for download on the TxDOT Bicycle and Pedestrian Funding Programs website. https://www.txdot.gov/inside-txdot/division/public-transportation/bicycle-pedestrian.html

Figure 1: 2023 TA Program Call – Two-Step Process

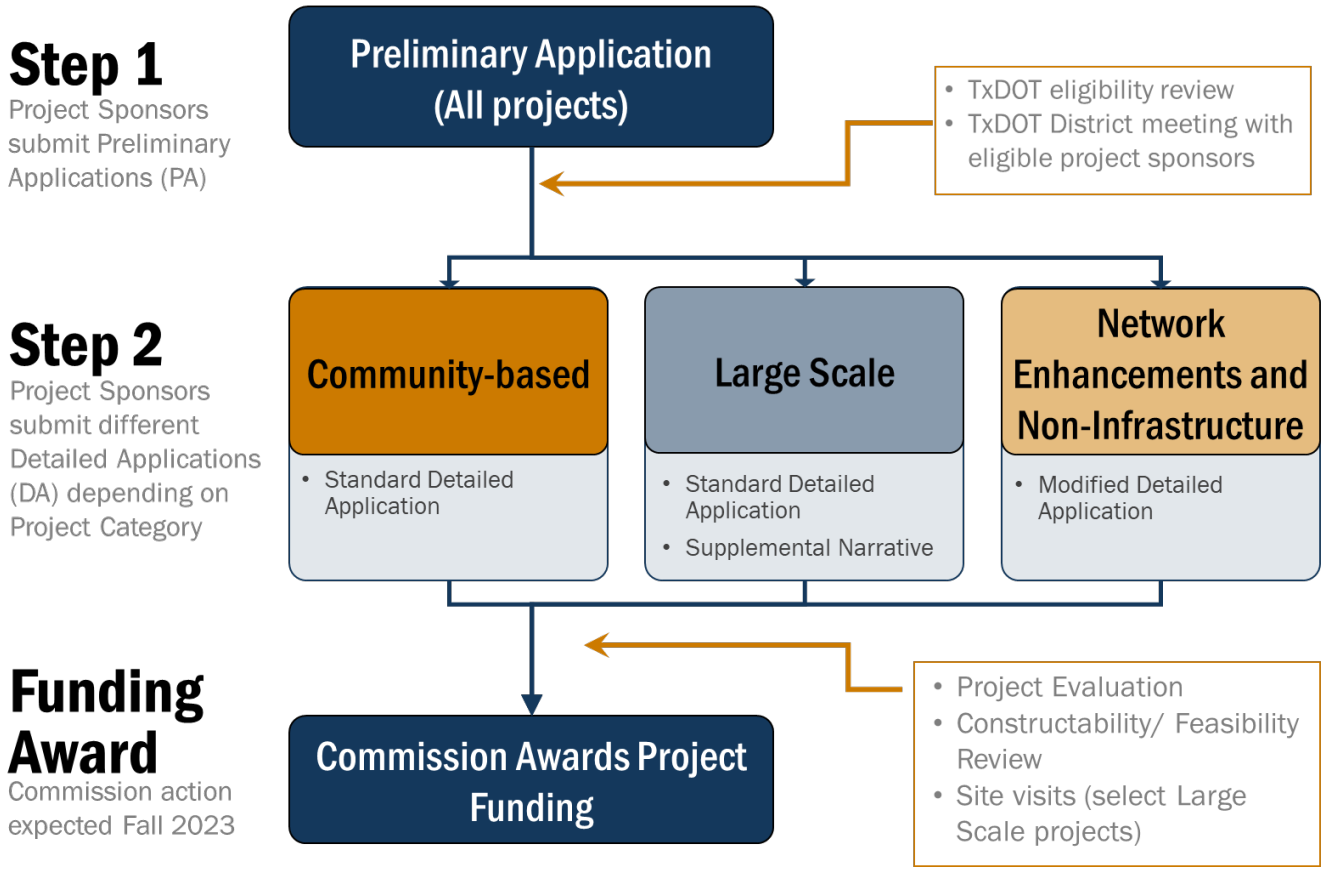
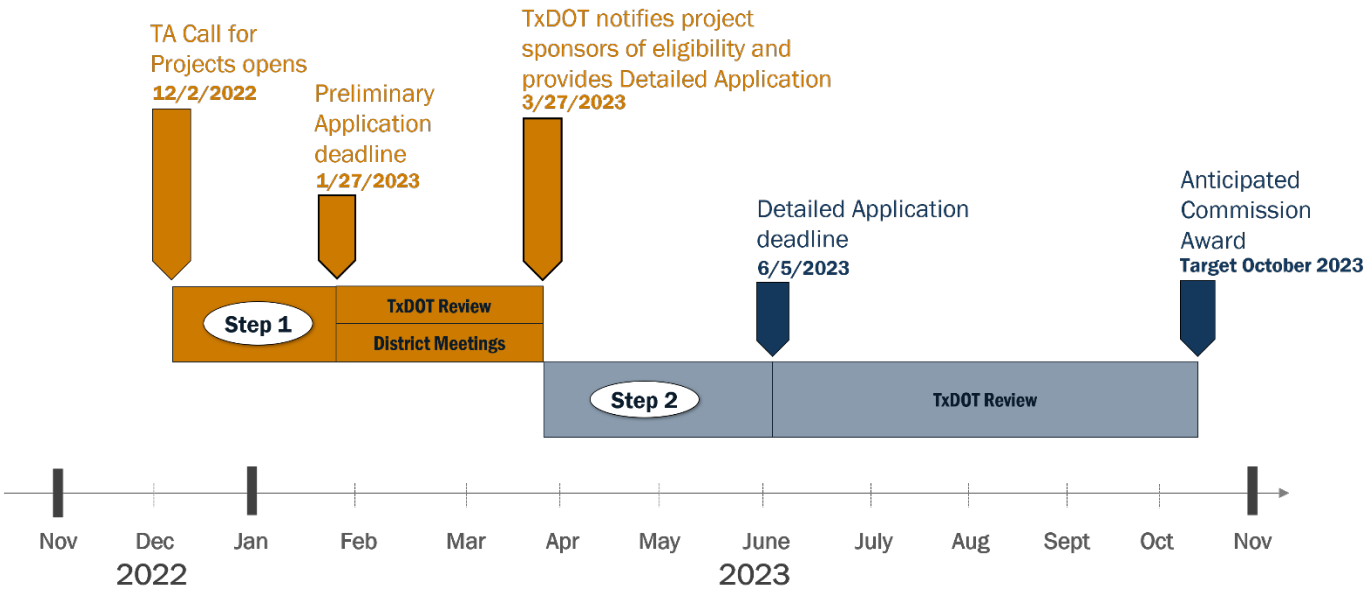


Figure 2: 2023 TA Program Call Timeline



B. TRANSPORTATION ALTERNATIVES SET-ASIDE (TA) ELIGIBILITY AND REQUIREMENTS

The TA Program, as administered by TxDOT, provides funding to plan for and construct a variety of alternative transportation projects that improve safety and mobility for non-motorized travelers and mitigate congestion by providing safe alternatives to motor vehicle transport. TA Program funding has increased through FY 2026 under the Infrastructure Investment and Jobs Act (IIJA), also known as the "Bipartisan Infrastructure Law". This continues the TA Program established under previous federal transportation funding bills. The TA Program provides funding for a variety of alternative transportation projects, including Safe Routes to School (SRTS)-type infrastructure projects. The TA Program is codified in 23 U.S.C.§133(h).

The TA Program provides opportunities to expand transportation choices and enhance bicycle and pedestrian infrastructure and planning. Each state department of transportation reviews the guidance provided by the Federal Highway Administration (FHWA) and develops rules to administer their TA Program according to that state's priorities. In Texas, the department's TA Program operates under rules adopted by the Texas Transportation Commission, which may be found in 43 Texas Administrative Code (TAC) §§11.400 - 11.418 and §§16.153 - 16.154.[3]

Project Location Restrictions for TA Projects

TxDOT administers statewide TA Program funds that are available to communities of any population size anywhere in the state, as well as TA funds suballocated for projects located outside the smoothed boundary of Census Urbanized Areas greater than 200,000 in population, which have been identified as Transportation Management Areas (TMAs). Projects located outside TMAs (i.e., in nonurban, small urban, and medium urban areas) are eligible for all project categories in TxDOT's 2023 TA Call for Projects. Because communities located inside TMAs are eligible to apply for TA funds from their MPO, they are only eligible to apply for three of the four project categories: Large Scale Active Transportation Infrastructure, Active Transportation Network Enhancements, and Active Transportation Non-Infrastructure. Please reference the Interactive Map to determine which project categories your community is eligible for.

Project Categories and Eligible TA Project Activities

Eligible TA activities for TxDOT's 2023 TA Program Call for Projects are provided below for each of the project categories.

Community-Based Projects are eligible for reimbursement for construction and engineering costs in communities of 200,000 or less outside of Transportation Management Areas (TMAs) and may range between $250,000 and $5 million in estimated costs related to:

[3] In Texas, TA funds for the Recreational Trails Program are administered through the Texas Parks and Wildlife Department.

1. Bicycle infrastructure improvements
2. Shared use paths
3. Sidewalk improvements
4. Infrastructure-related projects to improve safety for non-motorized transportation

Examples of community-based projects include accessible sidewalks with curb extensions, buffered bicycle lanes with bike parking at bus stops, or shared use paths with shade trees and safety lighting.

Large Scale Active Transportation Infrastructure projects are eligible for reimbursement for construction and engineering costs in communities of any size and may range between $5 million and $25 million related to:

1. Bicycle infrastructure improvements
2. Shared use paths
3. Sidewalk improvements
4. Infrastructure-related projects to improve safety for non-motorized transportation
5. Construction of boulevards and other roadways that are located primarily in the right-of-way of divided highways and that improve access for bicyclists, pedestrians, and transit users and do not reduce on-system roadway capacity unless such a reduction has the prior approval of the department[4]

According to FHWA, a boulevard is defined as a walkable, low-speed (35 mph or less) divided arterial thoroughfare in urban environments designed to carry both through and local traffic, pedestrians and bicyclists. An eligible "boulevard" project should demonstrate some of the following elements:

- Traffic calming measures
- Context-sensitive bicycle and pedestrian facilities
- Compliance with accessibility requirements and guidelines
- Promotion of transit corridor through additional protected stops and routes
- Environmentally efficient lighting, landscaping, and water-saving systems

For more information about boulevards related to TA projects please reference FHWA's definition and guidance.

Large-scale projects may include high impact projects that substantively improve mobility options such as: long-distance active transportation routes (e.g., bicycle tourism trails), comprehensive or area-wide accessibility improvements, active transportation connections to intermodal hubs (e.g.,

[4] Boulevard projects in TxDOT ROW must receive written approval from the TxDOT District Engineer for the TxDOT District the project is located in.

first/last-mile solutions at transit stations), shared use paths in rail or utility corridors, and improvements that mitigate barriers to bicycling and walking (e.g., pedestrian/bicycle bridges).

Large-scale projects may be composed of multiple elements that work together to create a connected network. The project sponsor should demonstrate how the elements contribute to a connected network in the project description, the maps, the planning section, and in the transformational narrative.

Active Transportation Network Enhancements projects are eligible for reimbursement for light construction/installation projects in communities of any size. These projects are intended to be quick turnaround projects that directly connect to and enhance active transportation networks and can be completed within one year after award. Projects should have limited or no design and no ROW acquisition activities. For projects located in communities of 200,000 or less in population, the minimum project cost is $250,000; for projects located in communities greater than 200,000, the minimum project cost is $1M. Examples include:

1. Traffic signal improvements in support of active transportation networks (e.g., pedestrian/bike-friendly traffic signal phasing improvements, pedestrian signal head additions)
2. Bicycle/pedestrian counters
3. Bike-share bikes and kiosk installations
4. Citywide bike parking installations
5. Citywide high visibility crosswalk installations
6. Separated bike lane upgrades (converting existing bike lanes into separated bike lanes)
7. Citywide ADA upgrades
8. Traffic calming activities directly supporting active transportation networks (mini roundabouts, curb extensions/bulb-outs)

Active Transportation Non-Infrastructure projects are eligible for development of planning documents to assist communities of any size in developing non-motorized transportation networks. The minimum project award is $100,000. Examples include:

1. Safe Routes to School plans
2. Pedestrian plans
3. Bicycle plans
4. Safety action plans for pedestrians or bicyclists
5. Active Transportation plans that plan for multiple non-motorized transportation modes

Please refer to Section D. Allowable Costs for more details. For additional details about the above eligible project activities, refer to *43 TAC §11.404(a).* Whether proposed as an independent project or as an element of a larger transportation project, the project must be limited to a logical unit of work and be constructible as an independent project.

Consistent with federal guidance outlined in 23 USC 217, TxDOT-selected TA projects should be principally for transportation rather than purely recreational and must contribute to a safe, contiguous, accessible, integrated walking and bicycling network that provides travelers with a real choice of transportation modes.

Projects, or substantially similar projects, previously submitted in a metropolitan planning organization (MPO) administered TA call for projects may be submitted for TA funding under this program call as long as the MPO call for projects is not occurring concurrent with the TxDOT TA Call for Projects. If the project is no longer being considered and will not be awarded funding by the MPO, it can be submitted under this call for projects.

A project that is currently being considered for TA funding by an MPO cannot be submitted to this Call for Projects.

Additionally, projects under an existing local agreement (i.e., Advance Funding Agreement) may not be resubmitted under this program call unless substantial additional funding is being requested for unforeseen project costs and this program call will not delay the original project from being implemented on schedule. Table 3 summarizes eligibility information.

Due to the amount of funding available in this Call for Projects and the importance of optimizing funding so that funds are successfully obligated and projects implemented in accordance with federal requirements, TxDOT will maintain some flexibility in regard to total funding awarded to each project category. Project funding amounts shown on row three of Table 3 are intended as targets. Depending on the number of applications and project amounts received during the Call for Projects, TxDOT may award projects with costs that exceed these targets. Conversely, project sponsors submitting projects in the Large Scale Active Transportation Infrastructure project category or that exceed funding targets should develop the project with phasing in mind, with options for scaling the project back if TxDOT is not able to award the total amount requested.

Additionally, TxDOT is targeting total awards of between $10 million and $20 million for the Active Transportation Network Enhancements and between $3 million and $5 million for Active Transportation Non-Infrastructure, but the total amount of funds awarded to these project categories will depend on the amount and suitability of applications received.

To help determine which project category your project matches please use the decision tree in Figure 3.

Table 3: TxDOT's 2023 TA Project Categories

Project Category	Community-Based Infrastructure	Large Scale Active Transportation Infrastructure	Active Transportation Network Enhancements	Active Transportation Non-Infrastructure
Eligible Areas	Outside of TMAs & Population Areas < 200,000	Any Population Area		
Local Match	20%[1]			
Target Project Funding Amounts	$250,000 to $5M per project	$5M to $25M per project	$250,000 minimum for cities <200,000; $1M min otherwise[2]	$100,000 minimum[3]
Eligible Project Sponsors	• Local governments • School districts	• Transit agencies • Small MPOs (<200k)	• TxDOT at the request of a sponsor • Others (see Eligible Sponsors) reference section	
Eligible Activities	<u>Preliminary engineering and construction for</u> ▪Bicycle infrastructure improvements ▪Shared use paths ▪Sidewalk improvements ▪Infrastructure-related projects to improve safety for non-motorized transportation ▪Construction of boulevards and other roadways that are located primarily in the right of way of divided highways and that improve access for bicyclists, pedestrians, and transit users and do not reduce on-system roadway capacity unless such a reduction has the prior approval of the department **(for large scale active transportation only)**		<u>Quick construction or installation activities</u> ▪Support active transportation networks ▪Infrastructure projects with limited or no design and no ROW acquisition activities ▪Can be completed quickly after award (a year)	Planning documents to assist communities develop non-motorized transportation networks
Project Examples	▪Bike lanes, sidewalks, or shared use paths between key destinations and existing facilities ▪Bike lanes, sidewalks, or shared use paths between schools and neighborhoods ▪Eliminating barriers, improving safety, filling in gaps in bike/ped network ▪Safety lighting for pedestrians/bicyclists	<u>High impact projects that substantively improve mobility options such as:</u> ▪Long-distance active transportation routes (e.g., bicycle tourism trails) ▪Comprehensive accessibility improvements ▪Intermodal hubs ▪Shared use paths in rail or utility corridors ▪Improvements that mitigate barriers to bicycling and walking (e.g., ped/bike bridges)	▪Traffic signal phasing improvements (e.g., leading pedestrian intervals) ▪Citywide pedestrian signal head additions ▪Citywide bike/ped counters ▪Bike share bikes and kiosk installations ▪Citywide bike parking installations ▪Citywide high visibility crosswalk installations ▪Separated bike lane upgrades (converting existing bike lanes into separated bike lanes) ▪Citywide ADA improvements ▪Mini roundabouts ▪Curb extensions/bulb-outs	▪SRTS plan ▪Pedestrian plan ▪Bike plan ▪Safety action plan for pedestrians or bicyclists ▪Active transportation plan ▪ADA transition plans

[1] *Some communities may be eligible for TDCs which allow for 100% federal TA funds to be applied to the project in lieu of a local match*

[2] *Target total award for all projects in this category ~$10M-20M*

[3] *Target total award for all projects in this category ~$3M-5M*

Figure 3: 2023 TA Program Call Project Category Decision Tree

Local Match for TA Projects

TA funding provides 80% federal funds with a 20% minimum local match required. The local funding match may be provided in one of the following ways:

- Cash provided by the project sponsor, or
- State funds in limited circumstances, or
- Transportation Development Credits (TDCs) for projects that meet specific economic criteria

A brief description of TDC eligibility is provided below.

Projects selected by the commission will include the addition of a 15% TxDOT administrative fee (based on the total estimated project construction cost) for TxDOT's direct state cost associated with the department's administration and oversight of the project. The department's administrative fee will be 80% federally funded with a 20% local match. The 20% local match for TxDOT's administrative cost can be provided utilizing the local match options outlined above.

Funds from other federal programs may be used as local funding match only when specifically authorized by federal law or regulation. Donated services may not be accepted as local funding match but may help reduce the overall cost of the project to the sponsor and would not be included in the project budget or scope of work. Third party cash donations paid to the project sponsor for use as the local match may be acceptable, if authorized by law.

TxDOT may in certain circumstances apply state funds to local match for projects that are on-system or fulfill ADA Transition Plan recommendations. This will be at the discretion of the TxDOT district the project is located in.

TA is a reimbursement program. After a project is authorized to proceed, allowable expenses are incurred by the project sponsor and reimbursement must be requested from the department. If a project selected by the commission is implemented by the department, the project sponsor must provide the local funding match prior to the commencement of project activities for each phase of work as outlined in the local agreement (i.e., Advance Funding Agreement).

Transportation Development Credits (TDCs)

Toll or transportation development credits are a federal transportation funding tool used to meet federal funding matching requirements. States accrue TDCs when capital investments are made in federally approved tolled facilities including toll roads and bridges. For TxDOT's 2023 TA Call for Projects, all projects that meet the economic criteria below may be eligible to apply for state TDCs that allow for 100% federal TA funds to be applied to the project in lieu of a local match. Under TxDOT's 2023 TA Call for Projects, eligibility for TDCs is as follows:

1. The project is located in an economically disadvantaged county certified by the commission for FY 2023, or
2. The project is located in a city/Census Designated Place (CDP) that meets all of the following criteria:
    - Population less than 200,000
    - Below state average per capita taxable property value[5]
    - Below state average per capita income[6], and
    - Above state average unemployment[7]

Appendix A identifies cities and CDPs that are eligible for TDCs. For a map of cities and CDPs eligible to use TDCs for local match please use this link: (https://txdot.maps.arcgis.com/apps/webappviewer/index.html?id=eb6b53d80aef46a3a9f5c28dd4248597).

For rural projects located outside jurisdictional boundaries or CDPs not identified on the map, contact TxDOT-PTN for guidance.

Eligible TA Project Sponsors

Entities eligible to receive TA funds are listed below.

- A local government
- A regional transportation authority
- A transit agency
- A natural resource or public land agency
- A school district, a local education agency, or a school
- A tribal government
- A metropolitan planning organization (MPO) that serves an area with a population of 200,000 or less
- A nonprofit
- Any other local or regional governmental entity with responsibility for, or oversight of, transportation or recreational trails (other than an MPO that serves a population greater 200,000 or a state agency)
- A state, at the request of an entity listed above

[5] Texas Comptroller of Public Accounts; 2020 City Rates and Levies, Total Property Market Value and U.S. Census Bureau; 2020 Decennial Census, Total Population
[6] U.S. Census Bureau; 2020 5-Year Community Survey, Table DP03, Per Capita Income
[7] U.S. Census Bureau; 2020 5-Year Community Survey, Table DP03, Civilian Unemployment Rate

Refer to 23 U.S.C.§133(h) for further details/descriptions of the above entities. A project sponsor may need to provide the department a reference to its enabling legislation for review to determine eligibility.

According to 23 U.S.C.§133(h)(4)(B), state departments of transportation (DOTs) at the request of another eligible entity are eligible project sponsors. Additionally, MPOs with a population of 200,000 or less are eligible project sponsors for TA funds. Moreover, state DOTs and MPOs of any size may provide assistance with applications or carry out a TA project once it is awarded funds even if the state DOT or MPO was not involved in the application for the project. For more information, see Section I. Project Implementation.

Entities with limited federally funded construction experience and entities without ROW ownership are strongly encouraged to partner with local governments (city, county, etc.) on construction-related projects. Only one entity is permitted to serve as a project sponsor and enter into an agreement for project implementation with TxDOT. The project sponsor is 100% responsible for the local match and project development.

Typically, a local government serves as the project sponsor because the majority of the improvements are located on property maintained by the local government. When a third party, such as a school district or nonprofit entity, partners on a project or agrees to provide a portion of the local funding match, it would be the project sponsor's responsibility to execute an agreement with the third party for any funding commitments and secure any right-of-entry for project construction while remaining the sole project sponsor.

Additionally, project sponsors may partner with transit agencies on projects that support safe, accessible connections to transit. TA funds may be transferred to a compatible Federal Transit Administration (FTA) grant program for implementation when a project has a transit nexus and when all project components are eligible under the receiving FTA Program rules. A transit nexus is defined as providing connecting pedestrian facilities within ½ mile of transit service or providing connecting bicycle facilities within 3 miles of transit service. Above, table 3 summarizes eligibility information.

C. PROJECT EVALUATION AND SELECTION CRITERIA

Selection criteria for TxDOT's TA Program were developed to support TxDOT's mission of connecting Texans to where they need to go and the department's vision to be a forward-thinking leader delivering mobility, enabling economic opportunity, and enhancing quality of life for all Texans. Additionally, TxDOT hosted a workshop to receive input from MPO and TxDOT stakeholders to establish evaluation criteria. These criteria were reviewed by the Bicycle and Pedestrian Advisory Committee and TxDOT staff to establish criteria category weights for each of the project categories. The department will evaluate the potential benefit to the state of each eligible TA project, as well as the project's potential to enhance the surface transportation system. The department intends to recommend and implement projects in various communities across Texas and includes equity evaluation criteria and local match assistance to ensure that projects in disadvantaged communities are afforded access to TA Program funds.

Table 4 outlines the criteria categories and measures that will be used to evaluate all eligible projects. The table includes a brief description of each evaluation criterion and a list of measures for each category. Table 5 provides the criteria category weights by project category. In the Detailed Application, project sponsors will address the criteria categories by responding to questions targeted toward specific evaluation criteria. A Detailed Application form and instructions will be available for download on the TxDOT webpage (https://www.txdot.gov/inside-txdot/division/public-transportation/bicycle-pedestrian.html) on or around March 27, 2023.

Table 4: Criteria Categories, Descriptions, and Measures

Criteria Category	Criteria Description	Criteria Measures	Evaluation Details
Safety	▪ Demonstrates need for safety improvement and appropriate safety countermeasures ▪ Provides safer and/or less intimidating accommodations for walking, bicycling, and other non-motorized travel	Non-motorized crash count	TxDOT GIS analysis
		Non-motorized crash rate	TxDOT GIS analysis
		Documented safety hazards	Analysis of application responses
		Professional judgement of countermeasure appropriateness	Analysis of application responses
		Proposed infrastructure elements	Analysis of application responses
Connectivity & Accessibility	▪ Improves active transportation access to destinations of interest such as business districts, downtown, centers of business activity, high density residential, and/or employment centers ▪ Supports multi-modal connections ▪ Eliminates barriers to pedestrians, bicycle riders, and wheelchair users ▪ Supports investments in local/interregional tourism, especially Texas Bicycle Tourism Trails	Connects to bicycle, pedestrian, and/or transit infrastructure	Analysis of application responses
		Connects to active transportation destinations	Analysis of application responses
		Eliminates barriers	Analysis of application responses
		Along long-distance bike route	Analysis of application responses
		Population density*	TxDOT GIS analysis
		Employer density*	TxDOT GIS analysis
Project Readiness	▪ Demonstrates the ability to advance the project to construction immediately, if selected for funding ▪ Identifies comprehensive, detailed construction cost estimate ▪ Meets and/or exceeds design criteria established by US Access Board, FHWA, AASHTO, TxDOT, and/or NACTO ▪ Past project sponsor performance on previous	Professional judgement rating of project constructability/feasibility	Analysis of application responses
		Professional judgement rating of shovel readiness	Analysis of application responses
Geographic Equity	▪ Enhances livability by improving active transportation access and improves mode choice in underserved communities	Average percent zero car household	TxDOT GIS analysis
		Average percent unemployed	TxDOT GIS analysis
		Average percent minority	TxDOT GIS analysis
		Average percent disabled	TxDOT GIS analysis
		Average percent elderly	TxDOT GIS analysis
Community Support & Planning	▪ Public outreach demonstrates positive community support ▪ Established community partnerships commit to collaboratively implement project ▪ Project demonstrates a link to formal transportation planning efforts (e.g., ADA Transition Plan) ▪ Demonstrates commitment to provide the local match	Professional judgement of supporting documentation of community support	Analysis of application responses
		Professional judgement of alignment with local planning documents (if provided)	Analysis of application responses

* Criterion only applies to Community Based TA Medium Urban projects and Large Scale Active Transportation projects.

Detailed applications for Large Scale Active Transportation Infrastructure projects will also be required to submit narrative responses to support a criteria category called Transformational Elements. Additional points may be added to Large Scale Active Transportation Infrastructure based on Transformative Elements of projects.

Additional Criteria Category	Criteria Description	Criteria Measures
Transformational Elements *(Large Scale Active Transportation Infrastructure only)*	• Eliminates significant barrier for peds and/or bikes • Mitigates significant impacts to underserved communities • Leverages and/or complements other existing projects in community • Features significant economic development potential • Features innovative partnerships • Applies innovative, smart, or connected technologies	Professional judgment of narrative response

Table 5: Criteria Categories Weights by Project Category

Criteria Category	Criteria Category Weights			
	Community Based	Large Scale*	Network Enhancements	Non-Infrastructure
Safety	25%	25%	20%	30%
Connectivity & Accessibility	25%	25%	20%	30%
Project Readiness	25%	25%	35%	-
Geographic Equity	15%	15%	15%	20%
Community Support & Planning	10%	10%	10%	20%
Total	**100%**	**100%**	**100%**	**100%**

*Additional points may be added to Large Scale Active Transportation Infrastructure based on Transformative Elements of projects.

Evaluation Process

A department evaluation committee will oversee an evaluation process that will result in a recommended list of projects submitted during this Call for Projects to receive funding. Department staff will review, evaluate, and recommend projects submitted during the department's 2023 TA Call for Projects. TxDOT staff will screen each proposed project to determine whether it is eligible for funding under applicable federal and state law and determine whether the proposed project would meet technical standards established by applicable law and acceptable professional practice.

This Call for Projects features a two-step application process. The first step will culminate in an eligibility determination subject to TA Program rules based on responses in the preliminary application. Department staff will verify the eligibility of the project sponsor, the proposed construction activity, and the project location. At the end of Step 1, eligible project sponsors will be notified of their eligibility to submit a detailed application during Step 2. A detailed application with instructions will be provided to eligible project sponsors to download at that time. If the project sponsor, construction activity, or location is determined to be ineligible at any time during the application process, then the project sponsor will be notified that the project will not be further considered for funding under this program.

In Step 2, each eligible project will be scored—criteria category scores are weighted using the list of criteria and weights provided above in Tables 4 and 5.

During project evaluation, TxDOT may identify potential constructability concerns (e.g., drainage issues, limited ROW, substantially inadequate budget, etc.). In this situation, TxDOT may recommend a project be phased and advanced for preliminary engineering (i.e., PS&E and environmental documentation) only. If a project is awarded preliminary engineering funding only, the project must be resubmitted in a future call for projects to be considered for construction funding.

A project that does not complete Step 1 successfully will not be evaluated in Step 2. An application package that fails to include items required in the instructions for the preliminary and detailed applications will be considered incomplete and may not be considered for funding. The department may request supplemental information, as needed, to conduct project screening and evaluation. If a project sponsor is nonresponsive or fails to adequately address requests for supplemental information, their application will be considered incomplete and may not be considered by funding.

The evaluation committee will provide project selection recommendations and supporting documentation to the director of the division responsible for administering the TA Program. The director of the responsible division will review the recommendations and supporting documentation and provide a list of recommended projects to the commission for consideration.

D. ALLOWABLE COSTS

For TxDOT's 2023 TA Program call, the department's TA funds are available for:

- Project construction
- Preliminary engineering and design, including preparation of construction plans, specification, and estimates (PS&E), and associated survey work
- Environmental documentation
- Planning activities associated with development of planning documents to assist communities develop non-motorized transportation networks
- Right-of-way acquisition on a case-by-case basis as approved by TxDOT. ROW acquisition must facilitate project execution within TA Program obligation requirements and be supported by affected property owners.

Any project costs incurred prior to selection by the commission, execution of a local agreement, and authorization from the department to proceed will not be eligible for reimbursement. The commission will specify an amount of federal TA funds for each project. See Section F for details.

Projects funded under 23 U.S.C.§133, including TA projects, shall be treated as projects on a federal-aid highway (23 U.S.C.§133(i)). This subjects all TA projects to various federal-aid requirements (e.g., Davis-Bacon prevailing wage requirements, Buy America, planning, environmental review, procurement and letting, etc.). Guidance regarding such requirements is found in the **TxDOT Local Government Projects Toolkit** (**LGP Toolkit**) at https://www.txdot.gov/government/processes-procedures/lgp-toolkit.html. The LGP Toolkit provides specific information regarding the applicable laws (see Project Policy Manual), procedures (see Project Management Guide), and best practices (see Best Practices Workbook) that must be adhered to regarding some or all phases of a TA project. Relevant portions of the LGP Toolkit are referenced in this guide.

The following costs are <u>not</u> eligible for federal reimbursement under this program call with TxDOT's TA funds:

- Environmental mitigation
- Utility adjustments (unless incidental to the project and approved as part of the project scope)
- Landscape improvements (unless incidental to the project and approved as part of the project scope)
- Acquisition of right-of-way and other property purchases that are not approved by TxDOT

The total amount for incidental construction activities (such as minor utility adjustment, minor drainage improvements, roadway repair, etc.) should not exceed 30% and amenities are allowed up to 10% of the project's construction budget.

If any element in a project application fails to meet federal and state requirements (e.g., warrants or conditions for traffic signals), the item will not be considered an eligible expense for reimbursement. A project construction budget must have a minimum of 75% of its cost items eligible for reimbursement in order to remain in competition. Ineligible items will not be funded. The project sponsor will need to demonstrate a willingness and ability to pay ineligible costs and/or demonstrate that the TA project is constructible as an independent project without the ineligible items.

Project overruns will be evaluated by the responsible division administering the program, in coordination with the project sponsor, on a case-by-case basis to determine if the project will continue and how the additional costs will be covered. The criteria for determining if the project may receive additional federal funding to cover overruns were established in 43 Texas Administrative Code (TAC) §11.411(d) and are outlined below.

If program funds remain or are returned to the program due to cost underruns, the responsible division may apply additional TA Set-Aside funds, on a needs basis, for project overruns based on:

1. Justification of overruns,
2. Timing of request,
3. Availability of funds;
4. A reasonable expectation of the ability of the project sponsor to complete the project; and
5. If overrun requests exceed available funds, application of additional funds will be based on the economic criteria outlined below:
    a. Project is located in an economically disadvantaged county certified by commission for FY 2023, or
    b. Project is located in a city/Census designated place (CDP) that meets the following criteria:
        i. Population less than 200,000
        ii. Below state average per capita taxable property value[8]
        iii. Below state average per capita income[9], and
        iv. Above state average unemployment[10]

[8] Texas Comptroller of Public Accounts; 2020 City Rates and Levies, Total Property Market Value and U.S. Census Bureau; 2020 Decennial Census, Total Population
[9] U.S. Census Bureau; 2020 5-Year Community Survey, Table DP03, Per Capita Income
[10] U.S. Census Bureau; 2020 5-Year Community Survey, Table DP03, Civilian Unemployment Rate

E. 2023 PROJECT SPONSOR WORKSHOP SCHEDULE

TxDOT will host project sponsor workshops in-person and virtually to provide information and guidance on TxDOT's 2023 TA Call for Projects. Potential project sponsors, consultants, and others interested in the program are invited to attend any scheduled workshop listed below. Registration is required for virtual meetings. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to attend or participate, please contact the coordinator identified below at least five business days in advance of the meeting. Recordings of these virtual workshops will be available for review on the TxDOT webpage (https://www.txdot.gov/inside-txdot/division/public-transportation/bicycle-pedestrian.html) in the weeks following the workshops. Questions submitted during the workshops or received by December 16, 2022 will be reviewed and responses posted on the program webpage on or around December 21, 2022.

November 29, 2022 (9:00AM – 12:00PM)
Virtual Workshop
Click Here to Register

Coordinator: Noah Heath (316) 876-7184

November 30, 2022 (9:00AM – 12:00PM)
League City Community Center,
400 South Kansas Avenue
League City, Texas 77573
Coordinator: Ana Ramirez Huerta (281) 928-4156

December 6, 2022 (9:00AM – 12:00PM)
North Central Texas Council of Governments
Transportation Council Room
616 Six Flags Dr., Centerpoint Two
Arlington, TX 76011
Coordinators: FTW Iftekhar Ali (817) 370-3565
DAL Rachael Twiggs, P.E. (214) 320-6669

December 7, 2022 (9:00AM – 12:00PM)
TxDOT El Paso District Office,
13301 Gateway Blvd West
El Paso, TX 79928
Coordinators: Adriana Rodriguez (915) 790-4221
Jose Bocanegra Jr. (915) 790-4365

December 15, 2022 (9:00AM – 12:00PM)
TxDOT Laredo District Office,
Large Meeting Room
1817 Bob Bullock Loop
Laredo, TX 78043
Coordinator: Janece Marquez (956) 712-7438

December 16, 2022 (9:00AM – 12:00PM)
Virtual Workshop
Click Here to Register

Coordinator: Noah Heath (316) 876-7184

F. SELECTION OF TA PROJECTS BY THE TEXAS TRANSPORTATION COMMISSION

The Texas Transportation Commission (commission) will select TA projects through a competitive process administered by the department.

The commission, by written order, will select projects for funding under the TA Program based on:

1. Recommendations from the director of the division responsible for administering the TA Program
2. The project's potential benefit to the state
3. The project's potential to enhance the surface transportation system
4. Funding availability

The commission is not bound by project recommendations provided by the department. The department will notify the sponsors of selected projects.

The commission will specify an amount of federal TA funds for each project selected. Refer to Section E. Allowable Costs for information on project cost overruns.

The number of project applications and individual project complexity may result in commission action over one or more meetings to expedite project implementation.

G. PROJECT ELIMINATION

A project will be eliminated from participation in the TA Program if, prior to the execution of the local agreement, the governing body of a municipality or county in which project activities are proposed, by resolution, order, or other official action, notifies the department of its opposition to the project.

TxDOT's executive director may eliminate a project or a portion of a project from participation in the TA Program if:

- The project sponsor fails to meet requirements established in the department's rules
- Implementation of the project would involve significant deviation from the activities proposed in the application package and approved by the commission
- The project sponsor withdraws from participation in the project
- A local agreement (i.e., Advance Funding Agreement) is not executed between the local entity and the department within one year after the date that the commission selected the project
- A construction contract has not been awarded or construction has not been initiated within three years after the date that the commission selected the project
- The executive director determines that federal funding may be lost because the project has not been advanced, implemented, or completed in a timely manner

H. FINDING OF INELIGIBILITY AND REQUEST FOR RECONSIDERATION

The department will notify the project sponsor of ineligible project activities proposed and the reason for the determination by certified mail, return receipt requested. A request for reconsideration may be initiated only by a certified letter from the project sponsor setting forth reasons in support of a finding of eligibility to the department's executive director with a CC: to the director of the division responsible for the TA Program (see addresses below). The letter requesting reconsideration MUST be received by the department no later than 15 days after the project sponsor received the department's notification of ineligibility, as established by the certified mail return receipt. A request for reconsideration must be mailed to the following parties:

To: TxDOT Executive Director
125 E. 11th Street
Austin, Texas 78701

Copy: TXDOT – PTN Director
125 E. 11th Street
Austin, Texas 78701

The determination of the executive director (following consultation with department and FHWA staff) in response to a project sponsor's request for reconsideration will be final.

I. PROJECT IMPLEMENTATION

The project sponsor shall implement or arrange for implementation of each project selected by the commission in accordance with statutory requisites and contracting procedures applicable to the type and character of the project. In accordance with 23 CFR §635.105, TxDOT ensures that a project sponsor "is adequately staffed and suitably equipped to undertake and satisfactorily complete" a project, and therefore, the department, in its sole discretion, may decide to perform certain phases or otherwise complete a project on behalf of a project sponsor. All projects shall be developed to current standards and specifications established or recognized by the federal government, the department, and the TA rules.

Local Government Project Requirements

All project sponsors awarded funding under the TA Program who propose to manage and perform any work on the project will be required to designate a "Responsible Person in Charge" (RPIC), a "Project Manager" (PM), and a "Qualified" person in accordance with TxDOT's Local Government Project Program (LGPP). Refer to the TxDOT Local Government Projects Toolkit for requirements: https://www.txdot.gov/government/processes-procedures/lgp-toolkit.html.

Through its LGPP Qualification Program, the department offers a 12-hour course (LGP101) to train and qualify individuals working on state or federally funded projects. Training is complete when at least one individual who is working actively and directly on the project successfully completes and receives a certificate for the LGP101 course. The individual who completes this training is designated as the project sponsor's "Qualified" person. The "Qualified" person may be an employee of the local government or an employee of a firm that has been contracted by the local government to perform oversight of the project. The department requires all persons "Qualified" through this program to successfully complete the LGPP qualification course at least once every three years. For local government project guidance and training visit the department's LGPP website: http://www.txdot.gov/government/programs/local-government-projects.html. It is recommended that the project sponsor's "Qualified" person complete the LGPP training as soon after project selection as possible.

In order for the department to authorize a local entity to manage elements of a project with FHWA or state funds, the department MUST perform a Local Government Risk Assessment. This assessment allows the department to evaluate the project sponsor's qualifications to perform one or more elements of the project development process for an FHWA- or state-funded project and set an appropriate level of department oversight. Refer to the department's guidance for Local Government Risk Assessment and Participation/Responsibilities in AFAs at: http://ftp.dot.state.tx.us/pub/txdot/lgp/funding/guidance.pdf.

Adding Projects to the Statewide Transportation Improvement Program (STIP)

TA projects may be grouped in the TIP/STIP unless the project doesn't meet the definition of a grouped project, is considered regionally significant, or is required to be individually listed in accordance with MPO policy. If a project selected by the commission is to be implemented in a metropolitan area, the department will request that the metropolitan planning organization (MPO) for that area immediately begin the process required to include the selected project in its Transportation Improvement Program (TIP) as appropriate; however*, it is the project sponsor's responsibility to make sure the project is included in the MPO's local TIP*. Early coordination with the MPO is strongly recommended. For projects in population areas outside the boundaries of an MPO, the department will immediately begin the process to include projects in its rural TIP and STIP, as appropriate. Projects that are individually listed must be identified in the MPO's TIP or in the department's rural TIP before the project can be added to the STIP. The STIP is updated quarterly and requires FHWA approval.

Execution of Local Agreement with the Department

All TA project sponsors must enter into a local agreement (e.g., Advance Funding Agreement) with the department and comply with all federal and state procedures applicable to development of federal-aid transportation projects. The local agreement must be executed by the project sponsor within one year of the date of selection by the commission or risk loss of federal funding.

Development of the local agreement for TA projects can begin immediately after project selection. As part of the agreement process, a determination will be made as to whether the project's federally participating preliminary engineering and construction letting (advertisement for bids and contract management) will be performed by the department or by the project sponsor. At the department's discretion, TA projects may be developed and/or let for construction by the department. Alternatively, project sponsors may seek department authorization for local project development and/or construction letting of their project(s).

In accordance with federal and state rules, the department will perform a Local Government Risk Assessment to determine the project sponsor's qualifications to perform one or more elements of the project development process. For additional information refer to ***Local Government Project Requirements***, above, and: http://www.txdot.gov/government/programs/local-government-projects.html. This determination dictates many subsequent steps in the project development process. A project sponsor requesting local responsibility for project development or construction letting will need to demonstrate adequate cash flow to accommodate the payment of 100% of costs pending reimbursement of the federal and/or state share of allowable costs for TA projects. The department's local district office will make the final determination after consultation with division staff and the project sponsor. See *Construction Letting by the Project Sponsor* and *Construction Letting by the Department* below.

Regardless of whether the project is developed and let for construction by the department or by the project sponsor, the department will have oversight responsibility and will incur direct state costs associated with project development, plan review (generally conducted at 30%, 60%, 90%, and 100% complete), and construction oversight. The detailed application will automatically apply a 15% fee to the project budget for the department's direct state costs, based on the total estimated cost for construction. The department's direct state costs are eligible for federal reimbursement in accordance with the program rules.

> Example 1:
> A TA project with an estimated construction cost of $1,000,000 will have a 15% administration cost of $150,000, which will be added to the total project cost. TA project costs are 80% federally reimbursable with a 20% local match. The 20% local match for a $150,000 direct state cost would be $30,000.

As outlined in the local agreement, the project sponsor will be required to advance the local match for preliminary engineering phase activities including the associated direct state costs in cash within 30 days of signing the local agreement. The department will not begin project reviews until the local match is received. The project sponsor would subsequently provide the remaining local match for construction and construction oversight, plus any estimated overruns within 60 days prior to the Construction contract being advertised for bids.

Federal Project Authorization and Agreement (FPAA)

The department is responsible for securing the federal funding for each phase of work. The environmental documentation must be cleared, all property must be acquired, any major utility adjustments must be completed, and the construction plans must be completed before the department requests an FPAA from FHWA to obligate the federal funding for construction.

It is critical for project sponsors to accurately estimate the time it will take to have the project ready to let. A project timeline is required as part of the Detailed Application. The timeline will be used to identify project funding and establish the year for construction letting.

TA funding is time-sensitive; TA funds are available for obligation for a period of three years after the last day of the fiscal year for which the funds are apportioned to the state. Due to the limited period of availability of TA funds, approval to adjust the letting date of a TA project must be obtained from the TA Program Manager in the TxDOT division responsible for administering the program.

Plans, Specifications, and Estimates (PS&E)

The project sponsor is responsible for plan preparation, environmental documentation, and other design-related activities including required reviews. All bicycle/pedestrian infrastructure design must comply with the Americans with Disabilities Act (ADA) and meet or exceed the minimum design requirements identified in the latest edition of TxDOT's *Roadway Design Manual*. Pedestrian

facilities must conform to the *Public Right of Way Accessibility Guidelines* (latest edition) as published by the US Access Board or the 2010 ADA Standards and Texas Accessibility Standards, as applicable. All design criteria for on-road and off-road bicycle facilities must comply with the *Guide for the Development of Bicycle Facilities* (latest edition) as published by the American Association of State Highway and Transportation Officials (AASHTO). When selecting bicycle infrastructure design elements, it is advisable to refer to FHWA's *Bikeway Selection Guide* and *Small Town and Rural Design Guide*. When constructing projects along transit routes or connecting pedestrians and bicyclists to transit, it is advisable to refer to FHWA's Improving Safety for Pedestrians and Bicyclists Accessing Transit. For projects proposing to construct a segment of the Texas Bicycle Tourism Trails Network, refer to recommended design guidelines and routes on TxDOT's webpage: https://www.txdot.gov/inside-txdot/modes-of-travel/bicycle/plan-design/tourism-study.html. Project sponsors may propose a locally preferred alternative route to a route identified on the Texas Bicycle Tourism Trails Example Network.

For costs associated with consultant services to be eligible for reimbursement, the project sponsor's consultant selection procedures will need to be approved by TxDOT to ensure they meet all federal and state requirements for selection of professional engineering services. These requirements are outlined in the department's Local Government Project Management Guide (http://ftp.dot.state.tx.us/pub/txdot/lgp/procedures/guide.pdf).

If reimbursements for engineering/environmental services are authorized, the project sponsor is required to submit plans to the department for review at progressive stages of development to ensure that state and federal standards are met (e.g., 30%, 60%, 90%, and 100% completion). For all other projects, design reviews occur at agreed-upon stages of development. Contact your local TxDOT district office to establish expectations.

If the estimated construction cost of pedestrian elements in the project is $50,000 or greater, the project must be reviewed by a Registered Accessibility Specialist (RAS) licensed by the Texas Department of Licensing and Regulation (TDLR). This may require an additional two months in the review process. As a result, include a minimum of three months for TxDOT's final plan review.

Environmental Documentation

The level of documentation required for TA project activities generally falls under a Categorical Exclusion (CE); however, with any action, impacts may occur whereby more substantial environmental documentation could be required (Environmental Assessment [EA] or Environmental Impact Statement [EIS]).

CEs are defined in 40 CFR §1501.4 as projects that do not individually or cumulatively have a significant environmental effect.

A project sponsor is responsible for completing the following tasks:

- Review the proposed project activities to determine if they meet the criteria outlined in 23 CFR §771.117 to be classified as a CE; preparation of an EA or EIS may be required for projects that don't meet the criteria for a CE.
- Determine the required environmental compliance tasks.
- Collaborate with the department representative (typically the department's local district environmental coordinator) to prepare the project scope that outlines the required environmental tasks and associated responsibilities.
- Ensure that any required environmental studies, resource agency coordination, and public participation are completed.
- As agreed to in the scope, prepare all required documentation that supports the environmental determination (CE, EA, or EIS).
- Maintain the project file for submittal to the department.
- Document and implement any environmental permits, issues, or commitments.

If the project is selected for funding, the department's environmental staff will be responsible for coordinating the required environmental studies with the appropriate resource specialists, including relevant specialists at other state and federal agencies, as applicable. For example, impacts to historic properties will be coordinated through the department as part of the project's environmental documentation process. Depending on the nature of the historic property, State Historic Preservation Office (SHPO) coordination can take several months to complete.

For more information on the department's environmental processes, please refer to the following resources:

- Categorical Exclusions for transportation projects in Texas Administrative Code: *Title 43, Part 1, Chapter 2, Subchapter D, Rule §2.81:* https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=43&pt=1&ch=2&rl=81
- *TxDOT's Environmental Compliance Toolkits*: http://www.txdot.gov/inside-txdot/division/environmental/compliance-toolkits.html
- *TxDOT's LGP Management Guide Chapter 5*: http://ftp.dot.state.tx.us/pub/txdot/lgp/procedures/guide.pdf

Environmental approval is a required step in the project development process. A Renewed Memorandum of Understanding between FHWA and TxDOT entitled Concerning State Of Texas' Participation in the Project Delivery Program Pursuant To 23 U.S.C. 327 (December 2019) assigned authority to TxDOT to make FHWA project decisions for assigned projects. Therefore, in most cases, the department (rather than FHWA) will provide the final environmental review and project decision for 2023 TA projects.

The project sponsor is encouraged to work closely with the department's local district environmental coordinator on project scope and environmental documentation requirements. This will significantly facilitate the development and approval of environmental documentation. Once a project sponsor submits required environmental documentation to TxDOT, the department's review, resource agency coordination, and the environmental decision process can take as little as a few days or as long as several months. The length of this process depends on the project location, the complexity of the project, and the completeness and accuracy of information submitted.

Public/Stakeholder Involvement

An appropriate level of public/stakeholder involvement is required for each project submitted under TxDOT's 2023 TA Call for Projects.

Current TxDOT environmental rules require a public hearing be held for a project that "substantially changes the layout or function of a connecting roadway or existing facility." Based on current state environmental rules, the addition of bicycle lanes is included in the definition of a "substantial change in function of a roadway." For the purposes of this requirement, "bicycle lane" means a portion of a roadway that is designated by striping, signing, or pavement markings for the exclusive use of bicyclists. Shared-use paths and wide shoulders are not considered "bicycle lanes" for the purposes of this requirement. Also, none of the following situations regarding bicycle lanes are treated as "substantially changing the layout or function of a connecting roadway or an existing facility or facilities:"

- Striping bicycle lanes when the pre-existing roadway already accommodated bicycles;
- Striping one or more non-continuous bicycle lanes approaching or through intersections, driveways, or other conflict areas; or
- Striping bicycle lanes not along, but across a roadway at an intersection to allow the continuation of planned or existing bicycle lanes on crossing local streets or other bicycle facilities.

