

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, DECEMBER 15, 2008
5:00 P.M.**

- A.1 [CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN](#)
- A.2 [PLEDGE OF ALLEGIANCE](#)
- A.3 [INVOCATION BY DEPUTY MAYOR CAROLYN S. WACKER](#)
- A.4 [APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF DECEMBER 1, 2008](#)

Public Hearing

- B.1 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5581](#)
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Automobile Sales and an Impound Lot in a C-2 (General Commercial) District at 4026 Texoma Parkway, being 2.85 Acres in the W.F. Patterson Survey, Abstract No. 969 (Utter Properties, Ltd., Owner and David Pryor, Representative); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000
- B.2 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5582](#)
Establishing Maximum, Reasonable and Prudent Rates of Speed on Certain Portions of Binkley Park Drive in the City of Sherman; Fixing Penalties for Violation Thereof

Close Public Hearing and Consider Adoption of Ordinances

- B.3 [ADOPTION OF ORDINANCES](#)
Consider Adoption of Ordinance Numbers:
 - a) 5581
 - b) 5582
- B.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

- C.1 [RESOLUTION NO. 5299](#)
Supporting a Heritage of Archery Hunting and Wildlife Conservation in Grayson County, Texas
- C.2 [RESOLUTION NO. 5300](#)
Authorizing the Execution of 2008 Sub-Recipient Agreement Number 08-SR-67496-02 with the Governor's Division of Emergency Management for the Receipt of a Federal Homeland Security Grant
- C.3 [* RESOLUTION NO. 5301](#)
Authorizing the Execution of Agreements with American Municipal Services for the Collection of Outstanding Warrants, Citations, and Capias Pro Fines
- C.4 [* RESOLUTION NO. 5302](#)
Authorizing the Execution of an Agreement with American Municipal Services for the Collection of Delinquent Utility Services, Emergency Ambulance Services, and Other Services Provided by the City of Sherman
- C.5 [RESOLUTION NO. 5303](#)
Authorizing Execution of an Engineering Services Agreement with CP&Y, Inc. for Design of the Washington Street West Project
- C.6 [RESOLUTION NO. 5304](#)
Approving the Greater Texoma Utility Authority's Intention to Enter into an Agreement with Quality Excavation, LTD. for the Extension of the U.S. Highway 75 North Water Main between Graham Drive and S.H. 691
- C.7 [* RESOLUTION NO. 5305](#)
Authorizing Execution of a Professional Services Agreement with Timothy L. Morris, P.E. d/b/a Morris Engineers for Design of the Willow Street Water Main Replacement Project
- C.8 [* RESOLUTION NO. 5306](#)
Authorizing Execution of an Encroachment Easement to Amy Coffman for the Construction of a Swimming Pool in a Utility and Drainage Easement in Block 3, Lot 7 of the Pebblebrook Addition, Phase 1B to the City of Sherman (1825 Pebblebrook Lane)

Other Business

- D.1 [OTHER BUSINESS](#)
Receive Quarterly Progress Report from Sherman Economic Development Corporation Board Vice Chairman Greg Kirkpatrick and SEDCO President John Boswell

D.2 [OTHER BUSINESS](#)

Receive Tourism Presentation from Assistant City Manager/CFO Robby Hefton

D.3 [OTHER BUSINESS](#)

Consider Calling a Special Meeting of the City Council for Tuesday, January 20, 2009 and Tuesday, February 17, 2009, due to Conflict with Federal Holidays

D.4 [* OTHER BUSINESS](#)

Final Plat Approval of O'Hanlon Ranch Estates, Phase 3; DGR Development Group, Ltd., Owners; Vilbig & Associates, Inc., Engineers; and Sartin & Associates, Surveyors [3000-3100 Blocks of Overland Trail, 2500-2800 Blocks of F.M. 1417 North (Heritage Parkway) and the 100 Block of Shady Oaks Lane]

D.5 [CITIZEN REQUESTS](#)

D.6 [MEDIA QUESTIONS](#)

Consider Board/Commission Appointments

D.7 [APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS](#)

a) Tri-County Senior Nutrition Board of Directors (1)

D.8 [COUNCIL COMMENTS](#)

D.9 [ADJOURNMENT](#)

[COUNCIL CALENDAR](#)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Carolyn S. Wacker, Deputy Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. A.3

INVOCATION BY DEPUTY MAYOR CAROLYN S. WACKER



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. A.4

APPROVE MINUTES

THE REGULAR CITY COUNCIL MEETING OF DECEMBER 1, 2008

STATE OF TEXAS

§

December 1, 2008

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 December 1, 2008.

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

MEMBERS ABSENT: NONE.

CALL TO ORDER

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

CALL TO ORDER

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of November 17, 2008 and the Called City Council Meeting of November 20, 2008. Council Member Adami moved to approve the Minutes as presented; Second by Deputy Mayor Wacker. All present voted AYE.
MOTION CARRIED.

APPROVE MINUTES

INTRODUCTION AND PUBLIC HEARING OF ORDINANCES

Mayor Magers introduced Ordinance 5580 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR TEMPORARY "STOP" SIGNS AT THE INTERSECTION OF LAKE STREET AND THE BURLINGTON NORTHERN SANTA FE RAILROAD CROSSING WITHIN THE CITY LIMITS OF THE CITY OF SHERMAN; PROVIDING FOR A PENALTY PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 5580
STOP SIGNS

No citizens appeared before the City Council to discuss Ordinance 5580.

The Ordinances were introduced and the Public Hearing was closed.

CLOSE PUBLIC
HEARING

ADOPTION OF ORDINANCES

Ordinance 5580

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR TEMPORARY "STOP" SIGNS AT THE INTERSECTION OF LAKE STREET AND THE BURLINGTON NORTHERN SANTA FE RAILROAD CROSSING WITHIN THE CITY LIMITS OF THE CITY OF SHERMAN; PROVIDING FOR A PENALTY PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 5580
STOP SIGNS

ACTION TAKEN.

Motion by Council Member Smith to approve Ordinance No. 5580, as presented. Second by Council Member Steele.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

CONSENT AGENDA

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

CONSENT AGENDA

RESOLUTIONS

RESOLUTION NO. 5291 – AMENDING THE 2008-2009 BUDGET OF THE CITY OF SHERMAN, TEXAS, APPROPRIATING AND ALLOCATING ADDITIONAL FUNDS FOR THE PERIOD OF OCTOBER 1, 2008, THROUGH SEPTEMBER 30, 2009

**RES 5291
BUDGET AMENDMENT**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE 2008-2009 BUDGET OF THE CITY OF SHERMAN, TEXAS, APPROPRIATING AND ALLOCATING ADDITIONAL FUNDS FOR THE PERIOD OF OCTOBER 1, 2008, THROUGH SEPTEMBER 30, 2009.

Mayor Magers reiterated that the City has settled a lawsuit and at this time there is no outstanding litigation, other than personnel issues.

CONSENT AGENDA.

**TABLED AT SEPTEMBER 15, 2008 COUNCIL MEETING:
RESOLUTION NO. 5263 – AUTHORIZING EXECUTION OF AN ENCROACHMENT LICENSE AGREEMENT WITH OVERLAND GROUP, LLC FOR A MULTI-TENANT SIGN IN THE UTILITY EASEMENT ALONG F.M. 1417 (HERITAGE PARKWAY) AND OVERLAND TRAIL IN THE O'HANLON RANCH ADDITION, PHASE 2 TO THE CITY OF SHERMAN**

**RES 5263
ENCROACHMENT
FOR SIGN ON
FM 1417**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT LICENSE AGREEMENT WITH OVERLAND GROUP, LLC FOR A MULTI-TENANT SIGN IN THE UTILITY EASEMENT ALONG F.M. 1417 (HERITAGE PARKWAY) AND OVERLAND TRAIL IN THE O'HANLON RANCH ADDITION, PHASE 2 TO THE CITY OF SHERMAN.

ACTION TAKEN.

Motion by Council Member Howeth to remove Resolution No. 5263 from table for consideration. Second by Council Member Steele.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED TO REMOVE FROM TABLE.

ACTION TAKEN.

Motion by Council Member Adami to approve Resolution No. 5263, as presented. Second by Deputy Mayor Wacker.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 5292 – AUTHORIZING EXECUTION OF A CONTRACT WITH TEAGUE NALL & PERKINS FOR PROFESSIONAL ENGINEERING SERVICES TO DESIGN THE FALLON DRIVE WATER MAIN CONSTRUCTION PROJECT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONTRACT WITH TEAGUE NALL & PERKINS FOR PROFESSIONAL ENGINEERING SERVICES TO DESIGN THE FALLON DRIVE WATER MAIN CONSTRUCTION PROJECT.

CONSENT AGENDA.

RES 5292
FALLON DRIVE
WATER MAIN

RESOLUTION NO. 5293 – AUTHORIZING EXECUTION OF A CONTRACT WITH TEAGUE NALL & PERKINS FOR PROFESSIONAL ENGINEERING SERVICES TO DESIGN THE OAK CREEK DRIVE WATER MAIN REPLACEMENT PROJECT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONTRACT WITH TEAGUE NALL & PERKINS FOR PROFESSIONAL ENGINEERING SERVICES TO DESIGN THE OAK CREEK DRIVE WATER MAIN REPLACEMENT PROJECT.

CONSENT AGENDA.

RES 5293
OAK CREEK DRIVE
WATER MAIN

RESOLUTION NO. 5294 – AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH TIMOTHY L. MORRIS, P.E. D/B/A MORRIS ENGINEERS FOR DESIGN OF THE RELIEF SEWER “C” PROJECT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH TIMOTHY L. MORRIS, P.E. D/B/A MORRIS ENGINEERS FOR DESIGN OF THE RELIEF SEWER “C” PROJECT.

CONSENT AGENDA.

RES 5294
RELIEF SEWER “C”

RESOLUTION NO. 5295 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH SPECIALIZED PUBLIC FINANCE, INC. FOR FINANCIAL ADVISORY SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH SPECIALIZED PUBLIC FINANCE, INC. FOR FINANCIAL ADVISORY SERVICES.

RES 5295
FINANCIAL
ADVISORY
SERVICES

Garry Kimball, Managing Director, Specialized Public Finance, Inc., announced the formation of a new financial advisory firm. The company has moved toward the Government Finance Officer’s Association recommended best practice of being unaffiliated with a broker/dealer.

This requirement helps them give better independent advice and they won't be competing against institutions that place the bonds. Specialized Public Finance, Inc. has basically the same team that has previously represented the City.

Mr. Kimball said the proposal is the same as before and is a contingency fee based arrangement that only applies if they are successful in placing the debt to the City's satisfaction. It is an "at-will" engagement.

Robby Hefton, Assistant City Manager/CFO, added that the City received the announcement about the new firm approximately one month ago and Mr. Kimball already has almost three dozen clients that have signed on with the firm. He added that the City staff feels very comfortable with Mr. Kimball and the services he offers.

ACTION TAKEN.

Motion by Deputy Mayor Wacker to approve Resolution No. 5295, as presented. Second by Council Member Softly.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 5296 – AUTHORIZING THE PURCHASE OF A LOADER BACKHOE THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) FOR THE DISTRIBUTION SERVICES DEPARTMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A LOADER BACKHOE THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) FOR THE DISTRIBUTION SERVICES DEPARTMENT.

CONSENT AGENDA.

RES 5296
PURCHASE OF
LOADER BACKHOE

RESOLUTION NO. 5297 – AUTHORIZING THE PURCHASE OF A 40-YARD HEIL COMMERCIAL FRONT LOADER BODY THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD) FOR THE SOLID WASTE SERVICES DEPARTMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 40-YARD HEIL COMMERCIAL FRONT LOADER BODY THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD) FOR THE SOLID WASTE SERVICES DEPARTMENT.

CONSENT AGENDA.

RES 5297
PURCHASE OF
COMMERCIAL FRONT
LOADER BODY

RESOLUTION 5298 – AUTHORIZING THE PURCHASE OF A 2010 MACK COMMERCIAL FRONT LOAD TRUCK CHASSIS THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) FOR THE SOLID WASTE SERVICES DEPARTMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A

RES 5298
PURCHASE OF
COMMERCIAL FRONT
LOAD TRUCK CHASSIS

**2010 MACK COMMERCIAL FRONT LOAD TRUCK CHASSIS THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) FOR THE SOLID WASTE SERVICES DEPARTMENT.
CONSENT AGENDA.**

REQUEST TO ADVERTISE

BROCKETT STREET IMPROVEMENT PROJECT

Mayor Magers verified that the bonds for the Brockett Street Improvement Project have been issued and the money is in the bank.

Mr. Hefton said bids are expected back in January 2009, with a contract to the Council in February 2009, and moving dirt in March 2009.

CITY RIGHT-OF-WAY AND PROPERTY MOWING

Mayor Magers said Council Member Adami had suggested combining the mowing of the City's right-of-way and property to obtain a better cost.

George Olson, City Manager, explained that the staff had combined all contracts for private mowing to obtain a better economy of scale.

ACTION TAKEN.

Motion by Council Member Howeth to approve the request to advertise for the Brockett Street Improvement Project and the City Right-of-Way and Property Mowing, as presented. Second by Council Member Softly.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

PURCHASE OF THREE POLICE PATROL VEHICLES

The City Council approved the request to advertise for the purchase of three police patrol vehicles. The Police Department rotates the older patrol vehicles out of the patrol fleet each year to insure reliable and safe transportation for our first responders and the citizens they transport.
CONSENT AGENDA.

RELIEF SEWER K-4 PHASE TWO

The City Council approved the request to advertise for the construction of Relief Sewer K-4 Phase Two. The existing sewer main is deteriorated and becoming overloaded as more development occurs in northwest Sherman. Relief Sewer K-4 will replace an existing sewer along Post Oak Creek, between Taylor Street and Lamberth Road.

The project is funded at \$900,000 in this year's Capital Improvement Program through bonds previously issued by the Greater Texoma Utility Authority on behalf of the City of Sherman.

CONSENT AGENDA.

**REQ TO ADVERTISE
BROCKETT STREET
IMPROVEMENT
PROJECT**

**R-O-W & PROPERTY
MOWING**

**POLICE PATROL
VEHICLES**

**RELIEF SEWER
K-4 PHASE TWO**

OTHER BUSINESS

CONSIDER SCHEDULING A JOINT MEETING WITH THE PLANNING AND ZONING COMMISSION FOR 12:00 NOON ON MONDAY, JANUARY 26, 2009

Mayor Magers verified that the joint meeting would be held to discuss the Comprehensive Master Plan.

**SET JOINT MEETING
WITH P&Z**

ACTION TAKEN.

Motion by Council Member Adami to schedule a Joint Meeting with the Planning and Zoning Commission for January 26, 2009 at 12:00 noon, to discuss the City's Comprehensive Master Plan. Second by Council Member Steele.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

APPROVAL OF THE 2008 AD VALOREM TAX ROLL VALUE AND TAX LEVY

The City Council approved the Ad Valorem Tax Roll Value and Tax Levy for Fiscal Year 2008-2009. The 2008 tax year represents taxes that will be collected during the City's 2008-2009 fiscal year.

**TAX ROLL VALUE
& TAX LEVY**

The Grayson County Tax Assessor's Office has provided the taxable value at \$2,070,800,426 with equates to a levy of \$6,608,956.06 based on the City's tax rate of \$0.32 per \$100 valuation.

Mayor Magers reiterated that the City's ad valorem property tax has been reduced 20% from previous years.

CONSENT AGENDA.

CITIZENS REQUESTS

There were no citizen's requests.

CITIZENS REQUESTS

MEDIA QUESTIONS

There were no media questions.

MEDIA QUESTIONS

COUNCIL COMMENTS

CHRISTMAS PARADE

Council Member Smith reminded everyone about the Christmas Parade that will be held Friday, December 5, 2008.

CHRISTMAS PARADE

THANKSGIVING HOLIDAY

Mayor Magers said he hoped everyone had a nice Thanksgiving and said we have a lot to be thankful for.

**THANKSGIVING
HOLIDAY**

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

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

EXECUTIVE SESSION

SECTION 551.074 --

PERSONNEL MATTERS:
CONSIDER THE QUALIFICATIONS,
APPOINTMENT AND REMOVAL
OF MEMBERS TO BOARDS AND
COMMISSIONS:
GREATER TEXOMA UTILITY
AUTHORITY BOARD OF
DIRECTORS (1)

Mayor Magers said Council Members did not need an Executive Session to consider an appointment to the Greater Texoma Utility Authority Board of Directors.

CONSIDER THE QUALIFICATIONS, APPOINTMENT AND
REMOVAL OF MEMBERS TO BOARDS AND COMMISSIONS:
GREATER TEXOMA UTILITY AUTHORITY BOARD OF
DIRECTORS (1)

GTUA

ACTION TAKEN.

Motion by Council Member Smith to reappoint Joe Henderson to the Greater Texoma Utility Authority Board of Directors for a term from December 31, 2008 to December 31, 2010. Second by Council Member Steele.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

Mayor Magers said the Greater Texoma Utility Authority is in the midst of several water projects that benefit surface water from Lake Texoma and the Water Conservation District. He recognized the importance of GTUA and thanked Mr. Henderson for continuing to serve on the Board.

ADJOURNMENT

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 5:12 p.m.

MAYOR

CITY CLERK



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. B.1

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5581

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Automobile Sales and an Impound Lot in a C-2 (General Commercial) District at 4026 Texoma Parkway, being 2.85 Acres in the W.F. Patterson Survey, Abstract No. 969 (Utter Properties, Ltd., Owner and David Pryor, Representative); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

Issue

To consider the request of Utter Properties, Ltd. (Owner) and David Pryor (Representative) concerning the property located at 4026 Texoma Parkway, being 2.85 acres in the W.F. Patterson Survey, Abstract No. 969, to allow automobile sales and an impound lot in a C-2 (General Commercial) District.

Background

The property is located at 4026 Texoma Parkway between Gallagher Road and Frisco Road; Midway Kia was the previous tenant. The applicant would like to operate an automobile sales center with an impound lot. The impound lot will have a 6' fence with vinyl inlays surrounding the area so cars will not be seen.

Origination

Utter Properties, Ltd. (Owner) and David Pryor (Representative)

Board Recommendation

At the November 18, 2008 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Attachments

Ordinance No. 5581
Location Map
Photograph
Site Plan
P&Z Communication Form
Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager

ORDINANCE NO. 5581

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW AUTOMOBILE SALES AND AN IMPOUND LOT IN A C-2 (GENERAL COMMERCIAL) DISTRICT AT 4026 TEXOMA PARKWAY, BEING 2.85 ACRES IN THE W.F. PATTERSON SURVEY, ABSTRACT NO. 969 (UTTER PROPERTIES, LTD., OWNER AND DAVID PRYOR, REPRESENTATIVE); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

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

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

SECTION 1. That from and after the passage of this ordinance, Utter Properties, Ltd. (Owner) and David Pryor (Representative) are granted a Specific Use Permit to allow automobile sales and an impound lot in a C-2 (General Commercial) District at 4026 Texoma Parkway, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the City of Sherman, County of Grayson, State of Texas, being a part of the W.F. Patterson Survey, Abstract No. 969, being a part of a 3.88 acre tract of land described in Tract No. 1 in deed from Larry Wayne Edwards, et ux to Robert J. Tate by deed dated April 25, 1975, recorded in Volume 1309, Page 371, Deed Records, Grayson County, Texas, being the same 2.85 acre tract of land conveyed by L.H. Partners, Ltd. to Loncarr-Brown Investments, LP by deed dated December 17, 2001, recorded in Volume 3175, Page 42, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows to-wit:

BEGINNING at a found ½ inch rebar on the West right-of-way line of State Highway No. 91 (formerly old U.S. Highway 75), and known as TEXOMA PARKWAY, said rebar maintaining the most Easterly Northeast corner of said 3.88 acre tract, the Northeast corner of said 0.554 acre tract, the Southeast corner of a 96 x 226.875 foot tract of land conveyed by 300 N. Travis Street Corp. to R. Scott McKinney, et ux by deed dated May 18, 1998, recorded in Volume 2657, Page 771, Official Public Records, Grayson County, Texas;

THENCE South 29 deg. 38 min. 00 sec. West, with the West right-of-way line of said Texoma Parkway, a distance of 186.34 feet to a found ½ inch capped rebar stamped "SARTIN-3694" maintaining the Northeast corner of an 0.380 acre tract of land conveyed by Dr. Vance R. Wren, et ux to Vance R. Wren, P.C. by deed dated May 21, 1991, recorded in Volume 2154, Page 313, Real Property Records, Grayson County, Texas;

THENCE North 63 deg. 04 min. 08 sec. West, with the North line of said 0.380 acre tract, passing its Northwest corner, the most Northerly Northeast corner of a 1.728 acre tract of land conveyed by Robert J. Tate to V. R. Wren by deed dated April 1, 1984, recorded in Volume 1696, Page 63, Deed Records, Grayson County, Texas, and continuing with a North line of said 1.728 acre tract for a total distance of 447.23 feet to a found ½ inch rebar at the base of a chain link fence corner post on the West line of said 3.88 acre tract, the East right-of-way line of the M. K. & T Railroad, said rebar maintaining the Northwest corner of said 1.728 acre tract;

THENCE in a Northerly direction with the West line of said 3.88 acre tract, the East right-of-way line of said M. K. & T Railroad, and with a curve to the left having a radius of 5779.60 feet, (chord bears North 02 deg. 11 min. 56 sec. East, 309.48 feet), a distance of 309.52 feet to a found 2 inch pipe at the base of a chain link fence corner post, said pipe maintaining the Northwest corner of said 3.88 acre tract, the Southwest corner of a 9.961 acre tract of land conveyed by Tomkins Industries, Inc. to Brice Ackerman, Trustee by deed dated October 28, 1993, recorded in Volume 2301, Page 896, Real Property Records, Grayson County, Texas;

THENCE South 63 deg. 13 min. 12 sec. East, with the general line of a chain link fence, the South line of said 9.961 acre tract, a distance of 363.30 feet to a found ½ inch at the base of a chain link fence corner post, said rebar maintaining the most Northerly Northeast corner of said 3.88 acre tract, the Northwest corner of the above mentioned McKinney 96 x 226.875 foot tract of land;

THENCE South 29 deg. 33 min. 51 sec. West, with the general line of a chain link fence, a distance of 95.83 feet to a found ½ inch rebar at the base of a chain link fence corner post, said rebar maintaining an ell corner of said 3.88 acre tract, the Southwest corner of said 96 x 226.875 foot tract;

THENCE South 63 deg. 01 min. 14 sec. East, with the South line of said 96 x 226.875 foot tract, a distance of 226.60 feet to the **PLACE OF BEGINNING**, and containing **2.85 ACRES OF LAND** more or less.....

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

Zoning:

1. All aspects of the C-2 (General Commercial) District and the Commercial Tree and Landscaping Ordinance must be followed. The exterior façade is required to be masonry or equivalent on the sides of all buildings visible from front street right-of-way.
2. Fire lanes and codes shall be coordinated with the Fire Marshal, (903.892.7267).
3. No outside parking or storage of dismantled vehicles, wrecks or parts is allowed.
4. All parking shall be on private property and shall not encroach into Texoma Parkway right-of-way.
5. Parking is permitted on paved surfaces only.
6. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering

7. A defined drive approach conforming to TxDOT and City criteria shall be physically created at the site. Access to the site shall be restricted to the drive approach area.
8. Detention in accordance with City criteria will be required if the impervious area is increased.

