

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, APRIL 20, 2015
5:00 P.M.**

- A. 1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A. 2. PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER RYAN JOHNSON**
- A. 3. INVOCATION BY COUNCIL MEMBER RYAN JOHNSON**
- A. 4. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF APRIL 6, 2015**

Proclamations

- B. 1. PROCLAMATION**
“Texoma Earth Day Festival Day” – April 25, 2015

Public Hearing

- C. 1. PUBLIC HEARING OF ORDINANCE NO. 5873**
Designating a Certain Area as Industrial Reinvestment Zone, Number 042015-1, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance
- C. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5876**
Amending Chapter 9 of the Code of Ordinances, entitled "Personnel", Article 9.05, entitled "Civil Service for Firefighters and Police Officers", at Section 9.05.026, entitled "Authorized Number of Positions", to Abolish the One Remaining Tested Assistant Police Chief Position and to Create a Second Appointed Assistant Police Chief Position

Close Public Hearing and Consider Adoption of Ordinances

- C. 3. ADOPTION OF ORDINANCES**
Consider Adoption of Ordinance Numbers: 5873 and 5876

C. 4. CONSENT AGENDA

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

Resolutions

D. 1. RESOLUTION NO. 5960

Declaring the City of Sherman's Eligibility and Intention to Participate in a Residential Tax Abatement Program to Promote Development/Redevelopment in Certain Areas of the City; Establishing Guidelines and Criteria

D. 2. RESOLUTION NO. 5961

Certifying Funding and Support for the 2015 Transportation Alternatives Program Nomination Form with the Texas Department of Transportation for the Application to Receive Funding to Build the Downtown Sherman Streetscape Enhancement Project Phase II

D. 3. RESOLUTION NO. 5962

Revoking and Replacing Resolution No. 5878; Establishing Salary Structures and Incentive/Certification Pay Schedules for Firefighters and Police Officers; Establishing Special Longevity Pay Schedules for Some Newly Hired Firefighters; Providing for an Effective Date

D. 4. RESOLUTION NO. 5963

Authorizing Execution of a Professional Engineering Services Agreement with Freeman-Millican, Inc. for the Design of the City of Sherman Elevated Water Storage Tank Improvements

D. 5. RESOLUTION NO. 5964

Authorizing the Purchase of a Mitel Phone System for the City of Sherman from Mitel Business Systems, Inc. under Texas Department of Information Resources Contract Number DIR-TSO-2685

D. 6. * RESOLUTION NO. 5965

Awarding a Bid to and Authorizing Execution of a Contract with Overland Materials and Manufacturing, Inc. for an Annual Supply of Hot Mix Asphalt

D. 7. * RESOLUTION NO. 5966

Authorizing Execution of an Encroachment Easement to Kent Hughlett for the Placement of a Decorative Fence within the South Crockett Street Right-of-Way to the City of Sherman

Other Business

E. 1. OTHER BUSINESS

Receive Quarterly Progress Report from Sherman Economic Development Corporation Board Chairman Brooks Hull and SEDCO President Scott Connell

E. 2. OTHER BUSINESS

Receive Presentation from Nancy Knapp concerning the Renaming of a Portion of F.M. 1417 as "Vietnam Veterans Parkway"

E. 3. OTHER BUSINESS

Setting the Public Hearing on the Proposed Agreement with Kaiser Aluminum Fabricated Products, LLC for the Abatement of Ad Valorem Property Taxes for Improvements within Industrial Reinvestment Zone, Number 042015-1, City of Sherman, Texas

E. 4. OTHER BUSINESS

Receive Presentation from Utilities Director Mark Gibson on a New Elevated Water Storage Tank

E. 5. * OTHER BUSINESS

Replat Approval of Vanderveer Addition, a Replat of Block E, T.J. Shannon Supplement; being part of Lot 10 and all of Lots 11 & 12, Block E, T.J. Shannon Supplement, containing 0.43 acres; Sean Vanderveer, Owner; and Sartin and Associates, Inc. Surveyor (200 blocks of East Pecan and North Montgomery Streets)

E. 6. * OTHER BUSINESS

Final Plat Approval of CAJC Addition, being 4.33 acres in the Daniel C. Shelp Survey, Abstract No. 1097; CAJC Corporation, Owners; Dan Massey, Applicant; and Underwood Drafting and Surveying, Surveyors (5200 block of Texoma Parkway)

F. CITIZEN REQUESTS

G. MEDIA QUESTIONS

H. COUNCIL COMMENTS

Executive Session

I. 1. EXECUTIVE SESSION

In Accordance with Chapter 551, Government Code, V.T.C.S. (Open Meetings Law), "The City Council Will Now Hold a Closed Executive Meeting Pursuant to the Provisions of the Open Meetings Law, Chapter 551, Government Code, Vernon's Texas Codes Annotated, in Accordance with the Authority Contained in the Following Sections:

Section 551.074

Personnel Matters:

- (a) Deliberate the Appointment, Employment, Evaluation, Reassignment, Duties, Discipline, or Dismissal of a Public Officer or Employee

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

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 April 16, 2015 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 16th day of April, 2015
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

Carolyn S. Wacker

Deputy Mayor

David Plyler

Council Members

Ryan Johnson, Council-At-Large, PL #1

Jason Sofey, Council-At-Large, PL #2

Lawrence Davis, Council – District #1

Terrence R. Steele, Council – District #2

Tom Watt, Council – District #3

David Plyler, Council – District #4



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. A. 4.

Meeting Date: 04/20/2015

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF APRIL 6, 2015

Attachments

April 6, 2015

STATE OF TEXAS §
 April 6, 2015
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 6, 2015.

MEMBERS PRESENT: MAYOR CARY WACKER; DEPUTY MAYOR DAVID PLYLER.
 COUNCIL MEMBERS DAVIS, JOHNSON, SOFEY, STEELE,
 WATT.

MEMBERS ABSENT: NONE.

CALL TO ORDER

Mayor Wacker called the meeting to order at 5:00 p.m. The Pledge of Allegiance and Invocation were given by Council Member Lawrence Davis.

CALL TO ORDER

She recognized Robby Hefton as Sherman's new City Manager, at this, his first "official" meeting.

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of March 16, 2015. Council Member Sofey moved to approve the Minutes as presented; Second by Council Member Steele. All present voted AYE.
MOTION CARRIED.

APPROVE MINUTES

PROCLAMATION

"SEXUAL ASSAULT AWARENESS MONTH" – APRIL 2015

Mayor Wacker presented a proclamation to Rachel Morgan, Executive Director, Grayson Crisis Center, designating April 2015 as "Sexual Assault Awareness Month" in Sherman.

**SEXUAL ASSAULT
AWARENESS MONTH**

Ms. Morgan thanked the City Council saying that the Crisis Center has been in Sherman for 39 years, and statistically, one in five women and one in 20 men continue to be affected by sexual assault. Sherman is part of a national conversation to help raise awareness of the issue and to help make the community safer.

Mayor Wacker added that April is also "Child Abuse Prevention Month" and it takes a community to work together to prevent family violence.

"NATIONAL LIBRARY WEEK" – APRIL 12-18, 2015

Council Member Steele presented a proclamation to Jacqueline Banfield, Library Services Administrator, designating April 12 through April 18, 2015 as "National Library Week" in Sherman.

**NATIONAL LIBRARY
WEEK**

Ms. Banfield thanked the City Council for supporting National Library Week. They are excited about the events happening in April. They have "revamped" the children's

COUNCIL MINUTES – APRIL 6, 2015

area and have more room and new, more colorful items. She added that the theme of the Summer Children's Program is "every hero has a story."

"SHERMAN TRASH-OFF" – APRIL 11, 2015

Deputy Mayor Plyler presented a proclamation to Jennifer Thompson, Keep Sherman Beautiful Commission Member, designating April 11, 2015 as "Sherman Trash-Off" in Sherman.

**SHERMAN
TRASH-OFF**

Ms. Thompson thanked the City Council saying she was happy to serve on the recently revived Keep Sherman Beautiful Commission. Their mission statement is to empower Sherman citizens of all ages to take responsibility for their environment. She added that one of the best ways to do that is to get citizens of all ages to participate in the Don't Mess With Texas Trash-Off event.

The event will be held on Saturday, April 11, 2015 and she invited all citizens to attend and participate in the Trash-Off.

INTRODUCTION OF ORDINANCE NO. 5873

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING A CERTAIN AREA AS INDUSTRIAL REINVESTMENT ZONE, NUMBER 042015-1, CITY OF SHERMAN, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF AGREEMENTS WITHIN THE ZONE, AND OTHER MATTERS RELATING THERETO; PROVIDING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE FOR THE COMMENCEMENT OF THE REINVESTMENT ZONE AND THIS ORDINANCE.

**ORD 5873
REINVESTMENT
ZONE**

Mayor Wacker explained that the City's Tax Reinvestment Zone Committee has already met and recommended approval of the Reinvestment Zone for Kaiser Aluminum.

Mr. Hefton said the ordinance will be introduced tonight and a public hearing and adoption of the ordinance to create the zone will be considered at the next City Council Meeting. The staff should hear very soon from Kaiser Aluminum and their Corporate Board on this project.

Grayson County is also considering action on this request and they have applied separately to the Sherman Economic Development Corporation for incentives.

INTRODUCTION AND PUBLIC HEARING OF ORDINANCES

Mayor Wacker introduced Ordinance 5874 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, EXTENDING THE CORPORATE LIMITS OF SAID CITY SO AS TO ANNEX 7.32 ACRES OF LAND ON WEST LAMBERTH ROAD, ADJOINING THE OLD COUNTY

**ORD 5874
LAMBERTH ROAD
ANNEXATION**

FARM ON THE SOUTH SIDE, ADJACENT TO THE SHERMAN CITY LIMITS, AND IN THE CITY OF SHERMAN'S EXTRA TERRITORIAL JURISDICTION; PROVIDING FOR A MUNICIPAL PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

No citizens appeared before the City Council to discuss Ordinance 5874.

Mayor Wacker introduced Ordinance 5875 and called for a public hearing:

ORD 5875
911 FEES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 1 OF THE CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS", ARTICLE 1.09, ENTITLED "EMERGENCY MANAGEMENT", DIVISION 3, ENTITLED "EMERGENCY SERVICE FEE", AT SECTIONS 1.09.071 AND 1.09.072; AND PROVIDING FOR A NEW SECTION 1.09.075 TO BE ENTITLED "VOIP POSITIONING CENTER OPERATOR MINIMUM REQUIREMENTS"; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

Police Chief Otis Henry explained that the E911 equipment that accepts all the 911 calls is housed in the Communications Center at the Police Department. It is now at the end of its life cycle and needs to be replaced.

The fees were increased in 2011, however there has been a decline in the revenue. Chief Henry asked to increase the fees from \$0.60 to \$0.80. The increase will help offset the cost of replacing the current equipment and will provide a cushion for future replacement of the equipment. It will also allow the City to collect fees on the voice over internet protocol for citizens receiving their telephone service through an internet provider.

No citizens appeared before the City Council to discuss Ordinance 5875.

The Public Hearing was closed.

ADOPTION OF ORDINANCES

Ordinance 5874

ORD 5874
LAMBERTH ROAD
ANNEXATION

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, EXTENDING THE CORPORATE LIMITS OF SAID CITY SO AS TO ANNEX 7.32 ACRES OF LAND ON WEST LAMBERTH ROAD, ADJOINING THE OLD COUNTY FARM ON THE SOUTH SIDE, ADJACENT TO THE SHERMAN CITY LIMITS, AND IN THE CITY OF SHERMAN'S EXTRA TERRITORIAL JURISDICTION; PROVIDING FOR A MUNICIPAL PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

COUNCIL MINUTES – APRIL 6, 2015

ACTION TAKEN.

Motion by Council Member Johnson to approve Ordinance No. 5874, as presented. Second by Deputy Mayor Plyler.

VOTING AYE: Davis, Johnson, Plyler, Sofey, Steele, Watt.

VOTING NAY: None.

MOTION CARRIED.

Ordinance 5875

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 1 OF THE CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS", ARTICLE 1.09, ENTITLED "EMERGENCY MANAGEMENT", DIVISION 3, ENTITLED "EMERGENCY SERVICE FEE", AT SECTIONS 1.09.071 AND 1.09.072; AND PROVIDING FOR A NEW SECTION 1.09.075 TO BE ENTITLED "VOIP POSITIONING CENTER OPERATOR MINIMUM REQUIREMENTS"; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

**ORD 5875
911 FEES**

Council Member Johnson understood the equipment needed to be replaced and the fees were needed to help fund the replacement. However since the VOIP fees were not previously included, he would like to see the impact of those fees, and then revisit the fee increase.

Chief Henry said the staff has estimated that the VOIP fee will add approximately \$9,000. Mr. Hefton said once the fee is actually enacted, a better estimate will be available and can be presented to the City Council.

ACTION TAKEN.

Motion by Council Member Watt to approve Ordinance No. 5875, as presented. Second by Council Member Steele.

VOTING AYE: Davis, Johnson, Plyler, Sofey, Steele, Watt.

VOTING NAY: None.

MOTION CARRIED.

CONSENT AGENDA

The Council reviewed the Consent Agenda. Deputy Mayor Plyler moved to approve the Consent Agenda, as presented. Second by Council Member Steele. All present voted AYE.

CONSENT AGENDA

RESOLUTIONS

RESOLUTION NO. 5952 – APPROVING AND AUTHORIZING THE EXECUTION OF A PROJECT CONTRACT WITH THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AND AUTHORIZING THE EXECUTION OF A PROJECT CONTRACT WITH THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION.

**RES 5952
BONDS FOR
WATER AND
WASTEWATER
FACILITIES**

Mr. Hefton explained that this resolution was an administrative item requested by the City's bond counsel.

The City currently has an arrangement that was not formally adopted, where SEDCO reimburses the City for their expenses for certain water and sewer infrastructure projects.

Examples of these types of projects include the water and sewer line on U.S. Highway 75 North and the water and sewer line on S.H. 289. The proposed agreement formalizes the arrangement that the City and SEDCO already have.

Mr. Hefton said this format will cover projects that have been agreed upon to date, and can also be used for future agreements.

ACTION TAKEN.

Motion by Council Member Sofey to approve Resolution No. 5952, as presented. Second by Deputy Mayor Plyler.

VOTING AYE: Davis, Johnson, Plyler, Sofey, Steele, Watt.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 5953 – ADOPTING AN INVESTMENT POLICY FOR THE CITY OF SHERMAN

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ADOPTING AN INVESTMENT POLICY FOR THE CITY OF SHERMAN.

CONSENT AGENDA.

RES 5953
INVESTMENT POLICY

RESOLUTION NO. 5954 – AMENDING THE AUTHORIZED REPRESENTATIVES TO INVEST CITY OF SHERMAN FUNDS WITH THE TEXAS LOCAL GOVERNMENT INVESTMENT POOL (TEXPOOL)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE AUTHORIZED REPRESENTATIVES TO INVEST CITY OF SHERMAN FUNDS WITH THE TEXAS LOCAL GOVERNMENT INVESTMENT POOL (TEXPOOL).

CONSENT AGENDA.

RES 5954
TEXPOOL FUNDS

RESOLUTION NO. 5955 – AMENDING THE AUTHORIZED REPRESENTATIVES TO INVEST CITY OF SHERMAN FUNDS WITH WELLS FARGO SECURITIES, LLC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE AUTHORIZED REPRESENTATIVES TO INVEST CITY OF SHERMAN FUNDS WITH WELLS FARGO SECURITIES, LLC.

CONSENT AGENDA.

RES 5955
WELLS FARGO
SECURITIES

RESOLUTION NO. 5956 – AMENDING THE AUTHORIZED REPRESENTATIVES TO INVEST CITY OF SHERMAN FUNDS WITH THE TEXAS SHORT TERM ASSET RESERVE PROGRAM (TEXSTAR)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE AUTHORIZED REPRESENTATIVES TO INVEST CITY OF SHERMAN FUNDS

RES 5956
TEXSTAR FUNDS

WITH THE TEXAS SHORT TERM ASSET RESERVE PROGRAM (TEXSTAR).
CONSENT AGENDA.

RESOLUTION NO. 5957 – PROVIDING FOR THE EXEMPTION OF CERTAIN VEHICLES USED BY THE SHERMAN POLICE DEPARTMENT FROM THE INSCRIPTION REQUIREMENTS AS AUTHORIZED BY V.T.C.A. TRANSPORTATION CODE §721.005; AUTHORIZING INDIVIDUALS TO APPLY FOR SPECIAL LICENSE PLATES

RES 5957
SPECIAL LICENSE
PLATES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR THE EXEMPTION OF CERTAIN VEHICLES USED BY THE SHERMAN POLICE DEPARTMENT FROM THE INSCRIPTION REQUIREMENTS AS AUTHORIZED BY V.T.C.A. TRANSPORTATION CODE §721.005; AUTHORIZING INDIVIDUALS TO APPLY FOR SPECIAL LICENSE PLATES.
CONSENT AGENDA.

RESOLUTION NO. 5958 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH CJA ENTERPRISES, LLP FOR AN ANNUAL SUPPLY OF CRUSHED ROCK COVERSTONE

RES 5958
ANNUAL SUPPLY OF
CRUSHED ROCK &
COVERSTONE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH CJA ENTERPRISES, LLP FOR AN ANNUAL SUPPLY OF CRUSHED ROCK COVERSTONE.
CONSENT AGENDA.

RESOLUTION NO. 5959 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH HEARTLAND ASPHALT MATERIALS, INC. FOR AN ANNUAL SUPPLY OF CRS-2, CRS-2H AND CRS-2P EMULSIFIED ASPHALT

RES 5959
ANNUAL SUPPLY OF
EMULSIFIED ASPHALT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH HEARTLAND ASPHALT MATERIALS, INC. FOR AN ANNUAL SUPPLY OF CRS-2, CRS-2H AND CRS-2P EMULSIFIED ASPHALT.
CONSENT AGENDA.

OTHER BUSINESS

RECEIVE REPORT FROM DIRECTOR OF TOURISM LAUREN ROTH

TOURISM REPORT

Lauren Roth, Chamber of Commerce Tourism Director, presented a report on tourism efforts and some upcoming events. One of the things they are focusing on this year is the advertising.

Ms. Roth presented a copy of the Texas Events Calendar with the spring and summer events listed and an ad for Hot Summer Nights. They will also advertise in the May edition

of D Magazine, Texas Monthly, and Texas Highways. She presented copies of the ads that will be included in each magazine.

Ms. Roth said the Tourism Department is also focusing on events and helping them to grow. A new concert series, Boots & Bands, recently began and was a big success with 500 people attending the initial concert at 903 Brewers. The next concert in that series will be held Friday, April 10, 2015 at Knight Furniture. Concerts will be held each Friday night through April, then the first Friday of each month through September.

All the bands have been scheduled for Hot Summer Nights and concerts will be held each Thursday in June and July, on the Municipal lawn.

Ms. Roth said the new tourism website is online and lists many events and activities. The website is www.shermantx.org.

The Tourism Department also partnered with Downtown Sherman Preservation and Revitalization to produce a new downtown map to encourage visitors to shop locally.

Council Member Watt confirmed that the Hot Summer Nights concerts will be located on the Municipal lawn.

CONSIDER REQUEST OF THE SHERMAN CHAMBER OF COMMERCE TO TEMPORARILY CLOSE CERTAIN STREETS AND USE CERTAIN CITY FACILITIES AND SERVICES FOR “LIGHTS ON THE LAKE” ON THURSDAY, JULY 2, 2015

Ms. Roth said there will be no changes in street closures or parking for the “Lights on the Lake” event. The parking lots at Faith Church and Fusion Bible Church will be used as extra parking for the event. Texoma Area Paratransit buses will be used to transport visitors from the parking lots to Pecan Grove Park.

Fireworks will be provided by Illumination Fireworks, located in Dallas. This should be a bigger fireworks show than in the past. Again, Landmark Bank will be the title sponsor of the event, which will be held on Thursday, July 2, 2015. Ms. Roth said she will be meeting with the various City departments involved to discuss the details.

Council Member Steele verified that Hot Summer Nights will not be held that week because of the “Lights on the Lake” event.

CONSIDER REQUEST OF THE SHERMAN CHAMBER OF COMMERCE TO TEMPORARILY CLOSE CERTAIN STREETS AND USE CERTAIN CITY FACILITIES AND SERVICES FOR THE “33RD ANNUAL SHERMAN AUTUMN AND ARTS FEST” ON SATURDAY, SEPTEMBER 19, 2015

Ms. Roth briefed the City Council on the upcoming “Autumn

REQUEST TO CLOSE
STREETS FOR
LIGHTS ON THE
LAKE

REQUEST TO CLOSE
STREETS FOR
AUTUMN & ARTS
FEST

and Arts Fest” saying the layout has changed from previous years. Vendors will be moved from the north side of the Municipal Building to Mulberry Street. The street closures have been updated to reflect this change.

There are currently 30 vendors signed up, but most will wait until a month or two prior to the event to register. There will also be an Art Walk along Mulberry Street, which is one of the main reasons for moving the vendors. Vendors will be located back-to-back down the center of Mulberry Street and the Art Walk will be located along the sidewalks on each side of Mulberry Street.

Mayor Wacker asked the Council to consider street closures for both the “Lights on the Lake” and the “Autumn & Arts Fest” events.

ACTION TAKEN.

Motion by Deputy Mayor Plyler to approve the request of the Sherman Chamber of Commerce to temporarily close certain streets and use certain City facilities and services for “Lights on the Lake” on July 2, 2015 and for the “33rd Annual Sherman Autumn and Arts Fest” on September 19, 2015, as presented. Second by Council Member Watt.

VOTING AYE: Davis, Johnson, Plyler, Sofey, Steele, Watt.

VOTING NAY: None.

MOTION CARRIED.

CITIZENS REQUESTS

There were no citizen’s requests.

CITIZENS REQUESTS

MEDIA QUESTIONS

KAISER ALUMINUM PROJECT

Nate Strauch, Herald Democrat Reporter, asked if someone would speak with him after the meeting about the Kaiser Aluminum project. Mr. Hefton will answer his questions after the meeting.

**KAISER ALUMINUM
PROJECT**

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

LIBRARY BOARD (2)

ACTION TAKEN.

Motion by Deputy Mayor Plyler to appoint Randy Hudson to the Library Board for a term from April 7, 2015 to April 7, 2018. Second by Council Member Johnson.

VOTING AYE: Davis, Johnson, Plyler, Sofey, Steele, Watt.

VOTING NAY: None.

MOTION CARRIED.

LIBRARY BOARD

COUNCIL COMMENTS

COMMENDING THE GRAYSON CRISIS CENTER

Council Member Watt said the Council presented a proclamation earlier in the meeting designating “Sexual Assault Awareness Month” and he commended the job that the Grayson Crisis Center does in the community. He said

**COMMENDING THE
GRAYSON CRISIS
CENTER**

they provide so many services for people in need and he thanked them for their effort.

ALLOW THE USE OF PROPANE FOR DEVELOPMENT

Council Member Sofey asked the staff to address several ordinances including the Development Ordinance, in general. He wanted to encourage development as the economy picks up, especially through the use of propane in the outlying areas.

**ALLOW THE USE OF
PROPANE FOR
DEVELOPMENT**

“JAKE BRAKES” ON 18-WHEEL TRUCKS

Council Member Sofey encouraged the staff to address the Noise Ordinance as it relates to “jake brakes” on 18-wheel trucks.

**“JAKE BRAKES” ON
18-WHEEL TRUCKS**

PANHANDLING ORDINANCE

Council Member Sofey also asked the staff to review a Panhandling Ordinance. Mr. Hefton said the staff will do some research and get back with the Council on all three issues.

**PANHANDLING
ORDINANCE**

OPPORTUNITIES TO SERVE THE COMMUNITY

Deputy Mayor Plyler thanked all the groups that were in attendance at the Council Meeting, including the Keep Sherman Beautiful Commission, the Grayson Crisis Center, Tourism, Chamber of Commerce, and SEDCO.

**OPPORTUNITIES TO
SERVE THE
COMMUNITY**

He praised everyone for working together and said the Crisis Center makes this community a great place to live. He felt addressing those kinds of issues are important and he encouraged all citizens to take the time to serve on a Board or in some type of organization. He said it makes Sherman a better place.

OPPORTUNITIES TO SERVE THE COMMUNITY

Council Member Johnson also thanked the groups in attendance and the Grayson Crisis Center for all they do. Sometimes it can be a thankless job, but he said it's nice to see these groups come together and make Sherman a better community.

**OPPORTUNITIES TO
SERVE THE
COMMUNITY**

ANNOUNCEMENTS

Mayor Wacker announced the following:

- Citizens should check out the City's website and the activities listed at the Sherman Public Library. Also the City's website is being redesigned and she urged citizens to see it at www.ci.sherman.tx.us.
- Reminded citizens that groups or individuals are welcome to participate in the Great Texas Trash-Off, on Saturday, April 11, 2015, at 10:00 a.m.

ANNOUNCEMENTS

COUNCIL MINUTES – APRIL 6, 2015

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 5:37 p.m.

ADJOURNMENT

MAYOR

CITY CLERK



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. B. 1.

Meeting Date: 04/20/2015

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

PROCLAMATION

“Texoma Earth Day Festival Day” – April 25, 2015

Issue:

The 7th Annual Earth Day Festival will be held on Saturday, April 25, 2015 from 8:30 a.m. until 5:00 p.m. on the Sherman Municipal Grounds. The Texoma Earth Day Festival Planning Committee has requested a proclamation to publicize the event.

Background:

Earth Day was originally founded in 1970 and is intended to inspire awareness and appreciation for the Earth’s natural environment. It is celebrated annually in April and corresponds to the beginning of Spring.

Origination:

The request for the proclamation originated with the Texoma Earth Day Festival Planning Committee.

Financial Consideration:

There is no financial consideration to the request.

Staff Recommendation:

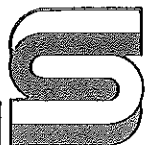
It is the staff recommendation that a proclamation be presented designating April 25th “Texoma Earth Day Festival Day” in Sherman.

Alternatives:

The Council could choose not to present the proclamation.

Attachments

"Texoma Earth Day Festival Day" Proclamation



Proclamation

WHEREAS, all people in the global community have a moral right to a healthy, sustainable environment with economic growth, and

WHEREAS, human activities around the world are causing severe environmental damage that threatens human health and our planet's ability to sustain a diverse community of life, and

WHEREAS, the citizens of the global community must step forward and take action to create a green economy that lives in harmony with the environment, and

WHEREAS, local communities can do much to reverse environmental degradation and contribute to building a healthy society by addressing issues such as energy use, transportation, waste prevention, and litter control, and

WHEREAS, there are sound economic, environmental, and social reasons for local governments to initiate energy efficiency and renewable energy practices, and

WHEREAS, the Texoma Earth Day Festival will be held on April 25, 2015 on the Municipal Building Grounds and will feature programs and activities where ordinary people will learn practical things to improve the health of the planet and to enhance the community's natural environment.

NOW THEREFORE, I, Cary Wacker, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim April 25, 2015

TEXOMA EARTH DAY FESTIVAL DAY

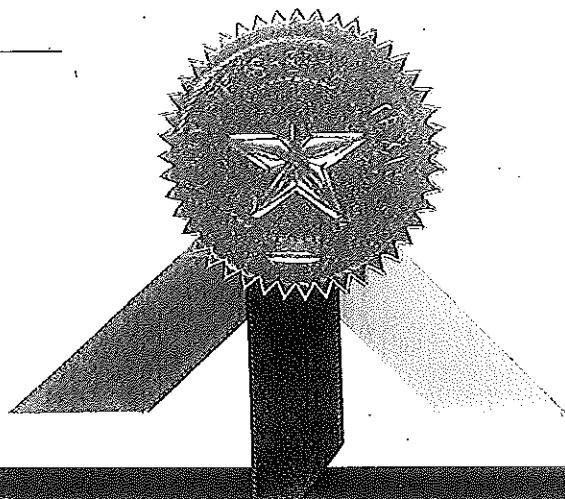
in the City of Sherman and encourage all citizens, businesses, and institutions to use this day to celebrate the Earth and commit to building a sustainable society.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed this the 20th day of April, 2015.