The public hearing requirement for the addition of bicycle lanes may be satisfied if the project is addressed in a local hearing held under 43 TAC §25.55, "Comment Solicitation on Bicycle Road Use." For any such project, the environmental review project file must contain a statement (e.g., Environmental Compliance and Oversight System [ECOS] Journal entry) indicating that the project was addressed in a local hearing held under 43 TAC §25.55 and the date of that local hearing. Not all of the requirements of TxDOT's Environmental Handbook for Public Involvement apply to a local hearing held under 43 TAC §25.55. Work with your District TA Coordinator to understand public involvement requirements related to your project. For more information about TxDOT's public involvement practices, refer to http://ftp.dot.state.tx.us/pub/txdot-info/env/toolkit/760-01-gui.pdf.

SRTS-type projects require coordination between the local jurisdictions responsible for the roadways/sidewalks/paths leading to schools and the school districts responsible for affected school campuses.

Additional interagency coordination may be necessary. Most agencies request a minimum of 30 days to review a project proposal and provide a letter of support. Contact agencies early to allow sufficient time to acquire any supporting documentation that may be required/desired as part of a proposed project.

Right-of-Way (ROW)

Proposed improvements may be located on state-maintained roadway ROW (on-system) or on property owned by the project sponsor (off-system). Projects may be constructed on private property if the proper easement is obtained. Projects that include state-maintained ROW or have a direct effect on an existing state-maintained roadway must have a recent letter of consent, addressed to the project sponsor, and signed by the current TxDOT District Engineer of the TxDOT district in which the project is located. This consent cannot be delegated. If a project is proposed on state right-of-way, the project sponsor is responsible for securing permission/access from the department prior to construction.

A project that will require the acquisition of real property must comply with the Uniform Relocation Assistance and Real Property Acquisition Act. The exercise of eminent domain or condemnation is not allowed for the department's 2023 TA Call for Projects. For requirements and information on how to acquire ROW and accommodate utilities, refer to the department's Local Government Project (LGP) Management Guide, Chapter 6 *Right of Way and Utilities*.

Railroad Impacts and Coordination

Advanced railroad coordination is strongly recommended and may be essential for funding consideration. Obtaining railroad approval can take in some instances several years if the project construction is occurring within a railroad right of way. Coordination with a railroad is a requirement for all projects that are within 100 feet of railroad right-of-way (including grade-separated crossings) and/or all projects that begin or end within 500 feet from an at-grade highway-rail crossing to ensure traffic control and construction do not interfere with an active crossing.

For projects that meet the threshold for railroad coordination, documentation of railroad coordination must be included as an attachment to the detailed application. At a minimum, this documentation should demonstrate that coordination with the railroad has been initiated and the railroad is in support of the project. Projects with completed railroad coordination documentation or written agreements in place demonstrate a stronger level of project readiness, and these documents should be attached, if available.

Cost can vary depending on railroad owner and elements of a project, so it is important to communicate with the railroad early to understand the full magnitude of associated costs. Railroad crossings of bicycle/pedestrian infrastructure must incorporate appropriate, ADA-compliant pedestrian and bicycle elements, such as planks, crossing arms, etc., to allow for safe crossing of the railroad by non-motorized users. Estimated costs may also include flaggers, permits, insurance,

and oversight by the railroad, or costs for the railroad to construct the work on behalf of the project sponsor. Additionally, the railroad may require a fee to conduct plan reviews in advance of issuing an agreement. If the project sponsor has not been in contact with the affected railroad regarding the proposed project, then the project may not be ready for funding consideration.

Construction Letting by the Project Sponsor

If the project sponsor is authorized for a local construction letting, the project sponsor will be required to pay 100% of the construction costs as the work is done and request reimbursement of allowable costs incurred up to the percentage applicable. Before the project sponsor can advertise for construction bids, the project must have environmental clearance (in accordance with current department procedures) and the project sponsor MUST have a State Letter of Authority (SLOA) from the department to proceed to the construction phase of work.

Construction Letting by the Department

If the project is let for construction by the department, the outstanding local match (if any) and 100% of any estimated cost overages will be due to the department 60 days prior to advertising for construction.

Contractor for Construction

The construction contractor must be chosen through a competitive bidding process approved by the department. The construction contract will be awarded to the lowest responsive and responsible bidder, in accordance with *23 CFR Part 635*.

Note: The department has oversight and monitoring responsibilities for transportation projects when project costs are wholly or partially paid using FHWA or state funds.

Scope Modifications

Projects must be developed as described in the 2023 TA Detailed Application and approved by the commission. Any change to the scope of work specified in the application package and approved by the commission must have advance written approval. Changes in items of work or project scope that occur without advance departmental approval will not be reimbursed.

Payment of Costs

If the project sponsor is authorized for a local construction letting, the project sponsor will be required to pay 100% of the construction costs as the work is done and request reimbursement of the allowable costs incurred up to the percentage applicable. A project sponsor must use the forms and procedures specified by the department to request reimbursement of allowable costs incurred. The department will submit all requests for reimbursement of allowable costs to FHWA. For locally

developed and let projects, the entire project cost is borne by the project sponsor until reimbursement can be obtained from FHWA for eligible activities.

Costs incurred prior to the inclusion of the project in the STIP, execution of the local agreement, or prior to federal and state approval and authorization to proceed are not eligible for federal reimbursement.

Project Inspection and Acceptance

Upon completion of construction, the project sponsor must have a Professional Engineer registered in Texas certify that the project was constructed in substantial compliance with project specifications and requirements. The department is responsible for the inspection and final acceptance of all TA projects selected by the commission and for certification of project completion. If the project sponsor does not complete the project as originally approved by the commission, the department may seek reimbursement of the expended federal funds from the sponsor.

Period of Performance End Date

The period of performance end date must be included in the local agreement, after which time additional costs incurred are not eligible for federal reimbursement. Recipients are required to submit all eligible incurred costs and required performance and financial reports or project records specified in the local agreement or stewardship and oversight procedures within 90 days after the agreement end date. The project should be closed within one year after receipt and acceptance of all required final reports.

Maintenance and Operation

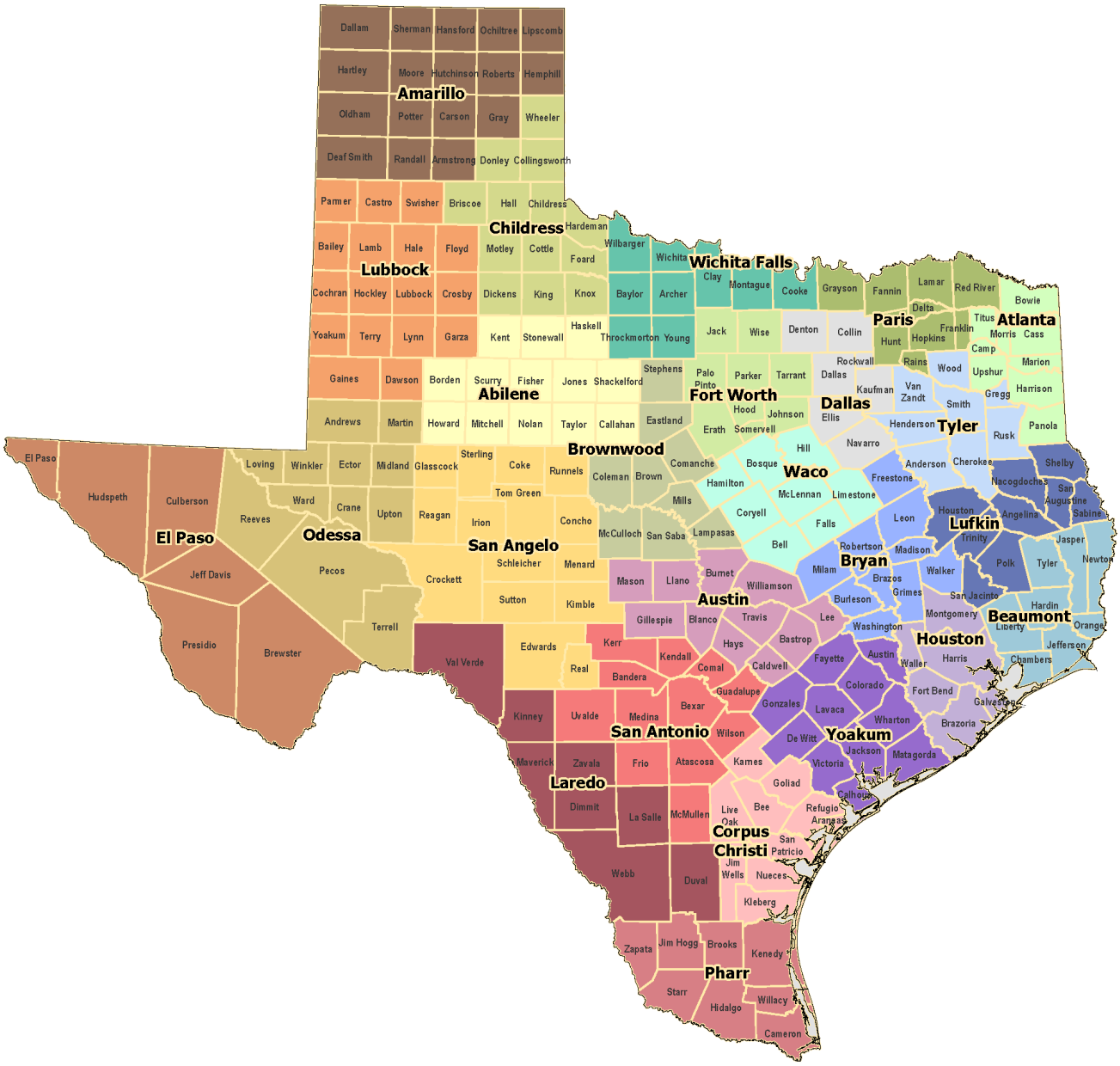
A project selected by the commission shall be maintained and operated by the project sponsor for the purpose for which it was approved and funded, and for a period of time that is commensurate with the amount of federal investment in the project. A project selected by the commission shall be dedicated for public use for the greater of (1) a period that is commensurate with the amount of federal investment in the project; or (2):

- 10 years, if the amount of federal investment in the project is $1 million or less
- 20 years, if the amount of federal investment is more than $1 million.

If at any time the project sponsor can no longer maintain and operate the project for its intended purpose, the project sponsor shall consult with the department and FHWA as to disposal or alternate uses consistent with the project's original intent.

J. TXDOT DISTRICT MAP

To locate the TxDOT District Office in your area, visit https://www.txdot.gov/about/districts.html. This website includes hyperlinks to TxDOT's 25 district office websites. Identify the project county and district using the map below. Use the TxDOT District TA Coordinators list on the following page to identify the local TA Coordinator for that district office.



K. TXDOT DISTRICT/DIVISION TA COORDINATORS

TxDOT's District TA Coordinator will be your first point-of-contact to discuss TxDOT's 2023 TA Call for Projects and the project nomination process. Click the District Coordinator's name to send an email.

Abilene District Office
Bryce Wade
4250 North Clack
Abilene, TX 79601-0150
(325) 676-6928

Amarillo District Office
Russell Washer
5715 Canyon Drive
Amarillo, TX 79110-7368
(806) 356-3249

Atlanta District Office
Lori Huett
701 East Main
Atlanta, TX 75551
(903) 799-1301

Austin District Office
Michelle Meaux
7901 North IH 35
Austin, TX 78753
(512) 832-7049

Beaumont District Office
Arnold Vowles
8350 Eastex Freeway
Beaumont, TX 77708
(409) 898-5773

Brownwood District Office
Andrew Chisholm
2495 Hwy. 183 North
Brownwood, TX 76802
(325) 643-0442

Bryan District Office
Stephen R. Copley, RLA
Amanda Owens
2591 N. Earl Rudder Freeway
Bryan, TX 77803-5190
(979) 778-9631

Childress District Office
Annabel Jurado
7599 US 287
Childress, TX 79201-9705
(940) 937-7251

Corpus Christi District Office
Jason Alvarez
1701 South Padre Island Drive
Corpus Christi, TX 78416(361) 808-2495

Dallas District Office
Rachael Twiggs, P.E.
4777 East Highway 80
Mesquite, TX 75150
(214) 320-6691

El Paso District Office
Adriana Rodriguez
Jose Bocanegra Jr.
13301 Gateway Blvd West
El Paso, TX 79928
(915) 790-4328

Fort Worth District Office
Iftekhar Ali
2501 SW Loop 820
Fort Worth, TX 76133
(817) 370-6591

Houston District Office
Ana Ramirez Huerta
7600 Washington Avenue
Houston, TX 77007
(713) 802-5810

Laredo District Office
Janece Marquez
1817 Bob Bullock Loop
Laredo, TX 78043
(956) 712-7438

Lubbock District Office
Kristi Schwartz
135 Slaton Road
Lubbock, TX 79404-5201
(806) 748-4435

Lufkin District Office
Celeste Solis
1805 North Timberland
Lufkin, TX 75901
(936) 633-4397

Odessa District Office
Kelli Williams
3901 East US Hwy. 80
Odessa, TX 79761
(432) 498-4752

Paris District Office
Scott Shannon
1365 North Main Street
Paris, TX 75460-2697
(903) 737-9285

Pharr District Office
Craig Wuensche
600 West Interstate 2
Pharr, TX 78577-6535
(956) 702-6306

San Angelo District Office
Mitchell Gatlin
4502 Knickerbocker Road
San Angelo, TX 76904
(325) 947-9242

San Antonio District Office
Suman Shrestha
4615 N.W. Loop 410
San Antonio, TX 78229
(210) 615-6113

Tyler District Office
Dylan McCord
2709 West Front Street
Tyler, TX 75702
(903) 510-9157

Waco District Office
Brenton Lane
100 South Loop Drive
Waco, TX 76704-2858
(254) 867-2761

Wichita Falls District Office
Kyle Poirot
1601 Southwest Parkway
Wichita Falls, TX 76302-4906
(940) 720-7776

Yoakum District Office
Barbara Obelgoner
403 Huck Street
Yoakum, TX 77995-2973
(361) 293-4371

Public Transportation Division (PTN):
Noah Heath
TxDOT - PTN
TA Program Manager
125 E. 11th Street
Austin, TX 78701
(512) 486-5973

L. BIKEWAY TERMINOLOGY

Shared Use Paths and Sidepaths

Can be located adjacent to roadways and physically separated from motorized vehicular traffic by a landscaped buffer or a barrier or along an independent alignment. Shared use paths are generally design for two-way travel and may also be used by pedestrians (including users of manual and motorized wheelchairs, and joggers) and other authorized motorized and non-motorized users such as skaters and eScooters. Conflict points occur between motorists and path users at intersections and driveways.

Separated and Raised Bicycle Lanes

A bicycle lane that is physically separated from the adjacent motor vehicle traffic by vertical elements in the street buffer. They are designed to operate one-way but may also operate two-way. Vertical elements separating the bike lane from the travel lane may include continuous raised medians, flexible posts, intermittent concrete curbing, or parked vehicles. Raised bicycle lanes are distinct from the sidewalk but may be at sidewalk level.

Bike Lane and Buffered Bike Lane

Bike lanes are one-way facilities on a roadway that typically carry bicycle traffic in the same direction as adjacent motor vehicle traffic. Bike lanes are provided for the exclusive use of bicyclists and are identified through signage, striping, or other pavement markings.

A buffered bike lane is a one-way bike lane that is separated from the adjacent motor vehicle lane or parking lane by a striped buffer area that may include chevrons, diagonal lines, or wide pavement marking stripes. When sufficient roadway width is present, or if the number of travel lanes is reduced, a buffer may be striped between a bike lane and travel lane to provide additional comfort for both bicyclists and motorists.

Bicycle Accessible Shoulder (rural)

Bike accessible shoulders are one-way facilities on a roadway that carry bicycle traffic in the same direction as adjacent motor vehicle traffic. A bike accessible shoulder is one that is at least as wide or wider than a bike lane (5-ft min) to accommodate bicyclists and paved to provide a smooth, solid surface across its width. Bike accessible shoulders are not solely for bicycle use and typically do not have bike lane markings, but they may include signage indicating the presence of bicyclists

Shared Lane

Shared lanes (wide outside lane) are lanes that allow compatibility of operation for both motorized vehicles and bicycles. Note that although marked shared lanes are allowed in the TMUTCD for certain conditions, TxDOT as a general policy does not recommend marked shared lanes for TxDOT roadways due to the higher speed nature of TxDOT roadways as compared to local jurisdictions. Shared wide outside lanes in urbanized applications should only be used in locations with low volumes (3,000 ADT or lower) and low speeds (35 mph or less). In a rural application, shared wide outside lanes should only be used in locations with low volumes (1,000 ADT or lower) and speeds of 45 mph or less.

M. ADDITIONAL WEBLINKS

Information about **TxDOT's 2023 TA Call for Projects**, including the Program Rules, Program Guide, Preliminary Application, Preliminary Application Instructions, Detailed Application, Detailed Application Instructions, workshop presentations, and other program related downloads can be found at:
https://www.txdot.gov/business/grants-and-funding/bicycle-pedestrian-local-federal-funding-programs.html

TxDOT Bicycle and Pedestrian Resource Webpage:
https://www.txdot.gov/projects/planning/bicycle-pedestrian-planning-designing.html

TxDOT Environmental Resources:

Environmental Handbook for Public Involvement:
http://ftp.dot.state.tx.us/pub/txdot-info/env/toolkit/760-01-gui.pdf

Categorical Exclusions for transportation projects in Texas Administrative Code: Title 43, Part 1, Chapter 2, Subchapter D, Rule §2.81:
https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=43&pt=1&ch=2&rl=81

Local Government Projects Program:
http://www.txdot.gov/government/programs/local-government-projects.html

TxDOT's Local Government Projects Toolkit:
https://www.txdot.gov/government/processes-procedures/lgp-toolkit.html

Local Government Project Management Guide:
http://ftp.dot.state.tx.us/pub/txdot/lgp/procedures/guide.pdf

TxDOT's Right of Way Acquisition Manual:
http://onlinemanuals.txdot.gov/txdotmanuals/acq/index.htm

TxDOT's Average Low Bid Unit Prices:
http://www.txdot.gov/business/letting-bids/average-low-bid-unit-prices.html

TxDOT's Economically Disadvantaged Counties Program (EDCP):
https://www.txdot.gov/about/programs/economically-disadvantaged-county-program.html

TDCs and TMA Interactive Map:
https://txdot.maps.arcgis.com/apps/webappviewer/index.html?id=eb6b53d80aef46a3a9f5c28dd4248597

TxDOT District Office Information:
https://www.txdot.gov/about/districts.html

U.S. Census TMA Designation:
https://www.fhwa.dot.gov/planning/census_issues/urbanized_areas_and_mpo_tma/;

U.S. Census Data Lookup:
https://data.census.gov/cedsci/

Adventure Cycling Association, US Bicycle Route System (USBRS):
https://www.adventurecycling.org/routes-and-maps/us-bicycle-route-system/

TxDOT Bicycle Tourism Example Network:
https://www.txdot.gov/apps/statewide_mapping/StatewidePlanningMap.html

Active Transportation Plan Inventory (ATPI):
https://www.txdot.gov/projects/planning/bicycle-pedestrian-planning-designing/plan-inventory-tool.html

TxDOT Bicycle and Pedestrian Count Program:
https://www.txdot.gov/data-maps/bicycle-pedestrian-count-program.html

TA Set-Aside Program in Texas Administrative Code:
Title 43, Part 1, Chapter 11, Subchapter G:
https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=43&pt=1&ch=11&sch=G&rl=Y

FHWA TA Set-Aside Guidance:
https://www.fhwa.dot.gov/environment/transportation_alternatives/guidance/

FHWA Safe Routes to Schools Guidance:
https://www.fhwa.dot.gov/environment/safe_routes_to_school/guidance/

FHWA Complete Streets Guidance:
https://highways.dot.gov/complete-streets

Safe Routes to School National Partnership:
https://www.saferoutespartnership.org/

National Center for Safe Routes to School:
https://www.saferoutesinfo.org/

DESIGN GUIDANCE:

AASHTO Guide for the Development of Bicycle Facilities (2012):
https://store.transportation.org/Item/CollectionDetail?ID=116

TxDOT Roadway Design Manual:
http://onlinemanuals.txdot.gov/txdotmanuals/rdw/rdw.pdf

TxDOT Bicycle Accommodation Design Guidance:
https://ftp.txdot.gov/pub/txdot-info/ptn/bike-acco-design-guide.pdf

Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG):
https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines

Separated Bike Lane Planning and Design Guide (FHWA):
https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/separated_bikelane_pdg/page00.cfm

Small Town and Rural Multimodal Networks (FHWA):
https://ruraldesignguide.com/
https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/small_towns/

Incorporating On-Road Bicycle Networks into Resurfacing Projects (FHWA):
https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/

NACTO Urban Bikeway Design Guide:
http://nacto.org/publication/urban-bikeway-design-guide/

FHWA Bikeway Selection Guide:
https://safety.fhwa.dot.gov/ped_bike/tools_solve/docs/fhwasa18077.pdf

Texas Accessibility Information - TDLR:
https://www.tdlr.texas.gov/

ADA Standards for Accessible Design:
Review Laws, Regulations & Standards | ADA.gov

N. DEFINITIONS AND TERMINOLOGY

AFA – Advance Funding Agreement

AASHTO – American Association of State Highway and Transportation Officials

Bikeway terminology – See Section L of this guide.

Bicycle Tourism Trails (BTT) – A network of bicycle tourism routes collaboratively developed to provide safe, non-motorized access to and connectivity between statewide/regional destinations and support economic development across Texas.

Boulevard - Walkable, low-speed (35 mph or less) divided arterial thoroughfare in urban environments designed to carry both through and local traffic, pedestrians and bicyclists. Boulevards may be long corridors, typically four lanes but sometimes wider, serve longer trips and provide pedestrian access to land. Boulevards may be high-ridership transit corridors. Boulevards are primary goods movement and emergency response routes and use vehicular and pedestrian access management techniques. Curb parking is encouraged on boulevards.

Census Urbanized Areas – Densely settled core of census tracts and/or census blocks that meet minimum population density requirements, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core.

Commission - Texas Transportation Commission

COG – Council of Governments
https://www.txregionalcouncil.org/display.php?page=regions_map.php

DA – Detailed Application

Department – Texas Department of Transportation (TxDOT)

Executive director – The executive director of the Texas Department of Transportation or his/her designee

EDCP – Economically Disadvantaged County Program

FHWA – Federal Highway Administration

FPAA – Federal Project Authorization and Agreement

Local Agreement – An agreement between the project sponsor and the department which includes a commitment for the required local funding, describes the total scope and course of project activities, and outlines the responsibilities and duties of the participants.

Local Match – A cash match provided by/through the project sponsor or if the project sponsor is eligible for TDCs then 100% federal TA funds will be applied to the project in lieu of a local match.

Medium urban area – Areas located outside TMA boundaries with a population size between 50,000 and 199,999 as determined by the 2010 Census.

Metropolitan Planning Organization (MPO) – The organization or policy board of an organization created and designated under 23 U.S.C. §134 and 49 U.S.C. §5303 to make transportation planning decisions for the metropolitan planning area and carry out the metropolitan planning process.

Micromobility - FHWA defines micromobility vehicles as any small, low speed, human or electric-powered transportation device, including bicycles, scooters, electric-assist bicycles (ebikes), electric scooters (e-scooters) and other small, lightweight, wheeled conveyances.

Nonurban area – Areas located outside TMA boundaries with a population size of 5,000 or less as determined by the 2010 Census.

PA – Preliminary Application

Project – An undertaking to implement or construct an eligible activity at a specific location or locations, or, if the context so implies, the particular activity so implemented or constructed.

Project sponsor – An eligible entity as described by 23 U.S.C. §133(h)(4)(b), that nominates a particular project for consideration, exercises jurisdiction over the geographic area in which the project is located, and commits to the project's development, implementation, construction, maintenance, management, and finance.

PS&E - Plans, Specifications, and Estimates

SLOA – State Letter of Authority

Small urban areas – Area located outside TMA boundaries with a population size between 5,001 and 49,999 as determined by the 2010 Census.

SRTS – Safe Routes to School

State – The State of Texas or any of its political subdivisions

Statewide Transportation Improvement Program (STIP) – A four-year short-range program developed by the department as a compilation of all metropolitan transportation improvement programs, together with rural transportation improvement programs, that include recommendations from rural planning organizations and department districts for the areas of the state that are outside of the boundaries of a metropolitan planning organization, including transportation between cities.

Surface transportation system – An interconnected surface transportation network for moving people and goods using various transportation modes

TDC – Transportation Development Credit

TDLR – Texas Department of Licensing and Regulation

TA – Transportation Alternatives Set-Aside Program

Transportation Improvement Program (TIP) – A short-range program developed by each metropolitan planning organization in cooperation with the department and public transportation

operators. The TIP covers a four-year period and contains a prioritized listing of all projects proposed for federal funding, plus regionally significant projects proposed for state, federal, and local funding in a metropolitan area.

Transportation Management Area (TMA) – FHWA defines TMAs as "all urbanized areas (UZAs) with populations greater than 200,000 as determined by the 2010 Census."

TxDOT – Texas Department of Transportation

APPENDIX A: CITIES AND CDPs ELIGIBLE FOR TDCS – FY 2023

The list below identifies cities and Census designated places (CDPs), or portions thereof, that are eligible for transportation development credits (TDCs) during TxDOT's 2023 TA Call for Projects. *An asterisk (*) indicates a jurisdiction that has portions eligible for TDCs and portions of its jurisdiction not eligible for TDCs. Refer to the TDC eligibility map link for specific locations.*

Eligible City or CDP
Abbott City
Abilene City*
Abram CDP
Acala CDP
Ackerly City*
Agua Dulce CDP
Agua Dulce City
Aguilares CDP
Airport Heights CDP
Airport Road Addition CDP
Alamo Beach CDP
Alamo City
Alamo Heights City
Alanreed CDP
Alba town CDP
Albany City
Aldine CDP
Alfred CDP
Alice Acres CDP
Alice City
Allison CDP
Alto Bonito Heights CDP
Alto town CDP
Alton City
Amada Acres CDP
Amargosa CDP
Amaya CDP
Ames City
Amherst City
Amistad CDP
Anacua CDP
Anahuac City
Anderson City
Angus City
Annona town CDP
Anson City
Anthony town CDP
Anton City
Appleby City

Eligible City or CDP
Aquilla City
Aransas Pass City
Arcola City
Arp City
Arroyo Colorado Estates CDP
Arroyo Gardens CDP
Asherton City
Athens City
Atlanta City
Austwell City
Avery town CDP
Avinger town CDP
B and E CDP
Bacliff CDP
Bailey City
Baird City
Balch Springs City
Balcones Heights City
Bangs City
Banquete CDP
Bardwell City
Barksdale CDP*
Barrera CDP
Barrett CDP
Barstow City
Bartlett City*
Bastrop City
Batesville CDP
Bay City
Bayside town CDP
Baytown City
Bayview town CDP
Bear Creek Ranch CDP
Beasley City
Beaumont City
Beauxart Gardens CDP
Beaver Creek CDP
Beckville City
Bedias City

Eligible City or CDP
Beeville City
Bells town CDP
Bellville City
Belton City
Ben Arnold CDP
Ben Bolt CDP
Benavides City
Benjamin City
Benjamin Perez CDP
Bertram City
Bevil Oaks City
Big Sandy town CDP
Big Spring City
Big Thicket Lake Estates CDP
Big Wells City
Bishop City
Bivins CDP
Bixby CDP
Blanco City
Blanket town CDP
Bledsoe CDP
Blessing CDP
Bloomburg town CDP
Blooming Grove town CDP
Bloomington CDP
Blue Berry Hill CDP
Blue Mound City
Bluetown CDP
Blum town CDP
Bogata City
Boling CDP
Bonanza Hills CDP
Bonham City
Borger City
Botines CDP
Box Canyon CDP
Boyd town CDP
Brady City
Brazoria City

TDC eligibility map link

Eligible City or CDP
Brazos CDP
Breckenridge City
Bridge City
Broaddus town CDP
Brookshire City
Brookside City
Browndell City
Brownfield City
Brownsboro City
Brownsville City
Brownwood City
Bruceville-Eddy City
Bruni CDP
Bryson City
Buchanan Dam CDP
Buchanan Lake CDP
Buckholts town CDP
Buena Vista CDP
Buffalo City
Bullard town CDP*
Buna CDP
Burke City
Burlington CDP
Burton City
Butterfield CDP
Byers City
Bynum town CDP
Cesar Chavez CDP
Cade Lakes CDP
Calvert City
Camargito CDP
Cameron City
Cameron Park CDP
Camp Swift CDP
Camp Wood City
Campbell City
Campo Verde CDP
Cantu Addition CDP
Canutillo CDP
Cape Royale CDP
Carl's Corner town CDP

Eligible City or CDP
Carrizo Springs City
Carter CDP
Carthage City
Casa Blanca CDP
Casas CDP
Castle Hills City
Cedar Creek CDP
Cedar Hill City
Cedar Point CDP
Celeste City
Center City
Centerville City
Central Gardens CDP
Chandler City
Channelview CDP
Chaparrito CDP
Chapeno CDP
Charlotte City
Chester town CDP
Chico City
Childress City
Chillicothe City
China City
China Grove town CDP
China Spring CDP
Chireno City
Christine town CDP
Chula Vista CDP (Cameron County) CDP
Chula Vista CDP (Maverick County) CDP
Chula Vista CDP (Zavala County) CDP
Cibolo City*
Cienegas Terrace CDP
Circle D-KC Estates CDP
Citrus City CDP
Clarksville City
Clarksville City
Cleveland City*
Clifton City
Clint town CDP
Cloverleaf CDP
Clute City

Eligible City or CDP
Coahoma town CDP
Coldspring City
Coleman City
Colmesneil City
Colorado Acres CDP
Colorado City
Combes town CDP
Comfort CDP
Commerce City
Como town CDP
Concepcion CDP
Converse City
Cool City
Coolidge town CDP
Copperas Cove City
Corpus Christi City*
Corrigan town CDP
Country Acres CDP
Covington City
Coyanosa CDP
Coyote Acres CDP
Cranfills Gap City
Crockett City
Cross Mountain CDP
Crowell City
Crowley City
Crystal City
Cuero City
Cuevitas CDP
Cumby City
Cuney town CDP
Cushing City
Daingerfield City
Daisetta City
Damon CDP
Danbury City
Dawson town CDP
Dayton City
Dayton Lakes City
De Kalb City
De Leon City

TDC eligibility map link

Eligible City or CDP
Del Mar Heights CDP
Del Rio City
Del Sol CDP
Dell City
Delmita CDP
Denison City
Denver City town CDP
Deport City
DeSoto City
Detroit town CDP
Devers City
Deweyville CDP
Diboll City
Dickens City
Dilley City
Dodd City town CDP
Doffing CDP
Domino town CDP
Donna City
Doolittle CDP
Douglassville town CDP
Driscoll City
Duncanville City
E. Lopez CDP
Eagle Lake City
Eagle Pass City
Early City
East Alto Bonito CDP
East Bernard City
East Mountain City
East Tawakoni City
Eastland City
Easton City
Ector City
Edcouch City
Edgecliff town CDP
Edgewater Estates CDP
Edinburg City
Edroy CDP
Eidson Road CDP
El Brazil CDP

Eligible City or CDP
El Camino Angosto CDP
El Campo City
El Castillo CDP
El Cenizo CDP
El Cenizo City
El Chaparral CDP
El Indio CDP
El Mesquite CDP
El Paso City
El Quiote CDP
El Rancho Vela CDP
El Refugio CDP
El Socio CDP
Eldorado City
Elgin City
Elias-Fela Solis CDP
Elm Creek CDP
Elmendorf City
Elsa City
Encantada-Ranchito-El Calaboz CDP
Encino CDP
Escobares City
Estelline town CDP
Eugenio Saenz CDP
Eureka City
Evadale CDP
Evant town CDP
Evergreen CDP
Everman City
Fabens CDP
Fabrica CDP
Fair Oaks Ranch City*
Fairfield City
Falcon CDP
Falcon Heights CDP
Falcon Lake Estates CDP
Falcon Mesa CDP
Falconaire CDP
Falfurrias City
Falman CDP
Fannett CDP

Eligible City or CDP
Fernando Salinas CDP
Flat CDP
Flor del Rio CDP
Flowella CDP
Fluvanna CDP
Follett City
Forest Heights CDP
Forest Hill City
Forney City
Forsan City
Fort Bliss CDP
Fort Hancock CDP
Fort Hood CDP
Fort Stockton City
Four Points CDP
Franklin City
Freeport City
Freer City
Fritch City
Fronton CDP
Fronton Ranchettes CDP
Gainesville City
Galena Park City
Gallatin City
Garceno CDP
Garciasville CDP
Garfield CDP
Garrett town CDP
Garrison City
Gary City town CDP
Garza-Salinas II CDP
Gatesville City
Gause CDP
George West City
Gilmer City
Gladewater City
Glen Rose City
Glenn Heights City
Goliad City
Goodrich City
Gordon City

TDC eligibility map link

Eligible City or CDP
Goree City
Graford City
Grand Prairie City
Grand Saline City
Grandfalls town CDP
Granger City
Granjeno City
Grape Creek CDP
Grapeland City
Green Valley Farms CDP
Greenville City
Gregory City
Grey Forest City
Groesbeck City
Groves City
Groveton City
Gruver City
Guadalupe Guerra CDP
Guerra CDP
Gun Barrel City
Guthrie CDP
Gutierrez CDP
H. Cuellar Estates CDP
Hallettsville City
Hallsville City
Hamlin City
Hamshire CDP
Hardin City
Harding Gill Tract CDP
Hargill CDP
Harker Heights City
Harlingen City
Harper CDP
Haskell City
Havana CDP
Hawk Cove City
Hawkins City
Hawley City
Hays City
Hearne City
Hebbronville CDP

Eligible City or CDP
Heidelberg CDP
Helotes City
Hemphill City
Hempstead City
Henderson City
Hermleigh CDP
Hidalgo City
Higgins City
Highlands CDP
Hill Country City
Hillsboro City
Hillside Acres CDP
Hilltop CDP (Starr County) CDP
Hilltop Lakes CDP
Hitchcock City
Holiday Beach CDP
Holiday Lakes town CDP
Holland town CDP
Holliday City
Holly Lake Ranch CDP
Hollywood Park town CDP
Homestead Meadows North CDP
Homestead Meadows South CDP
Honey Grove City
Hooks City
Horizon City
Horseshoe Bay City*
Hubbard City
Hudson City
Hughes Springs City
Hull CDP
Hungerford CDP
Huntington City
Huntsville City
Hutto City
Huxley City
Iago CDP
Iglesia Antigua CDP
Imperial CDP
Indian Hills CDP
Indian Lake town CDP

Eligible City or CDP
Indian Springs CDP
Indio CDP
Ingleside City
Ingleside on the Bay City
Iola City
Iraan City
Iredell City
Itasca City
Ivanhoe City
J.F. Villareal CDP
Jacinto City
Jacksboro City
Jacksonville City
Jardin de San Julian CDP
Jasper City
Jayton City
Jefferson City
Jewett City
Joaquin City
Johnson City
Jones Creek CDP
Jourdanton City
Juarez CDP
Katy City*
Kaufman City
K-Bar Ranch CDP
Kemp City
Kenefick town CDP
Kennard City
Kerens City
Kilgore City
Killeen City
Kingsland CDP
Kingsville City
Kirby City
Kirbyville City
Kirvin town CDP
Knippa CDP
Knollwood City
Knox City town CDP
Kopperl CDP

TDC eligibility map link

Eligible City or CDP
Kosse town CDP
Kountze City
Kress City
La Blanca CDP
La Carla CDP
La Casita CDP
La Chuparosa CDP
La Coma CDP
La Coma Heights CDP
La Escondida CDP
La Esperanza CDP
La Feria City
La Feria North CDP
La Grange City
La Grulla City
La Homa CDP
La Joya City
La Loma de Falcon CDP
La Marque City
La Minita CDP
La Moca Ranch CDP
La Paloma Addition CDP
La Paloma CDP
La Paloma Ranchettes CDP
La Paloma-Lost Creek CDP
La Presa CDP
La Pryor CDP
La Puerta CDP
La Rosita CDP
La Tina Ranch CDP
La Victoria CDP
La Villa City
La Ward City
Lackland AFB CDP
Lacy-Lakeview City
Ladonia town CDP
Lago CDP
Lago Vista CDP
Laguna Heights CDP
Laguna Park CDP
Laguna Seca CDP

Eligible City or CDP
Laguna Vista town CDP
Lake Brownwood CDP
Lake Cherokee CDP
Lake City town CDP
Lake Colorado City CDP
Lake Medina Shores CDP
Lake Meredith Estates CDP
Lake View CDP
Lakeport City
Lakeshore Gardens-Hidden Acres CDP
Lakeside town (San Patricio County) CDP
Lamesa City
Lampasas City
Lancaster City
Laredo City
Laredo Ranchettes CDP
Laredo Ranchettes West CDP
Las Haciendas CDP
Las Lomas CDP
Las Lomitas CDP
Las Palmas CDP
Las Palmas II CDP
Las Pilas CDP
Las Quintas Fronterizas CDP
Lasana CDP
Lasara CDP
Latexo City
Laughlin AFB CDP
Laureles CDP
Lawn town CDP
Leakey City
Leary City
Lefors town CDP
Leming CDP
Leon Valley City
Leona City
Leonard City
Levelland City
Liberty City
Liberty City CDP
Linden City

Eligible City or CDP
Linn CDP
Lipan City
Little Cypress CDP
Little River-Academy City
Live Oak City
Liverpool City
Livingston town CDP
Llano City
Llano Grande CDP
Lockhart City
Loma Grande CDP
Loma Linda CDP
Loma Linda East CDP (Jim Wells County) CDP
Loma Linda East CDP (Starr County) CDP
Loma Linda West CDP
Loma Vista CDP
Lometa City
Lone Star City
Longoria CDP
Longview City
Lopeño CDP
Lopezville CDP
Loraine town CDP
Lorenzo City
Los Altos CDP
Los Alvarez CDP
Los Angeles CDP
Los Arcos CDP
Los Arrieros CDP
Los Barreras CDP
Los Centenarios CDP
Los Corralitos CDP
Los Ebanos CDP (Hidalgo Cnty) CDP
Los Ebanos CDP (Starr Cnty) CDP
Los Fresnos CDP
Los Fresnos City
Los Huisaches CDP
Los Indios town CDP
Los Lobos CDP
Los Minerales CDP
Los Nopalitos CDP

TDC eligibility map link

Eligible City or CDP
Los Veteranos I CDP
Los Veteranos II CDP
Los Ybanez City
Lott City
Louise CDP
Lovelady City
Lozano CDP
Lueders City
Lufkin City
Luling City
Lumberton City
Lyford City
Lytle City*
Mabank town CDP
Macdona CDP
Madisonville City
Magnolia Beach CDP
Malakoff City
Malone town CDP
Manuel Garcia CDP
Manuel Garcia II CDP
Marietta town CDP
Markham CDP
Marlin City
Marquez City
Marshall City
Mart City
Martindale City
Martinez CDP
Mason City
Matador town CDP
Matagorda CDP
Mathis City
Maud City
Mauriceville CDP
May CDP
McAllen City
McDade CDP
McGregor City*
McLean town CDP
McLeod CDP

Eligible City or CDP
Meadow town CDP
Medina CDP
Melvin town CDP
Memphis City
Mercedes City
Meridian City
Mertens town CDP
Mertzon City
Mesquite CDP
Mexia City
Mi Ranchito Estate CDP
Midfield CDP
Midway City
Midway North CDP
Midway South CDP
Miguel Barrera CDP
Mikes CDP
Mila Doce CDP
Milam CDP
Milano City
Mildred town CDP
Milford town CDP
Miller's Cove town CDP
Millsap town CDP
Mineola City
Mineral Wells City
Mingus City
Mirando City CDP
Mission Bend CDP
Mission City
Monahans City
Mont Belvieu City*
Montague CDP
Monte Alto CDP
Moraida CDP
Morales-Sanchez CDP
Morgan City
Morgan Farm CDP
Morgan's Point Resort City
Morning Glory CDP
Morton City

Eligible City or CDP
Mosheim CDP
Mound CDP
Mount Calm City
Mount Enterprise City
Mount Pleasant City
Mount Vernon town CDP
Muniz CDP
Murchison City
Murillo CDP
Mustang Ridge City*
Nacogdoches City
Nada CDP*
Naples City
Narciso Pena CDP
Nash City
Natalia City
Navarro town CDP
Navasota City
Neches CDP
Nederland City
Nesbitt town CDP
Netos CDP
New Boston City
New Chapel Hill City
New Falcon CDP
New London City
New Summerfield City
New Waverly City
Newton City
Niederwald City*
Nina CDP
Nocona City
Nocona Hills CDP
Nolanville City
Nome City
Nordheim City
Normandy CDP
Normangee town CDP
Normanna CDP
North Alamo CDP
North Cleveland City

TDC eligibility map link

Eligible City or CDP
North Escobares CDP
North San Pedro CDP
Novice City
Oak Ridge town (Cooke County) CDP
Oak Trail Shores CDP
Oak Valley town CDP
Oakhurst CDP
Oakwood town CDP
O'Brien City
Odem City
Odessa City
O'Donnell City*
Oglesby City
Oilton CDP
Old River-Winfree City*
Olivarez CDP
Olivia Lopez de Gutierrez CDP
Olmito and Olmito CDP
Olmito CDP
Olmos Park City
Olney City
Omaha City
Onalaska City
Opdyke West town CDP
Orange City
Orange Grove City
Orason CDP
Ore City
Overton City
Owl Ranch CDP
Pablo Pena CDP
Paducah town CDP
Paige CDP
Paisano Park CDP
Palacios City*
Palm Valley City
Palmer CDP
Palmhurst City
Palmview City
Palmview South CDP
Palo Blanco CDP

Eligible City or CDP
Palo Pinto CDP
Pampa City
Pasadena City
Pattison City
Pawnee CDP
Pecan Gap City*
Pecos City
Pelican Bay City
Pena CDP
Pendleton CDP
Penelope town CDP
Penitas City
Perezville CDP
Perrin CDP
Petronila City
Pettus CDP
Pharr City
Pilot Point City
Pine Forest City
Pine Harbor CDP
Pine Island town CDP
Pinebrook CDP
Pinehurst CDP
Pinehurst City
Pineland City
Pinewood Estates CDP
Pittsburg City
Plains town CDP
Plantersville City
Pleak CDP
Pleasant Hill CDP
Pleasanton City
Plum Grove City
Point Blank City
Point Comfort City
Ponder town CDP
Port Aransas City*
Port Arthur City
Port Isabel City*
Port Lavaca City*
Port Mansfield CDP

Eligible City or CDP
Port Neches City
Port O'Connor CDP*
Portland City*
Post City
Poteet City
Potosi CDP
Powderly CDP
Prado Verde CDP
Praesel CDP
Prairie View City
Premont City
Presidio City
Primera town CDP
Progreso City
Progreso Lakes City
Pueblo East CDP
Pueblo Nuevo CDP
Putnam town CDP
Pyote town CDP
Quanah City
Queen City
Quemado CDP
Quesada CDP
Quinlan City
Quitman City
Radar Base CDP
Rafael Pena CDP
Ralls City
Ramireno CDP
Ramirez-Perez CDP
Ramos CDP
Ranchette Estates CDP
Ranchitos del Norte CDP
Ranchitos East CDP
Ranchitos Las Lomas CDP
Rancho Alegre CDP
Rancho Banquete CDP
Rancho Chico CDP
Rancho Viejo CDP
Rancho Viejo town CDP
Ranchos Penitas West CDP

TDC eligibility map link

Eligible City or CDP
Randolph AFB CDP
Rangerville CDP
Ratamosa CDP
Ravenna City
Raymondville City
Realitos CDP
Red Lick City
Red Rock CDP
Redfield CDP
Redland CDP
Redwater City
Redwood CDP
Refugio town CDP
Regino Ramirez CDP
Reid Hope King CDP
Reklaw City
Relampago CDP
Reno city (Lamar County) City
Reno city (Parker and Tarrant Counties) City
Ricardo CDP
Rice Tracts CDP
Richards CDP
Rio Bravo City
Rio Grande City
Rio Hondo City
Rising Star town CDP
Rivereno CDP
Riverside City
Riviera CDP
Road Runner town CDP
Robert Lee City
Robstown City
Rochelle CDP
Rochester town CDP
Rock Island CDP
Rockdale City
Rockwell Place CDP
Rocky Mound town CDP
Rogers town CDP
Roma City
Ropesville City

Eligible City or CDP
Rosanky CDP
Roscoe City
Rose City
Rose Hill Acres City
Rosenberg City
Rosharon CDP
Rosita CDP
Rosser CDP
Round Mountain town CDP
Rule town CDP
Rusk City
Sabinal City
Salado CDP
Salida del Sol Estates CDP
Salineño CDP
Salineño North CDP
Sam Rayburn CDP
Sammy Martinez CDP
San Antonio City
San Augustine City
San Benito City
San Carlos CDP
San Carlos I CDP
San Carlos II CDP
San Diego City
San Elizario City
San Fernando CDP
San Isidro CDP
San Juan CDP
San Juan City
San Marcos City
San Patricio City
San Pedro CDP
San Perlita City
San Ygnacio CDP
Sand Springs CDP
Sandia CDP
Sandoval CDP
Sandy Hollow-Escondidas CDP
Sandy Oaks City
Sanford town CDP

Eligible City or CDP
Sansom Park City
Santa Anna CDP
Santa Anna town CDP
Santa Cruz CDP
Santa Maria CDP
Santa Monica CDP
Santa Rosa CDP
Santa Rosa town CDP
Santel CDP
Santo CDP
Sargent CDP
Savoy City
Scenic Oaks CDP
Schertz City*
Scissors CDP
Scottsville City
Seadrift City*
Seagoville City
Sealy City
Sebastian CDP
Seco Mines CDP
Seguin City
Selma City*
Seven Oaks City
Shadybrook CDP
Shamrock City
Shavano Park City
Sheffield CDP
Shelbyville CDP
Shepherd City
Sherwood Shores CDP
Shiro CDP
Sierra Blanca CDP
Siesta Acres CDP
Siesta Shores CDP
Silsbee City
Sinton City
Skidmore CDP
Slaton City
Smiley City
Smithville City

TDC eligibility map link

Eligible City or CDP
Smyer town CDP
Snyder City
Socorro City
Solis CDP
Somerset City
Sonora City
Sour Lake City
South Alamo CDP
South Fork Estates CDP
South Houston City
South La Paloma CDP
South Mountain town CDP
South Padre Island town CDP*
South Point CDP
South Toledo Bend CDP
Southmayd City
Southwest Sandhill CDP
Sparks CDP
Spearman City
Spring Gardens CDP
Spur City
St. Hedwig town CDP
St. Jo City
St. Paul CDP
Stamford City
Stanton City
Stephenville City
Stinnett City
Stockdale City
Stowell CDP
Strawn City
Streetman town CDP*
Sullivan City
Sundown City
Sunray City
Sunrise Beach City
Sunrise Shores CDP
Sunset Acres CDP
Sunset CDP (Starr County) CDP
Sweetwater City
Taft City

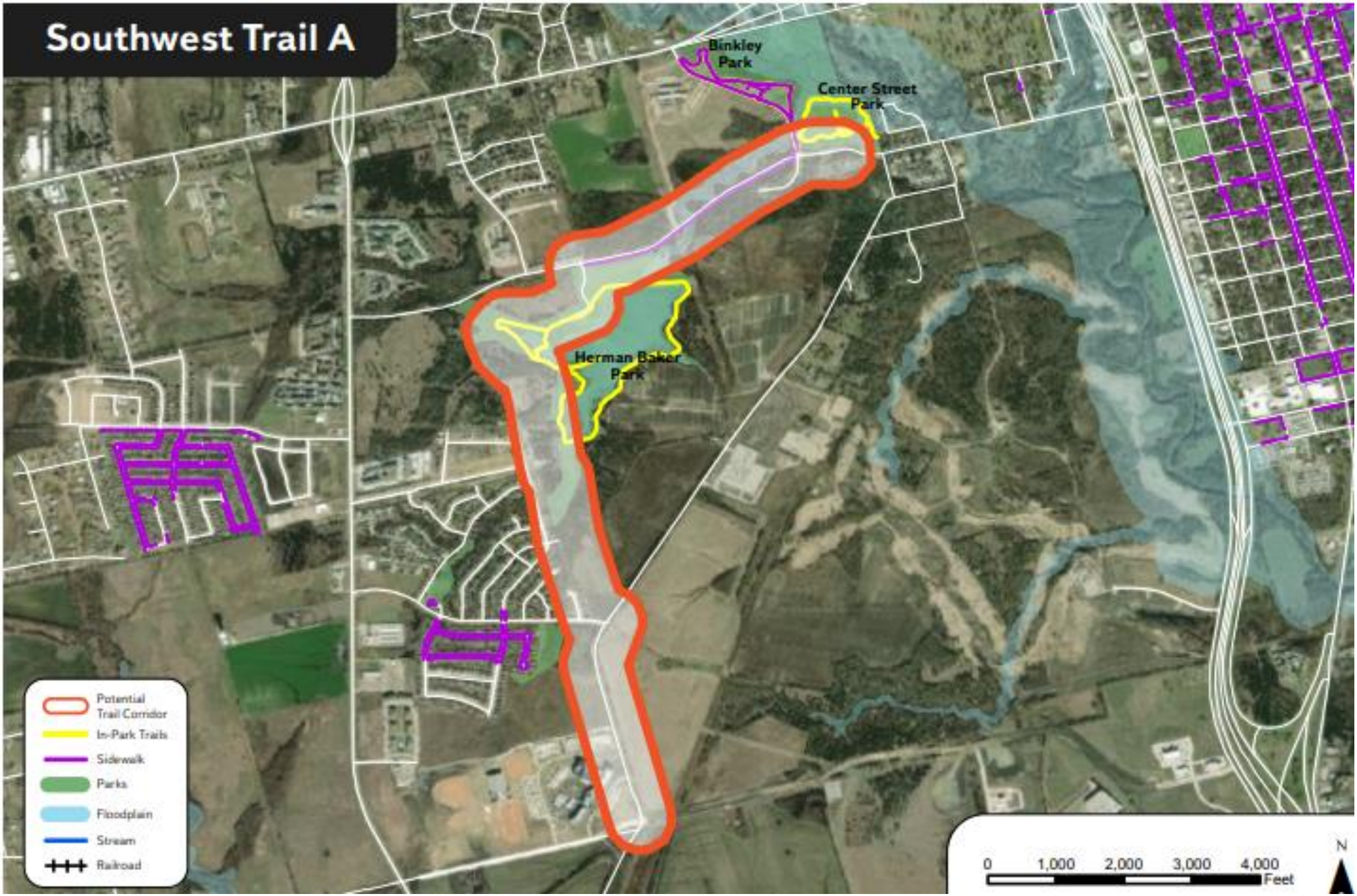
Eligible City or CDP
Taft Southwest CDP
Tahoka City
Talco City
Tanquecitos South Acres CDP
Tanquecitos South Acres II CDP
Tatum City
Taylor City
Taylor Landing City
Teague City
Tehuacana town CDP
Temple City
Tenaha town CDP
Terlingua CDP
Terrell City
Terrell Hills City
Texarkana City
Thompsonville CDP
Thorndale City
Thornton town CDP
Thorntonville town CDP
Thrall City
Three Rivers City
Throckmorton town CDP
Thunderbird Bay CDP
Tierra Bonita CDP
Tierra Dorada CDP
Tierra Grande CDP
Tierra Verde CDP
Tilden CDP
Timberwood Park CDP
Timpson City
Tivoli CDP
Todd Mission City
Tolar City
Tornillo CDP
Tow CDP
Tradewinds CDP
Trenton City
Trinity City
Troup City
Troy City

Eligible City or CDP
Tuleta CDP
Tulia City
Tulsita CDP
Tyler City
Tynan CDP
Uhland City*
Uncertain City
Union Grove City
Universal City
Utopia CDP
Uvalde City
Uvalde Estates CDP
Val Verde Park CDP
Valera CDP
Valle Hermoso CDP
Valle Verde CDP
Valle Vista CDP
Valley Mills City
Van Horn town CDP
Van Vleck CDP
Vanderbilt CDP
Vernon City
Victoria Vera CDP
Vidor City
Villa del Sol CDP
Villa Pancho CDP
Villa Verde CDP
Villarreal CDP
Vinton CDP
Von Ormy City
Wadsworth CDP
Wake City
Waller City*
Wallis City
Walnut Springs City
Warren CDP
Warren City
Waskom City
Webberville CDP
Weimar City
Weinert City

TDC eligibility map link

Eligible City or CDP
Welch CDP
Wellington City
Wellman City
Wells town CDP
Weslaco City
West Alto Bonito CDP
West Columbia City
West Livingston CDP
West Orange City
West Sharyland CDP
West Tawakoni City
Westbrook City
Westdale CDP
Western Lake CDP
Westway CDP
Westwood Shores CDP
Wharton City
White Oak City
Whiteface town CDP
Whitehouse City
Whitewright town CDP
Whitharral CDP
Whitney town CDP
Wickett town CDP
Wild Peach CDP
Wildwood CDP
Willis City
Wills Point City
Windcrest City
Windom town CDP
Winfield City
Winnie CDP
Winnsboro City
Wolfe City
Wolfforth City
Woodsboro town CDP
Woodson town CDP
Woodville town CDP
Wortham town CDP
Wyldwood CDP
Yantis town CDP

Eligible City or CDP
Yoakum City
Yznaga CDP
Zapata CDP
Zapata Ranch CDP
Zarate CDP
Zavalla City
Zephyr CDP


Southwest Trail A
Binkley Park
Center Street Park
Herman Baker Park
Potential Trail Corridor
In-Park Trails
Sidewalk
Parks
Floodplain
Stream
Railroad
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1,000
2,000
3,000
4,000
Feet
N

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 12.**

Meeting Date: 05/01/2023

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7070***

Awarding a Bid to and Authorizing Execution of a Contract with Water Works Metrology, LLC for an Annual Supply of Water Meters for the Customer and Utility Services Department

Issue:

To consider the award of bid to Water Works Metrology, LLC for the annual purchase of water meters

Background:

A request for bids was publicly advertised; and three (3) bids were received and opened on April 19, 2023, as noted in the attached bid tabulation. Water Works Metrology, LLC of Wylie, Texas, was the lowest responsive bid that met all contract requirements for the purchase of water meters meeting City specifications.