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

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

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

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

INTRODUCED on this the _____ day of _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

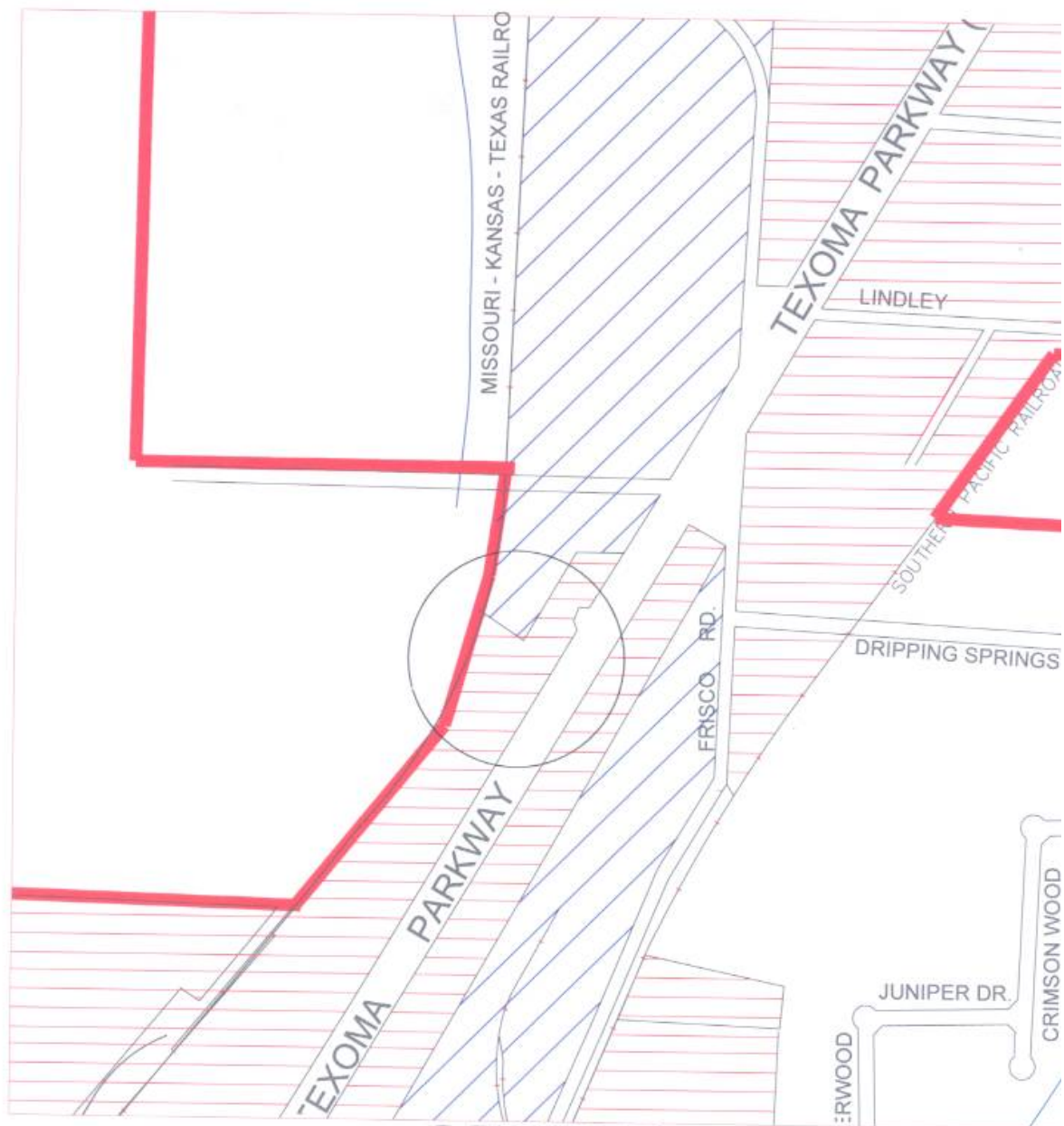
BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY



LEGEND

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



4026 TEXOMA PARKWAY

ENGINEERING DEPARTMENT





4026 Texoma Pkwy



"9.961 Ac."
Tomkins Industries, Inc.
to
Brice Ackerman
Vol. 2301, Pg. 896
Oct. 28, 1993

M. K. & T. Railroad

"1,728 Ad."
Robert J. Tate
to
V. R. Wren
Vol. 1696, Pg. 53
April 14, 1984

2.85 Acres

SARTIN & ASSOCIATES, INC.
Registered Professional Land Surveyors
1843 - 109 S. Travis - Sherman, Texas 75091-1843
phone (903)892-8003 - fax (903)868-2970

SURVEY FOR: BOB UTTER FORD-LINCOLN MERCURY, LTD.,
A Texas Partnership

I, Marshall Sartin, Registered Professional Land Surveyor, hereby certify that a survey of the property shown hereon was made on the ground on the 10 th day of July, 2007 of the following described property:

(LEGAL DESCRIPTION ATTACHED)

That the improvements located on said property are known as 4026 TEXOMA PARKWAY, SHERMAN, TEXAS and that this survey substantially complies with the current Minimum Standards for Professional Land Surveyors as adopted by the Texas Board of Professional Land Surveying, and is subject to all easements of record or as shown on recorded plat that may affect said property.

THIS COPY OF THE REPORT WAS OBTAINED FROM A SOURCE WHOSE CREDIBILITY HAS BEEN ESTABLISHED BY THE FBI

Scale: 1" = 100'

SHERMAN



**PLANNING AND ZONING BOARD
BUILDING INSPECTION DEPARTMENT**

Telephone No. (903) 892-7229

FAX No. (903) 892-7274

Munson 4200 LTD
% John Munson Real Estate
PO Box 357
Denison, TX 75020-0357

November 3, 2008

NOV 6 2008

The Planning and Zoning Commission of the City of Sherman will hold a public hearing on the day of Tuesday, November 18, 2008 at 5:00 P.M. in the City Council Chambers, at 220 W. Mulberry, to hear the request of:

Utter Properties, Ltd. (Owner) and David Pryor (Representative)
concerning the property located at 4026 Texoma Parkway, being 2.85 acres
in the W.F. Patterson Survey, Abstract No. 969,

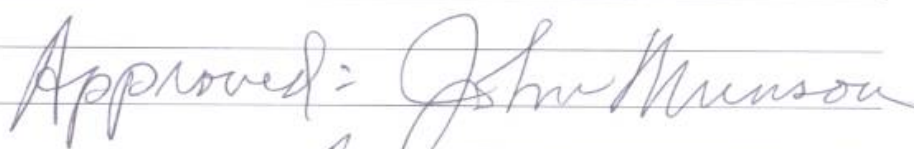
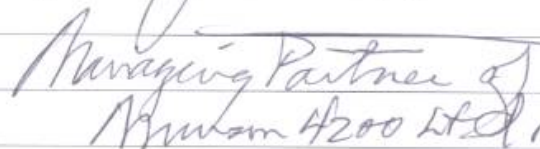
The request is as follows:

**Specific Use Permit and Site Plan approval under Ordinance No. 2280,
Section 8, Subsection (5)(a) to allow automobile sales and impound lot in a
C-2 (General Commercial) District.**

As a property owner within two hundred feet (200') of this property, you are invited to attend. You are not required to be present, but all interested parties wishing to speak should appear at the time and place stated above. If you can not attend the public hearing, but wish to have your views presented to the Board, you may do so in the space provided below or by a separate letter and mailed to:

Scott Shadden
Secretary, Planning and Zoning Board
P.O. Box 1106
Sherman, Texas 75091-1106


Secretary, Planning & Zoning Board

Approved: 

Managing Partner of
Munson 4200 LTD.

Unless this notice is delivered in an envelope that has the "City of Sherman" logo and is affixed with postage as required by the U.S. Postal Service, it is NOT an official notice sent to you by the City of Sherman.

City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
November 18, 2008
Jason Sofey, Chairman

Jim Jacobs, Vice Chairman
Robin Atherton, Commissioner
Lawrence Davis, Commissioner
Brad Morgan, Commissioner

Don Hicks, Commissioner
Steve Jones, Commissioner
David Plyler, Commissioner
Darren Tankersley, Commissioner

4026 Texoma Parkway
Being 2.85 acres in the W.F. Patterson Survey, Abstract No. 969
Specific Use Permit & Site Plan

Requested Action/Proposed Use:

Planning and Zoning Commission

Specific Use Permit and Site Plan approval to allow automobile sales and impound lot in a C-2 (General Commercial) District.

Background

The property is located at 4026 Texoma Parkway between Gallagher Road and Frisco Road; Midway Kia was the previous tenant. The applicant would like to operate an automobile sales center with an impound lot. The impound lot will have a 6' fence surrounding the area.

Adjacent Zoning:

C-2 (General Commercial) District

Origination:

Utter Properties, Ltd. (Owner) and David Pryor (Representative)

Master Plan Designation:

Retail/Commercial

Number of notices mailed:

8

Objections received:

0

Attachments:

Location map, Photos, Site Plan, Staff Review

Prepared by:

Patsy Reeves,
Development Services Secretary

Approved by:

Scott Shadden,
Development Services Director

STAFF REVIEW LETTER

November 13, 2008

Bob Utter
2525 Texoma Parkway
Sherman, Texas 75090

David Pryor
2525 Texoma Parkway
Sherman, Texas 75090

Dear Applicants,

Your request for a Specific Use Permit and Site Plan to allow automobile sales and impound lot in a C-2 (General Commercial) District located at 4026 Texoma Parkway has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, November 18, 2008 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 zoning, engineering and development guidelines and finds the following items need to be addressed:

Zoning:

1. All aspects of the C-2 (General Commercial) District and the Commercial Tree and Landscaping Ordinance must be followed. The exterior façade is required to be masonry or equivalent on the sides of all buildings visible from front street right-of-way.
2. Fire lanes and codes shall be coordinated with the Fire Marshal, (903.892.7267).
3. No outside parking or storage of dismantled vehicles, wrecks or parts is allowed.
4. All parking shall be on private property and shall not encroach into Texoma Parkway right-of-way.
5. Parking is permitted on paved surfaces only.
6. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering

7. A defined drive approach conforming to TxDOT and City criteria shall be physically created at the site. Access to the site shall be restricted to the drive approach area.
8. Detention in accordance with City criteria will be required if the impervious area is increased.

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

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

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

Respectfully,

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

CC: George Olson, City Manager
Mark Gibson, Director Utilities & Engineering Services
Interim City Attorney
Rita Gaither, Development Coordinator

Danny Fuller, Fire Marshal
Jeff Miller, Director of Public Works



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. B.2

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5582

Establishing Maximum, Reasonable and Prudent Rates of Speed on Certain Portions of Binkley Park Drive in the City of Sherman; Fixing Penalties for Violation Thereof

Issue

To adopt an ordinance establishing a school zone for the Sorey Elementary School by reducing the current speed limit from 35 mph to 30 mph and providing for the permanent placement of two solar school zone/flashing 20 mph signs on Binkley Park Drive

Background

New flashing school zone lights were installed on Binkley Park Drive prior to the new Sorey Elementary School's opening this fall. Additional solar powered flashing school zone signs were posted to help assure that the driving public is alerted when they enter the school zone. The speed limit on Binkley Park Drive was also reduced from 35 mph to 30 mph to better control traffic speed during other times of the day.

Origination

Department of Public Works

Financial Consideration

The financial impact associated with this ordinance was the purchase of two solar powered flashing school zone signs at a cost of \$3,000.00. No additional costs are expected at this time.

Staff Recommendation

It is recommended that the City Council adopt the proposed ordinance to reduce the current speed limit from 35 mph to 30 mph and for the placement of the school zone/20 mph flashing signs on Binkley Park Drive.

Alternatives

As may be directed by the City Council

Attachments

Ordinance No. 5582

Location Map

Prepared by:
Jeffrey R. Miller, Director of Public Works

Approved by:
George Olson, City Manager

ORDINANCE NO. 5582

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ESTABLISHING MAXIMUM, REASONABLE AND PRUDENT RATES OF SPEED ON CERTAIN PORTIONS OF BINKLEY PARK DRIVE IN THE CITY OF SHERMAN; FIXING PENALTIES FOR VIOLATION THEREOF; 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.

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

SECTION 1. That no person shall drive a vehicle upon a public road, street or highway in the City of Sherman, Texas, at a speed greater than is reasonable and prudent under the conditions and circumstances then existing. Except when a special hazard exists that requires lower speeds for compliance with the above requirement, the limits hereinafter set out shall be lawful, but any speed in excess of the limits as hereinafter set out for the streets and highways and portions thereof to which they apply shall be prima facie evidence that the speed is not reasonable or prudent:

On Binkley Park Drive commencing from the northern most driveway of Sorey Elementary School to 450 feet south of the southern most driveway of Sorey Elementary School, said portions of the roadway to be designated as a school zone with flashing lights, a speed limit of thirty (30) miles per hour will be effective at all times except for a school speed limit of twenty (20) miles per hour on school days only during the following hours:

For the forty-five (45) minutes immediately prior to the start of school classes; from the beginning to the end of the lunch period; and for a thirty (30) minute period beginning at the close of school. During other times, speed limits shall be as previously established.

SECTION 2. 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 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. That any person violating the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding FIVE HUNDRED AND NO/100 DOLLARS (\$500.00).

SECTION 5. 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 _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

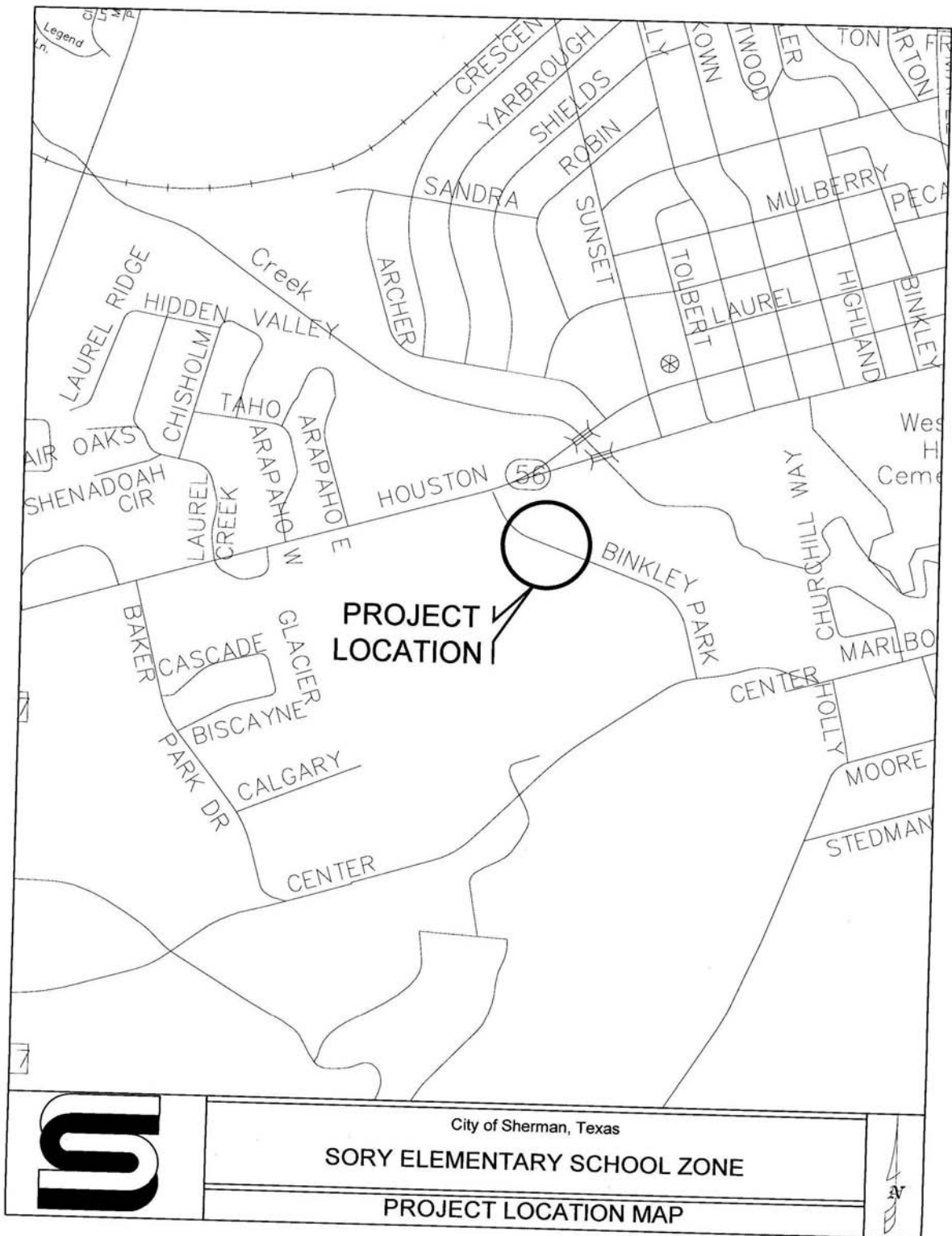
BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERMIM CITY ATTORNEY





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. B.3

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers: 5581 and 5582

B.1 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5581

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Automobile Sales and an Impound Lot in a C-2 (General Commercial) District at 4026 Texoma Parkway, being 2.85 Acres in the W.F. Patterson Survey, Abstract No. 969 (Utter Properties, Ltd., Owner and David Pryor, Representative); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

B.2 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5582

Establishing Maximum, Reasonable and Prudent Rates of Speed on Certain Portions of Binkley Park Drive in the City of Sherman; Fixing Penalties for Violation Thereof



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. B.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

C.3 * *RESOLUTION NO. 5301*

Authorizing the Execution of Agreements with American Municipal Services for the Collection of Outstanding Warrants, Citations, and Capias Pro Fines

C.4 * *RESOLUTION NO. 5302*

Authorizing the Execution of an Agreement with American Municipal Services for the Collection of Delinquent Utility Services, Emergency Ambulance Services, and Other Services Provided by the City of Sherman

C.7 * *RESOLUTION NO. 5305*

Authorizing Execution of a Professional Services Agreement with Timothy L. Morris, P.E. d/b/a Morris Engineers for Design of the Willow Street Water Main Replacement Project

C.8 * *RESOLUTION NO. 5306*

Authorizing Execution of an Encroachment Easement to Amy Coffman for the Construction of a Swimming Pool in a Utility and Drainage Easement in Block 3, Lot 7 of the Pebblebrook Addition, Phase 1B to the City of Sherman (1825 Pebblebrook Lane)

D.4 * *OTHER BUSINESS*

Final Plat Approval of O'Hanlon Ranch Estates, Phase 3; DGR Development Group, Ltd., Owners; Vilbig & Associates, Inc., Engineers; and Sartin & Associates, Surveyors [3000-3100 Blocks of Overland Trail, 2500-2800 Blocks of F.M. 1417 North (Heritage Parkway) and the 100 Block of Shady Oaks Lane]



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. C.1

RESOLUTION NO. 5299

Supporting a Heritage of Archery Hunting and Wildlife Conservation in Grayson County, Texas

Issue

The City Council has been asked to pledge their support for the heritage of archery hunting and wildlife conservation in Grayson County, Texas

Background

Mr. Hunter Graham has asked the City Council to support the Grayson County Whitetail Association's proposal before the Texas Parks and Wildlife Department to prohibit firearms hunting for whitetail deer in Grayson County. Mr. Graham believes Grayson County to be the only county in the State of Texas that allows hunting for whitetail deer by archery only. This issue is important to the City of Sherman because it is the Association's understanding that there are areas within the city limits of Sherman that contain populations of whitetail deer and are hunted, and thus would be subject to rifle hunting unless prohibited by city ordinance. More importantly, the whitetail deer of Grayson County are a valuable resource to the citizens of Grayson County, and to the City of Sherman in particular in that the archery-only hunting designation has helped to keep the annual deer harvest low and allow the deer to reach an older age, which in turn leads to larger "trophy-class" deer relative to most other counties in Texas. This is a draw to visitors from the DFW metroplex, from across the state and from across the nation, who travel to Grayson County to hunt Hagerman National Wildlife Refuge and other areas near Sherman, and, importantly, spend their money in and boost the economy of the City of Sherman. As such, this issue affects not only hunters, but also private landowners and other non-hunting but taxpaying residents of the City of Sherman. Therefore, the Grayson County Whitetail Association asks the Sherman City Council to join with State Senator Craig Estes, State Representative Larry Phillips, Grayson County Judge Drue Bynum and the Grayson County Commissioners, Grayson County Criminal District Attorney Joe Brown, and the City of Tom Bean, all of which have publicly stated their opposition to any type of firearms hunting for whitetail deer in Grayson County.

Origination

Hunter Graham, Grayson County Whitetail Association

Staff Recommendation

It is recommended that the Council approve the resolution and pledge its support.

Attachments

Resolution No. 5299

**Prepared and Approved by:
George Olson, City Manager**

RESOLUTION NO. 5299

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, SUPPORTING A HERITAGE OF ARCHERY HUNTING AND WILDLIFE CONSERVATION IN GRAYSON COUNTY, TEXAS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the citizens of Grayson County, Texas enjoy a strong heritage of conserving and managing the County's bountiful natural resources; and

WHEREAS, Grayson County maintains a small but steady population of wild whitetail deer that are used and enjoyed by the citizens of Grayson County; and

WHEREAS, Grayson County's whitetail deer are managed and conserved through the use of archery hunting only, and no firearms hunting for whitetail deer is permitted in Grayson County; and

WHEREAS, the Texas Parks and Wildlife Department is considering a petition to open firearms hunting for whitetail deer in Grayson County, which petition would create the possibility of more than doubling the annual harvest of whitetail deer in Grayson County, threatening the County's population of whitetail deer and jeopardizing Grayson County citizens' use and enjoyment of a precious natural resource; and

WHEREAS, the citizens and landowners strongly support maintaining an archery-only hunting season for whitetail deer in Grayson County; and

WHEREAS, the Grayson County whitetail herd attracts visitors to Grayson County from across the State of Texas and across the United States, which benefits the economy of Grayson County and all of its citizens; and

WHEREAS, Grayson County is experiencing significant commercial and residential development and population growth, resulting in the loss of whitetail deer habitat; and

WHEREAS, the Grayson County whitetail deer herd is a precious natural resource that should be maintained and preserved for the benefit of all the citizens of Grayson County; and

WHEREAS, it is the desire of the City Council of the City of Sherman, Texas, to join with the citizens of Grayson County and the Grayson County Commissioner's Court; County Judge Drue Bynum; Commissioner Johnny Waldrip, Pct. 1, Commissioner David Whitlock, Pct. 2, Commissioner Jackie Crisp, Pct. 3, and Commissioner Gene Short, Pct. 4; the Honorable Joseph D. Brown, Grayson County District Attorney; the Honorable Larry Phillips, State Representative, District 62; and the Honorable Craig Estes, State Senator, District 30, in supporting an archery-only hunting season for whitetail deer and opposing a firearms hunting

season for whitetail deer in Grayson County, in order to preserve and maintain one of the County's most treasured natural resources;

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

SECTION 1. That the City Council hereby proclaims its unanimous support of maintaining an archery-only hunting season for whitetail deer in Grayson County, Texas.

SECTION 2. That the City Council hereby proclaims its unanimous opposition to a firearms hunting season for whitetail deer in Grayson County, Texas.

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 _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. C.2

RESOLUTION NO. 5300

**Authorizing the Execution of 2008 Sub-Recipient Agreement Number 08-SR-67496-02
with the Governor's Division of Emergency Management for the Receipt
of a Federal Homeland Security Grant**

Issue

On November 21, 2008, the Governor's Division of Emergency Management awarded the City of Sherman a grant in the amount of \$184,558.98 as part of the Federal Homeland Security Grant Program. Council approval is required for the receipt and expenditure of these funds.

Background

In 2007, the City of Sherman applied for funds through the Homeland Security Grant Program. The application identified two regional response projects, which included search and rescue equipment for structural collapse and a rescue watercraft. On November 21, 2008, the Governor's Division of Emergency Management awarded the City of Sherman a grant in the amount of \$184,558.98 as part of the Homeland Security Grant Program.

Origination

J. J. Jones, Fire Chief

Financial Consideration

There are no matching fund requirements for this award. Grant funds will be reimbursed to the City upon receipt of equipment and completion of documentation required by the State of Texas. Reimbursement usually takes four weeks from date of delivery of equipment.

Staff Recommendation

It is recommended that the City Council approve and execute the award.

Alternatives

Though not recommended, the City Council could decline the award and return the money to the State for reissuance to another city.

Attachments

Resolution No. 5300

Notice of Sub-Recipient Award for City of Sherman with Terms and Conditions

Prepared by:
J. J. Jones, Fire Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5300

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF 2008 SUB-RECIPIENT AGREEMENT NUMBER 08-SR-67496-02 WITH THE GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT FOR THE RECEIPT OF A FEDERAL HOMELAND SECURITY GRANT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the Mayor be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the Interim City Attorney, to execute 2008 Sub-Recipient Agreement Number 08-SR-67496-02 with the Governor's Division of Emergency Management for receipt of a Federal Homeland Security Grant, 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 _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

	Governor's Division of Emergency Management																				
2008 Sub-Recipient Agreement for City of Sherman																					
Date of Award November 18, 2008																					
1. Sub-Recipient Name and Address Mayor Bill Magers City of Sherman P.O. Box 1106 Sherman, TX 75091-1106	2. Prepared by: Seals, Freddie	3. SAA Award Number: 08-SR 67496-02																			
4. Federal Grant Information <table style="width: 100%;"> <tr> <td style="width: 50%;">Federal Grant Title:</td> <td>Homeland Security Grant Program</td> </tr> <tr> <td>Federal Grant Award Number:</td> <td>2008-GE-T8-0034</td> </tr> <tr> <td>Date Federal Grant Awarded to GDEM:</td> <td>September 1, 2008</td> </tr> <tr> <td>Federal Granting Agency:</td> <td>Federal Emergency Management Agency National Preparedness Directorate</td> </tr> </table>			Federal Grant Title:	Homeland Security Grant Program	Federal Grant Award Number:	2008-GE-T8-0034	Date Federal Grant Awarded to GDEM:	September 1, 2008	Federal Granting Agency:	Federal Emergency Management Agency National Preparedness Directorate											
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Date Federal Grant Awarded to GDEM:	September 1, 2008																				
Federal Granting Agency:	Federal Emergency Management Agency National Preparedness Directorate																				
5. Award Amount and Grant Breakdowns <table style="width: 100%;"> <tr> <td rowspan="3" style="width: 20%; text-align: center; vertical-align: middle;"> Total Award Amount \$184,558.98 </td> <td colspan="6"> Note: Additional Budget Sheets (Attachment A): ☐ Yes ☐ No </td> </tr> <tr> <td style="width: 10%; text-align: center;">SHSP 97.073</td> <td style="width: 10%; text-align: center;">SHSP-LEAP 97.073</td> <td style="width: 10%; text-align: center;">UASI 97.008</td> <td style="width: 10%; text-align: center;">UASI-LEAP 97.008</td> <td style="width: 10%; text-align: center;">CCP 97.053</td> <td style="width: 10%; text-align: center;">MMRS 97.071</td> </tr> <tr> <td style="text-align: center;">\$165,540.00</td> <td style="text-align: center;">\$19,018.98</td> <td style="text-align: center;">\$0.00</td> <td style="text-align: center;">\$0.00</td> <td style="text-align: center;">\$0.00</td> <td style="text-align: center;">\$0.00</td> </tr> </table>			Total Award Amount \$184,558.98	Note: Additional Budget Sheets (Attachment A): ☐ Yes ☐ No						SHSP 97.073	SHSP-LEAP 97.073	UASI 97.008	UASI-LEAP 97.008	CCP 97.053	MMRS 97.071	\$165,540.00	\$19,018.98	\$0.00	\$0.00	\$0.00	\$0.00
Total Award Amount \$184,558.98	Note: Additional Budget Sheets (Attachment A): ☐ Yes ☐ No																				
	SHSP 97.073	SHSP-LEAP 97.073		UASI 97.008	UASI-LEAP 97.008	CCP 97.053	MMRS 97.071														
	\$165,540.00	\$19,018.98	\$0.00	\$0.00	\$0.00	\$0.00															
This award supersedes all previous awards. Performance Period: Sep 1, 2008 to Jan 15, 2011																					
6. Statutory Authority for Grant: This project is supported under Public Law 110-161, the Department of Homeland Security Appropriations Act of 2008.																					
7. Method of Payment: Primary method is reimbursement. See the enclosed instructions for the process to follow in the submission of invoices.																					
8. Debarment/Suspension Certification: The Sub-Recipient certifies that the subgrantee and its' contractors/vendors are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System at http://www.epls.gov .																					
9. Agency Approval																					
Approving GDEM Official: Jack Colley, Chief Division of Emergency Management Office of the Governor		Signature of GDEM Official: 																			
10. Sub-Recipient Acceptance																					
I have read and understand the attached Terms and Conditions.																					
Type name and title of Authorized Sub-Recipient official: Bill Magers, Mayor		Signature of Sub-Recipient Official: 																			
11. Enter Employer Identification Number (EIN) / Federal Tax Identification Number: 75-6000669		12. Date Signed : 																			
13. DUE DATE: Signed award and Direct Deposit Form (if applicable) must be returned to GDEM on or before the above due date.																					