Mayor

ATTEST:

Sinda Ashby
City Clerk





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. C. 1.

Meeting Date: 04/20/2015

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

PUBLIC HEARING OF ORDINANCE NO. 5873

Designating a Certain Area as Industrial Reinvestment Zone, Number 042015-1, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

Issue:

The creation of a new industrial reinvestment zone in response to a tax abatement requested by Kaiser Aluminum Fabricated Products, LLC (Kaiser).

Background:

On Monday, March 16, 2015, the Tax Reinvestment Committees of the City of Sherman, the Sherman Independent School District, Grayson County, and Grayson College (the "Committee") met to consider a request from Kaiser for a tax abatement involving a project to construct an additional 55,000 square foot building to house a 4,400 ton extrusion press and related manufacturing equipment at its Sherman location. The taxable value of Kaiser's current property is about \$16 million. This project proposes to add an additional \$25 million in value to the tax rolls, before any abatement, with about \$10 million coming from real property and \$15 million coming from personal property (the manufacturing equipment). In addition, Kaiser plans to add ten (10) additional positions to their current workforce.

The Committee voted to recommend an abatement and the creation of the Zone to the City Council and other taxing entities. The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. The attached ordinance is the first step in accomplishing the creation of a new commercial/industrial reinvestment zone, which would cover only Kaiser's property.

Ordinance No. 5873 was introduced at the April 6, 2015 Council meeting and, pursuant to State Law, a public hearing was set for the April 20, 2015 meeting to allow interested parties to speak to the issue. If the Ordinance is adopted, the request for tax abatement will be addressed at the May 4, 2015 Council meeting, in the form of a resolution.

Origination:

Kaiser Aluminum Fabricated Products, LLC, Applicant

Financial Consideration:

There is no direct cost to creating Industrial Reinvestment Zone, Number 042015-1 and providing the medium for granting tax abatement agreements within the designated zone.

Staff Recommendation:

The staff recommends the adoption of Ordinance No. 5873 to create Industrial Reinvestment Zone, Number 042015-1, City of Sherman, Texas (the "Zone").

Alternatives:

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

Attachments

Ordinance No. 5873

Application

ORDINANCE NO. 5873

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING A CERTAIN AREA AS INDUSTRIAL REINVESTMENT ZONE, NUMBER 042015-1, CITY OF SHERMAN, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF AGREEMENTS WITHIN THE ZONE, AND OTHER MATTERS RELATING THERETO; PROVIDING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE FOR THE COMMENCEMENT OF THE REINVESTMENT ZONE AND THIS ORDINANCE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

WHEREAS, a hearing before the City Council was set for 5:00 p.m. on the 20th day of April, 2015, such date being at least seven (7) days after the date of publication of the notice of such public hearing in a newspaper of general circulation in the City of Sherman; and

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

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

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

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

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

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

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

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

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

- (a) That the public hearing on adoption of the Reinvestment Zone has been properly called, held and conducted, and that notice of such hearing has been published as required by law;
- (b) That the City has jurisdiction to hold and conduct this public hearing on the creation of the proposed Reinvestment Zone, pursuant to the CODE;
- (c) That creation of the proposed Zone, with boundaries as described in Exhibits “A” and “B”, will result in benefits to the City, its residents and property owners, and to the property, residents and property owners in the Reinvestment Zone; and
- (d) That the Reinvestment Zone, as defined in Exhibits “A” and “B”, meets the criteria for the creation of a Reinvestment Zone as set forth in Section 312.202 of the CODE in that:
 - (1) It is a contiguous geographic area located wholly within the corporate limits of the City.
 - (2) The area will reasonably be likely, as a result of the designation, to contribute to the retention or expansion of primary employment or to attract major investment in the Zone that would be a benefit to the property and that would contribute to the economic development of the City.
 - (3) No part of the property in the Reinvestment Zone is owned or leased by a member of the governing body of the City or Town, or by a member of a zoning or planning board or commission of the City.
 - (4) Improvements in the Reinvestment Zone will enhance significantly the value of all taxable real property in the Reinvestment Zone.

SECTION 3. That the City hereby creates a Reinvestment Zone over the area described by the description in Exhibit “A”, attached hereto and depicted in a drawing attached hereto as Exhibit “B”, and such Reinvestment Zone shall hereafter be identified as the Industrial Reinvestment Zone, Number 042015-1, City of Sherman, Texas (the “Zone”).

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

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

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

SECTION 7. That the contents of the notice of public hearing, which hearing was held before the City Council on the 1st day of April, 2013, and the publication of said notices, is hereby ratified, approved, and confirmed.

1ST READING this the _____ day of _____, 2015.

2ND READING this the _____ day of _____, 2015.

EFFECTIVE DATE: _____ day of _____, 2015.

CITY OF SHERMAN, TEXAS

BY: _____
CAROLYN S. WACKER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

EXHIBIT "A"

**INDUSTRIAL REINVESTMENT ZONE, NUMBER 042015-1,
CITY OF SHERMAN, TEXAS
FIELD NOTES**

Tract 1:

Being a tract or parcel of land situated in the County of Grayson, State of Texas and being a part of the Sherrod Dunman Survey, Abstract No. 329, being a called 45.93 acre tract referred to as "Tract One" as conveyed to Kaiser Aluminum and Chemical Corporation by Deed recorded in Volume 3868, Page 348, Deed Records, Grayson County, Texas (D.R.G.C.T.) containing 45.938 acres of land, more or less, and being more particularly described by metes and bounds as follows:

Beginning at a concrete monument on the West right-of-way (R.O.W.) line of U.S. Highway No. 75 (a variable width R.O.W.) and East line of said Kaiser Tract with said point being at the Northeast corner of said Kaiser Tract and Southeast corner of a called 24.05 acre tract conveyed to the State of Texas in Grayson County Clerk Document No. 0013451 as filed with Grayson County Clerk on May 15, 2003 A.D.;

Thence South 09 degrees 48 minutes 00 seconds East along the West R.O.W. line of said U.S. Highway 75 and East line of said Kaiser Tract, for a distance of 497.88 feet to a 5/8 inch iron rebar rod with plastic cap stamped "JLS 5577" set for corner (JLS Point);

Thence South 06 degrees 44 minutes 26 seconds East along the West R.O.W. line of said U.S. Highway 75 and East line of said Kaiser Tract, for a distance of 469.80 feet to a concrete monument found for corner;

Thence South 05 degrees 59 minutes 00 seconds East along the West R.O.W. line of said U.S. Highway 75 and East line of said Kaiser Tract, for a distance of 272.68 feet to a 5/8 inch iron rebar rod with plastic cap stamped "JLS 5577" set for corner (JLS Point);

Thence South 75 degrees 14 minutes 17 seconds West (called South 75 degrees 16 minutes 00 seconds West by Kaiser Deed) departing the West R.O.W. line of said U.S. Highway 75 and East line of said Kaiser Tract and along the South line of said Tract One of said Kaiser Tract and North line of "Tract Two" as conveyed to Kaiser Aluminum and Chemical Corporation by Deed recorded in Volume 3868, Page 348, D.R.G.C.T. for a distance of 1,557.98 feet (called 1,557.25 feet by Kaiser Deed) to a nail found in concrete for corner at the apparent centerline of Howe Drive;

Thence North 13 degrees 13 minutes 06 seconds West (called North 13 degrees 13 minutes 44 seconds West by Kaiser Deed) along the apparent centerline of said Howe Drive and West line of said Kaiser Tract for a distance of 1,231.16 feet (called 1,231.21 feet by Kaiser

Deed) to an "X" found in concrete for corner at the apparent centerline of Howe Drive and being at the North West corner of said Kaiser Tract and Southwest corner of said State of Texas Tract;

Thence North 75 degrees 14 minutes 18 seconds East (called North 75 degrees 16 minutes 00 seconds East by Kaiser Deed) departing the apparent centerline of said Howe Drive and West line of said Kaiser Tract and along the North line of said Kaiser Tract and South line of said State of Texas Tract for a distance of 1,675.05 feet (called 1,674.54 feet by Kaiser Deed and 1,675.67 feet by State of Texas Deed) to the point of beginning of the herein described tract of land and containing within the metes recited 45.94 acres (2,001,059 square feet) of land, more or less.

Tract Two:

Being a tract or parcel of land situated in the County of Grayson, State of Texas and being a part of the Sherrod Dunman Survey, Abstract No. 329, being a called 11.694 acre tract referred to as "Tract Two" as conveyed to Kaiser Aluminum and Chemical Corporation by Deed recorded in Volume 3868, Page 348, D.R.G.C.T. containing 11.78 acres of land, more or less, and being more particularly described by metes and bounds as follows:

Beginning at a 1/2 inch iron rebar rod found at the intersection of the West R.O.W. line of U.S. Highway No. 75 and the North line of Dorset Drive with said point marking the Southeast corner of the herein described tract;

Thence South 75 degrees 16 minutes 00 seconds West departing the West R.O.W. line of said U.S. Highway No. 75 and along the North line of said Dorset Drive and South line of said "Tract Two" Kaiser Tract for a distance of 578.35 feet (called 573.00 feet by the Kaiser Deed) to a 1/2 inch iron rebar rod found for corner at the Southwest corner of said "Tract Two" Kaiser Tract and the Southeast corner of a called 5.034 acre tract of land conveyed to Yellow Equipment & Terminals, Inc. in Volume 1217, Page 304, D.R.G.C.T.;

Thence North 14 degrees 44 minutes 00 seconds West departing the North R.O.W. line of said Dorset Drive and along the West line of said "Tract Two" Kaiser Tract and East line of said Yellow Equipment Tract and generally along a fence for a distance of 510.00 feet to a chain link fence post found for corner;

Thence South 75 degrees 16 minutes 00 seconds West along the most northerly South line of said "Tract Two" Kaiser Tract and North line of said Yellow Equipment Tract and generally along a fence for a distance of 430.00 feet to a chain link fence post found for corner at the most northerly Southwest corner of said "Tract Two" Kaiser Tract and Northwest corner of said Yellow Equipment Tract and also being at the Southeast corner of a called 1.036 acre tract of land conveyed to 416 Interchange Business Park, L.P. as "Tract II" in Volume 3788, Page 919, D.R.G.C.T.;

Thence North 14 degrees 44 minutes 00 seconds West along the most westerly West line of said "Tract Two" Kaiser Tract East line of said "Tract II" 416 Interchange Business Park Tract and generally along a fence for a distance of 179.44 feet (called 180.00 feet by Kaiser Deed and 416 Interchange Business Park Deed) to a 1/2 inch iron rebar rod found for corner with said point being in the South line of "Tract One" of said Kaiser Deed;

Thence North 75 degrees 14 minutes 17 seconds East (called North 75 degrees 16 minutes 00 seconds East by Kaiser Deed) along the North line of said "Tract Two" Kaiser Tract and South line of "Tract One" Kaiser Tract and generally along a fence for a distance of 1,114.55 feet (called 1,109.20 feet by Kaiser Deed) to a 5/8 inch iron rebar rod with plastic cap stamped "JLS 5577" set for corner (JLS Point) with said point being on the westerly R.O.W. line of said U.S. Highway No. 75;

Thence South 05 degrees 59 minutes 00 seconds East along the westerly R.O.W. line of said U.S. Highway No. 75 and East line of said "Tract Two" Kaiser Deed for a distance of 698.13 feet to the point of beginning and containing within the metes recited 11.73 acres (512,802 square feet) of land, more or less.

EXHIBIT "B"

**INDUSTRIAL REINVESTMENT ZONE, NUMBER 042015-1,
CITY OF SHERMAN, TEXAS
VICINITY MAP**



Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

4300 South Highway 75



NOT TO SCALE

1 in = 487'

TAX REINVESTMENT ZONE
INDUSTRIAL APPLICATION

SECTION I

1. Property Owner Kaiser Aluminum Fabricated Products, LLC.
Mailing Address PO Box 1215 Sherman TX 75091
Telephone Number 903-893-5566
2. Property Owner's Representative Max Gorman
Mailing Address PO Box 1215 Sherman TX 75091
Telephone Number 903-892-5846
3. Physical Property Address 4300 Highway 75 S, Sherman TX
4. Property Legal Description (include as an attachment with metes and bounds). – See Below
5. Property is located within: City of Sherman? Yes
Sherman ISD? Yes
Grayson County? Yes
6. Description of Project: Automotive Unit Two – Construct an additional 55,000 square foot building to house an initial 4,400 ton extrusion press and related manufacturing equipment.
7. Date of projected occupation of project/initiation of operations:
Q1 2016
8. Narrative response to criteria questions in Section II of application? Yes (Yes or No, and include attachment).

SECTION II

Employment Impact

How many jobs will be brought to Sherman 10

What types of jobs will be created? Semi-skilled press operator and manufacturing positions along with Skilled maintenance, Quality, and engineering positions.

What will the total annual payroll be? Include current and increase factors.
Current payroll - \$9,080k. Increase factor 3%. Future Payroll - \$9,797

Fiscal Impact

How much real and personal property value will be added to the tax rolls?
\$25.5 Million

How much direct sales tax will be generated? Negligible

How will this project affect existing businesses and/or office facilities?
There should be no impact to the existing business park.

What infrastructure construction would be required? A new 55,000 sq foot facility would be constructed to locate the new equipment in.

What is the total annual operating budget of this facility projected to be?
(For expansion, state current and projected increase)

2014 - \$60,111k

2015 - \$73,395k

2016 – \$78,224k

2017 – \$81,797k

Community Impact

What effect would the project have on the local housing market? The project will have a favorable impact from increased employment and local spending.

How compatible is the project with the city's Comprehensive Plan? This project supports Sherman's Comprehensive Master Plan in that it creates employment opportunities in designated commercial business park areas.

What environmental impact, if any, will be created by the project? None

This project is being considered by Kaiser Aluminum to enable growth in the Automotive Market. The project includes a complete new extrusion line that would be highly automated to compete in the highly competitive Automotive Aluminum extrusion market.

The Automotive Market is using an increasing number of aluminum extrusions as automakers try to lightweight their cars to comply with regulations on miles per gallon. Kaiser Aluminum plans to take advantage of the current growth as we are currently serving this market and want to grow with the market.

Kaiser Aluminum Fabricated Products, LLC**Property Legal Description**

Property ID	MAP ID	Description	Assessed	Exemptions	2014
			Value		Tax
R125523	185-0329012	G-0329 Dunman Sherod A-G0329; 43.5 Acres	3,558,030		88,396
R125524	185-032901201	G-0329 Dunman Sherod A-G0329; 2.41 Acres	1,160,184		28,824
R125527	185-0329015	G-0329 Dunman Sherod A-G0329; 11.69 Acres	459,996		11,428
P184251		Furniture & Fixtures	379,055		9,417
P203162		Business Personal Property KFAB	483,460		12,011
P320905		Supplies	168,995		4,199
P320426		Inventory	6,898,059	6,139,273	18,851
P320427		Machinery & Equipment	9,185,747		228,211
			22,293,526		401,336



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. C. 2.

Meeting Date: 04/20/2015

Prepared By: Otis Henry, Police Chief

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5876

Amending Chapter 9 of the Code of Ordinances, entitled "Personnel", Article 9.05, entitled "Civil Service for Firefighters and Police Officers", at Section 9.05.026, entitled "Authorized Number of Positions", to Abolish the One Remaining Tested Assistant Police Chief Position and to Create a Second Appointed Assistant Police Chief Position

Issue:

Authorizing the Chief of Police to now appoint the vacant Tested Assistant Chief position in accordance with Texas Local Government Code Section 143.014

Background:

The current and only occupant of a Tested Assistant Chief classified position has separated from the police department classified service; and there is no promotional eligibility list in existence. In the current ordinance, the Council directed that, when this person leaves the classified service, the City Council will abolish that Tested Assistant Police Chief position and will then create a second Appointed Assistant Police Chief position. The Chief of Police requests the Council take the aforementioned action and that the ordinance be amended to reflect the change.

Origination:

Police Department

Financial Consideration:

None

Staff Recommendation:

Staff recommends adopting the proposed ordinance authorizing the Police Chief to appoint the rank of Assistant Police Chief.

Alternatives:

Continue with the current promotional method

Attachments

Ordinance No. 5876

ORDINANCE NO. 5876

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES, ENTITLED "PERSONNEL", ARTICLE 9.05, ENTITLED "CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS", AT SECTION 9.05.026, ENTITLED "AUTHORIZED NUMBER OF POSITIONS", TO ABOLISH THE ONE REMAINING TESTED ASSISTANT POLICE CHIEF POSITION AND TO CREATE A SECOND APPOINTED ASSISTANT POLICE CHIEF POSITION; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman has adopted civil service for its Police Department police officers; and

WHEREAS, the Police Department has at least four (4) ranks below the Department Head; and

WHEREAS, the Police Department had five (5) persons occupying the classification immediately below the Department Head as of January 1, 1983; and

WHEREAS, Section 143.014 of the Texas Local Government Code authorizes a City Council to allow a Department Head to appoint officers to the rank immediately below the Department Head without competitive examinations; and

WHEREAS, prior to last year, the Sherman Police Department had previously not availed itself of the option of appointing Assistant Police Chiefs under §143.014, but the current Police Chief believes it will improve the management of the Police Department to appoint the officers who occupy the rank immediately below him; and

WHEREAS, last summer, the City Council abolished one Tested position and created an Appointed Assistant Police Chief position, leaving one Tested Police Chief position remaining; and

WHEREAS, there is currently one Tested Assistant Police Chief position that is vacant and the City Council wishes to abolish the Tested position, and then to create an Appointed Assistant Police Chief position, for a total of two Appointed Assistant Police Chief positions;

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

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

SECTION 2. That, on July 7, 2014, the City Council amended the Code of Ordinances of the City of Sherman, Texas, to abolish one (1) of the two (2) Tested Assistant Police Chief positions, leaving one remaining Tested position. The occupant of that Tested position has made known his intention of leaving the classified service and there is no promotional eligibility list in existence. The City Council hereby creates one (1) additional Appointed Assistant Police Chief position in accordance with §143.014, and that officer will serve at the pleasure of the Department Head. The person so appointed by the Police Chief shall meet the criteria established in §143.014(e) of the Texas Local Government Code. Therefore, the strength of force for the Sherman Police Department is as follows:

<u>Title</u>	<u>No. Positions</u>
Patrolman	47
Corporal	6
Sergeant	8
Lieutenant	4
Assistant Chief-Appointed	2
Chief	1

SECTION 3. That Chapter 9, Article 9.05, Section 9.05.026 of the Code of Ordinances of the City of Sherman, Texas, be and is hereby amended so that such section shall read as follows:

Sec. 9.05.026 Authorized number of positions

The number of allocated positions for each job title in the fire and police departments are set forth below in order of ranking:

(1) **Fire department.**

<u>Title</u>	<u>No. Positions</u>
Firefighter	39
Engineer	15
Captain	15

Battalion Chief	3
Division Chief	4
Fire Chief	1

- (A) Active staffing in the “engineer” position greater than the number allocated shall be considered overstaffed and said position shall not be filled upon the occurrence of vacancy due to promotion, demotion, attrition, termination, retirement, or any other reason.
- (B) Staffing in the “firefighter” position shall be increased with each occurrence of the number of active “engineer” positions being eliminated until the total number of “engineer” positions meets the number of allocated positions set forth in section (1) above.
- (C) Once the number of active “engineer” positions is reduced to meet the number of allocated positions set forth in section (1) above. The number of active “firefighter” positions shall be increased to meet the number of allocated positions set forth in section (1) above.

(2) Police department.

<u>Title</u>	<u>No. Positions</u>
Patrolman	47
Corporal	6
Sergeant	8
Lieutenant	4
Assistant Chief-Tested	1
Assistant Chief-Appointed	1 2
Chief	1

SECTION 4. That it is the intention of the City Council of the City of Sherman, Texas, that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Sherman, Texas, and that sections of this ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 5. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 6. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 7. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the _____ day of _____, 2015.

ADOPTED on this the _____ day of _____, 2015.

EFFECTIVE DATE on this the _____ day of _____, 2015.

CITY OF SHERMAN, TEXAS

BY: _____
CAROLYN S. WACKER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. C. 3.

Meeting Date: 04/20/2015

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers: 5873 and 5876

Issue:

C.1. PUBLIC HEARING OF ORDINANCE NO. 5873

Designating a Certain Area as Industrial Reinvestment Zone, Number 042015-1, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

C.2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5876

Amending Chapter 9 of the Code of Ordinances, entitled "Personnel", Article 9.05, entitled "Civil Service for Firefighters and Police Officers", at Section 9.05.026, entitled "Authorized Number of Positions", to Abolish the One Remaining Tested Assistant Police Chief Position and to Create a Second Appointed Assistant Police Chief Position



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. C. 4.

Meeting Date: 04/20/2015

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

CONSENT AGENDA

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

Issue:

D.6. * RESOLUTION NO. 5965

Awarding a Bid to and Authorizing Execution of a Contract with Overland Materials and Manufacturing, Inc. for an Annual Supply of Hot Mix Asphalt

D.7. * RESOLUTION NO. 5966

Authorizing Execution of an Encroachment Easement to Kent Hughlett for the Placement of a Decorative Fence within the South Crockett Street Right-of-Way to the City of Sherman

E.5. * OTHER BUSINESS

Replat Approval of Vanderveer Addition, a Replat of Block E, T.J. Shannon Supplement; being part of Lot 10 and all of Lots 11 & 12, Block E, T.J. Shannon Supplement, containing 0.43 acres; Sean Vanderveer, Owner; and Sartin and Associates, Inc. Surveyor (200 blocks of East Pecan and North Montgomery Streets)

E.6. * OTHER BUSINESS

Final Plat Approval of CAJC Addition, being 4.33 acres in the Daniel C. Shelp Survey, Abstract No. 1097; CAJC Corporation, Owners; Dan Massey, Applicant; and Underwood Drafting and Surveying, Surveyors (5200 block of Texoma Parkway)

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SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. D. 1.

Meeting Date: 04/20/2015

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 5960

Declaring the City of Sherman's Eligibility and Intention to Participate in a Residential Tax Abatement Program to Promote Development/Redevelopment in Certain Areas of the City; Establishing Guidelines and Criteria

Issue:

Renewing the City's Residential Tax Abatement Program for two (2) years

Background:

At the April 15, 2013 meeting, the City Council renewed the Residential Tax Abatement Program for two (2) more years, pursuant to the provisions of Chapter 312, Section 312.002, Tax Code, Vernon's Texas Codes Annotated. At the January 6, 2014 meeting, the City Council revised the program to remove the "modernization" component of the abatement criteria and set an expiration date of April 15, 2015. The program's goal is to spur redevelopment in the older sections of the community.

Building within this area uses existing streets, water mains and sewer mains, rather than extending them on the outskirts of the city. It also tends to minimize the area that must be covered by police officers, street maintenance crews, and other City employees.

The City Council granted seven (7) residential tax abatements in 2013, thirteen (13) residential tax abatements in 2014, and seven (7) residential tax abatements year-to-date in 2015.

Origination:

City Manager's Office

Financial Consideration:

There is no direct cost to approving this resolution. Costs would vary as residential tax abatements are actually granted. In 2013, 2014 and 2015 combined, abatements have been granted on new construction with an estimated value of \$1,934,800.00 for a total of approximately \$6,596.74 in abated taxes. This was partially offset by \$2,025.00 in application fees.

Staff Recommendation:

The staff recommends approval of this resolution to renew the City's Residential Tax Abatement Program for two (2) years.

Alternatives:

The City Council could revise the terms of the abatements that are granted or could discontinue the program completely.

Attachments

Resolution No. 5960

Map of Residential Tax Abatement Zone

RESOLUTION NO. 5960

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DECLARING THE CITY OF SHERMAN'S ELIGIBILITY AND INTENTION TO PARTICIPATE IN A RESIDENTIAL TAX ABATEMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN CERTAIN AREAS OF THE CITY; ESTABLISHING GUIDELINES AND CRITERIA; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas, desires to promote the development/redevelopment of certain contiguous geographic areas within its jurisdiction; and

WHEREAS, the City of Sherman, Texas, is authorized to enter into Tax Abatement Agreements for commercial-industrial or residential purposes as authorized by Chapter 312 of the Texas Property Tax Code (Code); and

WHEREAS, Section 312.002 of the Code requires the City of Sherman, Texas, to establish guidelines and create criteria every two (2) years for the designation of reinvestment zones and the entering into Residential Tax Abatement Agreements; and

WHEREAS, Resolution No. 5764 was approved by the City Council at the April 15, 2013 meeting, renewing the City's program for an additional two (2) years; and

WHEREAS, at the January 6, 2014 meeting, the City Council approved Resolution No. 5835 to amend Resolution No. 5764, revising the program's guidelines and criteria to remove the "modernization" component and establishing an expiration date of two (2) years from and after April 15, 2015;

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

SECTION 1. That the City of Sherman, Texas, declares it is eligible for and intends to participate in a Residential Tax Abatement Program.

SECTION 2. That the City of Sherman, Texas, hereby adopts the following Guidelines and Criteria for Tax Abatement for use in its Residential Tax Abatement Program:

**CITY OF SHERMAN
RESIDENTIAL TAX ABATEMENT GUIDELINES AND CRITERIA**

GENERAL PURPOSE AND OBJECTIVES

The City of Sherman is committed to an expansion of its tax base, an increase to its population, the promotion of development in all parts of the City, and to an ongoing improvement in the quality of life for its citizens. As these objectives are generally served by the enhancement and expansion of the local economy, the City of Sherman will offer residential tax abatement as a stimulus for economic development in Sherman. The policy of the City of Sherman is to make residential tax abatement available to new structures. Likewise, residential tax abatement is intended for residential structures built upon vacant lots within existing subdivisions as well as within new subdivisions of the City. It is the policy of the City of Sherman that such tax abatement will be provided in accordance with the procedures and criteria outlined in this document and as permitted by State statute. The guidelines and criteria herein adopted shall expire two (2) years from and after April 20, 2017. The provisions herein are severable, and if any provision or requirement of these guidelines or criteria is declared or found to be illegal or invalid, such illegality or invalidity shall not affect the remaining provisions, since the City Council would have adopted these guidelines and criteria without the incorporation of the portions found to be invalid.

DEFINITION OF TERMS

Act — means the Property Redevelopment and Tax Abatement Act, Texas Tax Code Ann. 312.001, et seq., as amended from time to time.

Agreement — means a contractual agreement between a property owner and the City of Sherman for the purposes of tax abatement.

Applicant — means an owner of real property who requests tax abatement in accordance with these guidelines.

Base Year Value — means the assessed value of eligible property on January 1 preceding the date of execution of the agreement.

Economic Life — means the number of years a property improvement is expected to be in service.

New Structure — means residential improvements made to a property previously undeveloped which is placed into use by means other than or in conjunction with expansion.

Reinvestment Zone — means a contiguous geographic area in the jurisdiction of the municipality in which tax abatements may be granted to promote residential development or redevelopment if the governing body determines that residential development or redevelopment would not occur solely through private investment in the reasonably foreseeable future.

Residential Improvements — means the construction of residential building(s), and all the appurtenances thereto, single-family in purpose. This does not include duplexes or multi-family structures.

Total Facility — means all buildings and structures along with the appurtenances thereto.

ELIGIBILITY

All residentially zoned property is eligible for designation as a Reinvestment Zone. A new structure anywhere within the corporate limits of a value in excess of \$15,000.00 may receive abatement. As provided in the Act, abatement may only be granted for the value of eligible property subsequent to and listed in an abatement agreement between the City of Sherman and the property owner. Abatement will be granted for residential improvements only.