Origination:

Customer and Utility Services

Financial Consideration:

Funds are budgeted for fiscal year 2022-2023 for the purchase of water meters up to two inches (2").

Staff Recommendation:

City staff recommends that the City Council award the bid to Water Works Metrology, LLC of Wylie, Texas for the annual supply of water meters.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7070
Signed Agreement_Water Works
Exhibit A_Bid Request
Exhibit B_Water Works Metrology Submittal
Exhibit C_City Insurance Requirements
Exhibits D & E
Bid Tabulation

RESOLUTION NO. 7070

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH WATER WORKS METROLOGY, LLC FOR AN ANNUAL SUPPLY OF WATER METERS FOR THE CUSTOMER AND UTILITY SERVICES DEPARTMENT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That Water Works Metrology, LLC is hereby awarded the City of Sherman's contract for an annual supply of water meters for the Customer and Utility Services department, in accordance with all bid documentation attached hereto and incorporated herein for all purpose.

SECTION 2. That the City Manager is hereby authorized and directed, subject to all contract documents being completed and approved as to form and content by the City Attorney, to execute a contract with Water Works Metrology, LLC for an annual supply of water meters for the Customer and Utility Services department, in the same or substantially same form as the contract documents attached hereto and incorporated herein for all purposes.

SECTION 3. 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 1st day of May 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____

LINDA ASHBY, CITY CLERK **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 FOR WATER METERS

The **City of Sherman, Texas**, a home-rule municipality ("City"), and Water Works Metrology LLC, a Contractor ("Contractor"), hereby enter into this Agreement for the purchase of water meters ("Agreement"). City and Contractor are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, City issued an Invitation to Bid, attached hereto as Exhibit A and incorporated herein for all purposes ("Bid Request"), seeking competitive sealed bids for water meters for the City; and

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

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

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

1. Scope of Services.
   Contractor shall provide the services and deliverables that are described in the Agreement Documents (as defined below) and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Agreement Documents (collectively, "Services").

2. Term.
   The initial term of the Agreement shall be for a period of one (1) year, commencing on the Effective Date (hereinafter defined) of this Agreement ("Initial Term"). City shall have the option to extend this Agreement for four (4) additional terms of one (1) year each (each a "Renewal Term") on the same terms and conditions of this Agreement by giving Contractor written notice of its intent to extend prior to the expiration of the then-current one (1) year term.

3. Compensation.
   In exchange for Contractor's performance of the Services in accordance with the Agreement Document, City agrees to pay Contractor on the basis defined by and in the amounts set forth in the Submittal ("Contractor's Fee").

   City shall pay Contractor within thirty (30) days of receipt of each invoice, unless supporting receipts or other supporting documentation have been requested by City, in which case City shall pay the invoice as soon after receiving the supporting receipts or

documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in which case City shall pay the undisputed amount of the invoice within thirty (30) days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable. Notwithstanding anything to the contrary in the Agreement Documents, City shall not be required to pay any invoice submitted by Contractor if Contractor is in breach of this Agreement.

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

4. Agreement Documents.

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

A. This Agreement;

B. The Bid Request, attached hereto as Exhibit A;

C. The Submittal, attached hereto as Exhibit B;

D. City's Insurance Requirements, attached hereto as Exhibit C;

E. Affidavit of No Prohibited Interested, attached hereto as Exhibit D; and

F. Conflict of Interest Questionnaire, attached hereto as Exhibit E.

This Agreement shall incorporate the terms of the Agreement Documents in their entirety. To the extent that Exhibit A, Exhibit B, Exhibit C, Exhibit D or Exhibit E are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Exhibit A, Exhibit C, Exhibit D, Exhibit E and Exhibit B shall prevail in that order. Should disputes arise as to responsibilities and obligations set forth in the Agreement Documents, City's interpretation and/or decision shall be final and binding.

5. Entire Agreement.

The Agreement Documents contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. The Agreement Documents supersede all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties

regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the parties prior to the Effective Date of this Agreement which does not concern the subject matter of this Agreement. No amendment to the Agreement Documents shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

6. Required Insurance.

Contractor shall not start work under this Agreement until Contractor has obtained, at Contractor's expense, all of the insurance specified in, and required by, the Agreement Documents. Contractor shall procure and keep in full force and effect the types and amounts of insurance specified in City's Insurance Requirements, attached hereto as Exhibit C and incorporated herein for all purposes, for and during all aspects and phases of Contractor's work throughout the term of this Agreement at no expense to City. Contractor also shall comply with all other requirements set forth in Exhibit C.

7. No Prohibited Interest; Vendor Disclosure.

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

8. Indemnity.

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

BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

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

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

9. Liability.

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

10. Compliance with Laws; Standard of Care.

Contractor shall comply with all federal, state and local laws, statutes, ordinances, regulations and policies, as they exist, may be amended or in the future arising, applicable to Contractor and its work. Contractor shall ensure that its officers, agents, representatives, employees, subcontractors, licensees, invitees and other parties performing services for or on behalf of Contractor under this Agreement comply with all applicable laws, statutes, ordinances, regulations and policies. If Contractor observes or

is notified that the work under this Agreement is at variance with applicable laws, statutes, ordinances, regulations and policies, Contractor shall immediately notify City in writing. Contractor shall perform the Services in accordance with the prevailing standard of care by exercising the skill and care ordinarily utilized by professionals performing the same or similar services under the same or similar circumstances in the State of Texas.

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

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

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

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

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

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

14. No Waiver of Immunity.
The parties acknowledge and agree that, in executing and performing this Agreement, City has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

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

16. Consideration.
This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

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

18. 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.

19. Binding Effect.
This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

20. No Waiver.
Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

21. 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.

22. Indemnity.
The parties agree that the indemnity provision set forth in Section 8 herein is conspicuous and the parties have read and understood the same.

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

If to Contractor, to:
Water Works Metrology LLC
Attn: Joe Engram, Southeast Regional Manager
Address: 3338 State Hwy 78 Suite 2
Wylie, Texas 75098
Telephone: 864-538-8036
Facsimile:
Email: jengram@waterworksmetrology.com

If to City, to:
City of Sherman
Attn: Robby Hefton, City Manager
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7201
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

With a copy to:

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

24. Representations.
Each party states that they have carefully read this Agreement, know the contents hereof, have consulted with an attorney of their choice regarding the meaning and effect hereof and is signing the same solely of their own judgment.

25. Independent Contractor.
Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

26. Incorporation of Recitals.
The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Contractor.

27. Reference to Contractor.
When referring to "Contractor" herein, this Agreement shall refer to and be binding upon Contractor, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Contractor is legally responsible.

28. Reference to City.
When referring to "City" herein, 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.

29. 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.

30. 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.

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

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

ATTEST:

_____
Linda Ashby, City Clerk

Water Works Metrology
Seller

By: _____
Printed Name: Joseph Ingram
Title: SE Regional Sales Manager
Date: 4/24/2023

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 he is the City Manager and duly authorized representative for the **City of Sherman, Texas** and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 202_.

_____
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_____, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the_____(title) and duly authorized representative for, _____, _____, and that he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 202_.

_____
Notary Public in and for the State of Texas
My Commission Expires:_____

City of Sherman, Texas

Utility Billing Department

PO Box 1106
Sherman, TX 75091-1106

Invitation to Bid

For

WATER METERS BID NO. 2023-12

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INVITATION TO BID - BID NO 2023-12; **WATER METERS**

The enclosed **REQUEST FOR BIDS** (ITB) and accompanying **SPECIFICATIONS** are for your convenience in bidding the enclosed referenced **WATER METERS** 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., Wednesday, April 19, 2023** 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. – Bid for Water Meters 2023-12
P.O. Box 1106
Sherman, TX 75091-1106
OR

Electronically at https:www.publicpurchase.com

OR

By delivery at the Municipal Building address listed above.

The award will be included on the agenda of the City Council for their Monday, May 1, 2023 meeting. That meeting will be held at 5:00 p.m. at the following address:

City Council Chambers
City Hall
220 W. Mulberry
Sherman, TX

Information and specifications may be obtained on the City of Sherman website at www.sherman.tx.us, at www.publicpurchase.com or by calling the Finance Department at 903-892-7215. Each **bid** shall be sealed and marked "Bid for Water Meters 2023-12" on the exterior of the bid. Each bid shall be **manually signed by a person having the authority to bind the firm in a contract**. **All bids shall be signed and dated. Bids that are not signed and dated will be rejected.** FACSIMILE TRANSMITTALS SHALL NOT BE ACCEPTED.

Please note that all bids **must be received at the designated location 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., Wednesday, April 19, 2023** at which time the sealed bids will be opened.

The City of Sherman will receive sealed bids for: **WATER METERS**

IT IS UNDERSTOOD that the City Council of the City of Sherman reserves the right to reject any or all bids for any or all products and/or services covered in this Invitation to Bid and to waive informalities of defects in such bids.

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.

DESCRIPTIONS: Specifications **may** reference any catalog, brand name or manufacturers' model numbers. It is the intent of the City of Sherman to be **DESCRIPTIVE - NOT RESTRICTIVE** and to establish a desired quality level of merchandise or to meet a pre-established standard of quality. Bidders may offer items of equal quality and the burden of proof of such quality rests with them. The City of Sherman shall act as sole judge in determining quality and acceptability of products offered.

INTRODUCTION
The City of Sherman is soliciting bids for a price agreement to purchase water meters ranging in size as listed on the bid sheet. Vendors are encouraged to submit bids to the City of Sherman. The items must meet requested specifications as defined in the detailed specifications. Only responses conforming exactly to these specifications will be considered in determining an award.

Terms and Conditions:
The City of Sherman is requesting bids for a One-Year Price Agreement for water meters ranging in size as listed on the bid sheet. The price agreement shall be for an initial period of one (1) year with the option to renew for four additional one (1) year periods.

1. Please quote fixed prices firm for a period of twelve (12) months beginning approximately May 1, 2023.

2. Prices must be quoted F.O.B. City of Sherman and shall include delivery to the City of Sherman Meter Shop located at 2212 N Alexander St, Sherman, Texas 75092. No delivery charge will be paid regardless of order size, unless "Special Delivery" is requested by ordering department.

3. As a Municipal Government, the City of Sherman is exempt from all sales and excise taxes. **DO NOT INCLUDE TAXES** in price bid. Tax Exemption Certificates will be issued to successful vendor(s) upon request.

4. Each bid shall be sealed and marked "Bid for Water Meters 2023-12" on the exterior of the bid. Each bid shall be **manually signed by a person having authority to bind the firm in a contract. All bids shall be signed and dated. Bids that are not signed and dated will be rejected.** FACIMILE TRANSMITTALS SHALL NOT BE ACCEPTED.

5. No increase to prices will be allowed during the contract period. A price re-determination may be considered by the City of Sherman only at the anniversary date of the contract and must be substantiated in writing. Requests for price re-determination must be received by the City at least 45 days prior to the anniversary date of the price agreement to be considered. The City of Sherman reserves the right to reject any/all price re-determination requests as it deems to be in the best interest of the City.

6. If during the life of the contract, the successful bidder's net prices to other customers for items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to the City of Sherman.

7. Price agreement may be terminated in writing by the City without advance notice for poor or non-performance by vendor. Price agreement may be terminated by either the vendor or the City at any time without cause with a written 30-day notice of intent to terminate.

8. The bid award will be based on, but not necessarily limited to, the following factors:
    a. products meeting or exceeding specification,
    b. price,
    c. delivery, and
    d. bidder's past performance record

9. The City of Sherman reserves the right to purchase water meters from other sources.

10. Quantities shown on the bid sheet reflect the City's estimated annual requirement for particular items. The City may choose to purchase more, less or none of any listed item, depending on needs. The City is under no obligation to purchase a minimum amount of any item awarded.

11. Prices shall be filled in and extended where applicable. In the event of discrepancy between the unit price and the extended price, the unit price shall prevail.

12. Bid may be awarded to one or more vendors, by item or group of items, including those available through cooperative purchasing agreements as the City deems necessary to be in the best interest of the City.
13. The City of Sherman reserves the right to reject any and all bids, and to waive formalities.

14. **Bids shall be returned with two original signed copies of the contract.** Upon award by the City, one original will be returned to the Seller.

15. Questions may be directed to Craig Long, Budget Analyst, at 903-892-7215 or via email at craigl@ci.sherman.tx.us. If it becomes necessary to revise any part of this request for proposal a written addendum will be provided to all parties. The City of Sherman will not be bound by any oral representation, clarification, or change.

CITY OF SHERMAN
GENERAL CONDITIONS OF BIDDING

FUNDING: Funds for payment have been provided through the City of Sherman budget approved by the City Council for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current fiscal year shall be subject to budget approval.

LATE BIDS: Bids received in the City of Sherman Finance Department after submission deadline will be considered void and unacceptable. The City of Sherman is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the Finance Department shall be the official time of receipt.

ALTERING BIDS: Bids cannot be altered or amended after submission deadline. Any interlineations, alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

WITHDRAWAL OF BID: A bid may not be withdrawn or canceled by the Bidder without the permission of the City for a period of sixty (60) days following the date designated for the receipt of bids, and Bidder so agrees upon submittal of their bid.

SALES TAX: The City of Sherman is exempt by law from payment of Texas State Sales Tax and Federal Excise Tax. Bidder shall include any sales taxes from concession sales of taxable items on City property in the total price of the sale, and shall be responsible to report and pay such taxes in a timely manner.

BID AWARD: The City reserves the right to award in the best interest of the City. The City also reserves the right to not award.

CONTRACT: This bid, when properly accepted by the City of Sherman, shall constitute a Contract equally binding between the successful Bidder and the City. No different or additional terms will become a part of this Contract with the exception of Change Orders.

CHANGE ORDERS: No oral statement of any individual shall modify or otherwise change, or affect the terms, conditions or Specifications stated in the resulting Contract. All Change Orders to the Contract will be made in writing by the City's Finance Department.

IF DURING THE life of the Contract, the successful Bidder's net prices to other customers for items awarded herein are reduced below the Contracted price, it is understood and agreed that the benefits of such reduction shall be extended to the City of Sherman.

A PRICE redetermination may be considered by the City only at the anniversary date of the Contract and shall be substantiated in writing (i.e., Manufacturer's direct cost, postage rates, Railroad Commission rates, Wage/Labor rates, etc.). The Bidder's past history of honoring Contracts at the bid price will be an important consideration in the evaluation of the lowest and best bid. The City reserves the right to accept or reject any/all of the price redetermination as it deems to be in the best interest of the City.

MINIMUM ORDER CHARGE: Minimum order charges are strongly discouraged. However, the City of Sherman understands that the cost of processing small orders may cause a disadvantage to some bidders. Therefore, minimum order charges will be allowed but shall also be considered in evaluating the lowest and best bid. Bidder shall note minimum order charge, if applicable, on the bid sheet.

DELIVERY: All delivery and freight charges (F.O.B. City of Sherman) are to be included in the bid price. Deliveries shall be made to the City of Sherman Meter Shop, 2212 N Alexander, Sherman, Texas 75092.

DELIVERY TIME: Delivery time is an important consideration in the evaluation of the lowest and best bid. Bidder shall state the number of days required to deliver items in the space provided on the bid sheets. Failure to state delivery time may cause bid to be rejected. Bidder must guarantee a maximum of forty-five (45) days delivery after receipt of an order. Delivery delays beyond the Contract/Purchase Order delivery date result in added expense to the City. The City of Sherman shall be paid damages for such delay. Inasmuch as the amount of damage is extremely difficult to ascertain, the supplier agrees to compensate the City in the amount of $50.00 per calendar day beyond the maximum allowed of 45 days. This amount shall be fixed as liquidated damages that the City will suffer by reason of such delay, and not as a penalty. The City shall have the right to deduct and retain the amount of such liquidated damages from any monies due the supplier.

Successful Bidder must keep the City advised at all times of the status of the order and shall notify the Finance Department immediately if delivery schedule cannot be met. The City has the right to extend delivery time if reason appears valid. The supplier shall be entitled to a reasonable extension of time for unavoidable delay in delivery due to causes not reasonably foreseeable by the parties at the time of the Contract/Purchase Order execution, and that are entirely beyond the control and without the fault or negligence of the supplier, including, but not limited to, acts of God or the public enemy, war or other national emergency making delivery temporarily impossible or illegal, acts or omissions of other suppliers, strikes and labor disputes not brought on by any act or omission of the supplier, fire, flood, epidemics, quarantines, or freight embargoes.

SPECIAL DELIVERY: In the event that a rush delivery is required by the ordering department, the additional cost between the standard delivery method and the Special Delivery method may be billed to the ordering department.

Vendor must provide proof of additional cost with the invoice. (ie. Invoice or statement showing the actual cost of the special delivery along with a statement of what the cost would have been for standard delivery.)

CONFLICT OF INTEREST: No public official shall have interest in this Contract, in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5. Subtitle C, Chapter 171.

DISCLOSURE OF CERTAIN RELATIONSHIPS Effective January 1, 2008 Chapter 176 of the Texas Local Government Code Requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Sherman not later that the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offence if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. . The forms required to comply with Chapter 176 are available at http://www.ethics.state.tx.us/forms.CIS.pdf.

ETHICS: The Bidder shall not offer or accept gifts of anything of value nor enter into any business arrangement with any employee, official or agent of the City of Sherman.

EXCEPTIONS/SUBSTITUTIONS: All bids meeting the intent of this Invitation to Bid will be considered for award. Bidders taking exception to the Specifications, or offering substitutions, shall state these exceptions in the section provided or by attachment as part of the bid. In the absence of

such, a list shall indicate that the Bidder has not taken exceptions and shall hold the Bidder responsible to perform in strict accordance with the Specifications of the Invitation. The City of Sherman reserves the right to accept any and all, or none, of the exception(s)/substitution(s) deemed to be in the best interest of the City.

ADDENDA: Sole issuing authority of addenda shall be vested in the City of Sherman Finance Department. Addenda will be made available through Public Purchase and the city's website and to all who are known to have received a copy of this Invitation to Bid by other means. Bidders shall acknowledge receipt of all addenda.

BID MUST COMPLY with all federal, state, county, and local laws concerning these types of service(s).

DESIGN, STRENGTH, QUALITY of materials must conform to the highest standards of manufacturing and engineering practice.

All items supplied against credit must be new and unused, unless otherwise specified, in first-class condition and of current manufacturer.

MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS: A prospective Bidder must affirmatively demonstrate Bidder's responsibility. A prospective Bidder must meet the following requirements:

1. Have adequate financial resources, or the ability to obtain such resources as required;
2. Be able to comply with the required or proposed delivery schedule;
3. Have a satisfactory record of performance;
4. Have a satisfactory record of integrity and ethics;
5. Be otherwise qualified and eligible to receive an award.

The City may request representation and other information sufficient to determine Bidder's ability to meet these minimum standards listed above.

REFERENCES: The City may request Bidder to supply a list of at least three (3) references where like products and/or services have been supplied by their firm. Include name of firm, address, telephone number and name of representative.

BIDDER SHALL PROVIDE with this bid response, all documentation required by this Invitation to Bid. Failure to provide this information may result in rejection of bid.

SUCCESSFUL BIDDER SHALL defend, indemnify and save harmless the City of Sherman and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful Bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any Contract which may result from bid award. Successful Bidder indemnifies and will indemnify and save harmless the City from liability, claim or demand on their part, agents, servants, customers, and/or employees whether such liability, claim or demand arise from event or casualty happening or within the occupied premises themselves or happening upon or in any of the halls, elevators, entrances, stairways or approaches of or to the facilities within which the occupied premises are located. Successful Bidder shall pay any judgment with costs which may be obtained against the City growing out of such injury or damages. In addition, Contractor shall obtain and file with Owner City of Sherman a Standard Certificate of Insurance and applicable policy endorsement evidencing the required coverage and naming the Owner City of Sherman as an additional insured on the required coverage.

WAGES: Successful Bidder shall pay or cause to be paid, without cost or expense to the City of Sherman, all Social Security, Unemployment and Federal Income Withholding Taxes of all such employees and all such employees shall be paid wages and benefits as required by Federal and/or State Law.

TERMINATION OF CONTRACT: This Contract shall remain in effect until Contract expires, delivery and acceptance of products and/or performance of services ordered or terminated by either party with a thirty (30) day written notice prior to any cancellation. The successful Bidder must state therein the reasons for such cancellation. The City of Sherman reserves the right to award canceled Contract to next lowest and best Bidder as it deems to be in the best interest of the City of Sherman.

TERMINATION FOR DEFAULT: The City of Sherman reserves the right to enforce the performance of this Contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this Contract. The City of Sherman reserves the right to terminate the Contract immediately in the event the successful Bidder fails to:

1. Meet schedules;
2. Defaults in the payment of any fees; or
3. Otherwise perform in accordance with these Specifications.

Breach of Contract or default authorizes the City of Sherman to exercise any or all of the following rights:

1. The City may take possession of the assigned premises and any fees accrued or becoming due to date;
2. The City may take possession of all goods, fixtures and materials of successful Bidder therein and may foreclose its lien against such personal property, applying the proceeds toward fees due or thereafter becoming due.

In the event the successful Bidder shall fail to perform, keep or observe any of the terms and conditions to be performed, kept or observed, the City shall give the successful Bidder written notice of such default; and in the event said default is not remedied to the satisfaction and approval of the city within two (2) working days of receipt of such notice by the successful Bidder, default will be declared and all the successful Bidder's rights shall terminate.

Bidder, in submitting this bid, agrees that the City of Sherman shall not be liable to prosecution for damages in the event that the City declares the Bidder in default.

NOTICE: Any notice provided by this bid (or required by law) to be given to the successful Bidder by the City of Sherman shall conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in the City of Sherman, Texas by Registered or Certified Mail with sufficient postage affixed thereto, addressed to the successful Bidder at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

PATENTS/COPYRIGHTS: The successful Bidder agrees to protect the City of Sherman from claims involving infringement of patents and/or copyrights.

CONTRACT ADMINISTRATOR: Under this Contract, the City of Sherman may appoint a Contract Administrator with designated responsibility to ensure compliance with Contract requirements, such as but not limited to, acceptance, inspection and delivery. The Contract Administrator will serve as liaison between the City of Sherman Finance Department and the successful Bidder.

PURCHASE ORDERS: Orders will be placed by the City of Sherman Utility Billing Department on an as needed basis. A Purchase Order(s) shall be generated by the City of Sherman to the successful Bidder. The Purchase Order number must appear on all itemized invoices and packing slips. The City of Sherman will not be held responsible for any orders placed/delivered without a valid current Purchase Order number. Separate invoices will be required for each individual order and shall be mailed to Finance Department.

As a Municipal Government, the City of Sherman is exempt from Federal and State taxes. Taxes shall not be

billed. A Tax Exempt Certificate will be issued to successful bidder upon request.

PACKING SLIPS or other suitable shipping documents shall accompany each special order shipment and shall show: (a) name and address of successful Bidder, (b) name and address of receiving department and/or delivery location, (c) Purchase Order number, and (d) descriptive information as to the item(s) delivered, including product code, item number, quantity, number or containers, etc.

INVOICES shall show all information as stated above, and mailed directly to the City of Sherman Finance Department, PO Box 1106, Sherman, Texas, 75091-1106.

PAYMENT will be made upon receipt and acceptance by the City of Sherman for any item(s) ordered and receipt of a valid invoice, in accordance with the State of Texas Prompt Payment Act, Article 601f V.T.C.S. Successful Bidder(s) required to pay subcontractors within 30 days.

ITEMS supplied under this Contract shall be subject to the City's approval. Items found defective or not meeting Specifications shall be picked up and replaced by the successful Bidder at the next service date at no expense to the City of Sherman. If item is not picked up within one (1) week after notification, the item will become a donation to the City for disposition.

SAMPLES: When requested, samples shall be furnished free of expense to the City of Sherman.

WARRANTY: All equipment shall include manufacturer's warranty. A summary of warranty must be attached to the bid sheet. The manufacturer shall guarantee that all new meters furnished under this contract will meet the required new meter accuracy standards established by AWWA Standard for Cold Water Type meters C700 and C701, latest revision. In addition, successful bidder shall unconditionally assume full responsibility for timely handling and processing of all warranty replacements, at no cost to the City. Failure to comply with the above requirements for literature and manufacturer warranty information could cause bid to be rejected. See Cold Water Meters Specifications for additional information and requirements.

REMEDIES: The successful Bidder and the City of Sherman agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code.

VENUE: This Agreement will be governed and construed according to the laws of the State of Texas. This Agreement is performable in the City of Sherman.

ASSIGNMENT: The successful Bidder shall not sell, assign, transfer or convey this Contract, in whole or in part, without prior written consent of the City of Sherman.

SPECIFICATIONS: and model numbers are for description only. Bidder may bid on description only. Bidder may bid on alternate model but must clearly indicate alternate model being bid. Bidder must enclose full descriptive literature on alternate item(s).

PRODUCT CATALOG AND LIST PRICES: Current Product catalog and Manufacturer's list price sheets must be submitted with bid. Successful bidder(s) shall submit Manufacturer's price changes to the City at least seven (7) days prior to effective date of change. Additionally, new product and proposed discontinued product literature shall be submitted to the City at least seven (7) days prior to effective date of change. Specification sheets must be provided for any equipment bid that is to be evaluated by the City as an approved equal.

WATER METERS NOT HEREIN LISTED: Due to many unforeseen needs the City may require over the contract period, all bidders are required to provide a percentage discount from manufacturer's list price for meters not herein listed in the space provided on the discount list sheet. Manufacturer's list price used to calculate cost to the City for any item ordered that is not herein listed shall be the manufacturer's list price that is in effect at the time that the order is placed. Bidder shall list the manufacturer, type of equipment covered by discount and discount from list price. Bidder is to provide a discount from manufacturer's list for each manufacturer represented on your bid submittal. If no discount will be given for a particular manufacturer, place a 0 in the space provided.

SILENCE OF SPECIFICATION: The apparent silence of these Specifications as to any detail or to the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these Specifications shall be made on the basis of this statement.

Each insurance policy to be furnished by successful Bidder shall include, by endorsement to the policy, a statement that a notice shall be given to the City of Sherman by Certified Mail thirty (30) days prior to cancellation. Contractor shall notify the City, in the event that there are changes to its insurance program that would cause noncompliance with the contractual agreement, as soon as practical.

ANY QUESTIONS concerning this Invitation to Bid and Specifications should be directed to the Finance Department at 903-892-7215.

CITY OF SHERMAN
SPECIFICATION FOR POTABLE WATER METERS

The City of Sherman is seeking bids to purchase potable water meters on an annual contract. The size and quantity of the meters will be listed on the bid sheet and are based on previous use, which may vary.

The existing City of Sherman automated metering systems include ITRON Automated Meter Reading (AMR) and Automated Metering Infrastructure (AMI) fixed network systems. All meters must be compatible with ITRON AMR and AMI systems. Manual/visual meter readings and electronic/transmitted meter readings must match with no discrepancies.

All meters shall be of an absolute encoder register type with an ITRON waterproof in-line connector factory potted.

Bidders must bid on each item listed, no partial bids will be considered.

All meters must be new meters, no used or refurbished meters will be accepted.

All meters and parts must meet low lead requirements, as described in the amendment to the Federal Safe Drinking Water Act.

CITY OF SHERMAN
SPECIFICATION FOR WATER METERS

SCOPE
To obtain an agreement for the purchase of water meters with encoder registers and Itron waterproof in-line factory potted connectors for use with the 100w ITRON Automated Meter Reading Electronic Radio Transmitter (ERT), utilized by the City of Sherman Utility Billing Department in the metering and recording of water usage.

INTENT
It is the intent of this specification to provide water meters for distribution, metering and recording of usage of water.

EQUIPMENT MANUFACTURERS
All water meter bids shall be type and/or model specified or City approved equal. The City of Sherman shall have the sole responsibility of determining City approved equals. If bidding a meter not listed, it must be approved by the Utility Billing Manager prior to submitting the bid. Consideration of a meter not listed must be submitted to the City by noon on April 12, 2023 for pre-approval; requests, including detail information of your proposed meter, should be emailed to craigl@cityofsherman.com. Only meters assembled and tested in the United States shall be accepted.

Water meters must have an encoder register, be compatible with the ITRON 100W endpoints to interface with the existing ITRON automated systems of MVRS and Automated Metering Infrastructure (AMI), and to communicate with existing ITRON automated meter reading handheld and mobile collections systems. Manual/visual meter readings and electronic/transmitted meter readings must match, with no discrepancies.

COLD WATER METERS

GENERAL

Classification and Scope
Classification: This specification covers a contract for cold-water meters ranging in sizes 5/8” x 1/2" to 2”. All water meter registers will be an absolute encoder design and have glass lens and copper or stainless steel case, capable of providing electronically encoded meter information to meet the City’s current and future water meter data needs. Except as otherwise modified or supplemented herein, the latest revision of AWWA Standard C700 "AWWA Standard for Cold Water Meters - Displacement Type" and AWWA Manual M6 shall govern the materials, design, construction, manufacture and testing of all meters furnished under this specification. Standard flows apply.

Included herein are minimum requirements which are intended to govern in general the size and type required. There will be a bid for each size meter.

It is the intent of the City of Sherman to minimize the repair of any meters furnished and maximize the reliability of automated meter reading performance. All meters and electronics furnished shall be new, first line quality, for cold water service. Except as otherwise modified or supplemented herein, meters that will be considered are Positive Displacement, Oscillating Piston, Nutating disc type, Multi-jet, or Ultra-Sonic Meters are acceptable under this specification.

Applicable Specifications and Requirements

All meters shall meet or exceed AWWA Standard C700 and C701 latest revision and the minimum specifications herein. All meters must be ANSI/NSF61 certified. All meters must be low lead, complying with the rule as specified in the amendment to the Safe Drinking Water Act (SB 3874).

All meters must have absolute encoder registers. Encoder register shall provide value added flow data including leak, tamper and back flow detection when connected to a compatible radio frequency transmitter.

All meters shall have the ability to mount and connect to a radio frequency transmitter providing a communication link for the transmission of information from the register.

All meters shall be certified by ITRON, Inc as compatible with ITRON'S water ERT module. All meters must utilize the ITRON in-line connector.

Each meter shall include a stainless steel strainer or a strainer of a suitable non-corrosive material. It shall fit snugly to the casing and shall be rigid, easy to remove and have an effective straining area at least two times that of the main case inlet.

All external nuts, bolts and washers shall be bronze or other non-corrosive material. The

overall length of meters, face-to-face spuds and flanges, shall be as follows:

5/8" x 1/2"	7 1/2" external screw ends
5/8" x 3/4"	7 1/2" external screw ends
3/4" x 3/4" Short	7 1/2" external screw ends
3/4" x 3/4" Long	9" external screw ends
1"	10 ¾" external screw ends
1 ½"	13" face to face of flange
2"	17" face to face of flange

Manufacturer's meter serial number shall be individual and shall not be duplicated.

Additional Requirements for 1 ½" and 2" Meters
Main case connections shall be flanges of the oval type. Gaskets (2) shall be SBR (red rubber) drop-in gaskets with matte or cloth faced finish. Flange bolts (4) and nuts (4) are to be zinc. Meters shall be supplied with oval flanges; alternate pricing is requested for the meter without the flange. Pricing to include meters with and without a test port as defined on the Pricing Specification sheet.

Additional Requirements for 1 ½" and 2" Turbines
This specification covers cold-water class II turbine type NSF 61. Class II meters are the in-line, horizontal axis, high-velocity type turbines characterized by lower head loss and a wider normal operating flow range than class I models. Except as otherwise modified or supplemented herein, the latest revision of AWWA C701 "Cold-water meters-turbine type, for Customer Service" shall govern the materials, design, construction, manufacturer and testing of all meters furnished under this specification. Standard flows shall apply. Direction of flow and meter size shall be cast in raised letters on main case. Pricing for 1 ½" meters to include integral strainer. Pricing for 2" meters to include with and without integral strainers.

Main Case
The main case shall be NSF/ANSI approved. The meter housing and housing bottom plate shall be made of high quality lead-free bronze material. The main case will withstand a working pressure of one hundred fifty (150) pounds per square inch without seeping or distortion affecting the free operation of the measuring unit. A suitable gasket or NSF/ANSI approved O-ring must be provided between the main case and the bottom portion to prevent leakage under working pressure. All 2" meters must be furnished with test ports. The size, model and direction of flow through the meter shall be cast in raised characters on the outer case.

Register
Register must conform to the latest revision of AWWA Standard C700 and C701. Register shall be encoder-type and must conform with AWWA encoder type register standards. As used in these specifications, the term "Sealed Register" shall mean a register that is tamper proof, factory sealed, non-shop repairable, permanently hermetically sealed against fogging, moisture and corrosion, and mechanically disconnected from the measuring components.
Shall read in gallons and have a test or sweep hand, and shall be equipped with a low flow indicator.

At minimum, register shall include:

- Hermetically sealed register;
- Lens of a high-strength, heat-tempered or impact resistant glass.
- Magnetic drive design to prevent dirt and moisture contamination, tampering and lens fogging problems;
- Accumulate and register consumption without connecting to a receptacle or transmitter.
- Straight-reading, odometer-type totalization display; with output preference of 1/10 gallon resolution;
- A leak flow detector;
- Self-lubricating gears for long life and minimum friction.
- Shall provide easy installation and be field replaceable / interchangeable.

- ITRON waterproof in-line connector, factory potted for connection to ITRON ERT modules. All small meter registers (5/8" - 1 ½") will have a 5' factory potted pigtail with inline connector. All 2" meter registers will have a 5' to 25' factory potted pigtail with inline connector and cap, as requested by the City of Sherman Utility Billing Department.
- Meter size shall be stamped on the face of the register.

Strainers
Each meter shall include a stainless steel strainer or a strainer of a suitable non-corrosive material. It shall fit snugly to the casing and shall be rigid, easy to remove and have an effective straining area at least two times that of the main case inlet. If not integral with the main casing, all connecting hardware shall be provided.

Test Requirements
The manufacturer shall supply the test results of each meter purchased.

The City reserves the right to test all meters in accordance with AWWA Standard C700 and C701 (latest revision). Any meter that fails this test will be returned to the manufacturer freight collect, and the manufacturer shall replace the defective meter with new a new meter, freight prepaid. If more than 5% of any lot of meters tested fails to meet specifications, the City reserves the right to terminate the contract.

Bidders shall provide for consideration their proposed prices and their guarantees, as follows:

a. Unit price of these meters (including AMR absolute encoder register pre-programmed to the meter and waterproof factory potted in-line connector for an ITRON ERT) under these specifications and executed written agreement signed by the officer of the company providing guarantees as outlined herein, or any additional features being offered in connection with guarantees.
b. For all meter sizes, unit price for meter, delivered with a weather seal at the connector.
c. For1 ½" and 2" meters, an alternate pricing for units delivered without flanges (base bid includes one flange)
d. For 1 ½" meters, alternate pricing for meters with a test port.
e. For 2" meters, all pricing to include meters with a test port; and alternate pricing for meters with internal strainers.

The meters will be accepted when accompanied by a certificate furnished by the manufacturer attesting the meters supplied meets these specifications.

Any failure to specify exceptions will be basis for disqualification.

WARRANTY

All equipment shall include manufacturer's warranty. A summary of warranty must be attached to the bid sheet. The manufacturer shall guarantee that all new meters furnished under this contract will meet the required new meter accuracy standards established by AWWA Standard for Cold Water Type meters C700 and C701, latest revision. In addition, successful bidder shall unconditionally assume full responsibility for timely handling and processing of all warranty replacements, at no cost to the City. If a meter or meter components become defective within the manufacturer warranty period, the bidder shall repair or replace the defective meter with a meter that meets specifications. Standard manufacturer's warranty should include the following, and shall meet or exceed AWWA repaired meter accuracy standards.

New Meter Accuracy	Five (5) years from date of shipment
Repair Meter Accuracy	Fifteen (15) years from date of shipment or 1 MG registered

APPROXIMATE USAGE

Estimated annual quantities may be provided for water meters. Approximate usage does not constitute an order, but only implies the probable quantity the city may use. The City reserves the right to increase or decrease the quantities listed as deemed to be in the best interest of the City at no additional cost to the City. Orders will be placed on an as-needed basis.

PRICING SPECIFICATIONS

- City departments will place orders on an “as-needed” basis.
- The City of Sherman is EXEMPT from all taxes allowed by local, state, or federal law.
- The City is under no obligation to purchase a minimum amount of any item awarded.
- All items should be quoted FOB destination, City of Sherman, 2212 N Alexander St, Sherman, TX 75091.
- **Bidder must guarantee a maximum of forty-five (45) days delivery after receipt of an order.**

  Can you comply? Yes☐ No☐

  If delivery time is exceeded, $50.00 per calendar day may be assessed as liquidated damages unless a waiver of this requirement is approved by the City of Sherman.

ALL METERS AND PARTS MUST MEET LOW LEAD REQUIREMENTS, AS DESCRIBED IN THE AMENDMENT TO THE FEDERAL SAFE DRINKING WATER ACT (SB 3874).

To be included in all meter descriptions listed below – meters must have absolute encoder registers and factory potted Itron in-line connectors.

****See Next Page for Bid Items****

Bid Items_Water Meters

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8” x 1/2” Positive Displacement water meter	200		$	$		
2	5/8” x 3/4” Positive Displacement water meter	15		$	$		
3	3/4” x 3/4" Short Positive Displacement water meter	100		$	$		
4	3/4“ x 3/4" Long Positive Displacement water meter	800		$	$		
5	1” Positive Displacement water meter	40		$	$		
6	1 ½” Positive Displacement water meter	25		$	$		
7	2” Positive Displacement water meter, with test port	7		$	$		
	Total	1187					

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8” x 1/2” Oscillating Pistonwater meter	200		$	$		
2	5/8” x 3/4” Oscillating Piston water meter	15		$	$		
3	3/4” x 3/4" Oscillating Piston water meter	100		$	$		
4	3/4“ x 3/4" Long Oscillating Pistonwater meter	800		$	$		
5	1” Oscillating Piston water meter	40		$	$		
6	1 ½” Oscillating Piston water meter	25		$	$		
7	2” Oscillating Piston water meter,with test port	7		$	$		
	Total	1187					

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8” x 1/2” Nutating Disc Type water meter	200		$	$		
2	5/8” x 3/4” Nutating Disc Typewater meter	15		$	$		
3	3/4” x 3/4" Nutating Disc Typewater meter	100		$	$		
4	3/4“ x 3/4" Long Nutating Disc Typewater meter	800		$	$		
5	1” Nutating Disc Type water meter	40		$	$		
6	1 ½” Nutating Disc Type water meter	25		$	$		
7	2” Nutating Disc Typewater meter, with test port	7		$	$		
	Total	1187					

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8” x 1/2” Multi-Jet water meter	200		$	$		
2	5/8” x 3/4” Multi-Jet water meter	15		$	$		
3	3/4” x 3/4" Multi-Jet water meter	100		$	$		
4	3/4“ x 3/4" Long Multi-Jet water meter	800		$	$		
5	1” Multi-Jet water meter	40		$	$		
6	1 ½” Multi-Jet water meter	25		$	$		
7	2” Multi-Jet water meter, with test port	7		$	$		
	Total	1187					

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8” x 1/2” Ultra-Sonic Meter	200		$	$		
2	5/8” x 3/4” Ultra-Sonic Water Meters	15		$	$		
3	3/4” x 3/4" Short Ultra-Sonic Water Meters	100		$	$		
4	3/4“ x 3/4" Long Ultra-Sonic Water Meters	800		$	$		
5	1” Ultra-Sonic Water Meters	40		$	$		
6	1 ½” Ultra-Sonic Water Meters	25		$	$		
7	2” Ultra-Sonic water meter,with test port	7		$	$		
	Total	1187					

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	1 1/2” Turbine water meter, integral strainer, with test port	5		$	$		
2	1 1/2" Turbine water meter, integral strainer, without test port	10		$	$		
3	2" Turbine water meter	7		$	$		
4	1 1/2” Oval Strainer	3		$	$		
5	1 1/2" Oval Meter Flange Set	5		$	$		
6	2” Oval Strainer	7		$	$		
7	2” Oval Meter Flange Set	7		$	$		
	Total	44					

EXCEPTIONS TO THE SPECIFICATIONS:

Please list any exceptions to the specifications on this page. Please be specific by referencing the page and item number that you are taking exception to. If you need additional space use a blank page/s, mark the page/s "ADDITIONAL EXCEPTIONS" and include with your bid. If no exceptions are listed the City will assume you can meet all of the specifications listed within this bid.

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

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ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ITEM#_____EXCEPTION: _____

ADDENDUMS:

The bidder acknowledges receipt of the following Addenda: (If you have not received any Addenda then write NONE across the blanks). If you have received Addenda then write beside the appropriate Addenda number the date received. ALL ADDENDA RECEIVED SHOULD BE ATTACHED TO THE BID.

ADDENDUM # 1 _____

ADDENDUM # 2 _____

ADDENDUM # 3 _____

VENDOR TERMS AND CONDITIONS:

VENDOR PAYMENT TERMS: _____

VENDOR LEAD TIMES: _____

VENDOR PAYMENT TERMS:_____

COMPANY NAME/ADDRESS AND REPRESENTATIVE CONTACT NUMBERS:

COMPANY NAME: _____

REPRESENTATIVE NAME: _____

TELEPHONE #: _____ FAX #: _____

EMAIL: _____

BIDDERS CERTIFICATION:

I, the undersigned, by signing the following statement agree that I have read and understand all of the terms and conditions, specifications, and requirements contained on each page of this Invitation to Bid. I also understand that if this proposal is accepted by The City of Sherman that all of the terms and conditions, specifications, and requirements submitted in my proposal and any additions, changes, or deletions made during negotiations will be made a part of this proposal under a binding contract between my company and the City of Sherman, Texas. I also certify that this proposal is made without previous understanding, agreement, or connection with any person, firm, or corporation making a proposal for the same materials, and is in all fair and without collusion or fraud:

OUR company is a (Check One):

Corporation ___(The bid MUST be signed by an Officer of the company)
Partnership ___(The bid MUST be signed by a General Partner)
Joint Venture ___(The bid MUST be signed by an Officer of the company)
Sole Proprietor ___(The bid MUST be signed by the Owner)

COMPANY NAME:

COMPANY NAME (TYPED/PRINTED):_____

COMPANY ADDRESS: (TYPED/PRINTED):_____

CITY/STATE/ZIP (TYPED/PRINTED):_____

AUTHORIZED COMPANY REPRESENTATIVE PLEASE SIGN BELOW:

NAME (TYPED/PRINTED): _____

SIGNATURE: _____

DATE: _____

Your signature attests to your offer to provide the goods and/or services in this proposal according to the published provisions of this Invitation to Bid. When an award letter is issued, it becomes a part of this contract. Contract is not valid until a Purchase Order is issued.

Contractor References

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Exhibit C
City's Insurance Requirements

I. GENERAL INSURANCE REQUIREMENTS –

A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insureds as to all applicable coverages with the exception of workers compensation insurance.

B. Such policies shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail.

C. Such policies shall provide for a waiver of subrogation against City for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of the insurance.

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

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

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

Coverage Required		Limits
_X_	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
_X_	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.
_X_	6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.	
_X_	7. General Liability Insurance provides for a Waiver of Subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.	

_X_ 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

_X_ 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

_X_ 10. The Certificate of Insurance must state the project title.

___ 11. Other Insurance Requirements (State Below):

Exhibit D

Affidavit of No Prohibited Interest

THE STATE OF _____ §

THE COUNTY OF _____ §

I, _____, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

_____ Ownership of ten percent (10%) or more of the voting shares of the business entity.

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars ($25,000) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars ($25,000).

_____ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.

_____ Other:_____.

_____ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

Signed this ___ day of _____, 202_.