TERMS AND CONDITIONS

Parties to Sub-recipient Agreement

This Sub-recipient agreement is made and entered into by and between the Governor's Division of Emergency Management/State Administrative Agency, an agency of the State of Texas, hereinafter referred to as "GDEM," and the funds recipient, hereinafter referred to as the "Sub-recipient." Furthermore, GDEM and the Sub-recipient are collectively hereinafter referred to as the "Parties." By this Sub-recipient agreement's execution, the Parties have severally and collectively agreed to be bound to the mutual obligations and to the performance and accomplishment of the tasks described in this Sub-recipient agreement. The Sub-recipient Agreement is only an offer until the Sub-recipient returns the signed copy of the 2008 Sub-recipient Agreement in accordance with the date provided in the transmittal letter and in the agreement.

Sub-recipient Purpose and Overview

A. **Purpose and Overview.** Sub-grant funds provided shall be used to provide law enforcement and emergency response communities with enhanced capabilities for detecting, deterring, disrupting, preventing, and responding to potential threats of manmade, natural disasters and acts of terrorism. The Sub-recipient agrees that all allocations and use of funds under this grant will be in accordance with the Homeland Security Grant Program Guidelines and Application Kit for that fiscal year and must support the goals and objectives included in the State Homeland Security Strategic Plan and the Urban Area Homeland Security (UASI) Strategies. The funds must be used to conform with the State Homeland Security Strategic Plan, follow the projects outlined in the approved investment justifications used to make the FY 2008 grant application and as described in the federal program guidelines found at www.fema.gov/pdf/government/grant/hsgp/fy08_hsgp_guide.pdf. Further, as outlined in the 2008 grant guidance, 2008 HSGP will focus on three objectives as the highest priorities. These three objectives are: 1. Measuring progress toward achieving the National Preparedness Guidelines; 2. Strengthening improvised explosive device (IED) attack deterrence, prevention, and protection capabilities; and 3. Strengthening preparedness planning. At least 25 percent of the total FY 2008 HSGP funding must be dedicated toward enhancing capabilities related to objectives 2 and 3 as identified above. The 25 percent requirement applies to the total award amount for each State across all four programs, not individual awards for SHSP, UASI, MMRS, and CCP.

B. **Standard of Performance.** The Sub-recipient shall perform all activities and projects entered into the SAA web-based grants management system approved by its Council of Governments (COG) and by the State Administrative Agency (SAA). The Sub-recipient shall perform all activities in accordance with all terms, provisions and requirements set forth in this Sub-recipient agreement and the:

1. Applicable Laws and Regulations, hereinafter referred to as "Exhibit A";
2. Certifications, hereinafter referred to as "Exhibit B"; and
3. Certification Regarding Lobbying for Sub-recipient Agreements, Grants, Loans, and Cooperative Agreements, hereinafter referred to as "Exhibit C".

C. **Failure to Perform.** In the event the Sub-recipient fails to implement the project(s) entered into The SAA web-based grants management system, or comply with any of this Sub-recipient agreement's provisions, in addition to the remedies specified in this Sub-recipient agreement, the Sub-recipient is liable to GDEM for an amount not to exceed the award amount of this Sub-recipient agreement and may be barred from applying for or receiving additional Homeland Security Grant Program funds or any other federal program funds administered by GDEM until repayment to GDEM is made and any other compliance or audit finding is satisfactorily resolved.

GDEM Obligations

A. **Measure of Liability.** GDEM shall be liable for actual and reasonable costs incurred by the Sub-recipient during the Sub-recipient agreement period for performances rendered under this Sub-recipient agreement by the Sub-recipient, subject to the limitations set forth in this Section. GDEM shall not be liable to the Sub-recipient for any costs incurred by the Sub-recipient that are not allowable costs.

B. **Sub-recipient Agreement Funds Defined and Limit of Liability.** The term "Sub-recipient agreement funds" as used in this Sub-recipient agreement means funds provided by GDEM under the HSGP program. The term "Sub-recipient's funds" or match funds as used in this Sub-recipient agreement means funds provided by the Sub-recipient.

Notwithstanding any other provision of this Sub-recipient agreement, the total of all payments and other obligations incurred by GDEM under this Sub-recipient agreement shall not exceed the Total Award Amount listed on the cover page of the Sub-recipient agreement.

C. Excess Payments. The Sub-recipient shall refund to GDEM any sum of Sub-recipient agreement funds that has been paid to the Sub-recipient by GDEM or that GDEM determines has resulted in overpayment to the Sub-recipient that GDEM determines has not been spent by the Sub-recipient in accordance with this Sub-recipient agreement. No refund payment(s) may be made from local, state or federal grant funds unless repayment with grant funds is specifically permitted by statute or regulation. The Sub-recipient shall make such refund to GDEM within thirty (30) days after GDEM requests such refund.

Suspension

Notwithstanding the provisions of Chapter 2251, Texas Government Code, in the event the Sub-recipient fails to comply with any of this Sub-recipient Agreement's terms, GDEM may, upon written notification to the Sub-recipient, suspend this Sub-recipient agreement in whole or in part, withhold payments to the Sub-recipient and prohibit the Sub-recipient from incurring additional obligations of Sub-recipient agreement funds.

Termination

A. GDEM's Right to Terminate. GDEM shall have the right to terminate this Sub-recipient agreement, in whole or in part, at any time before the end of the Performance Period, whenever GDEM determines that the Sub-recipient has failed to comply with any of this Sub-recipient agreement's terms. GDEM shall notify the Sub-recipient in writing prior to the thirtieth (30th) day preceding the termination of such determination and include:

1. the reasons for such termination;
2. the effective date of such termination; and
3. in the case of partial termination, the portion of the Sub-recipient agreement to be terminated.

B. Parties' Right to Terminate. In addition to GDEM's right to terminate specified in Subsection A of this section, both Parties shall have the right to terminate this Sub-recipient agreement, in whole or in part, when the Parties agree that the continuation of the activities funded under this Sub-recipient agreement would not produce beneficial results commensurate with the further expenditure of Sub-recipient agreement funds. The Parties shall agree, in writing, upon the termination conditions, including the effective date of termination and in the case of partial termination, the portion of the Sub-recipient agreement to be terminated.

Conflict of Interest

A. Financial Interest Prohibited. A conflict of interest may arise when the employee, officer or agent; any member of his or her immediate family; his or her partner; or, any organization that employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform a subcontract pursuant to this Sub-recipient agreement. The Sub-recipient shall ensure that no employee, officer, or agent of the Sub-recipient shall participate in the selection, in the award or administration of a subcontract supported by Sub-recipient agreement funds pursuant to this Sub-recipient agreement and comply with Chapter 171, Texas Local Government Code.

B. Other Prohibited Interests. In all cases not governed by Subsection A of this Section and except for eligible administrative or personnel costs, no person who is an employee, agent, consultant, officer, elected official, appointed official of the Sub-recipient or of a subcontractor of the Sub-recipient, in Subsection C of this Section who exercises or have exercised any functions or responsibilities with respect to the activities assisted under this Sub-recipient agreement or any other HSGP Sub-recipient agreement who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, have an interest in or benefit from the activity or have any interest in any Sub-recipient agreement, subcontract or agreement with respect to the activities or the proceeds either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

C. Inclusion in Subcontracts. The Sub-recipient shall include the substance of this Section in all subcontracts.

Monitoring

GDEM reserves the right to perform periodic on-site monitoring of the Sub-recipient's compliance with this Sub-recipient agreement's terms and conditions and of the adequacy and timeliness of the Sub-recipient's performance pursuant to this Sub-recipient agreement. After each monitoring visit, GDEM shall provide the Sub-recipient with a written report of the monitor's findings. If the monitoring report notes deficiencies in the Sub-recipient's performance under this Sub-recipient agreement's terms, the monitoring report shall include requirements for the timely correction of such deficiencies by the Sub-recipient. Failure by the Sub-recipient to take action specified in the monitoring report may be cause for this Sub-recipient agreement's suspension or termination pursuant to Sections on the Suspension and/or Termination above.

Audit

A. Audit of Federal and State Funds. The Sub-recipient shall arrange for the performance of an annual financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement under the Single Audit Act (OMB Circular A – 133; 44 C.F.R. 13.26) and as outlined in Exhibit A. The Sub-recipient will also comply with Texas Government Code, Chapter 783, 1 TAC 5.141.et.seq. and the Uniform Grant Management Standards (UGMS), State Uniform Administrative Requirements for Grants and Cooperative Agreements.

B. GDEM's Right to Audit. Notwithstanding Subsection A of this Section, GDEM reserves the right to conduct a financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement. The Sub-recipient agrees to permit GDEM or its authorized representative to audit the Sub-recipient's records and to obtain any documents, materials or information necessary to facilitate such audit.

C. Sub-recipient's Liability for Disallowed Costs. The Sub-recipient understands and agrees that it shall be liable to GDEM for any costs disallowed pursuant to financial and compliance audit(s) of Sub-recipient agreement funds. The Sub-recipient further understands and agrees that reimbursement to GDEM of such disallowed costs shall be paid by the Sub-recipient from funds that were not provided or otherwise made available to the Sub-recipient pursuant to this Sub-recipient agreement or any other federal contract.

D. Sub-recipient's Facilitation of Audit. The Sub-recipient shall take such action to facilitate the performance of such audit(s) conducted pursuant to this Section as GDEM may require of the Sub-recipient.

E. State Auditor's Office. The Sub-recipient understands that acceptance of Sub-recipient agreement funds acts as acceptance of the authority of the State Auditor's Office or any successor agency to conduct an audit or investigation in connection with these funds. The Sub-recipient further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The Sub-recipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Sub-recipient and the requirement to cooperate is included in any subcontract it awards.

For FY 2008, the NIMSCAST will be the required means to report NIMS compliance for FY 2009 preparedness award eligibility. All State and Territory direct preparedness Sub-recipients will be required to submit their compliance assessment via the NIMSCAST by September 30, 2008. The State or Territory department/agency awardee reserves the right to determine compliance reporting requirement of their sub-awardees (locals) in order to disperse funds at the local level.

Reimbursement

Sub-recipient agrees to make no request for reimbursement prior to return of this agreement signed by the authorized Sub-recipient representative. Sub-recipient also agrees to make no request for reimbursement for goods or services procured by Sub-recipient prior to the performance period start date of this agreement.

A. Request for Advance or Reimbursement. The Sub-recipient shall submit to GDEM, a properly completed Local Purchase Submission Cover Sheet as often as actually needed. GDEM retains the authority to approve or deny amount requested and shall not make disbursement of any such payment until GDEM has reviewed and approved such a request. The Local Purchase Submission Cover Sheet shall be supported by documentation as referenced by the SAA web-based grants management system and subsequent policy updates.

B. Request for Advance Funds and Transfer of Funds. The Sub-recipient's requests for an advance of Sub-recipient agreement funds shall be limited to the minimum amounts needed for effective operation of their project(s) under this Sub-recipient agreement and shall be timed as closely as possible to be in accord with actual cash requirements. The Sub-recipient shall establish procedures to minimize the time elapsing between the transfer of funds from GDEM to the Sub-recipient and shall ensure that such funds are disbursed within fifteen (15) days or as soon as administratively possible.

C. Payment Contingent. Notwithstanding the provisions of Subsection A of this Section, payments under this Sub-recipient agreement are contingent upon the Sub-recipient's performance of its contractual obligations.

Urban Areas Security Initiative (UASI) Grants

A. If the Sub-recipient is a participant in a UASI program, during the performance period of this grant, Sub-recipient agrees to adhere to the UASI strategy, goals, objectives, and implementation steps.

B. Sub-recipient agrees that, during the performance period of this grant, all communications equipment purchases must be reviewed and approved by the Regional Interoperable Communications Committee and the UASI points of contact (voting members), if applicable.

UASI Non-Profit Security Grant Program (NSGP)

A. The Sub-recipient agrees that all allocations, uses of funds, and other associated program and administrative requirements under this grant will be in accordance with the Fiscal Year (FY) 2008 UASI Non-Profit Security Grant Program (NSGP) Program Guidance and Application Kit, Information Bulletin number 252, and the FY 2008 UASI NSGP Frequently Asked Questions (FAQs) Parts 1 and 2. All grant Sub-recipients are assumed to have read, understood, and accepted the FY 2008 UASI NSGP Program Guidance and Application Kit, Information Bulletin Number 252 and the FAQs as binding.

B. Sub-recipients must meet a 75 percent Federal-25 percent Sub-recipient soft match requirement. Sub-recipient contributions must be from non-Federal sources. For all costs other than training, the Sub-recipients match may be met through cash, training investments related to use of allowable equipment purchased with the grant, or training investments related to general purpose security and emergency preparedness for staff. In the case of training projects, awardees must meet the matching requirement through cash. In no event can regular personnel costs such as salary, overtime, or other operational costs unrelated to training be used to satisfy the matching requirement.

C. Non-governmental organization Sub-recipients are required to meet certain National Incident Management System (NIMS) compliance requirements. All emergency preparedness, response, and/or security personnel in the non-profit organization participating in the development, implementation, and/or operation of resources and/or activities awarded through this grant are compelled to complete training programs consistent with the NIMS National Standard Curriculum Development Guide. Minimum training includes IS-700 NIMS: An Introduction.

D. Sub-recipients are responsible for keeping a copy of the 501(c)(3) registration number or IRS Letter of Recognition of Sub-grantees on file. Those Sub-recipients who submitted investment justifications, subsequently selected for award, by non-profit organizations which do not hold or have not formally applied for a 501(c)(3) registration number, are responsible for maintaining an affidavit and/or other indicia certifying or verifying their 501(c)(3) compliance on file for review by DHS, in accordance with the FY 2008 UASI NSGP Q&A Part 2.

E. FY 2008 UASI NSGP allowable equipment costs include only the two Authorized Equipment List (AEL) categories identified in the FY 2008 UASI NSGP Program Guidance and Application Kit. These categories are 1) Physical Security Enhancement Equipment, and 2) Inspection and Screening Systems. All allowable equipment costs must fall within these two categories. Interoperable communications equipment, aesthetic enhancement, including business, shrubs, or flowers, general-use vehicles, or related general-use equipment is prohibited under this grant program if it does not fall within one of the two previously identified AEL categories. Additionally, any costs associated with exercises are strictly prohibited. All other training and management and administrative (M&A) costs must be in accordance with the FY 2008 UASI NSGP Program Guidance and Application Kit, Information Bulletin Number 252, and the FY 2008 NSGP FAQs, Parts 1 and 2.

F. The Sub-recipient also agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U. S. Department of Homeland Security."

Interoperable Communication Project Compliance

1. Before a local jurisdiction may submit a project for consideration by the State, a preliminary review must be done at the regional level by the Communications Committee or some similar group of the appropriate Council of Governments, Development Council or Planning Council. (Where possible, reviewers should represent a cross-section of the communications community and include representatives from cities, counties and Tribes where appropriate; conventional and trunked systems, and VHF, UHF, 700 MHz, 800 MHz and 900 MHz systems.) Jurisdictions must have baseline information (towers and POC/name) entered into CASM to show the jurisdictions' commitment to adhere to the SCIP. Projects that are deemed to satisfactorily meet the State's Plan will be submitted to the State for formal review.

National Incident Management System (NIMS) and the Incident Command System (ICS)

Sub-recipients must have adopted and be implementing the National Incident Management System (NIMS) and the Incident Command System (ICS) at the local level. NIMS compliance for 2008 must be achieved by completing actions outlined in the NIMS Implementation Matrix.

A. Adoption. The jurisdiction or organization must have formally adopted NIMS as its incident management system through ordinance, court order, or resolution. A copy of the adoption document should be provided to the Preparedness Section of the Division of Emergency Management.

B. Implementation. The jurisdiction or organization must be implementing the principles and policies of NIMS/ICS, including these major requirements:

1. Identifying specific NIMS training requirements for local emergency responder and emergency management positions; then obtaining or providing required training, and documenting it. For further information on NIMS training, see: http://www.fema.gov/emergency/nims/nims_training.shtm
2. Updating jurisdiction or organization emergency plans and procedures to address the NIMS/ICS organizational structure, major functions, concepts, policies, and procedures.
3. Utilizing NIMS/ICS for day-to-day all-hazard emergency response and during exercises.
4. Participating in local, regional, or intrastate mutual aid programs.
5. Maintaining an inventory of emergency response assets (Texas Regional Resource Network), and identifying key assets by resource typing standards developed by FEMA to facilitate multi-agency response. For resource typing information, see: <http://www.fema.gov/emergency/nims/rm/rt.shtm>. This is accomplished by registering with the Texas Regional Resource Network (TRRN) and updating the information regularly. Additionally, a certification form must be on file with GDEM for every county and local jurisdiction.
6. Complete the NIMS baseline assessment and develop a local NIMS implementation plan.
7. Participate in an all-hazard exercise program based on NIMS that involves responders from multiple disciplines and multiple jurisdictions.
8. All Primary jurisdictions must possess an independent NIMSCAST account.

For a more detailed description of these requirements, as well as other NIMS implementation requirements, see http://www.fema.gov/pdf/emergency/nims/imp_mtrx_states.pdf

FY 08 NIMS implementation requirements must be completed by September 30, 2008.

Other Requirements (These requirements DO NOT apply to NSGP Sub-recipients)

A. During the performance period of this grant, Sub-recipients must maintain an emergency management plan at the Intermediate Level of planning preparedness or higher, as prescribed by GDEM. This may be accomplished by a jurisdiction maintaining its own emergency management plan or participating in an inter-jurisdictional emergency management program that meets the required standards. If GDEM identifies deficiencies in the Sub-recipient's plan, Sub-recipient will correct deficiencies within 60 days of receiving notice of such deficiencies from GDEM.

B. Projects identified in the SAA web-based grant management system must identify and relate to the goals and objectives indicated by the applicable 12 approved project investments for the period of performance of the grant.

C. During the performance period of this grant, Sub-recipient agrees that it will participate in a legally-adopted county and/or regional mutual aid agreement.

D. During the performance period, the Sub-recipient must register as a user of the Texas Regional Response Network (TRRN) and identify all major resources such as vehicles and trailers, equipment costing \$5,000 or more and specialized teams/response units equipped and/or trained using grant funds (i.e. hazardous material, decontamination, search and rescue, etc.). This registration is to ensure jurisdictions or organizations are prepared to make grant funded resources available to other jurisdictions through mutual aid.

E. Sub-recipients must submit Fiscal Year 2008 Indirect Cost Allocation Plan signed by Cognizant Agency. Plan should be forwarded to the SAA along with the Planning and Administration Grant Budget Form.

F. Council of Governments (COG) will follow guidelines listed in the FY 08 COG Statement of Work.

G. Up to 15% of the program funds for SHSP, UASI and LETPP may be used to support the hiring of full or part-time personnel to conduct program activities that are allowable under the FY 2007 HSGP (i.e., planning, training program management, exercise program management, etc) The ceiling on personnel costs does not apply to contractors, and is in addition to eligible management and administrative (M&A) costs and eligible hiring of intelligence analysts. Sub-recipients may hire staff only for program management functions, not operational duties. Hiring planners, training program coordinators, exercise managers, and grant administrators fall within the scope of allowable program management functions.

H. The State's 24 planning regions are voluntary associations of local governments organized pursuant to state law as regional planning commissions, councils of government, development councils, and area councils. It is recognized that one of the major functions of state planning regions as homeland security grant Sub-recipients is to perform a wide variety of planning and some program administration for both their region and on behalf of the cities and counties within the region that may also be homeland security grant Sub-recipients.

Closing The Grant

A. The Sub-recipient must have all equipment ordered by January 14, 2010. The last day for submission of invoices is February 28, 2011.

B. GDEM/SAA will close a sub-award after receiving Sub-recipient's final performance report indicating that all approved work has been completed and all funds have been disbursed, completing a review to confirm the accuracy of the reported information, and reconciling actual costs to awards modifications and payments. If the close out review and reconciliation indicates that the Sub-recipient is owed additional funds, GDEM/SAA will send the final payment automatically to the Sub-recipient. If the Sub-recipient did not use all the funds received, GDEM/SAA will issue a Grant Adjustment Notice (GAN) to recover the unused funds.

C. GDEM/SAA will unilaterally close out this grant if sub recipient does not reconcile account and sign closeout GAN by May 31, 2011.

Restrictions, Disclaimers and Notices

A. Approval of this award does not indicate approval of any consultant rate in excess of \$450 per day. A detailed justification must be submitted to and approved by GDEM/SAA prior to obligation or expenditure of such funds.

B. In cases where local funding is established by COGs, release of funds by GDEM is contingent upon regional funding allocation approval by the Sub-recipient's COG governing board.

C. Notwithstanding any other agreement provisions, the parties hereto understand and agree that GDEM's obligations under this agreement are contingent upon the receipt of adequate funds to meet GDEM's liabilities hereunder. GDEM shall not be liable to the Sub-recipient for costs under this Agreement which exceed the amount specified in the Notice of Sub-recipient Award.

D. Notice. All notices or communication required or permitted to be given by either party hereunder shall be deemed sufficiently given if mailed by registered mail or certified mail, return receipt requested, or sent by overnight courier, such as Federal Express, to the other party at its respective address set forth below or to such other address as one party shall give notice of to the other from time to time hereunder. Mailed notices shall be deemed to be received on the third business day following the date of mailing. Notices sent by overnight courier shall be deemed received the following business day.

Chief
Division of Emergency Management
Homeland Security Office of the Governor
PO Box 4087
Austin, TX 78773-0220

Uniform Administrative Requirements, Cost Principles, Audit Requirements and Program Income

Except as specifically modified by law or this Sub-recipient agreement's provisions, the Sub-recipient shall administer the award through compliance with all Applicable Laws and Regulations, Exhibit A, but specifically with:

A. Administrative Requirements

1. 44 C.F.R. Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
2. 2 C.F.R. Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

B. Cost Principles

1. 2C.F.R. Part 225, Cost Principles for State, Local and Tribal Governments
2. 2C.F.R. Part 220, Cost Principles for Education Institutions
3. 2C.F.R. Part 230, Cost Principles for Non-Profit Organizations
4. Federal Acquisition Regulation Subpart 31.2, Contracts with Commercial Organizations

C. Audit Requirements – OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

Retention And Accessibility Of Records

A. Retention of Records. The Sub-recipient shall maintain fiscal records and supporting documentation for all expenditures of Sub-recipient agreement funds pursuant to OMB Circular A-87, 44 C.F.R. § 13.42 and this Sub-recipient agreement. The Sub-recipient shall retain these records and any supporting documentation for the greater of three (3) years from the completion of this project's public objective (close of the Sub-recipient agreement), including program requirements and financial obligations, or the period of time required by other applicable laws and regulations as described in Exhibit A.

B. Access to Records. The Sub-recipient shall give the United States Department of Homeland Security (DHS), the Inspector General, the General Accounting Office, the Auditor of the State of Texas, GDEM, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by the Sub-recipient pertaining to this Sub-recipient agreement including records concerning the past use of HSGP funds. Such rights to access shall continue as long as the records are retained by the Sub-recipient. The Sub-recipient agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552, Texas Government Code.

C. Inclusion in Subcontracts. The Sub-recipient shall include the substance of this Section in all subcontracts.

Subcontracts

A. GDEM's Approval of Subcontract and Liability. The Sub-recipient may subcontract for performances described in this Sub-recipient agreement without obtaining GDEM's prior written approval.

B. Sub-recipient Liability. In no event shall any provision of this Section be construed as relieving the Sub-recipient of the responsibility for ensuring that the performances rendered under all subcontracts comply with all of this Sub-recipient agreement's terms as if such performances rendered were rendered by the Sub-recipient. GDEM's approval under this Section does not constitute adoption, ratification or acceptance of the Sub-recipient's or a subcontractor's performance.

C. Applicable Law. The Sub-recipient shall comply with 44 C.F.R. § 13.1-13.52 and all applicable federal and state laws outlined in Exhibit A and local laws, regulations and ordinances related to making procurements under this Sub-recipient agreement.

D. Escrow Retainage for Construction Contracts. GDEM shall require Sub-recipient to maintain an escrow retainage of the Sub-recipient agreement funds budgeted for construction and rehabilitation in the amount of five percent (5%) of each construction and/or rehabilitation subcontract entered into by the Sub-recipient. Before the retainage fees for construction contracts are released, GDEM shall receive a complete and executed Certificate of Construction Completion and Final Wage Compliance Report and the Sub-recipient shall certify it has received as-built plans for this Sub-recipient agreement's funded construction activities.