Eligible Property — Abatement will be extended to the increased value of real estate, buildings, structures, and site improvements along with the appurtenances thereto for properties which are single-family in purpose. This does not include duplexes or multi-family structures.

Value and Term of Abatement — Upon determination that all requirements for tax abatement have been satisfied by the applicant, the value and terms of the abatement will be for a period of ten (10) years in accordance with the following schedule for the abatement of taxes on the added value above the base year value. Abatement shall be granted effective with the January 1 valuation date immediately following the date of completion of the improvements.

SCHEDULE OF TAXES ASSESSED

<u>TAX YEAR</u>	<u>ABATEMENT</u>
1	100%
2	100%
3	100%
4	100%
5	100%
6	100%
7	80%
8	60%
9	40%
10	20%

CRITERIA

Any request for tax abatement shall be reviewed for completeness. The City staff shall determine whether the application satisfies the guidelines and criteria. Tax abatement shall be based upon an evaluation of the following criteria which each applicant will be requested to address in narrative format:

Fiscal Impact

Addition of real property improvements to the tax rolls.

No utility construction by the City would be required other than routine.

Community Impact

The project is compatible with the City's comprehensive plan.

No adverse environmental impact will be created by the project.

PROCEDURES

Any person, partnership, organization, corporation or other entity desiring that the City of Sherman consider providing tax abatement to encourage location of residential improvements within the City limits of Sherman shall be required to comply with the following procedural guidelines:

1. Preliminary Application Steps

- A. Applicant shall submit an "Application for Tax Abatement" contemporaneously with the application for a building permit, and shall pay a filing fee of \$75.00 to cover publication, notice cost, review and processing. If the applicant for the building permit is not the owner of the real estate and does not make application for residential tax abatement on behalf of the owner, the City staff shall notify the owner by certified mail, return receipt requested, that residential tax abatement must be filed with the City within ten (10) business days of receipt of the notice.
- B. If the applicant does not wish to apply for residential tax abatement at the time that the building permit is issued, or if the owner fails to respond to the written notice of availability for residential tax abatement, the opportunity for residential tax abatement is waived. The staff shall prepare forms necessary to reflect the refusal of an applicant to participate and to document the lack of response by the owner to the written notice. The refusal or waiver to participate in residential tax abatement by the owner or applicant shall be binding on subsequent owners of the real property.
- C. The City may request applicant to provide substantiation of economic feasibility of the overall project to assist in determining the long-term benefit to the City.

D. A complete legal description shall be provided.

E. Applicant shall complete all forms and information detailed above and submit them to the City of Sherman.

2. All information in the application package detailed above will be reviewed for completeness and accuracy. Additional information may be requested as needed.

If necessary, applicant will meet with City to discuss details of the application and prepare for presentation of application to the City Council.

3. The application shall include the total capital investment for real property improvements and type of project.

LEGAL DOCUMENTATION PREPARATION

The City will be responsible for drafting the proposed agreement pursuant to the approved Tax Abatement, as well as all associated documentation.

The legal document is to include the following:

1. Estimated value of new construction to be abated.
2. Percent of value to be abated each year.
3. Commencement date and the termination date of abatement.
4. Proposed use of the facility, nature of construction, time schedule, map, property description and improvements list as provided in the application.
5. Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture and administration.

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 ____ day of _____, 2015.

CITY OF SHERMAN, TEXAS

BY: _____
CAROLYN S. WACKER, MAYOR

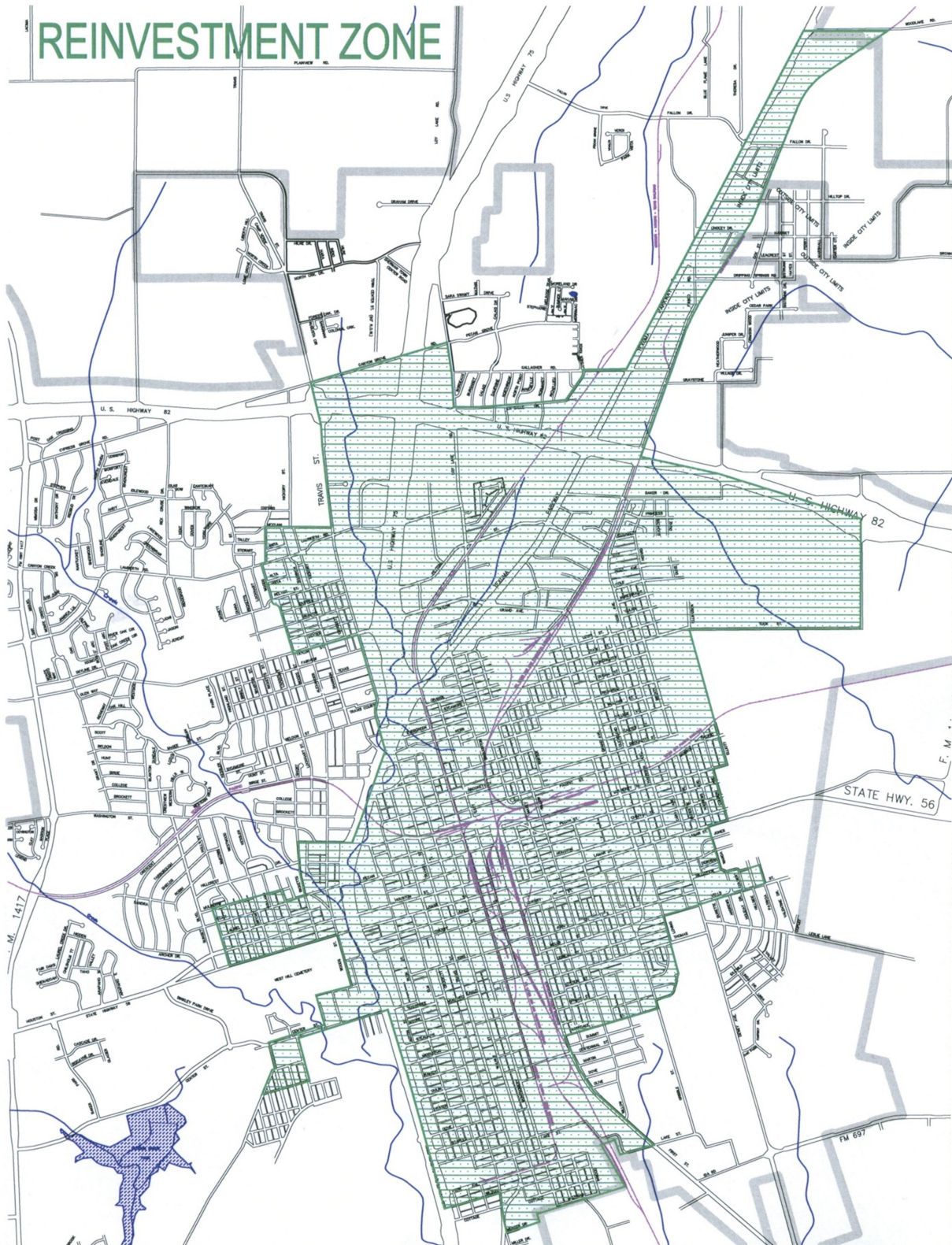
ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**

Residential Reinvestment Zone, Number 041811-1, City of Sherman, Texas





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. D. 2.

Meeting Date: 04/20/2015

Prepared By: Clay Barnett, Director of Public Works and Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 5961

Certifying Funding and Support for the 2015 Transportation Alternatives Program Nomination Form with the Texas Department of Transportation for the Application to Receive Funding to Build the Downtown Sherman Streetscape Enhancement Project Phase II

Issue:

To consider submitting a 2015 Transportation Alternatives Program (TAP) nomination package to the Texas Department of Transportation (TxDOT)

Background:

TxDOT is calling for nominations for the 2015 TAP. In 2009, similar TxDOT funding was approved and accepted to assist in completion of the Downtown Sherman Streetscape Enhancement Project Phase I. City staff worked with local architects, David Baca and Jared Tredway, and developed a plan to enhance the streetscapes of State Highway 56 (Houston and Lamar Streets) between U.S. Highway 75 and the downtown area. The enhancements were to not only beautify the heavily traveled corridors, but to address pedestrian and traffic safety issues.

The upcoming enhancements, referred to as the Downtown Sherman Streetscape Enhancement Project Phase II, would continue to address pedestrian and traffic safety issues related to streetscapes along State Highway 56 (Houston and Lamar Streets) in and around the downtown, and likely extending eastward.

Origination:

Public Works Department

Financial Consideration:

Matching funds are required for twenty percent (20%) of the project. Project costs are estimated at \$402,500.00 (\$322,000.00 funded by TxDOT; and \$80,500.00 funded by the City).

Staff Recommendation:

It is recommended that the City Council approve submission of a TAP nomination package to TxDOT for the Downtown Sherman Streetscape Enhancement Project Phase II.

Alternatives:

Those as may be recommended by the City Council

Attachments

Resolution No. 5961

Location Map

RESOLUTION NO. 5961

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CERTIFYING FUNDING AND SUPPORT FOR THE 2015 TRANSPORTATION ALTERNATIVES PROGRAM NOMINATION FORM WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE APPLICATION TO RECEIVE FUNDING TO BUILD THE DOWNTOWN SHERMAN STREETScape ENHANCEMENT PROJECT PHASE II; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman wishes to improve safety and aesthetics for pedestrians in and around the downtown area; and

WHEREAS, the proposed Downtown Sherman Streetscape Enhancement Project Phase II (the “Project”) would provide pedestrian and landscaping improvements along State Highway 56 (Lamar Street) between the Sherman Downtown Area and Sherman High School; and

WHEREAS, the proposed Downtown Sherman Streetscape Enhancement Project Phase II is a viable and important endeavor for the City of Sherman, its citizens and stakeholders, as well as its local businesses and industries; and

WHEREAS, the building of the Project will accomplish the intention of the City;

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

SECTION 1. That the City of Sherman will apply for funding through the Texas Department of Transportation to make the necessary improvements to accomplish the Downtown Sherman Streetscape Enhancement Project Phase II.

SECTION 2. That the City agrees to commit to the Project’s development, implementation, construction, maintenance, management and financing.

SECTION 3. That the City further agrees to provide the required local match at 20% or greater of the total Project cost, including being responsible for all non-federally fundable items and 100% of all overruns.

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

PASSED AND APPROVED on this the _____ day of _____, 2015.

CITY OF SHERMAN, TEXAS

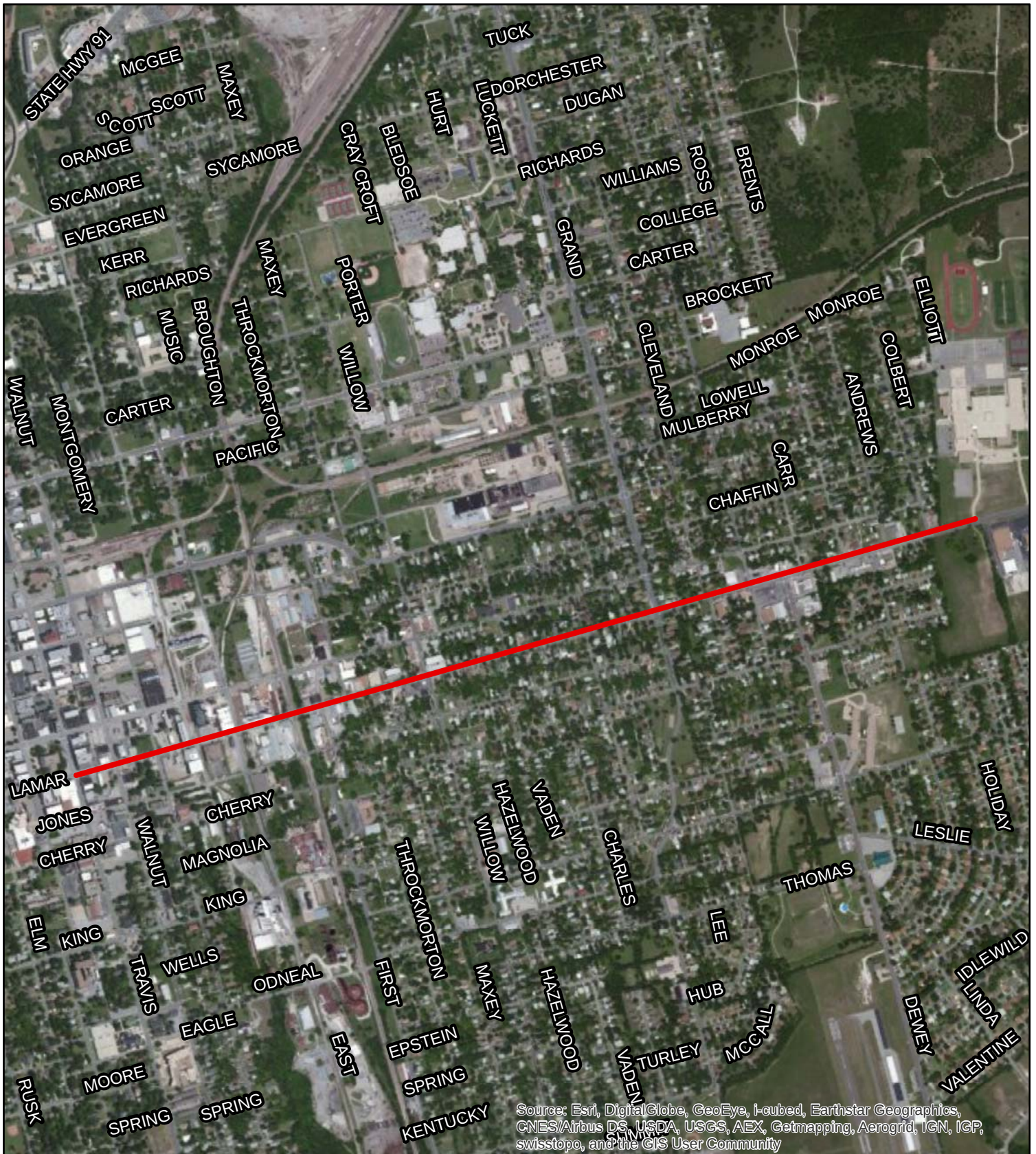
BY: _____
CAROLYN S. WACKER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
BRANDON S. SHELBY, CITY ATTORNEY





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. D. 3.

Meeting Date: 04/20/2015

Prepared By: JJ Jones, Fire Chief

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 5962

Revoking and Replacing Resolution No. 5878; Establishing Salary Structures and Incentive/Certification Pay Schedules for Firefighters and Police Officers; Establishing Special Longevity Pay Schedules for Some Newly Hired Firefighters; Providing for an Effective Date

Issue:

Implementing a lateral entry program allowing qualified, experienced firefighters to be hired at a higher pay rate

Background:

A primary goal of the Fire Department's recruiting efforts is to effectively and efficiently reach and maintain our maximum staffing levels, in part by hiring firefighters with prior experience. In February 2014, the Sherman Police Department proposed similar changes to the current resolution which enabled a lateral entry option enabling the department to seek out qualified and experienced firefighters. Similar to the Police Department's change, this would authorize a beginning special seniority pay commensurate to the firefighter's previous years of qualified service and experience not to exceed the three (3) year Firefighter monthly seniority pay rate.

Origination:

Fire Department

Financial Consideration:

Funds for this change are available within the current budget. The cost of this program will be determined by the number of experienced firefighters that are hired, if any, under this new program. The average annual cost per experience officer will range from \$4,300.00 to \$5,600.00, depending on the number of years of previous service. Incumbents who were hired prior to the effective date of this Resolution, who had prior qualified work experience, would be raised to pay steps reflective of their experience. The cost for this increase is expected to be less than \$5,000.00 annually.

Staff Recommendation:

Staff recommends the modification authorizing the special seniority pay for lateral entry firefighters with previous experience.

Alternatives:

The Council could reject these requested modifications.

Attachments

Resolution No. 5962

RESOLUTION NO. 5962

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REVOKING AND REPLACING RESOLUTION NO. 5878; ESTABLISHING SALARY STRUCTURES AND INCENTIVE/CERTIFICATION PAY SCHEDULES FOR FIREFIGHTERS AND POLICE OFFICERS; ESTABLISHING SPECIAL LONGEVITY PAY SCHEDULES FOR SOME NEWLY HIRED FIREFIGHTERS; PROVIDING FOR AN EFFECTIVE DATE; 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 Resolution No. 5878, passed and approved on the 2nd day of September 2, 2014, is hereby revoked.

SECTION 2. That, from and after the effective date of the 1st day of October, 2014, the following salary structures and incentive/certification pay schedules will be adopted for the Sherman Fire Department and Sherman Police Department:

CLASSIFICATION	MONTHLY BASE SALARY	MONTHLY SENIORITY PAY	TOTAL
FIREFIGHTER			
Entry	\$3,295.80	N/A	\$3,295.80
1 Year	\$3,295.80	\$366.22	\$3,662.02
2 Year	\$3,295.80	\$419.08	\$3,714.88
3 Year	\$3,295.80	\$472.76	\$3,768.56
4 Year	\$3,295.80	\$527.24	\$3,823.04
5 Year	\$3,295.80	\$582.54	\$3,878.34
ENGINEER			
Entry	\$3,982.44	N/A	\$3,982.44
1 Year	\$3,982.44	\$57.72	\$4,040.16
2 Year	\$3,982.44	\$116.26	\$4,098.70
CAPTAIN			
Entry	\$4,348.64	N/A	\$4,348.64
1 Year	\$4,348.64	\$63.22	\$4,411.86
BATTALION CHIEF			
Entry	\$4,669.06	\$352.00	\$5,021.06
1 Year	\$4,669.06	\$442.66	\$5,111.72

DIVISION CHIEF	\$5,182.10	\$805.98	\$5,988.08
PATROLMAN			
Entry – Non-Certified	\$3,489.84	N/A	\$3,489.84
Entry – Certified	\$3,800.00	N/A	\$3,800.00
1 Year	\$3,800.00	\$47.92	\$3,847.92
2 Year	\$3,800.00	\$160.06	\$3,960.06
3 Year	\$3,800.00	\$635.22	\$4,435.22
4 Year	\$3,800.00	\$701.74	\$4,501.74
5 Year	\$3,800.00	\$769.32	\$4,569.32
10 Year	\$3,800.00	\$869.52	\$4,669.52
20 Year	\$3,800.00	\$969.52	\$4,769.52
CORPORAL			
Entry	\$4,815.32	N/A	\$4,815.32
1 Year	\$4,815.32	\$94.38	\$4,909.70
SERGEANT			
Entry	\$5,035.31	\$211.19	\$5,246.50
1 Year	\$5,035.31	\$311.91	\$5,347.22
2 Year	\$5,035.31	\$414.59	\$5,449.90
LIEUTENANT			
Entry	\$5,401.52	\$158.42	\$5,559.94
1 Year	\$5,401.52	\$266.48	\$5,668.00
ASSISTANT CHIEF			
Entry	\$5,676.20	\$527.98	\$6,204.18
1 Year	\$5,676.20	\$641.52	\$6,317.72

SECTION 3. That, from and after the effective date of the 1st day of October, 2014, the following incentive/certification pay schedules shall be adopted for the Sherman Fire Department:

- (a) Each employee certified by the Texas Department of State Health Services as a Paramedic and who meet the Sherman Medical Director's prescribed Medical Standards for Medical Authorization shall receive \$375.00 per month Incentive/Certification Pay.
- (b) Each employee who is certified by the Texas Commission on Fire Protection as an Intermediate Firefighter shall receive \$104.00 per month Incentive/Certification Pay.

- (c) Each employee who is certified by the Texas Commission on Fire Protection as an Advanced Firefighter shall receive \$218.40 per month Incentive/Certification Pay.
- (d) Each employee who is certified by the Texas Commission on Fire Protection as a Master Firefighter shall receive \$318.40 per month Incentive/Certification Pay.
- (e) Incentive/Certification Pay shall only be paid for the highest Texas Commission on Fire Protection Certification achieved.
- (f) All Certifications shall be kept current to receive Incentive/Certification Pay.
- (g) Each employee who holds an Associates Degree from an accredited college or university shall receive \$75.00 per month Education Incentive Pay.
- (h) Each employee who holds a Bachelors Degree from an accredited college or university shall receive \$175.00 per month Education Incentive Pay.
- (i) Each employee who holds a Masters Degree from an accredited college or university shall receive \$250.00 per month Education Incentive Pay.
- (j) Education Incentive Pay shall only be paid for the highest degree received.

SECTION 4. That, from and after the effective date of the 1st day of October 2014, the following incentive/certification pay schedules shall be adopted for the Sherman Police Department:

- (a) Each employee certified by the Texas Commission on Law Enforcement as an Intermediate Peace Officer shall receive \$75.00 per month Incentive/Certification Pay.
- (b) Each employee certified by the Texas Commission on Law Enforcement as an Advanced Peace Officer shall receive \$175.00 per month Incentive/Certification Pay.
- (c) Each employee certified by the Texas Commission on Law Enforcement as a Master Peace Officer shall receive \$275.00 per month Incentive/Certification Pay.
- (d) Incentive/Certification Pay shall only be paid for the highest Texas Commission on Law Enforcement Certification achieved.
- (e) Each employee who speaks Spanish as a second language, as certified and designated by the Police Chief shall receive \$100.00 per month Incentive/Certification Pay.
- (f) All Certifications shall be kept current to receive Incentive/Certification Pay.

- (g) Each employee who holds an Associates Degree from an accredited college or university shall receive \$100.00 per month Education Incentive Pay.
- (h) Each employee who holds a Bachelors Degree from an accredited college or university shall receive \$250.00 per month Education Incentive Pay.
- (i) Each employee who holds a Masters Degree from an accredited college or university shall receive \$500.00 per month Education Incentive Pay.
- (j) Education Incentive Pay shall only be paid for the highest degree received.

SECTION 5. Eligible pay types are authorized by the City Council below for Patrolmen and Firefighters:

(a) Seniority Pay – Lateral Entry (prior Police Experience):

- 1. Seniority Pay is authorized by Chapter 143.04 (c)(1) of the Texas Local Government Code.
- 2. Applicants for patrolmen positions who are hired after February 17, 2014 shall be eligible for Special Seniority Pay for lateral entry if they have at least two (2) years' continuous service as a paid, full-time certified peace officer, or comparable Military Police experience as approved by the Chief of Police, with the authority to enforce laws, investigate crimes, make arrests, respond to calls for service, carry a firearm, and use discretion as part of their assigned duties. A lateral entry applicant shall not have more than a two-year break in service from the time the applicant left employment as a certified peace officer, or Military Police service and, as of the last date, applications are accepted.
- 3. Starting Pay: The starting pay for lateral entry patrolmen with prior qualifying law enforcement experience will be determined based on the number of years of prior qualified service as of the last date applications are accepted.
 - i. Lateral entry patrolmen who have at least two (2) years of prior qualified service will start at two (2) years of service according to the Sherman Police Department pay schedule.
 - ii. Lateral entry patrolmen who have at least three (3) year of prior qualified service will start at three (3) years of service according to the Sherman Police Department pay schedule.
 - iii. Previous Sherman Police Patrolmen who are reappointed as patrolmen will be placed in the same salary step that they held at the time of their separation unless the applicant for reappointment

separated employment while at a classification higher than patrolman. If the applicant for reappointment separated from service with the Sherman Police Department while at a classification higher than patrolman, then the reappointed patrolman's pay shall correspond with the reappointed patrolman's total prior service years but shall not exceed the top pay of the patrolman classification.

4. Departmental Seniority Impact: The Lateral Entry Program described in this Sub-section is for seniority pay purposes only to determine placement into the existing pay schedule. Prior law enforcement work experience will not be considered for promotional eligibility requirements, departmental seniority or transfers. Departmental seniority for lateral patrolmen and reappointed patrolmen will begin on their most recent Civil Service hire date with the Sherman Police Department.
 5. Requirements: Guidelines and administration for eligibility for lateral entry shall be governed by police policies and Local Civil Service Commission Rules and Regulations. The Chief of Police shall make the final determination as to whether an applicant meets the criteria for the Police Lateral Entry Program; and the Chief's decision shall be final and non-appealable to the Civil Service Commission or to any court.
 6. Longevity Pay: Sworn Police employees shall be paid Longevity Pay in accordance with City policy, Chapter 142 of the Texas Local Government Code, and as permitted under Chapter 143.041(c)(1) of the Texas Local Government Code. City policy provides specifics on administration and application.
- (b) Seniority Pay – Lateral Entry (prior Fire Experience):
1. Seniority Pay is authorized by Chapter 143.041(c)(1) of the Texas Local Government Code.
 2. Applicants for firefighter positions who are hired after July 1, 2015 shall be eligible for Special Seniority Pay for lateral entry if they have at least two (2) years' continuous service as a paid, full-time certified firefighter as approved by the Fire Chief. A lateral entry applicant shall not have more than one year break in service from the time the applicant left employment as a certified firefighter as of the last date applications are accepted.
 3. Starting Pay: The starting pay for lateral entry firefighter with prior qualifying firefighting experience will be determined based on the number of years of prior qualified service as of the last date applications are accepted.

- i. Lateral entry firefighter who have at least two (2) years of prior qualified service will start at two (2) years of service according to the Sherman Fire Department pay schedule.
 - ii. Lateral entry firefighter who have at least three (3) years of prior qualified service will start at three (3) years of service according to the Sherman Fire Department pay schedule.
4. Departmental Seniority Impact: The Lateral Entry Program described in this Sub-Section is for seniority pay purposes only to determine placement into the existing pay schedule. Prior fire work experience will not be considered for promotional eligibility requirements, departmental seniority or transfers. Departmental seniority for lateral firefighter will begin on their most recent Civil Service hire date with the Sherman Fire Department.
5. Requirements: Guidelines and administration for eligibility for lateral entry shall be governed by fire department policies and Local Civil Service Commission Rules and Regulations. The Fire chief shall make the final determination as to whether an applicant meets the criteria for the Fire Lateral Entry Program; and the Chief's decision shall be final and non-appealable to the Civil Service Commission or to any court.
6. Longevity Pay: Fire department employees shall be paid Longevity Pay in accordance with City Policy, Chapter 142 of the Texas Local Government Code, and as permitted under Chapter 143.041(c)(1) of the Texas Local Government Code. City policy provides specifics on administration and application.
7. Base pay for incumbent firefighter, hired prior to the adoption date of this Resolution who have at least two (2) years of prior qualified service will be increased to two (2) years of service according to the Sherman Fire Department pay schedule.
8. Base pay for incumbent firefighter, hired prior to the adoption date of this Resolution who have at least three (3) years of prior qualified service will be increased to three (3) years of service according to the Sherman Fire Department pay schedule.

SECTION 6. Detailed rules and regulations for qualifying standards, eligibility and administration of such pay types may be stated within the City and/or Police Department policies and/or Fire Department policies, and/or Local Civil Service Commission Rules and Regulations. Such policies are subject to change as needed and approved by the City Manager for purposes of City policies or by the Chief of Police for purposes of Police Department policies, by the Fire

Chief for purposes of Fire Department policies, or by the Local Civil Service Commission for the purposes of Local Civil Service Commission Rules and Regulations.

SECTION 7. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the _____ day of _____, 2015.

CITY OF SHERMAN, TEXAS

BY: _____
CAROLYN S. WACKER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY
CITY ATTORNEY**



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. D. 4.

Meeting Date: 04/20/2015

Prepared By: Mark Gibson, Director of Utilities

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 5963

Authorizing Execution of a Professional Engineering Services Agreement with Freeman-Millican, Inc. for the Design of the City of Sherman Elevated Water Storage Tank Improvements

Issue:

To consider a contract for professional services with Freeman-Millican, Inc. for the design of the City of Sherman Elevated Water Storage Tank improvements

Background:

The City of Sherman proposes to construct a new elevated water storage tank west of F.M. 1417 near Park Avenue. The water tank will provide additional capacity for the water system and provide redundancy in the surface water zone for water storage, allowing the Gallagher water tank to be repaired and repainted.