_____
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared _____, and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this _____ day of _____, 202_.

_____
Notary Public in and for the State of _____
My commission expires: _____

EXHIBIT E

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

_____

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

_____ _____

Signature of vendor doing business with the governmental entity Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

***

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

INSTRUCTIONS for
State Law Mandated Certificate of Interested Parties Form (Form 1295)

1. Pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the Sherman City Council must be accompanied by an original signature unsworn declaration, Certificate of Interested Parties, Form 1295.

2. Form 1295 must be completed in accordance with the TEC Rules: (https://www.ethics.state.tx.us/legal/ch46.html) and Section 2252.908 of the Texas Government Code, as amended: (http://www.legis.state.tx.us/tlodocs/84R/billtext/html/HB01295F.htm).

3. For questions or issues regarding the TEC rules and state law provisions and how Form 1295 should be completed, please consult with your own legal counsel.

4. In order to fill out and submit Form 1295, you will need to log in as directed on the TEC website: https://www.ethics.state.tx.us/whatsnew/elf info form1295.htm

   Tutorials for creating an account and for creating and submitting Form 1295 may also be found on this web page.

5. Please provide the bolded information exactly as it appears below when creating your certificate:

   Who is the contract with? Click the button for **Other**

   Governmental Entity

   Agency/Entity Name: **City of Sherman**

   Contract ID Number: **2023-12**

   Description of Goods and Services to be provided: **Annual Supply of Water Meters**

6. All other fields as required or as applicable to the individual vendor must be completed as explained in the tutorial video.

7. Vendors must provide a signed, original signature copy of this form along with four signed, notarized, original signature copies of the contract no later than 14 days after Notice of Recommendation for Award is received. All documents shall be signed by an Officer, Director or other Authorized Agent of the company. If the individual signing as Authorized Agent is not an officer or director of the company, appropriate documentation must be included with these documents to confirm that the individual has the authority to bind the company contractually.

rev. 1/26/2018

VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270

By signing below, the signatory hereby verifies that the firm it represents:

1. Does not boycott Israel; and,

2. Will not boycott Israel during the term of the contract.

SIGNED BY: _____

Print Name & Title: _____

Firm Name: _____

Date Signed: _____

NOTARIZATION

THE STATE OF _____)
)
COUNTY OF _____)

BEFORE ME, the undersigned notary public on this day personally appeared _____, on behalf of _____ (Company), who, being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct.

SWORN TO AND SUBSCRIBED before me on the_____day of _____, 202__.

_____
NOTARY PUBLIC IN AND
FOR THE STATE OF _____

The following definitions apply to Texas Government Code Section 2270.001:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

State law requires any firm entering into an agreement or contract with the Authority to complete the foregoing verification. TEX. GOV'T CODE § 2270.002.

AGREEMENT FOR WATER METERS

The **City of Sherman, Texas**, a home-rule municipality ("City"), and _____, a _____ ("Contractor"), hereby enter into this Agreement for the purchase of water meters ("Agreement"). City and Contractor are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, City issued an Invitation to Bid, attached hereto as Exhibit A and incorporated herein for all purposes ("Bid Request"), seeking competitive sealed bids for water meters for the City; and

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

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

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

1. Scope of Services.
   Contractor shall provide the services and deliverables that are described in the Agreement Documents (as defined below) and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Agreement Documents (collectively, "Services").

2. Term.
   The initial term of the Agreement shall be for a period of one (1) year, commencing on the Effective Date (hereinafter defined) of this Agreement ("Initial Term"). City shall have the option to extend this Agreement for four (4) additional terms of one (1) year each (each a "Renewal Term") on the same terms and conditions of this Agreement by giving Contractor written notice of its intent to extend prior to the expiration of the then-current one (1) year term.

3. Compensation.
   In exchange for Contractor's performance of the Services in accordance with the Agreement Document, City agrees to pay Contractor on the basis defined by and in the amounts set forth in the Submittal ("Contractor's Fee").

   City shall pay Contractor within thirty (30) days of receipt of each invoice, unless supporting receipts or other supporting documentation have been requested by City, in which case City shall pay the invoice as soon after receiving the supporting receipts or

documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in which case City shall pay the undisputed amount of the invoice within thirty (30) days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable. Notwithstanding anything to the contrary in the Agreement Documents, City shall not be required to pay any invoice submitted by Contractor if Contractor is in breach of this Agreement.

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

4. Agreement Documents.

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

A. This Agreement;

B. The Bid Request, attached hereto as Exhibit A;

C. The Submittal, attached hereto as Exhibit B;

D. City's Insurance Requirements, attached hereto as Exhibit C;

E. Affidavit of No Prohibited Interested, attached hereto as Exhibit D; and

F. Conflict of Interest Questionnaire, attached hereto as Exhibit E.

This Agreement shall incorporate the terms of the Agreement Documents in their entirety. To the extent that Exhibit A, Exhibit B, Exhibit C, Exhibit D or Exhibit E are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Exhibit A, Exhibit C, Exhibit D, Exhibit E and Exhibit B shall prevail in that order. Should disputes arise as to responsibilities and obligations set forth in the Agreement Documents, City's interpretation and/or decision shall be final and binding.

5. Entire Agreement.

The Agreement Documents contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. The Agreement Documents supersede all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties

regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the parties prior to the Effective Date of this Agreement which does not concern the subject matter of this Agreement. No amendment to the Agreement Documents shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

6. Required Insurance.

Contractor shall not start work under this Agreement until Contractor has obtained, at Contractor's expense, all of the insurance specified in, and required by, the Agreement Documents. Contractor shall procure and keep in full force and effect the types and amounts of insurance specified in City's Insurance Requirements, attached hereto as Exhibit C and incorporated herein for all purposes, for and during all aspects and phases of Contractor's work throughout the term of this Agreement at no expense to City. Contractor also shall comply with all other requirements set forth in Exhibit C.

7. No Prohibited Interest; Vendor Disclosure.

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

8. Indemnity.

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

BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

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

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

9. Liability.

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

10. Compliance with Laws; Standard of Care.

Contractor shall comply with all federal, state and local laws, statutes, ordinances, regulations and policies, as they exist, may be amended or in the future arising, applicable to Contractor and its work. Contractor shall ensure that its officers, agents, representatives, employees, subcontractors, licensees, invitees and other parties performing services for or on behalf of Contractor under this Agreement comply with all applicable laws, statutes, ordinances, regulations and policies. If Contractor observes or

is notified that the work under this Agreement is at variance with applicable laws, statutes, ordinances, regulations and policies, Contractor shall immediately notify City in writing. Contractor shall perform the Services in accordance with the prevailing standard of care by exercising the skill and care ordinarily utilized by professionals performing the same or similar services under the same or similar circumstances in the State of Texas.

11. Termination.

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

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

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

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

12. Authority to Execute.

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

13. Assignment.

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

14. No Waiver of Immunity.
The parties acknowledge and agree that, in executing and performing this Agreement, City has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

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

16. Consideration.
This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

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

18. 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.

19. Binding Effect.
This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

20. No Waiver.
Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

21. 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.

22. Indemnity.
The parties agree that the indemnity provision set forth in Section 8 herein is conspicuous and the parties have read and understood the same.

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

If to Contractor, to: _____
Attn:_____
Address:_____
_____
Telephone:_____
Facsimile:_____
Email:_____

If to City, to: City of Sherman
Attn: Robby Hefton, City Manager
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7201
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

With a copy to:

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

24. Representations.
Each party states that they have carefully read this Agreement, know the contents hereof, have consulted with an attorney of their choice regarding the meaning and effect hereof and is signing the same solely of their own judgment.

25. Independent Contractor.
Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

26. Incorporation of Recitals.
The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Contractor.

27. Reference to Contractor.
When referring to "Contractor" herein, this Agreement shall refer to and be binding upon Contractor, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Contractor is legally responsible.

28. Reference to City.
When referring to "City" herein, 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.

29. 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.

30. 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.

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

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

ATTEST:

_____
Linda Ashby, City Clerk

_____
Seller

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

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 he is the City Manager and duly authorized representative for the **City of Sherman, Texas** and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 202_.

_____
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_____**,** known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the_____(title) and duly authorized representative for, _____, _____, and that he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 202_.

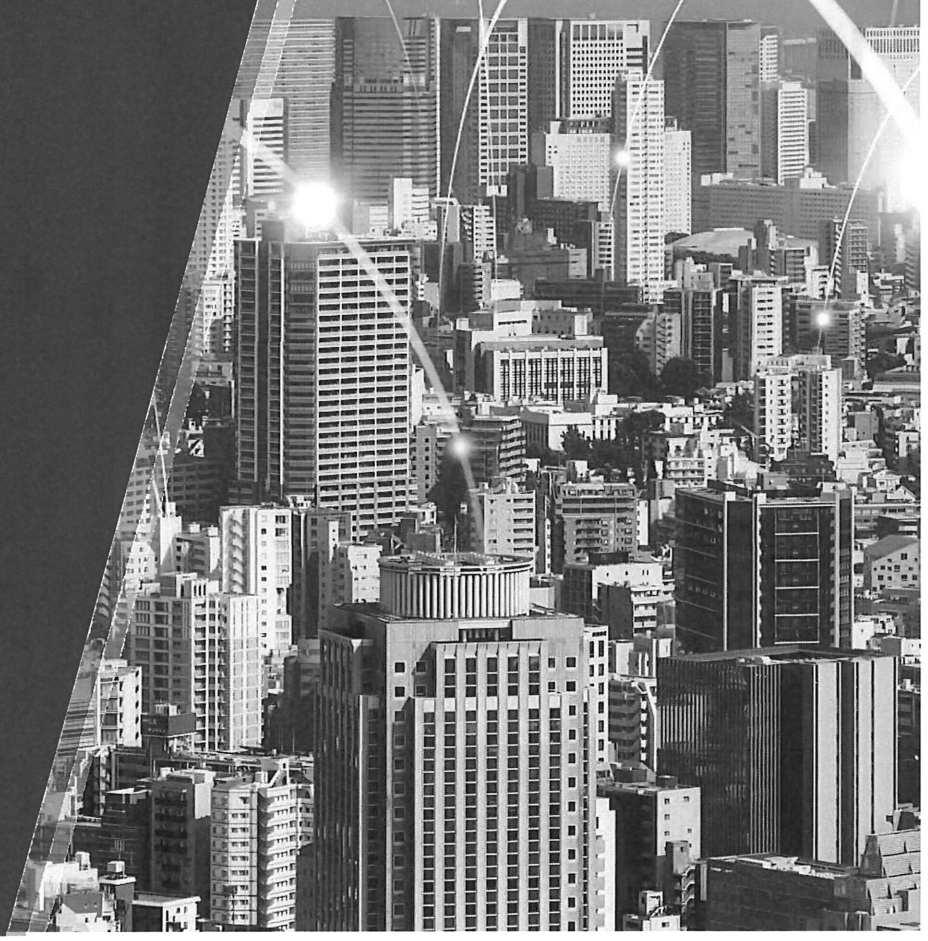
_____
Notary Public in and for the State of Texas
My Commission Expires:_____

EXHIBIT B

WATER WORKS
METROLOGY LLC

City of Sherman

Water Meters 2023-12



Joe Engram
3338 State Highway 78 Suite 2
Wylie, Texas 75098
Cell: 864-538-8036

Water Works Metrology LLC

For nearly 50 years, The Kennedy Companies has been building relationships with our manufacturers and our customers. We specialize in providing excellent engineered products to the utility and construction industries at competitive prices. We only represent those products and services which are deserving of our best quality, most technologically advanced, and most widely accepted in the marketplace – products and services that have a proven track record and work!

The Kennedy Companies mission is to provide top-quality, innovative, engineered utility products that ultimately produce a better way of living for others. We believe our first responsibility is to our customers. For 50 years Kennedy has offered the widest range of quality products, delivered at competitive prices. It is our goal to maintain the highest service standard in our industry today.

The Kennedy Companies has Metrology Division, Water Works Metrology LLC dedicated to the deployment of and ongoing support of automated water meter reading technologies such as AMI Fixed-Base Systems and AMR Drive-By Systems. Our experienced staff have a combined 50 plus years working in all aspects of meters. We are uniquely positioned to be a long-term partner of the City and to ensure efficient operation. We are the Sole Distributor for Mueller Systems in 12 states ranging from Texas to the east coast.

Water Works Metrology is excited to partner with the City of Sherman. We pride ourselves as being the only distributor whose sole purpose is to be experts in the metering world. Meaning our Team focuses solely on meters and metering systems. We believe that our Representatives are the best at what they do because that is all they do, Meters.

Brett Dickerson Vice President of Water Works Metrology has over 25 years in the meter industry. He has overseen with Mueller as his partner multiple deployments in NC, SC, GA and FL and VA. He envisioned a company that focuses on metering only, takes a hands-on approach and believes that he has put together the most comprehensive team in the meter industry through customer service, returns, one on one approach, building relationships that will be here for years to come.

Table of Contents

A. Agreement

B. Bid Request

C. Submittal

    1. Bidders Certification
    2. Exhibit B
    3. References
    4. Vendor Terms
    5. Data Sheets
    6. Warranty

D. Exhibit C

E. Exhibit D

F. Exhibit E

G. Lead Times

AGREEMENT FOR WATER METERS

The **City of Sherman, Texas**, a home-rule municipality ("City"), and Water Works Metrology LLC, a Contractor ("Contractor"), hereby enter into this Agreement for the purchase of water meters ("Agreement"). City and Contractor are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, City issued an Invitation to Bid, attached hereto as Exhibit A and incorporated herein for all purposes ("Bid Request"), seeking competitive sealed bids for water meters for the City; and

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

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

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

1. Scope of Services.
   Contractor shall provide the services and deliverables that are described in the Agreement Documents (as defined below) and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Agreement Documents (collectively, "Services").

2. Term.
   The initial term of the Agreement shall be for a period of one (1) year, commencing on the Effective Date (hereinafter defined) of this Agreement ("Initial Term"). City shall have the option to extend this Agreement for four (4) additional terms of one (1) year each (each a "Renewal Term") on the same terms and conditions of this Agreement by giving Contractor written notice of its intent to extend prior to the expiration of the then-current one (1) year term.

3. Compensation.
   In exchange for Contractor's performance of the Services in accordance with the Agreement Document, City agrees to pay Contractor on the basis defined by and in the amounts set forth in the Submittal ("Contractor's Fee").

   City shall pay Contractor within thirty (30) days of receipt of each invoice, unless supporting receipts or other supporting documentation have been requested by City, in which case City shall pay the invoice as soon after receiving the supporting receipts or

documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in which case City shall pay the undisputed amount of the invoice within thirty (30) days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable. Notwithstanding anything to the contrary in the Agreement Documents, City shall not be required to pay any invoice submitted by Contractor if Contractor is in breach of this Agreement.

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

4. Agreement Documents.

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

A. This Agreement;

B. The Bid Request, attached hereto as Exhibit A;

C. The Submittal, attached hereto as Exhibit B;

D. City's Insurance Requirements, attached hereto as Exhibit C;

E. Affidavit of No Prohibited Interested, attached hereto as Exhibit D; and

F. Conflict of Interest Questionnaire, attached hereto as Exhibit E.

This Agreement shall incorporate the terms of the Agreement Documents in their entirety. To the extent that Exhibit A, Exhibit B, Exhibit C, Exhibit D or Exhibit E are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Exhibit A, Exhibit C, Exhibit D, Exhibit E and Exhibit B shall prevail in that order. Should disputes arise as to responsibilities and obligations set forth in the Agreement Documents, City's interpretation and/or decision shall be final and binding.

5. Entire Agreement.

The Agreement Documents contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. The Agreement Documents supersede all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties

regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the parties prior to the Effective Date of this Agreement which does not concern the subject matter of this Agreement. No amendment to the Agreement Documents shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

6. Required Insurance.

Contractor shall not start work under this Agreement until Contractor has obtained, at Contractor's expense, all of the insurance specified in, and required by, the Agreement Documents. Contractor shall procure and keep in full force and effect the types and amounts of insurance specified in City's Insurance Requirements, attached hereto as Exhibit C and incorporated herein for all purposes, for and during all aspects and phases of Contractor's work throughout the term of this Agreement at no expense to City. Contractor also shall comply with all other requirements set forth in Exhibit C.

7. No Prohibited Interest; Vendor Disclosure.

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

8. Indemnity.

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

BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

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

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

9. Liability.

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

10. Compliance with Laws; Standard of Care.

Contractor shall comply with all federal, state and local laws, statutes, ordinances, regulations and policies, as they exist, may be amended or in the future arising, applicable to Contractor and its work. Contractor shall ensure that its officers, agents, representatives, employees, subcontractors, licensees, invitees and other parties performing services for or on behalf of Contractor under this Agreement comply with all applicable laws, statutes, ordinances, regulations and policies. If Contractor observes or

is notified that the work under this Agreement is at variance with applicable laws, statutes, ordinances, regulations and policies, Contractor shall immediately notify City in writing. Contractor shall perform the Services in accordance with the prevailing standard of care by exercising the skill and care ordinarily utilized by professionals performing the same or similar services under the same or similar circumstances in the State of Texas.

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

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

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

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

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

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

14. No Waiver of Immunity.
The parties acknowledge and agree that, in executing and performing this Agreement, City has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

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

16. Consideration.
This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

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

18. 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.

19. Binding Effect.
This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

20. No Waiver.
Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

21. 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.

22. Indemnity.
The parties agree that the indemnity provision set forth in Section 8 herein is conspicuous and the parties have read and understood the same.

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

If to Contractor, to:
Water Works Metrology LLC
Attn: Joe Engram, Southeast Regional Manager
Address: 3338 State Hwy 78 Suite 2
Wylie, Texas 75098
Telephone: 864-538-8036
Facsimile:
Email: jengram@waterworksmetrology.com

If to City, to:
City of Sherman
Attn: Robby Hefton, City Manager
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7201
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

PRICING SPECIFICATIONS

- City departments will place orders on an "as-needed" basis.
- The City of Sherman is EXEMPT from all taxes allowed by local, state, or federal law.
- The City is under no obligation to purchase a minimum amount of any item awarded.
- All items should be quoted FOB destination, City of Sherman, 2212 N Alexander St, Sherman, TX 75091.
- **Bidder must guarantee a maximum of forty-five (45) days delivery after receipt of an order.**

  Can you comply? Yes☒ No☐

  If delivery time is exceeded, $50.00 per calendar day may be assessed as liquidated damages unless a waiver of this requirement is approved by the City of Sherman.

ALL METERS AND PARTS MUST MEET LOW LEAD REQUIREMENTS, AS DESCRIBED IN THE AMENDMENT TO THE FEDERAL SAFE DRINKING WATER ACT (SB 3874).

To be included in all meter descriptions listed below – meters must have absolute encoder registers and factory potted Itron in-line connectors.

See Next Page for Bid Items

Bid Items_Water Meters

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8" x 1/2" Positive Displacement water meter	200		$115	$23,000	1 Week	6 Weeks
2	5/8" x 3/4" Positive Displacement water meter	15		$115	$1,725	1 Week	6 Weeks
3	3/4" x 3/4" Short Positive Displacement water meter	100		$152	$15,200	1 Week	6 Weeks
4	3/4" x 3/4" Long Positive Displacement water meter	800		$158	$126,400	1 Week	6 Weeks
5	1" Positive Displacement water meter	40		$225	$9,000	1 Week	6 Weeks
6	1 ½" Positive Displacement water meter	25		$412	$10,300	1 Week	6 Weeks
7	2" Positive Displacement water meter, with test port	7		$460	$1,840	1 Week	6 Weeks
	Total	1187			$187,465		

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8" x 1/2" Oscillating Pistonwater meter	200		$	$		
2	5/8" x 3/4" Oscillating Piston water meter	15		$	$		
3	3/4" x 3/4" Oscillating Piston water meter	100		$	$		
4	3/4" x 3/4" Long Oscillating Pistonwater meter	800		$	$		
5	1" Oscillating Piston water meter	40		$	$		
6	1 ½" Oscillating Piston water meter	25		$	$		
7	2" Oscillating Piston water meter,with test port	7		$	$		
	Total	1187					

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8" x 1/2" Nutating Disc Type water meter	200		$	$		
2	5/8" x 3/4" Nutating Disc Typewater meter	15		$	$		
3	3/4" x 3/4" Nutating Disc Typewater meter	100		$	$		
4	3/4" x 3/4" Long Nutating Disc Typewater meter	800		$	$		
5	1" Nutating Disc Type water meter	40		$	$		
6	1 ½" Nutating Disc Type water meter	25		$	$		
7	2" Nutating Disc Typewater meter, with test port	7		$	$		
	Total	1187					

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8" x 1/2" Multi-Jet water meter	200		$	$		
2	5/8" x 3/4" Multi-Jet water meter	15		$	$		
3	3/4" x 3/4" Multi-Jet water meter	100		$	$		
4	3/4" x 3/4" Long Multi-Jet water meter	800		$	$		
5	1" Multi-Jet water meter	40		$	$		
6	1 ½" Multi-Jet water meter	25		$	$		
7	2" Multi-Jet water meter, with test port	7		$	$		
	Total	1187					

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	5/8" x 1/2" Ultra-Sonic Meter	200		$	$		
2	5/8" x 3/4" Ultra-Sonic Water Meters	15		$ 142	$ 2,130	1 Week	20 Weeks
3	3/4" x 3/4" Short Ultra-Sonic Water Meters	100		$ 167	$ 16,700	1 Week	20 Weeks
4	3/4" x 3/4" Long Ultra-Sonic Water Meters	800		$ 172	$ 137,600	1 Week	20 Weeks
5	1" Ultra-Sonic Water Meters	40		$ 239	$ 9,560	1 Week	20 Weeks
6	1 ½" Ultra-Sonic Water Meters	25		$ 607	$ 15,175	1 Week	20 Weeks
7	2" Ultra-Sonic water meter,with test port	7		$ 687	$ 4,809	1 Week	20Weeks
	Total	1187			$ 185,974		

Item	Description	Estimated Quantity	Model	Unit Price	Total Price	Delivery Time-In Stock (#Days)	Delivery Time - Manufacture Lead (#Days)
1	1 1/2" Turbine water meter, integral strainer, with test port	5		$	$		
2	1 1/2" Turbine water meter, integral strainer, without test port	10		$ 585	$ 8,775	1 Week	14 Weeks
3	2" Turbine water meter	7		$ 695	$ 4,865	1 Week	14 Weeks
4	1 1/2" Oval Strainer	3		$ 20	$ 60	1 Week	6 Weeks
5	1 1/2" Oval Meter Flange Set	5		$ 205	$ 1,025	1 Week	8 Weeks
6	2" Oval Strainer	7		$ 32	$ 224	1 Week	6 Weeks
7	2" Oval Meter Flange Set	7		$ 222	$ 1,554	1 Week	8 Weeks
	Total	44			$ 16,503		

BIDDERS CERTIFICATION:

I, the undersigned, by signing the following statement agree that I have read and understand all of the terms and conditions, specifications, and requirements contained on each page of this Invitation to Bid. I also understand that if this proposal is accepted by The City of Sherman that all of the terms and conditions, specifications, and requirements submitted in my proposal and any additions, changes, or deletions made during negotiations will be made a part of this proposal under a binding contract between my company and the City of Sherman, Texas. I also certify that this proposal is made without previous understanding, agreement, or connection with any person, firm, or corporation making a proposal for the same materials, and is in all fair and without collusion or fraud:

OUR company is a (Check One):

Corporation	___(The bid MUST be signed by an Officer of the company)
Partnership	X (The bid MUST be signed by a General Partner)
Joint Venture	___(The bid MUST be signed by an Officer of the company)
Sole Proprietor	___(The bid MUST be signed by the Owner)

COMPANY NAME:

COMPANY NAME (TYPED/PRINTED): Water Works Metrology LLC

COMPANY ADDRESS: (TYPED/PRINTED): 3338 State Hwy 78 Suite 2

CITY/STATE/ZIP (TYPED/PRINTED): Wylie, Texas 75098

AUTHORIZED COMPANY REPRESENTATIVE PLEASE SIGN BELOW:

NAME (TYPED/PRINTED): Joseph Ingram

SIGNATURE: _____

DATE: 4/17/23

Your signature attests to your offer to provide the goods and/or services in this proposal according to the published provisions of this Invitation to Bid. When an award letter is issued, it becomes a part of this contract. Contract is not valid until a Purchase Order is issued.

VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270

By signing below, the signatory hereby verifies that the firm it represents:

1. Does not boycott Israel; and,

2. Will not boycott Israel during the term of the contract.

SIGNED BY: _____

Print Name & Title: Joseph Engram - Southeast Regional Manager

Firm Name: Water Works Metrology

Date Signed: 4/17/23

NOTARIZATION

THE STATE OF SC)
)
COUNTY OF Anderson)

BEFORE ME, the undersigned notary public on this day personally appeared Joseph Engram, on behalf of Water Works Metrology (Company), who, being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct.

SWORN TO AND SUBSCRIBED before me on the 17 day of April, 2023.

KATHERYNE D KING
Notary Public, State of South Carolina
My Commission Expires 06/20/2032

_____
NOTARY PUBLIC IN AND
FOR THE STATE OF South Carolina

The following definitions apply to Texas Government Code Section 2270.001:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

State law requires any firm entering into an agreement or contract with the Authority to complete the foregoing verification. TEX. GOV'T CODE § 2270.002.

Contractor References

Customer Name: Pace Water Systems Florida

Address: 4401 Woodbine Road, Pace, Florida 32571

Contact: Bridget Conner Telephone #: 850-463-3109

Scope of work performed: Supplied 19,854 meters

Length of Service: 7 years

Customer Name: City of Belmont

Address: 1404 E Catawba Street, Belmont, North Carolina 28012

Contact: Danny Whisnant Telephone #: 704-901-2073

Scope of work performed: Supplied 7,000 meters

Length of Service: 7 years

Customer Name: Town of Ranlo

Address: 120 Duff Street, Gastonia, North Carolina 28054

Contact: Jason Green Telephone #: 704-616-4126

Scope of work performed: Supplied 1,680 meters

Length of Service: 4 years

ADDENDUMS:

The bidder acknowledges receipt of the following Addenda: (If you have not received any Addenda then write NONE across the blanks). If you have received Addenda then write beside the appropriate Addenda number the date received. ALL ADDENDA RECEIVED SHOULD BE ATTACHED TO THE BID.

ADDENDUM # 1 _____

ADDENDUM # 2 _____

ADDENDUM # 3 _____

VENDOR TERMS AND CONDITIONS:

VENDOR PAYMENT TERMS: Net 30

VENDOR LEAD TIMES: See attached

VENDOR PAYMENT TERMS: Payment upon receipt

COMPANY NAME/ADDRESS AND REPRESENTATIVE CONTACT NUMBERS:

COMPANY NAME: Water Works Metrology LLC

REPRESENTATIVE NAME: Sean Curtis

TELEPHONE #: (512) 903-3131 FAX #: N/A

EMAIL: scurtis@waterworksmetrology.com

MUELLER

420 SERIES BRONZE

420 Bronze PD Meter - Sizes 5/8" x 1/2" and 5/8" x 3/4"

FEATURES

Applications: The Mueller® 420 bronze is a nutating disc style, positive displacement meter designed for residential and small commercial applications where water volumes are low and low flow sensitivity is important.

Conformance to Standards: All Mueller 420 bronze meters meet or exceed the latest revision of the AWWA C-700 Standard for positive displacement meters. Every 420 bronze no lead meter is compliant with the latest initiatives of NSF, ANSI and EPA standards.

Construction: Mueller 420 water meters consist of three basic parts: maincase; measuring chamber; and permanently sealed register. The maincase is made of bronze for long life. Direction of flow arrows and model are cast into each maincase for ease of identification. The bottom cover is epoxy-coated cast iron with a molded plastic liner separating it from the waterway. Optional bronze and polymer bottom covers are available. The measuring chambers are designed for reduced wear during operation. The measuring chamber, integral strainer, nutating disc and thrust roller are thermoplastic, which is dimensionally stable and will not corrode. The register housing and lid are available in your choice of plastic or bronze for standard visual read registers. The meter is designed so that the register can be replaced easily without removing the meter from the service line.

Register: The permanently sealed visual read register has a unique triple "L" seal and heat treated, glass lens to eliminate dirt, moisture infiltration and fogging. An integral tamper-proof locking feature is provided to resist tampering with the register. The totalizing register has a straight-reading odometer type display, a 360° test circle with center sweep hand and a low flow (leak) detector. Standard gearing is used, making registers interchangeable by size. The 420 bronze meter is available with all AMR and AMI options for increased reading efficiency.

Operation: Water flows through the meter's strainer where debris is screened out. The incoming water fills a known volume of the measuring chamber on one or the other side of a movable disc that separates the chamber into two sections. As water enters, it moves the disc (nutates), forcing a known volume of water out of the meter from the opposite side of the disc. The process repeats as the sections refill and empty in turn. The nutating action of the disc is coupled magnetically to the register to indicate the volume of water that passes through the meter.

Maintenance: The Mueller 420 positive displacement meter is designed and manufactured to provide long service life with virtually no maintenance required. Repair components available include complete chamber assemblies and bottom plate gaskets. All components can be accessed without removing the meter body from the service line for simplified maintenance.

Connections: Supplied with external straight pipe threads (NPSM) per ANSI B1.20.1

5/8" X 1/2" 420 BRONZE PD METER

MATERIALS AND SPECIFICATIONS

Model	420 Bronze Meter
Sizes	5/8" x 1/2", 5/8" x 3/4"
Standards	AWWA C-700, Most current NSF-61, ANSI, & EPA Initiatives
Service	Measurement of flow in forward direction only
Installation	Horizontal or Vertical
Operating Flow Range	See charts on the following pages
Accuracy	See charts on the following pages
Maximum Working Pressure	150 psi
Temperature Range	33° F to 100° F water temperature
Measuring Element	Nutating Disc PD Chamber
Register Type	Straight reading, permanently sealed, magnetic drive with low flow indicator and remote reading capability
Meter Connections	External straight pipe threads (NPSM)
Materials	Meter case – Bronze Bolts – Stainless Steel Measuring Element Chamber and Disc - Thermoplastic Disc Pin - SST Strainer - Thermoplastic
Options	AMR/AMI Reading Systems

420 SERIES BRONZE

420 Bronze PD Meter - Sizes 5/8" x 1/2" and 5/8" x 3/4"

METER REGISTRATION

METER SIZE	INITIAL DIAL*	CAPACITY	INITIAL DIAL*	CAPACITY
5/8"	10 Gallons	10 Million	1 Cubic Feet	1 Million

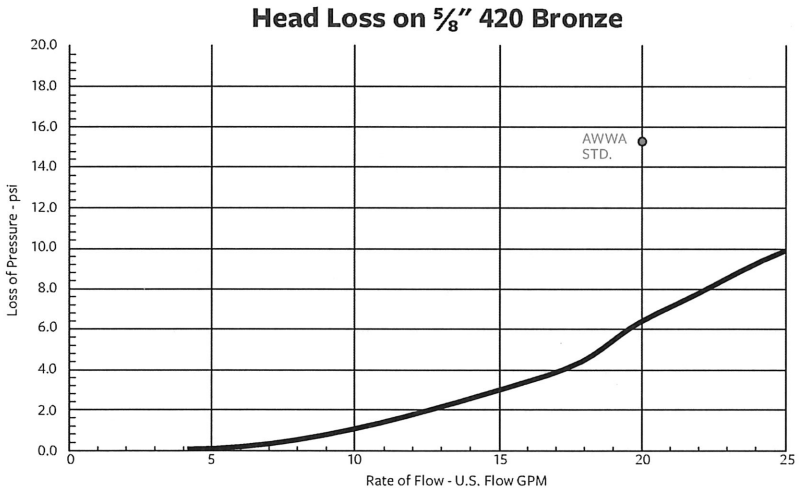
*Registration equal to one full revolution of the sweep hand.

FLOW CHARACTERISTICS

METER SIZE	TYPICAL LOW FLOW (95% MINIMUM)	TYPICAL OPERATING RANGE (100% ± 1.5%)	MAXIMUM CONTINUOUS OPERATION
5/8"	1/8 GPM	1/2 to 20 GPM	15 GPM

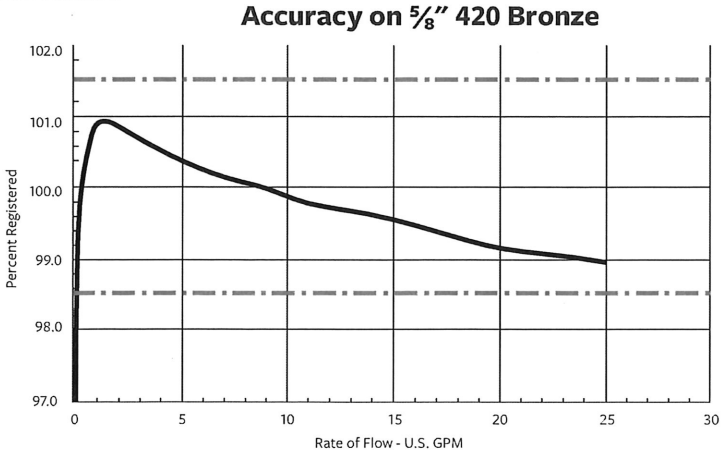
PERFORMANCE

HEAD LOSS



NOTE: Performance curves are typical only and NOT a guarantee of performance.

ACCURACY



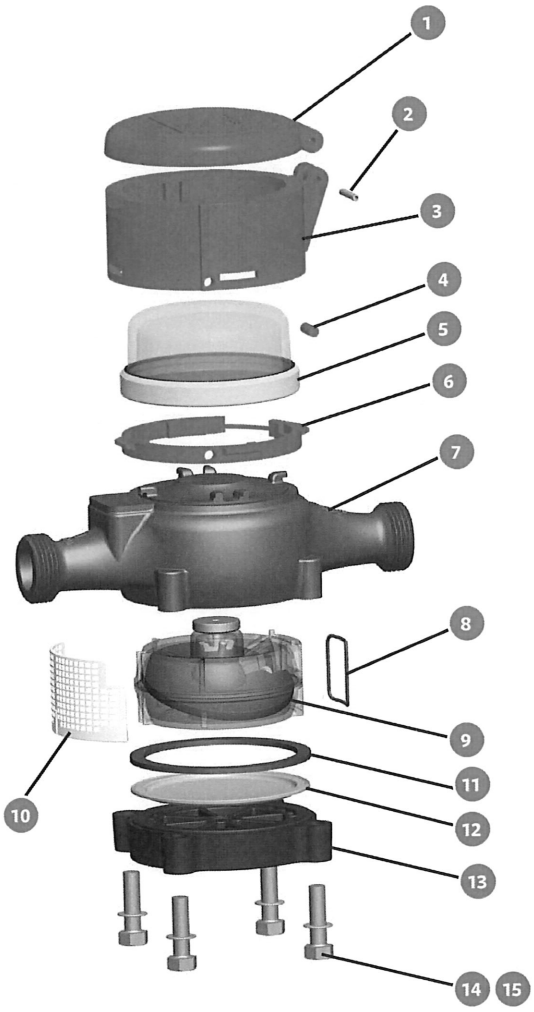
NOTE: Performance curves are typical only and NOT a guarantee of performance.

420 SERIES BRONZE

420 Bronze PD Meter - Sizes 5/8" x 1/2" and 5/8" x 3/4"

MODEL 420 BRONZE METER ASSEMBLY COMPONENTS

ITEM	PART #	DESCRIPTION	QTY
1	C5768	Plastic Register Cover	1
	C5774	Bronze Register Cover	
2	C5769	Plastic Register Housing Base	1
	C5772	Bronze Register Housing Base	
3	AS41122	Plastic Lid Spirol Pin	1
	AS41123	Bronze Lid Spirol Pin	
4	AS12658	Blue Color Register Locking Pin	1
	AS126581	Bronze Color Register Locking Pin	
5	D36981	Model 420 Visual Register SG	1
	D36982	Model 420 Visual Register CF	
	D36983	Model 420 Visual Register CM	
6	C5770	Register Housing Insert	1
7	D3680SI	5/8" x 3/4" Model 420 Main Case	1
	D3681-1SI	5/8" x 1/2" Model 420 Main Case	
8	A13120	Model 420 Chamber O-Ring	1
9	D3635PO	Model 420 Chamber Assembly	1
10	C6681	Model 420 Bronze Strainer Retainer	1
11	B8664	Model 420 Bronze Gasket	1
12	B8665	Model 420 Liner (Iron / Brz Only)	1
13	B8663	Model 420 Iron Bottom Plate	1
	B8662	Model 420 Bronze Bottom Plate	
	C6682	Model 420 Polymer Bottom Plate	
14	90026	5/16 - 18 x 7/8" Hex Bolt SS (Iron / Brz Btm)	4
	90010	5/16 - 18 x 1 1/8" Hex Bolt SS (Plastic Btm)	
15	90018	5/16 Flat Washer SS (Polymer Btm)	4

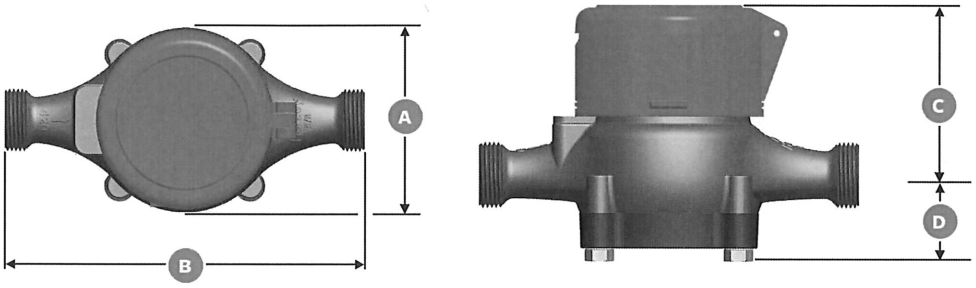


DIMENSIONS, WEIGHTS AND PARTS

METER SIZE		5/8″	
MODEL	420 BRONZE STANDARD REGISTER	420 BRONZE SSR REGISTER	420 BRONZE ME-8 REGISTER
		DIMENSION	
A	3.8125″	3.8125″	3.8125″
B	7.5″	7.5″	7.5″
C	3.3125	3″	3.5″
D	1.375″	1.375″	1.375″
Weight	3.7	3.7	3.7

Weights are in pounds are approximate.
Inlet and outlet ½″ or ¾″

420 BRONZE METER



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F 14206 6/20

MUELLER

435 SERIES BRONZE

435 Bronze PD Meter - Sizes ¾" Short, ¾" x ¾" Standard, ¾" x 1"

FEATURES

Applications: The Mueller® 435 bronze is a nutating disc style, positive displacement meter designed for residential and small commercial applications where water volumes are low and low flow sensitivity is important.

Conformance to Standards: All Mueller 435 bronze meters meet or exceed the latest revision of the AWWA C-700 Standard for positive displacement meters. Every 435 bronze no lead meter is compliant with the latest initiatives of NSF, ANSI and EPA standards.

Construction: Mueller 435 water meters consist of three basic parts: maincase; measuring chamber; and permanently sealed register. The maincase is made of bronze for long life. Direction of flow arrows and model are cast into each maincase for ease of identification. The bottom cover is epoxy-coated cast iron with a molded plastic liner separating it from the waterway. Optional bronze bottom covers are available. The measuring chambers are designed for reduced wear during operation. The measuring chamber, integral strainer, nutating disc and thrust roller are thermoplastic, which is dimensionally stable and will not corrode. The meter is designed so that the register can be replaced easily without removing the meter from the service line.

Register: The permanently sealed solid state encoder register has a heat treated, glass lens and thermoplastic housing to eliminate dirt, moisture infiltration and fogging. An integral tamper-proof locking feature is provided to resist tampering with the register. The totalizing register has a 10 digit LCD reading display, up to 9 digit electronic output, specifiable visual back flow detection, battery life icon, and a low flow and leak detector. Visual tamper codes are displayed intermittently with the reading data in the event of register removal or magnetic tampering. The 435 bronze meter is compatible with all AMR and AMI options for increased reading efficiency.

Operation: Water flows through the meter's strainer where debris is screened out. The incoming water fills a known volume of the measuring chamber on one or the other side of a movable disc that separates the chamber into two sections. As water enters, it moves the disc (nutates), forcing a known volume of water out of the meter from the opposite side of the disc. The process repeats as the sections refill and empty in turn. The nutating action of the disc is sensed by the register to accurately indicate the volume of water that passes through the meter.

Maintenance: The Mueller 435 positive displacement meter is designed and manufactured to provide long service life with virtually no maintenance required. Repair components available include complete chamber assemblies and bottom plate gaskets. All components can be accessed without removing the meter body from the service line for simplified maintenance.

Connections: Supplied with external straight pipe threads (NPSM) per ANSI B1.20.1

¾" SHORT BRONZE 435 PD BRONZE BODIED METER WITH SSR REGISTER

MATERIALS AND SPECIFICATIONS

Model	435 Composite Meter
Sizes	¾" Short, ¾" x ¾" Standard, ¾" x 1"
Standards	AWWA C-710, Most Current NSF-61, ANSI, & EPA Initiatives
Service	Measurement of flow in forward direction only
Installation	Horizontal or Vertical
Operating Flow Range	See charts on the following pages
Accuracy	See charts on the following pages
Maximum Working Pressure	150 psi
Temperature Range	33° F to 100° F water temperature
Measuring Element	Nutating Disc PD Chamber
Register Type	Solid State Register (SSR) ME-8 Register 5' flying lead wire, 5' Nicor connector, 5' Itron connector
Meter Connections	External straight pipe threads (NPSM)
Materials	Meter case – Bronze Bolts – Stainless Steel Measuring Element Chamber and Disc - Thermoplastic Disc Pin - SST Strainer - Thermoplastic
Options	AMR/AMI Reading Systems

435 SERIES BRONZE

435 Bronze PD Meter - Sizes ¾" Short, ¾" x ¾" Standard, ¾" x 1"

METER REGISTRATION

METER SIZE	REGISTRATION	REGISTRATION	REGISTRATION
¾"	Gallons	Cubic Feet	Cubic Meters

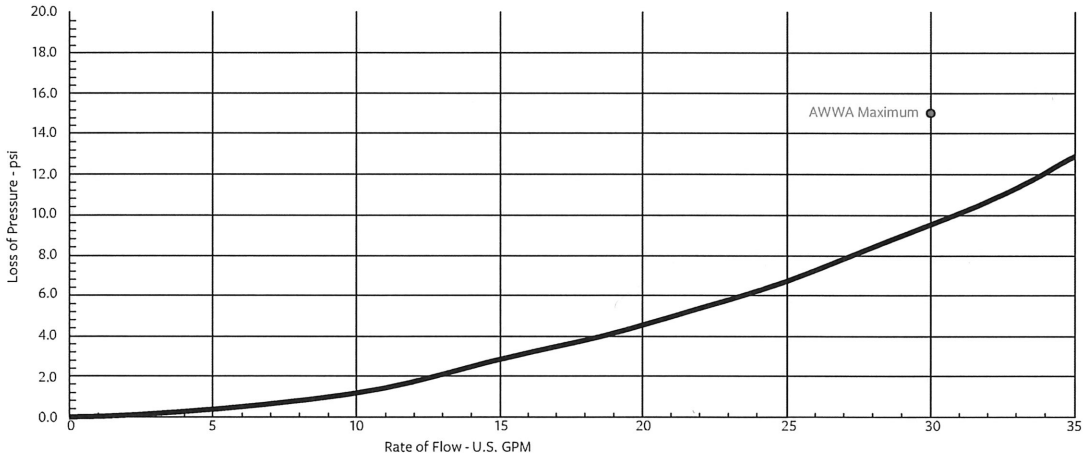
*All registration values are factory programmable and must be specified prior to ordering.

FLOW CHARACTERISTICS

METER SIZE	TYPICAL LOW FLOW (95% MINIMUM)	TYPICAL OPERATING RANGE (100% ± 1.5%)	MAXIMUM CONTINUOUS OPERATION
¾"	¼ GPM	¾ to 30 GPM	25 GPM

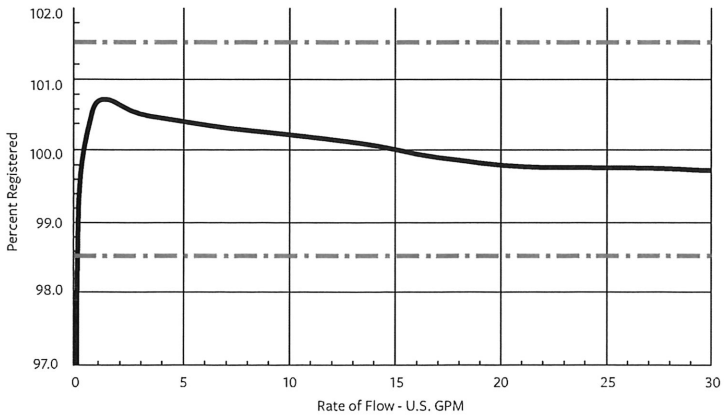
PERFORMANCE

HEAD LOSS



NOTE: Performance curves are typical only and NOT a guarantee of performance.

ACCURACY



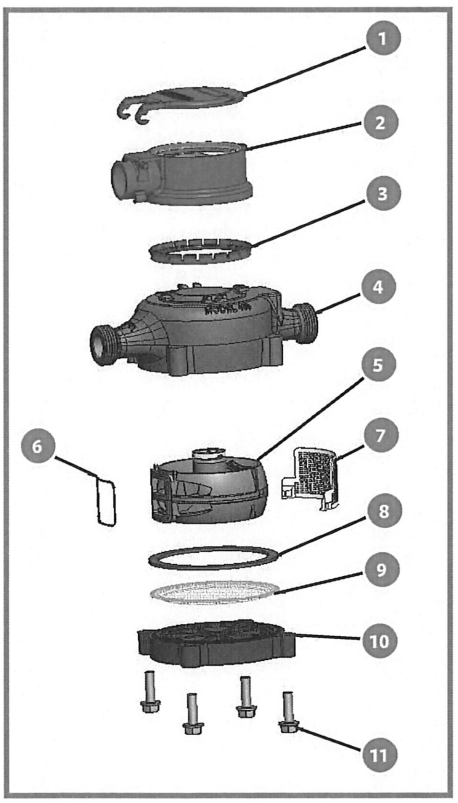
NOTE: Performance curves are typical only and NOT a guarantee of performance.

435 SERIES BRONZE

435 Bronze PD Meter - Sizes ¾" Short, ¾" x ¾" Standard, ¾" x 1"

MODEL 435 BRONZE METER ASSEMBLY COMPONENTS

ITEM	PART #	DESCRIPTION	QTY
1	C6939	SSR Cover	1
2	CALL CS	SSR Register Assembly	1
3	B8703	SSR Housing Retainer	1
	D3707	¾" x ¾" x 7.5" Model 435 Main Case	
3B	B8735	SSR Ring Wedge	1
4	D3723-1	¾" x ¾" x 9" Model 435 Main Case	1
	D3723-2	¾" x 1" x 9" Model 435 Main Case	
5	D3705	Model 435 Chamber Assembly	1
6	A13128	Model 435 Chamber O-Ring	1
7	C6933	Model 435 Strainer Retainer	1
8	B8698	Model 435 Bronze Gasket	1
9	B8699	Model 435 Liner (Iron / Brz Bottom Only)	1
10	B8714	Model 435 Iron Bottom Plate	1
	B8715	Model 435 Bronze Bottom Plate	
11	90026	5/16 - 18 x 7/8 Hex Bolt SS (Iron / Brz Btm)	4

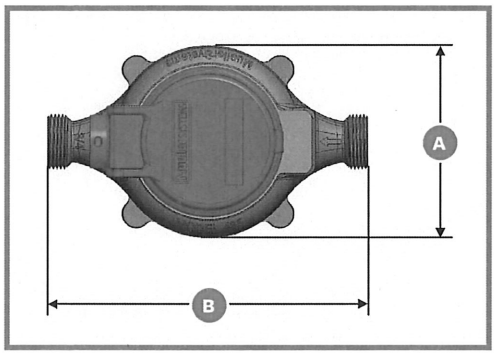


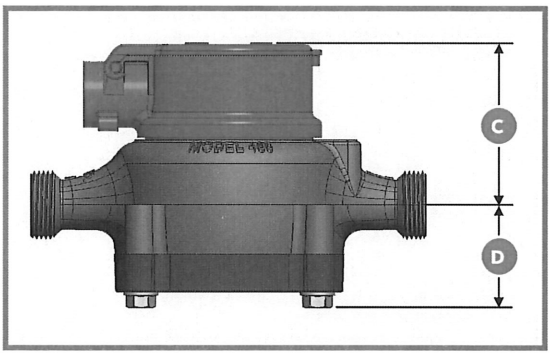
DIMENSIONS, WEIGHTS AND PARTS

METER SIZE	¾" SHORT 7.5"	¾" STANDARD 9"	¾" X 1" X 9"
MODEL	435 BRONZE SSR REGISTER	435 BRONZE SSR REGISTER	435 BRONZE SSR REGISTER
DIMENSION			
A	4.475"	4.475"	4.475"
B	7.5"	9"	9"
C			
Visual Register	3.25"	3.25"	3.25"
SSR Register	3.035"	3.035"	3.035"
ME-8 Register	3.5"	3.5"	3.5"
D	1.925"	1.925"	1.925"
Weight	4.6	4.7	4.8

Weights are in pounds are approximate.