Legal Authority

A. Signatory Authority. The Sub-recipient assures and guarantees that the Sub-recipient possesses the legal authority to enter into this Sub-recipient agreement, receive Sub-recipient agreement funds and to perform the services the Sub-recipient has obligated itself to perform pursuant to this Sub-recipient agreement.

B. Authorized Representative. The person or persons signing and executing this Sub-recipient agreement on the Sub-recipient's behalf do warrant and guarantee that he, she or they have been duly authorized by the Sub-recipient to execute this Sub-recipient agreement on the Sub-recipient's behalf and to validly and legally bind the Sub-recipient to all contractual terms, performances and provisions.

Notice Of Litigation and Claims

The Sub-recipient shall give GDEM immediate notice in writing of:

1. any action, including any proceeding before an administrative agency, filed against the Sub-recipient arising out the performance of any subcontract under this Sub-recipient agreement; and

2. any claim against the Sub-recipient, the cost and expense of which the Sub-recipient may be entitled to be reimbursed by HSGP.

Except as otherwise directed by GDEM, the Sub-recipient shall furnish immediately to GDEM copies of all documentation received by the Sub-recipient with respect to such action or claim.

Indemnification

To the extent permitted by law, the Sub-recipient agrees to hold GDEM harmless and to indemnify GDEM from and against any and all claims, demands and causes of action of every kind and character that may be asserted by any party occurring or in any way incident to, arising out of or in connection with the services to be performed by the Sub-recipient pursuant to this Sub-recipient agreement.

Changes and Amendments

- A. Written Amendment. Except as specifically provided otherwise in this Sub-recipient agreement, any alterations, additions or deletions to this Sub-recipient agreement's terms shall be made through Grant Adjustment Notices generated by the SAA web-based grants management system and executed by the Parties.
- B. Authority to Amend. This Sub-recipient agreement's performances shall be rendered in accordance with the Act, Exhibit A, the assurances and certifications made to GDEM by the Sub-recipient and the assurances and certifications made to DHS by the State of Texas with regard to the operation of the HSGP. Amendments may further be amended by GDEM, during the period of this Sub-recipient agreement's performance as GDEM issues policy directives that serve to establish, interpret or clarify this Sub-recipient agreement's performance requirements. Such policy directives shall be promulgated by GDEM in the form of Information Bulletins and shall have the effect of qualifying this Sub-recipient agreement's terms and shall be binding upon the Sub-recipient as if written in the Sub-recipient agreement.
- C. Effect of Changes in Federal and State Laws. Any alterations, additions, or deletions to this Sub-recipient agreement's terms that are required by the changes in federal and state laws or regulations are automatically incorporated into this Sub-recipient agreement without written amendment to this Sub-recipient agreement and shall become effective on the date designated by such law or regulation. Federal Emergency Management Agency (FEMA) periodically publishes Information Bulletins to release, update, amend or clarify grants and programs which it administers. FEMA's National Preparedness Directorate Information Bulletins can be accessed at <http://www.ojp.usdoj.gov/odp/docs/bulletins.htm> and are incorporated by reference into this sub-grant.

Headings

Headings and captions of this Sub-recipient agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Sub-recipient agreement's terms or be used to interpret or assist in the construction of this Sub-recipient agreement.

Oral and Written Agreements

- A. Prior Agreements. All oral and written agreements between the Parties relating to this Sub-recipient agreement's subject matter that were made prior to Date of Execution have been reduced to writing and are contained in this Sub-recipient agreement.
- B. Exhibits. The exhibits enumerated and denominated in the agreement are hereby made a part of this Sub-recipient agreement and constitute promised performances by the Sub-recipient in accordance with the Sub-recipient agreement and the Exhibits.
- C. Commissioner's Signature. This Sub-recipient agreement is not effective unless signed by the Chief of GDEM or by his authorized designee.

Waiver

Any right or remedy provided for in this Sub-recipient agreement provision shall not preclude the exercise of any other right or remedy under this Sub-recipient agreement or under any provision of law, nor shall any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at any time.

Venue

For purposes of litigation pursuant to this Sub-recipient agreement, venue shall lie in Travis County, Texas.

THE APPLICABLE LAWS AND REGULATIONS

I. PROGRAM INCOME - If a Sub-recipient is approved for an advance, the funds must be deposited in a separate interest bearing account and are subject to the rules outlined in the Uniform Rule 28C.F.R. Part 66, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, at http://www.access.gpo.gov/nara/cfr/waisidx_04/28cfrv2_04.html, and the Uniform Rule 28C.F.R. Part 70, Uniform Administrative Requirements for Grants and Agreements (including sub-awards) with Institutions of Higher Education.

Hospitals, and other Nonprofit Organizations, at http://www.access.gpo.gov/nara/cfr/waisidx_03/28cfr70_03.html. Sub-recipients must report any interest earned to GDEM/SAA. Any interest earned in excess of \$100 must, on a quarterly basis, be remitted to:

United States Department of Health and Human Services
Division of Payment Management Services
P.O. Box 6021
Rockville, MD 20852

J. **AUDITS** - The Sub-recipient shall arrange for the performance of an annual financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement under the Single Audit Act (OMB Circular A – 133; 44 C.F.R. 13.26) http://edocket.access.gpo.gov/cfr_2007/octqtr/44cfr13.26.htm.

K. **GRANT ADMINISTRATION** - The Sub-recipient will also comply with Texas Government Code, Chapter 783, <http://tlo2.tlc.state.tx.us/statutes/qv.toc.htm>; and the Uniform Grant Management Standards (UGMS), State Uniform Administrative Requirements for Grants and Cooperative Agreements, [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=111847&p_tloc=&p_plqc=1&pg=2&p_tac=&ti=1&pt=1&ch=5&rl=141](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=111847&p_tloc=&p_plqc=1&pg=2&p_tac=&ti=1&pt=1&ch=5&rl=141). Sub-recipients must also comply with 44 C.F.R., Part 13, http://www.access.gpo.gov/nara/cfr/waisidx_07/44cfr13_07.html; with 2C.F.R. Part 215 http://www.access.gpo.gov/nara/cfr/waisidx_08/2cfrv1_08.html#215, 2C.F.R. Part 225, Part 220 and Part 230. Parts 220 and 230 are not available on-line at this time. A link will be provided as soon as it becomes available.

L. **PROPERTY ADMINISTRATION** – TAC Title 1, Part 5, Chapter 116, [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=3&ti=1&pt=5](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=3&ti=1&pt=5)

M. **PUBLICATIONS** – 44 C.F.R., Section 13.34 http://edocket.access.gpo.gov/cfr_2007/octqtr/44cfr13.34.htm

1. Sub-recipient acknowledges that FEMA National Preparedness Directorate reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (1) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a recipient or Sub-recipient purchases ownership with Federal support. The Recipient agrees to consult with NPD regarding the allocation of any patent rights that arise from, or are purchased with, this funding.
2. The Sub-recipient agrees that all publications created with funding under this grant shall prominently contain the following statement: "This Document was prepared under a grant from the National Preparedness Directorate, United States Department of Homeland Security. Point of view or opinions expressed in the document are those of the authors and do not necessarily represent the official position or policies of U.S. Department of Homeland Security."

EXHIBIT B
CERTIFICATIONS

I, _____ as Mayor/County Judge of _____, Texas, hereinafter referred to as the "Sub-recipient," certify the following with respect to the expenditure of Sub-recipient agreement funds.

A. The Sub-recipient shall minimize displacement of persons as a result of activities assisted with Sub-recipient agreement funds.

B. The program shall be conducted and administered in conformity with the Civil Rights Act of 1964 (42 U.S.C. § 2000a et seq.)

C. As specified by GDEM and FEMA, in the event that displacement of residential dwellings shall occur in connection with a project assisted with HSGP funds, the Sub-recipient shall follow a residential anti-displacement and relocation assistance plan.

D. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28C.F.R. Part 67, Section 67.510. (Federal Certification) The Sub-recipient certifies that it and its principals and vendors:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency; Sub-recipients can access debarment information by going to www.epls.gov and the State Debarred Vendor List http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/.
2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (D)(2) of this certification; and
4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and
5. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application. (Federal Certification)

E. Sub-recipient understands and certifies that it will not use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of FEMA National Preparedness Directorate.

F. The Sub-recipient certifies federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Sub-recipient may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

Chief Elected Official, Mayor/County Judge

Date

EXHIBIT C

**CERTIFICATION REGARDING LOBBYING FOR
SUB-RECIPIENT AGREEMENTS, GRANTS, LOANS,
AND COOPERATIVE AGREEMENTS**

The undersigned, _____, as Mayor/County Judge of the _____, Texas certifies the following to the best of his knowledge and belief.

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

B. If any funds other than federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Sub-recipient agreement grant, loan or cooperative agreement, the undersigned shall complete and submit standard form Disclosure Form to Report Lobbying form in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards including sub-contracts, sub-grants and Sub-recipient agreements under grants, loans, and cooperative agreements and that all Sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon that reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Chief Elected Official, Mayor/County Judge

Date



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. C.3

*** RESOLUTION NO. 5301**

**Authorizing the Execution of Agreements with American Municipal Services
for the Collection of Outstanding Warrants, Citations, and Capias Pro Fines**

Issue

To consider entering into a Collection Agreement with American Municipal Services (AMS), which provides collection services for delinquent court citations and warrants

Background

This resolution will approve a service agreement with AMS for one year beginning on the date of execution and will renew annually until cancelled by either party by written 30 day notice. AMS will receive a fee of twenty percent (20%) or thirty percent (30%), depending on the age of the warrant. This amount will be added to the original amount, so there will be no cost to the City for these services. The City will continue to pursue collections on its own for warrants and citations that are less than six months old. After six months, these delinquent items will be sent to AMS for their collection. Due to the age of the accounts, the rate of collection for accounts greater than six months is relatively low. Thus, this agreement should provide the City with additional revenues as these older accounts are pursued more aggressively through AMS.

Origination

Finance

Financial Consideration

There is no cost to the City for these services, as AMS will receive the incremental 20% or 30% fee added by the City for the collection of these delinquent accounts.

Staff Recommendation

It is recommended that the City Council approve the Collection Agreement with AMS for the specified services.

Alternatives

As may be directed by Council

Attachments

Resolution No. 5301

Collection Agreement and Indemnification Agreement

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

RESOLUTION NO. 5301

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF AGREEMENTS WITH AMERICAN MUNICIPAL SERVICES FOR THE COLLECTION OF OUTSTANDING WARRANTS, CITATIONS, AND CAPIAS PRO FINES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager is hereby authorized and directed to enter into a Collection Agreement and Indemnification Agreement with American Municipal Services of Carrollton, Texas, such contract terms being first approved by the Interim City Attorney and being the same or substantially the same as contained in the agreements attached hereto as Exhibits "A" and "B" 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 _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
INTERIM CITY ATTORNEY



American Municipal Services
3740 N. Josey Lane, Suite 225
Carrollton, Texas 75007

Phone (972) 394-7200
Toll Free 1-800-555-5160
Fax (469) 568-1119

COLLECTION AGREEMENT

(Warrants, Citations, Capias Pro Fines, etc.)

City/Town of _____ hereinafter collectively referred to as "Municipality" desires to utilize the services of American Municipal Services, ("AMS"), to perform collection activities for the Municipality, and American Municipal Services desires to undertake such collection activities. Accordingly, the parties agree that their relationship be governed by the terms of this Collection Agreement.

The Municipality agrees to periodically refer to AMS citations and warrants for collection. No specific number or dollar amount of citations and/or warrants that will be sent to AMS is represented or guaranteed by the Municipality. AMS agrees to use their best efforts to collect those citations and/or warrants sent to AMS by the Municipality. AMS agrees to skip trace those accounts where it is determined a good address is not known, to send each defendant a minimum of four letters, and to contact each defendant by telephone in an effort to have the defendant pay any fine and/or court costs due to the Municipality. AMS will limit all telephone calls to between the hours of 8:00 am and 8:00 pm from Monday through Friday, and between the hours of 8:00 am and 2:00 pm on Saturdays. No defendant is to be phoned on Sundays. All contacts between AMS staff and defendants are to be by telephone or by mail. No personal contacts are to ever occur. AMS agrees to honor a defendants request to contact the defendant during specified hours, or at a specified location.

AMS will arrange for all Defendants to send their payments directly to the Municipality. In the event a payment is sent to AMS by a Defendant, AMS will immediately forward that payment to the Municipality. AMS agrees that it will not deposit, endorse or otherwise negotiate any funds belonging to the Municipality.

Pursuant to Article 103.0031 of the Texas Code of Criminal Procedure, as amended, for offenses committed after June 18, 2003, Municipality will add Thirty Percent (30%) to the amount a defendant owes for each offense as a collection fee. AMS, for its collection services with these accounts, is to be paid the Thirty Percent (30%) that is added to each offense. For cases with offenses committed prior to June 19, 2003, Municipality agrees to pay AMS a contingent fee of twenty percent (20 %) of the amount collected as a result of the efforts of AMS for those cases. AMS agrees to invoice the Municipality on or about the fifth (5) day of each month for the previous months collections, said invoices being due and payable within thirty (30) days. AMS will only be paid for those accounts where AMS contacted the defendant and a payment then followed. AMS will not be paid on an account if the defendant pays the fine prior to being contacted by AMS, the case is dismissed by the court for whatever reason, or the defendant is arrested.

All expenses in the collection process, including labor, postage, telephone, skip tracing, etc. shall be paid for by AMS. AMS is an independent contractor, and as such is not to be in any way considered an employee, agent, or representative of the Municipality. AMS agrees to constantly monitor their employees to insure all contacts with defendants are done in a polite, courteous, and helpful approach.

The Municipality agrees to review with AMS on a regular basis the amounts paid on those citations and warrants referred to AMS and to answer questions on specific accounts when a defendant claims they have already paid the fine, has served time for the offense, is the wrong person, or has had the case dismissed. AMS agrees to provide the Municipality with a report on all cases sent to AMS for collection within seven days of receipt by AMS and to monthly report to the Municipality on the cases AMS has for collection.

AMS is authorized to arrange payment schedules with Defendants and to authorize partial payments, provided the entire amount to be paid by the Defendant equals the total of the fine and costs established by the Municipality. AMS agrees that they will first request payment in full from each defendant, and only when it appears a defendant is unable to make the full payment will AMS negotiate a payment plan. In no case will AMS set payments at less than \$20.00 per month. When a payment plan is established, AMS agrees to provide each defendant with a schedule of their payments, payment coupons and envelopes addressed to the Court. AMS agrees to monitor each payment plan, and to telephone and write each defendant who fails to comply with the plan.

The Municipality may withdraw any citation or warrant at any time from AMS. This contract shall have a term of one (1) year, commencing on the date it is signed by the municipality and shall automatically renew itself annually and continue in effect unless a party to this agreement notifies in writing the other party at least 30 days prior to its renewal date for it not to renew.

Municipality: _____

Address: _____

Telephone: _____

Contact person: _____

Title and Signature: _____ Date: _____

American Municipal Services :

By: _____ Date: _____

Dan Hafen, Vice President Marketing

INDEMNIFICATION AGREEMENT

WHEREAS, American Municipal Services has agreed to use its best efforts to collect Warrants and Citations for the below named Municipality; and,

WHEREAS, the below named Municipality desires to be released from and indemnified from any and all liability from the actions of American Municipal Services, its employees, staff, officers, and agents in the collection of the Municipality Warrants and Citations; and,

WHEREAS, American Municipal Services, in order to obtain the business of collecting Warrants and Citations of the Municipality, is agreeable to indemnify the Municipality from any such liability;

IN CONSIDERATION THEREOF, American Municipal Services hereby agrees to indemnify, defend and hold harmless the below named Municipality from and against any and all loses, claims, demands, damages, suits or actions, of whatever type or nature, arising from, or in any way resulting from, or in any way connected with, any activity of American Municipal Services or its agents, attorneys, servants or employees in the handling and/or collecting of the below named Municipality Warrants, Citations or monies.

Agreed to this the ____ day of _____, 20____.

American Municipal Services:

By: _____

Dan Hafen, Vice President Marketing

MUNICIPALITY: _____



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. C.4

*** RESOLUTION NO. 5302**

Authorizing the Execution of an Agreement with American Municipal Services for the Collection of Delinquent Utility Services, Emergency Ambulance Services, and Other Services Provided by the City of Sherman

Issue

To consider entering into a Service Agreement with American Municipal Services (AMS), which provides collection services for delinquent utility bills, emergency ambulance services, and other services

Background

The City currently has staff in place to collect amounts billed for water/sewer utilities, ambulance services, and various other services. However, the City is not set up to pursue seriously delinquent bills through the collection process due to lack of resources. The staff is proposing to contract collection of these seriously delinquent billings to AMS for collection. These are billings that are otherwise going uncollected. This resolution will approve a service agreement with AMS for one year beginning on the date of execution and will renew annually until cancelled by either party by written 30 day notice. AMS will receive a fee of twenty percent (20%). Within the first year, the staff will evaluate the effectiveness of this program and will consider for the future whether adding this collection fee to the customers' delinquent bill is prudent. The City will continue to pursue collections on its own for these services for bills that are less than six months old. After six months, these delinquent items will be sent to AMS for their collection. Due to the age of the accounts, the rate of collection for accounts greater than six months is very low. Thus, this agreement should provide the City with additional revenues as these older accounts are pursued more aggressively through AMS.

Origination

Finance

Financial Consideration

The amount to be paid to AMS cannot be determined until history is established regarding their success in collecting these bills. However, any amounts collected by AMS will be above what the City is currently experiencing, so the net proceeds from AMS collection activities will be positive for the City.

Staff Recommendation

It is recommended that the City Council approve the Collection Agreement with AMS for the specified services.

Alternatives

As may be directed by Council

Attachments

Resolution No. 5302
Collection Agreement

Prepared by:

Robby Hefton, Assistant City Manager/CFO

Approved by:

George Olson, City Manager

RESOLUTION NO. 5302

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH AMERICAN MUNICIPAL SERVICES FOR THE COLLECTION OF DELINQUENT UTILITY SERVICES, EMERGENCY AMBULANCE SERVICES, AND OTHER SERVICES PROVIDED BY 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 is hereby authorized and directed to enter into a Collection Agreement with American Municipal Services of Carrollton, Texas, such contract terms being first approved by the City Attorney and being the same or substantially the same as contained in the agreement attached hereto as Exhibit "A" 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 _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
INTERIM CITY ATTORNEY



American Municipal Services
3740 N. Josey Lane, Suite 225
Carrollton, Texas 75007

Phone (972) 394-7200
Toll Free 1-800-555-5160
Fax (469) 568-1119

COLLECTION AGREEMENT

(Collection Services Contract Utilities, EMS, Miscellaneous)

The below stated Municipality desires to utilize the services of American Municipal Services, ("AMS"), to perform collection services for the Municipality, and American Municipal Services desires to undertake such collection services. Accordingly, the parties agree that their relationship be governed by the terms of this Collection Agreement.

The Municipality agrees to periodically refer to AMS for collection accounts whereas a party or entity owes monies to the Municipality, whether for utility services, emergency ambulance service, or other services provided by the Municipality. No specific number or dollar amount of collection accounts that will be sent to AMS is represented or guaranteed by the Municipality. AMS agrees to use their best efforts to collect those collection accounts sent to AMS by the Municipality. AMS agrees to skip trace those accounts where it is determined a good address is not known, to send each debtor a minimum of four letters, and to contact each debtor by telephone in an effort to have the debtor pay the amount owed to the Municipality. AMS will limit all telephone calls to between the hours of 8:00 am and 8:00 pm from Monday through Friday, and between the hours of 8:00 am and 2:00 pm on Saturdays. No debtor is to be phoned on Sundays. All contacts between AMS staff and debtors are to be by telephone or by mail. No personal contacts are to ever occur. AMS agrees to honor a debtors request to contact the debtor during specified hours, or at a specified location.

AMS will arrange for all Debtors to send their payments directly to the Municipality. In the event a payment is sent to AMS by a Debtor, AMS will immediately forward that payment to the Municipality. AMS agrees that it will not deposit, endorse or otherwise negotiate any funds belonging to the Municipality.

AMS is to be paid a contingent fee of twenty percent (20 %) of the gross amount collected on those Collection Accounts referred to AMS by the Municipality. The Municipality agrees to review with AMS on a weekly basis the amounts paid on those accounts referred to AMS. AMS agrees to invoice the Municipality on or about the fifth (5) day of each month for the previous months collections, said invoices being due and payable within thirty (30) days. All expenses in the collection process, including labor, postage, telephone, skip tracing, etc. shall be paid for by AMS. AMS is an independent contractor, and as such is not to be in any way considered an employee, agent, or representative of the Municipality.

AMS is authorized to arrange payment schedules with Debtors and to authorize partial payments, provided the entire amount to be paid by the Debtor equals the total of the monies owed plus any interest or late charges and costs established by the Municipality. AMS is authorized to report on

the various National Credit Bureaus, at AMS' expense, the unpaid amount owed the Municipality as a debt due the Municipality.

The Municipality may withdraw any account or debt at any time from AMS. This contract shall have a term of one (1) year, commencing on the date it is signed by the municipality and shall automatically renew itself annually and continue in effect unless a party to this agreement notifies in writing the other party at least 30 days prior to its renewal date for it not to renew.

Municipality: _____

Address: _____

Telephone: _____

Client Contact person: _____

Title and Signature:

_____ Date: _____

American Municipal Services:

By: _____
Dan Hafen, Vice President Marketing



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. C.5

RESOLUTION NO. 5303

Authorizing Execution of an Engineering Services Agreement with CP&Y, Inc. for Design of the Washington Street West Project

Issue

The provision of professional engineering services to design the Washington Street West Project from Heritage Parkway to the end of City maintenance

Background

In the 2008-2009 Capital Improvement Program, the Sherman City Council approved funds for rebuilding Washington Street, from Heritage Parkway (F.M. 1417) to the west Sherman City Limits. This project will include curb and gutter, a 25' concrete street section, and replacement of the bridge over Sand Creek. Rebuilding this section of Washington Street is a part of the planning included in our city-wide Street Enhancement Program and the new comprehensive thoroughfare plan. The engineering fee estimate of \$480,960 includes surveying, geotechnical, and other special services in addition to the direct engineering services for this project.

Origination

Sherman City Council 2008-2009 Capital Improvement Program

Financial Consideration

The City Council approved \$4 million in the FY 2008/2009 Capital Improvement Program budget to fund this project.

Staff Recommendation

It is recommended the City Council approve these professional engineering services administered by CP&Y, Inc. in the amount of \$480,960.00.

Alternatives

As may be directed by the City Council

Attachments

Resolution No. 5303

Engineering Services Agreement with Exhibits

Capital Improvement Project with Location Map

Prepared by:

Jeff Miller, Director of Public Works

Approved by:

George Olson, City Manager

RESOLUTION NO. 5303

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENGINEERING SERVICES AGREEMENT WITH CP&Y, INC. FOR DESIGN OF THE WASHINGTON STREET WEST PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That CP&Y, Inc. is hereby awarded an agreement for professional engineering services in the total amount of Four Hundred Eighty Thousand Nine Hundred Sixty Dollars and No Cents (\$480,960.00) to design the Washington Street West Project; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the Interim City Attorney, to execute an agreement with CP&Y, Inc. for said professional engineering services, in the same or substantially the same form as the 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 _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM 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, **C P & Y, 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 **PREPARATION OF CONSTRUCTION DOCUMENTS FOR AN REBUILD OF WEST WASHINGTON STREET, COMMENCING AT HERITAGE PARKWAY (FM 1417) AND PROCEEDING TO THE WEST CITY LIMITS** 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 upon 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 "A", 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. **Contracts.** Any contracts for contractors or subcontractors for services rendered under this Agreement shall be in a contract form provided and approved by the City Attorney.
4. **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.
5. **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 "A". The contract amount specified in Exhibit "D" shall not be exceeded without the written permission of the City.

6. **Contracts.** Any contracts for contractors or subcontractors for services rendered under this Agreement on behalf of the City shall be in a contract form provided and approved by the City's Attorney.

7. **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.
- i. 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.

8. **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.

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.

9. **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 respondeat 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.

10. **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.

11. **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.

12. 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.

13. Special Terms or Conditions.

None

14. Complete Contract. This Agreement, including Exhibits "A-G", 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 Exhibits "A-G" conflict with this Agreement, the provisions in the Agreement control over the provisions in the exhibits. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

15. 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:

Jeff Miller
Director of Public Works
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:

Thomas Cochill, P.E.
Chiang, Patel & Yerby, Inc.
1700 Redbud Blvd., Suite 460
McKinney, Texas 75069

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.

16. 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

A Texas Corporation

BY: _____

BY: William R. Hindman, P.E.

George Olson
City Manager

William R. Hindman, P.E.
Vice President

DATE: _____

DATE: December 8, 2008

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A
SCOPE OF SERVICES
FOR
WASHINGTON STREET
SHERMAN, TEXAS

The scope of work for engineering services involves: field surveying, geotechnical investigation, engineering design, preparation of plans and specifications, computing of construction quantities, and preparation of an opinion of probable cost for the widening and reconstruction of Washington Street from FM 1417 westward approximately 1.0 miles. All design work shall be in accordance with the City of Sherman, Texas standard requirements. Wherever possible, the standard drawings and specifications of the Texas Department of Transportation (TxDOT) will be utilized for consistency with other projects in the immediate vicinity.

