

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, APRIL 6, 2009
5:00 P.M.**

- A.1 [CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN](#)
- A.2 [PLEDGE OF ALLEGIANCE](#)
- A.3 [INVOCATION BY COUNCIL MEMBER CHIP ADAMI](#)
- A.4 [APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF MARCH 16, 2009](#)

Proclamations

- A.5 [PROCLAMATION](#)
“Occupational Therapy Month” – April 2009
- A.6 [PROCLAMATION](#)
“Sexual Assault Awareness Month” – April 2009
- A.7 [PROCLAMATION](#)
“National Library Week” – April 12-18, 2009

Public Hearing

- B.1 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5595](#)
Declaring as Elected the Unopposed Candidates for the Office of Mayor and City Council Member; Finding That All Necessary and Required Legal Conditions Have Been Satisfied; Providing That the May 9, 2009 Regular Municipal Election for City Council Shall Not be Held; Providing for Posting of This Ordinance on Election Day, May 9, 2009
- B.2 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5596](#)
Authorizing the Issuance of “CITY OF SHERMAN, TEXAS, LIMITED TAX NOTES, SERIES 2009”; Specifying the Terms and Features of Said Notes; Levying a Continuing Direct Annual Ad Valorem Tax for the Payment of Said Notes; Resolving Other Matters Incident and Related to the Issuance, Sale, Payment and Delivery of Said Notes, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; Providing an Effective Date

B.3 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5597](#)

Authorizing the Issuance of “CITY OF SHERMAN, TEXAS, TAX AND WATERWORKS AND SEWER SYSTEM (LIMITED PLEDGE) REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009”; Specifying the Terms and Features of Said Certificates; Providing for the Payment of Said Certificates of Obligation by the Levy of an Ad Valorem Tax upon all Taxable Property within the City and a Limited Pledge of the Net Revenues from the Operation of the City’s Waterworks and Sewer System; Resolving Other Matters Incident and Relating to the Issuance, Payment, Security, Sale and Delivery of Said Certificates, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; Providing an Effective Date

B.4 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5598](#)

Providing for Permanent “No Parking” Signs Restricting Parking along Portions of West Texas Street, Near its Intersection with North Travis Street, within the City Limits of the City of Sherman

B.5 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5599](#)

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Parking Lot in an R-1 (One Family Residential) District at 4505 Breezy Meadows Lane, being a Part of Lot 3, Block 1 of the Replat of Seasons West Addition, Phase One for a Total of 0.509 Acres in the Elizabeth Jones Survey, Abstract No. 625 (Israel Aleman, Sr., Owner; Underwood Drafting and Surveying, Inc., Surveyors); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

B.6 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5600](#)

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Automotive Tire Sales, Mufflers, Auto Upholstery and Consignment Auto/Trailer Sales in a C-1 (Retail Business) District at 1624 East Lamar Street, being a 75’ x 150’ Lot in the G.B. Pilant Survey, Abstract No. 96 for a Total of 0.59 Acres (Heracleo Gracia, Owner); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

Close Public Hearing and Consider Adoption of Ordinances

B.7 [ADOPTION OF ORDINANCES](#)

Consider Adoption of Ordinance Numbers:

- a) 5595
- b) 5596
- c) 5597
- d) 5598
- e) 5599
- f) 5600

B.8 [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. 5341](#)

Supporting the Creation of the Red River Groundwater Conservation District for Fannin and Grayson Counties

C.2 [RESOLUTION NO. 5342](#)

Authorizing Submission of an Application for and Acceptance of a Grant for the Sherman Police Department under the Office of Community Oriented Policing Service's Hiring Recovery Program

C.3 [* RESOLUTION NO. 5343](#)

Awarding a Bid to and Authorizing Execution of a Contract with Utility Construction Services of Texas Inc. for Replacement of the Oak Creek Drive Water Main between Oak Creek Circle and Alpine Drive

C.4 [* RESOLUTION NO. 5344](#)

Awarding a Bid to and Authorizing Execution of a Contract with Utility Construction Services of Texas Inc. for Construction of the Fallon Drive Water Main from U.S. Highway 75 to Pecan Grove Road

C.5 [RESOLUTION NO. 5345](#)

Authorizing Execution of a Professional Services Agreement with Teague, Nall and Perkins, Inc. for the Improvement of Taylor Street at the Intersections of Crockett Street and Alexander Street

C.6 [* RESOLUTION NO. 5346](#)

Awarding a Bid to and Authorizing Execution of a Contract with Gilco Contracting, Inc. to Construct the Extension of West Canyon Creek Drive from Shady Oaks Lane to Silverado Trail

C.7 [* RESOLUTION NO. 5347](#)

Awarding a Bid to and Authorizing Execution of a Contract with R.K. Hall Construction, LTD. for the 2009 Street Mill and Overlay Program

C.8 [* RESOLUTION NO. 5348](#)

Awarding a Bid to and Authorizing Execution of a Contract with James Thorpe Company for the Purchase of an Annual Supply of Cover Stone for the 2009 Seal Coat Program

C.9 [* RESOLUTION NO. 5349](#)

Awarding a Bid to and Authorizing Execution of a Contract with Martin Asphalt Company for the Purchase of an Annual Supply of Emulsified Asphalt Oil for the 2009 Seal Coat Program

C.10 [* RESOLUTION NO. 5350](#)

Awarding a Bid to and Authorizing Execution of a Contract with Impact Promotions, Inc. d/b/a Got You Covered Workwear Uniforms for an Annual Supply of Uniforms for Police Department Personnel

Change Order

D.1 [* CHANGE ORDER NO. 1](#)

Luella 4 Woodbine Water Well Repairs

Other Business

D.2 [OTHER BUSINESS](#)

Consider Changing the Two-Hour Parking Restriction to a Three-Hour Maximum on the Downtown Square and its Adjoining Streets

D.3 [OTHER BUSINESS](#)

Consider Approval of the Budget Calendar for Fiscal Year 2009-2010

D.4 [* OTHER BUSINESS](#)

Consideration to Ordinance No. 2684, Section 26, Subsection 12(B)(2)(c) for an Exception to Allow a Lot with 0.509 Acres In Lieu of the Requirement that the Minimum Area of Each Lot Shall be One Acre and Shall Have Adjacent to the Rear Lot Line a Dedicated Alley or Easement, Either for Present or Future Use in an R-1 (One Family Residential) District at 4505 Breezy Meadows Lane, being Lot 3, Block 1 of the Replat of Seasons West Addition, Phase One (Israel Aleman, Sr., Owner; Underwood Drafting and Surveying, Inc., Surveyors)

D.5 [* OTHER BUSINESS](#)

Replat Approval of Lot 3, Block 1 of Seasons West Addition, Phase One and 1.120 Acres out of the Elizabeth Jones Survey, Abstract No. 625; Israel Aleman, Sr., Owner; Underwood Drafting and Surveying, Inc., Surveyors (4600 West Houston Street, 4505 Breezy Meadows Lane, and 206 Windy Hill Road)

D.6 [CITIZEN REQUESTS](#)

D.7 [MEDIA QUESTIONS](#)

Consider Board/Commission Appointments

D.8 [APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS](#)

- a) Airport Advisory Board (2)

D.9 [COUNCIL COMMENTS](#)

Executive Session

E.1 [EXECUTIVE SESSION](#)

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

Section 551.071 Consultation with Attorney Concerning Pending or Contemplated Litigation:

- (a) Beall vs. City of Sherman, Texas

The Council reconvenes into General Session

F.1 [OPEN MEETING](#)

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

F.2 [ADJOURNMENT](#)

[COUNCIL CALENDAR](#)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Chip Adami, Council Member



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. A.3

INVOCATION BY COUNCIL MEMBER CHIP ADAMI



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. A.4

APPROVE MINUTES

THE REGULAR CITY COUNCIL MEETING OF MARCH 16, 2009

STATE OF TEXAS

§

March 16, 2009

COUNTY OF GRAYSON

§

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on March 16, 2009.

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 Called City Council Meeting of February 25, 2009, the Called City Council Meeting (held jointly with the Planning and Zoning Commission) of February 25, 2009, and the Regular City Council Meeting of March 2, 2009. Council Member Steele 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 5593 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A HOTEL IN A C-1 (RETAIL BUSINESS) DISTRICT AND THE O-1 (75 & 82) OVERLAY DISTRICT IN THE 300 BLOCK OF CORNERSTONE DRIVE, BEING ALL OF LOTS 7, 8, 9 AND 10, BLOCK 2 OF THE CORNERSTONE ADDITION (TOTTEN INVESTMENTS, LTD, OWNERS; ANIL RAM, GLOBAL DESIGNS, DESIGNER MANAGER/REPRESENTATIVE; AND UNDERWOOD DRAFTING AND SURVEYING, INC., SURVEYORS); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000; PROVIDING FOR A REPEALER.

ORD 5593
SUP FOR
HOTEL

No citizens appeared before the City Council to discuss Ordinance 5593.

Mayor Magers introduced Ordinance 5594 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW TWO ADDITIONAL SCHOOL CLASSROOMS IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AT 618 WEST BELDEN STREET, BEING A PART OF THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 AND THE EAST 20' OF LOT 46 OF THE BIRGE-FAIRVIEW ADDITION FOR A TOTAL OF 0.661 ACRES (SHERMAN MONTESSORI PRESCHOOL, INC., OWNERS, CHRISTOPHER REHMET, CHAIRMAN OF THE BOARD AND PRESIDENT OF THE BOARD OF TRUSTEES, MIKE WILSON, REPRESENTATIVE, AND SARTIN AND ASSOCIATES, INC., SURVEYORS); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000; PROVIDING FOR A REPEALER.

ORD 5594
SUP FOR
SCHOOL
CLASSROOMS

No citizens appeared before the City Council to discuss Ordinance 5594.

The Ordinances were introduced and the Public Hearing was closed.

CLOSE PUBLIC
HEARING

ADOPTION OF ORDINANCES

Ordinance 5593

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A HOTEL IN A C-1 (RETAIL BUSINESS) DISTRICT AND THE O-1 (75 & 82) OVERLAY DISTRICT IN THE 300 BLOCK OF CORNERSTONE DRIVE, BEING ALL OF LOTS 7, 8, 9 AND 10, BLOCK 2 OF THE CORNERSTONE ADDITION (TOTTEN INVESTMENTS, LTD, OWNERS; ANIL RAM, GLOBAL DESIGNS, DESIGNER MANAGER/REPRESENTATIVE; AND UNDERWOOD DRAFTING AND SURVEYING, INC., SURVEYORS); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000; PROVIDING FOR A REPEALER.

ORD 5593
SUP FOR
HOTEL

Ordinance 5594

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 TWO ADDITIONAL SCHOOL CLASSROOMS IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AT 618 WEST BELDEN STREET, BEING A PART OF THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 AND THE EAST 20' OF LOT 46 OF THE BIRGE-FAIRVIEW ADDITION FOR A TOTAL OF 0.661 ACRES (SHERMAN MONTESSORI PRESCHOOL, INC., OWNERS, CHRISTOPHER REHMET, CHAIRMAN OF THE BOARD AND PRESIDENT OF

ORD 5594
SUP FOR
SCHOOL
CLASSROOMS

THE BOARD OF TRUSTEES, MIKE WILSON, REPRESENTATIVE, AND SARTIN AND ASSOCIATES, INC., SURVEYORS); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000; PROVIDING FOR A REPEALER.

Council Member Smith asked if traffic issues had been addressed. George Olson, City Manager, said the traffic issues were addressed but were not included in the staff review letter.

Scott Shadden, Director of Developmental Services, said they will stagger their drop-off and pick-up times, and they agreed that if traffic becomes a problem, they will address it in the future.

ACTION TAKEN.

Motion by Council Member Smith to approve Ordinance Nos. 5593 and 5594, as presented. Second by Deputy Mayor Wacker.

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. 5334 - ACCEPTING CABLE ONE COMMERCIAL SOLUTIONS AS THE CITY OF SHERMAN'S INTERNET SERVICE PROVIDER

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING CABLE ONE COMMERCIAL SOLUTIONS AS THE CITY OF SHERMAN'S INTERNET SERVICE PROVIDER.

CONSENT AGENDA.

RES 5334
INTERNET
SERVICE

RESOLUTION NO. 5335 - AUTHORIZING EXECUTION OF A COMMERCIAL SERVICE AGREEMENT WITH CABLE ONE, INC. FOR FIBER OPTIC DATA NETWORK SERVICE AT THREE LOCATIONS WITHIN THE CITY OF SHERMAN

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A COMMERCIAL SERVICE AGREEMENT WITH CABLE ONE, INC. FOR FIBER OPTIC DATA NETWORK SERVICE AT THREE LOCATIONS WITHIN THE CITY OF SHERMAN.

CONSENT AGENDA.

RES 5335
FIBER OPTIC
DATA NETWORK
SERVICE

RESOLUTION NO. 5336 - DECLARING THE CITY OF SHERMAN'S ELIGIBILITY AND INTENTION TO PARTICIPATE IN A RESIDENTIAL TAX ABATEMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN CERTAIN

RES 5336
RESIDENTIAL
TAX ABATEMENT
PROGRAM

AREAS OF THE CITY; ESTABLISHING GUIDELINES AND CRITERIA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DECLARING THE CITY OF SHERMAN'S ELIGIBILITY AND INTENTION TO PARTICIPATE IN A RESIDENTIAL TAX ABATEMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN CERTAIN AREAS OF THE CITY; ESTABLISHING GUIDELINES AND CRITERIA.
CONSENT AGENDA.

Council Member Adami asked about the availability of the residential tax abatements. Mr. Olson said the City must renew the residential tax abatement program every two years.

The program itself helps develop infill housing on vacant lots. In 2007 the City approved 54 residential tax abatements and approved 34 abatements in 2008. This allows rebuilding on infill lots and helps rejuvenate the neighborhoods. The infrastructure is already available in these locations.

The abatements are for ten years and include 100% abatements for six years and partial abatements for the remaining four years. Council Member Steele verified that the abatement is only for property taxes and not for water or sewer rates.

Mayor Magers said the residential tax abatements are great because they encourage development without costing the taxpayers anything.

RESOLUTION NO. 5337 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH VESSELS CONSTRUCTION, A DIVISION OF VESCOR, INC. FOR THE REBUILD OF A SOLID WASTE TRANSFER STATION RETAINING WALL

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH VESSELS CONSTRUCTION, A DIVISION OF VESCOR, INC. FOR THE REBUILD OF A SOLID WASTE TRANSFER STATION RETAINING WALL.
CONSENT AGENDA.

RES 5337
SOLID WASTE
TRANSFER STATION
RETAINING WALL

RESOLUTION NO. 5338 – AUTHORIZING EXECUTION OF AN ENGINEERING SERVICES AGREEMENT WITH FREEMAN-MILLICAN, INC. FOR THE DESIGN, BIDDING, AND CONSTRUCTION PHASE FOR IMPROVEMENTS AT THE WASTEWATER TREATMENT PLANT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENGINEERING SERVICES AGREEMENT WITH FREEMAN-MILLICAN, INC. FOR THE DESIGN, BIDDING, AND CONSTRUCTION PHASE FOR IMPROVEMENTS AT THE WASTEWATER TREATMENT PLANT.
CONSENT AGENDA.

RES 5338
WASTEWATER
TREATMENT PLANT
IMPROVEMENTS

RESOLUTION NO. 5339 – AUTHORIZING EXECUTION OF AN ENGINEERING SERVICES AGREEMENT WITH FREEMAN-MILLICAN, INC. FOR THE CONTINUING DEVELOPMENT OF A SANITARY SEWER OVERFLOW (SSO) INITIATIVE PLAN

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENGINEERING SERVICES AGREEMENT WITH FREEMAN-MILLICAN, INC. FOR THE CONTINUING DEVELOPMENT OF A SANITARY SEWER OVERFLOW (SSO) INITIATIVE PLAN.

Mayor Magers verified that this is a result of a requirement from the Texas Commission on Environmental Quality. This will allow the City to map the sewer system and address any problems that might exist.

Mr. Olson said the City will get GIS surveying and mapping of the sewer system.

Mayor Magers verified that the City has now switched the water service back to well water and surface water, instead of strictly well water, while assessments were being made to the pipes.

ACTION TAKEN.

Motion by Deputy Mayor Wacker to approve Resolution No. 5339, as presented. Second by Council Member Softly.

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

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 5340 – APPROVING THE GREATER TEXOMA UTILITY AUTHORITY’S INTENTION TO ENTER INTO AN AGREEMENT WITH LYNN VESSELS CONSTRUCTION, LLC FOR THE CONSTRUCTION OF RELIEF SEWER K-4 PHASE ONE BETWEEN McGEE STREET AND THE TURTLE CREEK WEST SUBDIVISION

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 LYNN VESSELS CONSTRUCTION, LLC FOR THE CONSTRUCTION OF RELIEF SEWER K-4 PHASE ONE BETWEEN McGEE STREET AND THE TURTLE CREEK WEST SUBDIVISION.

CONSENT AGENDA.

CHANGE ORDER NO. 1

LUELLA 3 TRINITY WATER WELL EMERGENCY REPAIR

The City Council approved Change Order No. 1 which is a final closeout change order to adjust the final contract amount on the Luella 3 Trinity Water Well emergency repairs.

The estimated quantities for the repair were decreased for five of the bid items. A new tension plate was required in addition to drive shaft and stretch column additions. Upon removal of the old pump and shaft, several straps had to be

RES 5339
SANITARY SEWER
OVERFLOW
INITIATIVE PLAN
DEVELOPMENT

RES 5340
RELIEF SEWER K-4
PHASE ONE

CHANGE ORDER
WATER WELL
REPAIRS

fished out from the bottom of the well. A \$10,378 increase resulted from the non-bid items.

The change order results in a net increase of \$7,578 to the original contract amount of \$284,925, making a final contract price of \$292,503.

CONSENT AGENDA.

OTHER BUSINESS

RECEIVE ANNUAL PROPERTY TAX COLLECTION PRESENTATION FROM THE CITY'S CONTRACTED TAX ATTORNEY

PROPERTY TAX COLLECTION REPORT

Mayor Magers said the City's Tax Collection firm, Linebarger Goggan Blair & Sampson, LLP, has collected 103.51% of the delinquent taxes for the Fiscal Year 2007-2008. He added that the company is doing a great job collecting the delinquent taxes.