Origination:

Utilities Administration Department #710

Financial Consideration:

The fee for engineering services will be \$253,400.00; surveying costs are estimated to be \$25,000.00; and Geotechnical services are estimated to cost \$35,000.00. These services will be provided by separate companies. This project is funded by bonds issued through the Greater Texoma Utility Authority.

Staff Recommendation:

It is recommended that the contract for professional engineering services with Freeman - Millican, Inc. to design the City of Sherman Elevated Water Storage Tank improvements be approved. Approval for funding of surveying and geotechnical services is also recommended.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 5963

Engineering Services Agreement

RESOLUTION NO. 5963

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH FREEMAN-MILLICAN, INC. FOR THE DESIGN OF THE CITY OF SHERMAN ELEVATED WATER STORAGE TANK IMPROVEMENTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Engineering Services Agreement with Freeman-Millican, Inc. for the Sherman High Zone New Elevated Water Storage Tank Project in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2015.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY,
CITY CLERK

BY: _____
CAROLYN S. WACKER,
MAYOR

APPROVED AS TO FORM AND CONTENT:

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the CITY OF SHERMAN, a Home-Rule Municipality, organized and existing under the laws of the state of Texas, hereinafter referred to as "City", and, Freeman-Millican, Inc. hereinafter referred to as "Engineer", to be effective upon the date indicated below.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **Sherman High Zone New Elevated Water Storage Tank Project** in the City of Sherman, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City subject to the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

1. **Employment of the Engineer.** The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.
2. **Scope of Work.** The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "1", which is attached hereto and made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City. Engineer agrees to submit all final documents in a form acceptable to the City.
3. **Time of the Essence.** Time is of the essence. Engineer agrees to commence work immediately upon execution of this Agreement and to proceed diligently to completion except for delays beyond Engineer's reasonable control.
4. **Compensation and Method of Payment.** The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount described and set forth in Exhibit "1".
5. **Access To The Site.** City agrees to provide access to the Project area necessary or Engineer to complete his work.
6. **Insurance.** Engineer agrees to procure the following insurance:
 - a. Workers' Compensation as required by law.
 - b. Professional Liability Insurance in an amount not less than \$1,000,000 in the aggregate.

c. Comprehensive General Liability and Property Damage Insurance with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence of damage to or destruction of property.

d. Comprehensive Automobile and Truck Liability Insurance covering owned, hired, and non-owned vehicles, with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for property damage.

e. The Engineer shall include the City as an additional insured under the policies, with the exception of the Professional Liability Insurance and Workers' Compensation. Certificates of Insurance and endorsements shall be furnished to the City before work commences. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, and/or reduced in coverage or in limits ("Change in Coverage") except with prior written consent of the City and only after the City has been provided with written notice of such Change in Coverage, such notice to be sent to the City either by hand delivery to the City Manager or by certified mail, return receipt requested, and received by the City no fewer than thirty (30) days prior to the effective date of such Change in Coverage. Prior to commencing services under this Contract. Engineer shall furnish City with Certificates of Insurance, or formal endorsements as required by this Contract, issued by Engineer's insurer(s), as evidence that policies providing the required coverage, conditions, and limits required by this Contract are in full force and effect.

7. Indemnity and Duty to Defend.

a. Engineer shall release, defend, indemnify and hold city and its officers, agents and employees harmless from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by engineer and to the extent caused by the negligent act or omission or intentional wrongful act or omission of engineer, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom engineer is legally responsible. This agreement does not waive, nor shall it be deemed to waive, any immunity or defense, including, but not limited to Governmental immunity that would otherwise be available to the city against claims arising from the exercise of governmental powers and functions.

b. Engineer is expressly required to defend the City against all Claims for which the City becomes liable. In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Engineer in fulfilling its obligation hereunder to defend and indemnify City, unless such a right is expressly waived by City in writing by the City Manager, approved by the City Attorney, and properly authorized by the City's Council. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Engineer's obligation to defend the City or as a waiver of Engineer's obligation to indemnify the City pursuant to this Contract. Engineer shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If 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 in defense of Claims for which Engineer is liable under this Paragraph.

c. This indemnification and duty to defend is subject to and does not waive any governmental immunity available to the City under Texas law, and any defenses of the parties

under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

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

9. **Assignment and Subletting.** The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer 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 the Engineer from its full obligations to the City as provided by this Agreement.

10. **Contract Termination.** The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer 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 this Agreement is terminated, the City shall have the option of entering into an Agreement with another party for the completion of the work.

11. **Ownership of Documents.** Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefore for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Paragraph 10, Engineer will revise drawings, if necessary, and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. Engineer also acknowledges that such information shall become subject to the Public Information Laws of this State and that Engineer agrees to waive any copyright claims to the information once the information is submitted to the City.

12. **Complete Contract.** This Agreement, including Exhibit "1", constitutes the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. To the extent that any of the provisions in Exhibit "1" conflicts with this Agreement, the provisions in the Agreement control over the provisions in the exhibit(s). This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

13. **Mailing of Notices.** Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

Director of Utilities
City of Sherman
P.O. Box 1106
Sherman, TX. 75090

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Richard Dormier
Freeman-Millican, Inc.
12160 N. Abrams Rd., Suite 508
Dallas, Texas 75243

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

14. **Miscellaneous.**

a. **Paragraph Headings.** The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

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

c. **Venue/Governing Law.** The parties agree that the laws of the State of Texas shall govern this Agreement. Exclusive venue shall lie in Grayson County, Texas.

d. **Successors and Assigns.** City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

e. **Severability.** In the event a term, condition, or provision of this Agreement is determined to be 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.

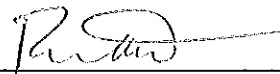
f. **Effective Date.** This Agreement shall be effective from and after execution by both parties hereto.

SIGNED on the date indicated below.

CITY OF SHERMAN

**ENGINEER:
Freeman-Millican, Inc.**

BY _____
Robby Hefton
City Manager

BY  _____
Richard Dormier, P.E.
Vice President

DATE _____

DATE 4-10-15 _____

APPROVED AS TO FORM:

Brandon S. Shelby, City Attorney

EXHIBIT "1"
ENGINEERING SERVICES AGREEMENT

City of Sherman, Texas
Sherman High Zone New Elevated Water
Storage Tank Project
Scope of Professional Services

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional engineering services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER'S professional engineering representative for the Project as set forth below, and shall give professional engineering consultation and advice to OWNER during the performance of services hereunder.

OWNER intends to construct, through Prime Contractor(s) the Sherman High Zone New Elevated Water, hereinafter called the "Project".

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 GENERAL

1.1.1 ENGINEER shall perform professional services as hereinafter stated which include customary civil, structural, mechanical, and electrical engineering services and customary architectural services incidental thereto.

1.2 PRELIMINARY DESIGN PHASE

After authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

- 1.2.1 In consultation with OWNER, determine the extent of the Project.
- 1.2.2 Advise OWNER as to the necessity of OWNER'S providing, or obtaining from others, data or services of the types described in paragraph 3.3, and act as OWNER'S representative in connection with any such services.
- 1.2.3 Prepare preliminary design documents consisting of final design criteria, preliminary drawings, and outline specifications.
- 1.2.4 Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.
- 1.2.5 Furnish 3 copies of the above preliminary design documents and present and review them in person with OWNER.

1.3 FINAL DESIGN PHASE

After authorization to proceed with the Final Design Phase, ENGINEER shall:

- 1.3.1 On the basis of comments from the review of the preliminary design documents and the revised opinion of probable Project Cost, prepare for incorporation in the Contract

Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

- 1.3.2 Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.
- 1.3.3 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.
- 1.3.4 Prepare for review and approval by OWNER, his legal counsel, and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.
- 1.3.5 Submit plans, specifications, and contract documents to applicable regulatory agencies for approval.
- 1.3.6 Furnish 3 copies of the above documents and present and review them in person with OWNER. Make any needed final revisions.

1.4 BIDDING PHASE

After authorization to proceed with the Bidding Phase, ENGINEER shall:

- 1.4.1 Assist OWNER in obtaining bids for each separate prime contract for construction, materials, equipment, and services.
- 1.4.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.
- 1.4.3 Prepare a tabulation of bids and assist OWNER in evaluating bids and in assembling and awarding contracts.

1.5 CONSTRUCTION PHASE

During the Construction Phase ENGINEER shall:

- 1.5.1 Consult with and advise OWNER and act as his representative as provided in the General Conditions of the Construction Contract. All of OWNER'S instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said General Conditions except as otherwise provided in writing.
- 1.5.2 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents. ENGINEER shall not be

required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). ENGINEER'S efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will conform to the Contract Documents, but ENGINEER shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations ENGINEER shall keep OWNER informed of the progress of the work and shall endeavor to guard OWNER against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents.

- 1.5.3 Review Shop Drawings and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and general compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents.
- 1.5.4 Issue all instructions of OWNER to Contractor(s); issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders as required; have authority, as OWNER'S representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.
- 1.5.5 Based on ENGINEER'S on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts: such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER'S knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any

lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.

- 1.5.6 Conduct in company with OWNER, an inspection to determine if the Project is substantially complete and a final inspection for compliance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may recommend, in writing, final payment to each Contractor and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.5.5.
- 1.5.7 ENGINEER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except ENGINEER'S own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.5.1 through 1.5.7, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties undertaken by him in the Contract Documents.
- 1.5.8 Revise contract drawings (unless redrawing is required), with the assistance of the OWNER and Contractor(s), and furnish two set in Adobe Acrobat Portable Document Format (pdf).

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 GENERAL

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services

- 2.1.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- 2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 2.1.3 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER'S control.
- 2.1.4 Providing renderings or models for OWNER'S use.
- 2.1.5 Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental

thereto, such as consultants for interior design, furniture, furnishings, communications, acoustics, kitchens and landscaping; and providing data or services of the types described in paragraph 3.3 when OWNER authorizes ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.3.

- 2.1.6 Services resulting from the arranging for performance by persons other than the principal prime contractors of services for the OWNER and administering OWNER'S contracts for such services.
- 2.1.7 Provide staking to enable Contractor(s) to proceed with their work and providing other special field surveys.
- 2.1.8 Services during out-of-town travel required of ENGINEER other than visits to the site and OWNER'S office as required by SECTION 1 and authorized by OWNER.
- 2.1.9 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor(s), (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor(s).
- 2.1.10 Preparation of operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial startup, testing, adjusting and balancing); and training personnel for operation and maintenance.
- 2.1.11 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.
- 2.1.12 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as agreed to under Basic Services).
- 2.1.13 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.
- 2.1.14 Preparation of property descriptions.
- 2.1.15 Additional copies of reports (over agreed number) and additional sets of Contract Documents (over agreed number).
- 2.1.16 Services of a resident Project representative, and other field personnel as required, for on-the-site observation of construction.
- 2.1.17 Any other special or miscellaneous assignments specifically authorized by OWNER.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1 Provide all criteria and full information as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish

copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

- 3.2 Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 3.3 Furnish to ENGINEER, as required for performance of ENGINEER'S Basic Services, data prepared by or services of others, including without limitation core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other special data or consultations not covered in SECTION 2; all of which ENGINEER may rely upon in performing his services.
- 3.4 Provide field control surveys and establish reference points and base lines to enable Contractor(s) to proceed with the layout of the work.
- 3.5 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 3.6 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.7 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.8 Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule or regulation applicable to their performance of the work.
- 3.9 Designate in writing a person to act as OWNER'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER'S services.
- 3.10 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services, or any defect in the work of Contractor(s).

- 3.11 Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.12 Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PERIOD OF SERVICE

- 4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER'S services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER'S obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts and construction of the Project including extra work and required extensions thereto.
- 4.2 After acceptance by OWNER of the ENGINEER'S Drawings, Specifications and other Final Design Phase documentation including the most recent opinion of probable Project Cost and upon written authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s) (except as may be otherwise required to complete the services called for in paragraph 6.1.2.5).
- 4.3 The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written approval by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.
- 4.4 If OWNER has requested significant modifications or changes in the extent of the Project, the time of performance of ENGINEER'S services and his various rates of compensation shall be adjusted appropriately.
- 4.5 If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 90 calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.2.2.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.
- 4.6 If ENGINEER'S services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER'S control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER'S control, or if ENGINEER for any reason is required to render services more than one year after Substantial Completion, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

- 4.7 In the event that the work designed or specified by ENGINEER is to be performed under more than one prime contract, OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER'S services during the Final Design, Bidding and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF ENGINEER

5.1.1 For Basic Services

OWNER shall pay ENGINEER for Basic Services rendered under SECTION 1 and as further identified in Exhibit "A" a lump sum in the amount of \$253,400.00.

5.1.2 For Additional Services

OWNER shall pay ENGINEER for Additional Services rendered under SECTION 2 as follows:

5.1.2.1 General

For Additional Services rendered under paragraphs 2.1.1 through 2.1.17, inclusive (except services covered by paragraph 2.1.5 and services as a consultant or witness under paragraph 2.1.12), payment will be at the hourly rates in Exhibit "B".

5.1.2.2 Special Consultants

For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to paragraph 2.1.5 or 2.1.17, the amount billed to ENGINEER therefor times a factor of 1.10

5.1.2.3 Serving as a Witness

For the services rendered by principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with paragraph 2.1.12, at the rate of \$ 2,500 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, hearing or proceeding will be on the basis provided in paragraph 5.1.2.1).

- 5.1.3 As used in this paragraph 5.1 the term "Reimbursable Expenses" will have the meaning assigned to it in paragraph 5.4.

5.2 TIMES OF PAYMENTS

- 5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for reimbursable Expenses incurred. The statements will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER'S monthly statements.
- 5.2.2 Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following percentages of total compensation payable for all phases of Basic Services:

Phase	Percent of Basic Services
Preliminary Design, Surveying & Geotechnical Report	23%
Final Design	50%
Bidding or Negotiating	7%
Construction	20%
TOTAL	100%

5.3 OTHER PROVISIONS CONCERNING PAYMENTS

5.3.1 Changes in Project Scope

In the event the OWNER changes the scope of the project after the commencement of the Final Design Phase and such changes render the work unusable that has been performed to the date of the change in project scope, ENGINEER will be paid for services rendered during that phase to the date of notice of the change in project scope at the hourly rates in Exhibit "B" for services rendered by principals and employees assigned to the Project during that phase to date of notice of the change in project scope. In the event of any such change in scope, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

In the event the OWNER changes the scope of the project after the commencement of the Final Design Phase and such changes require the Engineer to modify, redesign or otherwise change engineering work that has been completed or partially completed at the date of the change in scope, ENGINEER will be paid for services required to modify, redesign or otherwise change completed engineering work to meet the requirements of the revised scope of services at the hourly rates in Exhibit "B" for principals and employees assigned to the Project. In the event of any such change in scope, ENGINEER will be paid for all Additional Services and Reimbursable Expenses required to make the above stated changes. Before making changes to the engineering work under this provision, the ENGINEER shall submit an estimate of the cost of making the changes under this paragraph. The ENGINEER shall not begin making changes to the engineering work until authorized by the OWNER.

5.3.2 If OWNER fails to make any payment due ENGINEER for services and expenses within sixty days after receipt of ENGINEER'S bill therefor, the amounts due ENGINEER shall include a charge at the rate of 1% per month from said sixtieth day, and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

5.3.3 In the event of termination by OWNER, upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase at the hourly rates in Exhibit "B" for services rendered during that phase to date of termination by principals and employees assigned to the Project. In the event of any such termination, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, plus all termination expenses. Termination expenses mean Reimbursable Expenses directly attributable to termination, which shall include an amount computed as a percentage of total compensation for Basic Services earned by ENGINEER to the date of termination, as follows:

20% if termination occurs after commencement of the Preliminary Design Phase but prior to commencement of the Final Design Phase; or

10% if termination occurs after commencement of the Final Design Phase.

5.4 DEFINITIONS

5.4.1 Reimbursable Expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, and similar Project related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

SECTION 6 - OPINIONS OF COST

6.1 OPINIONS OF COST

6.1.1 Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him. If prior to the Bidding Phase OWNER wishes greater assurance as to Project or Construction Cost he shall employ an independent cost estimator as provided in paragraph 3.8. If a

Construction Cost limit is established by written agreement between OWNER and ENGINEER, the following will apply:

- 6.1.1.1 The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Project or Construction Cost in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.
- 6.1.1.2 Any Construction Cost limit so established will include a contingency of ten percent unless another amount is agreed upon in writing.
- 6.1.1.3 ENGINEER will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Drawings and Specifications and to make reasonable adjustments in the extent of the Project to bring it within the cost limit.
- 6.1.1.4 If the Bidding Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.
- 6.1.1.5 If the lowest bona fide proposal or bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's extent or quality. In the case of (3), ENGINEER shall, without additional charge, modify the Contract Documents as necessary to bring the Construction Cost within the cost limit. The providing of such service will be the limit of ENGINEER'S responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 REUSE OF DOCUMENTS

All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

- 8.1 The following Exhibits are attached to and made a part of this Exhibit 1:
Exhibit "A" Scope of Work and Exhibit "B" – Freeman-Millican, Inc. - Hourly Rate

Review construction bid documents with Sherman staff and TWDB
Revise bid document and print for bidding
Contractor request for information
Pre-bid conference
Bidding, addendums and award recommendation
Develop construction contracts

CONSTRUCTION

Preconstruction conference at WWTP
Review contractor submittals on all equipment, piping, electrical, rebar, valves and others
Monthly site reviews and pay applications
Construction meetings and site visits
Respond to TWDB inspection and progress request
Review and process any required changes
Start up and training
Final inspection & punch list
Make record drawings per contractor as built mark ups
Close out documentation per TWDB
.

Exhibit "A"

Sherman High Zone New Elevated Water Storage Tank Project

Scope of Work

Budget cost estimates for GTUA TWDB financial application

Assistance to GTUA on Environmental Assessment

Cost estimates and budgeting assistance for Sherman

CIVIL, MECHANICAL & ARCHITECTURAL

Geotechnical Investigation & Report

Design Survey

Hydraulic modeling analysis

Prelim. site layout of tank, piping, access, utilities, fence and overflow

Review with Sherman staff and collect drawings. & data

Elevated tank & foundation prelim. design

Tank vent, overflow, wet riser, manways, access, guardrail/antenna support and appurtenances design

Piping design & specs. and drawings

Wet riser vault design & drawings

Tower access, venting, manways & misc. design & drawings

Size and design valves & fittings

Ladders, platforms, handrail and grating design & drawings

Site access design, specs. & drawings.

Site drainage design, specs. & drawings.

Design antenna and communication cable supports & penetrations

Fence design and drawings

Project management

2nd review with Sherman staff

Develop painting specifications and drawings

Design for tower 1st & 2nd floor future maintenance, storage & office use with power, lights, water & sewer

Design water tank mixing

ELECTRICAL & CONTROLS

Electrical service design, drawing and specifications

Application for new service, coordination with ONCOR

Tank and site lighting design and specifications. & drawings.

Tank water level controls design & drawings

Design SCADA equipment

Identify and review control issues with Sherman staff

BIDDING

Develop bid documents for construction

EXHIBIT "B"
FREEMAN-MILLICAN, INC.
HOURLY RATES

<u>Employee Category</u>		<u>Hourly Rate</u>
Principal Engineer		\$185
Associate Engineer		\$150
Senior Project Engineer		\$135
Architect		\$135
Project Engineer		\$120
EIT		\$100
Designer		\$ 90
CAD		\$ 75
Clerical		\$ 50
RPLS		\$170
Survey Crew	(Including GPS)	\$140
Mileage	\$0.56/mile	



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. D. 5.

Meeting Date: 04/20/2015

Prepared By: Don Keene, Director of Community and Support Services

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 5964

Authorizing the Purchase of a Mitel Phone System for the City of Sherman from Mitel Business Systems, Inc. under Texas Department of Information Resources Contract Number DIR-TSO-2685

Issue:

To consider approval of a resolution to purchase a Mitel phone system for use in all City facilities

Background:

The requested purchase is to replace the City of Sherman's current Mitel phone system which was installed in December 2003. The City's current phone system will no longer be supported by Mitel after September 2015. The new Mitel phone system offers features and services that the City's current phone system cannot offer, including Voice over Internet Protocol (VOIP), which would allow the City to use the existing city-wide data network to make telephone calls and reduce line expenses. For over a year, City staff has researched alternatives from several manufacturers and has determined that converting from the current Mitel system to a newer Mitel system will be less disruptive for users and provide the most seamless transition from a technical standpoint.

Origination:

Information Technology Department

Financial Consideration:

The phone system will be purchased from Mitel for \$134,775.74 through Texas Department of Information Resources Contract Number DIR-TSO-2685. Funding for this purchase is available in the fiscal year 2014-2015 budget. **Installation and use of this new technology is expected to save the City about \$60,000.00 annually in telecommunication operating costs.**

Staff Recommendation:

It is recommended that staff be authorized to purchase the new Mitel phone system through Texas Department of Information Resources Contract Number DIR-TSO-2685.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 5964

Mitel Phones Quote 04152015

Texas DIR Mitel Contract

Mitel Phones DIR Appendix A

Mitel Phones DIR Appendix B

Mitel Phones DIR Appendix C

Mitel Phones DIR Appendix F

Mitel Phones DIR Appendix G

RESOLUTION NO. 5964

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A MITEL PHONE SYSTEM FOR THE CITY OF SHERMAN FROM MITEL BUSINESS SYSTEMS, INC. UNDER TEXAS DEPARTMENT OF INFORMATION RESOURCES CONTRACT NUMBER DIR-TSO-2685; 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 Mitel Business System, Inc. under Texas Department of Information Resources Contract Number DIR-TSO-2685, a Mitel phone system at a total purchase price of One Hundred Thirty-Four Thousand Seven Hundred Seventy-Five Dollars and Seventy-Four Cents (\$134,775.74) in accordance with the provisions of quote 100503-1429126153 and Texas Department of Information Resources Contract Number DIR-TSO-2685, 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 2014-2015 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.

PASSED AND APPROVED on this the _____ day of April, 2015.

CITY OF SHERMAN, TEXAS

BY: _____
CAROLYN S. WACKER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
BRANDON S. SHELBY, CITY ATTORNEY

Customer pricing - City of Sherman GCEC Telecom TX DIR t...

Currency USD
Partner GCEC TELECOM. INC. (0000111776)
Quote Ref 100503-1429126153
Report Created 15-Apr-2015 03:34:07
Quote Created 10-Dec-2014 03:33:03
Locked -
Version V2.9.3

This quote is based on the Mitel DIR-TSO-2685

Purchase orders resulting from this quote should be written to Mitel Business Systems, Inc. per the ordering instructions below.

DIR contract number DIR-TSO-2685 must be referenced on any PO resulting from this quote.

Contract information is available at:

http://www2.dir.state.tx.us/ict/contracts/pages/details.aspx?dir_contract_number=DIR-TSO-2685

MiVoice Business Multi-site

Part No.	Description	Qty	List	Ext. List	% Cust I	Cust Price	Ext Cust
Rebates							
	One Time Up Front Discount	1	0.00	0.00	0.00	-27,159.10	-27,159.10
	One Time Up Front Streamline Discount	1	0.00	0.00	0.00	-3,286.00	-3,286.00
Total				0.00			-30,445.10

MiVoice Business - 3300 MXe-Municiple Bldg (User Controller) part of MiVoice Business Multi-site

Part No.	Description	Qty	List	Ext. List	% Cust I	Cust Price	Ext Cust
MiVoice Business - Core Hardware and Software							
50003560	DUAL T1/E1 TRUNK MMC	1	1,500.00	1,500.00	38.00	930.00	930.00
50005084	MXe AC POWER SUPPLY	1	500.00	500.00	38.00	310.00	310.00
50005105	ASU II	1	700.00	700.00	38.00	434.00	434.00
50005731	24 port ONSp card	1	860.00	860.00	38.00	533.20	533.20
50005751	DSP II MMC	1	1,200.00	1,200.00	38.00	744.00	744.00
50006268	3300 MXe III Controller SATA SSD	1	530.00	530.00	0.75	526.03	526.03
50006269	3300 MXE III CONTROLLER	1	3,000.00	3,000.00	38.00	1,860.00	1,860.00
50006271	PWR CRD C13 10A 125V - NA Plug	8	15.00	120.00	38.00	9.30	74.40
51003344	3300 ICP PATCH PANEL	1	200.00	200.00	38.00	124.00	124.00
51300183	3300 AMB/AOB Connection Unit-America's	1	90.00	90.00	0.74	89.33	89.33
52002581	3300 MXe III Expansion Kit	1	2,250.00	2,250.00	38.00	1,395.00	1,395.00
	1 x 50001247 3300 - 128 CH. ECHO CANCELLOR ROHS5						
	1 x 50006432 Processor - MXe III Controller						
54002701	MiVoice Business License - Analog Ext	16	75.00	1,200.00	38.00	46.50	744.00
54003522	MiVoice Business License -T38 Channel x4	1	550.00	550.00	38.00	341.00	341.00
54004973	MiVoice Business Enterprise S/W for 3300	1	3,000.00	3,000.00	38.00	1,860.00	1,860.00
	1 x 54000303 MiVoice Business License - Digital Link						
	1 x 54000497 MiVoice Business XNET						
	1 x 54000540 MiVoice Business IP Networking						
	1 x 54000860 (AMC)3300 ADVANCED VOICEMAIL OPTION						
	1 x 54001130 MCD VOICEMAIL NETWORKING						
	1 x 54001490 MiVoice Business Tenanting						
	1 x 54002949 MiVoice Business Remote Management						
	16 x 54004975 MiVoice Bus License - Enterprise User						
MiVoice Business - Solution Licenses							
54000297	MCD Mailbox license	1	50.00	50.00	38.00	31.00	31.00
54000303	MiVoice Business License - Digital Link	1	1,500.00	1,500.00	38.00	930.00	930.00
54000650	MiVoice Business G.729 License 8channels	6	550.00	3,300.00	38.00	341.00	2,046.00
Desktop Devices - IP/SIP Phones and Accessories							
50005712	Cordless Headset & Module Bundle NA DECT	20	470.00	9,400.00	38.00	291.40	5,828.00
50005915	PKM KIT - 48 KEY (for 85xx/53xx Phones)	8	430.00	3,440.00	38.00	266.60	2,132.80
50006476	5330E IP PHONE	105	395.00	41,475.00	38.00	244.90	25,714.50
50006478	5340E IP PHONE	95	495.00	47,025.00	38.00	306.90	29,155.50
51005172	PWR CRD C7 2.5A 125V-NA PLUG NON POLRIZD	85	5.00	425.00	38.00	3.10	263.50
51015131	48VDC ETHNT PWR ADPT 100-240V 802.3af	85	40.00	3,400.00	38.00	24.80	2,108.00
51016170	LIVE CONTENT SUITE (5320/30/40/60)	1	0.00	0.00	0.00	0.00	0.00