The project involves new construction of approximately 5,100 linear feet of roadway with curb and gutter and a 25' back of curb to back of curb pavement section concrete pavement with sidewalks on both sides, a hydraulic study and bridge replacement for the Sand Creek crossing, enclosed drainage systems, and analysis of an existing farm detention pond and design of a new outfall structure. This project is assumed to terminate where City of Sherman maintenance on Washington Street ends. Consultant services for this project shall include all aspects of the work as set forth in the following scope of services (Exhibit A), and in coordination with Exhibit B (Services to be provided by the City). Any of the items identified herein that are specifically excluded from this scope of work and/or any items not listed below that are desired by the City to be included in the scope of work may be added at any time via a duly executed Supplemental Agreement defining the scope of those items and the related adjustment to the agreed upon fee.

For the purpose of these Exhibits (A-F), the Engineer shall be defined as CP&Y, Inc. or its duly appointed agent. Similarly, the Owner shall be defined as the City of Sherman, with whom this agreement has been executed, or their respective duly appointed agents.

The parameters for the design of the improvements shall include the following:

- A geotechnical investigation by Kleinfelder Central, Inc. will be performed prior to commencement of design. A Cultural Resources study will be performed by Horizon Environmental Services, Inc. A detailed field survey of the project area will be performed by Underwood Drafting and Surveying, Inc.;
- Replacement of existing streets with new concrete pavement with curbs developed in conjunction with geotechnical investigation and projected traffic demands, to a width of 25' (back of curb to back of curb);
- Replacement of existing Sand Creek-Washington St. bridge with a new 40' wide structure;

-
- Replacement of existing driveway approaches and cross streets to the ROW line, or beyond if necessary to provide a smooth transition to the existing surface beyond;
 - Construction of 4' wide sidewalks on both sides of the road;
 - Analysis of existing storm water runoff based on a 100-year storm event and development of an enclosed drainage system;
 - General construction sequencing to guide the contractor through the construction phase. This will not include detailed traffic control plans, temporary signing/stripping, and other similar items generally considered construction means and methods;
 - Erosion control plans for use during construction, and post construction erosion control to include sodding and/or seeding as necessary to re-establish vegetation;
 - Submittals to the City of work-in-progress shall be made at 30%, 60%, 95% and 100% stages of completion, as more fully defined in Exhibit C. The 30% submittal will include one (1) scroll plot of the entire project. Each subsequent submittal will include three (3) sets of half size (11" x 17") drawings in cut sheet format;
 - All plan sheets for review and construction shall be printed on 11"x17" bond paper. The 30% submittal will be a scroll plot;
 - All design work shall be prepared in CAD with electronic files in AutoCAD 2006 format which will be provided to the City upon completion of the record drawings;
 - Standard and typical details of the City and/or TxDOT may be included by reference in the final plans and specifications and will not be redrawn or recreated by the Engineer;
 - Special details not available as a standard drawing by the City or TxDOT will be prepared, as necessary;

The Engineer will perform the necessary engineering and technical services for the Design, Bid, and Construction Phases, including any Additional Services for the development of this project in accordance with the following sections of this agreement.

I. PROJECT MANAGEMENT & ADMINISTRATIVE TASKS

1. Project Management, Administration and Coordination

The Engineer will establish and maintain project schedules and budgets, develop monthly progress reports, prepare invoices, and attend design meetings with the Owner and other entities on an as-needed basis during the project design.

2. Supervision of Subconsultants

The engineer will establish a work program and schedule for each subconsultant, identified in the appropriate sections of this document, at the beginning of the project. The engineer will be responsible for the coordination, supervision, review and incorporation of the surveying, geotechnical investigations, environmental studies, public involvement, and other aspects of the work performed by subconsultants.

II. DESIGN PHASE SERVICES

0. General Design

a. Design Criteria

The Engineer will develop a set of design criteria at the beginning of the project, which shall form the basis of the design. Copies of this report will be furnished to the Owner for review and approval.

b. Project Title Sheet

A project title sheet will be prepared as required for use in the construction plans in accordance with the sample provided by the Owner.

c. Project Layout Sheets

Project layout sheets will be prepared at a minimum of 1"=100' (half-size), which clearly indicates the limits of the entire project. These layout sheets will indicate the major structures contained within the project, the names of all intersecting roadways and waterways, and other items relevant to creating an overall perspective of the entire project.

d. Horizontal Control Sheets

Roadway horizontal control sheets and horizontal curve data sheets will be prepared to provide relevant geometric information to establish the roadway centerlines and baselines prior to construction.

1. Roadway Design

a. Preliminary Right-of-Way Requirements

The Engineer shall determine the extent of the existing right-of-way based on development plats or other information to be provided by the Owner (see Exhibit B) during the early design stages of the project. The Engineer will notify the Owner of any locations where the existing right-of-way will not be sufficient so additional right-of-way can be acquired. If applicable, the Engineer will assist the Owner in the preparation of right-of-way documents and acquisition as defined in Section III-4 below.

b. Preliminary Schematic Plan/Profiles

Prior to commencing the final paving design, the Engineer will prepare a schematic plan and profile for the proposed work for the entire project. Roadway horizontal and vertical alignments will be provided to the Owner for review. These alignments will take into consideration preliminary drainage considerations, ties to existing cross streets, site distances and traffic flow patterns. The profile will take into consideration driveway and alley connections and available right-of-way for grading. Where possible, the top of curb elevation for these roads will be set below existing ground to facilitate offsite drainage.

c. Paving Plans/Profiles

On approval of the preliminary horizontal & vertical alignments, plan sheets will be prepared which depict these alignments. These plan sheets will be a minimum of 1"=40' half-size (11"x17") and contain topographic information, roadway baselines, pavement edges, roadway pavement contours where necessary, limits of structures, limits of retaining walls, drainage structures excluding pipes, limits of sidewalks, limits of barriers and any other information necessary for pavement construction. On approval of the preliminary vertical alignments, profile sheets will be prepared to depict these alignments. These profiles will contain existing ground lines at the proposed profile grade line, limits of structures, and proposed elevations at a minimum of 50-foot intervals.

d. Other Roadway Design Elements

(i) Typical Sections

Roadway typical sections will be prepared for various paving sections along the project. These sections will be developed in accordance with the City of Sherman design standards. These sections will be based on the pavement and subgrade design recommended to and approved by the Owner.

(ii) Supplementary Grading/Intersection Contour Sheets

Where necessary, supplementary grading sheets will be prepared to properly show the relationship between adjacent roadways, drainage swales, or areas of special grading. These sheets will contain spot elevations and/or contours to guide the construction in these areas.

(iii) Miscellaneous Paving Details

Miscellaneous paving details will be developed as necessary to describe various types of construction such as sidewalks, curbs, etc. when no such standard details are available from the City of Sherman, and/or TxDOT.

2. Drainage Design & Erosion Control Plans

a. Drainage Area Maps

Drainage area maps will be prepared at a minimum scale of 1"=100' (11"x17"), using available contour maps. Inlets will be located and sub-drainage areas determined. The runoff to each inlet will be calculated in accordance with the City of Sherman hydraulic design criteria and shown on run-off and inlet computation sheets.

b. Culvert Plans/Profiles

Culvert plan/profile sheets and cross-sections, if necessary, will be provided for new culvert construction. TxDOT Standards will be used whenever possible for these culverts.

c. Preliminary Storm Sewer Design Storm and Pond Analysis

Sewer design and pond analysis shall be performed in accordance with the City of Sherman hydraulic design criteria and design standards and shall be based on the drainage area information and the run-off and inlet computations. The pond outfall channel and Legend Lane structure shall be analyzed for capacity and the pond outfall designed accordingly. Preliminary design will be performed and submitted for approval.

d. Computation Sheets

In accordance with standard practice, sheets will be prepared for Runoff and Inlet Computations, Storm Sewer Computations and Lateral Computations. These sheets will tabulate all relevant data used in design for easy verification of the design methods and for future improvements to be coordinated with this project.

e. Final Storm Sewer Design

Upon approval of the preliminary drainage, plan sheets will be prepared at a minimum 1"-40' (11"x17"). These sheets will show the location of inlets, manholes, storm sewers, slotted drains, culverts, pond outfall structure and open channel improvements in relation to the project roadways. Drainage profile sheets will also be prepared which show profile information for the proposed storm sewer trunk lines, proposed ground above the storm sewers, existing ground above the storm sewers, and locations of lateral junctions. Any detail sheets necessary to construct pond outfall structure and accompanying culvert will be developed. Profiles of laterals will be provided in tabular form, with associated details as necessary, unless a proposed or existing utility crosses the lateral, in which case the lateral may be profiled, if necessary.

f. Miscellaneous Drainage Details

Miscellaneous drainage details will be prepared for any drainage related items, which are not covered by the City of Sherman and/or TxDOT standard details.

g. Erosion Control Plans and Details

Erosion Control Plans will be prepared and will illustrate the implementation of elements to be used to reduce the pollutants to storm water discharges associated with the construction site. The intent of these plans will be to show the ultimate configuration of these elements, not the intermediate phasing of the necessary elements.

3. Utility Design

a. Existing Utility Plans

After reviewing the survey information, the preliminary design plans (60%) will be provided to the affected utility companies. These plans will indicate approximate locations of any utilities identified.

The Engineer will make every effort to obtain as-built, and/or record plans for the following facilities in the project area:

- (i) Roadway
- (ii) Water lines
- (iii) Sanitary Sewer Lines
- (iv) Storm Drain Lines & Box Culverts
- (v) Irrigation Lines
- (vi) Telecommunication Underground and/or Overhead Lines
- (vii) Electric Underground and/or Overhead Lines
- (viii) Natural Gas Lines
- (ix) Other Utilities Known to Serve the Project Area

The Engineer will plot the preliminary information obtained above for later use in the field for determining the actual utility locations. The locations of utilities as determined during field surveys will be shown on the drainage plans and other plans, as appropriate.

b. Utility Design

The Engineer will not prepare Utility plans as part of this contract. Should this work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

4. Signing and Striping

The Engineer will not prepare Signing and Striping plans as part of this contract. Should this work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

5. Quantities and Estimates

a. Quantities

Project quantities will be calculated and tabulated in a bid schedule. The pay items will be in accordance with the TxDOT's Standard Specifications for Construction of Highways, Streets and Bridges (2004) and supplemented where necessary with special specifications prepared by the Engineer. The bid schedule will be included in the Bid Documents and may be reproduced in the plan set, as required.

b. Construction Cost Analysis

An Engineer's Opinion of Probable Construction Cost will be prepared for the entire project using current unit cost data from TxDOT and the Engineer's database of recent bid information.

6. General Notes and Specifications

a. General Notes

A list of general notes necessary for the project will be compiled by the Engineer.

b. Specifications

A list of specifications necessary for the project will be compiled by the Engineer. Any special specifications will also be provided.

c. Special Provisions

A list of standard special provisions necessary for the project will be compiled by the Engineer.

d. Assemble and Incorporate Standard Drawings

The Engineer shall assemble, collect, and incorporate the necessary standard drawings needed for the plan set.

7. Signal Design

The roadway pavement width at the intersection of Washington Street and FM 1417 will flare from 25' to 37' to allow for a future left turn lane (when warranted). In order to accommodate the additional pavement width the existing signal pole foundation and mast arm will need to be relocated. A signal pole layout sheet and appropriate TxDOT standards will be included in the design plans to allow for this relocation. Coordination and approval with TxDOT will be required for this work.

8. Illumination Design

The Engineer will not prepare Illumination plans as part of this contract. Should this work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

9. Irrigation Design

The Engineer will not prepare Irrigation plans as part of this contract. Should this work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

10. Bridge Design

A. BRIDGE LAYOUT AND TYPICAL SECTION

1. The Engineer will produce a bridge layout for the Washington Street Bridge over Sand Creek. This layout will illustrate a two (2) lane bridge of approximately 130' in length. It is anticipated that the bridge deck width will be 40' wide, consisting of two 12' lanes, two 6" curbs, two 6.5' sidewalks, and two 1' rails.
2. Bridge layout sheets shall have the same vertical and horizontal scale, and shall follow all TxDOT Bridge Division and TxDOT Design Division policies, specifications, and procedures.
3. The Engineer will prepare a typical section for the replacement bridge.
4. The Engineer will submit the bridge layout and typical section to the City for review and approval.
5. The Engineer will complete the final bridge layout sheet which incorporate City comments made on the intermediate engineering phase submittal.

B. BRIDGE DESIGN AND DETAILS

1. The Engineer will design all structural elements of the bridge including foundations, abutments, bents, beams and slabs. The Engineer will develop detail sheets to facilitate the construction of these items. Anticipated sheets include;
 - (a) Abutment detail sheets
 - (b) Interior bent details sheets
 - (c) Beam layouts
 - (d) Slab detail sheets
2. The Engineer will use TxDOT statewide standards to the greatest extent possible. The Engineer will not redraw these standards and will not transfer his title block to

the standard drawings. Modifications to the standards, if necessary, shall be clearly identified and designated by "MOD" in the standard title.

3. The generation of structural steel or prestressed concrete shop drawings, form work drawings and false work drawings are not part of the design requirements. However, contract plans shall be in sufficient detail to permit the preparation of complete shop details for fabrication and erection.

C. BRIDGE QUANTITIES AND BEARING SEAT ELEVATIONS

1. The Engineer will compute the bridge quantities and produce a summary table of these quantities.
2. The Engineer will include a table of bearing seat elevations will be included on the estimated quantity sheet, as provided for in the Bridge Detailing Manual.

11. Retaining Wall Plans

- A. The Engineer will investigate the need for retaining walls and if necessary, the Engineer will determine what is the most suitable wall type.
- B. The Engineer will prepare retaining wall layouts at a max horizontal scale of 1"=40'. The layouts will show plan and profile views of the retaining wall.
- C. The Engineer will prepare structural details, if necessary, for non-proprietary wall designs (i.e. tie-back, soil nailed, or drilled shafts).

12. Removal Plans

If necessary, removal item sheets will be prepared at a minimum of 1"=100' (half-size) to show the necessary roadway and structural items to be removed in order to accommodate construction of the proposed project elements.

13. Landscape Design

The Engineer will not prepare landscape plans as part of this contract. Should this work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

14. Sequence of Work and/or Traffic Control Plans

a. Preliminary Sequence of Work / Traffic Control Plan

The orderly routing of traffic during construction is of the utmost concern. A conceptual traffic-handling scheme will be prepared after the preliminary horizontal and vertical geometry is complete. This scheme will take into account various factors such as safety of traffic, minimum number of lanes, detours, access to adjacent properties, and other important factors for a logical sequence of construction. This

scheme will also address the potential phased construction of the overall project as indicated by the plan sets. This scheme will be submitted to the Owner as a scroll plot for review and approval prior to the commencement of final plan preparation.

b. Final Sequence of Work / Traffic Control Plan

(i) Typical Sections

Traffic control plan typical sections will be prepared for each stage of the construction sequence to clearly delineate the position of the existing traffic with respect to the proposed construction. Temporary traffic barriers and pavement markings will also be shown and dimensioned.

(ii) Traffic Control Plan Layouts

Traffic control plan layouts will be prepared for phases and steps of the project. Recommendations will be provided for appropriate signage and safety measures, but specific details will be left to the discretion of the contractor in accordance with the Texas Manual of Uniform Traffic Control Devices (TxMUTCD). These plans are generally prepared at 1"=100', however larger scale drawings may be necessary in some locations. These layouts will include the location of traffic, traffic handling devices for the maintenance of traffic, temporary and permanent pavement construction, and temporary and permanent drainage construction (if applicable).

c. Traffic Control Narrative

A special provision in narrative form will be prepared which describes phases and steps of the construction, the maintenance of traffic, and road construction work hours. The narrative description of the phases and steps of the construction shall be noted on the construction plans.

15. Cross Sections

The Engineer will prepare cross sections of the project during the design phase to facilitate the development of the appropriate vertical profile of the roadway. These cross sections will be developed to a sufficient level to aid the Engineer in this effort and to approximate the cut/fill quantities required for the Project. The Engineer will not prepare cross section sheets. If requested this information may be provided after the award, to the selected contractor and/or City, in electronic format for informational purposes only. This information will not be further detailed and/or manipulated into plan sheet format unless specifically requested as an Additional Service item as defined in Section V below.

III. SPECIAL SERVICES

1. Environmental Studies

a. Wetland Delineation

Impacts to jurisdictional wetlands and waters of the U.S. would be permitted under Section 404 of the Clean Water Act by the Fort Worth District of the United States Army Corps of Engineers (USACE). CP&Y will conduct a wetland delineation following the 1987 USACE wetland delineation manual procedures and the 2008 Interim Regional Supplement to the USACE delineation manual: Great Plains Region. Once field work has been conducted on the project site, the type of permit required will be determined depending on the area of impacts, if any, to jurisdictional waters and wetlands. *If a Pre-Construction Notification to the USACE or Individual Permit is required, it would be conducted under a separate work authorization.*

b. Threatened and Endangered Species Habitat Assessment

CP&Y will review technical databases, technical literature, and governmental publications and databases prior to conducting field surveys to identify federally threatened, endangered, and candidate plant and animal species in the vicinity of the project area. The habitat assessment includes determining whether suitable habitat exists within and adjacent to the proposed project area, taking representative photographs of the project area, and reporting all findings. All protocols for determining required habitat will be performed for the federally threatened, endangered, and candidate species in Grayson County. *If habitat for federally listed species is identified, coordination with the U.S. Fish and Wildlife Service would be conducted under a separate work authorization.*

2. Public Meetings and/or Hearings

The Engineer will not conduct or attend a public meeting to inform the nearby residents of the nature of the project and to receive input from the community. Should this work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

3. Mitigation Plans

The Engineer will not prepare Mitigation Plans as part of this contract. Should this work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

4. Right-of Way Acquisition

- a. A right-of-way map shall be prepared based on roadway design information, the surveyed existing right-of-way lines and the proposed right-of-way takes along Washington Street. The right-of-way map shall be revised, as required, to indicated

additional right-of-way needs per the roadway design.

- b. Field notes shall be computed and provided for all parcels shown on the right-of-way map. All field notes shall be signed, dated, and sealed by a Registered Professional Land Surveyor. Preparation of these exhibits shall be based on a cost per parcel.
- c. The Engineer will not perform right-of-way acquisition as part of this contract. Should this work become necessary, the City shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

5. TDLR Review

A TDLR review will be required if the Accessible Route improvements (i.e. - sidewalks and ramps) exceed \$50,000. CP&Y will submit a final set of plans to a local TDLR review firm for review. Review fees are based on the construction cost of the project. CP&Y will submit an invoice to the Owner for the cost of the review. This fee is not included in the Fee Summary attached (Exhibit D) as an expense item and will only be charged to the Owner if such a review is determined to be necessary.

6. Franchise Utility Relocation

The Engineer will be responsible for coordination with the various utility companies, for exposing potential conflicts and field ties to uncover utilities in potential conflict areas. If, in fact, there is a conflict, the Engineer will meet with the utility company to resolve the conflict.

The Engineer will not be responsible for the redesign of any franchise utility services, the relocation of these services, or the scheduling and confirmation of such relocations.

7. Detention Pond Analysis

Should it be determined that an existing detention pond and outfall structure on the north side on Washington Street between Legend Lane and Clay Lane will be impacted by the widening of the roadway an analysis of the pond will be performed. The analysis will determine the watershed contributing to the pond, the discharge from the pond, the design of a new outfall structure (if necessary) and the sizing of the culvert under Washington Street.

8. Hydraulic Analysis of Sand Creek – Washington Street Bridge

- 1) Preliminary Investigation and Data Collection – Before beginning the analysis CP&Y will perform a site investigation and will acquire the data necessary for the study. This scope of services assumes that the effective HEC-2 hydraulic model for Sand Creek is available and can be obtained either from the City of Sherman or from FEMA. Survey data, aerial photos, and topographic data will be collected for

use in the analysis. This scope of services includes up to two (2) meetings with regard to hydraulic analysis issues.

- 2) Hydrology – FEMA discharges as printed in the Grayson County FIS and as used in the effective FEMA hydraulic model, will be used for the hydraulic analysis of the Washington Street Bridge over Sand Creek. This scope does not include calculating or evaluating any discharges or using any discharges other than provided in the FIS.
- 3) Hydraulic Analysis – CP&Y will update the effective HEC-2 hydraulic model with current topographic data obtained from on-the-ground surveying and supplemented with information from topographic mapping with 2-foot contour intervals, if necessary. The updated hydraulic model will be used to evaluate the proposed bridge opening for the Washington Street Bridge. CP&Y will modify the floodplain and floodway delineations through the bridge, if necessary, and will transition those delineations into the effective floodplain and floodway delineations within a distance of 100-feet upstream and downstream of the project site. This scope of services does not include extending the model upstream and downstream of the bridge in order to provide a transition to the currently mapped floodplain and floodway.
- 4) Hydraulic Report – CP&Y will prepare a hydraulic report for the City of Sherman's review and approval. The report will consist of a summary of the work performed along with supporting tables, exhibits, floodplain maps, and model output. CP&Y will address comments from the City of Sherman, if necessary.
- 5) Letter of Map Revision – After construction of the bridge and any grading in the 100-year floodplain has been completed CP&Y will prepare a Letter of Map Revision (LOMR) request, if necessary. The LOMR request will include the information provided in the hydraulic report as well as the appropriate LOMR forms required by FEMA. CP&Y is assuming that the as-built condition of the crossing will not differ from the proposed bridge configuration developed for the Hydraulic Report. Changes to the bridge configuration could result in hydraulic impacts. This scope of services does not include updating the hydraulic model based on the as-built condition differing from the proposed condition. A review fee is required by FEMA upon submittal of a LOMR request. Although the fee could change before the LOMR request for the Washington Street Bridge is submitted, the current LOMR review fee is \$4,800. The FEMA review fee is not included in CP&Y's scope of services or cost estimate for this project.

IV. CONSTRUCTION PHASE SERVICES

1. Administrative Services

The Engineer will provide Construction Administration services under this contract.

Such services are defined as periodic site visits to review the general progress of the construction process and overall conformance with the plans and specifications. On site meetings with the selected contractor and Owner's representatives will occur approximately monthly throughout the construction phase.

2. Field Engineering

The Engineer will not perform any Field Engineering to design additional features as part of this contract. However, any redesign of a planned improvement that is required as a result of an incompatibility of Engineer's original design will be addressed by the Engineer.

3. Bid Processing

The Engineer will advertise for bids in publications approved by the Owner, distribute plans to prospective bidders, distribute plans to two Owner approved plan rooms, and assist with the bid opening by summarizing the bids received. The Engineer will also review the bids and make a recommendation for award based on the lowest qualified bidder. CP&Y will submit an invoice to the Owner for the cost of the advertising. This fee is not included in the Fee Summary attached (Exhibit D) as an expense item.

4. As-Built Drawings

The Engineer will prepare a reproducible complete set of As-Built drawings on mylar and in AutoCAD 2006 based on any field changes made during construction and any field notes or marked up plans provided by the contractor upon completion of construction.

5. Change Orders

The Engineer will assist the Owner in preparing any Change Orders required during the construction phase. If such change orders are a result of a change in the scope of the project, the engineering redesign required by such change orders will be addressed as an additional service as defined in Section V below.

6. Pay Requests

The Engineer will assist the Owner in the review of construction Pay Requests under this contract.

7. Requests for Information

The Engineer will respond, as necessary to Requests for Information during the construction phase of the Project. Should the requests arise from work outside the Engineer's original scope of work, a supplemental agreement may be required.

8. Shop Drawing Review

The Engineer will review Shop Drawings submitted by the contractor.

9. TDLR Inspections/Coordination

Based on the cost of accessible improvements (i.e., sidewalks and ramps), project may or may not be required to have a TDLR inspection upon completion. Such inspection will not be considered part of this contract and will be the City's responsibility at the end of construction.

V. Additional Services

1. Engineering Redesign

At various points during the design phase, the Engineer will submit work in progress plan sets for review by the Owner. Such sets should receive a thorough review by the Owner for compliance with the Owner's expectations for the Project. (Note: the Owner is not required to review such plan sets for design conformance, code compliance, or other requirements deemed to be the responsibility of the Engineer). Once these plans are reviewed and returned to the Engineer, they shall be considered accepted by the Owner except as noted in the review comments. **Subsequent changes requested by the Owner shall constitute Additional Services outside of the scope of this agreement. In such cases, the Engineer shall be granted a Supplemental Agreement for additional compensation in an amount sufficient to cover any and all costs incurred by the Engineer while completing the redesign effort.**

2. Public Meetings

As noted above in Section III-2, the Engineer shall not be required to prepare for or attend any Public Information Meetings and/or formal Public Hearing (as required by the State of Texas in some cases). Any request for such additional meetings shall constitute Additional Services outside of the scope of this agreement.

VI. Subconsultants

1. Aerial Survey

No Aerial Survey will be performed under this contract.

2. Field/Ground Survey

Engineer will provide detailed field survey as necessary to facilitate said design including:

- a. Obtain Right-of-Entry as needed.