435 BRONZE METER





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F 14210 6/20

MUELLER

MUELLER

452 SERIES

Magnetic Drive Positive Displacement Disc Meters Size 1″

FEATURES

Applications: Measurement of cold water for residential and small commercial applications where water volumes are low, and low flow sensitivity is important.

Conformance to Standards: Mueller 452 water meter complies with latest version of ANSI/AWWA Standard C700, NSF-61 372 and the Safe Water Drinking Act. Each meter is tested to ensure compliance.

Construction: Mueller 452 water meter consists of three basic parts: main case; measuring chamber; and permanently sealed register. The main case is made of bronze for long life. Direction of flow arrows and model are cast into each main case. The bottom cover is epoxy-coated cast iron with a molded plastic liner separating it from the waterway. Optional bronze bottom covers are available. The measuring chambers are large for reduced wear during operation. The measuring chamber, integral strainer, nutating disc are thermoplastic, which is dimensionally stable and will not corrode. The stainless steel thrust roller moves smoothly along a stainless steel wear plate to reduce friction and maintain accuracy. The register box and lid are available in plastic or bronze. The meter is designed so that the register can be replaced without removing the meter from the line.

Register: The permanently sealed register has a unique seal and heat-treated glass to eliminate dirt, moisture infiltration and lens fogging. An integral tamper-proof locking feature is provided to resist tampering with the register. The totalizing register has a straight-reading odometer type display, a 360° test circle with center sweep hand and a low flow (leak) detector or the option of a solid state LCD display. Standard gearing is used, making registers interchangeable by size. All Mueller meter Models have electronic meter reading systems available for increased reading efficiency (see Meter Reading Systems.)

Operation: Water flows through the meter's strainer where debris is screened out. The incoming water fills a known volume of the measuring chamber on one or the other side of a movable disc that separates the chamber into two sections. As water enters, it moves the disc (nutates), forcing a known volume of water out of the meter from the opposite side of the disc. The process repeats as the sections refill and empty in turn. The nutating action of the disc is coupled magnetically to the register to indicate the volume of water that passes through the meter. The large capacity measuring chamber requires fewer nutations of the disc for each gallon measured, which helps to limit wear, extend the life of the meter, and reduce pressure loss.

Maintenance: The Mueller 452 water meter is designed and manufactured to provide long service life with virtually no maintenance required.

Connections: Supplied with external straight pipe threads (NPSM) per ANSI B1.20.1.

452 WITH SSR REGISTER

MATERIALS AND SPECIFICATIONS

Model	452
Sizes	1″ x 1″
Standards	Manufactured and tested to meet or exceed all applicable parts of ANSI/AWWA C700 Standard NSF-61 372 and the Safe Water Drinking Act
Service	Cold water measurement with flow in only one direction
Operating Flow Range	See chart on the following page
Accuracy	See chart on the following page
Pressure Loss	See chart on the following page
Maximum Working Pressure	150 PSI
Temperature Range	33° F to 100° F water temperature
Measuring Element	Nutating Disc
Register Type	Straight reading, permanently sealed, magnetic drive with low flow indicator. Remote reading units optional.
Meter Connections	1″ external (NPSM) straight pipe threads per ANSI B1.20.1
Materials	Meter case – No Lead Bronze; Bottom cover – cast iron ASTM A126 CL. B; Chamber top/ bottom – thermoplastic; Nutating disc – thermoplastic; Disc pin – stainless steel; Thrust roller – stainless steel; Wear plate – stainless steel; Coupling – Ceramic magnet; Strainer – thermoplastic; Coupling shaft – stainless steel ANSI B18; Top cover bolts – stainless steel ANSI B18; Bottom cover bolts – stainless steel ANSI B18; Register box and lid – thermoplastic.
Options	Bottom cover – bronze UNSC84400 ; Register box and lid – bronze UNSC85700; AMR/AMI Reading Systems

452 SERIES

Magnetic Drive Positive Displacement Disc Meters Size 1″

METER REGISTRATION

METER SIZE	INITIAL DIAL*	CAPACITY	INITIAL DIAL*	CAPACITY
1″	10 Gallons	10 Million	1 Cubic Feet	1 Million

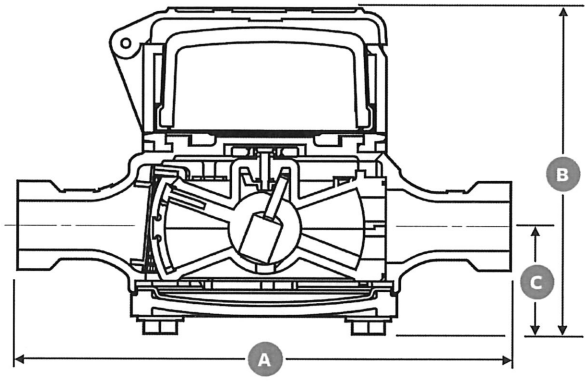
*Registration equal to one full revolution of the sweep hand.

FLOW CHARACTERISTICS

METER SIZE	TYPICAL LOW FLOW (95% MINIMUM)	TYPICAL OPERATING RANGE (100% ± 1.5%)	MAXIMUM CONTINUOUS OPERATION
1″	¾ GPM	2 to 50 GPM	35 GPM

Note: Performance curves are typical only and NOT a guarantee of performance.

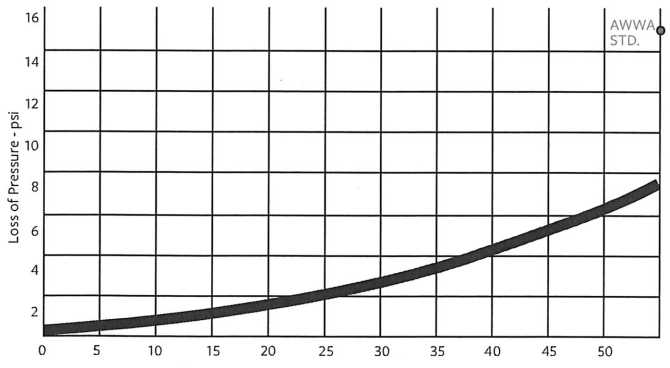
DIMENSIONS AND WEIGHTS



METER SIZE	1″
	ENDS EXTERNAL (NPSM) STRAIGHT PIPE THREADS
MODEL	452
DIMENSIONS	
A	10 ¾″
B Visual Reg	5 ½″
B SSR Reg	5 ¼″
B ME-8 Reg	5 ¾″
C	2 ⅛″
Width	7.22″
Inlet & Outlet	1″
Net Weight	11

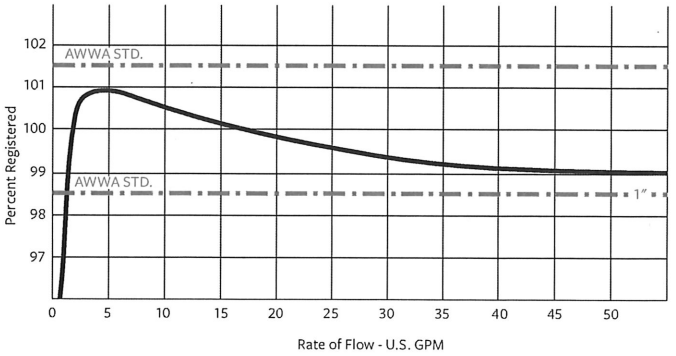
PERFORMANCE

HEAD LOSS - 1″ (FIGURE 1)



NOTE: Performance curves are typical only and NOT a guarantee of performance.

ACCURACY - 1″ (FIGURE 2)



452 SERIES

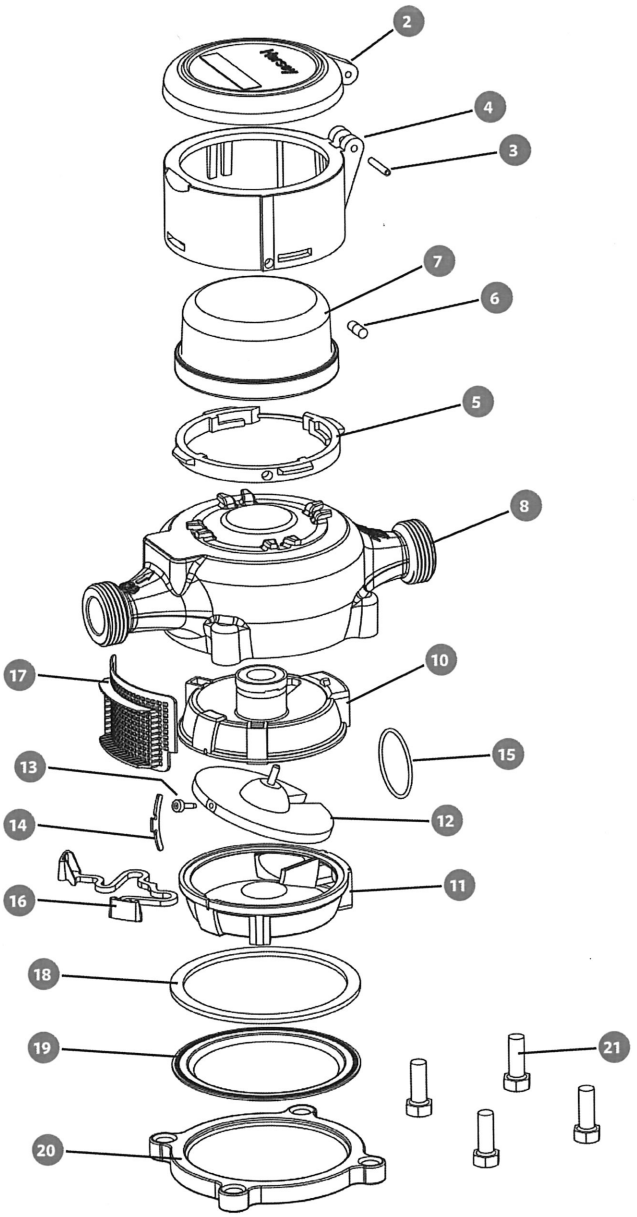
Magnetic Drive Positive Displacement Disc Meters Size 1" Parts

REF NO.	DESCRIPTION	MATERIAL	1" MODEL 452
1	Complete Register Housing Assembly Includes the following:	Plastic	B7856
		Bronze	B7857
2	Register Cover	Plastic	C5768
3	Spirol Pin	Plastic	AS41122
	Spirol Pin	Bronze	AS41123
4	Register Housing Base	Plastic	C5769
5	Register Housing Insert	Plastic	C5770
6	Register Locking Pin	Blue Color Plastic	A12658
	Register Locking Pin	Brass Color Plastic	A126581
7	Visual Register USG	Glass/Brass	D32565
	Visual Register CF	Glass/Brass	D32566
	Encoder Register USG*	Plastic/Brass	Call CS
	Encoder Register CF*	Plastic/Brass	Call CS
8	1" Main Case 2006 and after	No Lead Bronze	D3589SI
9	Complete Chamer Assembly Includes following parts 10-16	Plastic	C5692PO
10	Top Chamber Assembly	Plastic**	-
11	Bottom Chamber Assembly	Plastic**	-
12	Disc Assembly	Plastic/SST**	-
13	Thrust Roller	SST	
14	Wear Plate	SST	
15	Outlet Seal	Rubber	A130203
16	Chamber Retainer	Plastic	C5466
17	Strainer	Plastic	51026P045
18	Gasket	Rubber	C5489
19	Liner	Plastic	C5506
20	Bottom Cover 2006 and after	Cast Iron	B8623
	Bottom Cover 2006 and after	Bronze	B8624
21	Case Bolt 2006 and after	SST	90010 (6)

*Call Mueller Customer Service for appropriate Translator Register and AMR Device part number.
**Available only as part of item 9 – Complete Chamber Assembly.
NOTE: If more than one part is required per assembly, quantity is noted after part number (in parenthesis). The different top and bottom case requirements for the various flange configurations. Bolt quantities and sizes vary.

452 SERIES

Magnetic Drive Positive Displacement Disc Meters Model 452



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MUELLER

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MUELLER

500 SERIES (BRONZE)

Magnetic Drive Positive Displacement Disc Meters Sizes 1 ½" & 2"

FEATURES

Applications: Measurement of cold water for residential, commercial and industrial applications where water volumes are low, and low flow sensitivity is important.

Conformance to Standards: Mueller Series 500 Water Meters comply with ANSI / AWWA Standard C700, NSF-61 372 and the Safe Water Drinking Act. Each meter is tested to ensure compliance.

Construction: Mueller Series 500 Water Meters consist of three basic parts: maincase; measuring chamber; and permanently sealed register. The maincase and topcase are made of bronze. The measuring chamber, nutating disc and strainer are made of thermoplastic, which is dimensionally stable and will not corrode. A test port in the body permits in-line testing. Register box and lid are available in plastic or bronze for visual read registers

The meter is designed so that the register, measuring chamber and strainer can be replaced without removing the meter from the line.

Register: The permanently sealed register has a unique seal and heat-treated glass to eliminate dirt, moisture infiltration and lens fogging. An integral tamper-proof locking feature is provided to resist tampering with the register. The totalizing register has a straight-reading odometer type display, a 360° test circle with center sweep hand and a low flow (leak) detector. Standard gearing is used, making registers interchangeable by size.

All Mueller Meter Models have electronic meter reading systems available for increased reading efficiency (see Meter Reading Systems.)

Operation: Water flows through the meter's strainer where any debris that could adversely affect meter accuracy or free operation is screened out. As the water enters, it fills a known volume of the measuring chamber on one or the other side of a movable disc that separates the chamber into two sections. As water enters it moves the disc (nutates), forcing a known volume of water out of the meter from the opposite side of the disc. The process repeats as the sections refill and empty in turn. The nutating action of the disc is coupled magnetically to the register to indicate the volume of water that passes through the meter. The large measuring chamber requires fewer nutations of the disc for each gallon measured, which helps to limit wear, reduce pressure loss and extend the life of the meter.

Maintenance: The Mueller Series 500 Water Meters are designed and manufactured to provide long service life with virtually no maintenance required.

Connections: Available with integral two-bolt oval flanges.

562 PD METER WITH VISUAL REGISTER

MATERIALS AND SPECIFICATIONS

Model Number	562 and 572
Sizes	1 ½" and 2"
Standards	Manufactured and tested to meet or exceed all applicable parts of ANSI / AWWA C700 Standard. NSF-61 372 and the Safe Water Drinking Act
Operating Flow Range	Cold water measurement with flow in only one direction
Accuracy	See chart on following page
Pressure Loss	See chart on following page
Maximum Working Pressure	150 psi
Temperature Range	33°F to 100°F water temperature
Measuring Element	Nutating disc
Disc Nutations (Per Gallon)	562: 6.47, 572: 3.92
Register Type	Straight reading, permanently sealed,magnetic drive with low flow indicator. Remote reading units optional. 2 Bolt Oval Flange
Materials	Maincase – No Lead Bronze; Measuring Chamber – Thermoplastic; Magnets – ceramic; Strainer – Thermoplastic; Casing bolts – stainless steel ANSI B18; Register box and lid – thermoplastic.
Options	Register box and lid – bronze UNSC85700; AMR / AMI Reading Systems.

500 SERIES

Magnetic Drive Positive Displacement Disc Meters Sizes 1 ½" & 2"

METER REGISTRATION

METER SIZE	INITIAL DIAL*	CAPACITY	INITIAL DIAL*	CAPACITY
1 ½"	100 Gallons	100 Million	10 Cubic Feet	10 Million
2"	100 Gallons	100 Million	10 Cubic Feet	10 Million

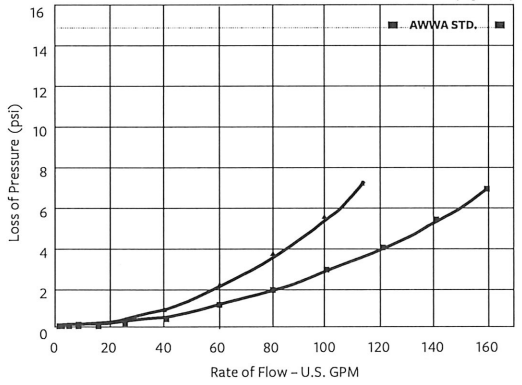
*Registration equal to one full revolution of the sweep hand.

FLOW CHARACTERISTICS

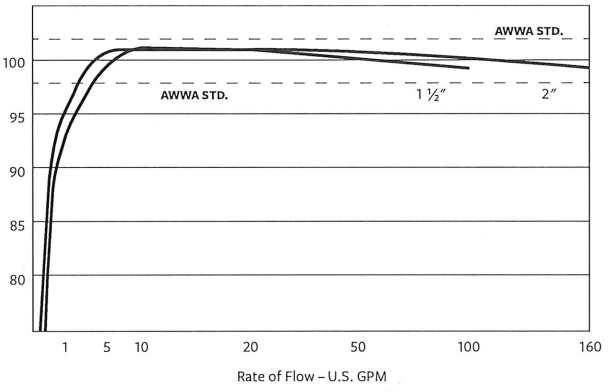
METER SIZE	TYPICAL LOW FLOW (95% MINIMUM)	TYPICAL OPERATING RANGE (100% ± 1.5%)	MAXIMUM CONTINUOUS OPERATION
1 ½"	1 ½ GPM	5 to 100 GPM	50
2"	2 GPM	8 to 160 GPM	80

PERFORMANCE

Head Loss - 1 ½" and 2" (Figure 1)

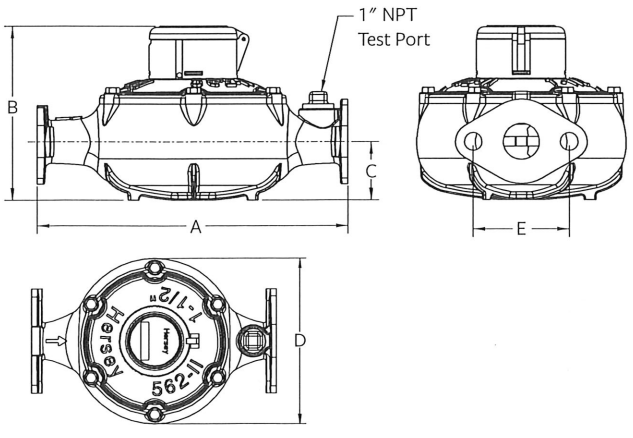


Accuracy – 1 ½" AND 2" (Figure 2)



Note: Performance curves are typical only and NOT a guarantee of performance.

DIMENSIONS AND WEIGHTS



METER SIZE	1 ½"	2"
ENDS	TWO BOLT FLANGED	
MODEL	562	572
DIMENSION		
A	13"	17"
B Visual Reg	7.250"	8.125"
B SSR Reg	7"	
B ME-8 Reg	7.75"	
C	2.437"	3.00"
D	8.750"	10.437"
E	4.00"	4.50"
W	9.25"	10.5"
Net Weight	18	28

Note: Meter couplings are optional and must be ordered separately. Weights are in pounds and are approximate.

500 SERIES

Magnetic Drive Positive Displacement Disc Meters Sizes 1 ½" & 2" Parts

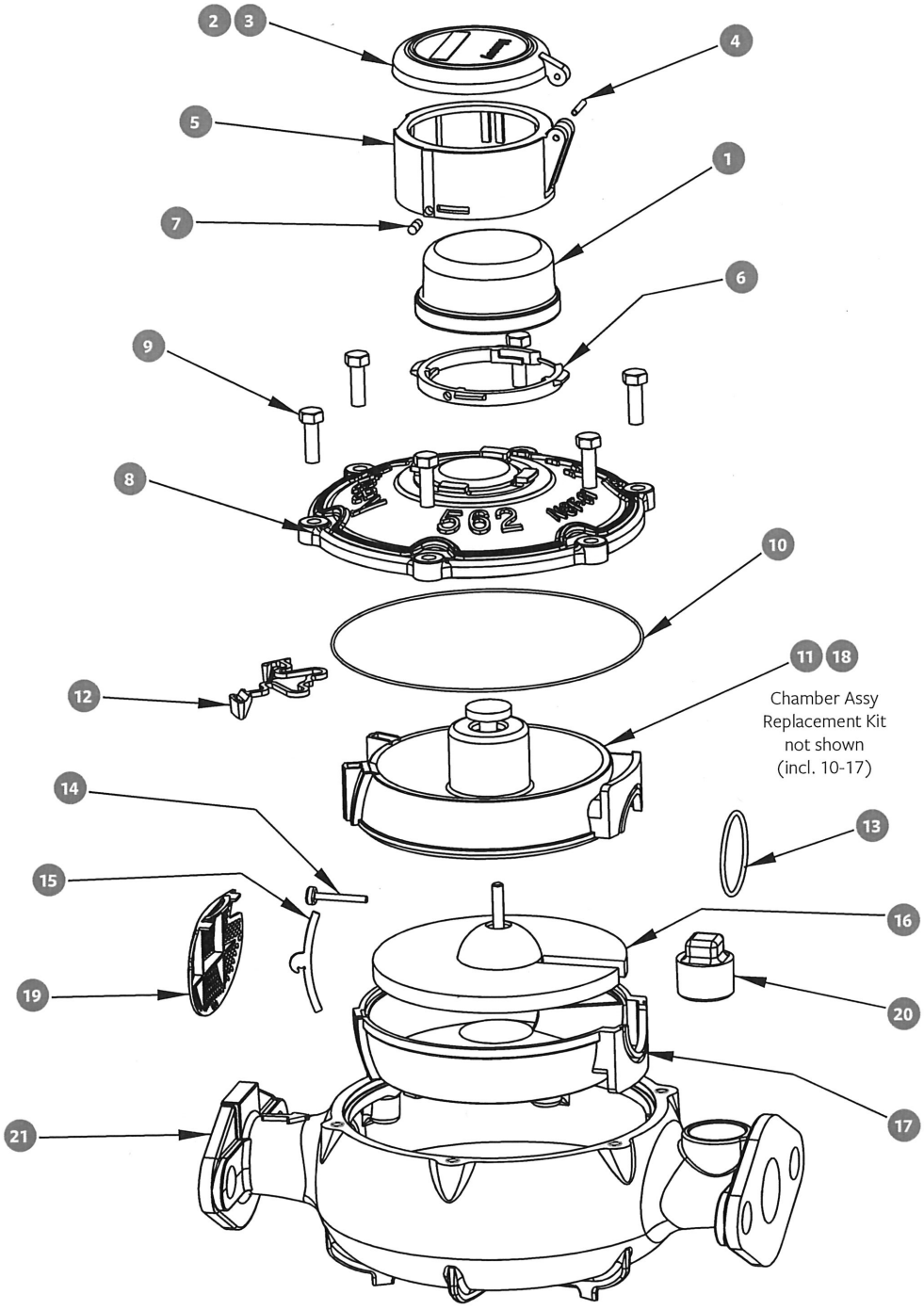
REF NO.	DESCRIPTION	MATERIAL	562 1 ½" MODEL	572 2" MODEL
1	Visual Register	US Gallons Glass / Brass	D357715	D358115
		CF Glass / Brass	D357725	D358125
	ME-8 and SSR Register*	US Gallons Plastic / Brass / Glass	GWESGxxxx562	GWESGxxxx572
		CF Plastic / Brass / Glass	GWECFxxxx562	GWECFxxxx572
	Specify Electronic Reading Value			
2	Complete Register Housing Assembly Includes parts 3-7	Plastic	B7856	B7856
		Bronze	B7857	B7857
3	Visual Register Cover	Plastic	C5768	C5768
		Bronze	C5774	C5774
4	Visual Spiral Pin	Plastic cover: SST	AS41122	AS41122
		Bronze Cover: SST	AS41123	AS41123
5	Visual Register Housing Base	Plastic	C5769	C5769
		Bronze	C5772	C5772
6	Register Housing Insert	Plastic	C5770	C5770
7	Register Locking Pin	Blue Colored Plastic	A12658	A12658
		Brass Colored Plastic	A126581	A126581
8**	Top Case 2 Bolt Flange	Low Lead Bronze	D3546SI	D3550SI
9**	Case Bolts for 2 Bolt Flange Units	SST	90026 (qty 6)	90010 (qty 8)
10	O-ring Case Seal	Rubber	A130206	A130207
11	Top Chamber Assembly		D3275ASSY	D3277ASSY
12	Chamber Retainer	Plastic	C5466	C5466
13	O-ring Chamber Seal	Rubber	A130204	A130205
14	Thrust Roller	SST	A12781	B8024
15	Wear Plate	SST	B8026	B8025
16	Disk Assembly	Plastic / SST	B8067	B8068
17	Bottom Chamber	Plastic	D3274	D3276
18	Chamber Assy Replacement Kit (incl. 10-17)		D3575	D3576
19	Strainer	Plastic	C6576	C6577
20	Test Plug	SST	59013	59013
21	Bottom Case 2 Bolt Flange	Low Lead Bronze – test port	D35481SI	D35521SI

Call Mueller Customer Service for Appropriate ME-8 or SSR Register and AMR/AMI Device part number *Not shown.

ME-8 and SSR register component parts are available on the appropriate data sheets.

500 SERIES

Magnetic Drive Positive Displacement Disc Meters Models 562 and 572



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MUELLER

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500 SERIES D

Magnetic Drive Positive Displacement Disc Meters Sizes 1 ½" & 2"

FEATURES

Applications: Measurement of cold water for residential, commercial and industrial applications where water volumes are low, and low flow sensitivity is important.

Conformance to Standards: Mueller Series 500 D Water Meters comply with ANSI / AWWA Standard C700. Meters which are manufactured with the Nylon coated ductile iron maincase option meet the requirements of NSF Standard 61, Annex 372.
The meters provide a no lead solution. Each meter is tested to ensure compliance.

Construction: Mueller Series 500 D Water Meters consist of three basic parts: maincase; measuring chamber; and permanently sealed register. The maincase and topcase are made of Nylon coated ductile iron. The measuring chamber, nutating disc and strainer are made of thermoplastic, which is dimensionally stable and will not corrode. A test port in the body permits in-line testing. Register box and lid are available in plastic or bronze.

The meter is designed so that the register, measuring chamber and strainer can be replaced without removing the meter from the line.

Register: The permanently sealed register has a unique seal and heat-treated glass to eliminate dirt, moisture infiltration and lens fogging. An integral tamper-proof locking feature is provided to resist tampering with the register. The totalizing register has a straight-reading odometer type display, a 360° test circle with center sweep hand and a low flow (leak) detector. Standard gearing is used, making registers interchangeable by size.

All Mueller Meter Models have electronic meter reading systems available for increased reading efficiency (see Meter Reading Systems.)

Operation: Water flows through the meter's strainer where any debris that could adversely affect meter accuracy or free operation is screened out. As the water enters, it fills a known volume of the measuring chamber on one or the other side of a movable disc that separates the chamber into two sections. As water enters it moves the disc (nutates), forcing a known volume of water out of the meter from the opposite side of the disc. The process repeats as the sections refill and empty in turn. The nutating action of the disc is coupled magnetically to the register to indicate the volume of water that passes through the meter. The large measuring chamber requires fewer nutations of the disc for each gallon measured, which helps to limit wear, reduce pressure loss and extend the life of the meter.

Maintenance: The Mueller Series 500 D Water Meters are designed and manufactured to provide long service life with virtually no maintenance required.

Connections: Available with integral two-bolt oval flanges.

572 D METER

MATERIALS AND SPECIFICATIONS

Model Number	562 D and 572 D
Sizes	1 ½" and 2"
Standards	Manufactured and tested to meet or exceed all applicable parts of ANSI / AWWA C700 Standard. Nylon coated ductile iron options meet requirements of NSF Standard 61, Annex G.
Operating Flow Range	Cold water measurement with flow in only one direction
Accuracy	See chart on following page
Pressure Loss	See chart on following page
Maximum Working Pressure	See chart on following page
Temperature Range	150 psi
Measuring Element	33°F to 100°F water temperature
Disc Nutations (Per Gallon)	Nutating disc
Register Type	562 D: 6.47, 572 D: 3.92
Meter Connections	Straight reading, permanently sealed, magnetic drive with low flow indicator. Remote reading units optional.
Materials	Maincase – Nylon coated ductile iron; Measuring Chamber – Thermoplastic; Magnets – ceramic; Strainer – Thermoplastic; Casing bolts – stainless steel ANSI B18; Register box and lid – thermoplastic.
Options	Meter case – Nylon coated ductile iron Register box and lid – bronze UNSC85700; AMR / AMI Reading Systems.

500 SERIES D

Magnetic Drive Positive Displacement Disc Meters Sizes 1 ½" & 2"

METER REGISTRATION

METER SIZE	INITIAL DIAL*	CAPACITY	INITIAL DIAL*	CAPACITY
1 ½"	100 Gallons	100 Million	10 Cubic Feet	10 Million
2"	100 Gallons	100 Million	10 Cubic Feet	10 Million

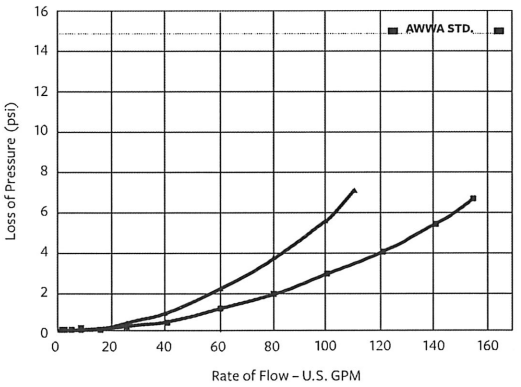
*Registration equal to one full revolution of the sweep hand.

FLOW CHARACTERISTICS

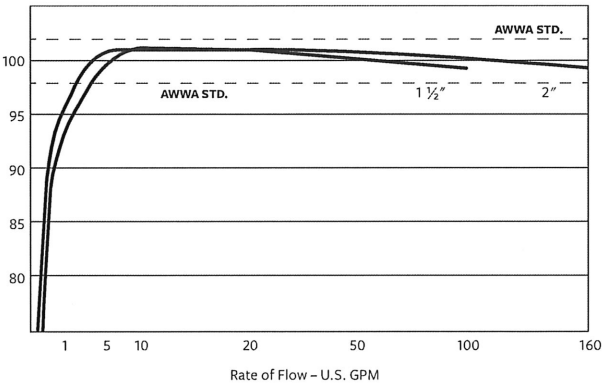
METER SIZE	TYPICAL LOW FLOW (95% MINIMUM)	TYPICAL OPERATING RANGE (100% ± 1.5%)	MAXIMUM CONTINUOUS OPERATION
1 ½"	1 ½ GPM	5 to 100 GPM	50
2"	2 GPM	8 to 160 GPM	80

PERFORMANCE

Head Loss - 1 ½" and 2" (Figure 1)

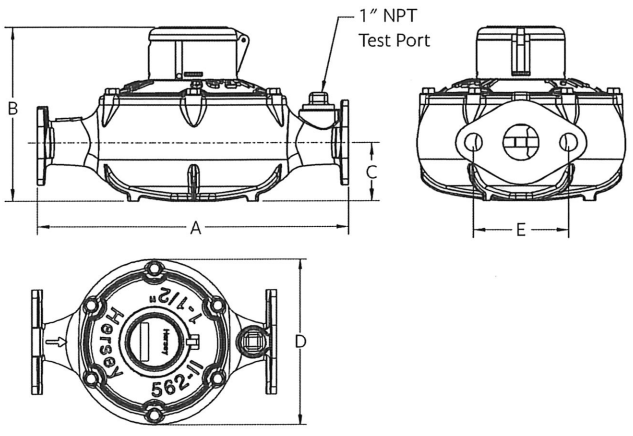


ACCURACY – 1 ½" AND 2" (Figure 2)



Note: Performance curves are typical only and NOT a guarantee of performance.

DIMENSIONS AND WEIGHTS

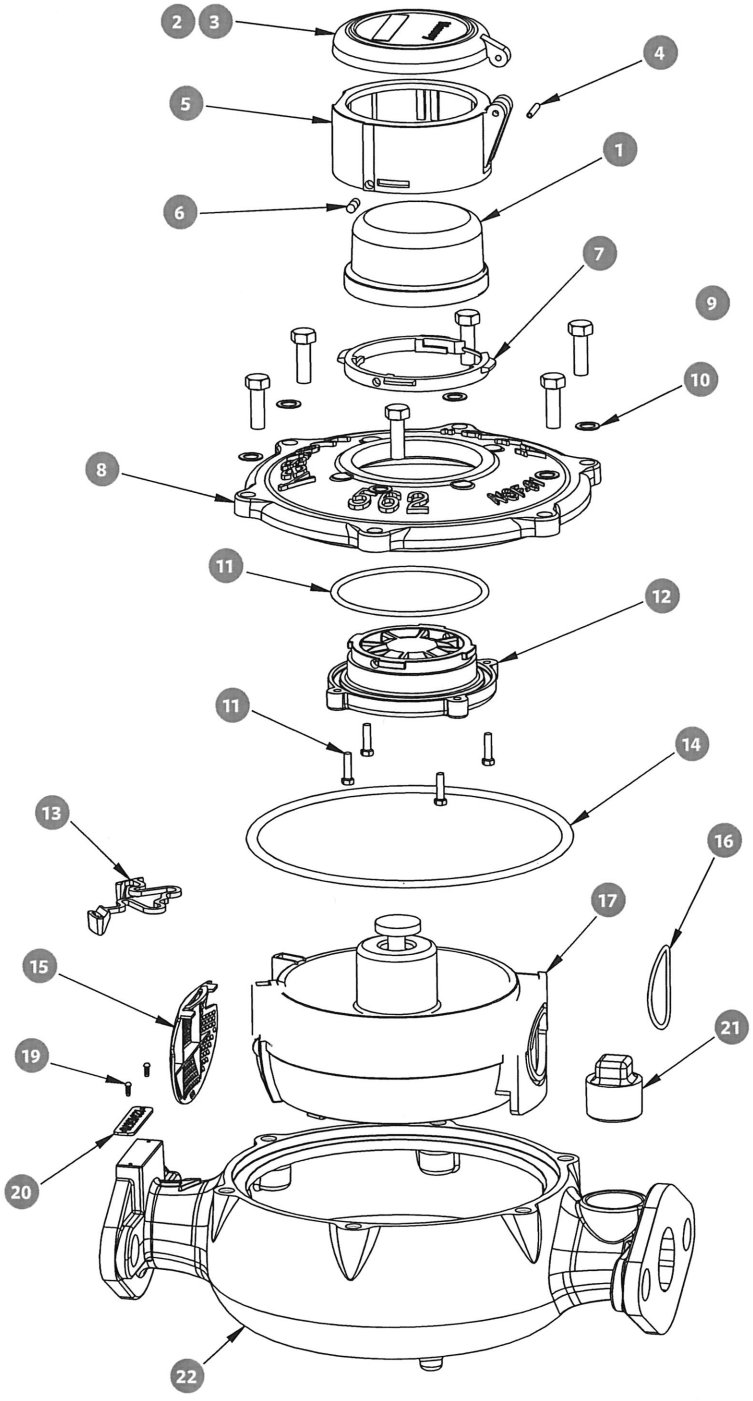


METER SIZE	1 ½"	2"
ENDS	FLANGED	
MODEL	562 D	572 D
DIMENSION		
A	13"	17"
B		
Visual Registration	7.250"	8.125"
SSR Registration	7"	7"
ME-Registration	7.750"	7.750"
C	2.437"	3.00"
D	8.750"	10.437"
E	4.00"	4.50"
Net weight	18	28

Note: Meter couplings are optional and must be ordered separately.
Weights are in pounds and are approximate.

500 SERIES D

Magnetic Drive Positive Displacement Disc Meters Sizes 1 ½" & 2"



500 SERIES D

Magnetic Drive Positive Displacement Disc Meters Sizes 1 ½" & 2" Parts

REF NO.	DESCRIPTION	MATERIAL	562 1 ½" MODEL	572 2" MODEL
1	Visual Register	US Gallons Glass / Brass	D357715	D358115
		CF Glass / Brass	D357725	D358125
	Translator Register	US Gallons Plastic / Brass	D35791xxx	D35831xxx
		CF Plastic / Brass	D35792xxx	D35832xxx
	Specify Electronic Reading Value 4, 5, or 6 Wheel			
2	Complete Register Housing Assembly Includes parts 3-7	Plastic	B7856	B7856
		Bronze	B7857	B7857
3	Register Cover	Plastic	C5768	C5768
		Bronze	C5774	C5774
4	Spirol Pin	Plastic cover: SST	AS41122	AS41122
		Bronze Cover: SST	AS41123	AS41123
5	Register Housing Base	Plastic	C5769	C5769
		Bronze	C5772	C5772
6	Register Locking Pin	Blue Colored Plastic	A12658	A12658
		Brass Colored Plastic	A126581	A126581
7	Register Housing Insert	Plastic	C5770	C5770
8	Top Case	Nylon Coated Ductile Iron	D3642C	D3646C
9	Case Bolts	SST	90026 (qty 6)	90010 (qty 8)
10	Washers	SST	90018 (Qty 6)	90018 (Qty 8)
11	Register Hub O-Ring	Rubber	98313	98313
12	Register Hub	Plastic	C6631	C6631
13	Socket Head Cap Screws	SST	98157 (Qty 4)	98157 (Qty 4)
14	O-Ring Case Seal	Rubber	98314	98315
15	Chamber Retainer	Plastic	C5466	C5466
16	O-Ring Chamber Seal	Rubber	A130204	A130205
17	Complete Chamber Assembly Includes parts 14, 15, 16		D3575	D3576
18	Strainer	Plastic	C6576	C6577
19	Type U Drive Screw	Plated	98158 (Qty 2)	98158 (Qty 2)
20	Serial Number ID Plate		A13070	A13070
21	Test Plug	SST	59013	59013
22	Bottom Case	Nylon Coated Ductile Iron	D3644C	D3648C

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MUELLER

Model MVR

Magnetic Drive Vertical Turbine Meters
Sizes 3/4"x1/2", 3/4", 3/4"x1", 1", 1-1/2", 2", 3", 4" and 6"

Mueller SYSTEMS

Features

APPLICATIONS: Measurement of water for residential, commercial, industrial and residential fire applications, where sensitivity to low flow is also important. Hersey® MVR meters are among the most sensitive vertical turbine meters available and may be used in place of compound meters in some applications. The compact design and integral strainer (separate external strainer is not needed) of Model MVR meters facilitate installation in tight spaces. They are ideal where flexibility is needed to meet wider flow ranges, where water temperatures are elevated between 80°F and 130°F, or where sand particles or other small debris may be encountered. May be installed vertically or horizontally for greater installation flexibility.

CONFORMANCE TO STANDARDS: Hersey Model MVR Water Meters comply with ANSI/AWWA Standard C701 Class I. Each meter is tested to ensure compliance. EnviroBrass® II options conform to the NSF 61 Standard.

CONSTRUCTION: Hersey Model MVR Water Meters consist of three basic parts: maincase; rotor assembly; and a permanently sealed register. Maincases are made of bronze for long life. Rotor assemblies are thermoplastic, which is dimensionally stable and will not corrode. Retro Thrust rotor design extends the life of the meter by dividing wear between two points: during low flow the tungsten carbide thrust bearing floats against a sapphire bearing surface; during high flow the stainless steel shaft gently contacts a second sapphire bearing. During medium flow, the rotor floats between the thrust bearings without contact. Optional test ports are available on all sizes 1-1/2" and larger. The measuring chamber is protected by an internal strainer. No external strainer is required.

REGISTER: Permanently sealed register has a unique seal and heat-treated glass to eliminate dirt, moisture infiltration and lens fogging. The totalizing register has a straight-reading odometer type display, a 360° test circle with center sweep hand and a low flow (leak) detector.

All Hersey Meter models have electronic meter reading systems available for increased reading efficiency (see Meter Reading Systems.)

OPERATION: Water flows through the integral strainer and into the vertical turbine assembly. There the direction of the water flow is directed by the hub into the rotor at the precise angle necessary for accurate measurement over the full range of flow rates. No straight pipe requirements apply before or after the meter. The turbine turns freely and rotates in direct proportion to the volume of water passing through the meter. The Model MVR turbine operates more quietly than conventional disc or piston meters.

MAINTENANCE: The Hersey Model MVR Water Meters are designed and manufactured to provide long service life. The register on all sizes, and meter interior and strainer on sizes 3" and larger, can be replaced without removing the meter from the line. Modular design and economical internal parts allow for inexpensive, speedy rebuilds. Optional built-in test ports make field testing easy and convenient.

CONNECTIONS: Available with external (N.P.S.M.) straight pipe threads (ANSI B1.20.1) on 3/4" and 1" sizes; integral two-bolt oval flanges or internal (NPT) pipe threads (ANSI B1.20.1) on 1-1/2" and 2" sizes. ANSI class 150 flanges on 3" through 6" sizes (class 125 cast iron or class 150 bronze companion flanges available on request).

MVR 30

MVR 30 with adapter

MVR 350

Materials and Specifications

MODEL NUMBER	MVR 30, MVR 30A, MVR 30B, MVR 50, MVR 100, MVR 160, MVR 350, MVR 650, and MVR 1300.
SIZES	3/4"x1/2", 3/4", 3/4"x1", 1", 1-1/2", 2", 3", 4" and 6"
STANDARDS	Manufactured and tested to meet or exceed all applicable parts of ANSI/AWWA C701 Class I Standard.
SERVICE	Cold water measurement with flow in only one direction.
OPERATING FLOW RANGE	See Chart on following page
ACCURACY	See Chart on following page
PRESSURE LOSS	See Chart on following page
MAXIMUM WORKING PRESSURE	150 PSI
TEMPERATURE RANGE	33°F to 130°F water temperature Hot water up to 180° available upon request.
MEASURING ELEMENT	Rotor
REGISTER TYPE	Straight reading, permanently sealed, magnetic drive with low flow indicator. Remote reading units optional.
METER CONNECTIONS	1/2", 3/4" and 1" external (NPSM) straight pipe threads, 1-1/2 size and 2" size available with either two bolt flanged ends or internal thread (NPT) ends same nominal size as size of meter, 3" thru 6" ANSI class 150 flanges.
MATERIALS	Maincase – bronze UNSC84400; 3/4"- 1-1/2" Bottom cover – cast iron ASTM A126 CL. B enamel painted; 2" Bottom cover – bronze UNSC84400; Rotor assembly – thermoplastic; Strainer – thermoplastic std. in 3/4" thru 1-1/2"; or stainless steel (2" – 6"); Casing bolts – stainless steel ANSI B18.
OPTIONS	Meter case – EnviroBrass® II UNSC89520. Stainless steel ring strainer is available on 3/4", 1" and 1-1/2" meters. AMR Reading Systems.

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Model MVR

Magnetic Drive Vertical Turbine Meters

Sizes 3/4"x1/2", 3/4", 3/4"x1", 1", 1-1/2", 2", 3", 4" and 6"

Meter Registration

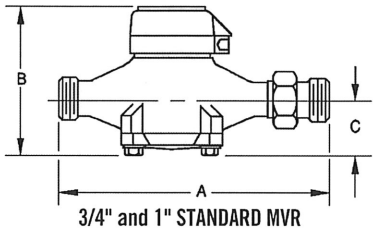
Meter Size	Initial Dial*	Capacity	Initial Dial *	Capacity
3/4"	10 Gallons	10 Million	1 Cubic Foot	1 Million
1"	10 Gallons	10 Million	1 Cubic Foot	1 Million
1-1/2"	100 Gallons	100 Million	10 Cubic Feet	10 Million
2"	100 Gallons	100 Million	10 Cubic Feet	10 Million
3"	100 Gallons	100 Million	10 Cubic Feet	10 Million
4"	100 Gallons	100 Million	10 Cubic Feet	10 Million
6"	1000 Gal	1 Billion	100 Cubic Ft	100 Mill.

* Registration equal to one full revolution of the sweep hand.

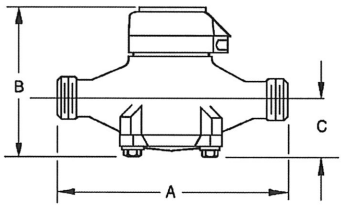
Flow Characteristics

Meter Size	Typical Low Flow (95% Min.)	Typical Operating Range (100% ± 2%)	Maximum Continuous Operation	Maximum Intermittent Flow
3/4"	1/2 GPM	1 to 30 GPM	25 GPM	35 GPM
1"	3/4 GPM	1-1/2 to 50 GPM	35 GPM	55 GPM
1-1/2"	1-1/2 GPM	2 to 100 GPM	70 GPM	110 GPM
2"	2 GPM	3 to 160 GPM	115 GPM	175 GPM
3"	2-1/2 GPM	4 to 350 GPM	240 GPM	390 GPM
4"	3-1/2 GPM	5 to 650 GPM	450 GPM	715 GPM
6"	5 GPM	15 to 1300 GPM	910 GPM	1430 GPM

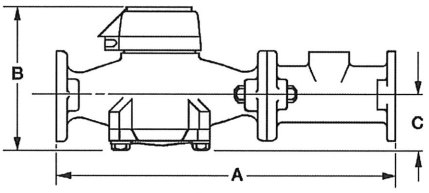
Dimensions and Weights



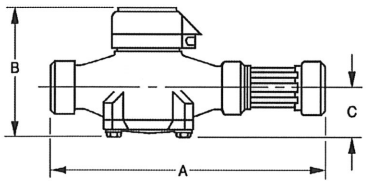
3/4" and 1" STANDARD MVR



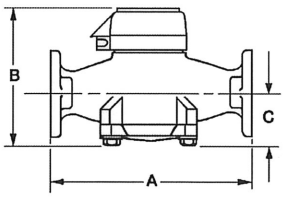
3/4" and 1" COMPACT MVR



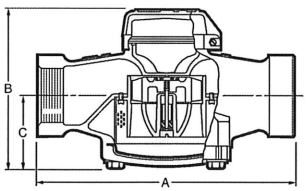
1-1/2" and 2" STANDARD MVR with 2 bolt flange ends** and spool piece



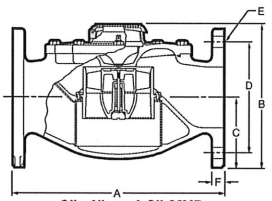
1-1/2" and 2" STANDARD MVR with Internal NPT ends



1-1/2" and 2" COMPACT MVR with integral 2 bolt flange ends**



1-1/2" and 2" COMPACT MVR with Internal NPT ends



3", 4" and 6" MVR

Meter Size	3/4"x1/2"	3/4"	3/4"x1"	1"	1-1/2"	2"	1-1/2"	2"	3"	4"	6"
Ends	Threaded (screwed)						Flanged				
Model	MVR30	MVR30A	MVR30B	MVR50	MVR100	MVR160	MVR100	MVR160	MVR350	MVR650	MVR1300
Dimensions											
A	9"	9"	9"	10-3/4"	12-5/8"	15-1/4"	13"	17"	12"	14"	18"
AA*	7-1/2"	7-1/2"	7-1/2"	9"	9"	10-1/2"	9"	10"	-	-	-
B	5"	5"	5"	5-1/2"	5-3/4"	6-1/4"	5-3/4"	6-1/4"	8-7/16"	9-3/8"	12-9/16"
C	1-13/16"	1-13/16"	1-13/16"	2-3/8"	2-3/8"	3"	2-3/8"	3"	3-7/8"	4-5/8"	6"
D	N/A	N/A	N/A	N/A	N/A	N/A	4"	4-1/2"	6"	7-1/2"	9-1/2"
E	N/A	N/A	N/A	N/A	N/A	N/A	5/8"	5/8"	3/4"	3/4"	7/8"
F	N/A	N/A	N/A	N/A	N/A	N/A	11/16"	15/16"	5/8"	11/16"	13/16"
Max.width	3-3/4"	3-3/4"	3-3/4"	4-1/4"	4-3/8"	5-3/8"	5-3/8"	5-15/16"	7-7/8"	9-3/4"	12-7/8"
Net weight	6 (5*)	6 (5*)	6 (5*)	8 (7*)	11 (9*)	15 (14 *)	12 (9*)	20 (14*)	38	68	140

*Compact length

**1-1/2" and 2" Flanged meters have 2 bolt oval flange pattern.

NOTE: Meter couplings are optional and must be ordered separately. Weights are in pounds and are approximate.