User Licenses							
54004975	MiVoice Bus License - Enterprise User	5	180.00	900.00	38.00	111.60	558.00
54006101	UCCv3 Premium User for Enterprise x1	15	480.00	7,200.00	38.00	297.60	4,464.00
	Includes: MiVoice Business Multi-device User Voice mailbox with Standard, Advanced UM MiCollab Desktop/Softphone with Adv IM, Presence Remote Teleworking (deskphone and softphone) MiCollab Audio/Video/Web Conferencing User MiCollab Mobile Client/Softphone w Dual-mode Hand-off						
54006130	UCCv3 Entry User Enterprise x100	2	18,375.00	36,750.00	38.00	11,392.50	22,785.00
	Each license includes: UCC Basic User w simple twinning (2 dev) Voice mailbox with Standard, Advanced UM MiCollab Desktop/Web Client with IM, Presence						
MiCollab, MiCollab Client							
54005442	MiCollab Virtual Appliance	1	995.00	995.00	38.00	616.90	616.90
	Includes:.MBG Base.UC Mobile Base.UC Base, NuPoint Base.MCD App Connection Lic (6).						
Additional Products							
50006593	StreamLine Unit - 24 port	5	2,620.00	13,100.00	38.00	1,624.40	8,122.00
50006644	StreamLine Dongle II - 6 Pack	20	460.00	9,200.00	38.00	285.20	5,704.00
Software Assurance and Support							
54005195	Std S/W Assur MiVoice Bus Base Usersx16	1	125.00	125.00	38.00	77.50	77.50
54005196	Std S/W Assur MiVoice Business Analog	16	4.00	64.00	38.00	2.48	39.68
54005197	Std S/W Assur MiVoice Business User	5	10.00	50.00	38.00	6.20	31.00
54005222	Std S/W Assurance MiCollab Base	1	100.00	100.00	38.00	62.00	62.00
54005992	Std S/W Assurance UCCv2 Entry	200	11.00	2,200.00	38.00	6.82	1,364.00
54005994	Std S/W Assurance UCCv2 Prem	15	30.00	450.00	38.00	18.60	279.00
Total				196,849.00			122,277.34

MiVoice Business - 3300 MXe-Gateway/Resilient Controller part of MiVoice Business Multi-site

Part No.	Description	Qty	List	Ext. List	% Cust I	Cust Price	Ext Cust
MiVoice Business - Core Hardware and Software							
50003560	DUAL T1/E1 TRUNK MMC	2	1,500.00	3,000.00	38.00	930.00	1,860.00
50005084	MXe AC POWER SUPPLY	1	500.00	500.00	38.00	310.00	310.00
50005751	DSP II MMC	1	1,200.00	1,200.00	38.00	744.00	744.00
50006268	3300 MXe III Controller SATA SSD	1	530.00	530.00	0.75	526.03	526.03
50006269	3300 MXE III CONTROLLER	1	3,000.00	3,000.00	38.00	1,860.00	1,860.00
50006271	PWR CRD C13 10A 125V - NA Plug	2	15.00	30.00	38.00	9.30	18.60
51300183	3300 AMB/AOB Connection Unit-America's	1	90.00	90.00	0.74	89.33	89.33
52002581	3300 MXe III Expansion Kit	1	2,250.00	2,250.00	38.00	1,395.00	1,395.00
	1 x 50001247 3300 - 128 CH. ECHO CANCELLOR ROHS5						
	1 x 50006432 Processor - MXe III Controller						
54003522	MiVoice Business License -T38 Channel x4	1	550.00	550.00	38.00	341.00	341.00
54004973	MiVoice Business Enterprise S/W for 3300	1	3,000.00	3,000.00	38.00	1,860.00	1,860.00
	1 x 54000303 MiVoice Business License - Digital Link						
	1 x 54000497 MiVoice Business XNET						
	1 x 54000540 MiVoice Business IP Networking						
	1 x 54000860 (AMC)3300 ADVANCED VOICEMAIL OPTION						
	1 x 54001130 MCD VOICEMAIL NETWORKING						
	1 x 54001490 MiVoice Business Tenanting						
	1 x 54002949 MiVoice Business Remote Management						
	16 x 54004975 MiVoice Bus License - Enterprise User						
MiVoice Business - Solution Licenses							
54000303	MiVoice Business License - Digital Link	2	1,500.00	3,000.00	38.00	930.00	1,860.00
54000650	MiVoice Business G.729 License 8channels	6	550.00	3,300.00	38.00	341.00	2,046.00
Software Assurance and Support							
54005195	Std S/W Assur MiVoice Bus Base Usersx16	1	125.00	125.00	38.00	77.50	77.50
Total				20,575.00			12,987.46

Mitel Business Reporter - 220 extensions part of MiVoice Business Multi-site

Part No.	Description	Qty	List	Ext. List	% Cust I	Cust Price	Ext Cust
MiContact Center Solutions							
51303024	Business Reporter Starter Pack	1	3,400.00	3,400.00	38.00	2,108.00	2,108.00

51303025	Business Reporter Extensions x50	4	300.00	1,200.00	38.00	186.00	744.00
51303029	Business Reporter Network License	1	1,000.00	1,000.00	38.00	620.00	620.00
Software Assurance and Support							
51300646	Std S/W Assurance - MiContact Center	672	1.00	672.00	38.00	0.62	416.64
Total				6,272.00			3,888.64

MiVoice Call Recording Solution - 68 VoIP taps

Part No.	Description	Qty	List	Ext. List	% Cust I	Cust Price	Ext Cust
Call Recording Solutions							
50006655	MiVoice Call Rcrd Analog Brd RJ21 PC1x16 [Prod.I	1	4,040.00	4,040.00	38.00	2,504.80	2,504.80
52002854	MiVoice Call Rcrd VoIP Win 7 Server x20 [Prod.M	1	7,200.00	7,200.00	38.00	4,464.00	4,464.00
52002889	MiVoice Call Recording Lic Upgrade x28 [Prod.M	1	5,800.00	5,800.00	38.00	3,596.00	3,596.00
54006180	MiVoice Call Rcrd MiTAI Single Licensex1 [Prod.N	1	1,800.00	1,800.00	38.00	1,116.00	1,116.00
54006181	MiVoice Call Rcrd Multi MiTAI License x1 [Prod.N	1	1,000.00	1,000.00	38.00	620.00	620.00
54006184	MiVoice Call Recording License x1 [Prod.Mgmt.A	33	400.00	13,200.00	38.00	248.00	8,184.00
54006191	MiVoice Quality Mgt Concurrent User Lic [Prod.N	1	1,000.00	1,000.00	38.00	620.00	620.00
Software Assurance and Support							
54006285	Std S/W Assur CallRecordingBase+30 [Prod.Mgm	1	210.00	210.00	38.00	130.20	130.20
54006289	Std S/W Assur CallRecordingLic [Prod.Mgmt.App	51	27.00	1,377.00	38.00	16.74	853.74
Professional Services							
53003653	CallRecording Rmt Installation Service	1	1,070.00	1,070.00	14.00	920.20	920.20
Total				36,697.00			23,008.94

SRC for Call Recording - 68 taps

Part No.	Description	Qty	List	Ext. List	% Cust I	Cust Price	Ext Cust
MiVoice Border Gateway							
54003182	SRC Single License	8	75.00	600.00	38.00	46.50	372.00
54003183	SRC Licenses x10	1	650.00	650.00	38.00	403.00	403.00
54003184	SRC Licenses x50	1	3,000.00	3,000.00	38.00	1,860.00	1,860.00
54005339	MiVoice Border Gateway Virtual	1	250.00	250.00	38.00	155.00	155.00
Software Assurance and Support							
54005220	Standard S/W Assurance MBG Base	1	25.00	25.00	38.00	15.50	15.50
54005388	STD SWAS MBG SRC TAP	68	6.00	408.00	38.00	3.72	252.96
Total				4,933.00			3,058.46

Grand Total

Grand Total				265,326.00			134,775.74
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* indicates a non discountable part which may have a suggested MSRP

This quote is good for 90 days from date on file and must renewed thereafter.

To Place an Order:

**A PO or Mitel Govt Credit Card Order Form can be submitted
via Fax to: 703-904-0568 or via Email: USGovernmentSales@mitel.com**

The PO should be made out to:

**Mitel Business Systems, Inc.
1146 North Alma School Rd.
Mesa , AZ 85201**

Remit to:
Mitel Business Systems, Inc.
PO Box 52688
Phoenix, AZ 85072-2688

Please note the following order requirements:

- * Prime Contract number for Mitel's DIR Contract# **DIR-TSO-2685**
- * Terms of Net/30
- * A copy of this Quote must accompany the order
- * Shipping and billing instructions;
- * Requested delivery dates
- * Any other special instructions

For New TX DIR End Users:

As this will be your first order with us, we will need to have a new customer account set up for you and will require the following information:

- * Full Legal Name and Invoice/Billing Address, Main Phone and Fax numbers
- * Point of Contact info for their Accounts Payable dept:
(Name, Title, Email, Phone and Fax number)
- * If Tax Exempt, a copy of the Tax Exemption Certificate must be provided

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
MITEL BUSINESS SYSTEMS, INC.

1. Introduction

A. Parties

This Contract for Products and Related Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Mitel Business Systems, Inc. (hereinafter “Vendor”), with its principal place of business at 1146 North Alma School Road, Mesa, Arizona, 85201.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-209, on December 6, 2013, for Data Communications & Networking Equipment and Related Services. DIR subsequently issued a BAFO opportunity on June 5, 2014. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-209 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Master Operating Lease Agreement; Appendix E, Master Lease Agreement; Appendix F, Sales Order Acknowledgement; Appendix G, Support Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-209, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-209, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix D, Master Operating Lease Agreement; Appendix E, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix F, Sales Order Acknowledgement; Appendix G, Support Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-209, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-209, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling

document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Appendix G, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then Appendix D or Appendix E, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix F, then Appendix G, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Data Communications & Networking Equipment as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of the RFO and products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Data Communications & Networking Services as specified in the RFO and Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarter of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment.

Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759
Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Sue Anders
Mitel Business Systems, Inc.
1146 North Alma School Road
Mesa, Arizona 85201
Phone: (703) 736-3105
Facsimile: (602) 629-3126
Email: sue_anders@mitel.com

7. Software License and Leasing Agreements

A. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

B. Service Agreement

Services provided under this Contract shall be in accordance with the Sales Order Acknowledgement as set forth in Appendix F of this Contract and/or the Support Agreement as set forth in Appendix G. No changes to the Sales Order

Acknowledgement or to the Support Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

C. Master Operating Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Operating Lease Agreement in Appendix D of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

D. Master Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix E of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions.

E. Conflicting or Additional Terms

In the event of a conflict between the terms of the Vendor Software License Agreements, Service Agreements or linked or supplemental documents and the Contract which amend or diminish the rights of DIR Customers or the State provided for in the Contract, such conflicting terms shall not take precedence over the terms of this Contract. In no event will any linked document alter or override any term of the Contract, nor will it change fees, prices, or the method of computing any of the foregoing.

8. Authorized Exceptions to Contract or any Appendices.

No exceptions have been agreed to by DIR and Vendor.

(Remainder of page intentionally left blank)

Vendor Contract No. _____

This Contract is executed to be effective as of the date of last signature.

MITEL BUSINESS SYSTEMS, INC.

Authorized By: Signature on File

Name: Joseph Vitalone

Title: EVP and President

Date: 09/30/14

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Karen Robinson

Title: Executive Director

Date: 10-16-14

Office of General Counsel: Mark Howard 10.15.14

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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Appendix A

Standard Terms and Conditions For Product and Related Services Contracts

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

3. Definitions

A. Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

B. Compliance Check – an audit of Vendor's compliance with the Contract may be

Appendix A

Standard Terms and Conditions For Product and Related Services Contracts

performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.

- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or

Appendix A

Standard Terms and Conditions For Product and Related Services Contracts

condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.

2) If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract. Rights and obligations under this Contract which by their nature should survive, including, but not limited to any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

H. Proof of Financial Stability

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

5. Intellectual Property Matters

A. Definitions

1) “Work Product” means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer’s benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2) “Intellectual Property Rights” means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3) “Statement of Work” means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4) “Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.

Appendix A

Standard Terms and Conditions For Product and Related Services Contracts

5) “Vendor IP” shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor’s provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor’s signature due to the dissolution of Vendor or Vendor’s unreasonable failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor’s agent and Vendor’s attorney-in-fact to act for and in Vendor’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to

Appendix A

Standard Terms and Conditions For Product and Related Services Contracts

Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

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H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property

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Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

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7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

- a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Filler information: Order Filler name, Order Filler business address, Order Filler CPA Identification Number, Order Filler contact person email address and phone number.
- b) DIR reserves the right to require the Vendor to rescind any such Order Filler participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.
- d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.
- e) Vendor shall not prohibit Order Filler from participating in other procurement opportunities offered through DIR.

2) Changes in Order Filler List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Filler information listed in Section 7.B.1.a above.

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3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Website

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include the product and services offered, product and service specifications, specific contract pricing expressed in dollars as well as discount off MSRP or List Price, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Website Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

4) Website Changes

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely

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for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

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I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

J. Performance Review Meetings

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

8. Pricing, Purchase Orders, Invoices, and Payments

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

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3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

E. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

F. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified, in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

- 1) Price increase or decrease change requests must be requested with a signed cover letter indicating the change in price. Price increase requests must be accompanied by a copy of the manufacturer or publisher's price list.
- 2) Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.
- 3) Requests for price increases will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Increases that are not accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted increase

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is rejected, Vendor may request that the product or service rejected be removed from the Contract. The product or service will be removed from the Contract upon execution of a written Contract amendment, which shall be transmitted to Vendor by DIR within thirty (30) calendar days after receipt of the written request to remove the product or service and executed by both parties without undue delay. Existing pricing must be honored up to the date of execution of the Contract amendment. Prices may not be increased for at least ninety (90) calendar days after the contract start date. Price reductions will be accepted at any time.

H. Purchase Orders

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

I. Invoices

- 1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.
- 2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.
- 3) The administrative fee as set forth in, the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

J. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

9. Contract Administration

A. Contract Managers

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

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2) Vendor Contract Manager

Vendor shall provide a dedicated Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract books at DIR's expense.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the administrative fee due for the reporting period, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period. DIR may change

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the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment.

b) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of a late fee penalty of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

C. Records and Audit

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number,

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contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts E-Mail Box information.

10. Vendor Responsibilities

A. Indemnification

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE

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CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for

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the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

C. Vendor Certifications

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to

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any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;

- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (x) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xi) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xii) have identified all current or former, within the last five years, employees of the State assigned to work on the DIR Contract 20% or more of their time and have disclosed them to DIR and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xiii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of

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the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;

- (xiv) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvi) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

D. Ability to Conduct Business in Texas

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

E. Equal Opportunity Compliance

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors

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in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

G. Responsibility for Actions

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Appendix A to the RFO and/or Section 10.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

H. Confidentiality

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

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K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

L. Overcharges

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

M. Prohibited Conduct

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within five (5) business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A rated by A.M. Best, licensed in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

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1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE POLICY LIMIT AND \$1,000,000 PER DISEASE PER EMPLOYEE.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

O. Use of State Property

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other resources of the Customer or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

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P. Immigration

Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude compliance by Vendor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

R. Product and/or Services Substitutions

Substitutions are not permitted without the written permission of DIR or Customer.

S. Secure Erasure of Hard Disk Products and/or Services

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

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V. Accessibility of Public Information

- 1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

W. Vendor Reporting Requirements

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

11. Contract Enforcement

A. Enforcement of Contract and Dispute Resolution

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.
- 3) State agencies are required by rule (34 TAC §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor

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offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the

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non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by

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registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

13. Captions

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

Appendix B

Historically Underutilized Business (HUB) Subcontracting Plan



HUB SUBCONTRACTING PLAN (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

VENDOR WILL NEED TO COMPLY WITH ONE OF THE FOLLOWING PROCESS BELOW (A-E):

☐ **A. SUBCONTRACTING ONLY WITH (100%) TEXAS CERTIFIED HUB VENDORS**

If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

- ☐ Section 1 (page 2) Respondent and Requisition Information
- ☐ Section 2 a. (page 3) Yes, I will be subcontracting portions of the contract
- ☐ Section 2 b. (page 3) List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
- ☐ Section 2 c. (page 3) Yes
- ☐ Section 4 (page 4) Affirmation- Sign and date
- ☐ (page 5) **GFE Method A (Attachment A)** – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

☐ **B. SUBCONTRACTING OPPORTUNITIES WILL BE PERFORMED USING HUB MENTOR PROTÉGÉ PROGRAM**

- ☐ Section 1 (page 2) Respondent and Requisition Information
- ☐ Section 2 a. (page 3) Yes, I will be subcontracting portions of the contract
- ☐ Section 2 b. (page 3). List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to HUB Protégé (skip Section 2c and 2d)
- ☐ Section 4 (page 4) Affirmation- Sign and date
- ☐ (page 6 & 7) **GFE Method B (Attachment B)** – Complete Section B-1, B-2 and B-4 for each HUB Protégé subcontracting opportunity as applicable

☐ **C. SUBCONTRACTING ONLY WITH TEXAS CERTIFIED HUB AND NON-HUB VENDORS- MEETS OR EXCEEDS THE HUB GOAL**

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements",

complete: SEE SPECIAL INSTRUCTIONS

- ☐ Section 1 (page 2) Respondent and Requisition Information
- ☐ Section 2 a. (page 3) Yes, I will be subcontracting portions of the contract
- ☐ Section 2 b. (page 3) List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- ☐ Section 2 c. (page 3) Yes
- ☐ Section 2 d. (page 3) Yes- Texas Certified HUBs
- ☐ Section 4 (page 4) Affirmation- Sign and date
- ☐ (page 5) **GFE Method A (Attachment A)** – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b

☐ **D SUBCONTRACTING ONLY WITH TEXAS CERTIFIED HUB AND NON-HUB VENDORS- DOES NOT MEET OR EXCEED THE HUB GOAL**

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete: SEE SPECIAL INSTRUCTIONS

- ☐ Section 1 (page 2) Respondent and Requisition Information
- ☐ Section 2 a. (page 3) Yes, I will be subcontracting portions of the contract
- ☐ Section 2 b. (page 3) List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- ☐ Section 2 c. (page 3) No
- ☐ Section 2 d. (page 3) No
- ☐ Section 4 (page 4) Affirmation Sign and date
- ☐ (page 6 & 7) **Method B (Attachment B)**- Must submit supporting documentation under Section B-3 & "HUB Subcontracting Opportunity Notification Form"

☐ **E. WILL NOT BE SUBCONTRACTING**

If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:

- ☐ Section 1 (page 2) Respondent and Requisition Information
- ☐ Section 2 a. (page 3) No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- ☐ Section 3 (page 4) Self Performing Justification
- ☐ Section 4 (page 4) Affirmation - Sign and date

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders contracts,**
- **32.7 percent for all special trade construction contracts,**
- **23.6 percent for professional services contracts,**
- **24.6 percent for all other services contracts, and**
- **21 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

Dir's HUB Goal for this bidding opportunity is 21%. Failure to complete and comply with the current HSP form may disqualify the bid response. The following documentation should be completed with the HSP:

- **Section 4 Affirmation-** must be signed and dated;
- **Method B (Attachment B)** -must provide documentation under Section B-3 with response (if applicable);
- **Actual % and dollar amounts** must be used on HSP form (if applicable).

For assistance in completing the HSP, contact the HUB Coordinator, at dir.hub@dir.texas.gov or lisa.maldonado@dir.texas.gov 512-463-5662 or lynn.sanchez@dir.texas.gov 512-463-9813

SECTION 1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Mitel Business Systems, Inc. State of Texas VID #: 1-91-201677-3
 Point of Contact: Murray Van Dyke Phone #: 602-629-8811
 E-mail Address: murray_vandyke@mitel.com Fax #: 623-201-4726
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition/ DIR-TSO-TMP-209 Bid Open/ 01/29/2014
 Contract # _____ Revision Date: _____

SECTION 2 SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

☒ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)

☐ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
1	Order Fulfiller	%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
Total Aggregate percentages of the contract expected to be subcontracted (all 3 columns cannot exceed 100%):		%	%	%

(Note: If you have more than twelve subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

☒ - **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the **aggregate expected percentage** of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

☒ - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- ☒ - **Yes** (If **Yes**, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- ☐ - **No** (If **No**, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

Mitel's only TX HUB is no longer a partner in good standing with Mitel. Mitel will be actively seeking out authorized partners that would also be qualified HUB vendors for future opportunities.

SECTION 4 AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature on File**Joe Vitalone****EVP, Americas****01/24/2014**

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

- REMINDER:** ➤ If you responded "**Yes**" to **SECTION 2, Items c or d**, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "**No**" **SECTION 2, Items c and d**, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

Enter your company's name here: Mitel Business Systems, Inc.

Requisition/Contract #: DIR-TSO-TMP-209

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-A.doc>

SECTION A-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: 1 Description: Order Fulfiller

SECTION A-2 SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB. HUB VIN #'s can be located at <http://www.window.state.tx.us/procurement/cmb/hubonly.html>

Company Name	Texas certified HUB	VID # (Required if Texas certified HUB)	Approximate Dollar Amount (no TBD)	Expected Percentage of Contract (no TBD)
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: **Mitel Business Systems, Inc.**

Requisition/Contract #: **DIR-TSO-TMP-209**

IMPORTANT: If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

SECTION B-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: **1** Description: **Order Fulfiller**

SECTION B-2 MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If Yes, to continue to SECTION B-4.)

☒ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- d. List two (2) minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

HSP Good Faith Effort - Method B (Attachment B) *Cont.*

Enter your company's name here: Mitel Business Systems, Inc.

Requisition/Contract #: DIR-TSO-TMP-209

SECTION B-4 SUBCONTRACTOR SELECTION

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item #: 1 Description: Order Fulfiller

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB. HUB VIN #'s can be located at <http://www.window.state.tx.us/procurement/cmb/hubonly.html>

Company Name	Texas certified HUB	VID # (Required if Texas certified HUB)	Approximate Dollar Amount (no TBDs)	Expected Percentage of Contract (no TBDs)
A&A Telecom Group Inc.	☐ - Yes ☒ - No	1742635064500	\$100,000	10%
ComTel USA, LLC	☐ - Yes ☒ - No	17428293660	\$100,000	10%
iPro Media, Inc.	☐ - Yes ☒ - No	181064216800	\$100,000	10%
J&J Telecommunications, Inc.	☐ - Yes ☒ - No	176035492700	\$100,000	10%
Enterprise Systems Corporation	☐ - Yes ☒ - No	1020594306000	\$100,000	10%
Innovative Communications Systems	☐ - Yes ☒ - No	742201057	\$100,000	10%
Mercury Communications Services, Inc.	☐ - Yes ☒ - No	17516835851	\$100,000	10%
Brookside Technology Partners, Inc	☐ - Yes ☒ - No	19434195335	\$100,000	10%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐ - No		\$	%

- b. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

Mitel's only TX HUB is no longer a partner in good standing with Mitel. Further, Mitel is limited as it has strict requirements for resellers to be properly certified and have proper contracts in place. Mitel is constantly trying to broaden its reseller community by seeking out and enlisting historically underutilized business and any other minority owned businesses.

Further, Mitel will be implementing a new process whereby new partners must submit their vendor classification, so Mite can better notify and utilize HUB, woman owned and any other affirmative action classifications of subcontracting opportunities.

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to minority/women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity identified in **Section C** reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

Section A

PRIME CONTRACTOR'S INFORMATION

Company Name:	Mitel Business Systems, Inc.	State of Texas VID #:	1-91-201677-3
Point-of-Contact:	Murray Van Dyke	Phone #:	602-629-8811
E-mail Address:	Murray_vandyke@mitel.com	Fax #:	623-201-4726

Section B

CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____ Phone #: _____

Requisition/Contract #: DIR-TSO-TMP-209 Bid Open /Revision Date: _____

Section C

SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:	Our firm must receive your bid response to this subcontracting opportunity no later than 2:00 P.M., Central Daylight Standard Time on: <u>January 29, 2014</u> (Date) (Note: In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to <u>at least three (3)</u> Texas certified HUBs, and allow the HUBs <u>at least seven (7) working days</u> to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to minority/women trade organizations or development centers <u>at least seven (7) working days</u> prior to submitting our bid response to the contracting agency.)
2. Scope of Work:	
3. Required Qualifications: ☐ - Not Applicable	
4. Bonding/Insurance Requirements: ☐ - Not Applicable	
5. Location to review plans/specifications:	

**APPENDIX C, PRICING INDEX
TO DIR-TSO-2685
MITEL BUSINESS SYSTEMS, INC.**

PRODUCT CATEGORY	Customer Discount % off MSRP
HARDWARE	
Mitel MiVoice Business	38.00%
Mitel MiVoice Office	38.00%
Mitel MPP	10.00%
Mitel ND (Non-Discountable)	0.75%
Mitel Endpoints	38.00%
Mitel Accessories	38.00%
NOTE: Software must be bundled with hardware. This contract does not allow stand alone software purchases.	
MAINTENANCE	
Mitel Maintenance	14.00%
TECHNICAL SERVICES	
Installation & Implementation	14.00%
End User Training	14.00%
System Design	14.00%
Project Management & Coordination	14.00%
ACCESSORIES	
Headsets	38.00%
Programmable Key Modules (PKM)	38.00%
Mitel Accessories	38.00%



APPENDIX F to DIR-TSO-2685

SALES ORDER ACKNOWLEDGEMENT ("SOA")

Customer Check or PO#: _____

("Customer")	Signature: _____	
Principal Place of Business (Address): _____	Name/Title: _____	Date: _____

Customer and Mitel Business Systems, Inc. (on its own behalf and on behalf of its parent and its parent's subsidiaries) ("Mitel") agree as follows:

1. Supplements. For the purchase of Hardware and Software (each as defined herein and collectively the "System"), services and/or support by Customer, Mitel may require Customer to sign one or more of the following supplements to this SOA (each a "Supplement"): (i) Schedule 1: List of System, services and support ("Schedule 1"); (ii) a Statement of Work ("SOW"), (iii) a P.O. issued by Customer. To the extent Customer places, and Mitel accepts, a P.O., each order will constitute a contract between the parties which shall be governed exclusively by the terms and conditions of DIR Contract No. DIR-TSO-2685 and this SOA and any SOW or Schedule 1, even if Customer does not refer to this SOA on the P.O.

2. Use. Customer agrees the System is being purchased for its own use (not for resale). Customer may opt to finance such purchase through a third party. Mitel's acceptance of payment from such third party is conditional upon the Customer ensuring such third party complies with, and Customer remains responsible for, Customer's obligations herein.

3. Software License. For all Mitel and third-party software ("Software"), Customer receives a personal, non-transferable, non-exclusive, paid-up license (subject to Mitel's receipt of payment) either through Mitel's standard end-user license and/or the end-user license that is provided by the third-party software supplier. Customer is granted no other rights to the Software except what is expressly stated herein and Mitel reserves all other rights. Customer's obligations under this license shall survive any termination of this SOA.

4. Hardware. Title and risk of loss to hardware detailed in a Supplement ("Hardware") shall pass to Customer upon acceptance. However, in the event Customer has elected to finance such purchase, title shall pass to such third party financier upon payment in full for the System, unless the parties agree otherwise.

5. Confidentiality. Confidentiality will be handled in accordance with Appendix A, Section 10H of the DIR Contract No. DIR-TSO-2685.

6. Indemnification. Indemnification will be handled in accordance with Appendix A, Section 10A of the DIR Contract No. DIR-TSO-2685.

7. Limitation of Liability. Limitation of Liability will be handled in accordance with Appendix A, Section 10K of the DIR Contract No. DIR-TSO-2685.

8. Delivery, Cutover and Acceptance. Upon execution of this SOA and any applicable Supplement, Mitel will deliver and install the System FOB in accordance with Appendix A, Section 8C of DIR Contract No. DIR-TSO-2685. Cutover occurs when Mitel determines that the System is performing substantially in compliance with the manufacturer specifications. Omissions or variances that do not, in Mitel's determination, materially affect the operation of the System shall not delay Cutover. Unless Customer provides Mitel, within ten (10) business days following Cutover ("Acceptance Period"), with written notice detailing any material nonconformity, unconditional acceptance by Customer shall be deemed to have occurred.