-
- b. Recover and or establish horizontal and vertical control based on City of Sherman or other applicable datum approved by the City.
 - c. Establish the horizontal and vertical project control, stake centerlines, locate existing utilities, obtain cross section data and locate other topographical features in the project necessary for design. The general field surveying requirements are as follows:
 - (i) The horizontal control for the project shall be established on the State Plane Coordinate System (NADA '83 Surface Coordinates) from monumentation provided by City if available.
 - (ii) Establish the horizontal control points using any City control points if readily available. The project base line will be coincidental with or parallel to the station design centerline. Set baseline control points using railroad spikes and/or punched aluminum disks at the PCs, PIs, and PTs of horizontal curves and at 500-foot maximum intervals on tangents. The ROW will be established by using existing property corners found and tied into the baseline control points. If insufficient or conflicting property data is found, a right-of-way survey shall be prepared as an additional service as directed by City. Any traverse related to the project will be performed with appropriate modified second order procedures by closed loop into the project control. Closures will be one part in 20,000 or better.
 - (iii) The vertical control survey shall include ties into any readily available City benchmark for correlation. A City approved and supplied GIS Benchmark will be established at the limits of the project and tied to the project baseline. Benchmarks shall be located outside of the anticipated construction area so they are not disturbed during construction. Benchmarks shall be railroad spikes.
 - (iv) The location, size and elevation profiles of any existing driveways 30-ft beyond right-of-way will be obtained. At least 3 shots along the driveway centerline shall be provided. The surfacing and base material will be determined by visual inspection only.
 - (v) Provide the existing apparent ROW limits and abutting parcel plats with legal description and physical address. Include any easements and property corner pins.
 - (vi) Provide list of encroachments into ROW, including all trees greater than 4" in caliper, signs, fences, and other physical objects.
 - (vii) Provide centerline data for intersecting streets 200 feet beyond the project right-of-way.
 - (viii) Perform centerline staking for roadway prior to start of construction.

d. Information Submittal

All fieldwork will be documented and made available to City for review if requested. Format of field data submittals will be a computer output listing of data collector information which includes x, y, & z coordinates and a description of each point; coordinate

geometry computer output of traverses and level loops; field books if produced; or other acceptable formats. Survey files will be provided in ASCII format where applicable. A Digital Terrain Model shall be created and the MicroStation 3-D file including, but not limited to, break lines, elevation points, triangles and contours, on separate levels. Field Survey Data Collection

3. Geotechnical Investigations

The Engineer will subcontract to a licensed geotechnical firm to provide the necessary geotechnical information needed for the design of this project. Typical services include taking boring samples of the existing ground material at various locations along the project length, measuring the level of subsurface water, determining the type and depths of the various soils and rock layers, estimating the bearing capacity of the materials, and recommending soil treatment methods to stabilize the

4. Cultural Resources

As necessary, a Texas Antiquities Code permit application will be prepared that includes a Class I archeological inventory (records search). A Class III (intensive pedestrian) archeological inventory of the project area will also be conducted. Methods will include a pedestrian survey accompanied by manually-excavated shovel tests. Project historians will document and evaluate any historic structures located within the project right-of-way. The collected data will be analyzed and a comprehensive technical report will be prepared. The report will describe all cultural resources encountered and all sites will be explicitly evaluated for National Register of Historic Places eligibility.

VII. Expenses

The Engineer will necessarily incur reasonable expenses in conjunction with the design and administration of this project. Such expenses have been estimated from similar experiences and included as a line item on the Fee Summary (Exhibit D). These expenses include:

- Travel to and from the job site and meetings related to the project
- Printing of reports, letters and related materials
- Printing of plan sets for review and construction

These expenses will be limited to every extent possible and will be reimbursed by the Owner as part of this agreement. If the scope of the project changes or if the required number of submittals and/or copies changes appreciably from that indicated in Exhibit C, the Engineer reserves the right to seek additional compensation for the additional expenses.

EXHIBIT B
SERVICES TO BE PROVIDED BY THE OWNER
FOR
WASHINGTON STREET
SHERMAN, TEXAS

The Owner will provide the following to the Engineer in the performance of the Project upon request:

- A. Provide any existing data the Owner has on file concerning the Project.
- B. Provide any available as-built plans for the existing roadway facility.
- C. Provide any available as-built plans for the water and sanitary sewer lines along and/or below the existing facility.
- D. Provide any plats and/or development plans for adjacent properties.
- E. Assist the Engineer, as necessary, in obtaining any required data and information from the State, County, neighboring cities and/or other franchise utility companies.
- F. Assist the Engineer by requiring appropriate utility companies to expose underground utilities within the right-of-way, when required.
- G. Give prompt written notice to Engineer whenever the Owner observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services.

EXHIBIT C
LIST OF SUBMITTALS
FOR
WASHINGTON STREET
SHERMAN, TEXAS

During the course of this project the Engineer will make periodic submittals to the Owner for review and input. The timing of such submittals will be determined by the flow of work and responsiveness of the Owner in reviewing previously submitted information. Below is a list of the expected submittals for this project and the approximate preparation time required for each submittal.

- A. Design Criteria — to be submitted in tabular form within 15 days of Notice to Proceed with the design phase. Three (3) copies will be provided for review with one (1) approved copy to be returned to the Engineer upon review.
- B. Preliminary Alignment Scroll (30%) — to be submitted in scroll plot format. Two (2) copies of scroll will be provided with one (1) to be returned with any review comments from the Owner. This review scroll will include:
 - 1. Horizontal and vertical alignment data of proposed roadway
 - 2. Typical section
- C. Preliminary Design (60%) — to be submitted in sheet format on 11"x17" pages, suitable for reproduction. Three (3) sets of plans will be provided with one (1) to be returned with any review comments from the Owner. These review sets of plans will include:
 - 1. Title Sheet
 - 2. Typical Sections
 - 3. Project Layout Sheets
 - 4. Roadway Plan and Profile Sheets
 - 5. Drainage Area Maps and Preliminary Storm Sewer Plans
- D. Pre-Final Design Plans (95%) — to be submitted in sheet format on 11"x17" pages, suitable for reproduction. Three (3) sets of plans will be provided with one (1) to be returned with any review comments from the Owner. These review sets of plans will include all plan sheets required for construction of the project as well as all standard details for inclusion in the final bid documents.

E. Construction Plans (100%) - to be submitted in sheet format on 11"x17" pages, suitable for reproduction. Three (3) sets of plans will be provided for the Owner's records. These final plan sets will be copies of the signed and sealed engineering plans to be used in the bidding and construction phases of the project. The original mylar sheets will be maintained by the engineer until construction is complete.

F. As-Built Plans - to be submitted in sheet format on 11"x17" pages, suitable for reproduction. These plans will reflect any design changes made during construction and will be accompanied by the original mylar plans prepared under Item D above. All electronic project design files will be submitted in AutoCAD 2006.

G. Construction Cost Analysis — at the 60% and 100% plan stages the Engineer will submit an updated Opinion of Probable Construction Cost for review by the Owner. This cost analysis will be based on updated estimates of material quantities and unit cost data from recent bid openings within the project area. This information is provided to the Owner for informational purposes. The Engineer does not guarantee that the information provided in such analysis will reflect actual construction bid price or the final cost of the project.

EXHIBIT D
FEE SUMMARY
FOR
WASHINGTON STREET
SHERMAN, TEXAS

	<u>Estm Hours</u>	<u>Labor Cost</u>
Project Management and Administrative Tasks	199	\$ 25,955.00
Design Phase Services (w/ Bridge & Retaining Walls)	2,965	\$ 306,650.00
Construction Phase Services	223	\$ 25,515.00
TOTAL DESIGN AND CONSTRUCTION SERVICES	3,387	\$ 358,120.00
Special Services		
a. Environmental Studies	91	\$ 7,552.00
b. TDLR Review	15	\$ 1,715.00
c. Franchise Utility Reloc. Coordination	13	\$ 1,495.00
d. Detention Pond Analysis	86	\$ 8,510.00
e. Hydraulic Analysis of Sand Creek	346	\$ 36,118.00
TOTAL SPECIAL SERVICES	551	\$ 55,390.00
Subconsultant Services		
a. Kleinfelder Central, Inc. (Geotechnical) *		\$ 22,000.00
b. Underwood Drafting and Surveying, Inc. (Surveying) **		\$ 33,700.00
c. Horizon Environmental Services, Inc. (Cultural Resources)		\$ 7,250.00
TOTAL SUBCONSULTANT SERVICES		\$ 62,950.00
Reimbursible Expenses		\$ 4,500.00
TOTAL FEE		\$ 480,960.00

NOTES:

* This fee does not include Traffic Control. An additional \$1,000/day will be invoiced to the City of Sherman if the City requires Kleinfelder to perform this task.

** - This fee includes document preparation for 15 parcels. Additional parcels will be invoiced to the City of Sherman at a cost of \$300/parcel.

EXHIBIT E

SCHEDULE

**FOR
WASHINGTON STREET
SHERMAN, TEXAS**

The Engineer will work diligently to complete the design phase, prepare bid documents and provide any support services required during construction. The schedule of activities provided below is based on award of the design contract at the beginning of December. The remainder of the schedule is based on information provided by the Owner during the selection process and previous experience with the City of Sherman. This information can be adjusted based on the actual award date.

	Duration	Completion Date
Award of Contract	N/A	Dec 15, 2008
Notice to Proceed	1	Dec 16, 2008
Submit Conceptual Plans (30%)	90	Mar 16, 2009
Review by City Staff	7	Mar 23, 2009
Submit Preliminary Plans (60%)	60	May 22, 2009
Review by City Staff	10	June 1, 2009
Submit Pre-Final Plans (95%)	42	July 13, 2009
Review by City Staff	7	July 20, 2009
Submit Construction Plans (100%)	28	Aug 17, 2009
Review by City Staff	7	Aug 24, 2009
Prepare Construction Documents	7	Aug 31, 2009
Advertise for Construction	0	Aug 31, 2009
Receive Open Bids	17	Sept 17, 2009
Award Construction Contract	18	Oct 5, 2009

EXHIBIT F

INSURANCE REQUIREMENTS
FOR
WASHINGTON STREET
SHERMAN, TEXAS

Before commencing work, the Engineer shall be required, at its own expense, to furnish the City with copies of all insurance certificate(s) indicating the coverage to remain in force throughout the term of this contract.

Broad Form Commercial General Liability insurance at minimum combined single limits of (\$500,000 per-occurrence and \$1,000,000 general aggregate) for bodily injury and property damage, which coverage shall include products/completed operations, independent contractors, and contractual liability each at \$500,000 per occurrence. Coverage must be written on an occurrence form.

Workers Compensation insurance at statutory limits, including employer's liability coverage at minimum limits. In addition to these, the contractor must meet each stipulation below as required by the Texas Workers Compensation Commission; (Note: If you have questions concerning these requirements, you are instructed to contact the TWCC at (512)440-3789).

Definitions: Certificate of coverage ("certificate"). A copy of a certificate of authority of self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, OR TWCC-84), showing statutory workers compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project. Duration of the project includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in 406.096) includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

EXHIBIT F

If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

no later than seven (7) days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

Obtain from each other person with whom it contracts, and provide to the contractor:

A certificate of coverage, prior to the other person beginning work on the project; and

A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

EXHIBIT F

Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

Contractually require each person with whom it contracts, to perform as required with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

Commercial Automobile Liability insurance shall be no less than \$500,000 combined single limits per accident for bodily injury and property damage, including owned, non-owned, and hired vehicle coverage.

Professional Liability Insurance at minimum limits of \$1,000,000. This policy must have a two (2) year extended period of coverage, (i.e. tail coverage). If you choose to have project coverage endorsed onto your base policy, this would be acceptable.

The required limits may be satisfied by any combination of primary, excess or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following form. The vendor may maintain reasonable and customary deductibles, subject to approval by the City of Sherman.

With reference to the foregoing insurance requirement, the vendor shall endorse applicable insurance policies as follows:

A waiver of subrogation in favor of the City of Sherman, its officials, employees, volunteers and officers shall be contained in the workers compensation coverage.

The vendor's insurance coverage shall name the City of Sherman as additional insured under the General Liability policy.

All insurance policies shall be endorsed to require the insurer to immediately notify the City of Sherman of any decrease in the insurance coverage limits.

All insurance policies shall be endorsed to the effect that the City of Sherman will receive at

EXHIBIT F

least thirty (30) days notice prior to cancellation, non-renewal or termination of the policy.

All copies of Certificates of Insurance shall reference the project/contract number.

All insurance shall be purchased from an insurance company that meets the following

requirements: A financial rating of B+VII or better as assigned by the BEST Rating

Company or equivalent.

Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:

Sets forth all endorsements and insurance coverage's according to requirements and instructions contained herein.

Sets forth the notice of cancellation or termination to the City of Sherman.

EXHIBIT G

COMPENSATION

**FOR
WASHINGTON STREET
SHERMAN, TEXAS**

It is agreed by both the Owner and Engineer that the fees paid under this Scope of Services shall not exceed the fees as outlined in Exhibit D without prior written notice from the Owner.

Invoices will be submitted by the Engineer to the Owner on a monthly basis for the value of the Services performed and expenses incurred during the prior month as outlined in Exhibit D. Payment of each such invoice, not in dispute, will be due within thirty (30) days of receipt. Portions of a disputed invoice, that are not in dispute, will be due within thirty (30) days of receipt. Late payments shall be assessed at an interest rate of 1½% per month for any payment not made within thirty (30).

PROJECT YEAR: 2008-2009

PROJECT NAME: Washington Street West

DESCRIPTION: Rebuild/Resurface Washington St. from Heritage Parkway (FM1417) to west City Limits.

ESTIMATED COST: \$4,000,000

ESTIMATED O&M COST: NA

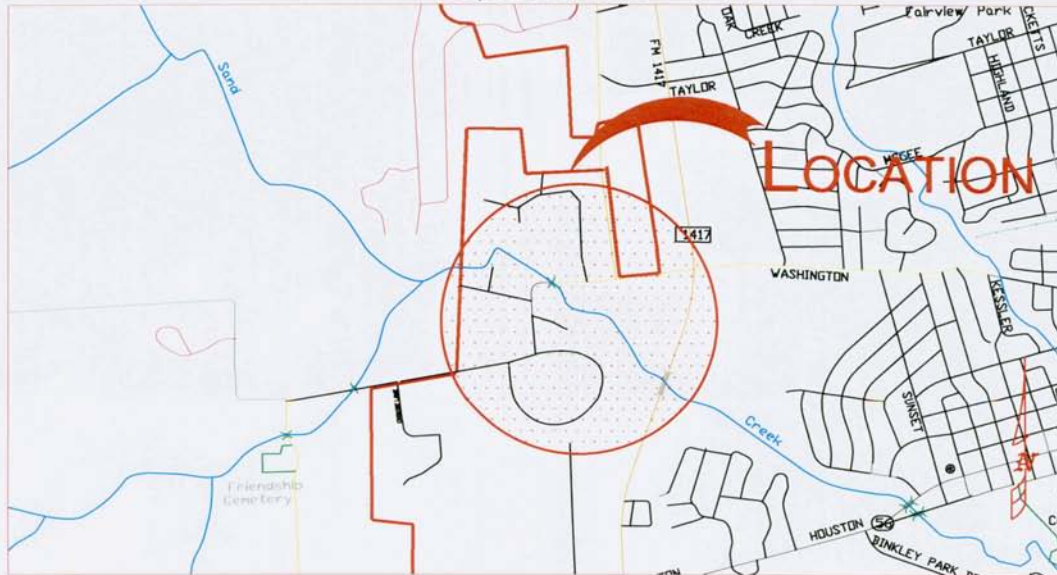
PROPOSED FINANCING: General Improvement Fund

PROJECT NECESSITY: As area west of Heritage Parkway develops, increased traffic will require upgrading this rural street.

DEPARTMENT/DIRECTOR: Public Works, Jeff Miller

PROPOSED START DATE: November 1, 2008

PROPOSED END DATE: September, 2009





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. C.6

RESOLUTION NO. 5304

Approving the Greater Texoma Utility Authority's Intention to Enter into an Agreement with Quality Excavation, LTD. for the Extension of the U.S. Highway 75 North Water Main between Graham Drive and S.H. 691

Issue

The current Capital Improvement Program contains a project for the extension of the U.S. Highway 75 North Water Line between Graham Drive and S.H. 691. The agreement will be administered through the Greater Texoma Utility Authority (GTUA).

Background

Bids for the construction of the water main were opened on November 25, 2008. Seven (7) bidders responded to the request for bids. The low bid in the amount of \$1,520,170.50 was received from Quality Excavation, LTD of Aubrey, Texas. Since adequate funding is available, it is recommended that Bid Alternate "B" be included in the award, which yields a total project bid amount of \$1,710,142.50.

Origination

Department of Utilities Administration

Financial Consideration

Funds for this project will be paid through GTUA.

Staff Recommendation

It is recommended the City Council approve this agreement.

Alternatives

As may be directed by the City Council

Attachments

Resolution No. 5304

Engineer's Recommendation

Bid Tabulation

Location Map

Prepared by:
Mark Gibson, Utilities and Engineering Director

Approved by:
George Olson, City Manager

RESOLUTION NO. 5304

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO ENTER INTO AN AGREEMENT WITH QUALITY EXCAVATION, LTD. FOR THE EXTENSION OF THE U.S. HIGHWAY 75 NORTH WATER MAIN BETWEEN GRAHAM DRIVE AND S.H. 691; 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 of Sherman hereby approves the Greater Texoma Utility Authority's intention to enter into an Agreement with Quality Excavation, LTD. of Aubrey, Texas, for the extension of the U.S. Highway 75 North Water Main between Graham Drive and S.H. 691.

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 _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

TNP **TEAGUE NALL AND PERKINS**

Civil Engineering | Surveying | Landscape Architecture | Planning

December 4, 2008

Mr. Jerry Chapman
General Manager
Greater Texoma Utility Authority
5100 Airport Drive
Denison, Texas 75020

**RE: US Highway 75 Water Line
Contract Recommendation
TNP Job No: SHN 07389**

Dear Mr. Chapman,

On Tuesday November 25th, 2008, at 10:00 am, bids were received at the City of Sherman Department of Engineering and Planning for the US Highway 75 water line project. The low bidder was Quality Excavation Ltd. They provided the following bids:

- Base bid \$1,520,170.50.
- Alternate A \$670,520.00. (All Ductile Iron)
- Alternate B \$189,972.00. (Second Cross Connection near Blue Flame Road)

After checking their references, we recommend that the Greater Texoma Utility Authority award the base bid contract to Quality Excavation Ltd. for the US Highway 75 Water Line. If additional funds are available we also recommend that Alternate B be awarded as well.

Thank you for the opportunity to work with the Greater Texoma Utility Authority on this project and please do not hesitate to call if you need any additional information.

Sincerely,

TEAGUE NALL AND PERKINS INC.



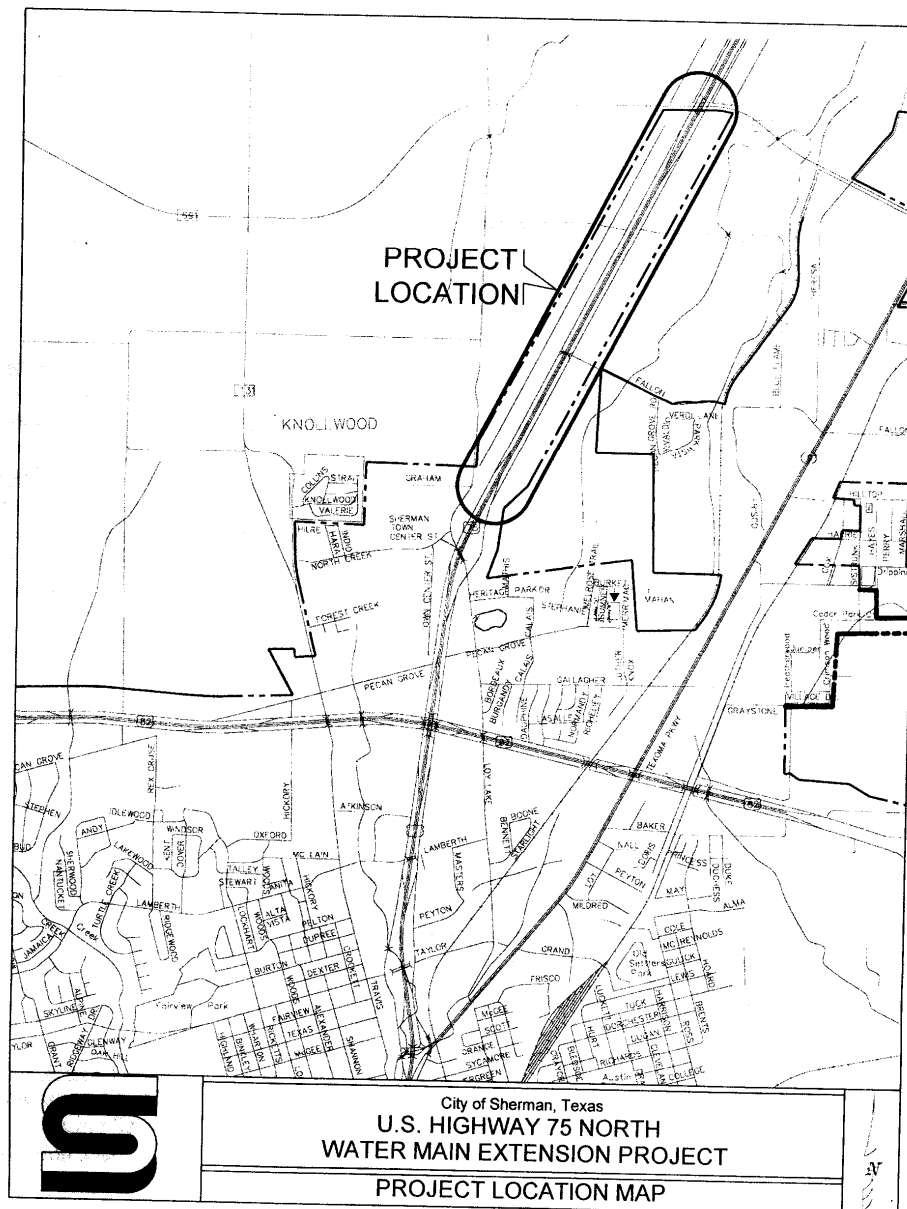
Chris Schmitt, P.E.

Cc: Mark Gibson

BID TABULATION

PROJECT: U.S. HIGHWAY 75 WATERLINE PROJECT
OWNER: CITY OF SHERMAN
BID TIME & DATE: NOVEMBER 25, 2008 10:00 A.M.
BID LOCATION: OFFICES OF THE DIRECTOR OF UTILITIES & ENGINEERING

BIDDER	BASE BID	ALTERNATE BID A	ALTERNATE BID B
Quality Excavation, Ltd.	\$1,520,170.50	\$670,520.00	\$189,972.00
W.R. Hodgson Co., LP	\$1,597,353.15	\$706,560.45	\$181,186.65
2L Construction, LLC	\$1,623,343.25	\$704,046.00	\$234,929.00
Lynn Vessels Const. LLC	\$1,793,226.54	\$809,820.53	\$209,818.90
Saber Development	\$1,925,333.10	\$940,404.30	\$202,385.50
Dickerson Const. Co.	\$1,973,290.00	\$821,387.00	\$204,399.00
Gin-Spen, Inc.	\$2,035,048.00	\$636,994.00	\$206,027.00





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. C.7

*** RESOLUTION NO. 5305**

**Authorizing Execution of a Professional Services Agreement with Timothy L. Morris, P.E.
d/b/a Morris Engineers for Design of the Willow Street Water Main Replacement Project**

Issue

To consider a contract for professional engineering services with Morris Engineers for design of the Willow Street Water Main Replacement Project.

Background

The current Capital Improvement Program contains a project to replace the existing water main on Willow Street, between Mulberry Street and Pacific Street. Engineering services are required to design the project in a timely manner.

Origination

Utilities and Engineering, Department 119

Financial Consideration

The fee for engineering services will be \$12,000.00. This project is funded through the City's Capital Improvement Program. Surveying services will be provided by Underwood Surveying at a cost of \$1,725.00.

Staff Recommendation

It is recommended that the contract for professional engineering services with Morris Engineers, to design the Willow Street Water Main Replacement between Mulberry Street and Pacific Street, be approved.

Alternatives

As may be directed by the City Council

Attachments

Resolution No. 5305

Contract for Professional Services

Location Map

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager

RESOLUTION NO. 5305

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH TIMOTHY L. MORRIS, P.E. D/B/A MORRIS ENGINEERS FOR DESIGN OF THE WILLOW STREET WATER MAIN REPLACEMENT PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the Interim City Attorney, to execute a Professional Services Agreement with Timothy L. Morris, P.E. d/b/a Morris Engineers for the design of the Willow Street Water Main Replacement Project between Mulberry Street and Pacific Street, 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 _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

MORRIS ENGINEERS

November 26, 2008

Mark Gibson, P.E.
Director of Utilities & Engineering
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

**RE: Engineering Services
Willow Street Water Replacement**

Dear Mark,

We will be pleased to provide engineering services for a Waterline along Willow St. from Mulberry to Pacific. The water pipeline will be approximately 800 feet long. I am estimating that the construction will cost about \$104,600.00. I am proposing a lump sum engineering service fee of \$12,000.00.

For this project we will perform the following services.

1. Prepare plans and specifications
2. Assist in soliciting bids and executing construction contracts
3. Monitor construction for general conformance to the plans and specifications
4. Represent the City's interests with regard to construction activities
5. Evaluate the construction with regard to interim payments and project close-out
6. Provide as-built drawings on prints and on CD or floppy disk

If this proposal is acceptable to you please return one signed agreement. I appreciate the opportunity to submit this proposal.

Sincerely,



Timothy L. Morris, P.E.

Enclosures: Engineering Services Agreements (2 copies); Project estimate; Map

MORRIS ENGINEERS

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of this ____ day of _____ in the year Two Thousand Eight by and between the **City of Sherman** (hereinafter called OWNER) and Timothy L. Morris, P.E., dba Morris Engineers (hereinafter called ENGINEER). OWNER intends to construct **Willow Street Water Replacement** (hereinafter called the Project).

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.

SECTION 1 – BASIC SERVICES OF ENGINEER

1.1. General

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

1.2. Preparatory Phase

ENGINEER shall:

- 1.2.1. Consult with OWNER to determine his requirements for the Project and review available data.
- 1.2.2. Advise OWNER as to the necessity of his providing or obtaining from others data or services of the types described in Paragraph 3.3 which are not part of Engineer's Basic Services, and assist OWNER in obtaining such data and services.
- 1.2.3. Identify requirements of governmental authorities having jurisdiction to approve portions of the Project designed or specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.