RECEIVE QUARTERLY PROGRESS REPORT FROM SHERMAN ECONOMIC DEVELOPMENT CORPORATION BOARD MEMBER JOE FALLON, JR. AND SEDCO PRESIDENT JOHN BOSWELL

SEDCO QUARTERLY REPORT

Joe Fallon, Jr., Sherman Economic Development Corporation Board Member, presented their Quarterly Progress Report.

SEDCO continues to meet with existing businesses to discuss development issues and how Sherman can help their businesses grow. They also continue to work closely with Grayson County and Denison to promote the North Texas Regional Airport.

The SEDCO staff has met several times with the City staff and TIP Strategies on the development of the Comprehensive Master Plan, and how SEDCO fits into the Plan.

SEDCO Board Member Rad Richardson and SEDCO President John Boswell attended the Tri-County Legislative Day in Austin with other community leaders.

The staff is working with several prospects for the next quarter and they will hopefully add new jobs and investment in Sherman. SEDCO is also looking at innovative ways to mitigate the negative effects of the global economy in Sherman.

SEDCO continues to work with the City on the Comprehensive Master Plan and with Panda Energy on the natural gas fired power plant.

Mayor Magers asked if SEDCO has funded anything yet on the North Texas Regional Airport. Mr. Boswell said they have paid their one-third of the cost for some of the planning activities and have hosted some prospects at the Park.

APPROVING THE LANDSCAPING SERVICES OF LANGFORD CONCRETE, LTD. FOR THE DOWNTOWN SQUARE PLANTER BOXES

**DOWNTOWN
SQUARE PLANTER
BOXES**

Mayor Magers explained that Downtown Sherman Preservation and Revitalization has requested that the City of Sherman make some improvements in the Downtown Area. He added that funding for the projects is coming from the Hotel/Motel Taxes.

Mayor Magers complimented Council Member Steele on his transparency and professionalism. His company is a sub contractor on the project and he is abstaining from the discussion and voting on this item.

ACTION TAKEN.

Motion by Council Member Adami to approve the Landscaping Services of Langford Concrete, Ltd. for the Downtown Square Planter Boxes, as presented. Second by Deputy Mayor Wacker.

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

VOTING NAY: None.

ABSTAIN: Steele.

MOTION CARRIED.

FINAL PLAT APPROVAL OF THE BELDEN STREET MONTESSORI SCHOOL ADDITION, BEING A REPLAT OF THE EAST 20' OF LOT 46, TOGETHER WITH A PORTION OF A 15' ALLEY OF THE BIRGE-FAIRVIEW ADDITION; SHERMAN MONTESSORI PRESCHOOL, INC., OWNERS; CHRISTOPHER REHMET, CHAIRMAN OF THE BOARD AND PRESIDENT OF THE BOARD OF TRUSTEES; MIKE WILSON, REPRESENTATIVE; AND SARTIN AND ASSOCIATES, INC., SURVEYORS (618 WEST BELDEN STREET)

**APPROVE FINAL PLAT
BELDEN ST.
MONTESSORI**

The City Council approved the Final Plat for the Belden Street Montessori School Addition, being a Replat of the east 20' of Lot 46, together with a portion of a 15' alley of the Birge-Fairview Addition. The property is located a 618 W. Belden Street, between Ricketts and Lockhart Streets. The owners would like to construct two additional classrooms for their preschool. The Planning and Zoning Commission recommended approval of the Final Plat.

CONSENT AGENDA.

REPLAT APPROVAL OF LOTS 7, 8, 9, AND 10, BLOCK 2 OF THE CORNERSTONE ADDITION; TOTTEN INVESTMENTS LTD, OWNER; ANIL RAM, GLOBAL DESIGNS, DESIGN MANAGER/REPRESENTATIVE; AND UNDERWOOD DRAFTING AND SURVEYING, INC., SURVEYORS (300 BLOCK CORNERSTONE DRIVE)

**APPROVE REPLAT
CORNERSTONE
ADDITION
(300 BLOCK
CORNERSTONE DR)**

The City Council approved the Replat of Lots 7, 8, 9, and 10, Block 2 of the Cornerstone Addition, located on Cornerstone Drive, which is on the west side of U.S. Highway 75, between Lamberth Road and U.S. Highway 82.

The owner would like to replat the property into two lots for commercial development. Current plans are to construct an

88 room, four story Candlewood Suites Hotel on one of the lots. The Planning and Zoning Commission recommended approval of the Replat.
CONSENT AGENDA.

REPLAT APPROVAL OF NATHAN GRAY'S REPLAT IN BLOCK "W" OF THE ALEXANDER & ALLEN'S ADDITION; NATHAN GRAY, OWNER; AND HELVEY AND ASSOCIATES, INC., SURVEYORS (303 WEST HOUSTON STREET)

The City Council approved the Replat of Nathan Gray's Replat in Block "W" of the Alexander & Allen's Addition, which is located at 303 W. Houston Street, between Rusk and Crockett Streets in the Central Business District. The owner would like to replat three lots into one lot for commercial development. The Planning and Zoning Commission recommended approval of the Replat.
CONSENT AGENDA.

APPROVE REPLAT
ALEXANDER &
ALLEN ADDITION
(303 W. HOUSTON)

CITIZENS REQUESTS

There were no citizen's requests.

CITIZENS REQUESTS

MEDIA QUESTIONS

WELCOME BACK

Mayor Magers and the Council Members welcomed Kathy Williams, Herald Democrat Reporter, back after her recent surgery.

WELCOME BACK

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS:

PARKS AND RECREATION ADVISORY BOARD (1)

ACTION TAKEN.

Motion by Council Member Adami to appoint Trent Bass, to the Parks and Recreation Advisory Board to fill an unexpired term from March 17, 2009 to November 8, 2009. Second by Council Member Steele.

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

VOTING NAY: None.

MOTION CARRIED.

PARKS & REC
ADVISORY BOARD

COUNCIL COMMENTS

SPRING BREAK

Council Member Howeth said she was glad this week was Spring Break.

SPRING BREAK

LOSS OF GREAT SHERMAN LEADER

Mayor Magers said Sherman lost a great leader last week with the death of Former Austin College President John D. Moseley. He recognized the impact Dr. Moseley had on community and the way he lived his life. There will be a public service at Wynne Chapel on March 24, 2009.

LOSS OF GREAT
SHERMAN LEADER

THANKS TO CITY STAFF

Mayor Magers recognized the City staff for their service to the citizens. Even though Sherman has been blessed, the economy is in uncertain times.

THANKS TO
CITY STAFF

When the current Budget was put together in April of 2008, the Council decided to look at employee pay increases in two phases. Phase one was a 2% raise in October 2008 and Phase two was a 2% raise in April 2009, for a total of 3% over the year.

The senior City staff has made the recommendation to cut back on the second half of the pay increase this year. Both the City Council and the City staff are working together to make sure that Sherman moves forward. Mayor Magers added that it was the City Manager's intent to keep a tight reign on finances so no one loses their job.

He added that this administration took office in 2005 and immediately moved the retirement match from one-to-one to a two-to-one match. This is a 100% increase over the City retirement match and represents a 7% increase to the employees' retirement fund.

As a citizen of Sherman, Mayor Magers said he wanted to thank the employees for their sacrifice and the great job they do for the City.

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 551.071

CONSULTATION WITH CITY ATTORNEY CONCERNING PENDING OR CONTEMPLATED LITIGATION:
IN THE COURT OF APPEALS, FIFTH DISTRICT OF TEXAS AT DALLAS NO. 05-06-00420-CV; THE CITY OF SHERMAN, TEXAS AND THE SHERMAN CITY COUNCIL, APPELLANTS V. JAMES WAYNE, APPELLEE

LUCKY STOP 10'S REQUEST FOR ALCOHOL PERMIT

SECTION 551.074

PERSONNEL MATTERS:
DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE:
CITY ATTORNEY

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:19 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:19 p.m. and reconvened in Open Meeting.

OPEN MEETING

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

APPOINTMENT OF CITY ATTORNEY

ACTION TAKEN.

Motion by Deputy Mayor Wacker to appoint Brandon Shelby as the new Sherman City Attorney. Second by Council Member Softly.

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

VOTING NAY: None.

MOTION CARRIED.

Mr. Shelby thanked the City Council for their vote of confidence and said he is anxious to get started.

Mayor Magers said Mr. Shelby is a graduate of Austin College and of the University of Texas Law School and he welcomed him to Sherman.

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:22 p.m.

OPEN MEETING

APPOINTMENT OF
CITY ATTORNEY

ADJOURNMENT

MAYOR

CITY CLERK



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. A.5

PROCLAMATION

“Occupational Therapy Month” – April 2009

Issue

To issue a proclamation designating April 2009 as “Occupational Therapy Month” in the City of Sherman

Background

Each year, the American Occupational Therapy Association designates April as “National Occupational Therapy Month.”

Origination

The request originated with Nicole Morgan, a local Occupational Therapist.

Financial Consideration

There is no financial consideration.

Staff Recommendation

It is the recommendation of the staff to present a proclamation proclaiming April 2009 as “Occupational Therapy Month.”

Alternatives

The Council could choose not to present the proclamation.

Attachments

A proclamation proclaiming “Occupational Therapy Month” is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN



Proclamation

WHEREAS, the American Occupational Therapy Association has declared the month of April 2009 to be known as Occupational Therapy Month, and

WHEREAS, the profession of occupational therapy makes valuable contributions in helping persons master the "skill for the job of living" after an illness or injury, and

WHEREAS, the services of occupational therapy are available to citizens of Grapson County through hospitals, home health agencies, schools, clinics and nursing homes, and

WHEREAS, the health and productivity of our citizens depend upon the effective use of healthcare resources, including the important services of occupational therapists and occupational therapy assistants.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim the month of April, 2009

OCCUPATIONAL THERAPY MONTH

in the City of Sherman and encourage all citizens to recognize the achievements and contributions of these valued health professionals.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed this the 6th day of April, 2009.

Mayor

ATTEST:

Sinda Ashby
City Clerk





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. A.6

PROCLAMATION

“Sexual Assault Awareness Month” – April 2009

Issue

To present a proclamation designating April 2009 as “Sexual Assault Awareness Month” in Sherman

Background

Each year, the Grayson County Women’s Crisis Center recognizes “Sexual Assault Awareness Month” and works to make the citizens of Sherman aware of the problem of sexual assault.

Origination

The request for this proclamation originated with the Grayson County Women’s Crisis Center.

Financial Consideration

There is no financial consideration to the City.

Staff Recommendation

It is the recommendation of the staff to present a proclamation proclaiming April 2009 as “Sexual Assault Awareness Month.”

Alternatives

The Council could choose not to present the proclamation.

Attachments

A proclamation proclaiming “Sexual Assault Awareness Month” is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager



Proclamation

WHEREAS, sexual assault affects every adult, teen, and child, in the City of Sherman, either as a victim/survivor of sexual assault or as a family member, significant other, neighbor or co-worker, and

WHEREAS, this year's theme "Rooting Ourselves in Social Justice," serves as a reminder that in order to end sexual violence, we must also fight all forms of oppression – whether based on gender, age, race or ethnicity, sexual orientation or gender identity, ability or economic class, and

WHEREAS, many citizens in the City of Sherman are working to provide quality services, and assistance to sexual assault survivors; volunteers help staff 24-hour hotlines, respond to emergency calls, offer support and advocacy during medical exams and criminal justice proceedings, and offer safe shelter, and

WHEREAS, Grapson County Women's Crisis Center, staff and volunteers promote sexual assault awareness and avoidance by offering education programs to schools, churches and civic organizations to rally citizen involvement in efforts that will reduce sexual assault through public education and changing public attitudes, and

WHEREAS, Grapson County Women's Crisis Center, other sexual assault programs, and other professionals and advocates of non-violence have joined together as the Texas Association Against Sexual Assault (TAAASA) to support each other in their work and to provide the citizens of the City of Sherman and the State of Texas with a central source of information on sexual assault, and

WHEREAS, during the month of April, Grapson County Women's Crisis Center will be intensifying efforts to promote public understanding of sexual violence and victims of sexual violence and will be emphasizing the need for citizen involvement in efforts to reduce sexual assault through public education and changing public attitudes, and

WHEREAS, Grapson County Women's Crisis Center will also be working to publicize their services, increase community support for their agency and increase awareness of the healing potential for survivors.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim the month of April, 2009

SEXUAL ASSAULT AWARENESS MONTH

in the City of Sherman and encourage all citizens to increase their awareness and work to prevent sexual assault in our community and to unite together and with the Grapson County Women's Crisis Center to continue to make a difference.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed this the 6th day of April, 2009.

Mayor

ATTEST:

Linda Ashby
City Clerk





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. A.7

PROCLAMATION

“National Library Week” – April 12-18, 2009

Issue

To present a proclamation designating April 12 through 18, 2009, as “National Library Week”

Background

Each year, “National Library Week” is celebrated to offer recognition to the important role that libraries play in our lives.

Origination

The request for this proclamation originated with the Sherman Public Library.

Financial Consideration

There is no financial consideration to the City.

Staff Recommendation

It is the recommendation of the staff to present a proclamation proclaiming “National Library Week” during April 12th through the 18th.

Alternatives

The Council could choose not to present the proclamation.

Attachments

A proclamation proclaiming “National Library Week” is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN



Proclamation

WHEREAS, our nation's school, academic, public and special libraries make a difference in the lives of millions of Americans, today, more than ever, and

WHEREAS, librarians are trained professionals, helping people of all ages and backgrounds find and interpret the information they need to live, learn and work in the 21st century, and

WHEREAS, libraries are part of the American Dream – places for opportunity, education, self-help and lifelong learning, and

WHEREAS, library use is up nationwide among all types of library users, continuing a decade-long trend, and

WHEREAS, libraries play a vital role in supporting the quality of life in their communities and can help you discover a world of knowledge, both in person and online, as well as personal service and assistance in finding what you need, when you need it, and

WHEREAS, libraries are a key player in the national discourse on intellectual freedom, equity of access, and narrowing the "digital divide," and

WHEREAS, libraries, librarians, library workers and supporters across America are celebrating National Library Week with The Campaign for America's Libraries, and

WHEREAS, "Read to Win," a reading readiness program is held on Tuesdays, Wednesdays and Thursdays from 10 a.m. to 11 a.m., and the "Brown Bag Video Series" on Wednesdays, April 8, April 15, April 22, and April 29, 2009, from noon to 1 p.m. at the Sherman Public Library, and

WHEREAS, the Library will also sponsor "PJ Storytime" on Tuesday, April 7, 2009 from 6:30 p.m. to 7:30 p.m.; a "Beginning Genealogy Workshop" on Tuesday, April 28, 2009 from 7 p.m. to 8:30 p.m.; and a Local History Presentation on the Woodmen Circle Home on Saturday, April 25, 2009 from 2 p.m. to 3:30 p.m., and

WHEREAS, the Friends of the Sherman Public will sponsor their Semi-Annual Book Sale on Saturday, April 18, 2009, from 8 a.m. to 4 p.m.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim April 12 through 18, 2009

NATIONAL LIBRARY WEEK

in the City of Sherman and urge all residents to visit the library this week to take advantage of the wonderful library resources available. I also encourage residents to thank their librarians and library workers for making information accessible to all who walk through the library's doors.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed, this the 6th day of April, 2009.

ATTEST:

Linda Ashby
City Clerk

Mayor





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. B.1

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5595

Declaring as Elected the Unopposed Candidates for the Office of Mayor and City Council Member; Finding That All Necessary and Required Legal Conditions Have Been Satisfied; Providing That the May 9, 2009 Regular Municipal Election for City Council Shall Not be Held; Providing for Posting of This Ordinance on Election Day, May 9, 2009

Issue

To consider an Ordinance canceling the May 9, 2009 Regular Municipal Election due to there being no opposed candidates for the three races: Mayor, Council Member At-Large, Place 1, and Council Member At-Large, Place 2

Background

Section 2.053 of the Texas Election Code allows a City to cancel its Election if, after the regular filing deadline and the write-in filing deadline, there are no opposed races. The regular filing deadline ended at 5:00 p.m. on Monday, March 9, 2009; and the write-in filing deadline ended at 5:00 p.m. on Monday, March 16, 2009.

Origination

The request originated with the City Clerk's Office.

Financial Consideration

The cost of the 2008 Regular Municipal Election was \$28,492.00.

Staff Recommendation

It is the recommendation of the staff to accept the City Clerk's "Certification of Unopposed Candidates" to cancel the May 9, 2009 Regular Municipal Election and to declare the unopposed candidates duly elected.

Alternatives

The Council could choose to hold the Election.

Attachments

Ordinance No. 5595

Certification of Unopposed Candidates

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

ORDINANCE NO. 5595

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DECLARING AS ELECTED THE UNOPPOSED CANDIDATES FOR THE OFFICE OF MAYOR AND CITY COUNCIL MEMBER; FINDING THAT ALL NECESSARY AND REQUIRED LEGAL CONDITIONS HAVE BEEN SATISFIED; PROVIDING THAT THE MAY 9, 2009 REGULAR MUNICIPAL ELECTION FOR CITY COUNCIL SHALL NOT BE HELD; PROVIDING FOR POSTING OF THIS ORDINANCE ON ELECTION DAY, MAY 9, 2009; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

WHEREAS, the City Council of the City of Sherman, Texas ("City Council"), adopted Ordinance No. 5588 on February 16, 2009, ordering that a Regular Municipal Election be held on May 9, 2009, for the purpose of electing a Mayor and two (2) At-Large City Council Members for full terms, as defined in the Charter of the City of Sherman, Texas; and

WHEREAS, pursuant to Sections 143.007 and 146.054 of the Texas Election Code, the deadlines for filing applications for a place on the ballot and for the declaration of write-in candidacy for the City's Regular Municipal Election have expired; and

WHEREAS, the Sherman City Council, in accordance with Section 2.052 of the Texas Election Code, has received from the City Clerk a "Certification of Unopposed Candidates" (see attached), certifying that Bill Magers, Willie Steele, and Cary S. Wacker are unopposed for election to the positions of Mayor, Council Member At-Large, Place 1, and Council Member At-Large, Place 2, respectively; and

WHEREAS, the City Council, upon receipt and review of such written certification, hereby finds and determines that the candidates whose names are to appear on the ballot in said Election for Mayor and City Council Members are unopposed, there are no declared write-in candidates, and no propositions are to appear on the ballot for said Election;

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

SECTION 1. FINDINGS INCORPORATED.