9. Payment. Payments will be handled in accordance with Appendix A, Section 8J of the DIR Contract No. DIR-TSO-2685.

10. Warranty. The Hardware, Software and services include Mitel's standard warranties for hardware, software and services. Incremental support may be purchased through a support plan ("Support Plan"). All other warranties or conditions whatsoever, including the warranty of merchantability and the warranty of fitness for a particular purpose, are hereby excluded and disclaimed. Mitel does not warrant that the operation of the System will be uninterrupted or error free. Mitel disclaims any express or implied warranty or condition that the System or any services provided by Mitel prevent toll fraud, unauthorized access, loss or theft of electronic data, or invasion of privacy (collectively, "fraudulent activity"). Mitel shall have no liability to Customer in the event of such fraudulent activity. Customer is advised that the operation of e-911 requires accurate information contained in Customer's database, which Customer is solely responsible for creating and managing.

11. Export. Systems, products, material, services, technology, tools and technical data delivered by Mitel to Customer ("Deliverables") may be subject to Canadian, UK and/or US export controls or the trade laws of other countries. Customer agrees not to release or re-export the Deliverables without prior written consent of an authorized representative of Mitel. Customer will not use or provide Deliverables for nuclear, missile, or chemical and biological weaponry end uses and will not divert such to third parties who are military end users or are involved in military end users without the prior written approval of Mitel. Customer certifies that all Mitel products, services and technology will be used or installed solely making or receiving secure internal and external telephone calls as designed by Mitel.

12. General. Force Majeure – Force Majeure will be handled in accordance with Appendix A, Section 11C of the DIR Contract No. DIR-TSO-2685. **Claims** Claims will be handled in accordance with Appendix A, Section 10K of the DIR Contract No. DIR-TSO-2685. **Substitutions and Subcontracting** –Mitel may substitute the System or any component thereof with comparable new equipment of equivalent functionality. Mitel may subcontract its obligations under this SOA, in accordance with Appendix A, Section 10F of DIR Contract No. DIR-TSO-2685, but will remain responsible for such obligations. **Applicable Law** - This SOA shall be interpreted under the laws of the State of Texas. Venue shall be in state courts in Travis County, Texas. Nothing herein shall be construed to waive the State's sovereign immunity. **Entire Agreement** – The Entire Agreement will be handled in accordance with Appendix A, Section 4A of the DIR Contract No. DIR-TSO-2685.



APPENDIX G TO DIR-TSO-2685 SUPPORT AGREEMENT

Mitel Business Systems, Inc. ("Mitel")	("Customer")
Principal Place of Business (Address): 1146 North Alma School Road Mesa, Arizona, 85201	Principal Place of Business (Address):
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Mitel and Customer agree to the terms and conditions of Contract No. DIR-TSO-2685 and those below and have caused this Agreement to be executed by their respective duly authorized representatives:

1. SUPPORT SERVICES.

(a) This Agreement is effective as of the date it is signed by both Mitel and Customer ("Effective Date"). The initial term of this Agreement is twelve (12) months from the Effective Date. Thereafter, this Agreement may be renewed for additional twelve-(12) month periods (each a "Renewal Term") with 30 day advance notice. Termination will be handled in accordance with Appendix A, Section 11B of the DIR Contract No. DIR-TSO-2685.

(b) Customer will receive support services ("Support Services") as set forth in a Support Plan referencing this Agreement. Each Support Plan may be renewed for additional twelve (12)-month periods unless customer provides written notice thirty (30) days prior to expiration. No renewal shall be effective unless Customer has installed the current release version of the embedded software minus 2 and (if applicable) Customer maintains application software at release levels currently supported by Mitel. Customer may increase the level of Support Services at the beginning of a month. Prices for the additional services will be pro-rated in accordance to the Appendix C, Pricing Index identified in the DIR Contract No. DIR-TSO-2685. Any decrease in the level of services must be made at the beginning of a Renewal Term. The prices for the Support Services may be adjusted to reflect changes to the System. Mitel will provide notice of any change in prices forty-five (45) days prior to any Renewal Term. All Support Services are limited to the Site listed in the Support Plan.

(c) Standard of Performance. Support Services will be performed in a good and workmanlike manner consistent with standard communications industry practice. Mitel may subcontract work required under this Agreement, in accordance with Appendix A, Section 10F of DIR Contract No. DIR-TSO-2685, but will remain responsible for the work performed.

(d) Definition of Major and Minor Failures.

(i) A Major System Failure for a PBX or ICP is defined as a complete system failure, tie-line group out of service, major system alarm, failure of an entire trunk group, more than twenty percent (20%) of stations totally inoperative, attendant position failure, inability to receive incoming calls, inability to call outside of the facility, or system failure that substantially interferes with the Customer's normal use of the System. A Major System Failure for voice processing System is defined as an inability to access system through the system manager terminal or through at least seventy-five percent (75%) of all telephone ports, inability to access one or more disk drives that store messages or data, loss of system integration, continual system restarts, unscheduled total system outage, reboot failure, inability of system to collect CDR data (if applicable). All other failures shall be deemed a Minor System Failure.

(ii). A Major Application Failure for an application software is defined as a complete inability to use the application software, application crash or loss of data that significantly interferes with Customer's access to or use of the application software. All other failures shall be deemed a Minor Application Failure.

(e) Application Software Support. Support for applications software listed in the Support Plan includes remote or onsite diagnosis and troubleshooting of Major and Minor Application Failures. Mitel will use commercially reasonable efforts to restore the application software to substantial compliance with applicable manufacturer specifications, including the following: developing work-around directions; updating application software documentation; and updating software, which includes maintenance fixes. Mitel will replace any software media or documentation that is defective in material or workmanship. Support for application software does not include (i) remedies for cosmetic software bugs that do not cause material deviation from the manufacturer's specifications or (ii) application software upgrades (which include additional application enhancements and functionality beyond software updates or maintenance fixes) unless Mitel determines that an upgrade is necessary to resolve the Application Failure.

(f) Proactive Remote Monitoring and Remote Support. Customer must provide the appropriate dedicated central office business line (1mb/1FL) and associated dial-in phone number and system passwords/access codes to receive proactive remote monitoring and/or remote support (if specified in the attached Support Plan) if the System is capable of supporting such remote monitoring or remote diagnostic capabilities. Mitel shall not be responsible for proactive remote monitoring or remote support in the event that Customer changes the dial-in phone number, disconnects the System from the 1 mb/1FL central office business line or changes system access codes until Customer notifies Mitel of the changed dial-in number or access code, or re-connects the System to the 1 mb/1f central office business line, as the case may be.

(g) Supplemental Services. All supplemental services will be performed under a Work Authorization subject to DIR Contract No. DIR-TSO-2685 and this Agreement. If any supplemental work / service are subsequently added to the Support Plan, the price will be adjusted accordingly subject to the Appendix C, Pricing Index identified in the DIR Contract No. DIR-TSO-2685. Any product or material provided in connection with the Support Services is provided "as is" and subject to all

terms and conditions applicable for the product or material. The following are supplemental services that will be provided in accordance to the Appendix C, Pricing Index, including the following:

- (i) communicating and cooperating with communications service provider(s) ("Liaison Service") to correct any problem that was not caused by the System;
- (ii) technician on-site service (including travel to and from the Site) to re-establish remote access that was disconnected or disabled by anyone other than Mitel or its authorized agent.
- (iii) installing software upgrades;
- (iv) moves, adds and changes (MAC);
- (v) consulting on application capabilities, administration, configuration, proper usage of application software, custom programming, documentation, training or other services that are not related to resolving a Major or Minor Application Failure;
- (vi) any other work not specifically provided for in the Support Plan.

(h). Exclusions. Mitel shall have no responsibility for troubleshooting or correcting any problems arising from the following: (i) Customer failure to maintain the embedded software at not less than the current release minus 2; (ii) power surges or dirty power not caused by Mitel; (iii) accidents, negligence or misconduct not caused by Mitel; (iv) work not performed or authorized by Mitel; (v) Customer data entry or Customer database backup; (vi) hardware or software not supplied by Mitel; (vii) Customer failure to maintain the environmental or electrical conditions according to manufacturer's specifications; (viii) host systems; and (ix) the LAN/WAN. Mitel's sole obligation or support of application software that is based on software code or features or functionality or for repair or replacement of System parts that have been manufacturer discontinued is to work in good faith with the manufacturer to obtain repairs, replacement parts, or devise custom software fixes, patches or work-arounds for which Customer shall be responsible to pay.

- 2. **PAYMENT TERMS.** Payments will be handled in accordance with Appendix A, Section 8J of the DIR Contract No. DIR-TSO-2685.
- 3. **TERM / TERMINATION.** Termination will be handled in accordance with Appendix A, Section 11B of the DIR Contract No. DIR-TSO-2685.
- 4. **ASSIGNMENT.** Assignment will be handled in accordance with Appendix A, Section 4D of the DIR Contract No. DIR-TSO-2685.
- 5. **CONFIDENTIALITY.** Confidentiality will be handled in accordance with Appendix A, Section 10H of the DIR Contract No. DIR-TSO-2685.
- 6. **LIMITATION OF LIABILITY.** Limitation of Liability will be handled in accordance with Appendix A, Section 10K of the DIR Contract No. DIR-TSO-2685.
- 7. **DISCLAIMERS.** MITEL DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION THAT THE SUPPORT SERVICES PREVENT TOLL FRAUD, UNAUTHORIZED ACCESS, LOSS OR THEFT OF ELECTRONIC DATA, OR INVASION OF PRIVACY (COLLECTIVELY, "FRAUDULENT ACTIVITY"). MITEL SHALL HAVE NO LIABILITY TO CUSTOMER IN THE EVENT OF SUCH FRAUDULENT ACTIVITY. CUSTOMER IS ADVISED THAT THE OPERATION OF E-911 REQUIRE ACCURATE INFORMATION CONTAINED IN CUSTOMER'S DATABASE, WHICH CUSTOMER IS SOLELY RESPONSIBLE FOR CREATING AND MANAGING.
- 8. **NON-SOLICITATION.** Both Parties agree not to solicit, or make offers of employment to, or enter into business relationships with, any of the other Party's employees involved, directly or indirectly, in the performance of the Services performed as a result of this Agreement for one (1) year after the date such employee ceases to perform any of the Services provided hereunder. However, either party may hire any employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to either of the parties employees.
- 9. **FORCE MAJEURE.** Force Majeure will be handled in accordance with Appendix A, Section 11C of the DIR Contract No. DIR-TSO-2685.
- 10. **SEVERABILITY.** In the event that any of the provisions contained herein is for any reason be held to be unenforceable, such unenforceability shall not affect the validity of any other provision of this Agreement, and this Agreement shall then be construed as if such unenforceable provision had never been contained herein. The parties agree to work in good faith to substitute the invalid provision with a provision that best achieves the effect intended by the parties. The right of either party at any time to require strict performance shall not be affected by any previous waiver or course of dealing.
- 11. **APPLICABLE LAW.** This Agreement shall be interpreted under the laws of the State of Texas, exclusive of its conflict of laws provisions.
- 12. **ENTIRE AGREEMENT.** The Entire Agreement will be handled in accordance with Appendix A, Section 4A of the DIR Contract No. DIR-TSO-2685.
- 13. **NOTICES.** Notices will be handled in accordance with Appendix A, Section 12A of the DIR Contract No. DIR-TSO-2685.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. D. 6.

Meeting Date: 04/20/2015

Prepared By: Clay Barnett, Director of Public Works and Engineering

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 5965**

Awarding a Bid to and Authorizing Execution of a Contract with Overland Materials and Manufacturing, Inc. for an Annual Supply of Hot Mix Asphalt

Issue:

To consider the award of bid to Overland Materials and Manufacturing, Inc. of Ardmore, Oklahoma for the purchase of up to 3,000 tons of Hot Mix Asphalt for the 2015 Street Maintenance Program

Background:

Each year, the Street Maintenance Department prepares for annual street patching repair needs. A request to advertise for public bids was approved by the City Council in its meeting of February 2, 2015. The Invitation to Bid was publicly advertised; and one (1) vendor, Overland Materials and Manufacturing, Inc. of Ardmore, Oklahoma, submitted a bid on April 7, 2015.

Origination:

Street Maintenance Department

Financial Consideration:

The bid submitted by Overland Materials and Manufacturing, Inc. for the required Hot Mix Asphalt was \$60.40 per ton (not delivered) and \$69.05 per ton (delivered). There are sufficient funds in the fiscal year 2014-2015 annual Street Maintenance Department operating budget to purchase up to 3,000 tons of Hot Mix Asphalt. Based on these volumes, the expected total cost would be \$181,200.00 (not delivered) and \$207,150.00 (delivered).

Staff Recommendation:

It is the staff's recommendation that the Sherman City Council award the City Hot Mix Asphalt contract to Overland Materials and Manufacturing, Inc. of Ardmore, Oklahoma for one (1) twelve (12) month period.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 5965

Contract

Bid Tabulation

RESOLUTION NO. 5965

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH OVERLAND MATERIALS AND MANUFACTURING, INC. FOR AN ANNUAL SUPPLY OF HOT MIX ASPHALT; 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 Overland Materials and Manufacturing, Inc. is hereby awarded the bid, based on estimated volume of 3,000 tons of hot mix asphalt; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved by the City Attorney, to execute a contract with Overland Materials and Manufacturing, Inc for an estimated volume of 3,000 tons of hot mix asphalt, in accordance with all contract documents attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2015.

CITY OF SHERMAN, TEXAS

BY: _____
CAROLYN S. WACKER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY



**CITY OF SHERMAN
STANDARD CONTRACT**

This Agreement is made by and between the City of Sherman, Texas, a home-rule municipality, hereinafter referred to as "Buyer", and the hereinafter named SELLER, referred to as the "Seller," for the sale of goods, materials and items specified hereinafter, and the Buyer and Seller hereby agree as follows:

Seller:

Overland Materials & Manufacturing, Inc.
Name

PO Box 1947
Address

Ardmore, OK 73402
City, State, Zip

580-223-8432
Telephone

estimator@overlandcorporation.com
Email

DESCRIPTION OF GOODS

This Contract is for the purchase by the City of Sherman, Texas, of the goods, materials and items described hereinafter as the "goods" or the subject of this Contract, and such parts, attachments, accessories, devices, and apparatus as may be considered an integral part of the Goods or necessary for the proper use or application of the Goods, whether or not specified herein. The Goods are more specifically described as follows:

Hot Mix Asphalt

[CHECK ONE:]

_____ This contract is a "fixed price – fixed quantity" Contract for the purchase of the specified quantity at the specified price. The full quantity of the Goods shall be delivered to and received at the designated point or points of delivery no later than the date specified herein below. This date is a material term and condition of the Contract and, in connection with the delivery date, time is and shall be of the essence.

Date of Delivery

OR

 X This Contract is for a specific duration wherein the Seller will supply, furnish and deliver at the designated point or points of delivery the specified Goods in the quantities requested by Buyer at the time of Buyer's order. The delivery date(s) shall be set forth in Buyer's order. This Contract is not intended to be and shall not be construed as an exclusive requirements contract. This Contract is non-exclusive and Buyer may acquire any or all of its requirements for the specified Goods from Seller or any other source deemed appropriate by Buyer.

DURATION: From April 20, 2015 to April 19, 2016

PAYMENT TERMS

The purchase price of the Goods shall be that contained in the Seller's bid and specifically accepted in writing by Buyer. Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, and shall be itemized. A copy of the packing slip should be attached to the invoice. Mail to the City of Sherman, Finance Department, PO Box 1106, Sherman, TX 75091-1106. Payment shall not be due until the above instruments are submitted, until the Goods have been received by Buyer, and until Buyer has had sufficient opportunity to inspect and exercise its right to accept or reject. Seller shall keep the Finance Department advised of any changes in their remittance addressees. In no event shall Buyer be responsible for interest of any kind on any funds due to Seller, and no term or provision contained in any Seller's invoice shall in any way modify, vary or alter the provisions hereof.

Buyer's obligation is payable solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void and to the extent funds are not available, any delivered but unpaid for goods will be returned to Seller by Buyer.

CONTRACT TERMS AND CONDITIONS

This Contract is made and entered into between the parties hereto in accordance with and subject to the following additional terms and conditions:

1. **SELLER TO PACKAGE GOODS:** Seller will package Goods in accordance with good commercial practice. Each shipping container shall be clearly marked and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address, and purchase order number; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packing unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirement of common carriers

and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipment not accompanied by packing lists.

2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the Goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE AND RISK OF LOSS:** The title and risk of loss of the Goods shall not pass to the Buyer until the Buyer actually receives and takes possession of the Goods at the point or points of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in the bid; Seller shall pay for the transportation costs.
5. **NO PLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
6. **PLACE OF DELIVERY:** The place of delivery shall be that set forth on the purchase order or in any other written designation by Buyer. The terms of this agreement are "no arrival, no sale."
7. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods at delivery before accepting them.
8. **REJECTION OF GOODS:** It is agreed that if Buyer rejects any of the goods sold pursuant to this agreement, Buyer's only duty shall be to reasonably notify Seller of the rejection and hold the goods for the disposition of Seller, and it is agreed that under no circumstances shall Buyer be required to resell the rejected goods or incur the cost to deliver same to Seller.
9. **GRATUITIES:** The Buyer may, by written notice to the Seller, cancel this contract without liability to the Seller if it be determined by the Buyer that gratuities, in the form of entertainment, gifts, or otherwise were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of City of Sherman with view toward securing the contract or securing favorable treatment with respect to awarding or amending, or the making of any determination with respect to the performing of such a Contract. In the event this Contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled in addition to any other rights and remedies, to recover and withhold the amount of the cost incurred by the Seller in providing such gratuities.
10. **SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or any special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

11. WARRANTY – PRICE:

- a. The price to be paid by the Buyer shall be that contained in the Seller's bid which Seller warrants to be no higher than Seller's current prices on orders for products of the kind and specification covered by the agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability for breach or Seller's actual expense.
- b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

12. WARRANTY-PRODUCTS: Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. No such attempts to limit, disclaim or exclude any warranties, whether of fitness, merchantability or otherwise, by Seller shall be binding or effective. Seller warrants that the Goods furnished will conform to the specifications, drawings, and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.

13. SAFETY WARRANTY: Seller warrants the product sold to the Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event that the products do not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event that Seller fails to make the appropriate correction within a reasonable time, any correction made by Buyer will be at Seller's expense.

14. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS: As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specifications will not give rise to such claim, and in no event shall Buyer be liable to Seller in the event that Seller issued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing or the like, within two weeks after the signing of this agreement. If Buyer does not receive notice and a claim is asserted or Buyer is subsequently held liable for the infringement or the like, Seller will indemnify, defend and save Buyer harmless. If Seller in good faith ascertains that production of the

goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.

15. **CANCELLATION:** Buyer shall have the right to cancel for default on all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which Buyer may have at law or equity. The Buyer may for any reason whatsoever terminate performance under this Contract by the Seller for convenience at any time. The Buyer shall give notice of such termination to the Seller specifying when termination becomes effective. Goods received but unopened or unused shall be made available to Seller for delivery. Buyer will, in the event of termination, remit such sums to Seller as may be due only for those Goods retained by Buyer.

16. **FORCE MAJEURE:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligation under the Agreement, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as is effected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereafter provided, but for no longer periods and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbance, act of public enemy, orders of any kind of government of the United States or State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any Force majeure shall be remedied with all reasonable dispatch shall not require the settlements of strikes and lockouts by exceeding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

17. **ASSIGNMENT – DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. An attempted assignment or delegation of Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

18. **MODIFICATIONS:** This contract can be modified or rescinded only in writing signed by both parties and their duly authorized agents.

19. **WAIVER:** No claim or right arising out of a breach in contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or

renunciation is supported by consideration and is in writing signed by the aggrieved party.

20. **INTERPRETATION-PAROL EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
21. **APPLICABLE LAW:** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
22. **ADVERTISING:** Seller shall not advertise or publish, without Buyer's prior written consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with prior requests for information from an authorized representative of federal, state or local government.
23. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
24. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or services, except on behalf of the City as an officer or employee. Any knowing and willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the governing body of the City shall render the contract involved voidable by the City Manager or the City Council.
25. **ENTIRE AGREEMENT:** This Contract, and all Specifications and Addenda attached thereto, constitute the entire and exclusive agreement between the Buyer and Seller with reference to the Goods. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Buyer and Seller not expressly made a part hereof.

26. **INDEMNITY AND DISCLAIMER:** BUYER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY SELLER FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE SELLER, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF SELLER UNDER THIS CONTRACT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF BUYER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE BUYER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY SELLER TO INDEMNIFY AND PROTECT BUYER FROM THE CONSEQUENCES OF THE SELLER'S AS WELL AS THE BUYER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE. 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.
27. **GOVERNING LAW:** The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Goods to be delivered hereunder shall be in the courts of Grayson County, Texas.
28. **SUCCESSORS AND ASSIGNS:** The Buyer and Seller bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Seller shall not assign this Contract without written consent of the Buyer.
29. **SEVERABILITY:** The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

30. **NOTICES:** All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party at the address set forth herein or set forth in a written designation of change of address delivered to all parties.

EXECUTED this 27th day of March, 2015.

SELLER:

Michael S. Voorhes

(Signature)

Michael S. Voorhes, President
(Type/Print Name and Title/Position)

PO Box 1947
(Address)

Ardmore, OK 73402
(City, State, Zip)

CITY OF SHERMAN:

By: _____
Robby Hefton,
City Manager
220 W. Mulberry
Sherman, TX 75090

ATTEST:

By: _____
Linda Ashby,
City Clerk

APPROVED:

Brandon Shelby
City Attorney

[illegible]



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. D. 7.

Meeting Date: 04/20/2015

Prepared By: Clay Barnett, Director of Public Works and Engineering

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 5966**

Authorizing Execution of an Encroachment Easement to Kent Hughlett for the Placement of a Decorative Fence within the South Crockett Street Right-of-Way to the City of Sherman

Issue:

To consider granting an encroachment easement into the South Crockett Street right-of-way in Sherman, Texas

Background:

The owner of the property located at 529 South Crockett Street proposes to place a decorative fence within the South Crockett Street right-of-way.

Origination:

Kent Hughlett, Owner

Financial Consideration:

None

Staff Recommendation:

City staff has no objection to the proposed encroachment and recommends approval.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 5966

Exhibit "A"

Encroachment Easement

Utility Letters

Location Map

RESOLUTION NO. 5966

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT EASEMENT TO KENT HUGHLETT FOR THE PLACEMENT OF A DECORATIVE FENCE WITHIN THE SOUTH CROCKETT STREET RIGHT-OF-WAY TO 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 documents being properly completed and approved as to form and content by the City Attorney, to execute an encroachment easement to Kent Hughlett in substantially the same form as presented at this meeting, for the placement of a decorative fence (between the back of sidewalk to the property line) in the South Crockett Street right-of-way as shown on the sketch marked Exhibit "A", approved by the City Engineer and the City Attorney, attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2015.

CITY OF SHERMAN, TEXAS

BY: _____
CAROLYN S. WACKER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
BRANDON SHELBY,
CITY ATTORNEY

Exhibit "A"

DESCRIPTION

All that certain lot, tract or parcel of land situated in the Samuel Blagg Survey, Abstract No. 56, in the City of Sherman, Grayson County, Texas, and being known as that tract of land described in a Deed to Cynthia L. Nelson as recorded in Volume 3803, Page 913 of the Official Public Records of Grayson County, Texas, and being more particularly described as follows:

BEGINNING at a cut "X" found for corner in a sidewalk at the intersection of the North line of King Street with the East line of Crockett Street and being the Southwest corner of said Nelson tract;

THENCE N. 16 deg. 00 min. 00 sec. W. (Directional Control Line) with the East line of Crockett Street, a distance of 96.05 feet to a 3/8" iron rod found for corner on the South side of a sidewalk at the Northwest corner of said Nelson tract;

THENCE N. 74 deg. 04 min. 45 sec. E. along the south side of said sidewalk and with the North line of said Nelson tract, a distance of 140.00 feet to a point for corner at the Northeast corner of said Nelson tract;

THENCE S. 15 deg. 57 min. 28 sec. E. with the East line of said Nelson tract, passing a 3/8" iron rod found on the edge of a building and at the base of a box d'arc post at a distance of 30.77 feet and continuing for a total distance of 96.96 feet to a concrete monument found for corner on the North line of King Street at the Southeast corner of said Nelson tract;

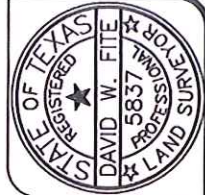
THENCE S. 74 deg. 27 min. 07 sec. W. with the North line of King Street, a distance of 139.93 feet to the POINT OF BEGINNING and containing 0.310 acres of land more or less.

NOTES

- 1) BEARING SOURCE: West line of Subject Tract
- 2) Survey prepared with benefit of Title Commitment, G.F. No. JANA-12-0042743, Effective Date NOVEMBER 8, 2012.

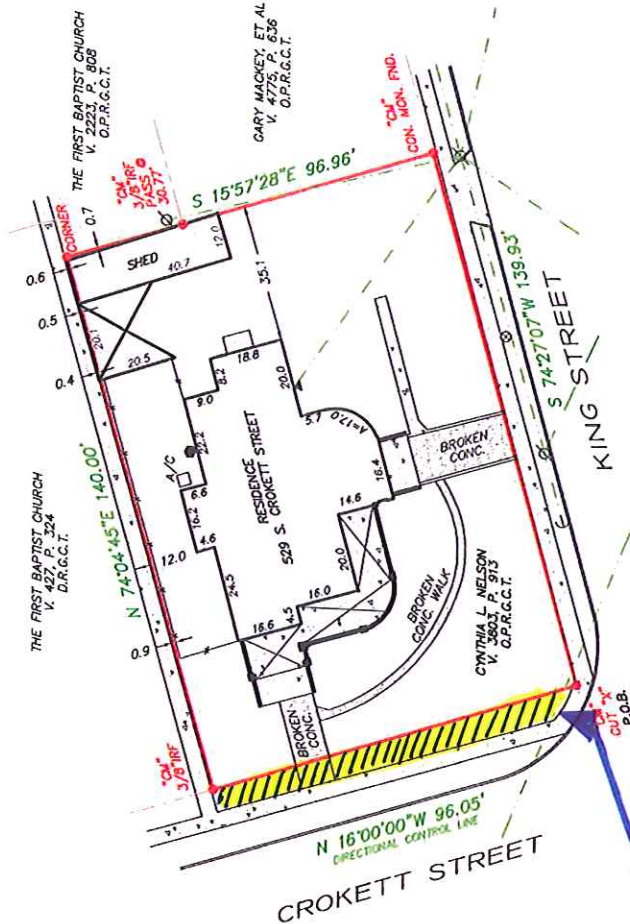
I, David W. Fite, Registered Professional Land Surveyor, State of Texas, do certify that the plat hereon was made from measurements performed on the ground, the lines and dimensions of said property being indicated by the plat, the improvements are within the boundaries of the property, set back from the property lines the distances indicated and there are NO VISIBLE EASEMENTS, ENCROACHMENTS, CONFLICTS OR PROTRUSIONS, except as shown on the plat hereon.