1.3. Preliminary Design Phase

ENGINEER shall:

- 1.3.1. Prepare preliminary design criteria and outline specifications.
- 1.3.2. Advise OWNER if additional data or services of the types described in Paragraph 3.3. are necessary and assist OWNER to obtain such data and services.

1.4. Final Design Phase

ENGINEER shall:

- 1.4.1. On the basis of the preliminary design, prepare final Drawings and Specifications to show the character and scope of the work to be performed by Contractor.
- 1.4.2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist OWNER in consultations with appropriate authorities.
- 1.4.3. Furnish OWNER his opinion of typical cost based on the Drawings and Specifications.
- 1.4.4. Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders and assist in the preparation of other related documents.
- 1.4.5. Furnish ten (10) copies of the Drawings, Specifications, and Construction Contract Documents to the OWNER.

1.5. Bidding or Negotiating Phase

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

- 1.5.1. Assist OWNER to advertise for and obtain bids or negotiate proposals for each separate prime contract for construction, materials, services, or equipment.
- 1.5.2. Issue Addenda as appropriate to clarify or change the Bidding Documents.
- 1.5.3. Consult with and advise OWNER as to the acceptability of contractors and other persons and organizations proposed by prime contractor(s) for those portions of the work as to which such acceptability is required by the Contract Documents.
- 1.5.4. Consult with OWNER concerning the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution is permitted by the Contract Documents.
- 1.5.5. Attend the bid opening, tabulate the bids, and assist OWNER in evaluating the bids or proposals and in assembling and awarding contracts.

1.6. Construction Phase

During the Construction Phase:

- 1.6.1. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided by the Construction Contract. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Construction Contract shall not be modified except as ENGINEER may agree in writing. 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 by the Contract Documents.

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- 1.6.2. ENGINEER shall make periodic visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary to observe as an experienced and qualified design professional the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. ENGINEER will utilize, guide, and direct the activities of the Resident Project Representative assigned to the Project by OWNER according to Paragraph 2.2.1. and 7.3. to provide more continuous observation of the work. Based on information obtained by such observations, ENGINEER shall endeavor to determine if the work is proceeding in general conformance to the Contract Documents and to keep the OWNER informed of the progress of the work. ENGINEER shall have no responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractor(s) performing their work. ENGINEER shall have no responsibility for Contractor's failure to perform the work according to the Contract Documents. ENGINEER may disapprove or reject Contractor's work if ENGINEER believes the work will not produce a completed Project that conforms to the requirements of the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected by the Contract Documents.
- 1.6.3. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents. ENGINEER shall review shop drawings, samples, and other data which Contractor is required to submit, but only for conformance with the design concept according to the Contract Documents. ENGINEER shall evaluate substitute materials and equipment proposed by Contractor according to the Contract Documents. ENGINEER may, as OWNER's representative, require special inspection or testing of the work and shall receive and review all certificates of inspection, testing, and approval required by the Contract Documents. ENGINEER shall prepare routine Change Orders, Field Orders, and Work Change Directives.
- 1.6.4. ENGINEER shall act as initial interpreter of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.
- 1.6.5. Based on his on-site observations as an experienced and qualified design professional, or information provided by the Resident Project Representative, and on his review of Contractor's applications for payment and the accompanying data and schedules: ENGINEER shall determine the amounts owing to Contractor and recommend in writing payments to Contractor in such amounts; such approvals of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated. Recommending a payment will not impose on ENGINEER responsibility to make any examination to ascertain how or for what purpose the Contractor has used the moneys paid on account of the Contract Price, or to determine 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 there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

- 1.6.6. ENGINEER shall conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may approve, in writing, final payment to each Contractor. ENGINEER's recommendation of any payment or performance of any inspections does not relieve Contractor(s) of any responsibility to fulfill the terms of the Contract Documents nor will such inspection or recommendation place any responsibility on ENGINEER for Contractor(s)' failure to perform according to the Contract Documents.
- 1.6.7. ENGINEER shall not be responsible for the acts or omissions of any Contractor, any subcontractor or any of the Contractor(s)' or subcontractor(s)' agents or employees or any other persons (except his own employees and agents) at the Project site or otherwise performing any of the work of the Project.
- 1.6.8. ENGINEER shall prepare for OWNER a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) and Resident Project Representative to ENGINEER and which ENGINEER considers significant.

SECTION 2 – ADDITIONAL SERVICES OF ENGINEER

2.1. General

If authorized by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services; these services will be paid for by OWNER as indicated in Section 5.

- 2.1.1. Preparation of applications and supporting documents for governmental grants, loans, or permits in connection with the Project; preparations or review of environmental assessments and impact statements; 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 general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction; 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.

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- 2.1.5. Preparing documents for alternate bids requested by OWNER for work which is not executed or documents for out-of-sequence work.
- 2.1.6. Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of the design, the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and assistance in obtaining financing for the Project; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 2.1.7. Furnishing the services of independent consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, and providing data or services of the types described in Paragraph 3.3.
- 2.1.8. Assistance in connection with bid protests, re-bidding or renegotiating contracts for construction, materials, equipment or services.
- 2.1.9. Services in connection with Change Orders and Work Change Directives to reflect changes requested by OWNER if the compensation for Basic Services is not commensurate with the additional services rendered; services in making revisions to Drawings and Specifications caused by acceptance of substitutions proposed by Contractor; and services resulting from significant delays, changes, or price increases occurring as a direct result of the Project.
- 2.1.10. Services during out-of-town travel required of ENGINEER other than visits to the Project site as required by Section 1.
- 2.1.11. Providing field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with its work and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- 2.1.12. 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 any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.
- 2.1.13. Preparation of operating, maintenance, and staffing manuals; extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance.
- 2.1.14. Service 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.

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- 2.1.15. Serving as a consultant or witness for OWNER in any litigation, arbitration, mediation, public hearing or other legal or administrative proceeding involving the Project.
- 2.1.16. Additional service in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.
- 2.2. **Resident Services During Construction**
 - 2.2.1. A Resident Project Representative and assistants will be furnished by OWNER who will act as directed by ENGINEER in order to provide further protection against defects and deficiencies in the work. OWNER and ENGINEER will cooperate to provide mutual assistance for the accomplishment of ENGINEER's responsibilities and those of the Resident Project Representative. OWNER and ENGINEER shall each be responsible for their own acts or omissions and neither may be held responsible for the acts or omissions of the other.

SECTION 3 – OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide full information as to his requirements for the Project.
- 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 and construction of the Project.
- 3.3. Furnish to ENGINEER, as required by him for performance of his Basic Services, data prepared by or services of others, such as core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; environmental assessment and impact statements; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions, zoning, deed, and other land use; restriction; and other special data or consultations not covered in Paragraph 2; all of which ENGINEER may rely upon in performing his services.
- 3.4. Provide, as required by the Construction Contract, engineering surveys and staking 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 he 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. Pay all costs incident to obtaining bids or proposals from contractors.

MORRIS ENGINEERS

- 3.8. Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, and 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.
- 3.9. Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement. Such person shall have authority to transmit instructions, receive information, and interpret OWNER's policies and decisions with respect to ENGINEER's services.
- 3.10. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the Project.
- 3.11. 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.
- 3.12. Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.13. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 – PERIOD OF SERVICE

- 4.1. The provisions of 4.2. through 4.8., inclusive, 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 Construction Contracts, and construction of the Project including extra work and required extensions thereto.
- 4.2. The service called for in the Preparatory Phase and Preliminary Design Phase will be completed within thirty (30) calendar days following the authorization to proceed with that phase of services.
- 4.3. Upon authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase, so as to deliver contract Documents for all authorized work on the Project within ninety (90) calendar days after the authorization to proceed with that phase of services.
- 4.4. ENGINEER's services under the Preparatory Phase, Preliminary Design Phase and Final Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to OWNER for final acceptance, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction over design criteria applicable to the Project.

MORRIS ENGINEERS

- 4.5. After acceptance by OWNER of the Contract Documents and ENGINEER's most recent opinion of typical Project Cost and upon authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. 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 negotiations with Contractor(s).
- 4.6. 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 the written recommendation 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 involved more than one prime contract.
- 4.7. In the event that the work of the Project 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 or Negotiating and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts.
- 4.8. If OWNER has requested significant modifications or changes in the scope of the Project, the time of performance of ENGINEER's services shall be adjusted appropriately.
- 4.9. If OWNER fails to give prompt authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days after the completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.
- 4.10. 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 5.3.3. for the services delayed or suspended. 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.

SECTION 5 – PAYMENTS TO ENGINEER

5.1. Methods of Payment for Services and Expenses of ENGINEER

- 5.1.1. Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 on the following basis:
- 5.1.1.1. Lump Sum. If the work of the entire Project is awarded on the basis of one prime contract, a lump sum fee of Twelve Thousand and 00/100 Dollars (\$12,000.00).

- 5.1.2. 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 2.1.16., inclusive (except services covered by Paragraph 2.1.7. and services as a consultant or witness under Paragraph 2.1.15), on the basis of the fee schedule listed in Paragraph 7.1.
- 5.1.2.2. Special Consultants. For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to Paragraph 2.1.7., the amount billed to ENGINEER therefore times a factor of 1.05.
- 5.1.2.3. Serving as a Witness. For the services of the principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with Paragraph 2.1.15, at the rate of 1.2 times the fees listed in Paragraph 7.1. (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.).
- 5.1.2.4. Resident Project Services. A Resident Project Representative will be furnished under Paragraph 2.2.1. by and at the expense of the OWNER.
- 5.1.3. Reimbursable Expenses. In addition to payments provided for in Paragraphs 5.1.1. and 5.1.2., OWNER shall pay ENGINEER the actual costs of all reimbursable expenses incurred in connection with all Basic and Additional Services.
- 5.1.4. As used in this Paragraph 5.1., the term "reimbursable expenses" will have the meanings assigned in Paragraph 5.3.1.
- 5.2. Times of Payment**
- 5.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for reimbursement expenses incurred. When compensation is on the basis of a lump sum or percentage of construction cost the periodic statements will be based upon ENGINEER's hourly fee schedule. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.
- 5.2.2. The OWNER shall, upon conclusion of each phase of Basic Services, pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following of total compensation for all phases of Basic Services:

<u>Phase</u>	<u>Fee</u>
Preliminary and Final Design	\$ 10,000.00
Bidding and Construction	<u>\$ 2,000.00</u>
Total	\$ 12,000.00

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5.3. General

5.3.1. 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 and Specifications, and similar Project-related items in addition to those required under Section 1; insurance in addition to that identified by Section 7.3; and, if authorized in advance by OWNER, overtime requiring higher than regular rates.

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 therefore, 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. If this Agreement is terminated by OWNER, upon the completion of any phase of the Basic Services, payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. If this Agreement is terminated by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis ENGINEER's hourly fee schedule times a factor of 1.25 for services rendered during that phase to date of termination by principals and employees assigned to the Project. In the event of any 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.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

This Agreement may be terminated at the sole discretion of either party upon thirty days' written notice.

6.2. Reuse of Documents.

All documents including Drawings and Specifications furnished by ENGINEER pursuant to this Agreement are instruments of his services in respect of 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 by the OWNER without specific written verification or adaptation by ENGINEER 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 attorney's 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.

6.3. Estimates of Cost.

Since ENGINEER has no control over the cost of labor, materials or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable project cost, construction cost, or typical costs provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but ENGINEER can not and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of cost prepared by him. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to the construction cost he shall employ an independent cost estimator as provided in Paragraph 3.8.

6.4. Successors and Assigns.

OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither OWNER nor ENGINEER shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

6.5. Fiduciary Responsibility

ENGINEER offers no fiduciary service to OWNER and ENGINEER has no fiduciary responsibility to OWNER.

SECTION 7 – SPECIAL PROVISIONS

OWNER and ENGINEER agree that this AGREEMENT is subject to the following special provisions which together with the provisions hereof and the exhibits and schedules hereto represent the entire AGREEMENT between OWNER and ENGINEER; they may only be altered, amended or repealed by a duly executed written instrument.

7.1 Hourly Fee Schedule

The hourly fee schedule primary project personnel are:

Engineering Services Payroll Costs:

Principal Engineer	\$85.00 per hour
Designer	\$45.00 per hour
Engineering Technician	\$35.00 per hour
Engineering Administration	\$35.00 per hour

7.2. Resident Project Representative.

ENGINEER recommends and OWNER agrees to provide at OWNER's direct expense a Resident Project Representative during the project construction.

MORRIS ENGINEERS

7.3.

ENGINEER's Insurance.

The ENGINEER shall carry and keep in force during this contract, policies of insurance in the minimum amounts as set forth below.

General Liability: Single Limit..... \$100,000.00
 Aggregate..... \$300,000.00
Workers' Compensation: Statutory

Automobile Liability:

Bodily Injury:
 Each Person..... \$ 50,000.00
 Each Accident..... \$100,000.00
Property Damage:
 Each Accident..... \$ 50,000.00

IN WITNESS WHEREOF the parties hereto have made and executed this AGREEMENT as of the day and year first above written.

OWNER:

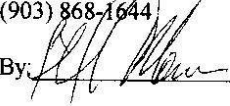
City of Sherman
Dept. of Engineering
P.O. Box 1106
Sherman, Texas 75091-1106
(903) 892-7208

By: _____

Title: _____

ENGINEER:

Morris Engineers
P.O. Box 606
225 E. Houston
Sherman, Texas 75091-0606
(903) 868-1644

By:  11/26/08

Title: Professional Engineer

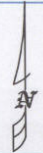
MASTER
MORRIS ENGINEERS

MORRIS ENGINEERS



City of Sherman, Texas
Willow Street Water Main Replacement

PROJECT LOCATION MAP





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. C.8

*** RESOLUTION NO. 5306**

Authorizing Execution of an Encroachment Easement to Amy Coffman for the Construction of a Swimming Pool in a Utility and Drainage Easement in Block 3, Lot 7 of the Pebblebrook Addition, Phase 1B to the City of Sherman (1825 Pebblebrook Lane)

Issue

To consider granting an encroachment into the utility and drainage easement located at 1825 Pebblebrook Lane

Background

The owner of the residence at 1825 Pebblebrook Lane proposes to construct a swimming pool, which would encroach into an existing 10' utility and drainage easement. The City has no utilities in the referenced easement; and the private utilities have no objections to the encroachment.

Origination

Amy Coffman of 1825 Pebblebrook Lane

Financial Consideration

None

Staff Recommendation

The staff has no objections to the proposed encroachment and recommends approval.

Alternatives

As may be directed by the City Council

Attachments

Resolution No. 5306

Encroachment Easement

Copy of Plat

Survey and Pool Sketch

Citizen Request

Utility Letters (4)

Location Map

Prepared by:

Mark Gibson, Director of Utilities and Engineering

Approved by:

George Olson, City Manager

RESOLUTION NO. 5306

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT EASEMENT TO AMY COFFMAN FOR THE CONSTRUCTION OF A SWIMMING POOL IN A UTILITY AND DRAINAGE EASEMENT IN BLOCK 3, LOT 7 OF THE PEBBLEBROOK ADDITION, PHASE 1B TO THE CITY OF SHERMAN (1825 PEBBLEBROOK LANE); 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 Interim City Attorney, to execute an encroachment easement to Amy Coffman, in substantially the same form as presented at this meeting, for the construction of a swimming pool in a Drainage and Utility Easement along Block 3, Lot 7 of the Pebblebrook Addition, Phase 1B (1825 Pebblebrook Lane), in accordance with the location map approved by the City Engineer and the Interim 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 _____, 2008.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

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 **AMY COFFMAN** of Sherman, Texas, hereinafter called "GRANTEE", an encroachment easement to construct a swimming pool within a drainage and utility easement at Lot 7, Block 3 of the Pebblebrook Addition, Phase 1B and known as 1825 Pebblebrook Lane, as shown on the location map 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, her heirs, successors and assigns, for the limited purpose of constructing an in-ground swimming pool within the herein described encroachment area, as shown on the attached exhibit. GRANTEE agrees that all maintenance of the swimming pool and related equipment shall be the responsibility of GRANTEE without cost, fees or expense to GRANTOR.

That GRANTEE shall fully and completely indemnify and hold harmless the GRANTOR from any and all damages, actions, suits, claims, 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 located therein, GRANTEE hereby releases GRANTOR and any public utility from any and all claims for damages, costs or expenses, and shall include, but specifically not be limited to, the cost of repair, relocation, or removal of the swimming pool and loss of use of such area.

TO HAVE AND TO HOLD the above described encroachment easement unto the said GRANTEE, her heirs, successors and assigns, until the use of such encroachment is no longer necessary.

EXECUTED this the _____ day of _____, A.D., 2008.

CITY OF SHERMAN, TEXAS

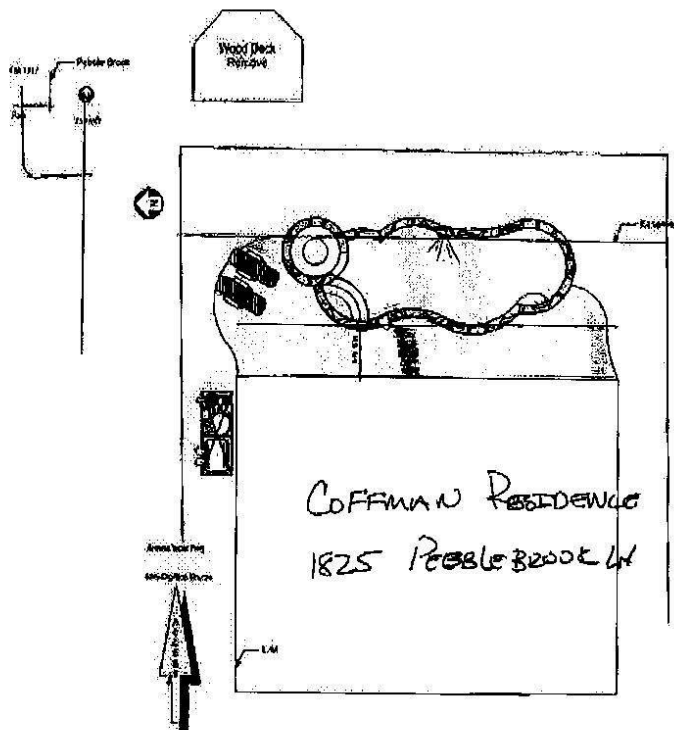
BY: _____
GEORGE OLSON,
CITY MANAGER

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, in and for said county and state, on this day personally appeared **GEORGE OLSON**, 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., 2008.

**NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS**



U.S.A.

The backside of the pool
is 2'6" in easement.

Thanks, Chad

November 17, 2008

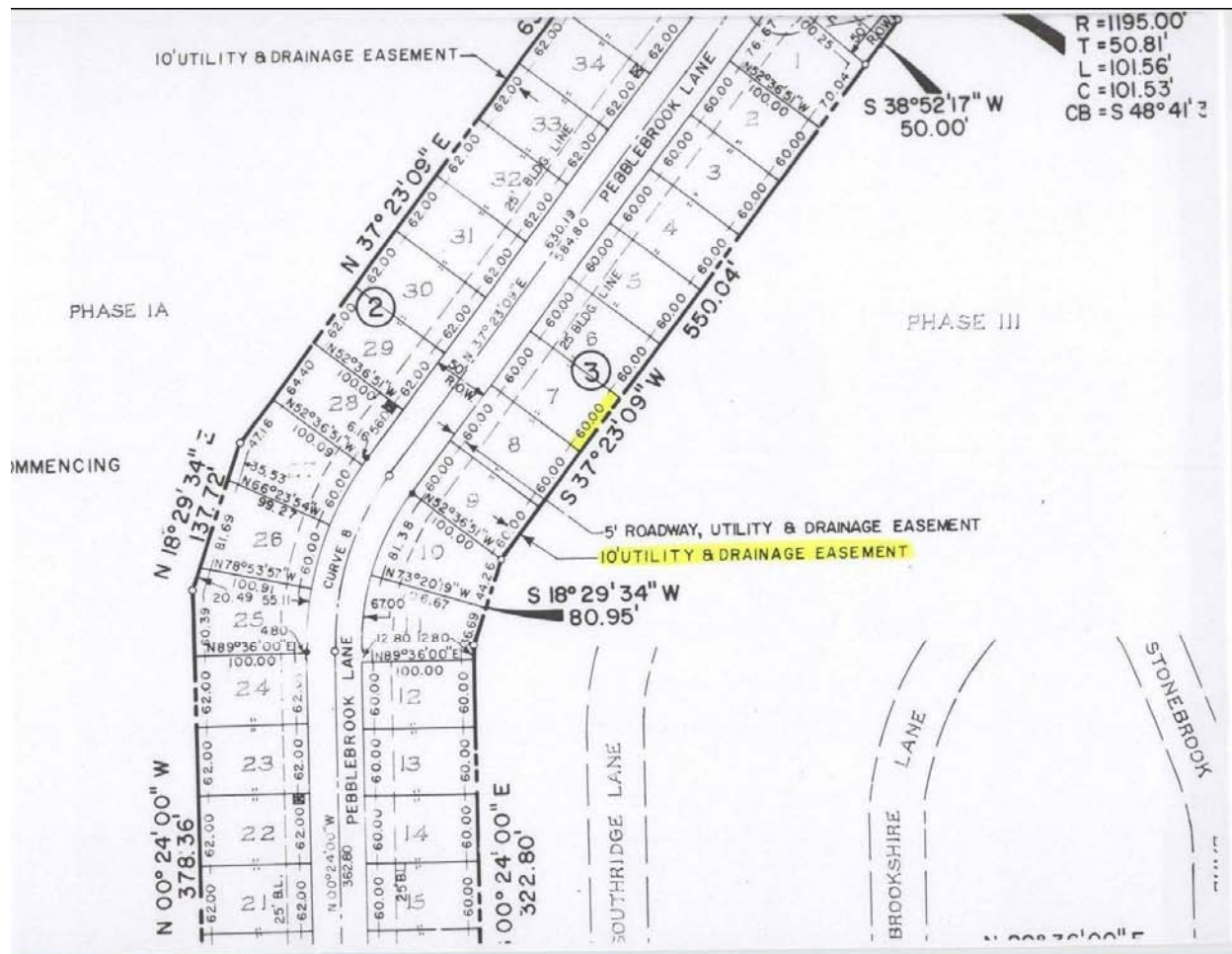
RE: 1825 Pebblebrook Lane
Sherman, TX 75092

To Whom It May Concern:

This letter is to formally request an encroachment into the utility and drainage easement on the back of my property for the purpose of installing an in-ground swimming pool. Taking into consideration the City of Sherman's rule of having the pool six feet from the back of the house and having a ten foot easement, it is difficult to have sufficient space left to put in the pool. I am asking for an encroachment of two feet and six inches.

Please contact me if you need any further information. Thank you for considering this request.

Amy Coffman
903-814-9628
1825 Pebblebrook Lane
Sherman, TX 75092





3720 TEXOMA PARKWAY
P.O. Box 1223
SHERMAN, TX 75090
TEL 903•893•6548
FAX 903•868•2754

November 20, 2008

Amy Coffman
1825 Pebblebrook Ln.
Sherman, Texas 75092

Re: Utility easement encroachment:

Dear Amy Coffman,

Cableone has no objection of a three feet encroachment into the utility easement at the rear
of 1825 Pebblebrook Ln. Sherman, Texas.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rod Ralls", written in a cursive style.

Rod Ralls

Technical Operations Manager

December 3, 2008

Amy Coffman
1825 Pebblebrook Lane
Sherman, Texas 75092



2303 S. FM 1417
Mail code: TXG46SHR
Sherman, Texas 75092
Ofc: 903-870-5294
Fax: 903-870-0009

SUBJECT: Easement encroachment for swimming pool.

To Whom It May Concern:

This letter is to inform you that Verizon Telephone Company does not object to an encroachment of 3' into the telephone utility easement at 1825 Pebblebrook Lane, in Sherman, Texas. Verizon has facilities within this area, and extreme caution should be used. If the Verizon cables are damaged in any way it will be the responsibility of the owners to pay for such damages. Please have all utilities located prior to digging.

If you have any questions concerning Verizon approving the easement encroachment on this property please contact me at (903) 870-5294.

Sincerely,

Robert (Bob) Holland
Engineer Supervisor OSP
2303 S. Hwy. 1417
Sherman, Texas 75092



Oncor Electric Delivery
400 W. Virginia
McKinney, TX 75069

December 4, 2008

Mrs. Amy Coffman
1825 Pebblebrook Lane
Sherman, Texas 75092

Subject: Request from Mrs. Amy Coffman, to construct pool improvements within the ten (10) foot drainage and utility easement located along the south lot line of Lot 7, Block 3 of the Pebblebrook Addition, an addition to the City of Sherman, 1825 Pebblebrook Lane

Dear Mrs. Coffman:

Oncor Electric Delivery Company LLC has received the referenced request and has reviewed the information as it pertains to your proposed improvements and potential conflicts with Oncor and its continued use of the easement and facilities.

At this time, Oncor Electric Delivery Company has no objections to your proposed pool construction encroaching within the easement as illustrated on the attached Exhibit "A". This letter may be used as Oncor Electric Delivery Company LLC approval for such installation as required by the City of Sherman.

Oncor Electric Delivery Company LLC retains its rights in full regarding said easement affecting the subject property and any and all liabilities for the proposed pool construction shall remain the obligation of you the landowner. Additionally, you shall further agree to indemnify Oncor Electric Delivery Company LLC from any and all claims related to the proposed pool and shall take the necessary steps to locate all electric facilities within the easement and maintain the proper clearances to avoid contact or damage to Oncor Electric Delivery Company LLC facilities.

Please do not hesitate to call me at 972-569-6304 should you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard A. Loftis".