That the findings set forth above are found to be true and correct and are hereby incorporated into the body of this Ordinance for all purposes as if fully set forth herein.

SECTION 2. DECLARING CANDIDATES DULY ELECTED.

That, in accordance with Section 2.053(a) and (c) of the Texas Election Code, the following unopposed candidates are hereby declared duly elected to the respective office shown and shall be issued a Certificate of Election on or after Election Day:

Bill Magers, Mayor
Willie Steele, Council Member At-Large, Place 1
Cary S. Wacker, Council Member At-Large, Place 2

SECTION 3. CANCELING REGULAR ELECTION.

That in accordance with Section 2.053(b) of the Texas Election Code, the Regular Municipal Election for the City Council heretofore called and ordered for May 9, 2009 shall not be held and is hereby canceled.

SECTION 4. REQUIRING POSTING OF ORDINANCE.

That in accordance with Section 2.053(b) of the Texas Election Code, the City Clerk is hereby directed to cause a copy of this Ordinance to be posted on Election Day, same being May 9, 2009, at all polling places that would have been used in such Election.

SECTION 5. REPEALER CLAUSE.

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

SECTION 6. SEVERABILITY CLAUSE.

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 7. FINDING AND DETERMINING.

That it is hereby officially found and determined that the meeting at which this ordinance 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.

INTRODUCED on this the _____ day of _____, 2009.

ADOPTED on this the _____ day of _____, 2009.

EFFECTIVE DATE on this the _____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

INTERIM CITY ATTORNEY

Prescribed by Secretary of State
Section 2.051 – 2.053, Texas Election Code
5/02

CERTIFICATION OF UNOPPOSED CANDIDATES
CERTIFICACIÓN DE CANDIDATOS ÚNICOS

To: Presiding Officer of Governing Body
Al: *Presidente de la entidad gobernante*

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the election scheduled to be held on May 9, 2009.

Como autoridad a cargo de la preparación de la boleta de votación oficial, por la presente certifico que los siguientes candidatos son candidatos únicos para elección para un cargo en la elección que se llevará a cabo el May 9, 2009.

List offices and names of candidates:
Lista de cargos y nombres de los candidatos:

Office(s) <i>Cargo(s)</i>	Candidate(s) <i>Candidato(s)</i>
Mayor	Bill Magers
Council Member At-Large, Place 1	Willie Steele
Council Member At-Large, Place 2	Cary S. Wacker


Signature *(Firma)*

Linda Ashby
Printed name *(Nombre en letra de molde)*

City Clerk
Title *(Puesto)*

March 17, 2009
Date of signing *(Fecha de firma)*

(Seal) *(sello)*

See reverse side for instructions
(Instrucciones en el reverso)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. B.2

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5596

Authorizing the Issuance of "CITY OF SHERMAN, TEXAS, LIMITED TAX NOTES, SERIES 2009"; Specifying the Terms and Features of Said Notes; Levying a Continuing Direct Annual Ad Valorem Tax for the Payment of Said Notes; Resolving Other Matters Incident and Related to the Issuance, Sale, Payment and Delivery of Said Notes, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; Providing an Effective Date

Issue

To authorize issuance of \$3 million in Limited Tax Notes (Notes) for street improvement projects

Background

The Council approved the Notice to Proceed with issuance of these Notes at the March 2, 2009 Council Meeting. This Ordinance authorizes the City to actually issue the Notes, which will be repaid over the next three years. The proceeds from issuance are expected to be received by the end of April. Although the Notes call for an ad valorem tax pledge as security, the source of repayment for these Notes will be the 1/8 cent special street sales tax that will sunset in 2012. The proceeds from these Notes will be used to finance a series of street improvement projects authorized by the Council during the fiscal year (FY) 2007-08 budget process.

By completing these projects at once instead of over the four-year period of special street sales tax collections, the City is able to complete about 25 miles of street improvements instead of the sixteen originally approved as part of the thoroughfare enhancement program.

Origination

City Manager's Office

Financial Consideration

The cost of issuance for these Notes will be about \$40,000, the cost of which will be netted against the proceeds from issuance. Completing these street projects up front and in this current economic environment is allowing the City to complete an additional nine miles of streets.

Staff Recommendation

The staff recommends that the Council approve this Ordinance as presented.

Alternatives

No alternatives can be recommended by staff at this time.

Attachments

Ordinance No. 5596

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5596

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE ISSUANCE OF "CITY OF SHERMAN, TEXAS, LIMITED TAX NOTES, SERIES 2009"; SPECIFYING THE TERMS AND FEATURES OF SAID NOTES; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SAID NOTES; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, PAYMENT AND DELIVERY OF SAID NOTES, INCLUDING THE APPROVAL AND EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT; PROVIDING AN EFFECTIVE DATE; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, pursuant to V.T.C.A., Government Code, Chapter 1431, as amended (hereinafter called the "Act"), the City Council is authorized and empowered to issue anticipation notes to pay contractual obligations to be incurred (i) for the construction of any public work and (ii) for the purchase of materials, supplies, equipment, machinery, buildings, lands and rights-of-way for the City's authorized needs and purposes; and

WHEREAS, in accordance with the provisions of the Act, the City Council hereby finds and determines that anticipation notes should be issued and sold at this time to finance the costs of paying contractual obligations to be incurred for (i) the construction of street improvements, including utility line relocations, drainage, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in relation to such project and the financing thereof;

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

SECTION 1. Authorization - Designation - Principal Amount - Purpose. Notes of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$3,000,000, to be designated and bear the title "CITY OF SHERMAN, TEXAS, LIMITED TAX NOTES, SERIES 2009" (hereinafter referred to as the "Notes"), for the purpose of paying contractual obligations to be incurred for (i) the construction of street improvements, including utility line relocations, drainage, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in relation to such project and the financing thereof, in conformity with the Constitution and laws of the State of Texas, including the Act.

SECTION 2. Fully Registered Obligations - Note Date - Authorized Denominations - Stated Maturities - Interest Rates. The Notes shall be issued as fully registered obligations only, shall be dated April 1, 2009 (the "Note Date"), shall be in denominations of \$5,000 or any integral multiple thereof, and shall become due and payable on August 15 in each of the years

and in principal amounts (the “Stated Maturities”) and bear interest at the per annum rate(s) in accordance with the following schedule:

<u>Year of Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2009	\$760,000	
2010	735,000	
2011	745,000	
2012	760,000	

The Notes shall bear interest on the unpaid principal amounts from the Note Date at the per annum rate(s) shown above in this Section. Interest on the Notes shall be calculated on the basis of a 360-day year of twelve 30-day months, and such interest shall be payable on February 15 and August 15 of each year, commencing August 15, 2009.

SECTION 3. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Notes, due and payable by reason of maturity or otherwise, shall be payable only to the registered owners or holders of the Notes (hereinafter called the “Holders”) appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas to serve as Paying Agent/Registrar for the Notes is hereby approved and confirmed. Books and records relating to the registration, payment, transfer and exchange of the Notes (the “Security Register”) shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided herein and in accordance with the terms and provisions of a “Paying Agent/ Registrar Agreement”, substantially in the form attached hereto as Exhibit A, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Mayor and City Clerk are authorized to execute and deliver such Agreement in connection with the delivery of the Notes. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Notes are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Notes, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Notes shall be payable at the Stated Maturities only upon presentation and surrender of the Notes to the Paying Agent/Registrar at its designated offices in Dallas, Texas (the “Designated Payment/Transfer Office”). Interest on the Notes shall be paid to the Holder whose name appears in the Security Register at the close of business on the Record Date (the last business day of the month next preceding the interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class

postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Notes shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/ Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4. Non-Redeemable. The Notes shall not be subject to redemption prior to maturity.

SECTION 5. Registration - Transfer - Exchange of Notes - Predecessor Notes. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every owner of the Notes issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Note may be transferred or exchanged for Notes of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Note to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Note (other than the Initial Note(s) authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Notes of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Note or Notes surrendered for transfer.

At the option of the Holder, Notes (other than the Initial Note(s) authorized in Section 8 hereof) may be exchanged for other Notes of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Notes surrendered for exchange, upon surrender of the Notes to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Notes are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Notes to the Holder requesting the exchange.

All Notes issued in any transfer or exchange of Notes shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States

Mail, first class, postage prepaid to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Notes surrendered in such transfer or exchange.

All transfers or exchanges of Notes pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Notes canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Notes," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Note or Notes registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Notes" shall include any mutilated, lost, destroyed, or stolen Note for which a replacement Note has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof and such new replacement Note shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Note.

SECTION 6. Book-Entry Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 3 and 5 hereof relating to the payment, and transfer/exchange of the Notes, the City hereby approves and authorizes the use of "Book Entry Only" securities clearance, settlement and transfer system provided by The Depository Trust Company (DTC), a limited purpose trust company organized under the laws of the State of New York, in accordance with the requirements and procedures identified in the Blanket Issuer Letter of Representations, by and between the City and DTC (the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Notes shall be deposited with DTC who shall hold said Notes for its participants (the "DTC Participants"). While the Notes are held by DTC under the Depository Agreement, the Holder of the Notes on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Note (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Notes or otherwise ceases to provide book entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Notes, the City covenants and agrees with the Holders of the Notes to cause Notes to be printed in definitive form and provide for the Note certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Notes in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Notes shall be made in accordance with the provisions of Sections 3 and 5 hereof.

SECTION 7. Execution - Registration. The Notes shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City

Clerk. The signature of said officers on the Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Note Date shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Notes to the initial purchaser(s) and with respect to Notes delivered in subsequent exchanges and transfers, all as authorized and provided in V.T.C.A., Government Code, Chapter 1201, as amended.

No Note shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Note either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly certified, registered, and delivered.

SECTION 8. Initial Note(s). The Notes herein authorized shall be initially issued either (i) as a single fully registered note in the total principal amount stated in Section 1 hereof with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as multiple fully registered Notes, being one note for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Note(s)") and, in either case, the Initial Note(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Note(s) shall be the Notes submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Note(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Note(s) delivered hereunder and exchange therefor definitive Notes of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) **Forms Generally.** The Notes, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Notes, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Notes, or any maturities thereof, are purchased with insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing

such Notes as evidenced by their execution. Any portion of the text of any Notes may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

The definitive Notes and the Initial Note(s) shall be printed, lithographed, or engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Notes as evidenced by their execution thereof.

(b) Form of Definitive Note.

REGISTERED
NO. _____

REGISTERED
\$_____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF SHERMAN, TEXAS
LIMITED TAX NOTE, SERIES 2009

Note Date:
April 1, 2009

Interest Rate:
_____%

Stated Maturity:
August 15, 20____

CUSIP NO:

Registered Owner:

Principal Amount:

DOLLARS

The City of Sherman (hereinafter referred to as the "City"), a body corporate and political subdivision in the County of Grayson, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above, without right of prior redemption, the Principal Amount stated above and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Note appearing below (unless this Note bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Note is prior to the initial interest payment date in which case it shall bear interest from the Note Date) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, commencing August 15, 2009. Principal of this Note is payable at its Stated Maturity to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest is payable to the registered owner of this Note (or one or more Predecessor Notes, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Notes shall

be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Note shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Note is one of the series specified in its title issued in the aggregate principal amount of \$3,000,000 (herein referred to as the "Notes") for the purpose of paying contractual obligations to be incurred for (i) the construction of street improvements, including utility line relocations, drainage, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in relation to such project and the financing thereof, under and in strict conformity with the Constitution and laws of the State of Texas and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

The Notes are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Note by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Notes; the terms and conditions relating to the transfer or exchange of this Note; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Note may be discharged at or prior to its maturity, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Note, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Notes of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Note as the owner entitled to payment of principal hereof at its Stated Maturity, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any

agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Notes is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Notes to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Notes do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Notes by the levy of a tax as aforestated. In case any provision in this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Note and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Note to be duly executed under the official seal of the City as of the Note Date.

CITY OF SHERMAN, TEXAS

Mayor

COUNTERSIGNED:

City Clerk

(SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Note only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER (
OF PUBLIC ACCOUNTS (REGISTER NO. _____
THE STATE OF TEXAS (

I HEREBY CERTIFY that this Note has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Note has been duly issued and registered under the provisions of the within-mentioned Ordinance; the note or notes of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in Dallas, Texas, is the Designated Payment/Transfer Office for this Note.

The Bank of New York Mellon Trust Company,
N.A., Dallas, Texas,
as Paying Agent/Registrar

Registration Date:

_____ By _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee:) _____

(Social Security or other identifying number: _____
_____) the within Note and all rights thereunder, and hereby
irrevocably constitutes and appoints _____

attorney to transfer the within Note on the books kept for registration thereof, with full power of
substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment
must correspond with the name of the
registered owner as it appears on the face of
the within Note in every particular.

(f) The Initial Note(s) shall be in the form set forth in paragraph (b) of this Section,
except that the form of a single fully registered Initial Note shall be modified as follows:

REGISTERED
NO. T-1

REGISTERED
\$3,000,000

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF SHERMAN, TEXAS
LIMITED TAX NOTE, SERIES 2009

Note Date:
April 1, 2009

CUSIP NO:

Registered Owner:

Principal Amount: THREE MILLION DOLLARS

The City of Sherman (hereinafter referred to as the "City"), a body corporate and
municipal corporation in the County of Grayson, State of Texas, for value received,
acknowledges itself indebted to and hereby promises to pay to the Registered Owner named
above, or the registered assigns thereof, the Principal Amount hereinabove stated on August 15
in each of the years and in principal installments in accordance with the following schedule:

<u>YEAR</u>	<u>PRINCIPAL INSTALLMENTS</u>	<u>INTEREST RATE</u>
-------------	-----------------------------------	--------------------------

(Information to be inserted from schedule in Section 2 hereof).

(without right of prior redemption) and to pay interest on the unpaid principal amounts hereof from the Note Date at the per annum rate(s) of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on February 15 and August 15 of each year, commencing August 15, 2009. Principal installments of this Note are payable at its Stated Maturity to the registered owner hereof, upon presentation and surrender, by The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender to its designated offices in Dallas, Texas (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Note whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Notes shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Note shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Notes, being (i) the interest on the Notes and (ii) a sinking fund for their payment at maturity or redemption or a sinking fund of 2% (whichever amount is the greater), there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations prescribed by law, and such tax hereby levied on each one hundred dollars' valuation of taxable property in the City for the Debt Service Requirements of the Notes shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Notes while Outstanding; full allowance being made for delinquencies and costs of collection; separate books and records relating to the receipt and disbursement of taxes levied, assessed and collected for and on account of the Notes shall be kept and maintained by the City at all times while the Notes are Outstanding, and the taxes collected for the payment of the Debt Service Requirements on the Notes shall be deposited to the credit of a "Special 2009 Note Account" (the "Interest and Sinking Fund") maintained on the records of the City and deposited in a special fund maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Notes.

The Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer and City Clerk of the City, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Notes, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Notes as the same accrues or matures; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Notes.

SECTION 11. Mutilated - Destroyed - Lost and Stolen Notes. In case any Note shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Note of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Note, or in lieu of and in substitution for such destroyed, lost or stolen Note, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Note, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Note shall be borne by the Holder of the Note mutilated, or destroyed, lost or stolen.

Every replacement Note issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Notes; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Notes.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Notes.

SECTION 12. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Notes, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Notes or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Notes or the principal amount(s) thereof at maturity therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Notes, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof. The City covenants that no deposit of moneys or

Government Securities will be made under this Section and no use made of any such deposit which would cause the Notes to be treated as “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

The term “Government Securities”, as used herein, means (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

Any moneys so deposited with the Paying Agent/ Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Notes, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Notes and remaining unclaimed for a period of three (3) years after the Stated Maturity of the Notes such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

SECTION 13. Ordinance a Contract - Amendments - Outstanding Notes. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Note remains Outstanding except as permitted in this Section and in Section 30. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders holding a majority in aggregate principal amount of the Notes then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Notes, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Notes, reduce the principal amount thereof, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Notes, (2) give any preference to any Note over any other Note, or (3) reduce the aggregate principal amount of Notes required to be held by Holders for consent to any such amendment, addition, or rescission.

The term “Outstanding” when used in this Ordinance with respect to Notes means, as of the date of determination, all Notes theretofore issued and delivered under this Ordinance, except:

(1) those Notes cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Notes deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Notes which have been replaced with Notes registered and delivered in lieu thereof as provided in Section 11 hereof.

SECTION 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section 14, the following terms have the following meanings:

“Closing Date” means the date on which the Notes are first authenticated and delivered to the initial purchasers against payment therefor.

“Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Notes.

“Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Nonpurpose Investment” means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Notes are invested and which is not acquired to carry out the governmental purposes of the Notes.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Notes. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Notes has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Note to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Note, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Notes:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Notes, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Notes or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Notes to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the

final Stated Maturity of the Notes directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Notes.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Notes to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Note is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Notes with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Notes until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Notes by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States from the construction fund, other appropriate fund, or if permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the Interest and Sinking Fund, the amount that when added to the future value of previous rebate payments made for the Notes equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or

such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148 3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Notes, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Notes not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer, or City Clerk, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Notes, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(k) Qualified Tax Exempt Obligations. In accordance with the provisions of paragraph (3) of subsection (b) of Section 265 of the Code, the City hereby designates the Notes to be "qualified tax exempt obligations" in that the Notes are not "private activity bonds" as defined in the Code and the reasonably anticipated amount of "qualified tax exempt obligations" to be issued by the City (including all subordinate entities of the City) for the calendar year 2009 will not exceed \$30,000,000.

SECTION 15. Sale of Notes. Pursuant to a public sale for the Notes, the bid submitted by _____ (herein referred to as the "Purchasers") is declared to be the best bid received producing the lowest true interest cost rate to the City; such bid is hereby accepted and incorporated herein by reference as a part of this Ordinance for all purposes and the sale of the Notes to said Purchasers at the price of par and accrued interest to the date of delivery, plus a premium of \$_____ is hereby approved and confirmed. Delivery of the Notes to the Purchasers shall occur as soon as possible upon payment being made therefor in accordance with the terms of sale.