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Model MVR

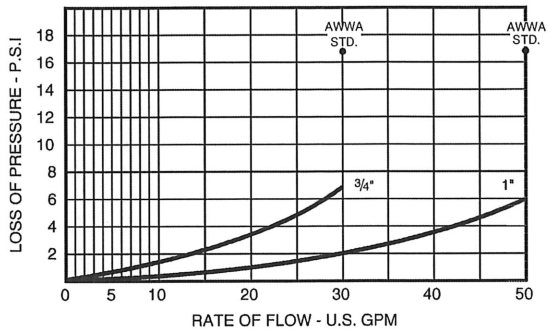
Mueller SYSTEMS

Magnetic Drive Vertical Turbine Meters

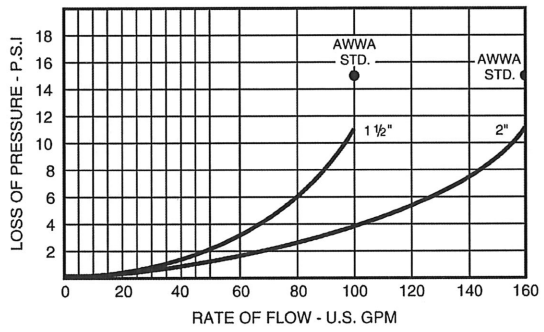
Sizes 3/4"x1/2", 3/4", 3/4"x1", 1", 1-1/2", 2", 3", 4" and 6"

Performance

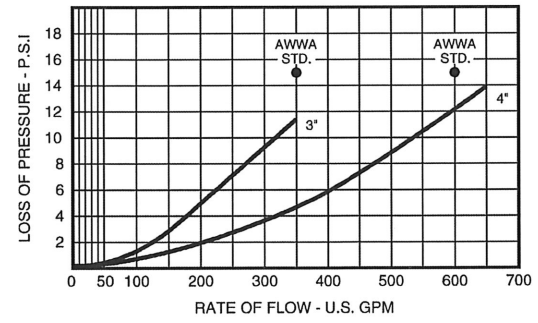
Head loss – 3/4" and 1"



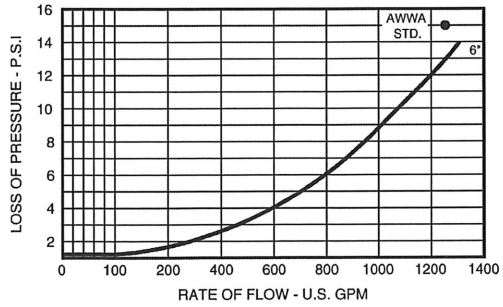
Head loss – 1-1/2" and 2"



Head loss – 3" and 4"

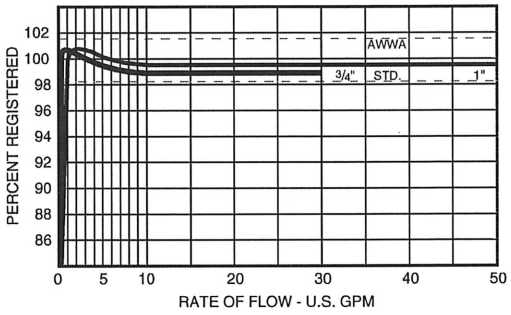


Head loss – 6"

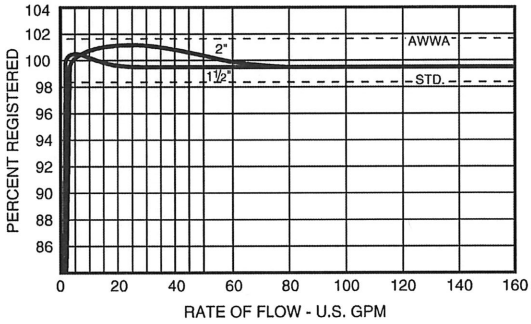


Performance

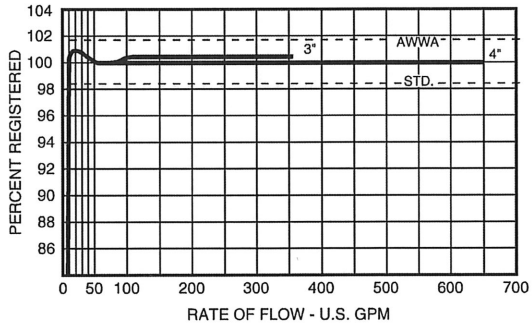
Accuracy – 3/4" and 1"



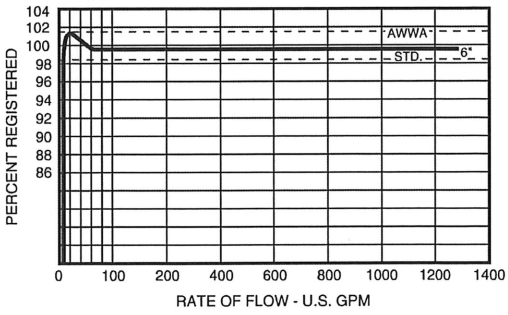
Accuracy – 1-1/2" and 2"



Accuracy – 3" and 4"



Accuracy – 6"



*Performance curves are typical only and not a guarantee of performance.

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Model MVR

Models MVR-30, MVR 50, MVR 100 and MVR 160

Ref. No.	Description	Model MVR-30	Model MVR-50	Model MVR-100	Model MVR-160
1	Lid (Plastic)	50377	50377	50377	50377
	Lid (Bronze)	50390	50390	50390	50390
2	Black Clamp Band for Visual Register Blue Clamp Band for Translator Register	50379 B8602	50379 B8602	50379 B8602	50379 B8602
3	SST Tri-Wing Screw	98344	98344	98344	98344
4	Lid Nut	19999	19999	19999	19999
5	Sealed Registers (Specify unit of measurement)	See pages 4.9-4.11			
6	MVR 30 Top Case (7-1/2" length): 1/2" M.I.P. Ends 3/4" M.I.P. Ends 1" M.I.P. Ends	 50452 50466 (A) 50476 (B)	 - - -	- - -	- - -
6	MVR 50 Top Case (9" length): 1" M.I.P. Ends 1-1/4" M.I.P. Ends	 - -	 50566 (C) 50576 (D)	- -	- -
6	MVR 100 Top Case (9" length): 1-1/2" F.I.P. Ends 1-1/2" Bronze 2-Bolt Flange Assembly	 - -	 - -	 50776 (E) 50784 (F)	- -
6	MVR 160 Top Case (10-1/2" length): 2" F.I.P. Ends 2" Bronze 2-Bolt Flange Assembly (10" length)	 - -	 - -	- -	 50866 (G) 50884 (H)
7	Rotor	50471	50571	50771	50871
8	Inlet Hub	50468	50568	50768	50867
9	Lower Bushing	50374 (2)	50574 (2)	50574 (2)	-
10	Interior Screw	98394 (4)	98394 (4)	98394 (4)	98394 (4)
11	Strainer (Plastic)	50469	50569	50769	-
12	Strainer (Metal Ring)**	50480	50580	50780	50880
13	Liner	50365	50565	50765	50865
14	Bottom (Bronze)	50363	50563	50763	50863
	Bottom (Cast Iron)	50364	50564	50764	-
15	Case Washer	AS7792 (4)	AS7792 (4)	98378 (4)	98378 (4)
16	Case Bolt	90026 (4)	90026 (4)	90073 (4)	90073 (4)
	Inlet Hub Assembly	-	-	-	50862
	Bushing Spacer	-	-	-	53114
	Bushing	-	-	-	54915 (2)
	Inlet Plug Assembly	50493	50493	50493	53105
	Sapphire Thrust Bearing (Case)	98371	98371	98371	98371
	Complete Interior	50477	50577	50777	50872
	Bearing Adhesive *	-	-	-	-
	Adapters: 3/4" Adapter 3/4" Adapter Washer 1" Adapter 1" Adapter Washer 1-1/4" Adapter 1-1/4" Adapter Washer 1-1/2" Female Adapter 2" Female Adapter	95046 95014 95011 95064 - - - -	- - 95063 95064 95086 95007 - -	- - - - - - 95095 -	- - - - - - - 95195

A: Order 3/4" Adapter 95046 and Adapter Washer 95014 to replace standard 3/4" disc meter, 9" long.
B: Order 1" Adapter 95011 and Adapter Washer 95064 with Top Case 50476 to replace 3/4" disc meter, 9" long, installed with 1" pipe connections.
C: Order 1" Adapter 95063 and Adapter Washer 95064 with Top Case 50566 to replace standard 1" disc meter, 10-3/4" long.
D: Order 1-1/4" Adapter 95086 and Adapter Washer 95007 with Top Case 50576 to replace 1" disc meter, 10-3/4" long, installed with 1-1/4" pipe connection.
E: Order 1-1/2" Adapter 95095 with Top Case 50776 to replace 1-1/2" female end meter installed with union connections. Assemble to length of 12-5/8".
F: Order 1-1/2" Bronze Spool Piece 50783 and gasket 95102 with Top Case 50784 to replace standard 1-1/2" disc meter, 13" long.
G: Order 2" Adapter 95195 with Top Case 50866 to replace standard 2" Female End disc meter, 15-1/4" long.
H: Order (2) Bronze Spool piece 50883 and gasket 95122 with Top Case 50884 for 17" length 2-90229 Bolt 2-90260 Nut.
* Purchase locally. Use a cyanoacrylic adhesive, such as Loctite Super Bonder #30-13, Eastman #916, Permabond or Aron Alpha.

**Standard on MVR 160. Optional on MVR 30, 50 100 in place of standard plastic disc strainer.
NOTE: If more than one part is required, quantity is noted after part number (in parenthesis).

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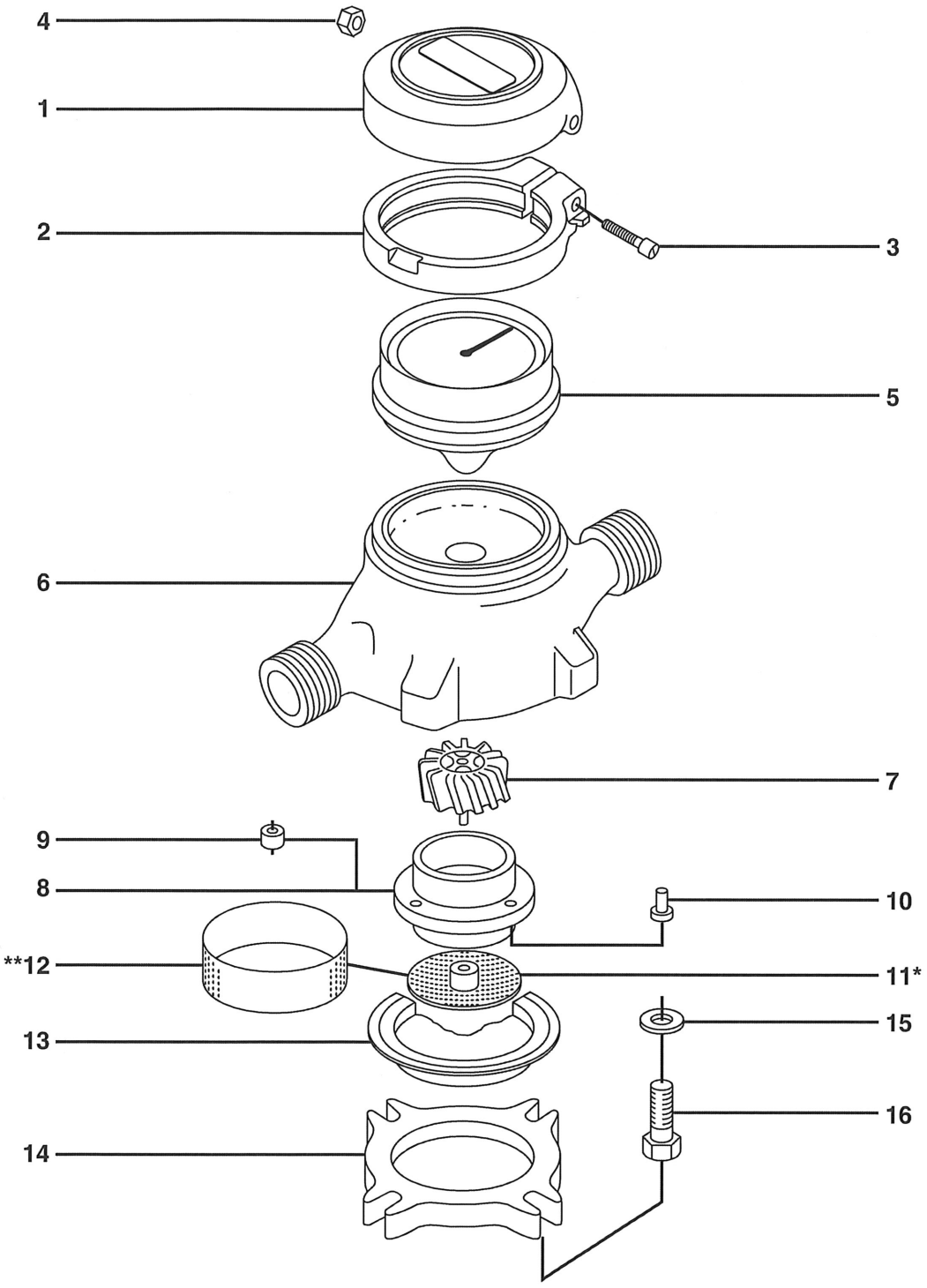
Model MVR

Models MVR-30, MVR 50, MVR 100 and MVR 160



*Disc Strainer – standard on MVR 30, 50, 100.
**Ring Strainer – optional (in place of) disc strainer on MVR 30, 50 100.
Standard on MVR 160.

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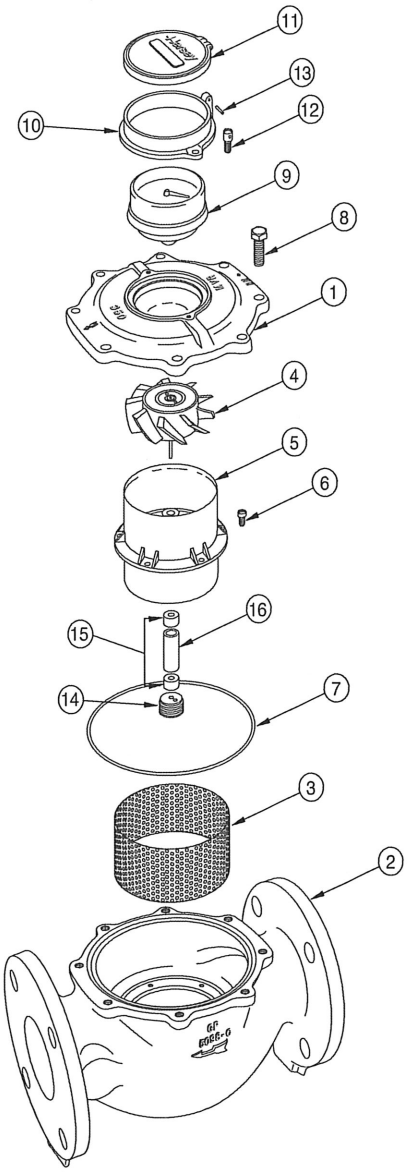
Model MVR

Models MVR-350, MVR 650 and MVR 1300



Ref. No.	Description	Model MVR-350	Model MVR-650	Model MVR-1300
1	Top Case/Thrust Bearing	50981	51181	51381
2	Bottom Case	50982	51182	51382
3	Ring Strainer	50985	51185	51383
4	Rotor Assembly	50984	51184	51384
5	Inlet Hub Assembly	50987	51187	51387
6	Inlet Hub Screws	98395 (6)	98395 (6)	98409 (12)
7	Top Case O-Ring	98361	98362	98408
8	Top Cast Screw	90073 (8)	90073 (10)	90180 (14)
9	Register	See page following pages	See page following pages	See page following pages
10	Register Box (Bronze)	50998	50998	50998
11	Lid (Bronze)	19201	19201	19201
12	Register Box Screw	51005P007 (2)	51005P007 (2)	51005P007 (2)
13	Lid Pin	AS41122	AS41122	AS41122
14	Inlet Plug/Thrust Bearing	50992	50992	-
15	Rotor Bushing	54915 (2)	56915 (2)	51392 (2)
16	Bushing Spacer	54914	51186	51391

NOTE: In order to retrofit translator registers on all 3"-6" MVR meters manufactured prior to 2003 a new top case (1) and top case o-ring (7) is required.

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Model MVR

Registers

	Cubic Feet			U.S. Gallons		
MVR Model	Register Part Numbers	Internal Ratio	Relation to other Registers	Register Part Numbers	Internal Ratio	Relation to other Registers
MVR-30	B79821	551.99	-4% (in relation to B79825)	B79813	738.92	-4% (in relation to B79817)
MVR-30	B79822	546.34	-3% (in relation to B79825)	B79814	731.88	-3% (in relation to B79817)
MVR-30	B79823	540.85	-2% (in relation to B79825)	B79815	723.79	-2% (in relation to B79817)
MVR-30	B79824	536.22	-1% (in relation to B79825)	B79816	715.86	-1% (in relation to B79817)
MVR-30	B79825	530.07	-	B79817	709.01	-
MVR-30	B79826	523.96	+1% (in relation to B79825)	B79818	702.61	+1% (in relation to B79817)
MVR-30	B79827	519.6	+2% (in relation to B79825)	B79819	694.85	+2% (in relation to B79817)
MVR-30	B79828	514.2	+3% (in relation to B79825)	B79820	688.55	+3% (in relation to B79817)
MVR-50	B79861	269.44	-4% (in relation to B79865)	B79851	360.58	-3% (in relation to B79854)
MVR-50	B79862	266.44	-3% (in relation to B79865)	B79852	356.41	-2% (in relation to B79854)
MVR-50	B79863	264.51	-2% (in relation to B79865)	B79853	353.17	-1% (in relation to B79854)
MVR-50	B79864	262.07	-1% (in relation to B79865)	B79854	349.42	-
MVR-50	B79865	258.83	-	B79855	345.93	+1% (in relation to B79854)
MVR-50	B79866	256.52	+1% (in relation to B79865)	B79856	342.53	+2% (in relation to B79854)
MVR-50	B79867	254	+2% (in relation to B79865)	B79857	339.04	+3% (in relation to B79854)
MVR-100	B79901	1973.95	-3% (in relation to B79904)	B79891	2664.16	-3% (in relation to B79894)
MVR-100	B79902	1951.68	-2% (in relation to B79904)	B79892	2646.98	-2% (in relation to B79894)
MVR-100	B79903	1935.27	-1% (in relation to B79904)	B79893	2605.61	-1% (in relation to B79894)
MVR-100	B79904	1912.65	-	B79894	2586.61	-
MVR-100	B79905	1901.98	+1% (in relation to B79904)	B79895	2554.55	+1% (in relation to B79894)
MVR-100	B79906	1882.77	+2% (in relation to B79904)	B79896	2526.66	+2% (in relation to B79894)
MVR-100	B79907	1862.97	+3% (in relation to B79904)	B79897	2505.78	+3% (in relation to B79894)
MVR-160	B79941	604.34	-3% (in relation to B79944)	B79931	808.31	-3% (in relation to B79934)
MVR-160	B79942	598.37	-2% (in relation to B79944)	B79932	800.5	-2% (in relation to B79934)
MVR-160	B79943	592.81	-1% (in relation to B79944)	B79933	792.41	-1% (in relation to B79934)
MVR-160	B79944	587.03	-	B79934	784.64	-
MVR-160	B79945	580.58	+1% (in relation to B79944)	B79935	775.87	+1% (in relation to B79934)
MVR-160	B79946	575.56	+2% (in relation to B79944)	B79936	768.47	+2% (in relation to B79934)
MVR-350	B79981	294.32	-2% (in relation to B79983)	B79971	394.09	-2% (in relation to B79973)
MVR-350	B79982	291.49	-1% (in relation to B79983)	B79972	389.61	-1% (in relation to B79973)
MVR-350	B79983	288.55	-	B79973	385.91	-
MVR-350	B79984	285.72	+1% (in relation to B79983)	B79974	382.06	+1% (in relation to B79973)
MVR-350	B79985	283.03	+2% (in relation to B79983)	B79975	378.6	+2% (in relation to B79973)
MVR-350	B79986	280.7	+3% (in relation to B79983)	B79976	374.11	+3% (in relation to B79973)
MVR-650	B80021	182.28	-3% (in relation to B80024)	B80013	239.51	-1% (in relation to B80014)
MVR-650	B80022	180.35	-2% (in relation to B80024)	B80014	236.41	-
MVR-650	B80023	178.86	-1% (in relation to B80024)	B80015	234.58	+1% (in relation to B80014)
MVR-650	B80024	176.9	-	B80016	232.95	+2% (in relation to B80014)
MVR-650	B80025	175.04	+1% (in relation to B80024)	B80017	230.62	+3% (in relation to B80014)
MVR-650	B80026	173.77	+2% (in relation to B80024)	B80018	228.21	+4% (in relation to B80014)
MVR-650	B80027	171.53	+3% (in relation to B80024)	-	-	-
MVR-650	B80028	170.34	+4% (in relation to B80024)	-	-	-
MVR-1300	B80067	413.35	-1% (in relation to B80068)	B80056	551.99	1% (in relation to B80057)
MVR-1300	B80068	409.41	-	B80057	546.34	-
MVR-1300	B80069	405.25	+1% (in relation to B80068)	B80058	540.85	1% (in relation to B80057)

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Model MVR

Visual Registers Options

MVR Model	Cubic Feet Standard Register	US Gallons Standard Register
MVR-30	B79821	B79813
MVR-30	B79822	B79814
MVR-30	B79823	B79815
MVR-30	B79824	B79816
MVR-30	B79825	B79817
MVR-30	B79826	B79818
MVR-30	B79827	B79819
MVR-30	B79828	B79820
MVR-50	B79861	B79851
MVR-50	B79862	B79852
MVR-50	B79863	B79853
MVR-50	B79864	B79854
MVR-50	B79865	B79855
MVR-50	B79866	B79856
MVR-50	B79867	B79857
MVR-100	B79901	B79891
MVR-100	B79902	B79892
MVR-100	B79903	B79893
MVR-100	B79904	B79894
MVR-100	B79905	B79895
MVR-100	B79906	B79896
MVR-100	B79907	B79897
MVR-160	B79941	B79931
MVR-160	B79942	B79932
MVR-160	B79943	B79933
MVR-160	B79944	B79934
MVR-160	B79945	B79935
MVR-160	B79946	B79936
MVR-350	B79981	B79971
MVR-350	B79982	B79972
MVR-350	B79983	B79973
MVR-350	B79984	B79974
MVR-350	B79985	B79975
MVR-350	B79986	B79976
MVR-650	B80021	B80013
MVR-650	B80022	B80014
MVR-650	B80023	B80015
MVR-650	B80024	B80016
MVR-650	B80025	B80017
MVR-650	B80026	B80018
MVR-650	B80027	B80019
MVR-650	B80028	B80020
MVR-1300	B80067	B80053
MVR-1300	B80068	B80054
MVR-1300	B80069	B80055

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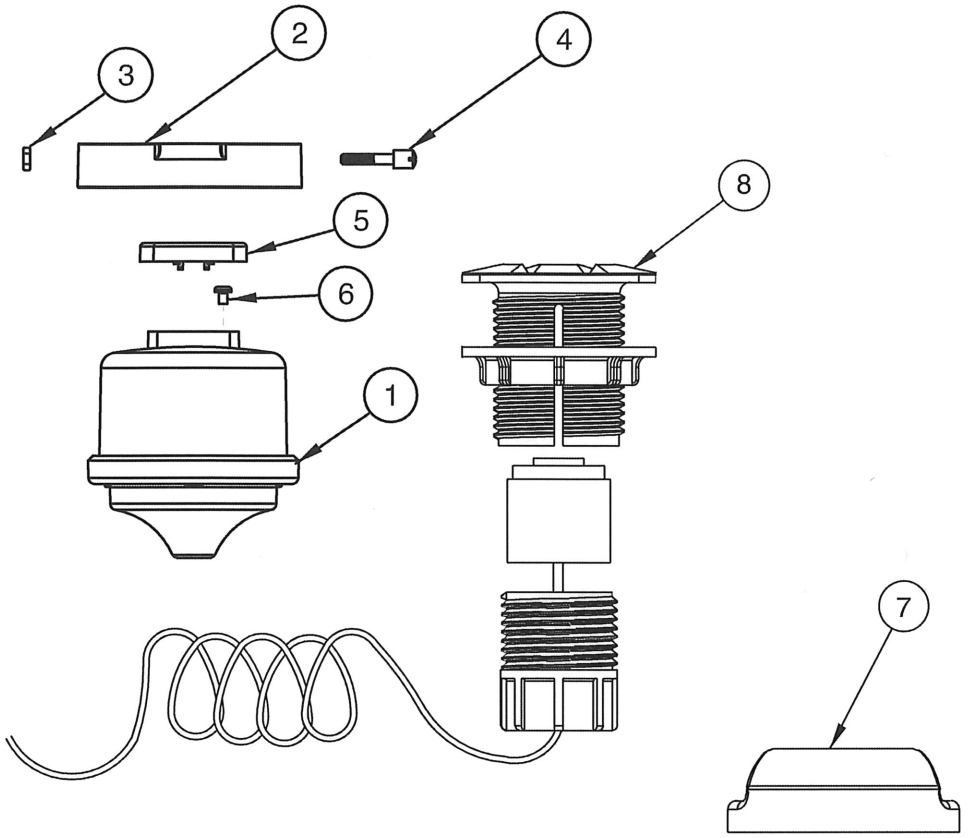
Model MVR

Translator Register Options for MVR 30 to 160



Ref	Description	MVR-30	MVR-50	MVR-100	MVR-160
1	Translator Register* Gallons Cubic Feet Specify Electronic Reading Value 4, 5, or 6 Wheel	 D35231xxx D35232xxx	 D35241xxx D35242xxx	 D35251xxx D35252xxx	 D35261xxx D35262xxx
2	Clamp Band (Plastic) Translator Only	B8602	B8602	B8602	B8602
3	Clamp Band Seal Nut	19999	19999	19999	19999
4	SST Tri-Wing Screw	98344	98344	98344	98344
5	Lens Terminal Cover	B8447	B8447	B8447	B8447
6	Terminal Lug Screw	98197 (3)	98197 (3)	98197 (3)	98197 (3)
7	Wall Pad	T1234	T1234	T1234	T1234
8	Pit Pad	T1240	T1240	T1240	T1240
9	TrueRead (not shown)	C6551G	C6551G	C6551G	C6551G
10	1,000' Spool of Wire (not shown)	AS755	AS755	AS755	AS755

*Call Mueller Systems Customer Service for appropriate Translator Register and AMR device part number.

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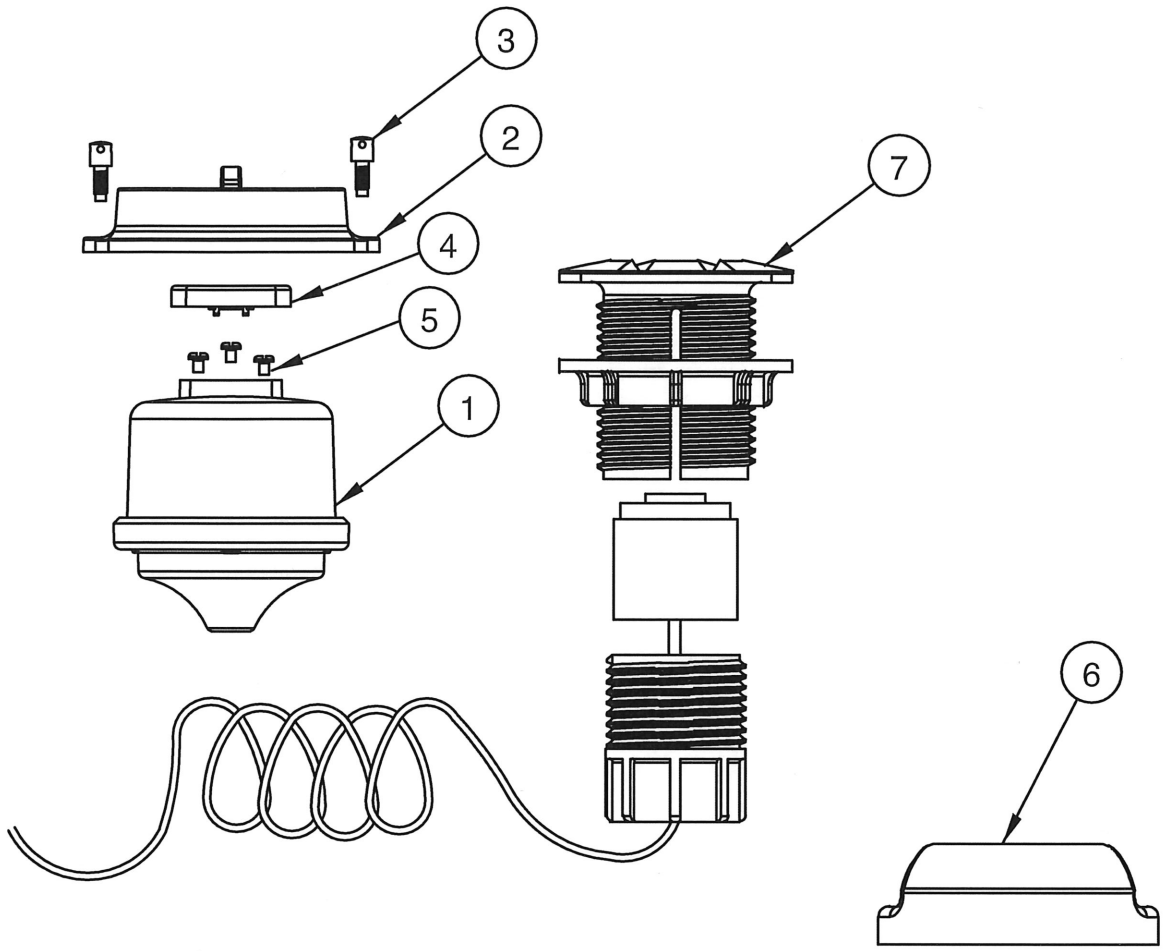
Model MVR

Translator Register Options for MVR 350 to 1300



Ref	Description	MVR-350	MVR-650	MVR-1300
1	Translator Register Gallons* Cubic Feet*	 D35271xxx D35272xxx	 D35281xxx D35282xxx	 D35291xxx D35292xxx
2	Register Box (Bronze) Translator Only	C6525	C6525	C6525
3	Register Box Screw	51005P007 (2)	51005P007 (2)	51005P007 (2)
4	Lens Terminal Cover	B8447	B8447	B8447
5	Terminal Lug Screw	98197 (3)	98197 (3)	98197 (3)
6	Wall Pad	T1234	T1234	T1234
7	Pit Pad	T1240	T1240	T1240
8	TrueRead (not shown)	C6551G	C6551G	C6551G
9	1,000' Spool of Wire (not shown)	AS755	AS755	AS755

*Call Mueller Systems Customer Service for appropriate Translator Register and AMR device part number.

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MUELLER

SOLID STATE METER (SSM)

Sizes 5/8" x 3/4" and 3/4" Short; 3/4" Long; and 1"

Applications: The Mueller solid state meter (SSM) is available in 5/8" X 3/4" through 2" sizes. The SSM meter provides 8 digits of granular data for visual reads and 8 digits in encoded electronic format for use in Mueller Mi.Net AMR / AMI applications. The meter can be used in any residential or commercial application where a high degree of accuracy at low flow rates is important.

Construction: The SSM meter utilizes a low lead copper alloy body with a polymer measuring tube and patented stainless steel reflectors. A heat treated glass lens and polymer lid surround provide protection for the liquid crystal display. 3.6 volt lithium batteries provide power for the processor for 20 years of life. All internal electronics are potted to prevent water intrusion in the toughest environments.

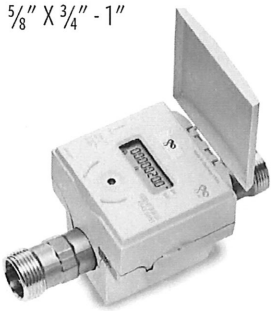
Operation: The SSM meter utilizes ultrasonic measurement technology to provide outstanding accuracy across a broad flow range with extremely low pressure loss. The static meter design means there are no moving parts inside the meter so it will not degrade in accuracy over the life of the meter due to mechanical wear, providing exceptional revenue for years to come.

With starting flow rates as low as 0.017 GPM and ultra-low flow accuracy of 95% at 0.05 GPM on the 5/8' X 3/4" and 3/4" short sizes, the SSM is capable of wringing every drop of revenue from your system and detecting the smallest leaks and backflow conditions. The stainless steel reflectors and measuring tube design channel water over the reflectors to keep them free of debris and increase the velocity of the water as it passes through the tube, contributing to the high degree of meter accuracy.

The display provides large numerals and icons that permit verification of the 8-digit meter volume as well as direction of flow, error alarm status, and battery life. A unique, never duplicated 8-digit serial number on the SSM meter faceplate and lid identifies it as the basis for all systems communication. The register face plate and housing provide visual information specific to the registration units, model, size, date of manufacture, and billing units, to provide verifiable and retrievable data in the event it is required.

Conformance to standards: Mueller SSM meter complies with AWWA C-715 requirements for accuracy and odometer wheel height as well as the American Standard Code for Information Interchange or ASCII.

SOLID STATE METER
5/8" X 3/4" - 1"



Operation: When interrogated by a Mueller AMR / AMI device, the SSM meter communicates the unique 8-digit serial number and 8-digit electronic reading in ACSII format where it can be recorded and maintained within the reporting structure of the AMR / AMI system. In the event that field testing is required, an optical button located on the display faceplate can be utilized to place the meter in test mode which provides excellent resolution for testing purposes.

Maintenance: The Mueller SSM meter is designed and manufactured to provide a 20 year service life with virtually no maintenance required. Meter lids are available as replacement components in the event of vandalism or the need for meter retrofits.

MATERIALS AND SPECIFICATIONS

Model	Solid State Meter (SSM)
Register Type	Solid State Encoder Register
Sizes	5/8" through 2" Ultrasonic Meters
Standards	Manufactured and tested to meet or exceed all applicable accuracy and pressure loss requirements of the AWWA C-715 standard and the American Standard Code for Information Interchange (ASCII)
Temperature Operating Range	34°F to 158°F
Storage Temperature Range	-4°F to 158°F
Water Temperature Range	34°F to 140°F
Connection Options	18" Nicor Connector, 5' flying lead wire, with factory potted connections
Materials	Processor / register housing and lid - thermoplastic; Register lens – heat treated, tempered glass; LCD, polymer measuring tube, SST reflectors
AMR / AMI Compatibility	Mi.Net AMR / AMI system, and other AMR / AMI systems that can utilize the standard 8-digit encoder protocol output.

SOLID STATE METER (SSM)

Sizes 5/8" x 3/4" and 3/4" Short; 3/4" Long; and 1"

GENERAL TECHNICAL DATA

	5/8" – 3/4" – 1"
Medium Temperature Range	34 ... 122 °F
Ambient Operating Temperature	34 ... 158 °F
Ambient Storage Temperature	-4 ... +140 °F (>90° F max. for one hour)
Maximum Pressure	psi 300
Power Supply	3.6 VDC lithium battery
Battery Lifetime	20 years
Interfaces	Industry standard Encoder protocol, ASCII output for compatibility with all AMR / AMI systems
Data Storage	Alarms and consumption values
Protection Class	IP 68

TECHNICAL DATA DISPLAY

	5/8" – 3/4" – 1"
Display Indication	LCD, 8-digit, Gallon Visual display to 0.1 Gallons and Cubic Foot Display to 0.01 Cubic Feet
Units	Flow and volume (GPM, gal, Ft^3)
Values Displayed	Volume - flow - reverse flow - water temperatures - display test - error and alarm status - battery lifetime
Values Transmitted	8-digit electronic resolution only

APPROVAL

	5/8" – 3/4" – 1"
NSF	Complies with NSF / ANSI Standard 61, Annex F/G
AWWA	Meets or exceeds applicable sections of the AWWA / ANSI C700 Standards
FCC	Complies with FCC part 15 B

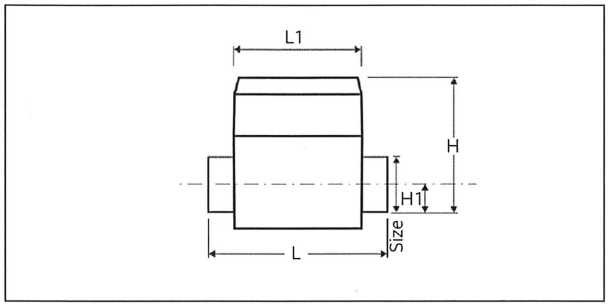
MATERIAL

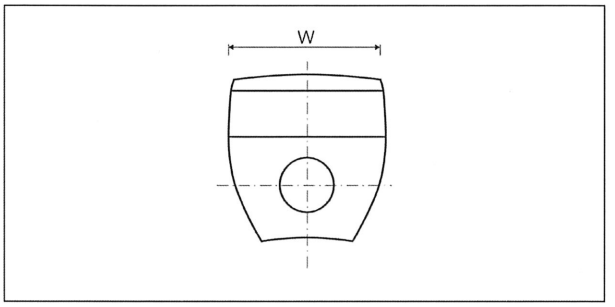
	5/8" – 3/4" – 1"
Measuring Pipe	Lead-free copper alloy "CUPHIN®"
Register Housing	Engineered Polymer
Transducers	Composite
Reflectors	Stainless steel

SOLID STATE METER (SSM)

Sizes 5/8" x 3/4" and 3/4" Short; 3/4" Long; and 1"

DIMENSIONS

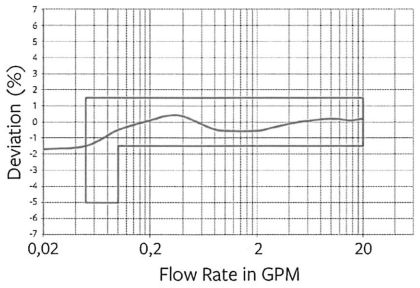




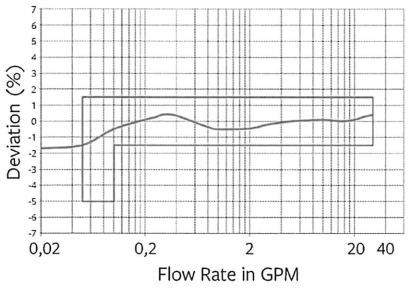
SIZE			5/8" X 3/4"	3/4" S	3/4" L	1"
Lay Length	L	Inch	7.5"	7.5"	9.0"	10.75"
Register Length	L1	Inch	3.5"	3.5"	3.5"	3.5"
Register Width	W	Inch	3.7"	3.7"	3.7"	3.7"
Height to Center of Pipe	H	Inch	4.0"	4.0"	4.0"	4.2"
Height to Center of Pipe	H1	Inch	1.3"	1.3"	1.3"	1.4"
Nominal Thread Size			1"-11.5 NPSM	1"-11.5 NPSM	1"-11.5 NPSM	1.25"-11.5 NPSM
Net Weight		Lb.	2.8	2.8	3.1	3.5

TYPICAL FLOW CHARTS

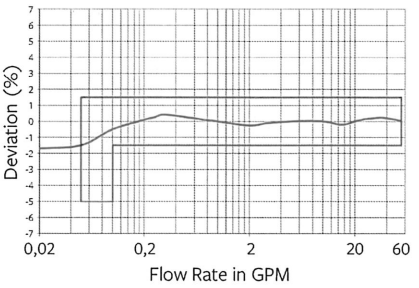
Typical Flow Chart 5/8" Mueller SSM



Typical Flow Chart 3/4" Mueller SSM



Typical Flow Chart 1" Mueller SSM



TECHNICAL DATA

SIZE			5/8" X 3/4"	3/4" S	3/4" L	1"
Lay Length	L	Inch	7.5	7.5	9	10.75
Operating Flow Range		GPM	0.1 - 30	0.1 - 30	0.1 - 30	0.4 - 55
Low Flow Range		GPM	0.05 - 0.1	0.05 - 0.1	0.05 - 0.1	0.25 - 0.4
Operating Range accuracy		%	±1.5	±1.5	±1.5	±1.5
Low Flow Range accuracy		%	-5 / ±1.5	-5 / ±1.5	-5 / ±1.5	-5 / ±1.5
Pressure Loss			2.0 psi at 15 GPM	2.0 psi at 15 GPM	2.0 psi at 15 GPM	1.5 psi at 25 GPM
Operating Performance			In the temperature range of 45 to 85° F, meter consumption measurement is accurate to ±1.5% over the normal flow range (reference: approved test bench, ISO9001 certified.			

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MUELLER

MUELLER

SOLID STATE METER (SSM)

Sizes 1 ½" & 2"

Applications: The Mueller solid state meter (SSM) is available in 1½" and 2" sizes. The SSM meter provides 8 digits of granular data for visual reads and 8 digits in encoded electronic format for use in Mueller Mi.Net AMR / AMI applications. The meter can be used in any residential or commercial application where a high degree of accuracy at low flow rates is important.

Construction: The SSM meter utilizes a stainless steel body with a polymer measuring tube and patented stainless steel reflectors. A heat treated glass lens and polymer lid and surround provide protection for the liquid crystal display. 3.6 volt lithium batteries provide power for the processor for 20 years of life. All internal electronics are potted to prevent water intrusion in the toughest environments.

Operation: The SSM meter utilizes ultrasonic measurement technology to provide outstanding accuracy across a broad flow range with extremely low pressure loss. The static meter design means there are no moving parts inside the meter so it will not degrade in accuracy over the life of the meter due to mechanical wear, providing exceptional revenue for years to come.

With ultra-low flow accuracy of 95% at 0.08 GPM on the 1 ½" sizes, the SSM is capable of wringing every drop of revenue from your system and detecting the smallest leaks and backflow conditions. The stainless steel reflectors and measuring tube design channel water over the reflectors to keep them free of debris and increase the velocity of the water as it passes through the tube, contributing to the high degree of meter accuracy.

The display provides large numerals and icons that permit verification of the 8-digit meter volume as well as direction of flow, error and alarm status, and battery life. A unique, never duplicated 8-digit serial number on the SSM meter faceplate and lid identifies it as the basis for all systems communication. The register face plate and housing provide visual information specific to the registration units, model, size, date of manufacture, and billing units, to provide verifiable and retrievable data in the event it is required.

Conformance To Standards: Mueller SSM meter complies with AWWA C-715 requirements for accuracy and odometer wheel height as well as the American Standard Code for Information Interchange or ASCII.

Operation: When interrogated by a Mueller AMR / AMI device, the SSM meter communicates the unique 8-digit serial number and 8-digit electronic reading in ACSII format where it can be recorded and maintained within the reporting structure of the AMR / AMI system. In the event that field testing is required, an optical button located on the display faceplate can be utilized to place the meter in test mode which provides excellent resolution for testing purposes.

SOLID STATE METER
SIZES 1 ½" & 2"

Maintenance: The Mueller SSM meter is designed and manufactured to provide a 20 year service life with virtually no maintenance required. Meter lids are available as replacement components in the event of vandalism or the need for meter retrofits.

MATERIALS AND SPECIFICATIONS

Model	Solid State Meter (SSM)
Register Type	Solid State Encoder Register
Sizes	1½" & 2" Ultrasonic Meters
Standards	Manufactured and tested to meet or exceed all applicable accuracy and pressure loss requirements of the AWWA C-715 standard and the American Standard Code for Information Interchange (ASCII)
Temperature Operating Range	34°F to 158°F
Storage Temperature Range	-4°F to 158°F
Water Temperature Range	34°F to 140°F
Connection Options	18" Nicor Connector, 5' flying lead wire, with factory potted connections
Materials	Processor / register housing and lid - thermoplastic; Register lens – heat treated, tempered glass; LCD, polymer measuring tube, SST reflectors
AMR / AMI Compatibility	Mi.Net AMR / AMI system, and other AMR / AMI systems that can utilize the standard 8-digit encoder protocol output.

SOLID STATE METER (SSM)

Sizes 1 ½" & 2"

GENERAL TECHNICAL DATA

	1.5" AND 2"
Potable Water Temperature Range	34 ... 122 °F
Ambient Operating Temperature	34 ... 158 °F
Ambient Storage Temperature	-4 ... +140 °F (>90° F max. for one hour)
Maximum Pressure	psi 300
Power Supply	3.6 VDC lithium battery
Battery Lifetime	20 years
Interfaces	Industry standard Encoder protocol, ASCII output for compatibility with all AMR / AMI systems
Data Storage	Alarms and consumption values
Protection class	IP 68
Operating performance	In the temperature range of 45 to 85 °F, meter consumption measurement is accurate to ±1.5% over the normal flow range (reference: approved test bench, ISO9001 certified.

TECHNICAL DATA DISPLAY

	1.5" AND 2"
Display	LCD, 8-digit Visual resolution in US Gallons to 0.1 and Ft3 to 0.01
Units	Flow and volume (GPM, gal, Ft3)
Values Displayed	Volume - flow - reverse flow - water temperatures - display test - error and alarm status - battery lifetime

APPROVAL

	1.5" AND 2"
NSF	Complies with NSF / ANSI Standard 61, Annex F/G
AWWA	Meets or exceeds applicable sections of the AWWA / ANSI C715 Standards
FCC	Complies with FCC part 15 B

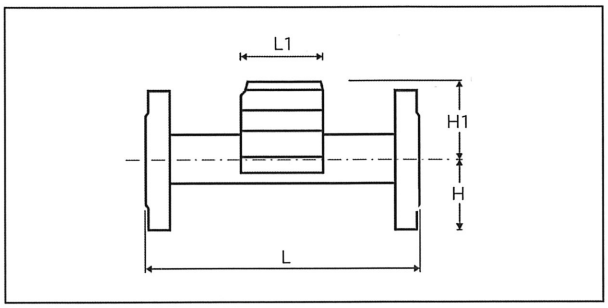
MATERIAL

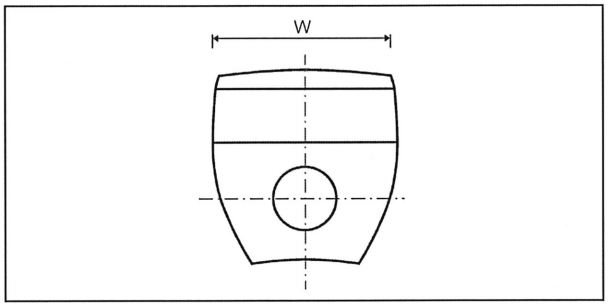
	1.5" AND 2"
Measuring Pipe	Stainless Steel
Register Housing	Engineered Polymer
Transducers	Composite
Reflectors	Stainless steel

SOLID STATE METER (SSM)

Sizes 1 ½" & 2"

DIMENSIONS

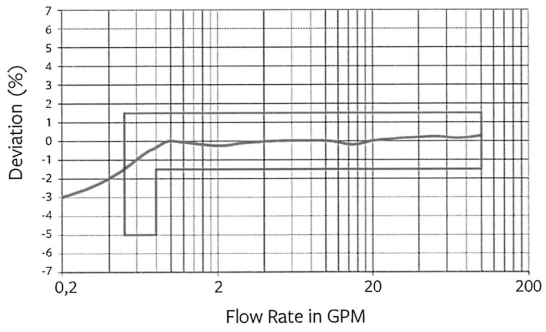




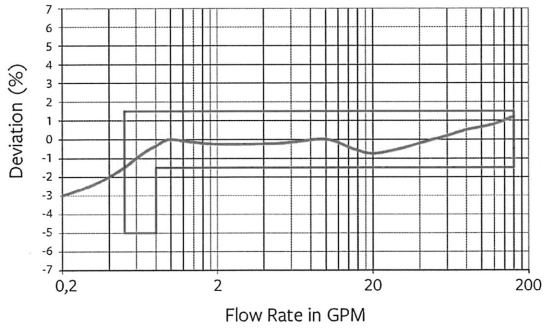
SIZE			1.5"	2" L
Lay Length	L	Inch	13"	17"
Register Length	L1	Inch	3.5"	3.5"
Register Width	W	Inch	3.75"	3.75"
Height to Center of Pipe	H1	Inch	2"	2.5"
Height to Center of Pipe	H1	Inch	3.3"	3.3"
Net Weight		Lb.	14.1	19.2

TYPICAL FLOW CHARTS

Typical Flow Chart 1 ½" Mueller SSM



Typical Flow Chart 2" Mueller SSM



TECHNICAL DATA

SIZE			1.5"	2" L
Lay Length	L	Inch	13"	17"
Operating Flow Range		GPM	0.8 - 100	0.8 - 160
Low Flow Range		GPM	0.5 - 0.8	0.55 - 0.8
Operating Range accuracy		%	±1.5	±1.5
Low Flow Range accuracy		%	-5 / ±1.5	-5 / ±1.5
Pressure Loss			3.5 psi at 70 GPM	3.6 psi at 110 GPM

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MUELLER

Product Warranty

Product	Description	Warranty Period

Water Metering Products

Product	Description	Warranty Period
All Meter Products not otherwise specified herein	During the Warranty Period, these Products will be free from defects in materials and workmanship.	One (1) year from date of shipment to Purchaser.
Remote Disconnect Meters (RDM) valve and solenoid assembly	During the Warranty Period, these Products will be free from defects in materials and workmanship.	Five (5) year warranty or two-thousand (2,000) actuations of the valve, whichever comes first, from the date of shipment to Purchaser.
Bronze Maincases	During the Warranty Period, these Products will be free from defects in materials and workmanship.	Twenty-Five (25) years from date of shipment to Purchaser.
Composite Maincases	During the Warranty Period, these Products will be free from defects in materials and workmanship.	Fifteen (15) years from date of shipment to Purchaser.
Standard registers for the above listed mechanical meters	During the Warranty Period, these Products will be free from defects in materials and workmanship.	Ten (10) years from date of shipment to Purchaser.
Models 400 and 500 Series Meters	AWWA[1] New Meter Accuracy	5/8" – Five (5) years from the date of shipment to Purchaser or the registration of 500,000 U.S. gallons, whichever comes first; 3/4" – Five (5) years from the date of shipment to Purchaser or the registration of 750,000 U.S. gallons, whichever comes first; 1" – Five (5) years from the date of shipment to Purchaser or the registration of 1,000,000 U.S. gallons, whichever comes first; 1-1/2" – Two (2) years from the date of shipment to Purchaser or the registration of 1,600,000 U.S. gallons, whichever comes first; 2" – Two (2) years from the date of shipment to Purchaser or the registration of 2,700,000 U.S. gallons, whichever comes first.
	AWWA Repaired Meter Accuracy (AWWA M6 Manual)	5/8" – Fifteen (15) years from the date of shipment to Purchaser or the registration of 1,500,000 U.S. gallons, whichever comes first; 3/4" – Fifteen (15) years from the date of shipment to Purchaser or the registration of 2,250,000 U.S. gallons, whichever comes first; 1" – Fifteen (15) years from the date of shipment to Purchaser or the registration of 3,000,000 U.S. gallons, whichever comes first; 1-1/2" – Ten (10) years from the date of shipment to Purchaser or the registration of 5,000,000 U.S. gallons, whichever comes first; 2" – Ten (10) years from the date of shipment to Purchaser or the registration of 8,000,000 U.S. gallons, whichever comes first.
Solid State Meters	During the Warranty Period (ten (10) years from date of shipment to Purchaser) these Products will meet or exceed accuracy of +/- 1.5% between the specified minimum flow rate to the specified maximum. Additionally, the unit is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, and years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount from the date of shipment to Purchaser. All discounts will be calculated on the then current published price of the original product. All prorated warranty discounts are to be used towards the purchase of replacement units for the following sizes: 5/8" Meter — 0.1 gpm to 20 gpm 5/8" x ¾", ¾" Short, and ¾" Long Meter — 0.1 to 30 gpm 1" Meter — 0.4 to 55 gpm 1 ½" Meter — 0.25 to 100 gpm 2" Meter — 1.5 to 160 gpm	

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
X	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
X	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.
X	6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.	
X	7. General Liability Insurance provides for a Waiver of Subrogation against 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 TX §

THE COUNTY OF Collin §

I, Joseph Ingram, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

_____ Ownership of ten percent (10%) or more of the voting shares of the business entity.

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars ($25,000) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars ($25,000).