Richard A. Loftis
Oncor Electric Delivery Company LLC
Right of Way Services

FM 1417

Pebble Brook

Prop.

75' HWY

Wood Deck
Remove

WASTA



10' utility & Drainage Easement

13'

Easement



Lot 7, Block 3
Pebblebrook Addition, Phase 18

Access letter Req.

Mini-Dig/Boc Shovel



E/M



December 3, 2008

Ms. Amy Coffman
1825 Pebblebrook Lane
Sherman, Texas 75092

Re: Atmos Energy Corporation abandonment of 10' utility easement
1825 Pebblebrook Lane, Sherman, Texas – Grayson County
Along the East side of Lot 7 Block 3, Pebblebrook Addition, Phase 18

Dear Ms Coffman:

After review of the subject request, Atmos Energy Corporation does hereby grant permission for the abandonment of the 10' utility easement located along the east side of 1825 Pebblebrook Lane, Sherman, Texas – Grayson County, also known as Lot 7 Block 3 of the Pebblebrook Addition

Atmos Energy Corporation offers not objections to the abandonment of the 10' wide utility easement shown by plat. This letter may be used as Atmos Energy's approval for such permission as required by the City of Sherman.

Atmos Energy Corporation retains its rights in full and effect of all remaining and existing utility easement affecting the subject property.

Please do not hesitate to call me at 214 206 2941 should you have any questions

Sincerely,

A handwritten signature in black ink, appearing to read "LJ Robinson".

LJ Robinson
Right of Way Agent
214.206.2941

Atmos Energy Corporation
5420 LBJ FRWY, Dallas TX 75240





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.1

OTHER BUSINESS

**Receive Quarterly Progress Report from Sherman Economic Development Corporation
Board Vice Chairman Greg Kirkpatrick and SEDCO President John Boswell**

Issue

To receive the Sherman Economic Development Corporation's (SEDCO's) quarterly progress report from Board Vice Chairman Greg Kirkpatrick and President John Boswell

Background

The brief presentation by the SEDCO Board Vice Chairman and President will provide the City Council with an overview of SEDCO's activities and accomplishments during the last three months. SEDCO's last progress report was presented at the September 18, 2008 joint meeting with the City Council.

Origination

City Council

Financial Consideration

None

Attachments

SEDCO's Quarterly Progress Report

**Prepared and Approved by:
George Olson, City Manager**

REPORTING FORM FOR BOARDS AND COMMISSIONS

Name of Board: Sherman Economic Development Corporation

Name of Chairman: Andy Olmstead

Name of Vice Chairman: Greg Kirkpatrick

Date of Report to City Council: December 15, 2008

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

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

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

- 1) The SEDCO Board agreed to a joint marketing effort with Grayson County and the Denison Development Alliance for \$33,000/year for three years.
- 2) Approved an incentive with Presco Products for seven new jobs. (Approved Sept-08)
- 3) Approved an incentive with Clay Precision to add \$1.2 million in new equipment plus add six new jobs. (Approved Sept-08)

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

The Board is working with SEDCO staff on several potential projects that will create new jobs and add taxable capital investment in Sherman. Additionally, Rad Richardson and John Boswell represent SEDCO on the Joint Marketing Committee to promote the North Texas Regional Airport.

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

Since the joint meeting in September, the SEDCO Board held two regular scheduled meetings.

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

100%.

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

No.

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

The SEDCO staff has attended two trade shows to try to generate new leads for Sherman. The staff has also been working closely with Grayson County on the joint marketing program for the North Texas Regional Airport. The Sherman Economic Development Corporation was recently recognized by *Expansion Solutions Magazine's Award of Excellence* as a top five award winner for High Tech Expansions in 2008.



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.2

OTHER BUSINESS

**Receive Tourism Presentation
from Assistant City Manager/CFO Robby Hefton**



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.3

OTHER BUSINESS

Consider Calling a Special Meeting of the City Council for Tuesday, January 20, 2009 and Tuesday, February 17, 2009, due to Conflict with Federal Holidays

Issue

To consider calling a special meeting of the City Council for 5:00 p.m. on Tuesday, January 20, 2009 and on Tuesday, February 17, 2009, to make up for the regular meetings in January and February, which fall on the Federal Holidays of Martin Luther King, Jr. Day and Washington's Birthday (President's Day)

Background

Article II, Section 9 of the City Charter provides that City Council regular meetings shall fall "on the first and third Mondays of each month, excluding holidays, at its discretion." While the Charter provision does not require the City Council to meet on a Federal Holiday, neither does it establish a make up date, which would be done by a motion and order with a 72-hour public notice.

The City Council's second regular meeting in January falls on Monday, January 19th, the Federal Holiday to celebrate Martin Luther King, Jr. Day. The Council's second regular meeting in February falls on Monday, February 16th, the Federal Holiday to celebrate Washington's Birthday (President's Day). These days are not officially recognized holidays for City of Sherman employees.

The City Council has expressed the desire to hold its regular meetings on the regularly scheduled first and third Mondays of each month as long as the City of Sherman is open for business as is the case with Monday, January 19th (Martin Luther King, Jr. Day) and Monday, February 16th (Washington's Birthday/President's Day).

Origination

Mayor and Council

Financial Consideration

No financial impact to be considered

Council Action Requested

To consider changing the City Council's current policy by resolution or to consider calling special City Council meetings on Tuesday, January 20th and Tuesday, February 17th

Alternatives

As the City Charter does not require the City Council to make up a regular meeting which falls on a Federal Holiday, the Council could elect to skip these meetings.

Attachments

Charter Provision
Resolution No. 3018

Prepared and Approved by:
George Olson, City Manager

HOME RULE CHARTER

ARTICLE II. CITY COUNCIL

Section 9. Rules of procedure and meetings.

(a) Meetings. The first meeting of each newly elected council shall take place on the first Tuesday following its election and qualification as provided by law. Thereafter, the city council will hold regular meetings on the first and third Mondays of each month, excluding holidays, at its discretion. Special and emergency meetings may be held on the call of the mayor or of four (4) or more council members. All meetings shall be open to the public in accordance with the Texas Open Meetings Act, except for lawfully conducted executive sessions, the discussions of which shall be confidential. All final action shall be noticed on the agenda and decided in a public meeting.

(b) Rules and journal. The council shall determine its own rules and order of business except that, upon the request of any member, Roberts Rules of Order shall be followed for the designated issue. There shall be kept a detailed journal of its proceedings, which shall be a public record.

(c) Voting. The council shall determine its own rules for voting except that, upon the request of any member, a roll call vote shall be required for the issue being considered. Four (4) members of the council shall constitute a quorum. No action of the council except as otherwise provided in this charter shall be valid or binding unless adopted by the affirmative vote of the majority of council members present and voting.

(Ordinance 3048, sec. 2(6), adopted 4/5/75; Ordinance 4745, sec. 2, adopted 3/8/99; Ordinance 4927, sec. 4(3), adopted 5/5/01; Resolution 4442, adopted 5/6/03)

93-018

RESOLUTION NO. 3018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, THAT COUNCIL MEETINGS SCHEDULED FOR A MONDAY WHICH IS A FEDERAL HOLIDAY SHALL BE RESCHEDULED TO THE FOLLOWING TUESDAY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Charter of the City of Sherman provides at Article II, Section 9(a) that the Council shall meet regularly every other Monday and as prescribed by its rules; and

WHEREAS, a number of Federal holidays are celebrated on Monday, with businesses closed and citizens away from their homes with family and friends; and

WHEREAS, Council Meetings should be scheduled to allow for the greatest possible participation by citizens;

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

SECTION 1. That it shall be a standing rule of this Council that regularly scheduled Monday Council Meetings which fall on a Monday celebrated as a Federal holiday, shall be rescheduled for the following Tuesday.

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

PASSED AND APPROVED this the 8TH day of NOVEMBER, 1993.


MAYOR

93-018

ATTEST:

Y. Helen J. Fried
CITY CLERK

APPROVED AS TO FORM:

John D. Williams
CITY ATTORNEY



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.4

*** OTHER BUSINESS**

Final Plat Approval of O'Hanlon Ranch Estates, Phase 3; DGR Development Group, Ltd., Owners; Vilbig & Associates, Inc., Engineers; and Sartin & Associates, Surveyors [3000-3100 Blocks of Overland Trail, 2500-2800 Blocks of F.M. 1417 North (Heritage Parkway) and the 100 Block of Shady Oaks Lane]

Issue

To consider final plat approval of the O'Hanlon Ranch Estates, Phase 3

Background

This is the third phase of the O'Hanlon Ranch Estates. The owner would like to plat the property into 41 lots for residential development.

Origination

DGR Development Group, Ltd. (Owners); Vilbig & Associates, Inc. (Engineers); and Sartin & Associates (Surveyors)

Board Recommendation

At the November 18, 2008 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Final Plat be approved.

Attachments

Location Map

Photos

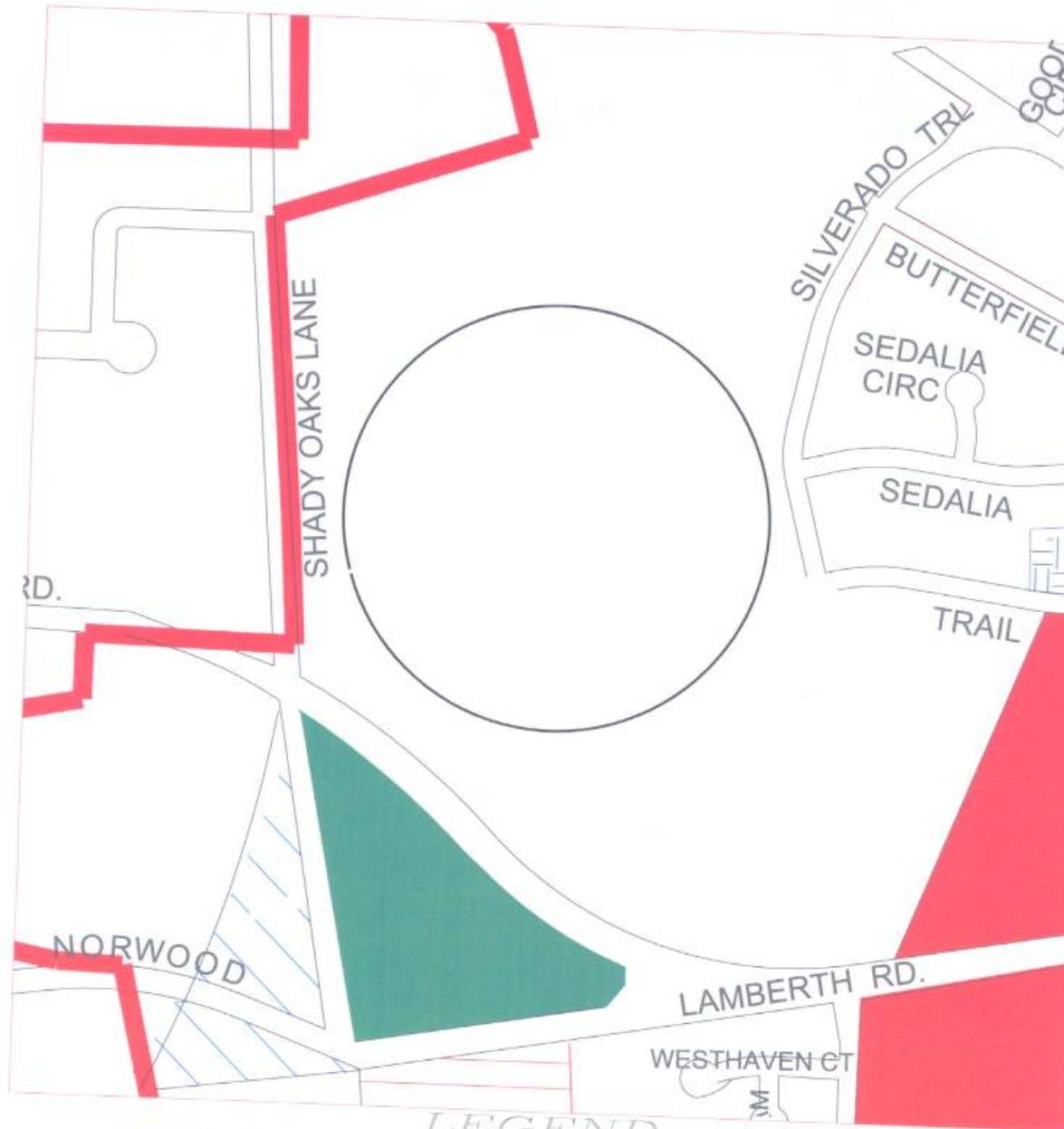
Plat

P&Z Communication

Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager



LEGEND

R-A	SINGLE FAMILY AGRICULTURAL DISTRICT	M-2	HEAVY MANUFACTURING DISTRICT
SF-1	SINGLE FAMILY RESIDENTIAL DISTRICT	M H	MANUFACTURED HOUSING DISTRICT
R-1	ONE AND TWO FAMILY RESIDENTIAL DISTRICT		BLALOCK INDUSTRIAL PARK
R-2	MULTI-FAMILY RESIDENTIAL DISTRICT	O-1	OVERLAY DISTRICT - 75 & 82
C-1	RETAIL BUSINESS DISTRICT	O-1.1	OVERLAY DISTRICT - 1417
C-2	GENERAL COMMERCIAL DISTRICT	O-1.2	OVERLAY DISTRICT - SAM RAYBURN FREEWAY
C-3	OFFICE DISTRICT	CPO	COLLEGE PARK OVERLAY
M-1	LIGHT MANUFACTURING DISTRICT	A&C	ARTS & CULTURAL OVERLAY DISTRICT
M-1.5	MEDIUM MANUFACTURING DISTRICT	CBD	CENTRAL BUSINESS DISTRICT



3000-3100 OVERLAND
2500-2800 FM 1417 N.

ENGINEERING DEPARTMENT







**O'HANLON RANCH ADDITION
PHASE 3**
to the
CITY of SHERMAN, TEXAS
(Being 21.74 Acres)



Owners & Developers
DGR Development Group, Ltd.
Dean Gilbert, Inc.
801 E. Taylor
Sherman, Texas 75090
Dean Gilbert, President

SARTIN & ASSOCIATES, INC.
Regional Professional Land Surveyors
1011 S. Travis, P.O. Box 1493 Sherman, Texas 75091-1493
Ph. (409) 897-8003 Fax (409) 898-7920

SHEET 1 OF 2
100 x 14 pgs.

City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
November 18, 2008
Jason Sofey, Chairman

Jim Jacobs, Vice Chairman
Robin Atherton, Commissioner
Lawrence Davis, Commissioner
Brad Morgan, Commissioner

Don Hicks, Commissioner
Steve Jones, Commissioner
David Plyler, Commissioner
Darren Tankersley, Commissioner

**3000-3100 Blocks of Overland Trail, 2500-2800 Blocks of
F.M. 1417 North and 100 Block of Shady Oaks Lane being
21.74 acres in the J.B. McAnair Survey, Abstract #763 and
the James H. Vaden Survey, Abstract No. 1228
Final Plat**

Requested Action/Proposed Use:

Final Plat of O'Hanlon Ranch Estates, Phase 3.

Background

This is redevelopment of existing property that has never been platted.

Adjacent Zoning:

R-1 (One and Two Family Residential) District

Origination:

DGR Development Group, Ltd (Owners), Vilbig & Associates, Inc. (Engineers) and Sartin & Associates (Surveyors).

Master Plan Designation:

Residential

Attachments:

Location map
Photographs
Plat
Staff Review

Prepared by:
Rita Gaither,
Development Coordinator

Approved by:
Scott Shadden,
Development Services Director

STAFF REVIEW LETTER

November 12, 2008

DGR Development Group, Ltd.
Dean Gilbert, Jr.
801 E. Taylor
Sherman, Texas 75090

Dear Applicants,

The request for approval of a Final Plat of O'Hanlon Ranch Estates, Phase 3 concerning the property located at 3000-3100 Blocks of Overland Trail, 2500-2800 Blocks of F.M. 1417 North and the 100 Block of Shady Oaks Lane has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, November 18, 2008 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. A block number shall be shown for lots 1- 4 facing Overland Trail.
2. Original tax certificates shall be furnished for the purpose of recording the plat.
3. Letters from the various utility providers are required verifying availability of service and when service will be available. (City will acquire)
4. It shall be noted on the plat: Detention pond and associated appurtenances are privately owned and maintained.
5. The Drainage and Detention Easement notation shall be removed.
6. Building lines shall be removed from the plat.
7. The street name Remuda Trail shall be shown on the plat between Block 2 and 3.
8. Show all dimensions on North Texas Municipal Water District Easement in several locations.
9. The drainage easement between lots 3 and 4, Block 1 shall be 20' in width.
10. Easement between lot 1 and 2 on Overland Trail shall be a private easement.
11. Drainage easement in Block 1 shall be terminated at the end of Lot 5.
12. The Drainage easement in Lots 1-5 shall be a minimum of 20' in width and the bearings, distances and locations shall be noted.
13. Drainage easement between Lots 10 and 11, Block 1 needs to be fully defined with bearings and distances.
14. 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 Rita Gaither, Development Coordinator at 903-892-7212 prior to the meeting.

Respectfully,

Mark Gibson
Director of Utilities and Engineering

cc: George Olson, City Manager Scott Shadden, Director of Development Services
 Rita Gaither, Development Coordinator Danny Fuller, Fire Marshal
 Interim City Attorney Jeff Miller, Director of Public Works
 Vilbig & Associates, Inc., 10132 Monroe Dr., Dallas, Texas 75229
 Sartin & Associates, P.O. Box 1843, Sherman, Texas 75090



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.5

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.6

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.7

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

a) Tri-County Senior Nutrition Board of Directors (1)

Issue

Mayor Bill Magers currently serves on the Tri-County Senior Nutrition Board of Directors. His term expired on September 30, 2007; and he should have been reappointed to serve until September 30, 2008. Last year, elected officials from Sherman, Denison, Bonham, Gainesville, Grayson County, Cooke County, and Fannin County took over the Tri-County Senior Nutrition Board of Directors. There were problems with the Board that needed to be corrected. That has been done; and the elected officials feel it is time to let volunteers take over the Board. The new term will be until September 30, 2009. Phyllis Hicks has completed an application for service on the Board.

Background

The Tri-County Senior Nutrition Board functions as a contracting agent with the Texoma Council of Governments and oversees the Tri-County Senior Nutrition Project. The most recognized program of the Tri-County Senior Nutrition Project is the Meals on Wheels Program. The mission of the Senior Nutrition Program is to provide the momentum needed to enable older citizens to continue living in active independence.

Origination

The request originated with Mayor Bill Magers.

Financial Consideration

There is no financial consideration to the City.

Staff Recommendation

It is recommended that the City Council consider an appointment to the Tri-County Senior Nutrition Board of Directors.

Alternatives

The City Council could delay the appointment.

Attachments

A membership roster, fact sheet, applicant list, and application are attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

MEMBERSHIP ROSTER

TRI-COUNTY SENIOR NUTRITION BOARD

LENGTH OF TERMS: 1 YEAR
Consecutive Term Limit: No Limit

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
Bill Magers	1	A 2/7/2007	9/30/2007	1	Sherman Mayor
Drue Bynum					Grayson County Judge
Robert Brady					Denison Mayor
Roy Floyd					Bonham Mayor
Glenn Loch					Gainesville Mayor
Bill Freeman					Cooke County Judge
George Henderson					Fannin County Judge

NOTE:

CITY STAFF:
Revised 2/6/2007

FACT SHEET

TRI-COUNTY SENIOR NUTRITION BOARD

Established by TRI-COUNTY SENIOR NUTRITION PROJECT, INC. DATE 1976

1. Number of Members SEVEN (7)
2. Term of Appointment ONE YEAR - DIRECTOR
3. Consecutive Term Rule NONE
4. Qualifications for Membership APPOINTEE MAY BE EITHER AN ELECTED OFFICIAL OR A PRIVATE CITIZEN WITH A STRONG SUPPORTIVE INTERESTED IN SENIOR CITIZEN AFFAIRS
5. Appointed by CITY COUNCIL
6. Board Organization

PRESIDENT X VICE PRESIDENT X SECRETARY X
ELECTED X APPOINTED
7. Departmental Responsibility COUNCIL/CITY MANAGER
8. Meeting Date AS CALLED; AND ONE ANNUAL MEETING
9. Attendance Requirements DETERMINED BY BOARD

=====

FUNCTIONS:

This Project Board functions as a contracting agent with the Texoma Council of Governments and other agencies to provide and operate facilities and services for the benefit of senior citizens in the Texoma Region.

MEMBERSHIP:

Each governmental entity appoints one (1) Director to hold office until the annual meeting. The entities are: the City of Sherman, City of Gainesville, City of Bonham, City of Denison, and the Counties of Cooke, Fannin and Grayson.

APPLICANT LIST

Tri-County Senior Nutrition Board of Directors

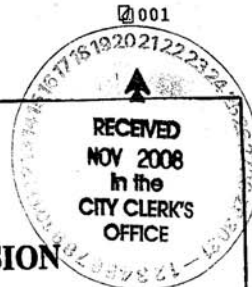
Positions Vacant 1

Applicant	Address	District	Qualifications
Phyllis Hicks	619 Madison Place	1	

COMMENTS:



CITY OF SHERMAN APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP



Return completed application to:
City Clerk's Office
220 W. Mulberry
P.O. Box 1108
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: PHYLIS HICKS

(Please print legal name and your name as you wish it to appear, if different.)

Name of Board

or Commission: TRI COUNTY SR. NUTRITION BOARD

☐ Yes, I would be interesting in serving on subcommittees that may be formed.

Personal Information

Occupational Information

Home Address: 619 MADISON PLACE 75092

Business Name: _____

Mailing Address: SAME

Occupation: HOUSEWIFE

Telephone: 903-868-2820

Fax: _____

Address: _____

E-Mail: PHICKS2@VERIZON.NET

Telephone: _____

Fax: _____

Sherman Resident for 15 years County: GRAYSON

E-Mail: _____

Drivers License No.: 18391780

*Voter Registration No.: 1025168202 ✓

Which Council District do you live in? (see attached map) 1 ✓

Prior work experience: (please include dates)

OFFICE MGR HUSBANDS OILFIELD BUSINESS 1969-1991
PERSONAL ASST. - SCHEDULED PLUS CONGRESS WOMAN IN DC 1992-1993
REAL ESTATE SALESPERSON 1994-2008

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? _____

Business College, Correspondence School, Adult Education, Other? 2 YEARS

Name of College/University: FRANK PHILLIPS JR COLLEGE ☐ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: (please include dates)

WYOMING RED CROSS - 1971-1978 NATRONA CO WYO - HOMELESS
MARCH ORDINES 1986-1999 WYO AND TX
FULL - SHERMAN TX 1994-PRESENT WILSON JONES FOUNDATION
HEALTH BY DESIGN + GOLF TOURNAMENT COMMITTEE HOME HOSPICE

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Taxes - No

Application held for 12 months from date received

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission (how would you use this experience to benefit the City)?

AM VERY INTERESTED IN NUTRITIONAL NEEDS OF OUR SR CITIZENS.

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

- 1) MAKE SURE TriCounty Sr. Nutrition stays solvent and able to serve our seniors
- 2) Continue to improve quality of meals served to our seniors
- 3) Make sure center managers are qualified for the job and use funds efficiently

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

active in volunteer board and have expertise in financial matters in real estate sales

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

None

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☒ Yes ☐ No

Comments: served on advisory committee for Meals on Wheels

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

*I affirm that I am qualified to vote.

Signature: Rhonda L. Liles

Date: 11-18-08

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.8

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. D.9

ADJOURNMENT

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 12-15-2008

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2008 CITY COUNCIL MEETINGS

JANUARY

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

FEBRUARY

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

MARCH

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

APRIL

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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6	7	8	9	10	11	12
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20	21	22	23	24	25	26
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MAY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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4	5	6	7	8	9	10
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18	19	20	21	22	23	24
25	26	27	28	29	30	31

JUNE

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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15	16	17	18	19	20	21
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29	30					

JULY

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27	28	29	30	31		

AUGUST

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31						

SEPTEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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7	8	9	10	11	12	13
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OCTOBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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NOVEMBER

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DECEMBER

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27	28	29	30	31		

01/21/08 - M.L.K., Jr. Birthday - Called Council Meeting on 01/22/08
02/29/08 - 12:00 Noon Called Meeting with Chamber Board
05/10/08 - City Council Election
05/13/08 - 12:00 Noon Called Meeting to Canvass Election Results
05/22/08 - 6:00 PM Called Meeting for Comprehensive Plan Community Forum
05/29/08 - 6:00 PM Called Meeting for Comprehensive Plan Community Forum
06/10/08 - 12:00 Noon Budget Planning Meeting in Council Chambers
07/17-18/08 - Budget Workshop in Council Chambers (adjourned on 07/17/08)

09/01/08 - Labor Day - Called Council Meeting on 09/02/08
09/18/08 - 12:00 Noon Joint Meeting with SEDCO Board
11/20/08 - 12:00 Noon Called Meeting for 2nd Reading, PH and
Adoption of Enterprise Texas Pipeline Franchise Ordinance

2009
CITY COUNCIL MEETINGS

JANUARY

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

FEBRUARY

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MARCH

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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22	23	24	25	26	27	28
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APRIL

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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26	27	28	29	30		

MAY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

JUNE

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

JULY

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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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30	31					

SEPTEMBER

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

OCTOBER

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

NOVEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

DECEMBER

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		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

01/19/09 - M.L.K., Jr. Birthday / Regular Council Meeting
 01/26/09 - 12 Noon Joint Meeting w/P&Z Commission re: Comprehensive Plan
 02/16/09 - Washington's Birthday / Regular Council Meeting
 09/07/09 - Labor Day / Called Council Meeting on 09/08/09