SECTION 16. Official Statement. The use of the Preliminary Official Statement, dated March ____, 2009, in the offering and sale of the Notes is hereby ratified, confirmed and approved in all respects, and the City Council hereby finds that the information and data contained in said Preliminary Official Statement pertaining to the City and its financial affairs is true and correct in all material respects and no material facts have been omitted therefrom which are necessary to make the statements therein, in light of the circumstances under which they were

made, not misleading. The final Official Statement, which reflects the terms of sale (together with such changes approved by the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer and City Clerk, any one or more of said officials, shall be and is hereby in all respects approved and the Purchasers are hereby authorized to use and distribute said final Official Statement, dated April 6, 2009, in the reoffering, sale and delivery of the Notes to the public.

SECTION 17. Control and Custody of Notes. The Mayor of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Notes, and shall take and have charge and control of the Initial Note(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the initial purchasers.

SECTION 18. Proceeds of Sale. The proceeds of sale of the Notes, excluding accrued interest and premium in the amount of \$_____ received from the Purchasers and amounts to pay costs of issuance, shall be deposited in a construction fund maintained at a depository of the City. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of V.T.C.A., Government Code, Chapter 2256 and the City's investment policies and guidelines, and any investment earnings realized shall be expended for such authorized projects and purposes or deposited in the Interest and Sinking Fund as shall be determined by the City Council. Accrued interest and premium in the above amount as well as any excess note proceeds, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Interest and Sinking Fund.

SECTION 19. Notices to Holders - Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Notes. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 20. Cancellation. All Notes surrendered for payment, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Notes previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all

Notes so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Notes held by the Paying Agent/Registrar shall be returned to the City.

SECTION 21. Legal Opinion. The Purchasers' obligation to accept delivery of the Notes is subject to being furnished a final opinion of Fulbright & Jaworski L.L.P., Dallas, Texas, approving the Notes as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Notes. An executed counterpart of said opinion shall accompany the global certificates deposited with The Depository Trust Company or a reproduction thereof shall be printed on the definitive Notes in the event the book-entry-only system shall be discontinued.

SECTION 22. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Notes. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Notes shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Notes as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Notes.

SECTION 23. Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

SECTION 24. Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 25. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 26. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 27. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 28. Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 29. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer or City Clerk are hereby expressly authorized, empowered and directed from time to time and at any time to do and

perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance, sale and delivery of the Notes. In addition, prior to the initial delivery of the Notes, the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer or City Clerk or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Notes by the Attorney General. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 30. Continuing Disclosure Undertaking.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"MSRB" means the Municipal Securities Rulemaking Board.

"NRMSIR" means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

"Rule" means SEC Rule 15c2 12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"SID" means any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

(b) Annual Reports. The City shall provide annually to each NRMSIR and any SID, within six months after the end of each fiscal year (beginning with the fiscal year ending September 30, 2008) financial information and operating data with respect to the City of the general type included in the final Official Statement approved by Section 16 of this Ordinance, being the information described in Exhibit B hereto. Financial statements to be provided shall be (1) prepared in accordance with the accounting principles described in Exhibit B hereto and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available at the time the financial information and operating data must be provided, then the City shall provide unaudited financial statements for the applicable fiscal year to each NRMSIR and any SID with the financial information and operating data and will file the annual audit report, when and if the same becomes available.

If the City changes its fiscal year, it will notify each NRMSIR and any SID of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

(c) **Material Event Notices.** The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the Notes, if such event is material within the meaning of the federal securities laws:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or events affecting the tax-exempt status of the Notes;
7. Modifications to rights of holders of the Notes;
8. Note calls;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Notes; and
11. Rating changes.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) **Limitations, Disclaimers, and Amendments.** The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an "obligated person" with respect to the Notes within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Notes, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Notes at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY NOTE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted underwriters to purchase or sell Notes in the primary offering of the Notes in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Notes consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Notes. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Notes from lawfully purchasing or selling Notes in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 31. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption on the date shown below in accordance with V.T.C.A., Government Code, Section 1201.028, as amended.

SECTION 32. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

INTRODUCED AND ADOPTED this 6th day of April, 2009.

EFFECTIVE DATE on this the 6th day of April, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT entered into as of April 6, 2009 (this “Agreement”), by and between the City of Sherman, Texas (the “Issuer”), and The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, a banking corporation organized and existing under the laws of the United States of America (the “Bank”),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its “City of Sherman, Texas, Limited Tax Notes, Series 2009” (the “Securities”), dated April 1, 2009, such Securities scheduled to be delivered to the initial purchasers thereof on or about April 30, 2009; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the “Authorizing Document” (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the “Authorizing Document”.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in Annex A attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Security means the date on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

"Bank Office" means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

"Authorizing Document" means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, certified by the Secretary or any other officer of the Issuer and delivered to the Bank.

"Fiscal Year" means the fiscal year of the Issuer, ending September 30th.

"Holder" and "Security Holder" each means the Person in whose name a Security is registered in the Security Register.

"Issuer Request" and "Issuer Order" means a written request or order signed in the name of the Issuer by the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer, or City Clerk, any one or more of said officials, and delivered to the Bank.

"Legal Holiday" means a day on which the Bank is required or authorized to be closed.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular

Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

First Class/

Registered/Certified

The Bank of New York Mellon
Trust Company, N.A.
Institutional Trust Services
P. O. Box 2320
Dallas, Texas 75221-2320

Express Delivery/Courier

The Bank of New York Mellon
Trust Company, N.A.
Institutional Trust Services
2001 Bryan Street, 9th Floor
Dallas, Texas 75201

By Hand Only

The Bank of New York Mellon Trust
Company, N.A.
Room 234-North Building
Institutional Trust Securities Window
55 Water Street
New York, New York 10041

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities at the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the "Security Register") for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacement of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers, in form satisfactory to the Bank, duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide an adequate inventory of printed Securities to facilitate transfers or exchanges thereof. The Bank covenants that the inventory of printed Securities will be kept in safekeeping pending their use and reasonable care will be

exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such destroyed lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer's financial advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the financial advisor or the Issuer as the final closing instructions. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of money received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred

without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the State and County where the administrative offices of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for “Depository Trust Company” services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the “Operational Arrangements”, which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[remainder of page left blank intentionally]

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

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas**

BY: _____
Title: _____

**Address: 2001 Bryan Street, 8th Floor
Dallas, Texas 75201**

Attest:

Title:

CITY OF SHERMAN, TEXAS

BY: _____
Mayor

**Address: 220 West Mulberry Street,
Sherman, Texas 75091**

Attest:

City Clerk

EXHIBIT B

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 30 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The financial statements of the City appended to the Official Statement as Appendix B for the most recently concluded fiscal year.
2. The information contained in Tables 1 through 6 and 8 through 11 in the Official Statement

Accounting Principles

The accounting principles referred to in such Section are generally those described in Appendix B to the Official Statement, as such principles may be changed from time to time to comply with state law or regulation.



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. B.3

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5597

Authorizing the Issuance of “CITY OF SHERMAN, TEXAS, TAX AND WATERWORKS AND SEWER SYSTEM (LIMITED PLEDGE) REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009”; Specifying the Terms and Features of Said Certificates; Providing for the Payment of Said Certificates of Obligation by the Levy of an Ad Valorem Tax upon all Taxable Property within the City and a Limited Pledge of the Net Revenues from the Operation of the City’s Waterworks and Sewer System; Resolving Other Matters Incident and Relating to the Issuance, Payment, Security, Sale and Delivery of Said Certificates, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; Providing an Effective Date

Issue

To authorize issuance of \$5 million in Certificates of Obligation (Certificates) for street and park improvement projects and for infrastructure improvements in Tax Increment Financing Zones #1 and #2

Background

The Council approved the Notice to Proceed with issuance of these Certificates at the March 2, 2009 Council Meeting. This Ordinance authorizes the City to actually issue the Certificates, which will be repaid over twenty years. The proceeds from issuance are expected to be received by the end of April. Although the Certificates call for a limited pledge of water and sewer revenues as security, the source of repayment for these Certificates will be the taxes from the general fund.

The proceeds from the Certificates will be used to finance various street and park improvement projects authorized by the Council during the fiscal year (FY) 2007-08 and FY 2008-09 budget processes. Also, a portion of the proceeds, about \$1.3 million, will be used in Tax Increment Financing Zones #1 and #2 for downtown capital improvements and purchase of infrastructure at the Sherman Town Center.

Origination

City Manager’s Office

Financial Consideration

The cost of issuance for these Certificates will be about \$70,000 to \$75,000, the cost of which will be netted against the proceeds from issuance.

Staff Recommendation

The staff recommends that the Council approve this Ordinance as presented.

Alternatives

No alternatives can be recommended by staff at this time.

Attachments

Ordinance No. 5597

Prepared by:

Robby Hefton, Assistant City Manager/CFO

Approved by:

George Olson, City Manager

ORDINANCE NO. 5597

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE ISSUANCE OF "CITY OF SHERMAN, TEXAS, TAX AND WATERWORKS AND SEWER SYSTEM (LIMITED PLEDGE) REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009"; SPECIFYING THE TERMS AND FEATURES OF SAID CERTIFICATES; PROVIDING FOR THE PAYMENT OF SAID CERTIFICATES OF OBLIGATION BY THE LEVY OF AN AD VALOREM TAX UPON ALL TAXABLE PROPERTY WITHIN THE CITY AND A LIMITED PLEDGE OF THE NET REVENUES FROM THE OPERATION OF THE CITY'S WATERWORKS AND SEWER SYSTEM; RESOLVING OTHER MATTERS INCIDENT AND RELATING TO THE ISSUANCE, PAYMENT, SECURITY, SALE AND DELIVERY OF SAID CERTIFICATES, INCLUDING THE APPROVAL AND EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT; PROVIDING AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, notice of the City Council's intention to issue certificates of obligation in the maximum principal amount of \$5,000,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) street improvements, including utility line relocations, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, (b) drainage improvements, (c) park improvements, including the acquisition of land and rights-of-way therefor, (d) improvements and extensions to the City's combined Waterworks and Sewer System and (e) improvements to the Downtown square, including lighting, curbs and sidewalks and (ii) professional services rendered in relation to such projects and the financing thereof, has been duly published in Herald Democrat, a newspaper hereby found and determined to be of general circulation in the City of Sherman, Texas, on March 4, 2009 and March 11, 2009, the date the first publication of such notice being not less than thirty-one (31) days prior to the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates; and

WHEREAS, no petition protesting the issuance of the certificates of obligation and bearing valid petition signatures of at least 5% of the qualified electors of the City has been presented to or filed with the Mayor, City Clerk or any other official of the City on or prior to the date of the passage of this Ordinance; and

WHEREAS, the City Council hereby finds and determines that the certificates of obligation described in the aforesaid notice should be issued and sold at this time in the amount and manner as hereinafter provided;

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

SECTION 1. Authorization, Designation, Principal Amount, Purpose. Certificates of obligation of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$5,000,000, to be designated and bear the title “CITY OF SHERMAN, TEXAS, TAX AND WATERWORKS AND SEWER SYSTEM (LIMITED PLEDGE) REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009” (hereinafter referred to as the “Certificates”), for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) street improvements, including utility line relocations, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, (b) drainage improvements, (c) park improvements, including the acquisition of land and rights-of-way therefor, (d) improvements and extensions to the City’s combined Waterworks and Sewer System, and (e) improvements to the Downtown square, including lighting, curbs and sidewalks and (ii) professional services rendered in relation to such projects and the financing thereof, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended.

SECTION 2. Fully Registered Obligations - Authorized Denominations - Stated Maturities - Date. The Certificates are issuable in fully registered form only; shall be dated April 1, 2009 (the “Certificate Date”) and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity) and the Certificates shall become due and payable on August 15 in each of the years and in principal amounts (the “Stated Maturities”) and bear interest at the per annum rate(s) in accordance with the following schedule:

<u>Year of</u> <u>Stated Maturity</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate(s)</u>
2010	\$ 135,000	
2011	205,000	
2012	210,000	
2013	215,000	
2014	220,000	
2015	225,000	
2016	230,000	
2017	235,000	
2018	245,000	
2019	250,000	
2020	265,000	
2021	270,000	
2022	285,000	
2023	295,000	
2024	305,000	
2025	320,000	
2026	335,000	
2027	240,000	

2028	250,000
2029	265,000

The Certificates shall bear interest on the unpaid principal amounts from the Certificate Date at the rates per annum shown above in this Section (calculated on the basis of a 360-day year of twelve 30-day months), and such interest shall be payable on February 15 and August 15 of each year, commencing February 15, 2010, until maturity or prior redemption.

SECTION 3. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the registered owners or holders of the Certificates (hereinafter called the “Holders”) appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as Paying Agent/Registrar for the Certificates is hereby approved and confirmed. Books and records relating to the registration, payment, transfer and exchange of the Certificates (the “Security Register”) shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided herein and in accordance with the terms and provisions of a “Paying Agent/Registrar Agreement”, substantially in the form attached hereto as Exhibit A, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Mayor or Mayor Pro Tem and City Clerk are authorized to execute and deliver such Agreement in connection with the delivery of the Certificates. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Certificates shall be payable at the Stated Maturities or upon prior redemption thereof only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices, initially in Dallas, Texas, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the “Designated Payment/Transfer Office”). Interest on the Certificates shall be paid to the Holders whose names appear in the Security Register at the close of business on the Record Date (the last business day of the month next preceding each interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by

law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business next preceding the date of mailing of such notice.

SECTION 4. Redemption.

(a) Optional Redemption. The Certificates having Stated Maturities on and after August 15, 2019 shall be subject to redemption prior to maturity, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on August 15, 2018, or on any date thereafter at the redemption price of par plus accrued interest to the date of redemption.

At least forty five (45) days prior to a redemption date for the Certificates (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of the decision to redeem Certificates, the principal amount of each Stated Maturity to be redeemed, and the date of redemption therefor. The decision of the City to exercise the right to redeem Certificates shall be entered in the minutes of the governing body of the City.

(b) Mandatory Redemption. The Certificates having Stated Maturities of August 15, 20__, August 15, 20__, August 15, 20__ and August 15, 20__ (the "Term Certificates") shall be subject to mandatory redemption in part prior to maturity at the redemption price of par and accrued interest to the date of redemption on the respective dates and in principal amounts as follows:

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20	\$,000 (maturity)

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20	\$,000 (maturity)

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20	\$,000 (maturity)

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20	\$,000
August 15, 20	\$,000 (maturity)

Approximately forty-five (45) days prior to each mandatory redemption date for the Term Certificates, the Paying Agent/Registrar shall select by lot the numbers of the Term Certificates within the applicable Stated Maturity to be redeemed on the next following August 15 from moneys set aside for that purpose in the Certificate Fund (as hereinafter defined). Any Term Certificate not selected for prior redemption shall be paid on the date of their Stated Maturity.

The principal amount of the Term Certificates for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Certificates of like Stated Maturity which, at least 50 days prior to the mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions set forth in paragraph(a) of this Section and not theretofore credited against a mandatory redemption requirement.

(c) Selection of Certificates for Redemption. If less than all Outstanding Certificates of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Certificates as representing the number of Certificates Outstanding which is obtained by dividing the principal amount of such Certificates by \$5,000 and shall select the Certificates to be redeemed within such Stated Maturity by lot.

(d) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Certificates, a notice of redemption shall be sent by United States Mail, first class postage prepaid, in the name of the City and at the City's expense, to each Holder of a Certificate to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Certificates, (ii) identify the Certificates to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Certificates, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, provided moneys sufficient for the payment of such Certificate (or the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar and (v) specify that payment of the redemption price for the Certificates, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender of the Certificates. If a Certificate is subject by its terms to prior redemption and has been called for redemption and notice of redemption has been duly given as hereinabove provided, such Certificate (or the principal amount thereof to be redeemed) shall become due and payable and interest thereon shall cease to accrue from and after the redemption date therefor.

(e) Conditional Notice of Redemption. With respect to any optional redemption of the Certificates, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

SECTION 5. Registration - Transfer - Exchange of Certificates – Predecessor Certificates. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every owner of the Certificates issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Certificate may be transferred or exchanged for Certificates of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Certificate (other than the Initial Certificate(s) authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holder, Certificates (other than the Initial Certificate(s) authorized in Section 8 hereof) may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Certificates surrendered for exchange, upon surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/ Registrar. Whenever any Certificates are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates to the Holder requesting the exchange.

All Certificates issued in any transfer or exchange of Certificates shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class, postage prepaid to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered and delivered in lieu thereof pursuant to the provisions of Section 21 hereof and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the City nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Certificate; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 3, 4 and 5 hereof relating to the payment, and transfer/exchange of the Certificates, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company ("DTC"), a limited purpose trust company organized under the laws of the State of New York, in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the City and DTC (the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the "DTC Participants"). While the Certificates are held by DTC under the Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Certificates, the City covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions of Sections 3, 4 and 5 hereof.

SECTION 7. Execution - Registration. The Certificates shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City Clerk. The signature of said officers on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Certificate Date shall be deemed to be duly executed on behalf of the City, notwithstanding that one or more of the individuals executing the same shall cease to be such officer at the time of delivery of the Certificates to the initial purchaser(s) and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in V.T.C.A., Government Code, Chapter 1201, as amended.

No Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered and delivered.

SECTION 8. Initial Certificate(s). The Certificates herein authorized shall be initially issued either (i) as a single fully registered certificate in the total principal amount stated in Section 1 hereof with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as multiple fully registered certificates, being one certificate for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Certificate(s)") and, in either case, the Initial Certificate(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate(s) shall be the Certificate(s) submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Certificate(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Certificate(s) delivered hereunder and exchange therefor definitive Certificates of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) **Forms Generally.** The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Certificates, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers

Association) and such legends and endorsements (including insurance legends in the event the Certificates, or any maturities thereof, are purchased with insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Certificates as evidenced by their execution. Any portion of the text of any Certificates may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

The definitive Certificates and the Initial Certificate(s) shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution.