David W. Fite, R.P.L.S. No. 5837



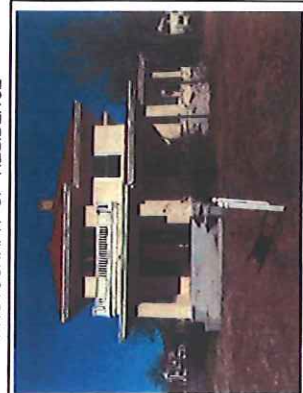
DAVID W. FITE SURVEYING

SCALE: 1" = 30'
DATE: 12-6-2012
OF NO. JANA-12-0042743
DRAWN: D.W.F.
PH. NO. 903-355-8178
FAX NO. 903-454-7478
3480 COUNTY ROAD 3307
GREENVILLE, TX 75402
E-MAIL: davidfite@bham.net



Encroachment Area

PHOTOGRAPH OF RESIDENCE



LEGEND

- POWER POLE
- LIGHT POLE
- ANCHOR
- ELEC. METER
- GAS METER
- WATER METER
- WATER VALVE
- FIRE HYDRANT
- TELEPHONE PEDESTAL
- CABLE PEDESTAL
- SUBSURFACE UTILITY BOX
- ELECTRIC TRANSFORMER

ENCROACHMENT EASEMENT

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GRAYSON

§

That the **CITY OF SHERMAN**, a municipal corporation of the State of Texas, hereinafter called "GRANTOR", in consideration of ONE DOLLAR AND NO CENTS (\$1.00) and other good and valuable consideration to it, in hand paid, hereby grants to **KENT HUGHLETT** of Sherman, Texas, hereinafter called "GRANTEE", an encroachment easement to place a decorative fence within the S. Crockett Street Right-of-Way of 529 S. Crockett Street as shown on the sketch marked Exhibit "A", attached hereto and incorporated herein for all purposes. Said encroachment easement shall be inferior, subordinate, and subject to the GRANTOR'S rights herein.

This instrument shall be construed as conveying an encroachment easement to GRANTEE, its successors and assigns, for the limited purpose of a decorative fence placement within the S. Crockett Street Right-of-Way within the herein described encroachment area, as shown on the attached exhibit. GRANTEE agrees that all maintenance of the decorative fence in the right-of-way shall be the responsibility of GRANTEE without cost, fees or expense to GRANTOR.

The GRANTOR shall not be responsible for any damages to the fence resulting from the failure of any utility located within the right-of-way area.

The GRANTEE shall be responsible for all costs or expenses related to damages and repair of any utility located within the easement resulting from any type of failure of the decorative fence.

The GRANTEE shall be solely responsible for any and all maintenance activities required to keep the decorative fence in a sound and safe condition.

That GRANTEE shall fully and completely indemnify and hold harmless the GRANTOR from any and all damages, actions, suits, demands, liabilities, executions and judgments, whether liquidated or unliquidated, absolute or contingent, direct or indirect, at law or in equity, together with attorneys fees which may occur in any manner by reason of any matter, fact, or thing arising from this conveyance and use of the area.

In the event it becomes necessary for the GRANTOR or any public utility to utilize the encroachment area for the purpose of installing new utilities, removing or repairing any public utilities or right-of-way located therein, GRANTEE hereby releases GRANTOR and any public utility from any and all damages, costs or expenses, and shall include, but specifically not be limited to, the cost of repair, relocation, or removal of the decorative fence and loss of use of such area.

TO HAVE AND TO HOLD the above described encroachment easement unto the said GRANTEE, its successors and assigns, until the use of such encroachment is no longer necessary.

EXECUTED this the _____ day of _____, A.D., 2015.

CITY OF SHERMAN, TEXAS

BY: _____
ROBBY HEFTON,
CITY MANAGER

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, in and for said county and state, on this day personally appeared **Robby Hefton**, City Manager, 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, and that he executed the same as the act 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., 2015.

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

KENT HUGHLETT,
OWNER

By: Kent Hughlett

ADDRESS: 529 S. Crockett
Sherman Tx

PHONE #: 972-743-8398

ACKNOWLEDGEMENT

STATE OF TEXAS *

COUNTY OF Collin *

BEFORE ME, the undersigned authority, in and for said county and state, on this day personally appeared **Kent Hughlett**, known to me to be the person and officer 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, on this the 08 day of
April, A.D., 2015.

NOTARY SIGNATURE: Tammy Cox

COMMISSION EXPIRES: 1-27-2018

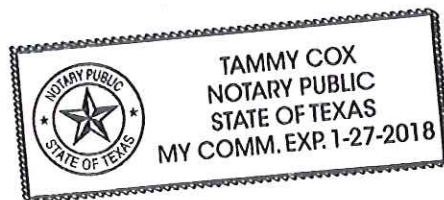


Exhibit "A"

DESCRIPTION

All that certain lot, tract or parcel of land situated in the Samuel Bluff Survey, Abstract No. 56, in the City of Sherman, Grayson County, Texas, and being known as that tract of land described in a Deed to Cynthia L. Nelson as recorded in Volume 3802, Page 912 of the Official Public Records of Grayson County, Texas, and being more particularly described as follows:

BEGINNING at a "X" found for corner in a sidewalk at the intersection of the North line of King Street with the East line of Crockett Street and being the Southwest corner of said Nelson tract;

THENCE N. 16 deg. 00 min. 00 sec. W. (Directional Control Line) with the East line of Crockett Street, a distance of 96.05 feet to a 3/8" iron rod found for corner on the South side of a sidewalk at the Northwest corner of said Nelson tract;

THENCE N. 74 deg. 04 min. 45 sec. E. along the south side of said sidewalk and with the North line of said Nelson tract, a distance of 140.00 feet to a point for corner at the Northeast corner of said Nelson tract;

THENCE S. 15 deg. 57 min. 25 sec. E. with the East line of said Nelson tract, passing a 3/8" iron rod found on the edge of a building and at the base of a 30" cast pipe at a distance of 70.77 feet and continuing for a distance of 10.00 feet to a monument found for corner on the North line of King Street at the Southeast corner of said Nelson tract;

THENCE S. 74 deg. 27 min. 07 sec. W. with the North line of King Street, a distance of 139.93 feet to the **POINT OF BEGINNING** and containing 0.310 acres of land more or less.

NOTES

- 1) BEARING SOURCE: West line of Subject Tract
- 2) Survey prepared with benefit of Title Commitment, G.F. No. JANA-15-0042743, Effective Date NOVEMBER 8, 2012.

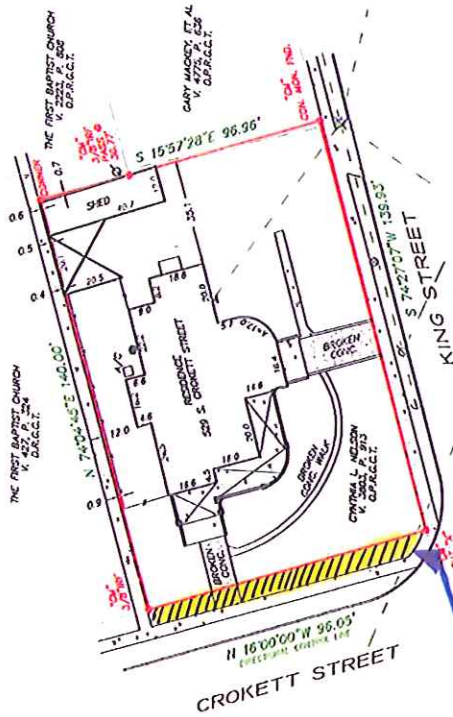
I, David W. Fite, Registered Professional Land Surveyor, State of Texas, do hereby certify that the foregoing survey was made and the same was performed on the ground, the lines and dimensions of said property being indicated by the plat, the improvements are within the boundaries indicated and there are NO VISIBLE ENCROACHMENTS, ENCROACHMENTS OR PROTRUSIONS, except as shown on the plat heron.

David W. Fite, R.P.L.S. No. 5837



DAVID W. FITE SURVEYING

3400 COUNTY ROAD 3307
CRENSHAW, TX 75425
PH. NO. 937-355-8778
FAX NO. 937-355-7475
Cadastral, Real Estate, Surveying



Encroachment
Area

PHOTOGRAPH OF RESIDENCE



LEGEND

- POWER POLE
- LIGHT POLE
- ANCHOR
- ELEC. METER
- GAS METER
- WATER METER
- WATER VALVE
- FIRE HYDRANT
- TELEPHONE PEDESTAL
- CABLE PEDESTAL
- SUBSURFACE UTILITY BOX
- ELECTRIC TRANSFORMER

Whitfield, Lisa

From: Baker, Daryl
Sent: Wednesday, April 08, 2015 9:43 AM
To: Whitfield, Lisa
Subject: RE: Possible Encroachment

We are clear behind the sidewalk.

Daryl Baker
Utility Field Superintendent
Office (903) 892-7298
Fax (903) 957-4140
Cell (903) 815-5794
E-Mail: darylb@ci.sherman.tx.us

-----Original Message-----

From: Whitfield, Lisa
Sent: Wednesday, April 08, 2015 9:27 AM
To: Baker, Daryl
Subject: Possible Encroachment

The gentleman at 529 S Crockett would like to put a fence in the hi-lighted right-of-way area on the attached survey (between sidewalk and property line). Do we have water or sewer lines in that area?

Whitfield, Lisa

From: Smith, Chris W (CHRIS) <smith.chris@verizon.com>
Sent: Wednesday, April 08, 2015 10:23 AM
To: Whitfield, Lisa
Subject: RE: Encroachment

Verizon does not have facilities in the referenced area.

Thanks,

*Chris W. Smith
Network Engineering
Eastern District
Ofc 972-578-3311
Fax 972-578-3396*



From: Whitfield, Lisa [mailto:lisaw@ci.sherman.tx.us]
Sent: Wednesday, April 08, 2015 9:06 AM
To: 'Meek, Stephen'; 'Graham, Nolan'; 'Cook, Clint'; 'clint.cook@cableone.biz'; Smith, Chris W (CHRIS); 'jacky.thomas@atmosenergy.com'
Subject: RE: Encroachment

Here is a copy of the survey (I received it this morning). It appears the fence would fall in the right-of-way (between the back of the sidewalk and the property line). Do you have any facilities in that area?

From: Whitfield, Lisa
Sent: Monday, April 06, 2015 4:00 PM
To: 'Meek, Stephen'; 'Graham, Nolan'; 'Cook, Clint'; 'clint.cook@cableone.biz'; 'Smith, Chris W (CHRIS)'; 'jacky.thomas@atmosenergy.com'
Subject: Encroachment

529 S Crockett (on the Crockett Side). Mr. Kent Hughlett would like to put a rod iron fence behind the sidewalk (between the sidewalk and the house) on Crockett Street. This would allow him to have the grass behind the sidewalk within the fence for maintenance. Do you have a utility easement within this area and will he be required to get an encroachment?

Thank you for all your help.
Lisa

Whitfield, Lisa

From: Thomas, Jacky G <Jacky.Thomas@atmosenergy.com>
Sent: Wednesday, April 08, 2015 11:10 AM
To: Whitfield, Lisa
Subject: RE: Encroachment

Atmos does have a line that runs along the east side of the property in the utility easement. He will need to make sure he calls 811 for locates before work starts.

From: Whitfield, Lisa [mailto:lisaw@ci.sherman.tx.us]
Sent: Wednesday, April 08, 2015 9:06 AM
To: 'Meek, Stephen'; 'Graham, Nolan'; 'Cook, Clint'; 'clint.cook@cableone.biz'; 'Smith, Chris W (CHRIS)'; Thomas, Jacky G
Subject: RE: Encroachment

Here is a copy of the survey (I received it this morning). It appears the fence would fall in the right-of-way (between the back of the sidewalk and the property line). Do you have any facilities in that area?

From: Whitfield, Lisa
Sent: Monday, April 06, 2015 4:00 PM
To: 'Meek, Stephen'; 'Graham, Nolan'; 'Cook, Clint'; 'clint.cook@cableone.biz'; 'Smith, Chris W (CHRIS)'; 'jacky.thomas@atmosenergy.com'
Subject: Encroachment

529 S Crockett (on the Crockett Side). Mr. Kent Hughlett would like to put a rod iron fence behind the sidewalk (between the sidewalk and the house) on Crockett Street. This would allow him to have the grass behind the sidewalk within the fence for maintenance. Do you have a utility easement within this area and will he be required to get an encroachment?

Thank you for all your help.
Lisa

Whitfield, Lisa

From: Graham, Nolan <Nolan.Graham@oncor.com>
Sent: Wednesday, April 08, 2015 12:54 PM
To: Whitfield, Lisa
Subject: RE: Encroachment

Lisa, Oncor does not have any objection to the proposed fence. Our facilities are southeast of the house at King St. between the sidewalk and street.

From: Whitfield, Lisa [mailto:lisaw@ci.sherman.tx.us]
Sent: Wednesday, April 08, 2015 9:06 AM
To: Meek, Stephen; Graham, Nolan; 'Cook, Clint'; 'clint.cook@cableone.biz'; 'Smith, Chris W (CHRIS)'; 'jacky.thomas@atmosenergy.com'
Subject: RE: Encroachment

Here is a copy of the survey (I received it this morning). It appears the fence would fall in the right-of-way (between the back of the sidewalk and the property line). Do you have any facilities in that area?

From: Whitfield, Lisa
Sent: Monday, April 06, 2015 4:00 PM
To: 'Meek, Stephen'; 'Graham, Nolan'; 'Cook, Clint'; 'clint.cook@cableone.biz'; 'Smith, Chris W (CHRIS)'; 'jacky.thomas@atmosenergy.com'
Subject: Encroachment

529 S Crockett (on the Crockett Side). Mr. Kent Hughlett would like to put a rod iron fence behind the sidewalk (between the sidewalk and the house) on Crockett Street. This would allow him to have the grass behind the sidewalk within the fence for maintenance. Do you have a utility easement within this area and will he be required to get an encroachment?

Thank you for all your help.
Lisa

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

Whitfield, Lisa

From: Cook, Clint <Clinton.Cook@cableone.biz>
Sent: Wednesday, April 08, 2015 5:01 PM
To: Whitfield, Lisa
Subject: FW: Encroachment

Lisa,

CableOne does not have any facilities at this location. No objection to the encroachment.

Thanks

Clint Cook
CableOne - Sherman
Technical Operations Manager
3720 Texoma Parkway
Sherman, TX 75090

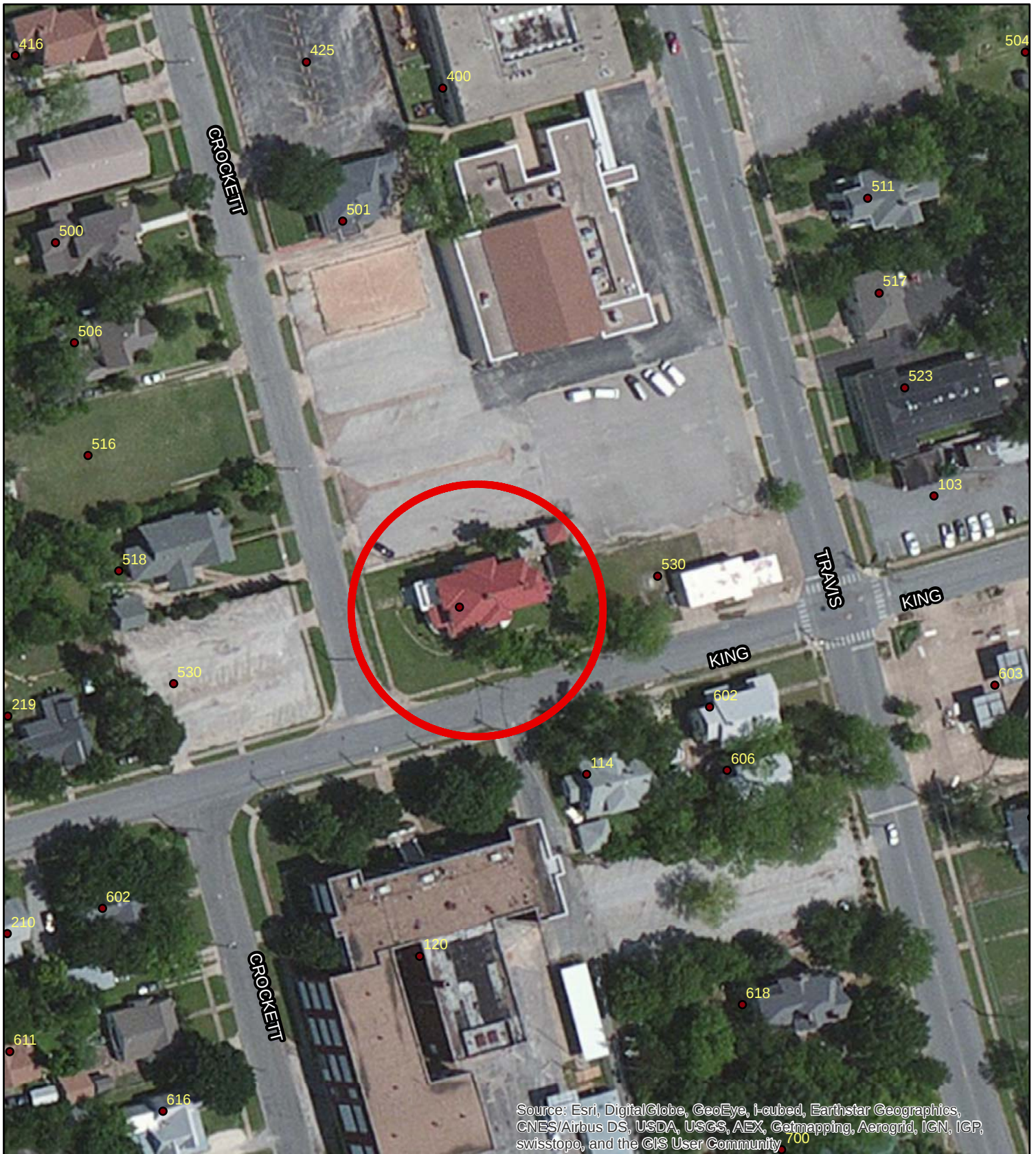
From: Miller, Cecil
Sent: Wednesday, April 08, 2015 3:03 PM
To: Cook, Clint
Subject: RE: Encroachment

Clint,
CableOne has no facilities in any easement at 529 S. Crockett Street, and therefore should have no objection to encroachment to build a fence.

Thanks,
Cecil Miller

From: Cook, Clint
Sent: Wednesday, April 08, 2015 10:35 AM
To: Miller, Cecil
Subject: FW: Encroachment

From: Whitfield, Lisa [<mailto:lisaw@ci.sherman.tx.us>]
Sent: Wednesday, April 08, 2015 9:06 AM
To: 'Meek, Stephen'; 'Graham, Nolan'; Cook, Clint; Cook, Clint; 'Smith, Chris W (CHRIS)'; 'jacky.thomas@atmosenergy.com'
Subject: RE: Encroachment



529 S Crockett Street



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. E. 1.

Meeting Date: 04/20/2015

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Receive Quarterly Progress Report from Sherman Economic Development Corporation Board Chairman Brooks Hull and SEDCO President Scott Connell

Issue:

To receive the Sherman Economic Development Corporation (SEDCO) quarterly progress report from Board Chairman Brooks Hull and President Scott Connell

Background:

The brief presentation by the SEDCO Board Chairman and President will provide the City Council with an overview of SEDCO's activities and accomplishments during the last three (3) months. SEDCO's last update was presented at the January 19, 2015 City Council meeting.

Origination:

City Council

Financial Consideration:

This presentation is for informational purposes only and has no impact on the City's revenues or expenses.

Staff Recommendation:

No action is required of the City Council.

Alternatives:

None recommended

Attachments

SEDCO Quarterly Progress Report

REPORTING FORM FOR BOARDS AND COMMISSIONS

Name of Board: Sherman Economic Development Corporation

Name of Chairman: Brooks Hull

Name of Vice Chairman: Willie Steele

Date of Report to City Council: April 13, 2015

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

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

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

- *SEDCO launched a new Business Retention and Expansion (BRE) Program. The BRE Program is directed by Stacey Jones, SEDCO ED Coordinator, and is focused around monthly visits to local industry by a "SEDCO team". The SEDCO team includes Mayor Cary Wacker, Djuna Forrester, Director of the Center for Workplace Learning at Grayson College, a SEDCO Board Member and another Sherman City Council Member. The goal is to make a strong connection with the industry leaders, extend our appreciation for their commitment to Sherman and create a relationship that provides support for challenges and growth opportunities. The BRE program will formalize and schedule annual meetings with every industry in Sherman. Thanks go out to the industries who have hosted the visits and for the volunteers (SEDCO and City Council) who have taken the time to participate.*
- *SEDCO hosted the first Plant Managers Forum for 2015. There were representatives from eight industrial companies in attendance. Staff surveyed the plant managers in second quarter to identify the preferred topics and calendar schedule for 2015. Quarterly meeting dates and times have been scheduled for the year.*
- *SEDCO provided incentive funding to several companies that met the contractual requirements for their expansion projects. The following companies reached the level of investment and/or jobs for a payment: Emerson Process Management/Fisher Controls, Texas Instruments, Presco, Globitech, and Modular Power Solutions.*
- *In second quarter FY 2014-15, SEDCO contracted with a local architecture firm to review the Sherman Youth Center facility (structure, ADA, etc.) and develop plans for renovation for a business incubator or co-working space. SEDCO received preliminary plans, but expect refined plans and cost estimates in early third quarter. SEDCO staff will work with SEDCO Board to determine next steps and develop a business plan.*
- *SEDCO partnered with Workforce Solutions Texoma and Denison Development Alliance to engage Dr. Derek Crews to conduct a Workforce Systems Analysis Project. The report delivered March 24 evaluates the best training programs from around the country that focus on middle skills jobs. Middle skills jobs are those that require education and training beyond high school, but less than a bachelor's degree. Grayson College, Sherman ISD and Denison ISD are partners in the effort. The report provides 13 recommendations for the region to consider pursuing. The project sponsors are reviewing the report and working to develop next steps.*

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

- *SEDCO will work to compete aggressively for the attraction of new jobs and investment from existing Sherman employers and new companies to the city. Staff submitted proposals in the second quarter 2014-15 to twelve (12) different companies with ten (10) follow up reports for companies evaluating Sherman for projects. The proposals include detailed information for local demographics, workforce and training, real estate options, utilities/infrastructure, taxes, incentives, supplier possibilities, transportation, quality of life issues and other data singular to their company. The average length of each report is fifteen pages. (SEDCO Goals A, B, C, D)*
- *In second quarter 2014-15, SEDCO began the process for developing a new website. We are planning for the website to be a content rich source of data and information about Sherman and the business community. We are working for the new site to launch in June 2015.(SEDCO Goals B, C, G)*
- *SEDCO will work closely with companies that have announced new investments in Sherman to ensure they have the support to meet their goals and receive the incentives as identified in the Economic Development Performance Agreements including Panda Sherman Power, Texas Instruments, Tyson, 903 Brewers, Modular Power Solutions, Progress Rail, Emerson-Fisher Controls, Globitech, Renew Blue and others. (SEDCO Goals A, B)*
- *SEDCO will begin professional review of the former Sherman Youth Center facility to identify needed renovations for a possible business incubator. (SEDCO Goal G)*

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

- *The SEDCO Board held three regularly scheduled meetings (January 13, February 10, March 17) and one special called meeting (February 27).*

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

- *100%*

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

- *No*

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

- *SEDCO hosted an intern from Austin College during the January term. Ms. Mashal Ali assisted staff with company proposals, updated website data, participated in Business Retention visits and supported the business management functions of the organization. It was a pleasure to have Ms. Ali at SEDCO during an unusually busy time for the organization.*
- *SEDCO worked with a few different private real estate groups during second quarter 2014-15 to consider their investments in new industrial space. Sherman has successfully leased up most of the available industrial buildings and there is a demand for additional buildings. The majority of companies searching for a new location request existing building space to save time. SEDCO continues to work with the private sector to identify ways to encourage new investment in these assets.*
- *Scott Connell began serving as Chairman of the Dallas Fort Worth Marketing Team for 2015. The DFW marketing Team is staffed by the Dallas Chamber in partnership with the Fort Worth Chamber and Oncor. We coordinate marketing trips and events with*

representatives from cities throughout North Texas (75+). The first quarterly meeting was held March 25.

- Stacey Jones attended a training conference for Business Retention and Expansion specialists sponsored by International Economic Development Council.
- Scott Connell actively worked with staff and Board members for North Texas Regional Airport regarding active clients considering facilities and sites on the campus. The projects are ongoing and considered favorable.
- Progress on Program of Work 2014-15

Goal A Three expansion projects, \$25 million investment, 50 new jobs, 200 retained jobs

Two expansion projects, \$6,621,000 investment, 7 new jobs, 145 retained (Presco, Kaiser Aluminum)

Goal B Four new primary employers, \$40 million investment, 100 new jobs

One new project, 104 new jobs (Renew Blue)

Goal C DFW allies marketing activities, 2 businesses, \$10 million investment, 40 jobs

Scott Connell Chairman of DFW Marketing Team and attended marketing trips to Atlanta, Los Angeles, Greenville, South Carolina.

Goal D Attract three retail businesses, \$5 million investment, 40 jobs

One business, \$868,000 investment, 13 jobs (Barrett Hospitality)

Goal E Sale of 40 acres in Progress Park

No transactions in First or Second Quarter 2014-15.

Goal F Invest in community projects that help attract employers

Partnered with local agencies for Texoma Craft Beverage Alliance.

Partnered with local agencies in Texoma Regional Innovation Consortium.

SEDCO paid third payment for City GIS mapping system.

SEDCO made finance payments for utility lines in US 75 and SH 289 areas.

Goal G Raise Sherman Profile

Partnered with local agencies for Workforce System Analysis Project.

Contracted with architect for designs for Sherman Youth Center renovations.

Expanded public relations for press releases of new announcements.

SEDCO updated logo and tagline "Distinctive Market. Global Reach."

Scott Connell on Board of Directors of Texas Economic Development Council

Scott Connell 2015 Chairman of DFW Marketing Team



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. E. 2.

Meeting Date: 04/20/2015

Prepared By: Clay Barnett, Director of Public Works and Engineering

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Receive Presentation from Nancy Knapp concerning the Renaming of a Portion of F.M. 1417 as "Vietnam Veterans Parkway"

Issue:

Ms. Nancy Knapp has approached the City with a request to change the name of a portion of F.M. 1417 (from U.S. Highway 75 to Old Luella Road) to "Vietnam Veterans Parkway".

Origination:

Ms. Nancy Knapp

Attachments

Request - "Vietnam Veterans Parkway"

To: City of Sherman and Grayson County Commissioners Court

Date: March 10th, 2015

This is a request to set and finalize our request to present 'Veterans Name a Road Request – Vietnam Veterans Parkway' on FM1417 from FM11 west to Hwy 75.

** April 20th for the City of Sherman Business meeting.

**Grayson County Commissioners' Court on April 21st.

Reason for this Date request changes have been due to weather, Easter Holidays and scheduling meetings one to follow the other (City and County mtgs).

Reason for this request is that one of our Vietnam Veterans 'Robert 'Bob' Hillerby' was killed on this roadway October, 2013. After working with TX DOT to have 'Safety Turn Lanes' constructed on FM1417 Chapter 973 of the Vietnam Veterans of America would like to request this roadway be given a significant name to remember Bob Hillerby's life and help to other veterans. Therefore, this is how this request came about out of the love and care for Bob Hillerby. Mr. Hillerby was the 'Peer to Peer' lead counselor for veterans with Post Traumatic Stress Disorder/Illness and known by many veterans wanting the help.

Respectfully

Nancy Knapp, VVA Project Chair - FM1417 Safety Turn Lanes/Road Name-Vietnam Veterans Parkway. Member Vietnam Veterans of America-Chpt973 associate.

Questions: Nancy Knapp 903-337-0403

Response Receipt Requested. Thank You.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. E. 3.

Meeting Date: 04/20/2015

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Setting the Public Hearing on the Proposed Agreement with Kaiser Aluminum Fabricated Products, LLC for the Abatement of Ad Valorem Property Taxes for Improvements within Industrial Reinvestment Zone, Number 042015-1, City of Sherman, Texas

Issue:

To consider setting a public hearing on a proposed tax abatement agreement for the City Council's regular meeting on Monday, May 4, 2015

Background:

On Monday, March 16, 2015, the Tax Reinvestment Committees of the City of Sherman, the Sherman Independent School District, Grayson County, and Grayson College (the "Committee") met to consider a request from Kaiser for a tax abatement involving a project to construct an additional 55,000 square foot building to house a 4,400 ton extrusion press and related manufacturing equipment at its Sherman location. The taxable value of Kaiser's current property is about \$16 million. This project proposes to add an additional \$25 million in value to the tax rolls, before any abatement, with about \$10 million coming from real property and \$15 million coming from personal property (the manufacturing equipment). In addition, Kaiser plans to add ten (10) additional positions to their current workforce.