_____ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.

_____ Other: _____.

__✓__ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

Signed this 17th day of April, 2023.

_____
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared Joseph Ingram, 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 17 day of April, 2023.

_____
Notary Public in and for the State of South Carolina
My commission expires: 6/20/2032

KATHERYNE D KING
Notary Public, State of South Carolina
My Commission Expires 06/20/2032

EXHIBIT E

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.**

N/A

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

7

Signature of vendor doing business with the governmental entity

4/17/23
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.

Lead Times

PART #	DESCRIPTION	LEAD TIME
PD Meters		
VEFB223C	5/8X1/2,420B,BB,ME8,SG,5'CC	6 WEEKS
VEGB223C	5/8X3/4,420B,BB,ME8,SG,5'CC	6 WEEKS
VELB223C	3/4 435B,SHT,BB,ME8,SG,5'CC	6 WEEKS
VEHB223C	3/4 435B,BB,ME8,SG,5'CC	6 WEEKS
VEKB223C	1"452B,BB,ME8,SG,5'CC	6 WEEKS
WENN123C	562DI, 1-1/2",2B,ME8,SG,5'CC	6 WEEKS
WEPN123C	572DI,2",2B,ME8,SG,5'CC	6 WEEKS
MVR Meters		
Q9NS2056	MVR100,2B,SI,STD,BB,TRL6,5'CC	14 WEEKS
Q9PS2056	MVR160,SG,SI,2B,STD,TRL6,5'CC	14 WEEKS
95176NSF	1-1/2BRZ 2B COM FLG PR KIT NSF	8 WEEKS
50769	MVR 100 STRAINER ASSY P.O.	6 WEEKS
95179NSF	2" BRZ 2B COMP FLG PR KIT NSF	8 WEEKS
50880	MVR 160 RING STRAINER-SST	6 WEEKS
Itron Adapter		
A13075	1'NICOR TO ITRON CABLE	4 WEEKS
Ultrasonic Meters		
S0320EN	SSM3/4"S,SG,.1V,8E,XPRO 18"N	20 WEEKS
S0420SN	SSM3/4"STD,SG.1V,8E,STDPR 18"N	20 WEEKS
S0420EN	SSM ¾"L,SG.1V,8E,XPRO 18"N	20 WEEKS
S0520EN	SSM 1",SG,.1V,8E,XPRO 18"NIC	20 WEEKS
S0620EN	SSM1.5",SG,.1V,8E,XPRO 18"N	20 WEEKS
S0720EN	SSM 2",SG,.1V,8E,XPRO 18"NIC	20 WEEKS

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
_X_	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
_X_	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.

_X_ 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.

_X_ 7. General Liability Insurance provides for a Waiver of Subrogation against 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 TX §

THE COUNTY OF Collin §

I, Joseph Ingram, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

_____ Ownership of ten percent (10%) or more of the voting shares of the business entity.

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars ($25,000) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars ($25,000).

_____ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.

_____ Other: _____.

__✓__ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

Signed this 17th day of April, 2023.

_____

Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared Joseph Ingram, 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 17 day of April, 2023.

_____

Notary Public in and for the State of South Carolina

My commission expires: 6/20/2032

KATHERYNE D KING
Notary Public, State of South Carolina
My Commission Expires 06/20/2032

EXHIBIT E

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).

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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.**

N/A

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

7

_____
Signature of vendor doing business with the governmental entity

4/17/23
Date

BID TABULATION
Water Meters
Bid Opening: 2:00 pm 04/19/2023

Description	VENDOR			
	Atlas Utilty Supply Co.	Water Works Metrology, LLC	WinSupply of Cooke County	
	Total Estimated Price per Water Meter Type			
Positive Displacement Water Meters	294,608.02	187,465.00	-	
Oscillating Piston Water Meters	-	-	-	
Nutating Disc Type Water Meters	294,608.02	-	-	
Multi-Jet Water Meters	-	-	150,542.45	
Ultra-Sonic Water Meters	347,120.42	185,974.00	186,345.54	
Turbine Water Meters/Oval Water Meters	33,068.88	16,503.00	6,135.60	

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 13.**

Meeting Date: 05/01/2023

Prepared By: Jim Cross, Water Systems Manager

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7071***

Authorizing the Purchase of a New GTH-5519 Telehandler from Terex Government Programs for the Water Treatment Plant through the U.S. General Services Administration (GSA) Multiple Award Schedule Cooperative Purchasing Program

Issue:

To consider approval of a resolution to purchase a telehandler for the Water Treatment Plant from Terex Corporation through the GSA Multiple Award Schedule Cooperative Purchasing Program.

Background:

At the Water Treatment Plant, staff routinely perform repairs and maintenance during day-to-day operations. Telehandlers allow staff to reach out and over obstacles to optimally perform plant repair and maintenance tasks.

The GSA Multiple Award Schedule is a long-term government-wide contract with commercial companies. It provides access to commercial products and services to government agencies and satisfies State of Texas competitive procurement requirements.

Origination:

Production Services

Financial Consideration:

$67,586.49 for the purchase of a GTH-5519 Telehandler from Terex Government Programs. Funds are available in the Fleet Fund for FY 2022-2023.

Staff Recommendation:

Staff recommends approval to purchase the telehandler from Terex Corporation under a contract through the General Services Administration.

Alternatives:

As may be recommended by City Council

Attachments

Resolution No. 7071
Terex Quote
GSA Contract Acknowledgement

RESOLUTION NO. 7071

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW GTH-5519 TELEHANDLER FROM TEREX GOVERNMENT PROGRAMS FOR THE WATER TREATMENT PLANT THROUGH THE U.S. GENERAL SERVICES ADMINISTRATION MULTIPLE AWARD SCHEDULE PRUCHASING PROGRAM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase from Terex Government Programs through the U.S. General Services Administration (GSA) Multiple Award Schedule Purchasing Program a new GTH-5519 Telehandler for the Water Treatment Plant at a total price of Sixty Seven Thousand Five Hundred Eighty-Six Dollars and Forty-Nine Cents ($67,586.49). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2022-2023 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 1st day of May 2023.

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

TEREX®

PAGE 1 of 1

Quote Provided by:

Terex Government Programs
(540) 361-7755 OFFICE
(703) 997-1092 FAX

DATE: *4/11/2023*

Terex Government Programs
150 Riverside Parkway Suite 203
Fredericksburg, VA. 22406-1094
Phone: 540-361-7755 Fax: 703-997-1092
govsales@terex.com

QUOTE NUMBER: Q23164B

QUOTE FOR:

Company	City of Sherman
Ordered By	Leroy Dorley
Address	243 La Cima Dr
email:	leroyd@cityofsherman.com
City	Sherman
State	TX Zip 75092
Phone	903-821-7822
FAX	

SHIP TO: (if different from bill to location)

Company	
ATTN/POC	
Address	
email	
City	
State	Zip
Phone	
Fax	

CCR	*Manufacture*	*Product Type*	*Contract Vehicle*	*Sales POC*		*Business Type*
4J2G1	*Terex*	*New*	*Direct*	*Jarvis Williams*		*Large*
Qty.	*Description*		*Part Number*	*Unit*	*Price*	*Extended Price*
1	GTH-5519		GTH-5519	ea	$ 62,978.74	$ 62,978.74
	Customer Requested Optional Items					
1	48" Heavy Duty Forks set of 2			ea	$ 1,025.96	$ 1,025.96
1	QA Carriage 48"/1.2m			ea	$ 2,370.59	$ 2,370.59
	Manufacturing Location					
	590 Huey Rd.					
	Rock Hill, SC 29730					
	Cage Code					
	Warranty					
	Please See Attached Warranty Provisions					
	Please see attached Quotation Continuation					
	for vehicle specifications.					

Sub Total	$	*66,375.29*
***Freight Total :*	$	*1,211.20*
Tax:		
Total:	$	*67,586.49*

Reference RFQ/RFP:

Terms (Net 30 unless stated otherwise)

Requested Delivery Date (standard leadtime will apply unless noted below)

Estimated Delivery: Year 2024 Q4

Free On Board (FOB)

Destination	X
Origin	
Third Party	

***indicate third party information in comment section below.**

Authorized signature (Sign and Print Name)

Kelvin Gallaway

Kelvin Gallaway, Controller
Terex Government Programs

Comments:

This quote is good for 30 days. *Estimated delivery is subject to prior sales. Estimated freight is based on prior sales.

Terex Government Programs
150 Riverside Parkway
Suite 203
Fredericksburg, VA 22406
(540) 361-7755 (office)
(703) 997-1092 (fax)
www.terex.xom

GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE
AUTHORIZED FEDERAL SUPPLY SCHEDULE CATALOG/PRICE LIST

Prices Shown Herein Are Net Price (Discount deducted)

Contract Number: GS-07F-0069X

Schedule: Multiple Award Schedule (MAS)

FSC Group: Industrial Products and Services/Industrial Products

Transportation and Logistics Services/Motor Vehicle (Non-Combat)

PSC: 6260/5440/2540

CONTRACT PERIOD: October 20, 2020 through October 19, 2025

Business Size: Large

Online access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order is available through GSA Advantage!, a menu-driven database system.

The INTERNET address for GSA Advantage! Is http://www.gsaadvantage.gov.

For more information on ordering from Federal Supply Schedules click on the GSA Schedules link at www.gsa.gov

1a. TABLE OF AWARDED SPECIAL ITEM NUMBERS (SINs)

333923S - Scaffolding, Work, and Service Platforms
OLM – Order Level Materials

1b. LOWEST PRICED MODEL NUMBER AND PRICE FOR EACH SIN:

333923S GL-4 STD $1083.48

1c. HOURLY RATES:

(Not Applicable)

2. MAXIMUM ORDER*:

333923S - $300,000
OLM - $250,000

If the best value selection places you order over the Maximum Order identified in this catalog/pricelist, you have an opportunity to obtain a better schedule contract price. Before placing your order, contact the aforementioned contractor for a better price. The contractor may (1) offer a new price for the requirement (2) offer the lowest price available under this contract or (3) decline the order. A delivery order that exceeds the maximum order may be placed under the schedule contract in accordance with FAR 8.404.

3. MINIMUM ORDER:

One Unit

4. GEOGRAPHIC COVERAGE:

Domestic, 48 states, Alaska, Hawaii, Puerto Rico, Washington DC, and U.S. territories, and to a CONUS port or consolidation point for orders received from overseas activities.

5. POINT(S) OF PRODUCTIONS:

Redmond, WA; Rock Hill, SC and Grant County, WA

6. DISCOUNT FROM LIST PRICES:

The prices listed are GSA net (the discounts have been deducted and the IFF has been added).

7. QUANTITY DISCOUNT(S):

None

8. PROMPT PAYMENT TERMS:

Net 30

INFORMATION FOR ORDERING OFFICES:

Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.

9. Government Purchase Cards are accepted at, below or above the micro-purchase threshold.

10. FOREIGN ITEMS:
None

11a. TIME OF DELIVERY:
SIN 333923S – 180 Days ARO

11b. EXPEDITED DELIVERY:
Contact contractor prior to placing order to check availability.

11c. OVERNIGHT AND 2-DAY DELIVERY:
Contact contractor prior to placing order to check availability.

11d. URGENT REQUIREMENTS:
Contact contractor prior to placing order to check availability.

12. FOB POINT:
Origin

13a. ORDERING ADDRESS:
Terex Government Programs
150 Riverside Parkway, Suite 203
Fredericksburg, VA 22406

13b. ORDERING PROCEDURES:
For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPAs) are found in the Federal Acquisition Regulations (FAR) 8.405-3.

14. PAYMENT ADDRESS:
Terex Corporation GSA
13230 Collections Center
Lock Box 13230 Chicago,
IL 60693

15a. WARRANTY PROVISION:
Standard commercial warranty. Contact contractor for a copy of the warranty.

16. EXPORT PARKING CHARGES:
Not Applicable

17. TERMS AND CONDITIONS OF GOVERNMENT PURCHASE CARD ACCEPTANCE:
No Limit

18. TERMS AND CONDITIONS OF RENTAL, MAINTENANCE & REPAIR:
Not Applicable

19. TERMS AND CONDITIONS OF INSTALLATION:
Not Applicable

20a. TERMS AND CONDITIONS OF REPAIR PARTS INDICATING DATES OF PARTS PRICE LISTS AND ANY DISCOUNTS FROM LIST PRICES:
Not Applicable

20b. TERMS AND CONDITIONS FOR ANY OTHER SERVICES:
Not Applicable

21. LIST OF SERVICE AND DISTRIBUTION POINTS:
Not Applicable

22. LIST OF PARTICIPATING DEALERS:
Not Applicable

23. PREVENTATIVE MAINTENANCE:
Not Applicable

24a. SPECIAL ATTRIBUTES SUCH AS ENVIRONMENTAL ATTRIBUTES:
Not Applicable

24b. SECTION 508 COMPLIANCE:
Not Applicable

25. UEI NUMBER
SYWUFMFFEJV4

26. SAMS REGISTRATION – Registered in SAM

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 14.**

Meeting Date: 05/01/2023
Prepared By: Billy Hartsfield, Fire Chief
Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7072
Authorizing the purchase of a 2023 Frazer Type I 14' Module Ambulance for Sherman Fire-Rescue from Rush Trucks of Ohio and Frazer Ltd. through BuyBoard.

Issue:

To consider the purchase of a 2023 Frazer Type I 14' Module Ambulance for Sherman Fire-Rescue

Background:

The purchase of a 2023 Frazer Type I 14' Module Ambulance will replace City vehicle 126, a 2015 Dodge Ram 4500 ambulance with over 100.000 miles.

Purchase through Buy Board conforms to the requirements of Texas statutes that are applicable to competitive bids and competitive proposals.

Resolution 7001 approved the purchase of a Chevrolet Ambulance. That PO has been voided. Fleet requested a change to international for compatibility purposes.

Origination:

Sherman Fire-Rescue
Chief Billy Hartsfield

Financial Consideration:

A quote was received from Frazer LTD for the purchase of a new ambulance from Rush Trucks of Ohio and Frazer, Ltd through the BuyBoard in the amount of $328,318.00. This quote includes the BuyBoard cooperative fee. Funds for the purchase and fee were appropriated in the fiscal year 2022-2023 budget.

Staff Recommendation:

The staff recommends authorization of the purchase.

Alternatives:

As directed by the city council.

Attachments

Resolution No. 7072
Quote

RESOLUTION NO. 7072

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 2023 FRAZER TYPE I 14' MODULE AMBULANCE FOR THE SHERMAN FIRE DEPARTMENT FROM RUSH TRUCKS OF OHIO AND FRAZER, LTD. THROUGH BUYBOARD; 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 Rush Trucks of Ohio and Frazer, Ltd., through BuyBoard, a 2023 Frazer Type I 14' Module Ambulance for the Sherman Fire Department at a total price of Two Hundred Eighty-Six Thousand Six Hundred Dollars and No Cents ($328.318.00), in accordance with the provisions of the H-GAC proposal and terms and conditions of the Interlocal Participation Agreement, both attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2022-2023 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of May 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____

LINDA ASHBY, CITY CLERK **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

Customer Quote

2/14/2023 2:49:40 PM

Estimate No:	Q2927-0001
Quote Date:	2/13/2023
Expiration Date:	4/30/2023
Salesperson:	HB
Payment Terms:	Net 30

Invoice To: 10227

Dillon Stewart
Sherman Fire Department
City of Sherman
P.O. Box 1106
Sherman TX 75091
US

Deliver To:

Dillon Stewart
Sherman Fire Department
City of Sherman
P.O. Box 1106
Sherman TX 75091
US
Phone:dillons@cityofsherman.com

Order Instructions:

Chassis only must be paid for at the time of arrival to the dealership. Balance invoiced 30 days prior to unit completion and will be due at the time of delivery.

The estimated chassis price may change at the discretion of the chassis manufacturer.

Revision Log:
October 28:
UNOC #535 changed radio equipment
Removed Opticom
Changed UNOC #1823 to CPI docking station
Revisions 2/13/2023
Updated to 2023 pricing
Changed to International CV 515
Removed Opticom
Removed Sierra Wireless
Changed to Full Replacement bumper
Eliminated Valor CPR Seat
Eliminated Valor Squad Bench Seats
Eliminated the rear backboard compartment (now incl under squad bench storage)
Changed Interior Module to Desert Rose
Changed Floor to Loncoid Onyx
Added Minibrow to front grill guard
Changed air tank train to the manual valve
Changed PowerLOAD to CP

No.	Item	Qty	U/M:		Unit Price		Net Amount
1	MODULE	1.00	EA	$	236,825.00	$	236,825.00
	Type I 14' Module						

Frazer will accept returns on parts up to 180 days after shipment. No restocking fee will be charged if the item is returned within 90 days of the original invoice date. All parts returns should be shipped back freight prepaid and require prior approval with a "Returns Material Authorization" (RMA) clearly displayed on the exterior of the shipping package. A credit will be issued towards the customer's account within approximately 7 business days of receipt of the item. If a part is returned after 90 days of the original invoice date a 15% restocking fee will be applied. Frazer Ltd reserves the right to accept returned items at its sole discretion based upon the condition of the item to be placed back into stock. :

Customer Quote

2/14/2023 2:49:40 PM

Estimate No:	Q2927-0001
Quote Date:	2/13/2023
Expiration Date:	4/30/2023
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Dillon Stewart
Sherman Fire Department
City of Sherman
P.O. Box 1106
Sherman TX 75091
US

Deliver To:

Dillon Stewart
Sherman Fire Department
City of Sherman
P.O. Box 1106
Sherman TX 75091
US
Phone:dillons@cityofsherman.com

Order Instructions:

No.	Item	Qty	U/M:		Unit Price		Net Amount
2	CHASSIS 2023 International CV515	1.00	EA	$	97,250.00	$	97,250.00
3	DELIVERY Customer Pick Up - FOB Frazer	1.00	M	$	0.00	$	0.00
5	HGAC-NEW Contract No. AM10-20	1.00	EA	$	1,000.00	$	1,000.00
6	SpecDoc Configurable item to create the SpecDoc	1.00	EA	$	0.00	$	0.00

Frazer will accept returns on parts up to 180 days after shipment. No restocking fee will be charged if the item is returned within 90 days of the original invoice date. All parts returns should be shipped back freight prepaid and require prior approval with a "Returns Material Authorization" (RMA) clearly displayed on the exterior of the shipping package. A credit will be issued towards the customer's account within approximately 7 business days of receipt of the item. If a part is returned after 90 days of the original invoice date a 15% restocking fee will be applied. Frazer Ltd reserves the right to accept returned items at its sole discretion based upon the condition of the item to be placed back into stock. :

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For your convenience, all pricing has been itemized below per quote Q2927-0001 for Sherman Fire Department

Base Module	$	145,900.00
Chassis Exterior	$	23,600.00
Module Exterior	$	34,100.00
Chassis Interior	$	4,375.00
Module Interior	$	28,850.00
	Total $	**236,825.00**

Items included in above totals:

1. Type I 14' Module - Side Entry Door Forward of Front I/O Configuration	$	6,150.00
2. This is a CAAS GVS v2.0 Unit	$	incl
Chassis Exterior:		
3. Heat Shielding for Diesel Chassis	$	2,025.00
4. Chassis Options: OEM back-up camera with in-dash monitor	$	incl
5. Chassis Paint Layout: Paint All One Color - Red	$	6,650.00
6. Chassis : 2023 International CV 515 (Class 4), Diesel, 4x2, Regular Cab, 108" Cab to Axle, Cameo White (NAV 9218)	$	incl
7. Suspension: Factory Liquid Spring	$	incl
8. Wheel type: Factory Aluminum	$	incl
9. Dual Dynamics Valve Stem Extender with Equalization and Pressure Indicator	$	375.00
10. Chrome Hub and Lug Nut Cover Upgrade	$	600.00
11. Road Force Elite tire and wheel balancing	$	incl
12. Grille Guard Bedliner	$	900.00
13. Grille Guard: Full Replacement Bumper	$	5,175.00
14. Led Go-Light with Black Housing with Control Pad at Chassis Headliner	$	1,700.00
15. 10" and 12" Air Horns	$	1,450.00
16. Manual Air Horn Air Drain Valve	$	575.00
17. Compressor Type: Fast Recovery	$	1,875.00
18. Switching Options: Momentary	$	125.00
19. Window Tint (35% VLT) on Chassis Doors	$	375.00
20. Exhaust Removal System: MagneGrip	$	1,275.00
21. Passenger's side Grille Light: Whelen M4 Blue/Red Light	$	125.00
22. Driver's side Grille Light: Whelen M4 Red/Blue Light	$	125.00
23. Passenger's side Intersect Light: Whelen M4 Blue/Red Light	$	125.00
24. Driver's side Intersect Light: Whelen M4 Red/Blue Light	$	125.00

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25. Note to Engineering, this is the magnetic plymovent exhaust tip	$	incl
Chassis Exterior Subtotal	**$**	**23,600.00**

Module Exterior:

26. Power Source: Onan 5.5kW Generator	$	12,625.00
27. Locking Gas Cap	$	incl
28. Module Paint Layout: Non-White One Tone - Red	$	3,350.00
29. Rear Wall 3M Conspicuity Layout - Chevron : Fluorescent Yellow/Green Base Color and Red - Translucent Overlay	$	2,025.00
30. Entry Door Conspicuity Layout - Squares : White Base Color	$	450.00
31. Compartment Conspicuity Layout - Strips : White Base Color	$	250.00
32. Frazer Provided Graphics	$	3,500.00
33. Body Drop on the Passenger's Side Forward of Rear Wheels	$	incl
34. Hidden Switch Behind the Driver's Side Front Corner Stone Guard	$	300.00
35. Shore Power: Single 30 Amp on Front Wall	$	incl
36. Pigtail/Plug Option: Pigtail	$	incl
37. Install Ignition Kill Switch	$	375.00
38. Coax 1: Run coax from location 1 to Chassis	$	incl
39. Coax 2: Run coax from location 2 to Chassis	$	incl
40. Coax 3: Run coax from location 3 to Electrical Compartment	$	incl
41. Coax 4: Run coax from location 4 to Electrical Compartment	$	incl
42. UNOC #535 Install Customer Provided Radio Equipment: -Motorola APX 8500 radio base in the electrical compartment; battery hot ignition activated -Antenna on the module roof -Radio head in console slot 3; battery hot, ignition activated. -Mic on P/S of console slot 1 Speaker on front of console.	$	850.00
43. Front Wall Light Layout: M Pattern Light	$	incl
44. Front Wall Light #1: Whelen M6 Amber Light	$	incl
45. Front Wall Light #2: Whelen M6 Red Light	$	incl
46. Front Wall Light #3: Whelen M6 Clear Light	$	incl
47. Front Wall Light #4: Whelen M6 Red Light	$	incl
48. Front Wall Light #5: Whelen M6 Amber Light	$	incl
49. Front Wall Driver Side Box Light: Whelen M6 Red Light	$	incl

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50. Front Wall Passenger Box Light: Whelen M6 Red Light	$	incl
51. UNOC 570 Furnish and Install HiViz 9000 Lumen MiniBrow Trunnion 18" LED light mounted near the top of flip down brush guard with switch on console	$	2,075.00
52. Driver Wall Front Box Light: Whelen M6 Red Light	$	incl
53. Driver Wall Rear Box Light: Whelen M6 Red Light	$	incl
54. Driver Wheel Well Light: Whelen M6 Red/Blue Light	$	125.00
55. Side Scene Lights: Frazer Standard Whelen M9 Chrome Housing	$	incl
56. O2 Compartment Style: 76" O2 Standup with Divider	$	incl
57. O2 Cylinder Bracket Type: Ratchet Straps for H Cylinder	$	incl
58. O2 Cylinder Changing Wrench	$	125.00
59. O2 Regulator - Ship Loose	$	250.00
60. Intermediate Compartment Style: Left T-Split	$	300.00
61. Additional Shelf in the Intermediate Compartment	$	125.00
62. Electrical Compartment Style: Taller Electrical Compartment	$	incl
63. Dometic Self-Contained A/C with Exhaust Fan	$	incl
64. Rear Storage Compartment Style: Rear Storage with Flatbars for SCBA Brackets	$	300.00
65. (2) SC-50-H-6-SF SCBA brackets raised 10" off the Floor of the Compartment	$	1,400.00
66. Coat Hooks: Four Hooks - 1 on Front Wall, 1 on Rear Wall, and 2 on an angle on the Ceiling	$	300.00
67. UNOC #1916 - Furnish and install (2) SC-50-H-5-SFPHS SCBA brackets on the flat bars in D/S rear storage compartment in lieu of standard SCBA brackets selected in CPQ.	$	incl
68. Module Window Option: Sliding Window	$	incl
69. Window Tint (5% VLT) on Rear and Side Entry Doors	$	375.00
70. Upper Rear Wall Light Layout: 3 Across	$	incl
71. Upper Light #1: Whelen M6 Load Light	$	incl
72. Upper Light #2: Whelen M6 Amber Light	$	incl
73. Upper Light #3: Whelen M6 Load Light	$	incl
74. Lower Light #1: Whelen M6 Brake/Tail/Turn Red Light	$	incl
75. Lower Light #2: Whelen M6 Brake/Tail/Turn Red Light	$	incl
76. Lower Light #3: Whelen M6 Red/Blue Light	$	125.00
77. Lower Light #4: Whelen M6 Red/Blue Light	$	125.00
78. Rear Wall Driver Box Light: Whelen M6 Red Light	$	incl
79. Rear Wall Passenger Box Light: Whelen M6 Red Light	$	incl

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80. Lower BTTs: 2 M6 Lights on each side	$	950.00
81. Rear Bumper	$	incl
82. Door Grabbers	$	incl
83. License Plate Light	$	incl
84. Passenger Wall Front Box Light: Whelen M6 Red Light	$	incl
85. Passenger Wall Rear Box Light: Whelen M6 Red Light	$	incl
86. Passenger Wheel Well Light: Whelen M6 Red/Blue Light	$	125.00
87. Passenger Scene Light Activated with Side Entry Door	$	425.00
88. Interior Step Option: Double Step Well	$	incl
89. Passenger Rear Compartment Style: Onan Genset Compartment	$	incl
90. Door Locks on Entry Doors and Compartments	$	3,250.00
Module Exterior Subtotal	**$**	**34,100.00**

Chassis Interior:

91. Siren Speakers: Whelen SA 315 Speakers	$	incl
92. Tap-2 on Primary Siren	$	incl
93. Siren Option: Whelen C9 Siren in Console	$	incl
94. Mic 1 on driver's side slot 1	$	incl
95. HAAS Alert System: HAAS Alert Responder to Vehicle - 3 Year Sub	$	incl
96. Slot 1: Extended MDT plate - swivel, no fuel gauge (swivel on passenger side)	$	625.00
97. Slot 2: Single Slot Switch Panel	$	incl
98. Slot 3: Radio Plate: 7.5 L X 2.5 W opening dims	$	incl
99. Slot 4: Siren 1	$	incl
100. Console Switch Layout : Primary - Secondary - Air Horn - Blank - Side Scene (Driver's Side) - Side Scene (Passenger's Side) - Rear Load - Interior Lights - Start/Stop Genset -	$	incl
101. New Armrest	$	300.00
102. Console Layout: 4-Slot Console	$	incl
103. Front Base of Console: 120VAC	$	700.00
104. Floor in Front of Console: Gamber Johnson Heavy Dual Cup Holder	$	250.00
105. Rear of Console: Single Mapholder	$	300.00
106. Chassis Rear Wall: 3 High Glove Box Holder	$	300.00
107. Camera System: Chevrolet OEM Back-up Camera System	$	700.00
108. Aftermarket Vinyl Seats	$	1,100.00

109. UNOC #1823 - Install customer provided Gamber Johnson docking station, with built-in power supply, on swivel on extended MDT plate.	$	100.00
Chassis Interior Subtotal	**$**	**4,375.00**

Module Interior:

110. Protek Cushions	$	incl
111. Desert Rose Red Interior	$	incl
112. Stainless Steel Countertops	$	incl
113. Safety Yellow Powdercoated Grab Rails	$	250.00
114. Stacked Cabinet with Medvault Opening	$	1,650.00
115. Medvault w/ Wifi	$	3,625.00
116. (2) Glove Box Holders on the Front Wall	$	450.00
117. Module Heater : New	$	1,150.00
118. Location 1: 8 Switch panel	$	incl
119. Location 2: Single O2 Outlet	$	incl
120. Location 3: Electric O2 panel with monitor	$	2,300.00
121. Location 4: Dual USB receptacles	$	300.00
122. Location 6: Thermostat	$	incl
123. Location 7: Blank	$	incl
124. Location 8: Quad 120 VAC	$	incl
125. Location 9: Suction	$	incl
126. Door Lock Switch at Action Wall	$	175.00
127. Action Wall Switch Layout : Interior Lights; Dimmer; Ventilation Fan; Electric O2; Module Heater - Hi/Off/Low; Blank; Blank; Unlock/Lock;	$	incl
128. Technimount ZOLL X Monitor Mount (Heavy Duty) on the Action Wall Countertop	$	1,975.00
129. Sharps Container at Action Wall	$	incl
130. Acrylic Holder at the Action Wall Cabinet	$	incl
131. New 6pt Harness at the CPR Seat	$	700.00
132. Acrylic Holder Aft CPR Seat	$	incl
133. Rear Door Switch Layout : Acknowledge; Blank; Dump/Bypass (Suspension); Rear Load;	$	incl
134. 2 High Glove Box Low and Sharps Container High on Rear Wall	$	500.00
135. Latching Double Interior Squad Bench Storage	$	incl
136. Two Seating Positions at the Squad Bench - 1 and 2	$	incl
137. Harness Type for Seat Position 1: New 6pt Harness	$	700.00

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138. Harness Type for Seat Position 2: New 6pt Harness	$	700.00
139. Triple Squad Bench Cabinet	$	1,225.00
140. Trashcan With Lid at the Head of the Squad Bench	$	incl
141. O2 Outlet Above the Front I/O	$	incl
142. Door Forward Front I/O with Hospital Grade Power Strip with Lexan Doors	$	incl
143. 2 High "D" Cylinder Holder in the Front I/O	$	250.00
144. Duplex Outlet Above the Front I/O	$	incl
145. Large Black Trashcan at the Side Entry Door	$	250.00
146. UNOC #638 - Furnish and install large acrylic holder, in lieu of 22-pocket holder, at squad bench position 3	$	350.00
147. UNOC #1751 - Furnish and install 2-high D cylinder holder in the exterior compartment below front I/O in lieu of being in the front I/O cabinet	$	incl
148. Note: This is a standard squadbench without a rear backboard compartment. This will have under squad bench storage with gas hold opens.	$	incl
149. Install Evergreen UV-C air and surface disinfection lamp in ceiling raceway with control unit in electrical compartment	$	6,000.00
150. O2 Outlet in Ceiling Raceway	$	450.00
151. IV Hanger on Ceiling Raceway	$	incl
152. Overhead Grabrails on Both Sides	$	300.00
153. IV Hanger on Squad Bench Ceiling	$	incl
154. Head knocker options: With Clock only	$	625.00
155. Stryker cot tower only (no antler and bar)	$	incl
156. Floor Options: Customer Provided Stryker Power-LOAD	$	2,225.00
157. Loncoin II Onyx Floor	$	incl
158. Captain's Chair Type: Valor's Captain's Chair with Child Safety Seat and 4pt. Harness	$	2,375.00
159. Customer Provided Items Processing Fee	$	325.00
Module Interior Subtotal	**$**	**28,850.00**

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Email this quote along with your PO

to Herbert Brady at hbrady@frazerbilt.com

Remit To:

Standard Terms and Conditions

INVOICING AND PAYMENT TERMS: Vendor shall submit one (1) original invoice per payment due. The invoice(s) shall include the items listed in accordance with the quote mentioned in the Sale Agreement with reference to the Customer's Purchase Order Number.

If the Sale Agreement provides for any progress (or advance) payments based on specific milestones or activities, Vendor's invoice shall certify to the accomplishment or performance by Vendor of said milestone or activity, and that Customer has obtained a security interest in such Products to the extent of such payment.

Payment shall be due upon receipt of the invoice and delivery of the unit to the Customer unless previously negotiated.

CANCELLATION POLICY: Cancellation of orders must be received 120 days prior to the agreed upon delivery date. If the order is cancelled within the 120 day window, a fee of 25% of the total purchase order price will apply.

DELIVERY TERMS: The products listed in the estimate are to be delivered Free On Board (FOB) Destination to Houston,TX. Customer representative(s) will pick up the unit at upfitter location, 7219 Rampart St., Houston, TX 77081 and transport it to their final destination at customer expense unless otherwise specified in the Vendor quote.

TERMINATION FOR CAUSE: Customer may terminate this Sale Agreement and any corresponding Purchase Order, or any part thereof, for cause including, but not limited to the following Vendor actions: (1) any default or breach of any of the terms and conditions of the Sale Agreement, (2) failure to provide Customer, upon request, a reasonable assurance of future performance, or (3) bankruptcy, dissolution, or suspension of payments by judicial decree. If Vendor does not cure such failure within a period of five (5) days or such a

longer period as Customer may authorize in writing after the date such notice is sent to Vendor, then termination may proceed.

Vendor may also terminate this Sale Agreement and any corresponding Purchase Order for cause, and Vendor will not be in breach of same, in the event any supplier to Vendor fails to deliver Products and/or component parts in a timely fashion and Vendor cannot make alternate accommodations in order to comply with the Parties' agreed upon completion and delivery dates.

CHANGE ORDERS: Vendor has the right to modify the Purchase Order requirements and conditions as needed and will advise Customer in writing of such requested changes. Vendor shall not proceed with any changes without Customer's written authorization. Any request by Customer to change the terms or conditions of the Purchase Order, including product specifications, options, and price, must be made in advance of the production job order release. Any changes made after the release of the production job order will incur a $350 fee per change order made in a 24 hour period and will be included on a secondary invoice. Vendor reserves the right to refuse changes requested by the Customer.

PROPRIETARY INFORMATION, CONFIDENTIALITY AND ADVERTISING: All commercial, financial or technical information in any form that Vendor provides to Customer shall be deemed proprietary and confidential and Customer shall not disclose such information to third parties without Vendor's written consent. Termination of the Sale Agreement shall not relieve Customer of this confidentiality obligation. Upon Vendor's request, Customer shall return all confidential information to Vendor along with any reproductions, in whole or in part. The confidentiality obligation does not apply to information that is in the public domain through no fault of Customer or to information lawfully within Customer's possession prior to the date of the Purchase Order, as evidenced by Customer's written records.

INDEMNIFICATION: Customer shall fully release, indemnify, defend and hold harmless Vendor, its co-venturers, its contractors, and their respective affiliates, and Vendor's and their respective directors, officers and employees (including agency personnel) ("Vendor Group") from and against any and all claims arising out of the Customer's purchase, use, sale or incorporation of any Products purchased from Vendor into Customer's products or equipment wherein it is claimed or alleged that Vendor's Products are defective or violate any warranty, standard of care, industry standard or governmental regulation or term or condition of any Purchase Order without regard to any allegation of negligence on the part of the Vendor Group as it pertains to Vendor's Products.

Vendor shall fully release, indemnify, defend and hold harmless Customer, its co-venturers, its contractors, and their respective affiliates, and the Customer's and their respective directors, officers and employees (including

agency personnel) ("Customer Group") from and against any and all claims arising out of the Customer's purchase, use, sale or incorporation of any Products purchased from Vendor into Customer's products or equipment wherein it is claimed or alleged that Vendor's Products are defective or violate any warranty, standard of care, industry standard or governmental regulation or term or condition of any Purchase Order without regard to any allegation of negligence on the part of the Customer Group as it pertains to Vendor's Products.

Customer Initials: _____

LIMITATIONS ON DAMAGES: In the event of any dispute, disagreement or breach alleged by Customer on the part of Vendor, Customer's exclusive and sole remedy shall be repair or replacement, if practical, of the module, or component part, by Vendor. If Vendor is not able to effectuate a repair, replacement, or cure that brings the module, or component part, into compliance with the Parties' agreement, then Vendor shall refund the sale price to Customer. In no event shall Vendor be liable to Customer, or to any third-party acting through Customer, for any additional, consequential or punitive damages, or damages for lost sales, revenue or profits claimed by Customer or any third-party acting through Customer.

FORCE MAJEURE: A force majeure delay shall mean any delay or other unforeseeable causes beyond the reasonable control of the party affected, provided that any such delay is not caused, in whole or in part, by the acts or omissions of the party so delayed and further provided that such party is unable to make up for such delay with reasonable diligence and speed. If any such cause delays Vendor's performance, the delivery date or time for completion may be extended by a period of time reasonably necessary to overcome the effect of such delay; however, Vendor shall take all reasonable measures to mitigate the effects of the force majeure event and to minimize such delay. A party affected by a force majeure event shall notify the other party of such force majeure event within forty-eight (48) hours of its knowledge of such event for the event to be considered a bona fide force majeure event.

TITLE AND RISK OF LOSS: Title to the Products shall transfer to Customer upon receipt of Products by Customer or its agent unless otherwise stated in the Sale Agreement. Notwithstanding the above, risk of loss of the Products shall remain with Vendor until delivered to Customer.

WAIVER: Vendor's failure to exercise or enforce any right in the Purchase Order, or any other right or privilege under law, or Vendor's waiver of any breach by Customer shall not constitute a waiver or modification of any terms, conditions, privileges or rights whether of the same or similar type, unless Vendor gives such waiver in writing.

LIENS: Vendor waives and relinquishes all existing and future liens and claims (statutory or otherwise) for the Products specified in the Purchase Order, and warrants that the Products will be free and clear of all liens, claims or encumbrances of any kind.

INSPECTION, REVIEW AND WITNESSING: Customer and/or the ultimate owner of the Products have the right to inspect and attend testing of the Products at Vendor's premises (or its supplier's or subcontractor's premises) with reasonable advance notice. If any inspection is made on the premises of Vendor or its supplier, Vendor, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties.

APPLICABLE LAW AND VENUE: The Sale Agreement shall be governed and interpreted in accordance with the laws of the State of Texas, without reference to any principle of conflict of laws. Customer and Vendor expressly exclude the application of the Convention on International Sale of Goods to the Sale Agreement. Venue for all judicial, administrative, or regulatory proceedings shall be Houston, Harris County, Texas.

OWNERSHIP OF DOCUMENTS: Title to all drawings, specifications, calculations, technical data and other documents that Customer submits in accordance with the Purchase Order shall vest with Vendor. Vendor shall have the right to use such documents for any purpose pertaining to the manufacture, assembly, and delivery of the Products.

Title to all drawings, specifications, calculations, technical data, and other documents that Vendor submits to the Customer shall vest with the Customer. Customer shall have the right to use such documents for any purpose pertaining to the installation, operation, and maintenance of the Products.

INSURANCE: Vendor shall comply with the project insurance requirements for which the Products are being provided. Customer shall provide specific reasonable levels required as soon as such levels are available, which shall not exceed $1,000,000 for any non-statutory category other than excess liability umbrella, which shall not exceed $4,000,000. When requested by Customer, Vendor shall provide certificates of insurance as proof of same.

SURVIVAL: The provisions of the following Paragraphs of these Terms and Conditions shall survive any cancellation or termination of the Purchase Order: (Proprietary Information, Confidentiality and Advertising), (Indemnification), (Liens), and (Applicable Law and Venue).

Customer Quote

2/14/2023 2:49:40 PM

Estimate No:	Q2927-0001
Quote Date:	2/13/2023
Expiration Date:	4/30/2023
Salesperson:	HB
Payment Terms:	Net 30

Order Instructions:

No.	Item	Qty	U/M:		Unit Price		Net Amount

Sale Amount:	335,075.00
Order Disc(0.0000%):	0.00
Surcharge:	N/A
Sales Tax:	0.00
Misc Charges:	0.00
Total Amount:	335,075.00

Frazer will accept returns on parts up to 180 days after shipment. No restocking fee will be charged if the item is returned within 90 days of the original invoice date. All parts returns should be shipped back freight prepaid and require prior approval with a "Returns Material Authorization" (RMA) clearly displayed on the exterior of the shipping package. A credit will be issued towards the customer's account within approximately 7 business days of receipt of the item. If a part is returned after 90 days of the original invoice date a 15% restocking fee will be applied. Frazer Ltd reserves the right to accept returned items at its sole discretion based upon the condition of the item to be placed back into stock. :

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **F. 1.**

Meeting Date: 05/01/2023
Prepared By: Jana Walker, Controller
Approved By: Robby Hefton, City Manager

Caption:

**** REQUEST TO ADVERTISE***
Services to Perform the Annual Audit for the Period Ending September 30, 2023

Issue:

Requesting permission to advertise for services to perform the annual audit for the fiscal year ending September 30, 2023

Background:

By Charter, the City Council is required to annually appoint an independent auditor to perform a financial audit for the City. Additionally, a compliance audit is required in years when federal and state grant expenditures exceed certain thresholds. Five years ago, Pattillo, Brown & Hill, L.L.P. was awarded the audit based on proposals submitted by various audit firms. All renewals for audit services provided by Pattillo, Brown & Hill, L.L.P. have expired; and staff seeks permission to advertise for audit services for the fiscal year ending September 30, 2023.

Origination:

Finance Director and Audit Committee

Financial Consideration:

The cost of advertising will be less than $500.00.

Staff Recommendation:

Staff recommends that the Council instruct the Audit Committee to seek proposals for the services of an independent auditor to perform the annual audit for the fiscal year ending September 30, 2023. The Finance Director will present the Audit Committee with a list of potential auditors.

Alternatives:

As may be directed by the City Council

Attachments

Audit Committee Memo

Sherman
CLASSIC TOWN. BROAD HORIZON.

memorandum

DATE: Tuesday, April 25, 2023

TO: The Council Audit Committee
The Honorable David Plyler, Mayor
The Honorable Daron Holland, Council Member
The Honorable Shawn Teamann, Council Member

CC: Robby Hefton, City Manager

FROM: Mary Lawrence, Director of Finance ml

SUBJECT: **Request to Advertise for the Independent Audit for the Fiscal Year Ended September 30, 2023**

Patillo, Brown and Hill, a Certified Public Accounting firm has performed the annual audit for the City for the past five years. All renewals for audit services have expired. Subject to Audit Committee and City Council approval, the staff proposes to advertise for proposals for audit services for the fiscal year ending September 30, 2013 on the May 1, 2023 City Council agenda.

Please contact me if you have any questions.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 1.**

Meeting Date: 05/01/2023

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider Approval of the Annexation Scheduling Plan for Adoption of Approximately 78 acres of land located North of Post Oak Creek, South of Three Oaks, Phase II, and along the Burlington Santa Fe Railroad, adjacent to the Sherman City Limits and in the City of Sherman's Extraterritorial Jurisdiction; and Directing the Department of Engineering Services to Develop a Service Plan for the Area to be Annexed Upon Approval of the Annexation Scheduling Plan

Issue:

To consider approval of the schedule for annexation of approximately 78 acres of land located north of Post Oak Creek, south of Three Oaks, Phase II, and along the Burlington Santa Fe Railroad, adjacent to the Sherman City Limits, and in the City's extraterritorial jurisdiction (ETJ), in accordance with state law and the City Charter

Background:

The property owner, City of Sherman, has requested annexation into the city limits of approximately 78 acres of land located north of Post Oak Creek, south of Three Oaks, Phase II, and along the Burlington Santa Fe Railroad, adjacent to the Sherman City Limits and in the City's ETJ.

City staff recommends the public hearing on its intent to annex be held at the May 15th meeting and that action on the Annexation Ordinance be taken at the same meeting.

Origination:

City of Sherman

Financial Consideration:

A cost benefit analysis will be prepared prior to final action on this item.

Staff Recommendation:

City Staff recommends that the public hearing on the intent to annex be held at the May 15th regular meeting and that action on the Annexation Ordinance be taken at the same meeting.

Alternatives:

None proposed

Attachments

Annexation Scheduling Plan - City of Sherman East Street

Legal Description

Survey

Aerial Location Map

ANNEXATION SCHEDULING PLAN

Annexation of approximately 78 acres of land located north of Post Oak Creek, south of Three Oaks, Phase II and along the Burlington Santa Fe Railroad, adjacent to the Sherman City Limits and in the City of Sherman's extra territorial jurisdiction being more specifically described as:
City of Sherman East Street Property

Monday, May 1, 2023	City Council sets public hearing date and accepts annexation application.
Wednesday, May 3, 2023	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 5, 2023.....	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 11, 2023	Post notice of public hearing as required by Open Meetings Act.
Monday, May 15, 2023.....	Hold public hearing. (Regular Council Meeting)
Monday, May 15, 2023.....	Adopt ordinance. (Regular Council Meeting)

UNDERWOOD

DRAFTING & SURVEYING, INC.