(b) Form of Definitive Certificates.

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF SHERMAN, TEXAS,
TAX AND WATERWORKS AND SEWER SYSTEM
(LIMITED PLEDGE) REVENUE
CERTIFICATE OF OBLIGATION,
SERIES 2009

Certificate Date:
April 1, 2009

Interest Rate:
_____ %

Stated Maturity:
August 15, 20__

CUSIP NO:

Registered Owner:

Principal Amount:

DOLLARS

The City of Sherman (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of Grayson, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date in which case it shall bear interest from the Certificate Date) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, commencing February 15, 2010, until maturity or prior redemption. Principal of this Certificate is payable at its Stated Maturity or on a redemption date to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing

the registration certificate appearing hereon, or its successor; provided, however, while this Certificate is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Certificate. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$5,000,000 (herein referred to as the "Certificates") for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) street improvements, including utility line relocations, sidewalks, entryways, landscaping, lighting, curbs and gutters related thereto and the acquisition of land and rights-of-way therefor, (b) drainage improvements, (c) park improvements, including the acquisition of land and rights-of-way therefor, (d) improvements and extensions to the City's combined Waterworks and Sewer System, and (e) improvements to the Downtown square, including lighting, curbs and sidewalks and (ii) professional services rendered in relation to such projects and the financing thereof, under and in strict conformity with the Constitution and laws of the State of Texas, particularly V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

The Certificates maturing on dates hereinafter identified (the "Term Certificates") are subject to mandatory redemption prior to maturity with funds on deposit in the Certificate Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the mandatory redemption date on the respective dates and in principal amounts as follows:

Term Certificates due August 15, 20	
<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20	\$,000 (maturity)

Term Certificates due August 15, 20	
<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20	\$,000 (maturity)

Term Certificates due August 15, 20	
<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20	\$,000 (maturity)

Term Certificates due August 15, 20	
<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20	\$,000
August 15, 20	\$,000 (maturity)

The particular Term Certificates of a stated maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Certificates for a stated maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Certificates of like stated maturity which, at least 50 days prior to the mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.

The Certificates maturing on and after August 15, 2019, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on August 15, 2018, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City, and are additionally payable from and equally and ratably secured by a lien on and limited pledge of the Net Revenues (as defined in the Ordinance) of the City's combined Waterworks and Sewer System (the "System"), such lien and pledge being limited to an amount of \$1,000 and, together with a parity pledge securing the payment of the Previously Issued Certificates, being junior and subordinate to the lien on and pledge of the Net Revenues of the System securing the payment of "Prior Lien Obligations" (identified and defined in the Ordinance) now outstanding and hereafter issued by the City. In the Ordinance, the City reserves and retains the right to issue Prior Lien Obligations while the Certificates are outstanding without limitation as to principal amount but subject to any terms, conditions or restrictions as may be applicable thereto under law or otherwise, as well as the right to issue Additional Obligations payable from the same sources as the Certificates and, together with the Previously Issued Certificates and the Certificates, equally and ratably secured by a parity lien on and pledge of the Net Revenues of the System.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all the provisions of which the owner or holder of this Certificate by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the nature and extent of the pledge of the Net Revenues securing the payment of the Certificates; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the pledge of the Net Revenues and covenants made in the Ordinance may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal hereof at its Stated Maturity or upon its prior redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30)

days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates as aforestated. In case any provision in this Certificate shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Certificate to be duly executed under the official seal of the City as of the Certificate Date.

CITY OF SHERMAN, TEXAS

Mayor

COUNTERSIGNED:

City Clerk

(SEAL)

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas,
as Paying Agent/Registrar

Registration Date:

By _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

(Social Security or other identifying number _____) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints

attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

DATED:

Signature guaranteed:

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Certificate in every particular.

(f) The Initial Certificate(s) shall be in the form set forth in paragraph (b) of this Section, except that the form of a single fully registered Initial Certificate shall be modified as follows:

REGISTERED
NO. T-1

REGISTERED
\$5,000,000

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF SHERMAN, TEXAS,
TAX AND WATERWORKS AND SEWER SYSTEM
(LIMITED PLEDGE) REVENUE
CERTIFICATE OF OBLIGATION,
SERIES 2009

Certificate Date: April 1, 2009

Registered Owner:

Principal Amount: FIVE MILLION DOLLARS

The City of Sherman (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of Grayson, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on August 15 in each of the years and in principal installments in accordance with the following schedule:

<u>YEAR</u>	<u>PRINCIPAL INSTALLMENTS</u>	<u>INTEREST RATE</u>
-------------	-----------------------------------	--------------------------

(Information to be inserted from schedule in Section 2 hereof).

(or so much thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal amounts hereof from the Certificate Date at the per annum rate(s) of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year, commencing February 15, 2010, until maturity or prior redemption. Principal installments of this Certificate are payable at its Stated Maturity or on a prepayment date to the registered owner hereof by The Bank of New York Mellon Trust Company, N.A. (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices, initially in Dallas, Texas, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/ Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10. Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues therefor, the following words or terms, whenever the same appears herein without qualifying language, are defined to mean as follows:

(a) The term "Additional Obligations" shall mean combination tax and revenue obligations hereafter issued which by their terms are payable from ad valorem taxes and additionally payable from and secured by a parity lien on and pledge of the Net Revenues of the System of equal rank and dignity with the lien and pledge securing the payment of the Previously Issued Certificates and the Certificates.

(b) The term "Certificates" shall mean the "City of Sherman, Texas Tax and Waterworks and Sewer System (Limited Pledge) Revenue Certificates of Obligation, Series 2009" authorized by this Ordinance.

(c) The term "Certificate Fund" shall mean the special Fund created and established under the provisions of Section 11 of this Ordinance.

(d) The term "Collection Date" shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the City become delinquent.

(e) The term "Fiscal Year" shall mean the twelve month financial accounting period used by the City in connection with the operation of the System which may be any twelve consecutive month period established by the City.

(f) The term "Government Securities" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iii) noncallable obligations of a state or an agency or a county, municipality or other political subdivision of a state that have been refunded and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

(g) The term "Gross Revenues" shall mean all income, receipts and revenues of every nature derived or received from the operation and ownership (excluding refundable meter deposits, restricted gifts and grants in aid of construction) of the System, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts created and established for the payment and security of the Prior Lien Obligations and other obligations payable solely from and secured only by a lien on and pledge of the Net Revenues.

(h) The term "Net Revenues" shall mean Gross Revenues of the System, with respect to any period, after deducting the System's Operating and Maintenance Expenses during such period.

(i) The term "Operating and Maintenance Expenses" shall mean all current expenses of operating and maintaining the System, including all salaries, labor, materials, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the City Council, reasonably and fairly exercised, are necessary to maintain the operations and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair obligations payable from Net Revenues shall be deducted in determining "Net Revenues". Depreciation charges shall not be considered Operating and Maintenance Expenses. Operating and Maintenance Expenses shall include payments under contracts for the purchase of water supply, treatment of sewage or other materials, goods, services, or facilities for the System to the extent authorized by law and the provisions of such contract.

(j) The term "Outstanding", when used in this Ordinance with respect to Certificates, means, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(1) those Certificates cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Certificates deemed to be duly paid by the City in accordance with the provisions of Section 22 hereof; and

(3) those Certificates that have been mutilated, destroyed, lost or stolen and replacement Certificates have been registered and delivered in lieu thereof as provided in Section 21 hereof.

(k) The term "Previously Issued Certificates" shall mean the outstanding "City of Sherman, Texas, Tax and Waterworks and Sewer System (Limited Pledge) Revenue Certificates of Obligation, Series 2008", dated March 1, 2008, originally issued in the principal amount of \$5,000,000.

(l) The term "Prior Lien Obligations" shall mean all revenue bonds or other obligations hereafter issued, payable from and secured, in whole or in part, by a lien on and pledge of all or a portion of the Net Revenues of the System prior to the right and claim on the Net Revenues of the System securing the payment of the Previously Issued Certificates and the Certificates.

(m) The term "System" shall mean all properties, facilities and plants currently owned, operated and maintained by the City for the supply, treatment, transmission and distribution of treated potable water and the collection, treatment and disposal of water carried wastes, together with all future improvements, extensions, enlargements and additions thereto and replacements thereof.

SECTION 11. Certificate Fund. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption and retirement of the Certificates, there shall be and is hereby created a special account or fund on the books and records of the City known as the "SPECIAL SERIES 2009 TAX AND REVENUE CERTIFICATE OF OBLIGATION FUND", and all moneys deposited to the credit of such Fund shall be kept and maintained in a

special banking account at the depository bank of the City. The City Manager and Assistant City Manager/Chief Financial Officer, individually or collectively, are hereby authorized and directed to make withdrawals from said Fund sufficient to pay the principal of and interest on the Certificates as the same become due and payable, and shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Fund an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Fund may, at the option of the City, be invested in obligations identified in, and in accordance with the provisions of the "Public Funds Investment Act" (V.T.C.A., Government Code, Chapter 2256, as amended) relating to the investment of "bond proceeds"; provided that all such investments shall be made in such a manner that the money required to be expended from said Fund will be available at the proper time or times. All interest and income derived from deposits and investments in said Certificate Fund shall be credited to, and any losses debited to, the said Certificate Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Certificates.

SECTION 12. Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates, being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied a sufficient tax on each one hundred dollars' valuation of taxable property in said City, within the limitations prescribed by law, adequate to pay such Debt Service Requirements while the Certificates remain Outstanding, full allowance being made for delinquencies and costs of collection; and said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Fund. The City Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(a) Prior to the date the City Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the City Council shall determine:

(1) The amount on deposit in the Certificate Fund after (a) deducting therefrom the total amount of Debt Service Requirements to become due on Certificates prior to the Collection Date for the ad valorem taxes to be levied and (b) adding thereto the amount of the Net Revenues of the System appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(2) The amount of Net Revenues of the System, appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(3) The amount of Debt Service Requirements to become due and payable on the Certificates (or a sinking fund of 2% if greater than the amount due and payable on the Certificates) between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(b) The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amount established in paragraph (3) above less the sum total of the amounts established in paragraphs (1) and (2), after taking into consideration delinquencies and costs of collecting such annual taxes.

SECTION 13. Limited Pledge of Net Revenues. The City hereby covenants and agrees that, subject to the prior lien on and pledge of the Net Revenues of the System to the payment and security of Prior Lien Obligations, the Net Revenues of the System in the amount of \$1,000 are hereby irrevocably pledged, equally and ratably, to the payment of the principal of and interest on the Certificates, and the limited pledge of \$1,000 of the Net Revenues of the System herein made for the payment of the Certificates shall constitute a lien on the Net Revenues of the System in accordance with the terms and provisions hereof and shall be on a parity in all respects with the lien on the Net Revenues securing the payment of the Previously Issued Certificates. Furthermore, such lien on and pledge of the Net Revenues securing the payment of the Certificates shall be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer or transfer of control of the Net Revenues, the filing of this Ordinance or any other act; all as provided in Chapter 1208 of the Texas Government Code.

V.T.C.A., Chapter 1208, Government Code, as amended, applies to the issuance of the Certificates and the pledge of the revenues granted by the City under this Section of this Ordinance, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Certificates are Outstanding and unpaid such that the pledge of the revenues granted by the City under this Section of this Ordinance is to be subject to the filing requirements of V.T.C.A., Chapter 9, Business & Commerce Code, as amended, then in order to preserve to the Holders of the Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of V.T.C.A., Chapter 9, Business & Commerce Code, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14. System Fund. The City covenants and agrees that all Gross Revenues (excluding earnings from the investment of money held in any special funds or accounts created for the payment and security of the Prior Lien Obligations) shall be deposited as collected into a fund maintained at an official depository of the City and known on the books of the City as the "Water and Sewer System Fund" (hereinafter called the "System Fund"). All moneys deposited

to the credit of the System Fund shall be allocated, dedicated and disbursed to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of reasonable and proper Operating and Maintenance Expenses of the System as defined herein or required by statute to be a first charge on and claim against the Gross Revenues of the System.

Second: To the payment of all amounts required to be deposited in the special Funds created and established for the payment, security and benefit of Prior Lien Obligations in accordance with the terms and provisions of the ordinances authorizing the issuance of Prior Lien Obligations.

Third: To the payment of the limited amount pledged to the payment of the Previously Issued Certificates and the Certificates.

Any Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law.

SECTION 15. Deposits to Certificate Fund. Subject to the provisions of Section 13 hereof, the City hereby covenants and agrees that the amount of pledged Net Revenues of the System (\$1,000), together with other lawfully available revenues appropriated by the City for payment of the Debt Service Requirements on the Certificates and ad valorem taxes levied, collected and deposited in the Certificate Fund for and on behalf of the Certificates, will be an amount equal to one hundred percent (100%) of the amount required to fully pay the interest and principal due and payable on the Certificates. In addition, any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, or another fund created for the payment of the principal of and interest on any Certificates, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Net Revenues of the System.

SECTION 16. Security of Funds. All moneys on deposit in the Funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and moneys on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17. Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in the payments to be made to the Certificate Fund, or (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance, the Holder of any of the Certificates shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

SECTION 18. Special Covenants. The City hereby further covenants as follows:

(a) It has the lawful power to pledge the Net Revenues of the System to the payment of the Certificates in the manner herein contemplated and has lawfully exercised such power under the Constitution and laws of the State of Texas, including said power existing under V.T.C.A., Government Code, Chapter 1502, as amended, and V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended.

(b) Other than for the payment of the Previously Issued Certificates and the Certificates, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

SECTION 19. Issuance of Prior Lien Obligations. The City hereby expressly reserves the right to hereafter issue Prior Lien Obligations, without limitation as to principal amount but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, payable, in whole or in part, from the Net Revenues (without impairment of the obligation of contract with the Holders of the Certificates) upon such terms and conditions as the City Council may determine.

Additionally, the City reserves the right to issue Additional Obligations, without limitation or any restriction or condition being applicable to their issuance under the terms of this Ordinance, payable from and secured by a lien on and pledge of the Net Revenues of the System of equal rank and dignity, and on a parity in all respects, with the lien thereon and pledge thereof securing the payment of the Previously Issued Certificates and the Certificates.

SECTION 20. Application of Prior Lien Obligations Covenants and Agreements. It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements and covenants contained in the ordinances authorizing the issuance of the Prior Lien Obligations, and to the extent of any irreconcilable conflict between the provisions contained herein and in the ordinances authorizing the issuance of the Prior Lien Obligations, the provisions, agreements and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders of the Prior Lien Obligations.

SECTION 21. Mutilated - Destroyed - Lost and Stolen Certificates. In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same

denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost or stolen Certificate, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

Every replacement Certificate issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Certificates. The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Certificates.

SECTION 22. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the limited pledge of taxes levied under this Ordinance and the Net Revenues of the System and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Certificates or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/ Registrar have been made) the redemption date thereof. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/ Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City.

Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

SECTION 23. Ordinance a Contract - Amendments. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Certificate remains Outstanding except as permitted in this Section and in Section 39 hereof. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders holding a majority in aggregate principal amount of the Certificates then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 24. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

“Closing Date” means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

“Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“Computation Date” has the meaning set forth in Section 1.148 1(b) of the Regulations.

“Gross Proceeds” means any proceeds as defined in Section 1.148 1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148 1(c) of the Regulations, of the Certificates.

“Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Nonpurpose Investment” means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

“Rebate Amount” has the meaning set forth in Section 1.148 1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Certificates:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038 G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Certificate is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Certificates with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Certificates by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the construction fund, other appropriate fund or, if permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the Certificate Fund, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148 3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer and City Clerk, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(k) Qualified Tax Exempt Obligations. In accordance with the provisions of paragraph (3) of subsection (b) of Section 265 of the Code, the City hereby designates the Certificates to be "qualified tax exempt obligations" in that the Certificates are not "private activity bonds" as defined in the Code and the reasonably anticipated amount of "qualified tax exempt obligations" to be issued by the City (including all subordinate entities of the City) for the calendar year 2009 will not exceed \$30,000,000.

SECTION 25. Sale of Certificates. Pursuant to a public sale for the Certificates, the bid submitted by _____ (herein referred to as the "Purchasers") is declared to be the best bid received producing the lowest true interest cost rate to the City; such bid is hereby accepted and incorporated herein by reference as a part of this Ordinance for all purposes and the sale of the Certificates to said Purchasers at the price of par and accrued interest to the date of delivery, plus a premium of \$_____ is hereby approved and confirmed. Delivery of the Certificates to the Purchasers shall occur as soon as possible upon payment being made therefor in accordance with the terms of sale.

SECTION 26. Official Statement. The use of the Preliminary Official Statement, dated March 23, 2009, in the offering and sale of the Certificates is hereby ratified, confirmed and approved in all respects, and the City Council hereby finds that the information and data contained in said Preliminary Official Statement pertaining to the City and its financial affairs is true and correct in all material respects and no material facts have been omitted therefrom which are necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The final Official Statement, which reflects the terms of sale (together with such changes approved by the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer and City Clerk, any one or more of said officials, shall be and is hereby in all respects approved and the Purchasers are hereby authorized to use and distribute said final Official Statement, dated April 6, 2009, in the reoffering, sale and delivery of the Certificates to the public.

SECTION 27. Proceeds of Sale. The proceeds of sale of the Certificates, excluding the accrued interest received and premium in the amount of \$_____ from the Purchasers and amounts to pay costs of issuance, shall be deposited in a construction fund maintained at the City's depository bank or used to pay costs of issuance. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of V.T.C.A., Government Code, Chapter 2256, including guaranteed investment contracts permitted by V.T.C.A., Section 2256.015 et seq., and the City's investment policies and guidelines, and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Fund as shall be determined by the City Council. Accrued interest and premium in the above amount as well as all surplus proceeds of sale of the Certificates, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Fund.

SECTION 28. Control and Custody of Certificates. The Mayor of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending the sale of the Certificates, the investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificate(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

SECTION 29. Notices to Holders - Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to

the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 30. Cancellation. All Certificates surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Certificates held by the Paying Agent/Registrar shall be returned to the City.