The Committee voted to recommend an abatement and the creation of the Zone to the City Council and other taxing entities. The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. Ordinance No. 5873 creating Industrial Reinvestment Zone, Number 042015-1, City of Sherman, Texas, necessary for consideration of this tax abatement, was introduced at the April 6, 2015 Council meeting; and public hearing and adoption is scheduled for this meeting.

The City is required by state law to hold a public hearing prior to the adoption of a tax abatement agreement. The Committee agreed to propose a six (6) year tax abatement of 100%, 100%, 75%, 50%, 50%, 25%, in accordance with the City's current tax abatement matrix. Approval of this abatement agreement will be considered at the May 6, 2015 Council meeting.

Origination:

Kaiser Aluminum Fabricated Products, LLC, Applicant

Financial Consideration:

There is no direct cost associated with the public hearing.

Staff Recommendation:

The staff recommends that the City Council set a public hearing on the proposed tax abatement agreement for the regular Monday, May 4, 2015 Council meeting.

Alternatives:

None recommended



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. E. 4.

Meeting Date: 04/20/2015

Prepared By: Mark Gibson, Director of Utilities

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Receive Presentation from Utilities Director Mark Gibson on a New Elevated Water Storage Tank

Issue:

Presentation regarding the necessity, siting and construction of a new elevated water storage tank in west Sherman

Background:

A second elevated water storage tank is needed in the City's high zone surface water distribution area to provide additional storage capacity and to prepare for future growth and development in the north and west areas of Sherman. Bringing this tower on line will also help provide redundancy in the system that will allow for maintenance and repair of the Gallagher tower.

Origination:

Utility Administration

Financial Consideration:

The cost for the new elevated water storage tank is estimated to be \$3,300,000.00. The project will be funded by bonds issued through the Greater Texoma Utility Authority.

Staff Recommendation:

It is recommended that the City Council approve the siting and construction of the proposed new elevated water storage tank.

Alternatives:

As may be directed by the Council



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. E. 5.

Meeting Date: 04/20/2015

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Replat Approval of Vanderveer Addition, a Replat of Block E, T.J. Shannon Supplement; being part of Lot 10 and all of Lots 11 & 12, Block E, T.J. Shannon Supplement, containing 0.43 acres; Sean Vanderveer, Owner; and Sartin and Associates, Inc. Surveyor (200 blocks of East Pecan and North Montgomery Streets)

Issue:

To consider Replat approval of Vanderveer Addition, a Replat of Block E, T.J. Shannon Supplement; being part of Lot 10 and all of Lots 11 & 12, Block E, T.J. Shannon Supplement, containing 0.43 acres in the 200 blocks of East Pecan and North Montgomery Streets

Background:

The property is located in the 200 blocks of East Pecan Street and North Montgomery Street; the southwest corner of Pecan and Montgomery Streets. The owner would like to plat the property into two lots for commercial development.

Origination:

Sean Vanderveer (Owner)
Sartin and Associates, Inc. (Surveyors)

Financial Consideration:

None

Staff Recommendation:

At the March 17, 2015 regular meeting, the Planning & Zoning Board voted unanimously to recommend to the City Council that the Replat be approved subject to the Staff Review Letter.

Alternatives:

None

Attachments

Location Map

Zoning Map

Replat

P&Z Communication

Staff Review Letter



Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Sherman
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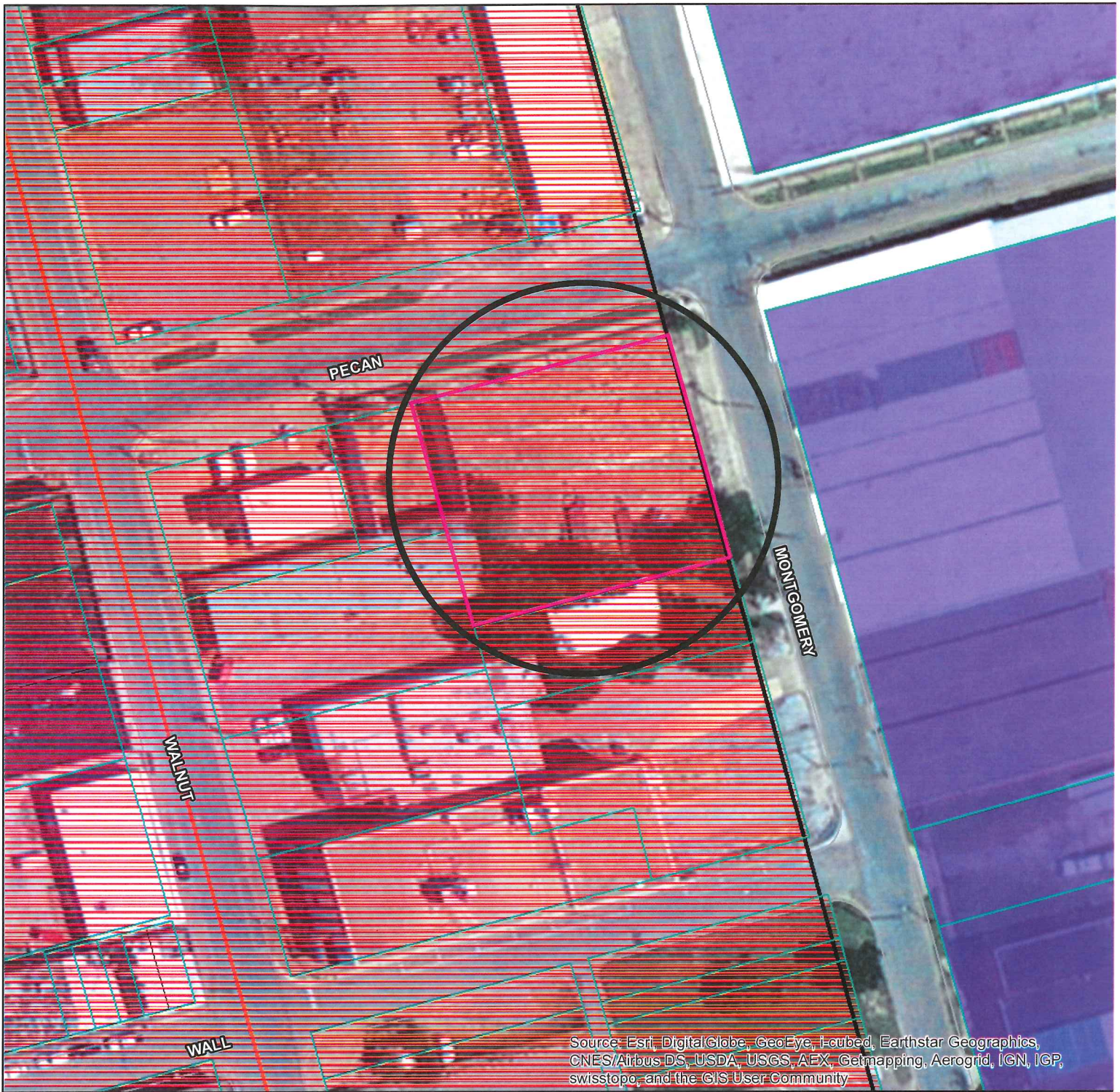
City of Sherman, Texas
Developmental Services Department

200 Blocks E. Pecan & N. Montgomery Streets



NOT TO SCALE

1 inch = 78 feet



Zoning - 200 Blk. E. Pecan & N. Montgomery Streets Vanderveer Addition



City of Sherman, Texas
Developmental Services Department

Legend		
ZONING PARCELS	DISTRICT_NAME	C-2 General Commercial District
Transportation Corridors Overlay	Arts and Cultural District	CO Office District
HWY_NAME	Blalock Commercial Overlay District	Lakes
FM 1417	Central Business District	M-1 Light Manufacturing District
Sam Rayburn Freeway	College Park District	M-1.5 Medium Manufacturing District
US Hwy 82 and 75	Downtown Overlay District	M-2 Heavy Manufacturing District
Special Districts Overlay	Historic Preservation District	MH Manufacturing Housing District
ZONING PARCELS	Zoning Classification	R-1 One Family Residential District
BIP Blalock Industrial Park	C-1 Retail Business District	R-2 Multi-Family Residential District
C-1 Retail Business District		R-A Single Family Agricultural District
		SF-1 Single Family Residential District



NOT TO SCALE

1 inch = 78 feet

PECAN STREET

Starting Base
N 74°00'00" E
92.00'

123.00'

60.00'

22' 0" x 7' 0" (P.O.B.)

Lot 3

S 89°22' E
122.46'

123.57'

S 89°22' E

Lot 1

Block One

Building Corner

N 10°20'22" W
123.36'

91.30'

S 74°04'11" W
151.30'

60.00'

2" = 100'

WALNUT STREET

"12" X 120"

Harper & Harper, Inc.
to
Machens & Leika
Vol. 4558, Pg. 126
Oct. 31, 2007

"10" X 120"

Mary E. Pluney
to
Sara Vandewater &
Arla Vandewater
Vol. 4558, Pg. 212
July 31, 2008

"12" X 150.4"

Hannon Baker, et al
to
Mack R. Broder &
Channon L. Broder
Vol. 2613, Pg. 212
Jan. 26, 1960

"3.24" Lot 1

Richard M. Eul
to
Culver Communications, Inc.
Vol. 2774, Pg. 171
Dec. 13, 2009

Warrant to Block
to
Theirs Small Family Limited Partnership
Number One
Vol. 4553, Pg. 310
May 22, 2008

General Telephone Company
of the Southwest
Vol. 1527, Pg. 718
April 1, 1962

MONTGOMERY STREET

**being 0.43 Acres
Being a replat of a part of
Block "E" of T. J. Shannon Supplement Addition
Volume "B", Page 259, D.R.G.C.T.**

Sean Vanderveer
115 E. Wall St.
Sherman, Texas





**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 9.

Meeting Date: 03/17/2015

Prepared by: Patsy Reeves, Developmental Services Admin Secretary

Approved by: Scott Shadden, Director of Development Services

Commissioners: Joe Gilbert, Chairman

Kyle Patterson, Vice-Chairman

Eric Elliott, Commissioner

Ron Barton, Commissioner

Chris Vellotti, Commissioner

Sam Thorpe, Commissioner

Sean Vanderveer, Commissioner

Ronnie Dutton, Commissioner

Shawn Davis, Commissioner

Requested Action/Proposed Use:

*** 200 BLOCKS E. PECAN & N. MONTGOMERY STREETS**

The request of Sean Vanderveer (Owner) and Sartin and Associates, Inc. (Surveyors) concerning the property located in the 200 Blocks East Pecan and North Montgomery Streets, being part of Lot 10 and all of Lots 11 & 12, Block E, T.J. Shannon Supplement containing 0.43 acres, as follows:

Planning and Zoning Commission

Replat approval of Vanderveer Addition, Being a Replat of a part of Block E, T.J. Shannon Supplement Addition

Background:

The property is located in the 200 blocks of East Pecan Street and North Montgomery Street; the southwest corner of Pecan and Montgomery Street. The owner would like to plat the property into two lots for commercial development.

Adjacent Zoning:

C-2 (General Commercial) District

Central Business District

M-2 (Heavy Manufacturing) District

Origination:

Sean Vanderveer (Owner)

Sartin and Associates, Inc. (Surveyors)

Master Plan Designation:

Urban/Downtown – Buildings are two to five stories and are built right up to the sidewalk, creating a sense of enclosure. Sidewalks provide pedestrian access and streetscape amenities. Parking is available along the street or in small parking lots in the rear of the buildings.

Number of notices mailed:

Not required.

Objections Received:

0

Attachments

Location Map

Zoning Map

Replat

Staff Review Letter

**STAFF REVIEW LETTER**

March 10, 2015

Sean Vanderveer
115 E. Wall St.
Sherman, TX 75090

Dear Applicants,

The request for approval of the Vanderveer Addition, a Replat of part of Block E, T.J. Shannon Supplement Addition, has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, March 17, 2015 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

1. Letters from the various utility providers are required verifying availability of service and when service will be available.
2. Original tax certificates shall be furnished for the purpose of recording the plat.
3. Drive approaches shall conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
4. The width of the right-of-way and pavement for streets shall be shown on the plat.
5. Engineering plans for utility, grading and storm drain design in accordance with City ordinances shall be submitted to the City Engineer for approval.
6. Any other changes made to the replat prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

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

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

Respectfully,

Clint A. Philpott,
City Engineer

cc: George Olson, City Manager
Brandon Shelby, City Attorney
Jamie Baggs, Fire Marshal
Clay Barnett, Director of Public Works and Engineering
Sartin & Associates, PO Box 1843, Sherman, TX 75091

Scott Shadden, Director of Development Services
Mark Gibson, Director of Utilities
Don Keene, Dir. of Community and Support Services
Lisa Whitfield, Engineering & Development Coordinator



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. E. 6.

Meeting Date: 04/20/2015

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Final Plat Approval of CAJC Addition, being 4.33 acres in the Daniel C. Shelp Survey, Abstract No. 1097; CAJC Corporation, Owners; Dan Massey, Applicant; and Underwood Drafting and Surveying, Surveyors (5200 block of Texoma Parkway)

Issue:

To consider Final Plat approval of CAJC Addition, being 4.33 acres in the Daniel C. Shelp Survey, Abstract No. 1097 in the 5200 block of Texoma Parkway

Background:

The property is located in the 5200 block of Texoma Parkway between Fallon Drive and Woodlake Road. The applicant would like to plat the property into two lots for commercial development.

Origination:

CAJC Corporation (Owners)
Dan Massey (Applicant)
Underwood Drafting and Surveying (Surveyors)

Financial Consideration:

None

Staff Recommendation:

At the March 17, 2015 regular meeting, the Planning & Zoning Board voted unanimously to recommend to the City Council that the Final Plat be approved subject to the Staff Review Letter.

Alternatives:

None

Attachments

Location Map

Zoning Map

Final Plat

P&Z Communication

Staff Review Letter



Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

CAJC Addition 5200 Block Texoma Parkway



NOT TO SCALE

1 inch = 187 feet



Zoning - 5200 Blk. Texoma Parkway CAJC Addition

Legend

ZONING PARCELS

Transportation Corridors Overlay

FM 1417

Sam Rayburn Freeway

US Hwy 82 and 75

Special Districts Overlay

DISTRICT_NAME

Arts and Cultural District

Blalock Commercial Overlay District

Central Business District

College Park District

Downtown Overlay District

Historic Preservation District

ZONING PARCELS

Zoning Classification

Unknown

BIP Blalock Industrial Park

C-1 Retail Business District

C-2 General Commercial District

CO Office District

Lakes

M-1 Light Manufacturing District

M-1.5 Medium Manufacturing District

M-2 Heavy Manufacturing District

MH Manufacturing Housing District

R-1 One Family Residential District

R-2 Multi-Family Residential District

R-A Single Family Agricultural District

SF-1 Single Family Residential District

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department



NOT TO SCALE

1 inch = 195 feet

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the Daniel C. Shelp Survey, Abstract No. 1097, and being the same 4.33 acre tract of land conveyed by First Texas National Bank to CAJC Corporation by deed dated March February 1, 2014, recorded in Volume 5428, Page 56, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a 1/2" steel rod found maintaining the Southwest corner of the said 4.33 acre tract in the East right-of-way line of Texoma Parkway (a.k.a. State Highway No. 91), said rod also maintaining the Northwest corner of the same tract of land conveyed by Floyd Shadden to Monroe E. Coble et ux by deed dated March 17, 1955, recorded in Volume 794, Page 305, Deed Records, Grayson County, Texas;

Thence North 28°36'52" East with said East right-of-way line of Texoma Parkway a distance of 321.09 feet to a 1/2" steel rod found maintaining the Northwest corner of the said 4.33 acre tract and the Southwest corner of the same tract of land described as 1.79 acres conveyed by Dawson Stafford, Jr. et al to Gary Yost by deed dated February 28, 2011, recorded in Volume 4926, Page 452, said Official Public Records;

Thence South 72°06'36" East with the South line of the said Yost tract a distance of 154.47 feet to a 1/2" steel rod found at an angle point;

Thence North 78°01'55" East continuing with said South line of the Yost tract a distance of 120.06 feet to a 1/2" steel rod found at an angle point;

Thence South 89°01'12" East a distance of 324.89 feet to a 1/2" steel rod previously set marking the Northeast corner of the said 4.33 acre tract at the intersection of the described said South line of the Yost tract with the West right-of-way line of the H & T C Railroad from which a 1/2" steel rod found maintaining the called for Southeast corner of the said Yost tract bears South 80°01'12" East a distance of 26.81 feet;

Thence South 22°36'11" West with said West right-of-way line of railroad a distance of 375.47 feet to a 1/2" steel rod previously set marking the Southeast corner of the said 4.33 acre tract at the intersection of said West right-of-way line of railroad with the described North line of the same tract of land described as 1.67 acres conveyed by David Pack to Albert Salazar by deed dated September 1, 2005, recorded in Volume 3932, Page 72, and subsequently referred to as Property No. 5. In conveyance from Rita Salazar Perez to Alicia Salazar by deed dated July 1, 2011, recorded in Volume 5086, Page 544, said Official Public Records;

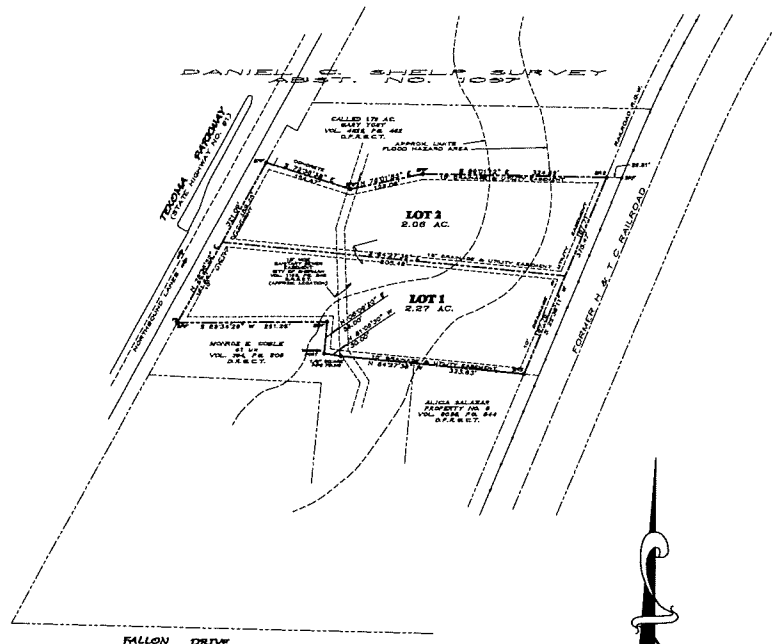
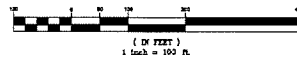
Thence North 84°27'38" West with a fence, posing the Northwest corner of the said Salazar tract and the most Easterly Northeast corner of the said Coble tract and continuing for a total distance of 323.63 feet to a 1/2" square pipe found at an angle point;

Thence North 81°05'30" West a distance of 30.00 feet to a wooden post maintaining a Southwesterly "L" corner to the said 4.33 acre tract and an inside "L" corner to the said Coble tract;

Thence North 08°09'20" East a distance of 56.00 feet to a 1/2" steel rod found maintaining an inside "L" corner to the said 4.33 acre tract and the most Northerly Northeast corner of the said Coble tract;

Thence South 89°34'28" West with the South line of the said 4.33 acre tract North line of the said Coble tract a distance of 261.26 feet to the Point-of-Beginning and containing 4.33 acres of land.....

GRAPHIC SCALE



KNOWN ALL MEN BY THESE PRESENTS:

That I, James R. Maret, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Sherman, Texas.

James R. Maret
Registered Professional
Land Surveyor, No. 5433

Date

~ GENERAL NOTES ~

1. PROPOSED USE ~ COMMERCIAL ~ ZONED C-2 GENERAL COMMERCIAL.
2. AS SHOWN, A PORTION OF THE SUBJECT PROPERTY LIES WITHIN THE LIMITS OF A FLOOD HAZARD AREA ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP FOR GRAYSON COUNTY, TEXAS AND INCORPORATED AREAS, MAP NO. 48181C0280P, REVISED DATE SEPTEMBER 23, 2010.
3. UTILITY SERVICE TO BE PROVIDED BY THE CITY OF SHERMAN.
4. WATER SUPPLIED BY THE CITY OF SHERMAN BY EXISTING EXISTING 8" LINE ALONG TEXOMA PARKWAY RIGHT-OF-WAY.
5. BEARING AND DISTANCE TO SHERMAN CONTROL MONUMENTS ESTABLISHED BY GPS OBSERVATION, GRID NORTH, TEXAS COORDINATE SYSTEM, NORTH CENTRAL ZONE, NAD 83.

**FINAL PLAT
OF
CAJC ADDITION
TO THE CITY OF
SHERMAN, TEXAS
4.33 ACRES
OUT OF THE
DANIEL C. SHELPS SURVEY
ABST. NO. 1097
GRAYSON COUNTY, TEXAS**

OWNER ~ DEVELOPER
CAJC CORPORATION
800 E. TAYLOR ST., SUITE 305
SHERMAN, TEXAS, 75090
3404 INTERURBAN ROAD
DENISON, TEXAS 75021



~ SURVEYOR ~
JAMES R. MARET, R.L.S. NO. 5433
UNDERWOOD DRAFTING & SURVEYING
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(803)465-2151

NOW THEREFORE KNOWN ALL MEN BY THESE PRESENTS:

THAT WE, CAJC Corporation, do hereby adopt this plat designating the hereinabove property as CAJC ADDITION to the City of Sherman, Texas, and do hereby dedicate to the public use forever the streets and easements shown on this plat for the mutual use and accommodation of all public and private utilities desiring to use or using same. Any public or private utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs or other improvements or growths which in any way endanger or interfere with the construction, maintenance, or efficiency of its respective system without the permission of anyone. This plat approved subject to all ordinances, rules, regulations and resolutions of the City of Sherman, Texas.

WITNESS MY HAND this _____ day of _____, 2015.

Charlotte Cole (Authorized)

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 Charlotte Cole, 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 purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2015.

Notary Public in and for
the State of Texas

Commission Expires: _____

Approved this _____ day of _____, 2015, by the City
Planning and Zoning Commission of the City of Sherman, Texas.

Chairman

Secretary

Accepted by the City Council of the City of Sherman

Mayor, City of Sherman, Texas

Date

The Undersigned, the City Clerk of the City of Sherman, hereby certifies that the foregoing plat of CAJC ADDITION to the City of Sherman, Texas, was submitted to the City Council on the day of _____, 2015, 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 _____ day of _____, 2015.

Clerk, City of Sherman, Texas

3" X 5" PLAT
1/4" X 1/4" PLAT
1/4" X 1/4" PLAT

JOB NO. 15020102



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 7.

Meeting Date: 03/17/2015

Prepared by: Patsy Reeves, Developmental Services Admin Secretary

Approved by: Scott Shadden, Director of Development Services

Commissioners: Joe Gilbert, Chairman

Kyle Patterson, Vice-Chairman

Ron Barton, Commissioner

Sam Thorpe, Commissioner

Ronnie Dutton, Commissioner

Eric Elliott, Commissioner

Chris Vellotti, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Requested Action/Proposed Use:

*** 5200 BLOCK TEXOMA PARKWAY**

The request of CAJC Corporation (Owners), Dan Massey (Applicant) and Underwood Drafting and Surveying (Surveyors) concerning the property located in the 5200 Block Texoma Parkway, being 4.33 acres in the Daniel C. Shelp Survey, Abstract No. 1097, as follows:

Planning and Zoning Commission

Preliminary and Final Plat approval of CAJC Addition

Background:

The property is located in the 5200 block of Texoma Parkway between Fallon Drive and Woodlake Road. The applicant would like to plat the property into two lots for commercial development.

Adjacent Zoning:

C-2 (General Commercial) District

Origination:

CAJC Corporation (Owners)

Dan Massey (Applicant)

Underwood Drafting and Surveying (Surveyors)

Master Plan Designation:

Estate – Estate is a large lot residential use (1-5 acres) with open space and a rural street network (ditches and no sidewalk). These homes are unlikely to have access to full service public utilities, especially sewer service.

Number of notices mailed:

Not required.

Objections Received:

0

Attachments

Location Map

Zoning Map

Preliminary Plat

Final Plat

Staff Review Letter

**STAFF REVIEW LETTER**

March 10, 2015

CAJC Corp
600 E. Taylor St.
Suite 305
Sherman, TX 75090

Dan Massey
4164 FM 1753
Denison, TX 75021

Dear Applicants,

The request for approval of the Preliminary and Final Plat of CAJC Addition, has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, March 17, 2015 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

PRELIMINARY PLAT

1. The width of the right-of-way and pavement for streets shall be shown on the plat
2. Privately owned and maintained detention in accordance with City criteria is required and shall be noted on the plat as being "Private Detention".
3. An Operation and Maintenance Manual and Landscaping Plan for the detention pond shall be provided to the Engineering Department prior to issuance of Occupancy Permits.
4. The Point of Beginning shall be shown on the plat.
5. All requirements of the floodplain ordinance shall be followed.
6. A drainage easement in the creek area shall be dedicated.
7. Drive approaches shall conform to TxDOT and City of Sherman standards and a permit is required from City of Sherman Engineering Department. Any special requirements by TxDOT shall be met.
8. Engineering plans for utility, grading and storm drain design in accordance with City ordinances shall be submitted to the City Engineer for approval.
9. Any other changes made to the preliminary plat prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

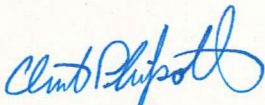
FINAL PLAT

1. Letters from the various utility providers are required verifying availability of service and when service will be available.
2. Original tax certificates shall be furnished for the purpose of recording the plat.
3. The width of the right-of-way and pavement for streets shall be shown on the plat.
4. Privately owned and maintained detention in accordance with City criteria is required and shall be noted on the plat as being "Private Detention".
5. An Operation and Maintenance Manual and Landscaping Plan for the detention pond shall be provided to the Engineering Department prior to issuance of Occupancy Permits.
6. The Point of Beginning shall be shown on the plat.
7. All requirements of the floodplain ordinance shall be followed.
8. A drainage easement in the creek area shall be dedicated.
9. Drive approaches shall conform to TxDOT and City of Sherman standards and a permit is required from City of Sherman Engineering Department. Any special requirements by TxDOT shall be met.
10. Engineering plans for utility, grading and storm drain design in accordance with City ordinances shall be submitted to the City Engineer for approval.
11. Any other changes made to the final plat prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

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

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

Respectfully,



Clint A. Philpott,
City Engineer

cc: George Olson, City Manager Scott Shadden, Director of Development Services
 Brandon Shelby, City Attorney Mark Gibson, Director of Utilities
 Jamie Baggs, Fire Marshal Don Keene, Dir. of Community and Support Services
 Clay Barnett, Director of Public Works and Engineering Lisa Whitfield, Engineering & Development Coordinator
 Underwood Drafting & Surveying, Inc., 3404 Interurban Rd., Denison, TX 75021



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Agenda Item No. L.

Meeting Date: 04/20/2015

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2015 Council Calendar

2015

JANUARY						
S	M	T	W	T	F	S
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1/5/2015	Regular City Council Meeting - Cancelled
4/21/2015	Called Budget Planning Meeting in Council Chambers
06/25-26/2015	Called Budget Workshop in Council Chambers
9/8/2015	Labor Day/Called Council Meeting on 09/8/2015