LEGAL DESCRIPTION
CITY OF SHERMAN
JOB NO. 23020119

Situated in the County of Grayson, State of Texas, being a part of Preston Kitchen Survey, Abstract No. 667, and being a retracement survey of a tract of land described in the deed to the City of Sherman, recorded in Volume 876, Page 150, Deed Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the western-most northwest corner of said City of Sherman Tract, common to the northeast corner of a called 49.497 acre tract of land described in the deed to Three Oaks Development and Construction Company, recorded in Document No. 2020-27922, Official Public Records, Grayson County, Texas, and on the southerly line of Three Oaks Addition, according to the plat thereof recorded in Document No. 2021-261, Plat Records, Grayson County, Texas;

Thence North 74°11'53" East, with a northerly line of said City of Sherman Tract, and with the southerly line of said Three Oaks Addition, a distance of 441.95 feet to a 1/2" steel rod found for the southeast corner of said Three Oaks Addition, and on the westerly side of South East Street (no record found);

Thence North 77°00'49" East, continuing with a northerly line of said City of Sherman Tract, a distance of 26.77 feet to a set 1/2" steel rod, and in South East Street;

Thence North 34°15'31" West, with a westerly line of said City of Sherman Tract, and in said South East Street, distance of 17.52 feet to a 1/2" steel rod found for the southwest corner of a called 5.29 acre tract of land described in the deed to Lynne K. Uldrich, recorded in Document No. 2019-17227, said Official Public Records;

Thence North 81°42'55" East, with a northerly line of said City of Sherman Tract, and with the southerly line of said 5.29 acre tract, distance of 372.28 feet to a set 1/2" steel rod;

Thence South 85°49'42" East, continuing with a northerly line of said City of Sherman Tract, and with the southerly line of said 5.29 acre tract, a distance of 198.65 feet to the southeast corner of said 5.29 acre tract, said point falls in a creek;

Thence with a westerly line of said City of Sherman Tract, and with the easterly line of said 5.29 acre tract, the following 11 course:

1. North 26°16'48" West, a distance of 27.45 feet to a point;
2. North 09°52'54" West, a distance of 54.45 feet to a point;
3. North 15°00'55" East, a distance of 82.45 feet to a point;
4. North 00°00'00" West, a distance of 21.81 feet to a point;
5. North 26°57'42" West, a distance of 17.99 feet to a point;
6. North 40°17'47" West, a distance of 40.71 feet to a point;
7. North 07°04'13" East, a distance of 15.33 feet to a point;
8. North 59°18'53" East, a distance of 24.96 feet to a point;
9. North 06°12'58" East, a distance of 20.50 feet to a point;
10. North 23°38'11" West, a distance of 47.11 feet to a point;
11. North 42°34'17" West, a distance of 34.81 feet to the northern-most northwest corner of said City of Sherman Tract, common to the northeast corner of said 5.29 acre tract, and on the southerly line

of a called 15.5696 acre tract of land described in the deed to Delbert D. Newjmanowski, Trustee, recorded in Volume 1367, Page 781, said Deed Records;

Thence North 88°54'29" East, with a northerly line of said City of Sherman Tract, and with the southerly line of said 15.5696 acre tract, a distance of 13.91 feet to a set 1/2" steel rod;

Thence North 74°37'29" East, continuing with a northerly line of said City of Sherman Tract, and with the southerly line of said 15.5696 acre tract, a distance of 241.66 feet to a 1/2" steel rod set for the northeast corner of said City of Sherman Tract, common to the southeast corner of said 15.5696 acre tract, and on the westerly right-of-way line of Saint Louis, San Francisco, and Texas Railroad (abandoned);

Thence South 25°15'49" East, with the easterly line of said City of Sherman Tract, and with the westerly right-of-way line of Saint Louis, San Francisco, and Texas Railroad (abandoned), a distance of 2662.62 feet to the southeast corner of said City of Sherman Tract, common to the northeast corner of a tract of land described in the deed to Thanh Trong Nguyen and Thu Thuy Pham, recorded in Document No. 2017-18222, said Official Public Records, said point falls in Post Oak Creek;

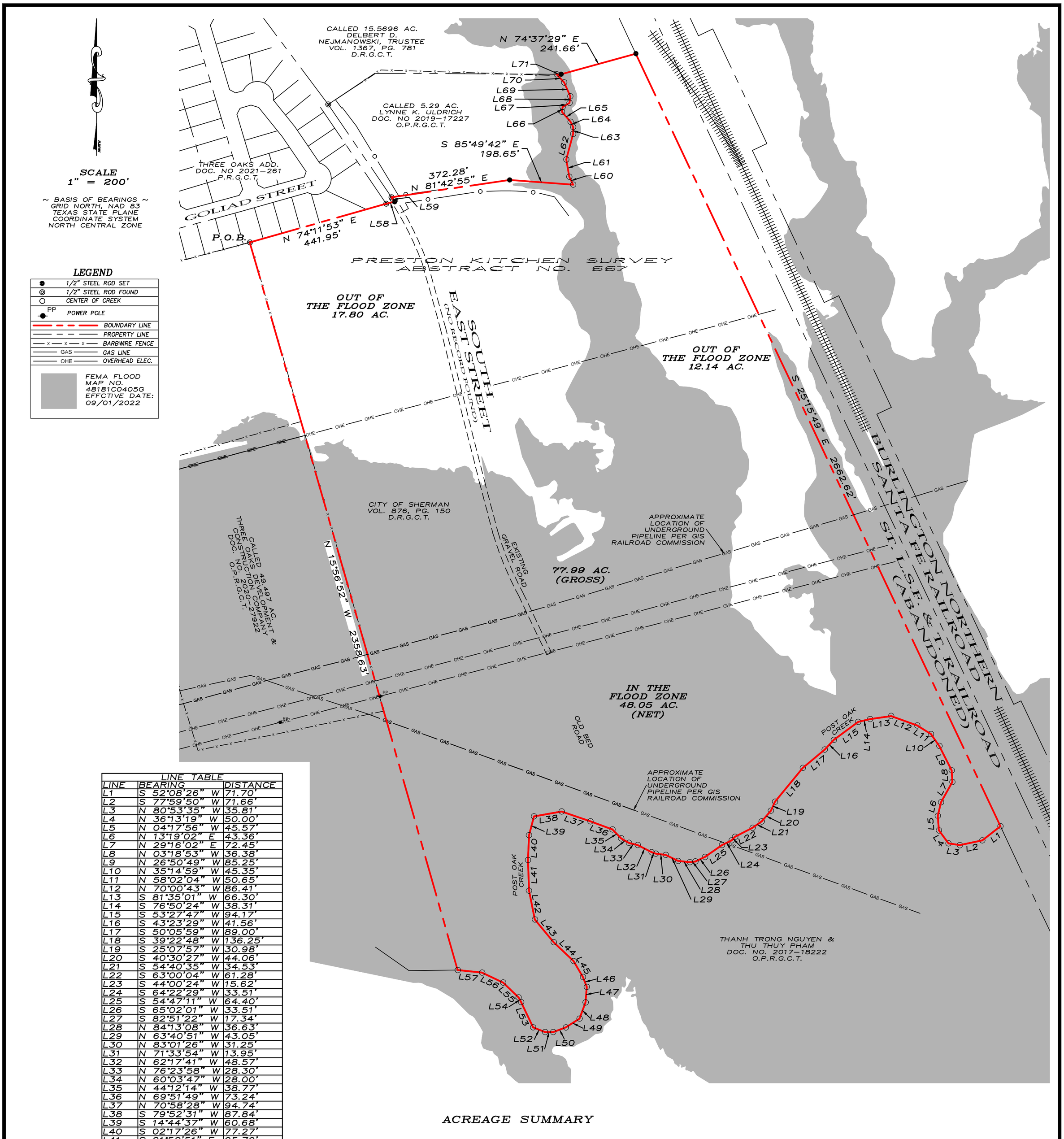
Thence with the southerly line of said City of Sherman Tract, and with the northerly line of said Nguyen Tract, and in said Post Oak Creek, the following 57 courses:

1. South 52°08'26" West, a distance of 71.70 feet to a point;
2. South 77°59'50" West, a distance of 71.66 feet to a point;
3. North 80°53'35" West, a distance of 35.81 feet to a point;
4. North 36°13'19" West, a distance of 50.00 feet to a point;
5. North 04°17'56" West, a distance of 45.57 feet to a point;
6. North 13°19'02" East, a distance of 43.36 feet to a point;
7. North 29°16'02" East, a distance of 72.45 feet to a point;
8. North 03°18'53" West, a distance of 36.38 feet to a point;
9. North 26°50'49" West, a distance of 85.25 feet to a point;
10. North 35°14'59" West, a distance of 45.35 feet to a point;
11. North 58°02'04" West, a distance of 50.65 feet to a point;
12. North 70°00'43" West, a distance of 86.41 feet to a point;
13. South 81°35'01" West, a distance of 66.30 feet to a point;
14. South 76°50'24" West, a distance of 38.31 feet to a point;
15. South 53°27'47" West, a distance of 94.17 feet to a point;
16. South 43°23'29" West, a distance of 41.56 feet to a point;
17. South 50°05'59" West, a distance of 89.00 feet to a point;
18. South 39°22'48" West, a distance of 136.25 feet to a point;
19. South 25°07'57" West, a distance of 30.98 feet to a point;
20. South 40°30'27" West, a distance of 44.06 feet to a point;
21. South 54°40'35" West, a distance of 34.53 feet to a point;
22. South 63°00'04" West, a distance of 61.28 feet to a point;
23. South 44°00'24" West, a distance of 15.62 feet to a point;
24. South 64°22'29" West, a distance of 33.51 feet to a point;
25. South 54°47'11" West, a distance of 64.40 feet to a point;
26. South 65°02'01" West, a distance of 33.51 feet to a point;
27. South 82°51'22" West, a distance of 17.34 feet to a point;
28. North 84°13'08" West, a distance of 36.63 feet to a point;
29. North 63°40'51" West, a distance of 43.05 feet to a point;
30. North 83°01'26" West, a distance of 31.25 feet to a point;
31. North 71°33'54" West, a distance of 13.95 feet to a point;

32. North 62°17'41" West, a distance of 48.57 feet to a point;
33. North 76°23'58" West, a distance of 28.30 feet to a point;
34. North 60°03'47" West, a distance of 28.00 feet to a point;
35. North 44°12'14" West, a distance of 38.77 feet to a point;
36. North 69°51'49" West, a distance of 73.24 feet to a point;
37. North 70°58'28" West, a distance of 94.74 feet to a point;
38. South 79°52'31" West, a distance of 87.84 feet to a point;
39. South 14°44'37" West, a distance of 60.68 feet to a point;
40. South 02°17'26" West, a distance of 77.27 feet to a point;
41. South 01°50'51" East, a distance of 95.79 feet to a point;
42. South 11°41'22" East, a distance of 91.46 feet to a point;
43. South 39°33'35" East, a distance of 92.14 feet to a point;
44. South 46°28'08" East, a distance of 85.20 feet to a point;
45. South 30°44'24" East, a distance of 57.67 feet to a point;
46. South 20°33'22" East, a distance of 32.98 feet to a point;
47. South 04°05'08" West, a distance of 48.47 feet to a point;
48. South 20°30'43" West, a distance of 53.98 feet to a point;
49. South 57°06'26" West, a distance of 50.65 feet to a point;
50. South 70°12'03" West, a distance of 42.13 feet to a point;
51. North 90°00'00" West, a distance of 25.25 feet to a point;
52. North 68°52'11" West, a distance of 40.02 feet to a point;
53. North 25°18'46" West, a distance of 86.98 feet to a point;
54. North 28°26'35" West, a distance of 16.85 feet to a point;
55. North 46°10'09" West, a distance of 66.89 feet to a point;
56. North 64°47'56" West, a distance of 72.53 feet to a point;
57. North 83°58'01" West, a distance of 76.44 feet to the southwest corner of said City of Sherman Tract, common to the southeast corner of aforesaid 49.497 acre tract;

Thence North 15°56'52" West, with a westerly line of said City of Sherman Tract, and with the easterly line of said 49.497 acre tract, a distance of 2358.63 feet to the Point of Beginning and containing 77.99 acres of land, more or less.

04/11/2023



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 52°08'26" W	71.70'
L2	S 77°59'50" W	71.66'
L3	N 80°53'35" W	35.81'
L4	N 36°13'19" W	50.00'
L5	N 04°17'56" W	45.57'
L6	N 13°19'02" E	43.36'
L7	N 29°16'02" E	72.45'
L8	N 03°18'53" W	36.38'
L9	N 26°50'49" W	85.25'
L10	N 35°14'59" W	45.35'
L11	N 58°02'04" W	50.65'
L12	N 70°00'43" W	86.41'
L13	S 81°35'01" W	66.30'
L14	S 76°50'24" W	38.31'
L15	S 53°27'47" W	94.17'
L16	S 43°23'29" W	41.56'
L17	S 50°05'59" W	89.00'
L18	S 39°22'48" W	136.25'
L19	S 25°07'57" W	30.98'
L20	S 40°30'27" W	44.06'
L21	S 54°40'35" W	34.53'
L22	S 63°00'04" W	61.28'
L23	S 44°00'24" W	15.62'
L24	S 64°22'29" W	33.51'
L25	S 54°47'11" W	64.40'
L26	S 65°02'01" W	33.51'
L27	S 82°51'22" W	17.34'
L28	N 84°13'08" W	36.63'
L29	N 63°40'51" W	43.05'
L30	N 83°01'26" W	31.25'
L31	N 71°33'54" W	13.95'
L32	N 62°17'41" W	48.57'
L33	N 76°23'58" W	28.30'
L34	N 60°03'47" W	28.00'
L35	N 44°12'14" W	38.77'
L36	N 69°51'49" W	73.24'
L37	N 70°58'28" W	94.74'
L38	S 79°52'31" W	87.84'
L39	S 14°44'37" W	60.68'
L40	S 02°17'26" W	77.27'
L41	S 01°50'51" E	95.79'
L42	S 11°41'22" E	91.46'
L43	S 39°33'35" E	92.14'
L44	S 46°28'08" E	85.20'
L45	S 30°44'24" E	57.67'
L46	S 20°33'22" E	32.98'
L47	S 04°05'08" W	48.47'
L48	S 20°30'43" W	53.98'
L49	S 57°06'26" W	50.65'
L50	S 70°12'03" W	42.13'
L51	N 90°00'00" W	25.25'
L52	N 68°52'11" W	40.02'
L53	N 25°18'46" W	86.98'
L54	N 28°26'35" W	16.85'
L55	N 46°10'09" W	66.89'
L56	N 64°47'56" W	72.53'
L57	N 83°58'01" W	76.44'
L58	N 77°00'49" E	26.77'
L59	N 34°15'31" W	17.52'
L60	N 26°16'48" W	27.45'
L61	N 09°52'54" W	54.45'
L62	N 15°00'55" E	82.45'
L63	N 00°00'00" W	21.81'
L64	N 26°57'42" W	17.99'
L65	N 40°17'47" W	40.71'
L66	N 07°04'13" E	15.33'
L67	N 59°18'53" E	24.96'
L68	N 06°12'58" E	20.50'
L69	N 23°38'11" W	47.11'
L70	N 42°34'17" W	34.81'
L71	N 88°54'29" E	13.91'

ACREAGE SUMMARY

OUT OF THE FLOOD ZONE	17.80 AC.
OUT OF THE FLOOD ZONE	12.14 AC.
IN THE FLOOD ZONE (NET)	48.05 AC.
TOTAL (GROSS)	77.99 AC.

SEE LEGAL ATTACHED

This survey contains information that is proprietary to Underwood Drafting & Surveying, Inc. Its use or disclosure in whole or part without the express written permission of Underwood Drafting & Surveying, Inc. is prohibited.

This survey is also unpublished work protected under the copyright laws of the United States of America. If this work becomes published, the following notice shall apply:

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All rights reserved.

I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

Douglas W. Underwood
Registered Professional
Land Surveyor No. 4709
Firm No. 10006300
DATE OF SURVEY: 04/11/23

UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

JOB NO. 23020119 COS
FW: HC – DFT: BH

CROCKETT
COTTAGE
SHERMAN
SAN JACINTO
ALAMO
SIDNEY
EAST
MEADOW VIEW
GOLIAD
MILLER
TRAVIS
CROCKETT
AYERS
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SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 2.**

Meeting Date: 05/01/2023

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider Approval of the Annexation Scheduling Plan for Adoption of Approximately 25.08 acres of land located North of Post Oak Creek, East of U.S. Highway 75 and South of Three Oaks, Phase II, adjacent to the Sherman City Limits and in the City of Sherman's Extraterritorial Jurisdiction; and Directing the Department of Engineering Services to Develop a Service Plan for the Area to be Annexed Upon Approval of the Annexation Scheduling Plan

Issue:

To consider approval of the schedule for annexation of approximately 25.08 acres of land located north of Post Oak Creek, east of U.S. Highway 75 and south of Three Oaks, Phase II, adjacent to the Sherman City Limits, and in the City's extraterritorial jurisdiction (ETJ), in accordance with state law and the City Charter

Background:

The property owner,Three Oaks Development and Construction, has requested annexation into the city limits of approximately 25.08 acres of land located north of Post Oak Creek, east of U.S. Highway 75 and south of Three Oaks, Phase II, adjacent to the Sherman City Limits and in the City's ETJ.

City staff recommends the public hearing on its intent to annex be held at the May 15th meeting and that action on the Annexation Ordinance be taken at the same meeting.

Origination:

Letter requesting annexation by Three Oaks Development and Construction

Financial Consideration:

A cost benefit analysis will be prepared prior to final action on this item.

Staff Recommendation:

City Staff recommends that the public hearing on the intent to annex be held at the May 15th called meeting and that action on the Annexation Ordinance be taken at the same meeting.

Alternatives:

None proposed

Attachments

Annexation Scheduling Plan - Three Oaks III
Request for Annexation
Annexation Service Plan Agreement
Legal Description
Survey
Aerial Location Map

ANNEXATION SCHEDULING PLAN

Annexation of approximately 25.08 acres of land adjacent to the city limits, located North of Post Oak Creek, East of U.S. Highway 75 and South of Post of Three Oaks Phase II,
being more specifically described as:
Three Oaks Phase III

Monday, May 1, 2023	City Council sets public hearing date and accepts annexation application.
Wednesday, May 3, 2023	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 5, 2023.....	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 11, 2023	Post notice of public hearing as required by Open Meetings Act.
Monday, May 15, 2023.....	Hold public hearing. (Regular Council Meeting)
Monday, May 15, 2023.....	Adopt ordinance. (Regular Council Meeting)

Doan, Amber

From: Kirk Allen <kirkallen@yahoo.com>
Sent: Thursday, April 20, 2023 1:07 PM
To: Doan, Amber
Subject: Annexation request, survey coming from Underwood today

EXTERNAL EMAIL: -- Avoid clicking on links or files -- Be safe!

Amber,

Please accept this email as a formal request for annexation of the Three Oaks parcel identified on separate survey from Underwood Drafting and Surveying.

Previously we had annexed the northern portion but IAW our development plans and a possible park option we wish to include the entire parcel (+/- 49 acres in total) into the city limits.

Thank you,

Kirk Allen
Three Oaks Development and Construction Company

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 THREE OAKS DEVELOPMENT AND CONSTRUCTION ("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 25.08± acres, situated in the Preston Kitchens 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 it 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:

THREE OAKS DEVELOPMENT AND CONSTRUCTION
Attn: Kirk Allen
1313 W. Washington
Sherman, Texas 75092
Telephone: (972) 672-7793
Email: kirkallen@yahoo.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

THREE OAKS DEVELOPMENT AND CONSTRUCTION

By: _____
Printed Name: Kirk D. Allen
Title: President
Date: 4/20/23

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 _____, 2023.

_____
Notary Public, State of Texas
My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF Grayson §

BEFORE ME, the undersigned authority, on this day personally appeared **KIRK ALLEN,** 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 20th day of April, 2023.

Amber Doan
_____
Notary Public, State of Texas
My Commission Expires: 09/12/2024

AMBER DOAN
Notary Public, State of Texas
Comm. Expires 09-12-2024
Notary ID 12467837-6

Exhibit A

Situated in the County of Grayson, State of Texas, being a part of the Preston Kitchens Survey, Abstract No. 667, and being a part of that tract of land described as 50.908 acres conveyed to Harold and Patsy Falk by deed recorded in Volume 1616, Page 664, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Commencing at the northwest corner of that Tract of land conveyed to the City of Sherman, Recorded in Volume 876, Page 150, Deed Records, Grayson County, Texas;

Thence South 15°56'52" East, with the west line of said City of Sherman, tract a distance of 829.25 feet to the Point-of-Beginning;

Thence South 15°56'52" East, and continuing with said west line a distance of 1529.38 feet to a point in the center of Choctaw Creek;

Thence the Following Calls and Distances with the center of said Choctaw Creek:

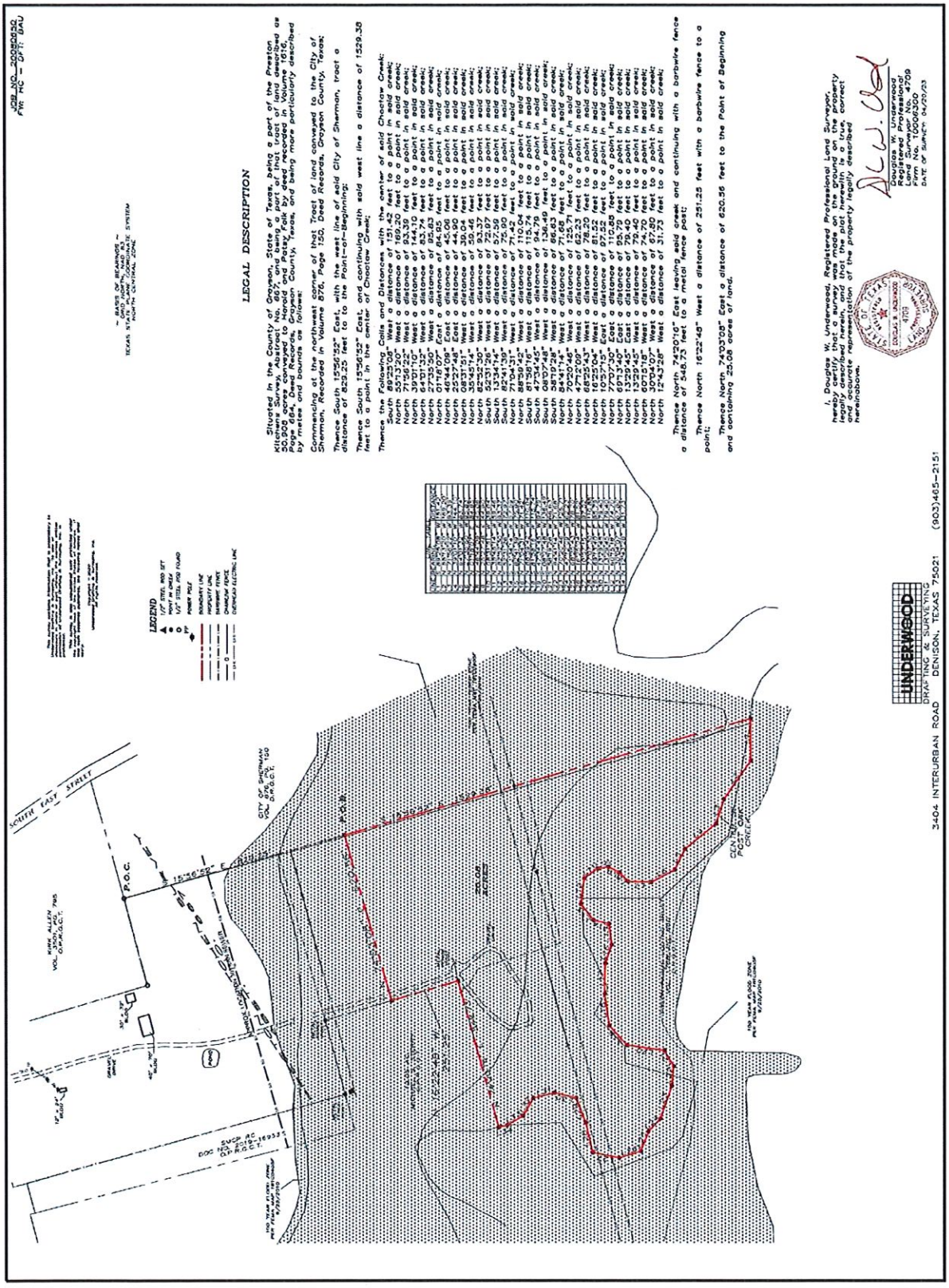
South 89°25'08" West a distance of 151.42 feet to a point in said creek;
North 55°13'20" West a distance of 169.20 feet to a point in said creek;
North 71°56'22" West a distance of 93.39 feet to a point in said creek;
North 39°01'10" West a distance of 144.10 feet to a point in said creek;
North 64°01'32" West a distance of 83.74 feet to a point in said creek;
North 27°35'50" West a distance of 95.83 feet to a point in said creek;
North 01°18'07" East a distance of 84.95 feet to a point in said creek;
North 46°44'09" East a distance of 45.06 feet to a point in said creek;
North 25°27'48" East a distance of 44.90 feet to a point in said creek;
North 08°31'51" West a distance of 39.04 feet to a point in said creek;
North 35°45'14" West a distance of 59.46 feet to a point in said creek;
North 82°52'30" West a distance of 93.37 feet to a point in said creek;
South 52°31'26" West a distance of 72.97 feet to a point in said creek;
South 13°34'14" West a distance of 57.59 feet to a point in said creek;
South 82°41'39" West a distance of 75.90 feet to a point in said creek;
North 71°04'31" West a distance of 71.42 feet to a point in said creek;
North 88°59'42" West a distance of 110.04 feet to a point in said creek;
South 81°58'16" West a distance of 115.74 feet to a point in said creek;
South 47°34'45" West a distance of 94.79 feet to a point in said creek;
South 08°07'48" West a distance of 136.49 feet to a point in said creek;
South 58°19'28" West a distance of 66.63 feet to a point in said creek;
North 84°41'14" West a distance of 71.68 feet to a point in said creek;
North 70°20'46" West a distance of 125.71 feet to a point in said creek;
North 47°12'09" West a distance of 62.23 feet to a point in said creek;
North 68°25'43" West a distance of 78.20 feet to a point in said creek;
North 16°25'04" West a distance of 81.52 feet to a point in said creek;
North 10°57'15" East a distance of 97.52 feet to a point in said creek;
North 77°07'30" East a distance of 110.88 feet to a point in said creek;
North 69°13'40" East a distance of 95.79 feet to a point in said creek;
North 13°29'45" East a distance of 79.40 feet to a point in said creek;

North 13°29'45" West a distance of 79.40 feet to a point in said creek;
North 60°15'18" West a distance of 74.70 feet to a point in said creek;
North 30°04'07" West a distance of 67.80 feet to a point in said creek;
North 12°43'28" West a distance of 31.73 feet to a point in said creek;

Thence North 74°20'16" East leaving said creek and continuing with a barbwire fence a distance of 548.73 feet to a metal fence post;

Thence North 16°22'48" West a distance of 251.25 feet with a barbwire fence to a point;

Thence North 74°03'08" East a distance of 620.56 feet to the Point of Beginning and containing 25.08 acres of land.


JOB NO. 20060630
FW: HC — DFT: BAU
LEGAL DESCRIPTION
Situated in the County of Grayson, State of Texas, being a part of the Preston Kitchens Survey, Abstract No. 867, and being a part of that tract of land described as 50.00 acres, described in deed to Three Oaks Development and Construction, recorded in Page 684, Deed Records Grayson County, Texas, and being more particularly described by metes and bounds as follows:
Commencing at the northwest corner of that Tract of land conveyed to the City of Sherman, Recorded in Volume 876, Page 150, Deed Records, Grayson County, Texas;
Thence South 15°56'52" East, with the west line of said City of Sherman, tract a distance of 829.25 feet to to the Point-of-Beginning;
Thence South 15°56'52" East, and continuing with said west line a distance of 1529.38 feet to a point in the center of Choctaw Creek;
Thence the Following Calls and Distances with the center of said Choctaw Creek:
South 89°23'08" West a distance of 151.42 feet to a point in said creek;
North 55°13'20" West a distance of 189.20 feet to a point in said creek;
North 77°06'22" West a distance of 53.38 feet to a point in said creek;
North 39°01'10" West a distance of 144.10 feet to a point in said creek;
North 64°01'32" West a distance of 83.74 feet to a point in said creek;
North 27°35'00" West a distance of 85.83 feet to a point in said creek;
North 37°08'07" East a distance of 64.88 feet to a point in said creek;
North 49°44'09" East a distance of 45.06 feet to a point in said creek;
North 25°27'48" East a distance of 44.90 feet to a point in said creek;
North 38°45'14" West a distance of 38.46 feet to a point in said creek;
North 82°52'30" West a distance of 93.37 feet to a point in said creek;
South 52°31'26" West a distance of 72.97 feet to a point in said creek;
South 61°43'36" West a distance of 74.36 feet to a point in said creek;
South 82°41'39" West a distance of 75.90 feet to a point in said creek;
North 71°04'31" West a distance of 71.42 feet to a point in said creek;
North 88°39'42" West a distance of 110.04 feet to a point in said creek;
South 61°38'14" West a distance of 111.74 feet to a point in said creek;
South 47°34'45" West a distance of 94.79 feet to a point in said creek;
South 08°07'48" West a distance of 136.49 feet to a point in said creek;
South 38°17'28" West a distance of 96.83 feet to a point in said creek;
South 84°46'46" West a distance of 66.63 feet to a point in said creek;
North 70°20'46" West a distance of 125.71 feet to a point in said creek;
North 47°27'09" West a distance of 62.23 feet to a point in said creek;
North 68°25'04" West a distance of 81.20 feet to a point in said creek;
North 10°57'13" East a distance of 87.52 feet to a point in said creek;
North 77°07'30" East a distance of 110.88 feet to a point in said creek;
North 13°29'45" East a distance of 79.40 feet to a point in said creek;
North 13°29'45" East a distance of 79.40 feet to a point in said creek;
North 13°29'45" East a distance of 79.40 feet to a point in said creek;
North 80°51'18" West a distance of 74.70 feet to a point in said creek;
North 12°43'28" West a distance of 92.82 feet to a point in said creek;
North 12°43'28" West a distance of 31.73 feet to a point in said creek;
Thence North 74°30'16" East leaving said creek and continuing with a barbwire fence a distance of 546.73 feet to a metal fence post;
Thence North 16°22'45" West a distance of 291.25 feet with a barbwire fence to a point;
Thence North 74°03'08" East a distance of 620.56 feet to the Point of Beginning and containing 20.08 acres of land.
I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the property legally described hereon and that this plat is a true, correct and accurate representation of the property legally described hereinabove.
Douglas W. Underwood
Registered Professional Land Surveyor
Firm No. 100063300
DATE OF SURVEY: 04/20/23
UNDERWOOD
SURVEYING & DRAFTING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151
LEGEND
BOUNDARY LINE
PROPERTY LINE
BARBWIRE FENCE
CHAINLINK FENCE
OVERHEAD ELECTRIC LINE
POWER POLE
P.O.B.
P.O.C.
SOUTH EASY STREET
CITY OF SHERMAN VOL. 876, PG. 150 D.R.G.C.T.
KIRK ALLEN VOL. 2309, PG. 795 O.P.R.G.C.T.
CENTER OF CHOCTAW CREEK
100 YEAR FLOOD ZONE PER FEMA MAP #48181C0210D

Situated in the County of Grayson, State of Texas, being a part of the Preston Kitchens Survey, Abstract No. 667, and being a part of that tract of land described as 50.908 acres conveyed to Harold and Patsy Falk by deed recorded in Volume 1616, Page 664, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Commencing at the northwest corner of that Tract of land conveyed to the City of Sherman, Recorded in Volume 876, Page 150, Deed Records, Grayson County, Texas;

Thence South 15°56'52" East, with the west line of said City of Sherman, tract a distance of 829.25 feet to the Point-of-Beginning;

Thence South 15°56'52" East, and continuing with said west line a distance of 1529.38 feet to a point in the center of Choctaw Creek;

Thence the Following Calls and Distances with the center of said Choctaw Creek:

South 89°25'08" West a distance of 151.42 feet to a point in said creek;
North 55°13'20" West a distance of 169.20 feet to a point in said creek;
North 71°56'22" West a distance of 93.39 feet to a point in said creek;
North 39°01'10" West a distance of 144.10 feet to a point in said creek;
North 64°01'32" West a distance of 83.74 feet to a point in said creek;
North 27°35'50" West a distance of 95.83 feet to a point in said creek;
North 01°18'07" East a distance of 84.95 feet to a point in said creek;
North 46°44'09" East a distance of 45.06 feet to a point in said creek;
North 25°27'48" East a distance of 44.90 feet to a point in said creek;
North 08°31'51" West a distance of 39.04 feet to a point in said creek;
North 35°45'14" West a distance of 59.46 feet to a point in said creek;
North 82°52'30" West a distance of 93.37 feet to a point in said creek;
South 52°31'26" West a distance of 72.97 feet to a point in said creek;
South 13°34'14" West a distance of 57.59 feet to a point in said creek;
South 82°41'39" West a distance of 75.90 feet to a point in said creek;
North 71°04'31" West a distance of 71.42 feet to a point in said creek;
North 88°59'42" West a distance of 110.04 feet to a point in said creek;
South 81°58'16" West a distance of 115.74 feet to a point in said creek;
South 47°34'45" West a distance of 94.79 feet to a point in said creek;
South 08°07'48" West a distance of 136.49 feet to a point in said creek;
South 58°19'28" West a distance of 66.63 feet to a point in said creek;
North 84°41'14" West a distance of 71.68 feet to a point in said creek;
North 70°20'46" West a distance of 125.71 feet to a point in said creek;
North 47°12'09" West a distance of 62.23 feet to a point in said creek;
North 68°25'43" West a distance of 78.20 feet to a point in said creek;
North 16°25'04" West a distance of 81.52 feet to a point in said creek;
North 10°57'15" East a distance of 97.52 feet to a point in said creek;
North 77°07'30" East a distance of 110.88 feet to a point in said creek;
North 69°13'40" East a distance of 95.79 feet to a point in said creek;
North 13°29'45" East a distance of 79.40 feet to a point in said creek;
North 13°29'45" West a distance of 79.40 feet to a point in said creek;
North 60°15'18" West a distance of 74.70 feet to a point in said creek;
North 30°04'07" West a distance of 67.80 feet to a point in said creek;

North 12°43'28" West a distance of 31.73 feet to a point in said creek;

Thence North 74°20'16" East leaving said creek and continuing with a barbwire fence a distance of 548.73 feet to a metal fence post;

Thence North 16°22'48" West a distance of 251.25 feet with a barbwire fence to a point;

Thence North 74°03'08" East a distance of 620.56 feet to the Point of Beginning and containing 25.08 acres of land.

JOB NO. 20080650
FW: HC — DFT: BAU

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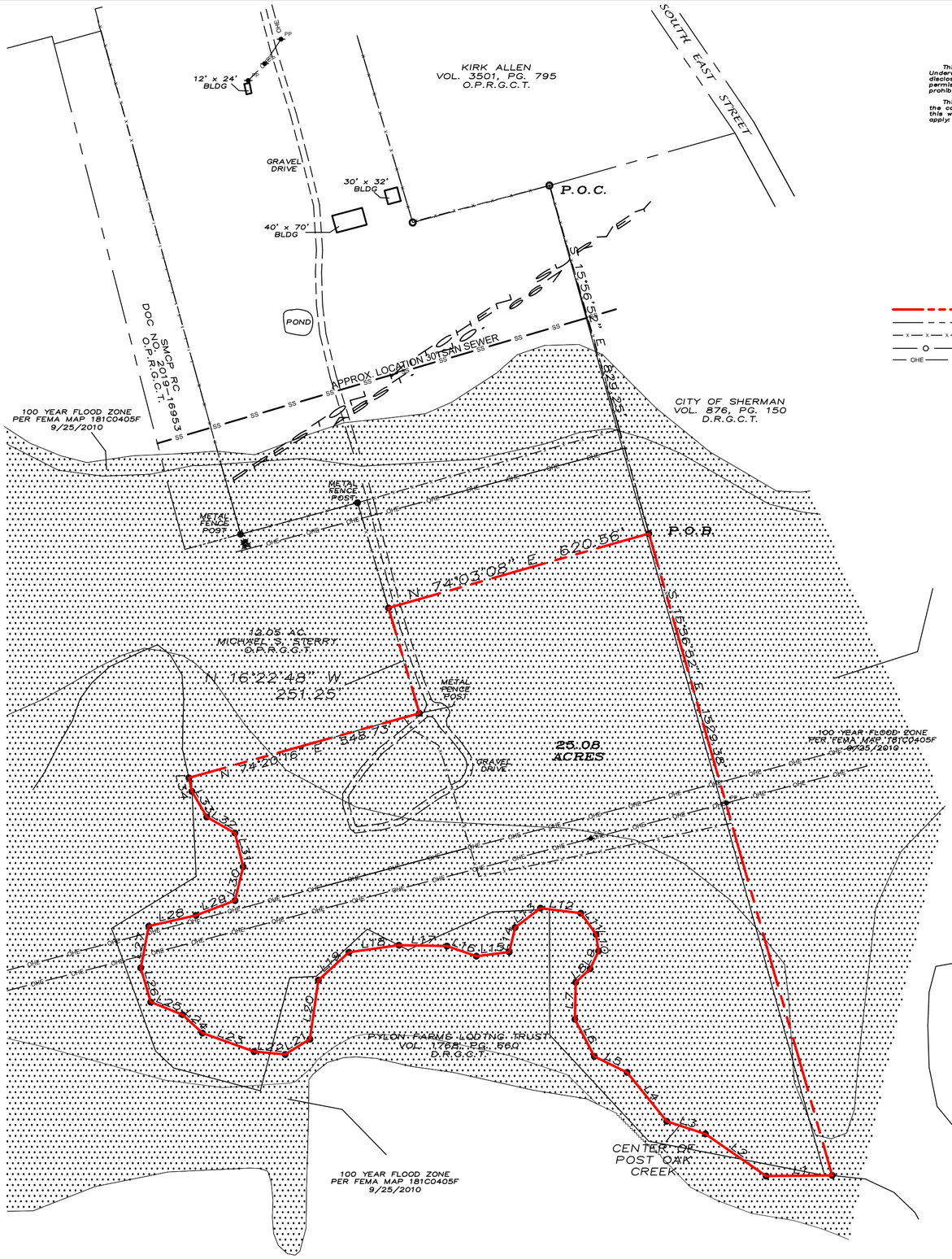

LEGEND

- 1/2" STEEL ROD SET
- POINT IN CREEK
- 1/2" STEEL ROD FOUND
- PP — POWER POLE
- BOUNDARY LINE
- PROPERTY LINE
- BARBWIRE FENCE
- CHAINLINK FENCE
- OHE — OVERHEAD ELECTRIC LINE

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 89°25'08" W	151.42'
L2	N 55°13'20" W	169.20'
L3	N 71°56'22" W	93.39'
L4	N 39°01'10" W	144.10'
L5	N 64°01'32" W	83.74'
L6	N 27°35'50" W	95.83'
L7	N 01°18'07" E	84.95'
L8	N 46°44'09" E	45.06'
L9	N 25°27'48" E	44.90'
L10	N 08°31'51" W	39.04'
L11	N 35°45'14" W	59.46'
L12	N 82°52'30" W	93.37'
L13	S 52°31'26" W	72.97'
L14	S 13°34'14" W	57.59'
L15	S 82°41'39" W	75.90'
L16	N 71°04'31" W	71.42'
L17	N 88°59'42" W	110.04'
L18	S 81°58'16" W	115.74'
L19	S 47°34'45" W	94.79'
L20	S 08°07'48" W	136.49'
L21	S 58°19'28" W	66.63'
L22	N 84°41'14" W	71.68'
L23	N 70°20'46" W	125.71'
L24	N 47°12'09" W	62.23'
L25	N 68°25'43" W	78.20'
L26	N 16°25'04" W	81.52'
L27	N 10°57'15" E	97.52'
L28	N 77°07'30" E	110.88'
L29	N 69°13'40" E	95.79'
L30	N 13°29'45" E	79.40'
L31	N 13°29'45" W	79.40'
L32	N 60°15'18" W	74.70'
L33	N 30°04'07" W	67.80'
L34	N 12°43'28" W	31.73'

~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the Preston Kitchens Survey, Abstract No. 667, and being a part of that tract of land described as 50.908 acres conveyed to Harold and Patsy Falk by deed recorded in Volume 1616, Page 664, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

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Thence North 74°03'08" East a distance of 620.56 feet to the Point of Beginning and containing 25.08 acres of land.

I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

Douglas W. Underwood
Registered Professional
Land Surveyor No. 4709
Firm No. 10006300
DATE OF SURVEY: 04/20/23

UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465—2151

Annexation - Three Oaks, Ph. 3

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 3.**

Meeting Date: 05/01/2023

Prepared By: Sarah McRae, Tourism/Main Street Manager

Approved By: Robby Hefton, City Manager

Caption:

**** OTHER BUSINESS***

Consider Request to Temporarily Close Certain Streets for the "Cinco de Mayo Festival" on Friday, May 5, 2023

Issue:

The Hispanic Heritage Council proposes holding the "Cinco de Mayo Festival" on Friday, May 5th. They have requested barricades to close the 100 block of South Crockett Street, between Houston and Lamar Streets.

Background:

The Hispanic Heritage Council proposes holding the inaugural "Cinco de Mayo Festival" on the 100 Block of S. Crockett, from 6:00 p.m. to 11:00 p.m., on Friday, May 5, 2023. The closure of the 100 block of Crockett Street would take place from 3:00 p.m. - 12:00 a.m. to ensure the safety of the attendees. A live band will play on a stage, food and beverages will be available for purchase. This event will be open to the public.

Origination:

Hispanc Heritage Council

Financial Consideration:

Barricade placement and removal will be provided by the City of Sherman Street Department.

Staff Recommendation:

It is recommended that the City Council authorize the street closures.

Alternatives:

As directed by the Council

Attachments

Event Packet

Sherman
CLASSIC TOWN. BROAD HORIZON.

Special Event
Date Request Form

Name of Event:	Cinco de Mayo Festival
Type of Event (i.e. Carnival, Circus, Festival, 1 Mile/5 K Run, etc.):	Community Event with entertainment, food, drinks & fun for the family
Location of Event:	100 S. Crockett Block
Date of Event:	May 5, 2023
Event Contact Name:	Henry Marroquin
Event Contact Address:	309 E. Lamar
Event Contact Phone:	903-819-7115
Event Contact Email:	henryspot@yahoo.com

Completion and approval of the Special Event Date Request Form does not guarantee event approval. The Community and Support Services Department must receive the completed Special Event Application 60 days prior to the event date. If the application is not received the date will be released 60 days prior to the event.

Requester Signature:	Henry Marroquin
Date:	4-6-2023

*Office Use Only
Date Request Received:
Event Date Hold Approved: YES NO
If NO, reason:
Date 60 Days Prior to the Event Date:
Date Special Event Application Received:
Requested Event Date Released: YES NO Date:
Community and Support Services Department Signature:

Sherman
CLASSIC TOWN. BROAD HORIZON.

Special Event Application

This agreement is between the City of Sherman, hereinafter referred to as City, and an event/event coordinator, hereinafter referred to as event, for the cooperation of planning and operating a Special Event.

City reserves the right to close down or cancel any Event that is in violation of any City Ordinance or deviation from this agreement. The City also reserves the right to close down or cancel the Event if public safety or affected department supervisors deem the event unsafe for public participation.

- Application must be submitted at least 60 days prior to the event date.
- The Event must carry property, bodily injury and municipal liability insurance of $1,000,000.00 per occurrence. The City of Sherman must be shown as an additional named insured on the insurance declaration. One (1) original copy of insurance must be submitted 30 days prior to event date.
- Alcohol distribution or consumption in any City Park and/or street is prohibited, unless approval is granted by motion and order by the City Council. A special event permit for alcohol on private property in conjunction with a Sherman private club may be permitted with a T.A.B.C license. Certain city-owned properties may allow for the consumption of alcohol.
- Please provide all information pertaining to the event as accurately as possible.

General Event Information

Official Name of Event: Cinco de Mayo Festival

Type of Event: (I.e. Carnival, Circus, 1 Mile/5 K Run, etc.) Community Event - With music entertainment, food, drinks + fun for the family

Event Date: May 5, 2023 Event Times: 6pm - 11pm

Alternate Date: N/A Event Times: N/A

*Alternate date required in case of weather delays Rain or Shine

Location of Event: the block of 100 S. Crockett

Event Contact Name: Henry Marroquin

Event Contact Address: 309 E. Lamar

Event Contact Phone: 903-819-7115

Event Contact Email: henryspnt@yahoo.com

Alternate Event Contact Name: Diana Salas

Alternate Event Contact Address: 1214 West Hall St.

Alternate Event Contact Phone: 903-819-3139

Alternate Event Contact Email: dsalas@farmersagent.com

Event Day Emergency Contact: Diana Salas Phone: 903-819-3139

Event Day Emergency Contact: Henry Marroquin Phone: 903-819-7115

Estimated # of Participants: 12 Spectators: 500

Is Event Private or Open to the Public? ____ Private Event ✓ Public Event

Description of Event

Include background/history of this event or type of event and a timeline of event. Maps and site plans are required; site plans should include location of concessions, port-a-lets and dumpsters; description of routes to be used, severe weather emergency plan, etc. Clean-up deposit may be required.

1st Annual - Cinco de Mayo celebration. A live band will be playing for folks to bring a chair, camp out & enjoy. Fresh hot tacos will be available along with nice cold drinks. Some games may be played on stage with some community involvement.

Public Services

Will event take place at a public park/facility? ✓ Yes ____ No

If yes, which park/facility? on a public street - 100 block S. Crockett

*Park and/or facility reservation(s) required prior to completing this application.

Will you need any public street closures? ✓ Yes ____ No

If Yes, which streets? 100 block of South Crockett

*Closure of TxDOT controlled streets will need prior approval by TxDOT.
*Police and Fire vehicles must have access through street closures if the need arises.

Street closure time: 3pm Time closure removed: Midnight
*Barricades will be provided by the City for the listed street closures. Fees may be required for additional barricade requests.

Where are the parking areas located: (Include on site plan) all around the courthouse, up & down all the streets & businesses around Houston, Lamar & Travis

Does your event require special/additional support? (Fee may be required)

____ Police
(crowd control, traffic control, etc.)
If yes, contact Jarena Capps, Police Department, 903-892-7397

____ Fire Department
(EMT Support, etc.)
If yes, contact Chief Jones, Fire Department, 903-892-7263

____ Other
(provide detail)

If any special/additional support is checked above it is the responsibility of the event coordinator to contact the person listed above, prior to approval. If no contact is made by the event coordinator, the approval process for your special event will cease.

Number of trash containers and size requested over and above the current level: 10

*Per city ordinance, all solid waste services must be provided by the city. Additional fees are possible for solid waste services.

Concessions

Will food concessions be present at the event? ✓ Yes _____ No

Name, Address & Phone Number for Food Vendors: Our organization will be the only food vendor.

*All food vendors are required to have the appropriate permits required by the city or the county.

Fire Prevention

Will you have any tents at the event? _____ Yes ✓ No

Will any tents be over 200sq. ft.? _____ Yes ✓ No

*No smoking signs and 5lb. ABC extinguishers are required in all tents over 200sq. ft.

Will any tents be enclosed? _____ Yes ✓ No

*A permit ($50.00 fee) must be obtained from the Developmental Services Department for enclosed tents.

*A flame certificate for the tent and a site plan showing the setback from the property lines will be required to obtain this permit.

Will you have bounce houses? _____ Yes ✓ No Number: _____

Will you have other air supported structures? _____ Yes ✓ No

Will there be fireworks? _____ Yes ✓ No

Will there be any temporary structures built or placed on site? ✓ Yes _____ No

If Yes, describe: 12X16 Stage 3ft tall

Miscellaneous

Will you need the use of city water and/or electricity? ✓ Yes _____ No

*Additional fees will apply to the usage of city utilities

Where will restroom facilities be located? 3 port-a-potties

*Depending on accessibility of restroom facilities, city may require portable toilets to be used

Will there be music or any other use of a loudspeaker? ✓ Yes ____ No

If Yes, please fill out the following:
Type of loudspeakers: each speaker will have it's own Amp. How many: 6

Type of Amplifiers: ____ How many: 0-3

Type of electrical devices: extension cords for speakers, lights, instruments How many: 6-8

Date and time loudspeakers/amplifiers/electrical devices will be in use: 6pm - 11pm
*Loudspeakers/Amplifiers/Electrical Devices cannot be used during the hours of 9pm to 8am

Will you have any animals at the event? ____ Yes ✓ No

If yes, are any prohibited/regulated animals? N/A

*All pet owners must abide by Grayson County leash law

Public Information

Describe signage that will be used for the event, to include placement of signs: Maybe some yard signs posted around the courthouse, corners of Houston & Lamar & Hwy 75.

Describe how you will notify residents affected by the event either living on the route/course or nearby. No residents live nearby.

*Proof of notification may be required

Overnight Accommodation Needs

Will event produce overnight stays in Sherman hotels, motels or bed and breakfasts? If so, how many rooms potentially? ____

* The Sherman Chamber of Commerce is available for assistance with hotel information and accommodation needs for the event.

Agreement:

Initial HM I hereby attest that the information contained in this application is true and correct. I understand that this is only an application and not a guarantee that a permit will be issued. If a permit is issued, I agree that: (1) if any of the information contained in this application is found to be false: or (2) should my conduct, or the conduct of any participants or guests, not adhere to the Special Event Policies and Procedures: or (3) should any applicable city, county, state or federal rules, regulations, codes or laws be violated, any permit issued shall automatically become null and void and any activity associated with this permit will immediately cease.

Initial HM Applicant agrees to assume the defense of and indemnify and save harmless the City, its council members, boards, commissions, officers, employees and agents, from all suits, actions, damages or claims to which the City may be subjected of any kind or nature whatsoever resulting from, caused by, arising out of or as a consequence of such temporary street closure and the activities permitted in connection therewith. The city may require, as a condition of issuance of a permit, that the applicant obtain insurance to serve this end, in such an amount and with such terms as the City determines to be appropriate under the circumstances. This shall be a continuing release and shall remain in effect until revoked in writing.

Initial HM In case of emergency or for reasons beyond the City's control, the City reserves the right to cancel the permit prior to scheduled use without liability. Refunds will be made if cancellation by the City is necessary.

Initial _____ Alcohol must be confined to private property. Alcohol consumed on Public property is a violation of city Ordinance and is prohibited.

Signature:

I the undersigned representative have read the policies and procedures with reference to this application. The information contained herein is complete and accurate.

Henry Manoyan
Signature

4-6-2023
Date

For Office Use Only

DEPARTMENT APPROVALS

DEPARTMENT	DATE	SIGNATURE
City Council Approval		
Fire Department		
Police Department		
Public Works Department		
Solid Waste & Recycling Department		
Parks & Recreation Department		

Google Maps Cinco de Mayo - 2023

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting

Meeting Date: 05/01/2023

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2023 Council Calendar

2023
Council Calendar

January

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
11	12	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

March

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	6	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

July

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

August

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

CALLED MEETINGS	
4/20/20223	Budget Planning Meeting
5/25/2023	CIP Work Session
6/15/2023	Budget Workshop Day 1
6/16/2023	Budget Workshop Day 2
7/5/2023	Called City Council Meeting (Rescheduled)