SECTION 31. Bond Counsel's Opinion. The Purchasers' obligation to accept delivery of the Certificates is subject to being furnished a final opinion of Fulbright & Jaworski L.L.P., Dallas, Texas, approving the Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Certificates. An executed counterpart of said opinion shall accompany the global certificates deposited with The Depository Trust Company or a reproduction thereof shall be printed on the definitive Certificates in the event the book-entry-only system shall be discontinued.

SECTION 32. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 33. Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, and this Ordinance and all its provisions is intended to be and shall be for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

SECTION 34. Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 35. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 36. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 37. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 38. Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 39. Continuing Disclosure Undertaking.

(a) **Definitions.** As used in this Section, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“NRMSIR” means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

“Rule” means SEC Rule 15c2 12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“SID” means any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

(b) **Annual Reports.** The City shall provide annually to each NRMSIR and any SID, within six months after the end of each fiscal year (beginning with the fiscal year ending September 30, 2008), financial information and operating data with respect to the City of the general type included in the final Official Statement approved in Section 26 of this Ordinance, being the information described in **Exhibit B** hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in **Exhibit B** hereto and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available at the time the financial information and operating data must be provided, then the City shall provide unaudited financial statements for the applicable fiscal year to each NRMSIR and any SID and shall provide to each NRMSIR and any SID audited financial statements, when and if the same become available.

If the City changes its fiscal year, it will notify each NRMSIR and any SID of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

(c) Material Event Notices. The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the Certificates, if such event is material within the meaning of the federal securities laws:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions or events affecting the tax-exempt status of the Certificates;
- (7) Modifications to rights of holders of the Certificates;
- (8) Certificate calls;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates;
and
- (11) Rating changes.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any Certificate calls and defeasance that cause the City to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 40. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer or City Clerk are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance, sale and delivery of the Certificates. In addition, prior to the initial delivery of the Certificates, the Mayor, Mayor Pro Tem, City Manager,

Assistant City Manager/Chief Financial Officer or City Clerk or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Certificates by the Attorney General. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 41. Incorporation of Findings and Determinations. The findings and determinations of the City Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 42. Effective Date. This Ordinance shall take effect and be in full force immediately from and after its adoption on the date hereof in accordance with the provisions of V.T.C.A., Government Code, Section 1201.028, as amended.

SECTION 43. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

INTRODUCED AND ADOPTED on this the 6th day of April, 2009.

EFFECTIVE DATE on this the 6th day of April, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT entered into as of April 6, 2009 (this “Agreement”), by and between the City of Sherman, Texas (the “Issuer”), and The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, a banking corporation organized and existing under the laws of the United States of America (the “Bank”),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its “City of Sherman, Texas, Tax and Waterworks and Sewer System (Limited Pledge) Revenue Certificates of Obligation, Series 2009” (the “Securities”), dated April 1, 2009, such Securities scheduled to be delivered to the initial purchasers thereof on or about April 30, 2009; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE SEVEN APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 7.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the “Authorizing Document” (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the “Authorizing Document”.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 7.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in Annex A attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE EIGHT DEFINITIONS

Section 8.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Security means the date on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

"Bank Office" means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

"Authorizing Document" means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, certified by the Secretary or any other officer of the Issuer and delivered to the Bank.

"Fiscal Year" means the fiscal year of the Issuer, ending September 30th.

"Holder" and "Security Holder" each means the Person in whose name a Security is registered in the Security Register.

"Issuer Request" and "Issuer Order" means a written request or order signed in the name of the Issuer by the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager/Chief Financial Officer, or City Clerk, any one or more of said officials, and delivered to the Bank.

"Legal Holiday" means a day on which the Bank is required or authorized to be closed.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 8.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE NINE PAYING AGENT

Section 9.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

First Class/ Registered/Certified

The Bank of New York Mellon
Trust Company, N.A.
Institutional Trust Services
P. O. Box 2320
Dallas, Texas 75221-2320

Express Delivery/Courier

The Bank of New York Mellon
Trust Company, N.A.
Institutional Trust Services
2001 Bryan Street, 9th Floor
Dallas, Texas 75201

By Hand Only

The Bank of New York Mellon Trust
Company, N.A.
Room 234-North Building
Institutional Trust Securities Window
55 Water Street
New York, New York 10041

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

Section 9.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities at the dates specified in the Authorizing Document.

ARTICLE TEN REGISTRAR

Section 10.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the "Security Register") for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacement of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers, in form satisfactory to the Bank, duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 10.02 Securities. The Issuer shall provide an adequate inventory of printed Securities to facilitate transfers or exchanges thereof. The Bank covenants that the inventory of printed Securities will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than

the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 10.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 10.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 10.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 10.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such destroyed lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 10.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE ELEVEN THE BANK

Section 11.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer's financial advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the financial advisor or the Issuer as the final closing instructions. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 11.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

Section 11.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 11.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 11.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of money received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 11.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred

without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 11.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the State and County where the administrative offices of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

Section 11.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for “Depository Trust Company” services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the “Operational Arrangements”, which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE TWELVE MISCELLANEOUS PROVISIONS

Section 12.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 12.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 12.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page hereof.

Section 12.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 12.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 12.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 12.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 12.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 12.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 12.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 12.12 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[remainder of page left blank intentionally]

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

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas**

BY: _____
Title: _____

**Address: 2001 Bryan Street, 8th Floor
Dallas, Texas 75201**

Attest:

Title:

CITY OF SHERMAN, TEXAS

BY: _____
Mayor

**Address: 220 West Mulberry Street
Sherman, Texas 75091**

Attest:

City Clerk

EXHIBIT B
DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 39 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

The financial statements of the City appended to the Official Statement as Appendix C for the most recently concluded fiscal year.

The information contained in Tables 1 through 5 and 7 through 11 in the Official Statement.

Accounting Principles

The accounting principles referred to in such Section are generally those described in Appendix C to the Official Statement, as such principles may be changed from time to time to comply with state law or regulation.



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. B.4

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5598

**Providing for Permanent “No Parking” Signs Restricting Parking
along Portions of West Texas Street, Near its Intersection with North Travis Street,
within the City Limits of the City of Sherman**

Issue

To introduce an ordinance and seek public input concerning the establishment of parking restrictions along the south and north sides of the 100 block of West Texas Street

Background

In December 2008, a resident complaint was received indicating that cars were parking too close to the intersection of West Texas Street and North Travis Street causing traffic congestion. This situation was created upon the opening of the new Medicine Shoppe with employees and customers parking on West Texas Street. The problem was discussed with the owner of the Medicine Shoppe; but it was their opinion that any street parking restrictions would adversely affect their business. In an attempt to reach a safe compromise, two unrestricted parking spaces on the south side of West Texas Street were established a safe distance back from the intersection. To provide for traffic mobility at the intersection, parking was restricted on the north side of West Texas Street for a distance of 120 feet west of the intersection, and 50 feet west of the intersection on the south side. The “No Parking” signs have been up for 90 days. Since the parking was changed at this intersection, two resident complaints have been received; and one complaint was received from the office manager of Mosley & Associates/Raymond James (north of the Medicine Shoppe).

Origination

Citizen Complaints and Public Works Department

Financial Consideration

A total of three signs were installed. Material and labor to install these signs was \$204.00.

Staff Recommendation

Adopt the proposed ordinance to provide for the enforcement of “No Parking” along the north and south sides of the 100 block of West Texas Street.

Alternatives

Those as may be recommended by the City Council

Attachments

Ordinance No. 5598

Location Map

Prepared by:

Jeff Miller, Director of Public Works

Approved by:

George Olson, City Manager

ORDINANCE NO. 5598

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR PERMANENT “NO PARKING” SIGNS RESTRICTING PARKING ALONG PORTIONS OF WEST TEXAS STREET, NEAR ITS INTERSECTION WITH NORTH TRAVIS STREET, WITHIN THE CITY LIMITS OF THE CITY OF SHERMAN; 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, from and after the passage of this ordinance, permanent “NO PARKING” signs will be erected within the corporate limits of the City of Sherman and parking is prohibited in the following location:

The 100 block of West Texas Street, at its intersection with North Travis Street, 120 feet west along the north side and 50 feet west along the south side of West Texas Street, as shown by Exhibit “A” attached hereto and incorporated herein for all purposes.

SECTION 2. That the Director of Public Works is directed to designate this action by the appropriate markings and signs.

SECTION 3. That, from and after the erection of the “NO PARKING” signs herein authorized, it shall be unlawful for any motorist to park a vehicle in such area designated as a “NO PARKING” zone, as provided in Sec. 12.04.020 of the Code of Ordinances of the City of Sherman, Texas. Violators of this ordinance shall be subject to fine as provided in Section 1.01.009 of the Code of Ordinances of the City of Sherman, Texas.

SECTION 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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

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

INTRODUCED on this the _____ day of _____, 2009.

ADOPTED on this the _____ day of _____, 2009.

EFFECTIVE DATE on this the _____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

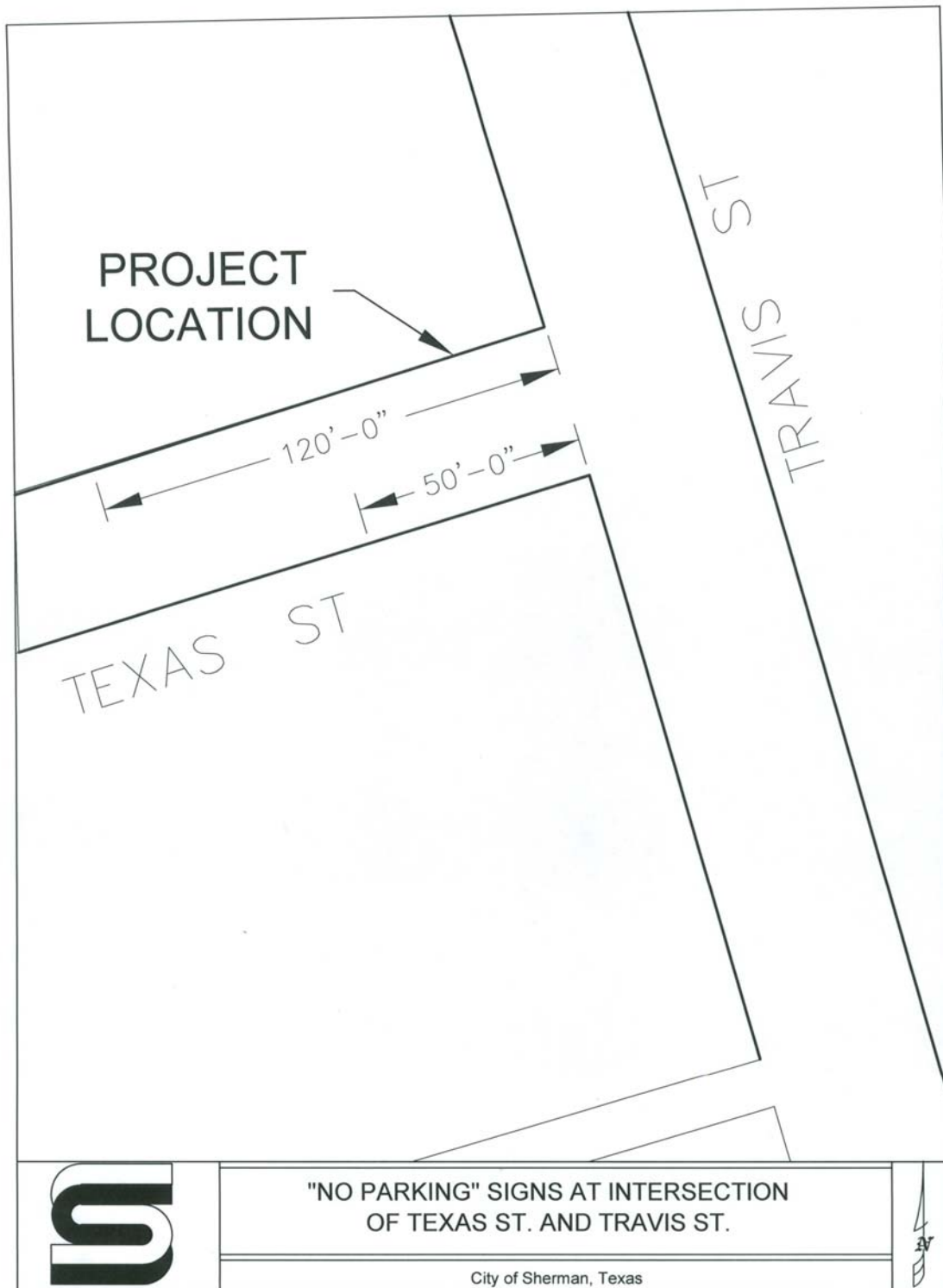
ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

Exhibit "A"





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. B.5

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5599

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Parking Lot in an R-1 (One Family Residential) District at 4505 Breezy Meadows Lane, being a Part of Lot 3, Block 1 of the Replat of Seasons West Addition, Phase One for a Total of 0.509 Acres in the Elizabeth Jones Survey, Abstract No. 625 (Israel Aleman, Sr., Owner; Underwood Drafting and Surveying, Inc., Surveyors); 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 Israel Aleman, Sr. (Owner) and Underwood Drafting and Surveying, Inc. (Surveyors) concerning the property located at 4505 Breezy Meadows Lane, being a part of Lot 3, Block 1 of the Replat of Seasons West Addition for a total of 0.509 acres in the Elizabeth Jones Survey, Abstract No. 625, to allow a parking lot in an R-1 (One Family Residential) District

Background

The property is located at 4505 Breezy Meadow Lane in the Seasons West Subdivision located off of West Houston Street. The parking lot is for the park located inside the subdivision.

Origination

Israel Aleman, Sr. (Owner) and Underwood Drafting & Surveying, Inc. (Surveyors)

Board Recommendation

At the March 17, 2009 regular meeting, the Planning and Zoning Board voted 6/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Attachments:

Ordinance No. 5599

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. 5599

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A PARKING LOT IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AT 4505 BREEZY MEADOWS LANE, BEING A PART OF LOT 3, BLOCK 1 OF THE REPLAT OF SEASONS WEST ADDITION, PHASE ONE FOR A TOTAL OF 0.509 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ISRAEL ALEMAN, SR., OWNER; UNDERWOOD DRAFTING AND SURVEYING, INC., SURVEYORS); PROVIDING FOR A REPEALER CLAUSE; 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, Israel Aleman, Sr. (Owner) and Underwood Drafting and Surveying, Inc. (Surveyors) are granted a Specific Use Permit to allow a parking lot in an R-1 (One Family Residential) District, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the City of Sherman, Grayson County, Texas, being a part of Lot 3, Block 1, of the Amended Plat of Seasons West Addition, Phase One, an addition to the City of Sherman, as shown by plat of record in Volume 16, Pages 75 & 76, of the Plat Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a ½” steel rod found in the north right-of-way of Breezy Meadow Lane (a public road) maintaining the southwest corner of Lot 2, of said Block 1, said rod being a southeast corner of said Lot 3:

THENCE South 75°24’00” West along said north right-of-way line, a distance of 164.35 feet to a 1/2” steel rod found at the beginning of a curve to the left;

THENCE with said curve having a radius of 80.00 feet (chord bears South 58°21’21” West a distance of 46.90 feet) an arc length of 47.60 feet;

THENCE across said Lot 3 the following calls and distances:

North 49°07’19” West a distance of 84.20 feet to a point;
North 73°45’54” West a distance of 53.30 feet to a point;
North 74°37’24” East a distance of 34.32 feet to a point;
North 14°16’01” West a distance of 3.16 feet to a P/K nail found maintaining the southwest corner of Lot 1, Block 1, Aleman Addition, an addition the City of Sherman, Texas, as shown in Volume 15, Page 22, of said Plat Records, said rod being the north line of said Lot 3;

THENCE North 75°19’57” East along the south line of said Lot 1, a distance of 268.34 feet to a ½” steel rod found in the west line of said Lot 2;

THENCE South 14°36’00” East along the west line of said Lot 2, a distance of 86.90 feet to the **POINT-OF-BEGINNING** and containing **0.509 acres** of land.

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

Engineering

1. Lot 3B is unbuildable for development since it is less than 1 acre and has no sewer service. The lot needs to be marked as “unbuildable”. An exception is required.

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

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

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

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

INTRODUCED on this the _____ day of _____, 2009.

ADOPTED on this the _____ day of _____, 2009.

EFFECTIVE DATE on this the _____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

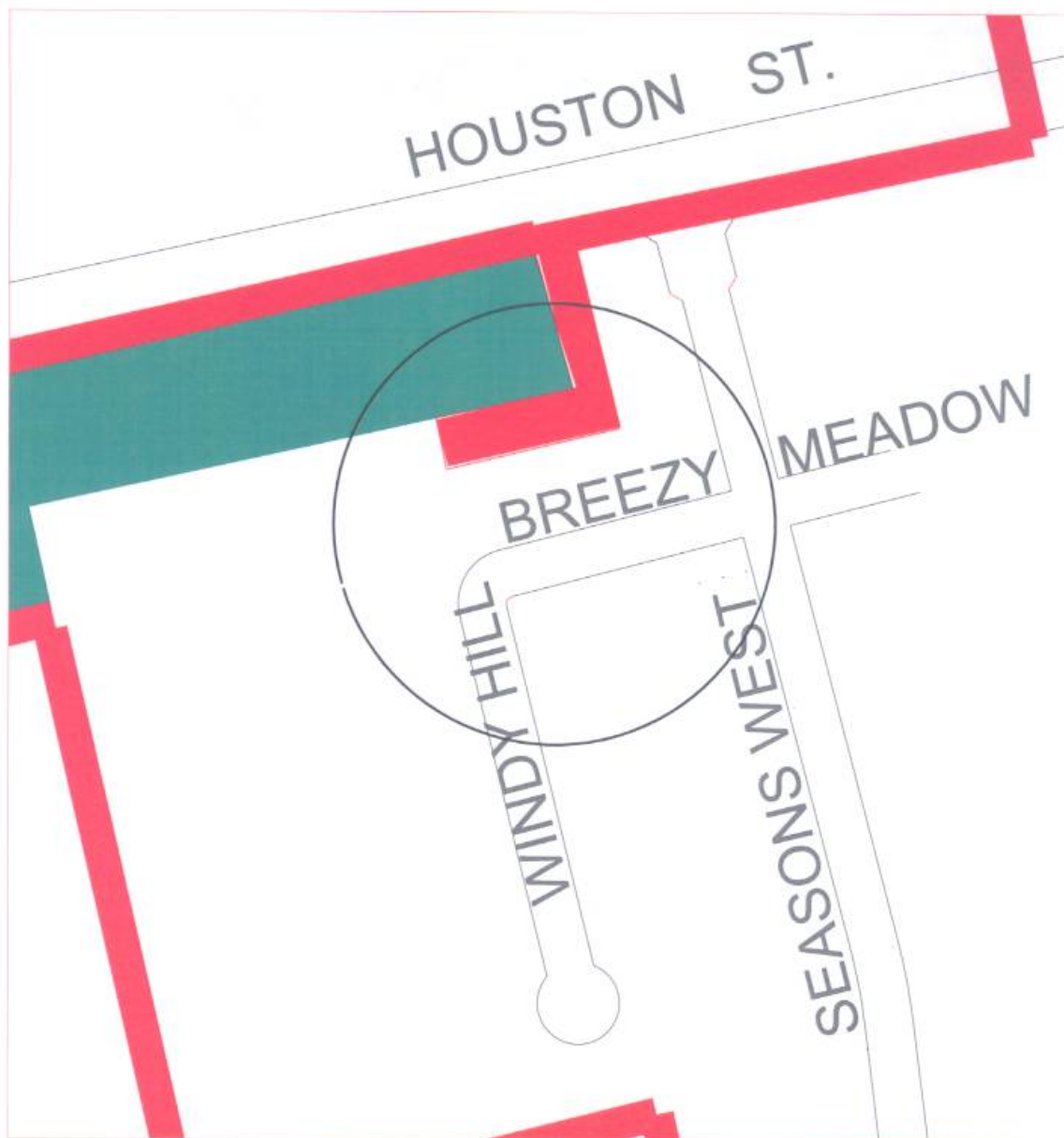
BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
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
CO	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



4505 BREEZY MEADOWS

ENGINEERING DEPARTMENT





4505 Breezy Meadows Ln





City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
March 17, 2009
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

4505 Breezy Meadows Lane
Being a part of Lot 3, Block 1 of the Replat of Seasons West Addition, Phase One
Specific Use Permit

Requested Action/Proposed Use:

Planning and Zoning Commission

Specific Use Permit and site plan to allow a parking lot in an R-1 (One Family Residential) District.

Background

The property is located at 4505 Breezy Meadows Lane in the Seasons West Subdivision located off West Houston Street.

Adjacent Zoning:

R-1 (One Family Residential) District, SF-1 (Single Family Residential) District and C-1 (Retail Business) District

Origination:

Israel Aleman, Sr. (Owner) and Underwood Drafting & Surveying, Inc. (Surveyors)

Master Plan Designation:

Residential

Number of notices mailed:

6

Objections Received:

0

Attachments:

Location map, Photographs, Site Plan and Staff Review Letter

Prepared by:
Patsy Reeves,
Development Services Secretary

Approved by:
Scott Shadden,
Development Services Director

STAFF REVIEW LETTER

March 12, 2009

Israel Aleman, Sr.
4600 W. Houston
Sherman, Texas 75092

Underwood Drafting & Surveying
3404 Interurban Road
Denison, TX 75021

Dear Applicants:

The request for approval of a Specific Use Permit and site plan to allow a parking lot in an R-1 (One Family Residential) District at 4505 Breezy Meadows Lane is scheduled to be heard by the Planning and Zoning Board on March 17, 2009 in the City Council Chambers, City Hall at 220 West Mulberry. The meeting will begin at 5:00 P.M.

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

Engineering

1. Lot 3B is unbuildable for development since it is less than 1 acre and has no sewer service. The lot needs to be marked as "unbuildable". An exception is required.

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

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

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

Respectfully,

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

CC: George Olson, City Manager
Mark Gibson, Director Utilities & Engineering Services
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: 4-6-2009

Subject: Agenda Item No. B.6

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5600

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Automotive Tire Sales, Mufflers, Auto Upholstery and Consignment Auto/Trailer Sales in a C-1 (Retail Business) District at 1624 East Lamar Street, being a 75' x 150' Lot in the G.B. Pilant Survey, Abstract No. 96 for a Total of 0.59 Acres (Heracleo Gracia, Owner); 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 Heracleo Gracia (Owner) concerning the property located at 1624 East Lamar Street, being a 75' x 150' lot in the G.B. Pilant Survey, Abstract No. 96 for a total of 0.59 acres, to allow automotive tire sales, mufflers, auto upholstery and consignment auto/trailer sales in a C-1 (Retail Business) District

Background

The property is located at 1624 East Lamar Street, the southwest corner of Harrison and Lamar Streets. The applicant would like to operate an automotive tire sales, mufflers, auto upholstery and consignment auto/trailer sales at this location. He plans to upgrade the building and erect screening in different areas of the property.

Origination

Heracleo Gracia (Owner)

Board Recommendation

At the March 17, 2009 regular meeting, the Planning and Zoning Board voted 6/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Attachments:

Ordinance No. 5600

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. 5600

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 TIRE SALES, MUFFLERS, AUTO UPHOLSTERY AND CONSIGNMENT AUTO/TRAILER SALES IN A C-1 (RETAIL BUSINESS) DISTRICT AT 1624 EAST LAMAR STREET, BEING A 75' X 150' LOT IN THE G.B. PILANT SURVEY, ABSTRACT NO. 96 FOR A TOTAL OF 0.59 ACRES (HERACLEO GRACIA, OWNER); 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, Heracleo Gracia (Owner) is granted a Specific Use Permit to allow automotive tire sales, mufflers, auto upholstery and consignment auto/trailer sales in a C-1 (Retail Business) District, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the County of Grayson, State of Texas, being a part of G.B. Pilant Survey, Abstract no. 963, being the same property described in two tracts in deed from Rex Cameron to Heracleo Gracia, dated September 7, 2007, recorded in Volume 4320, Page 114, Official Public Records, Grayson County, Texas, said property encompasses the East Ninety five feet (95 ft.) of Lot One (1) in Block One (1) of J.P. Loving's Second Addition to the City of Sherman, Texas as shown by plat of record in Volume 130, Page 345, Deed Records, Grayson County,

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

BEGINNING at a set ½ inch capped rebar stamped SARTIN-3694 for the Northwest corner of said Gracia tract, the Northeast corner of an 0.546 acre tract of land conveyed by The Salvation Army to Grayson County Juvenile Alternatives, Inc. by deed dated March 26, 1996, recorded in Volume 2458, Page 254, Official Public Records, Grayson County, Texas, on the North line of said Lot One, the South line of Lamar Street;

THENCE North 73 deg. 11 min. 22 sec. East, with the South line of said Lamar Street, the North line of said Lot One, at a distance of 95.00 feet passing its Northeast corner and continuing for a total distance of 170.00 feet to the Northeast corner of the herein described tract at the intersection of the South line of said Lamar Street with the West line of Harrison Street;

THENCE South 16 deg. 22 min. 00 sec. East, with the West line of said Harrison Avenue, a distance of 150.00 feet to a found axle maintaining the Northeast corner of a 10 foot wide alley (not open) shown on said plat of J. P. Loving's Second Addition, the Northeast corner of an 80 x 175 foot tract of land conveyed by Ned B. Thomas to Melinda Leigh Green by deed dated September 26, 1996, recorded in Volume 2496, Page 520, Official Public Records, Grayson County, Texas;

THENCE South 73 deg. 24 min. 59 sec. West, with the North line of both said alley and 80 x 175 foot tract, at a distance of 75.57 feet passing the Southeast corner of said Lot One and continuing with its South line for total distance of 170.57 feet to a found axle maintaining a Southeast corner of the above mentioned Grayson County Juvenile Alternatives, Inc. 0.546 acre tract;

THENCE North 16 deg. 08 min. 53 sec. West, with an East line of said 0.546 acre tract, a distance of 149.33 feet to the PLACE OF BEGINNING and containing **0.59 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-1 (Retail Business) District and the Commercial Tree and Landscaping Ordinance must be followed. Masonry or equivalent shall be required on the sides of all commercial buildings visible from the front street right-of-way. Masonry requirements may be excluded on the rear or one side of a building where screening is required and is not visible from the 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, tires or parts is allowed.

4. Screening is required between residential districts.
5. All parking shall be on private property and shall not encroach into East Lamar Street right-of-way; 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.

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

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

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

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

INTRODUCED on this the _____ day of _____, 2009.

ADOPTED on this the _____ day of _____, 2009.

EFFECTIVE DATE on this the _____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

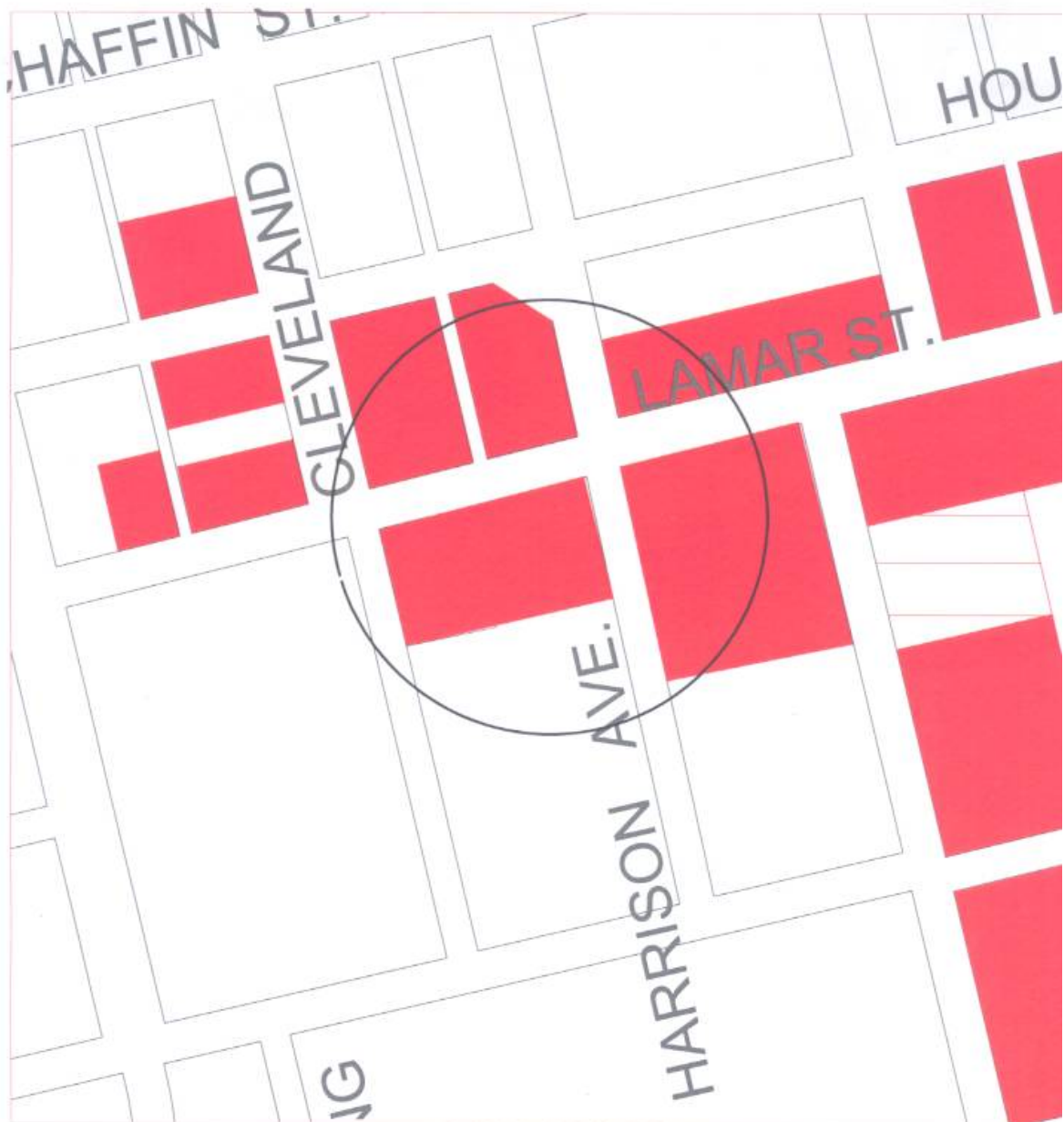
BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
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			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
	CO	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



1624 EAST LAMAR

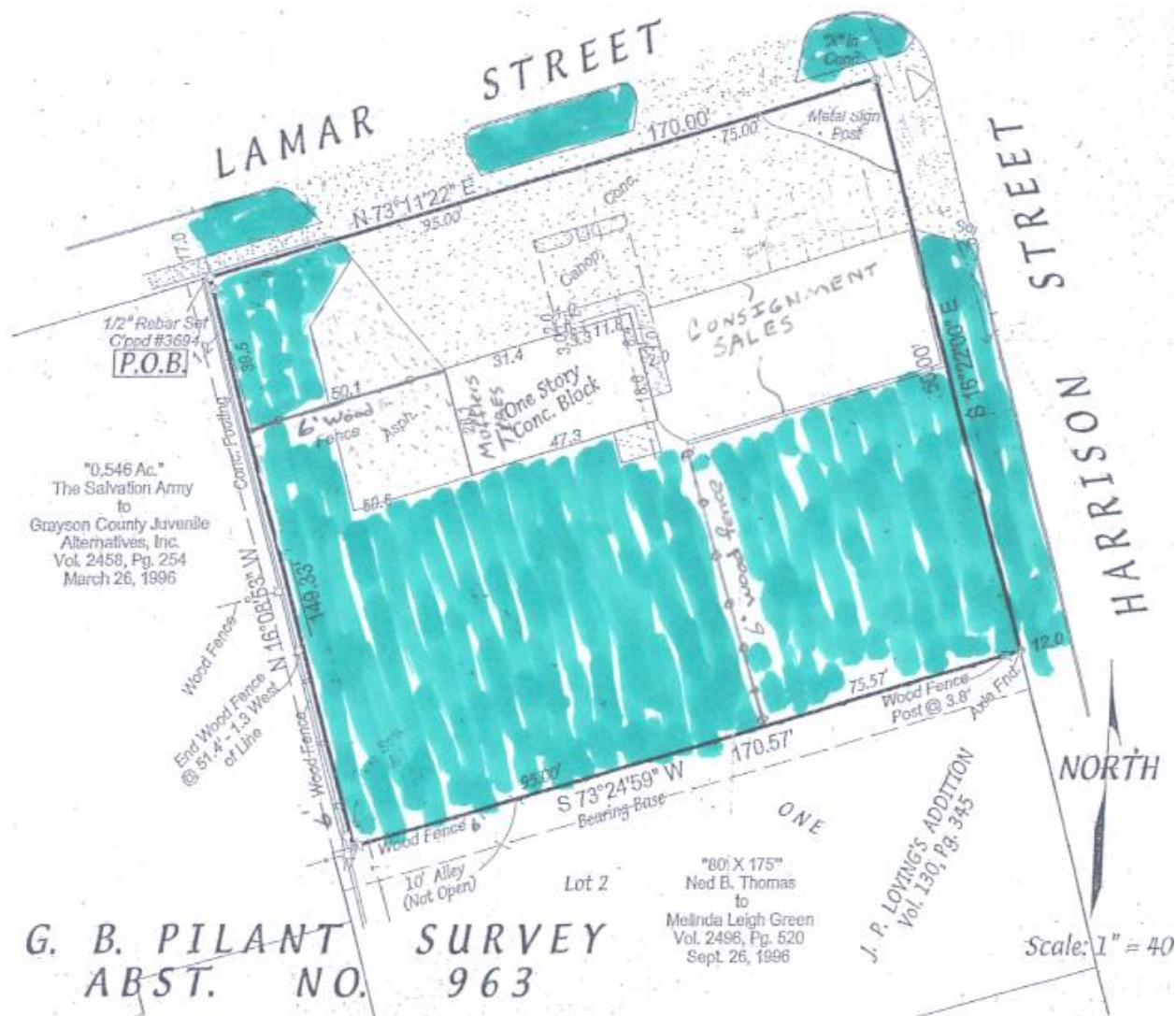
ENGINEERING DEPARTMENT





1624 E. Lamar





City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
March 17, 2009
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

1624 East Lamar Street
Being east 95' Lot 1, Blk. 1, J.P. Loving's 2nd Addition & a 75' X 150' lot in G.B. Pilant
Survey, Abstract No. 96 for a total of .59 acres
Specific Use Permit & Site Plan

Requested Action/Proposed Use:

Planning and Zoning Commission

Specific Use Permit and site plan approval to allow automotive tire sales, mufflers, auto upholstery and consignment auto/trailer sales in a C-1 (Retail Business) District.

Background

This item was tabled at the February 17, 2009 Planning and Zoning Commission Meeting. The property is located at 1624 East Lamar, the southwest corner of Harrison and Lamar Streets. The applicant would like to operate an automotive tire sales, mufflers, auto upholstery and consignment auto/trailer sales at this location.

Adjacent Zoning:

C-1 (Retail Business) District

Origination:

Heracleo Gracia (Owner)

Master Plan Designation:

Retail/Commercial

Number of notices mailed:

16

Objections Received:

0

Attachments:

Location map, Photographs, Site Plan, Staff Review Letter

Prepared by:

Patsy Reeves,
Development Services Secretary

Approved by:

Scott Shadden,
Director of Development Services

STAFF REVIEW LETTER

March 12, 2009

Heracleo Gracia
1020 E. Lamar St.
Sherman, Texas 75090

Dear Applicants,

Your request for Specific Use Permit and site plan approval to allow automotive tire sales, mufflers, auto upholstery and consignment auto/trailer sales in a C-1 (Retail Business) District located at 1624 East Lamar Street has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, March 17, 2009 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the C-1 (Retail Business) District and the Commercial Tree and Landscaping Ordinance must be followed. Masonry or equivalent shall be required on the sides of all commercial buildings visible from the front street right-of-way. Masonry requirements may be excluded on the rear or one side of a building where screening is required and is not visible from the 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, tires or parts is allowed.
4. Screening is required between residential districts.
5. All parking shall be on private property and shall not encroach into East Lamar Street right-of-way; 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.

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: 4-6-2009

Subject: Agenda Item No. B.7

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers: 5595, 5596, 5597, 5598, 5599 and 5600

B.1 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5595

Declaring as Elected the Unopposed Candidates for the Office of Mayor and City Council Member; Finding That All Necessary and Required Legal Conditions Have Been Satisfied; Providing That the May 9, 2009 Regular Municipal Election for City Council Shall Not be Held; Providing for Posting of This Ordinance on Election Day, May 9, 2009

B.2 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5596

Authorizing the Issuance of "CITY OF SHERMAN, TEXAS, LIMITED TAX NOTES, SERIES 2009"; Specifying the Terms and Features of Said Notes; Levying a Continuing Direct Annual Ad Valorem Tax for the Payment of Said Notes; Resolving Other Matters Incident and Related to the Issuance, Sale, Payment and Delivery of Said Notes, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; Providing an Effective Date

B.3 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5597

Authorizing the Issuance of "CITY OF SHERMAN, TEXAS, TAX AND WATERWORKS AND SEWER SYSTEM (LIMITED PLEDGE) REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009"; Specifying the Terms and Features of Said Certificates; Providing for the Payment of Said Certificates of Obligation by the Levy of an Ad Valorem Tax upon all Taxable Property within the City and a Limited Pledge of the Net Revenues from the Operation of the City's Waterworks and Sewer System; Resolving Other Matters Incident and Relating to the Issuance, Payment, Security, Sale and Delivery of Said Certificates, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; Providing an Effective Date

B.4 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5598

Providing for Permanent "No Parking" Signs Restricting Parking along Portions of West Texas Street, Near its Intersection with North Travis Street, within the City Limits of the City of Sherman

B.5 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5599

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Parking Lot in an R-1 (One Family Residential) District at 4505 Breezy Meadows Lane, being a Part of Lot 3, Block 1 of the Replat of Seasons West

Addition, Phase One for a Total of 0.509 Acres in the Elizabeth Jones Survey, Abstract No. 625 (Israel Aleman, Sr., Owner; Underwood Drafting and Surveying, Inc., Surveyors); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000

B.6 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5600

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Automotive Tire Sales, Mufflers, Auto Upholstery and Consignment Auto/Trailer Sales in a C-1 (Retail Business) District at 1624 East Lamar Street, being a 75' x 150' Lot in the G.B. Pilant Survey, Abstract No. 96 for a Total of 0.59 Acres (Heracleo Gracia, Owner); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. B.8

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. 5343

Awarding a Bid to and Authorizing Execution of a Contract with Utility Construction Services of Texas Inc. for Replacement of the Oak Creek Drive Water Main between Oak Creek Circle and Alpine Drive

C.4 * RESOLUTION NO. 5344

Awarding a Bid to and Authorizing Execution of a Contract with Utility Construction Services of Texas Inc. for Construction of the Fallon Drive Water Main from U.S. Highway 75 to Pecan Grove Road

C.6 * RESOLUTION NO. 5346

Awarding a Bid to and Authorizing Execution of a Contract with Gilco Contracting, Inc. to Construct the Extension of West Canyon Creek Drive from Shady Oaks Lane to Silverado Trail

C.7 * RESOLUTION NO. 5347

Awarding a Bid to and Authorizing Execution of a Contract with R.K. Hall Construction, LTD. for the 2009 Street Mill and Overlay Program

C.8 * RESOLUTION NO. 5348

Awarding a Bid to and Authorizing Execution of a Contract with James Thorpe Company for the Purchase of an Annual Supply of Cover Stone for the 2009 Seal Coat Program

C.9 * RESOLUTION NO. 5349

Awarding a Bid to and Authorizing Execution of a Contract with Martin Asphalt Company for the Purchase of an Annual Supply of Emulsified Asphalt Oil for the 2009 Seal Coat Program

C.10 * RESOLUTION NO. 5350

Awarding a Bid to and Authorizing Execution of a Contract with Impact Promotions, Inc. d/b/a Got You Covered Workwear Uniforms for an Annual Supply of Uniforms for Police Department Personnel

D.1 * *CHANGE ORDER NO. 1*

Luella 4 Woodbine Water Well Repairs

D.4 * *OTHER BUSINESS*

Consideration to Ordinance No. 2684, Section 26, Subsection 12(B)(2)(c) for an Exception to Allow a Lot with 0.509 Acres In Lieu of the Requirement that the Minimum Area of Each Lot Shall be One Acre and Shall Have Adjacent to the Rear Lot Line a Dedicated Alley or Easement, Either for Present or Future Use in an R-1 (One Family Residential) District at 4505 Breezy Meadows Lane, being Lot 3, Block 1 of the Replat of Seasons West Addition, Phase One (Israel Aleman, Sr., Owner; Underwood Drafting and Surveying, Inc., Surveyors)

D.5 * *OTHER BUSINESS*

Replat Approval of Lot 3, Block 1 of Seasons West Addition, Phase One and 1.120 Acres out of the Elizabeth Jones Survey, Abstract No. 625; Israel Aleman, Sr., Owner; Underwood Drafting and Surveying, Inc., Surveyors (4600 West Houston Street, 4505 Breezy Meadows Lane, and 206 Windy Hill Road)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.1

RESOLUTION NO. 5341

Supporting the Creation of the Red River Groundwater Conservation District for Fannin and Grayson Counties

Issue

Support for the creation of the Red River Groundwater Conservation District to be comprised of Fannin and Grayson Counties

Background

Representative Larry Phillips is seeking the City Council's support for legislation he has filed to create the Red River Groundwater Conservation District, to be comprised of Fannin and Grayson Counties, effective September 1, 2009. The District would be served by a seven-member board. Four of the members would be appointed for Grayson County, with the City of Sherman as the largest municipal groundwater producer appointing two representatives, the smaller municipal producers appointing one representative, and the rural water providers appointing one representative. Three members would be appointed by Fannin County, with the municipal water providers, rural water suppliers, and the Fannin County Commissioner's Court each appointing one representative. While a simple majority vote would be required to conduct the District's business, a super majority vote would be required for the following:

- a) establishing or amending any groundwater production fees assessed by the district based on the amount of groundwater authorized by permit to be withdrawn from a well or on the amount of water actually withdrawn;
- b) adopting the annual budget of the district; and
- c) taking action to grant or deny a permit or permit amendment application for a well to produce water within the district which will be subsequently transported for use, in whole or in part, outside of the boundaries district.

Origination

Texas Commission on Environmental Quality; Representative Larry Phillips; and the Grayson/Fannin GCD Steering Committee

Financial Consideration

There is no financial impact to approving this resolution.

Staff Recommendation

The staff recommends the City Council approve the resolution and support the creation of this two-member Groundwater Conservation District.

Alternatives

None

Attachments

Resolution No. 5341

Prepared and Approved by:
George Olson, City Manager

RESOLUTION NO. 5341

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, SUPPORTING THE CREATION OF THE RED RIVER GROUNDWATER CONSERVATION DISTRICT FOR FANNIN AND GRAYSON COUNTIES; 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, in 2006 the staff of the Texas Commission on Environmental Quality (“TCEQ”) designated thirteen (13) counties in north-central Texas as a Priority Groundwater Management Area; and

WHEREAS, the staff of the TCEQ has recommended that Groundwater Conservation Districts be established in these counties; and

WHEREAS, most of the groundwater providers in Fannin and Grayson Counties participated in a contested hearing before the State Office of Administrative Hearings on May 13, 2008; and

WHEREAS, the Commissioners of the TCEQ confirmed on February 11, 2009 the requirement for a Groundwater Conservation District in north-central Texas, including Fannin and Grayson Counties; and

WHEREAS, the groundwater providers in the area expressed a preference for a legislatively created Groundwater Conservation District rather than having a Groundwater Conservation District administratively imposed by the TCEQ; and

WHEREAS, State Representative Larry Phillips has agreed to support the efforts of the local groundwater providers to draft said legislation;

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

SECTION 1. That the City Council of the City of Sherman, Texas, hereby formally supports the efforts to create the Red River Groundwater Conservation District in Fannin and Grayson Counties provided that:

1. The district is to be composed of seven (7) representatives, four (4) of which shall be from Grayson County, including two (2) from the largest municipal groundwater provider, one (1) to be appointed by the smaller municipal groundwater producers, and one (1) to be appointed by the rural water providers;
2. Three (3) of the representatives shall be from Fannin County, with one (1) to be appointed by the municipal water providers, one (1) by the rural water suppliers, and one (1) by the Fannin County Commissioner’s Court; and

3. A majority of the seven-member district board shall constitute a quorum for any meeting and a concurrence of a majority of the board (a simple majority) shall be sufficient to transact the district's business; except a concurrence of no fewer than six (6) directors (a super majority) is required to transact the following business of the district:
- a) establishing or amending any groundwater production fees assessed by the district based on the amount of groundwater authorized by permit to be withdrawn from a well or on the amount of water actually withdrawn;
 - b) adopting the annual budget of the district; and
 - c) taking action to grant or deny a permit or permit amendment application for a well to produce water within the district which will be subsequently transported for use, in whole or in part, outside of the boundaries district.

SECTION 2. That the City Manager is hereby directed to send a copy of this resolution to Representative Larry Phillips, notifying him of the City of Sherman's support for the Legislature's creation of the Red River Groundwater Conversation District for Grayson and Fannin Counties.

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 _____, 2009.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
BILL MAGERS, MAYOR

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.2

RESOLUTION NO. 5342

Authorizing Submission of an Application for and Acceptance of a Grant for the Sherman Police Department under the Office of Community Oriented Policing Service's Hiring Recovery Program

Issue

Approval to submit an application through the Office of Community Oriented Policing Services (COPS) for a COPS Hiring Recovery Program (CHRP) grant in order to hire four police officers

Background

CHRP is a competitive grant program that provides funding directly to law enforcement agencies having primary law enforcement authority to create and preserve jobs and to increase their community policing capacity and crime-prevention efforts. CHRP grants will provide 100 percent funding for approved entry-level salaries and benefits for three years (36 months) for newly-hired, full-time sworn officer positions (including filling existing unfunded vacancies) or for rehired officers who have been laid off, or are scheduled to be laid off on a future date, as a result of local budget cuts. In 2006, the Sherman City Council approved eight additional positions for the police department (one supervisor and seven officers). Three of the positions have been funded since that time, with four of those positions remaining unfunded. This grant would be used to fund the remaining four positions.

Origination

Police Department

Financial Consideration

There is no local match requirement for CHRP, but grant funding will be based on current entry-level salary and benefit packages. Therefore, any additional costs for higher salaries or benefits for particular individuals hired will be the responsibility of the grantee agency. At the conclusion of federal funding, grantees must retain all sworn officer positions awarded under the CHRP grant for a period of at least twelve months. The retained CHRP-funded position(s) should be added to the grantees' law enforcement budget with state and/or local funds, over and above the number of locally-funded positions that would have existed in the absence of the grant. If approved by Council and awarded by the COPS office, staff will bring back a budget amendment to reflect the additional revenues and expenditures associated with this program.

Staff Recommendation

The staff recommends submitting the CHRP grant application.

Alternatives

The Council could decline to take advantage of this grant opportunity

Attachments

Resolution No. 5342; Grant Information

Prepared by:
Tom Watt, Police Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5342

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING SUBMISSION OF AN APPLICATION FOR AND ACCEPTANCE OF A GRANT FOR THE SHERMAN POLICE DEPARTMENT UNDER THE OFFICE OF COMMUNITY ORIENTED POLICING SERVICE'S HIRING RECOVERY PROGRAM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the Interim City Attorney, to submit an application for and, once granted by the Office of Community Oriented Policing Service (COPS), to accept a grant under the COPS Hiring Recovery Program for 100% of the funding required to fill four (4) police officer positions, including approved entry-level salaries and benefits for three years (36 months) for newly-hired, full-time sworn officer positions (including filling existing unfunded vacancies) or for rehired officers who have been laid off, or are scheduled to be laid off on a future date, as a result of local budget cuts.

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

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

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

Cloer, Pam

From: Watt, Thomas
Sent: Friday, March 27, 2009 3:46 PM
To: Cloer, Pam
Subject: Emailing: COPS Office COPS Hiring Recovery Program (CHRP)



COPS Hiring Recovery Program (CHRP)



The Office of Community Oriented Policing Services (COPS Office) is pleased to announce the availability of funding under the COPS Hiring Recovery Program (CHRP). The COPS Office will receive the funds from the American Recovery and Reinvestment Act of 2009 to address the personnel needs of state, local, and tribal law enforcement.

Applications for CHRP grants will be accepted online via the COPS Office web site at www.cops.usdoj.gov beginning March 16, 2009 through April 14, 2009.

[CLICK HERE TO APPLY](#)

Have a Question? You might find your answer by clicking [here!](#)

Quick Overview

- CHRP is a competitive grant program that provides funding directly to law enforcement agencies having primary law enforcement authority to create and preserve jobs and to increase their community policing capacity and crime-prevention efforts.
- Up to \$1 billion in grant funding will be available for the hiring and rehiring of additional career law enforcement officers.
- There is no local match requirement for CHRP, but grant funding will be based on current entry-level salary and benefits packages and therefore any additional costs for higher salaries or benefits for particular individuals hired will be the responsibility of the grantee agency.
- CHRP grants will provide 100 percent funding for approved entry-level salaries and benefits for 3 years (36 months) for newly-hired, full-time sworn officer positions (including filling existing unfunded vacancies) or for rehired officers who have been laid off, or are scheduled to be laid off on a future date, as a result of local budget cuts.

*In addition, there is no cap on the number of positions an agency may request, but awards will be limited to available funding. Please be mindful of the initial 3-year grant period and your agency's ability to fill the officer positions awarded, while following your agency's established hiring policies and procedures.

03/27/2009

- At the conclusion of federal funding, grantees must retain all sworn officer positions awarded under the CHRP grant. The retained CHRP-funded position(s) should be added to the grantees law enforcement budget with state and/or local funds, over and above the number of locally-funded positions that would have existed in the absence of the grant.

The COPS Hiring Recovery Program funding is in addition to \$2.76 billion in preventing and controlling crime and \$225 million to combat violence against women. For more information on CHRP and additional Department of Justice grant program opportunities, including the Byrne JAG Program, click below:

- [CHRP Letter from the Acting COPS Director](#)
- [Office of Justice Programs](#)
- [Office on Violence Against Women](#)

To determine if your agency will be eligible to apply for CHRP funding, please [click here](#)

To learn about the Department of Justice's implementation of the Recovery Act, visit www.usdoj.gov/recovery



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Last Revised: 3/25/2009



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.3

*** RESOLUTION NO. 5343**

Awarding a Bid to and Authorizing Execution of a Contract with Utility Construction Services of Texas Inc. for Replacement of the Oak Creek Drive Water Main between Oak Creek Circle and Alpine Drive

Issue

Contracting for the replacement of the Oak Creek Drive water main between Oak Creek Circle and Alpine Drive

Background

The current Capital Improvement Program contains a project to replace the water main on Oak Creek Drive. Twelve (12) bidders responded to the request for bids. A bid tabulation is attached.

Origination

Department of Utilities Administration

Financial Consideration

The budget for this project in this year's Capital Improvement Program is \$140,000.

Staff Recommendation

It is recommended that the contract for the replacement of the Oak Creek Drive water main be awarded to the low bidder, Utility Construction Services of Texas Inc. located in Garland, Texas, in the amount of \$50,740.50 and that the City Manager be authorized to execute the required contract documents.

Alternatives

As may be directed by the City Council

Attachments

Engineer's Recommendation with Bid Tabulation
Resolution No. 5343
Contract
CIP Project Sheet and Location Map

Prepared by:
Mark Gibson, Utilities and Engineering Director

Approved by:
George Olson, City Manager

TNP TEAGUE NALL AND PERKINS

Civil Engineering Surveying Landscape Architecture Planning

March 30, 2009

Mark Gibson
Director of Utilities
P O Box 1106
Sherman, TX 75091

**RE: City of Sherman
Oak Creek Drive Water Main Replacement
Contract Recommendation
TNP Job No: SHN 08348**

Dear Mark,

On Thursday, March 12th, 2009, at 10:30 am, bids were received at the City of Sherman Department of Engineering and Planning for the Oak Creek Drive Water Main Replacement project. The low bidder was Utility Construction Services with a base bid of \$50,740.50.

After checking their references, we recommend the City of Sherman award the contract to Utility Construction Services for the Oak Creek Drive Water Main Replacement project.

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

Sincerely,

TEAGUE NALL AND PERKINS INC.

Chris Schmitt, P.E.

Cc: TNP file

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OAK CREEK DRIVE WATER MAIN REPLACEMENT
Project No. SHN08348
City of Sherman
BID TABULATION REPORT

Engineer's Estimate = \$78,432.50 BID OPENING DATE: 03/12/09 BID OPENING TIME: 10:30 AM				BIDDERS					
				Utility Construction Services		Lynn Vessels Construction LLC		R. D. Moorman Inc.	
ITEM NO.	DESCRIPTION OF ITEMS	QUANTITY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	Remove & Replace 6" Concrete Pavement	115	SY	\$60.00	\$6,900.00	\$31.91	\$3,669.65	\$50.00	\$5,750.00
2	Remove & Replace 6" HMAc Pavement	3	SY	\$60.00	\$180.00	\$287.50	\$862.50	\$100.00	\$300.00
3	Remove & Replace 4" Concrete Sidewalk	230	SF	\$25.00	\$5,750.00	\$4.77	\$1,097.10	\$15.00	\$3,450.00
4	Remove & Replace 6" Concrete Curb and Gutter	14	LF	\$20.00	\$280.00	\$31.22	\$437.08	\$50.00	\$700.00
5	6" DR-18, Class 150 PVC Waterline	1,321	LF	\$15.00	\$19,815.00	\$29.44	\$38,890.24	\$35.00	\$46,235.00
6	8" DR-18, Class 150 PVC Waterline	10	LF	\$20.00	\$200.00	\$37.89	\$378.90	\$40.00	\$400.00
7	6" Gate Valve	5	EA	\$700.00	\$3,500.00	\$667.00	\$3,335.00	\$850.00	\$4,250.00
8	8" Gate Valve	1	EA	\$900.00	\$900.00	\$934.95	\$934.95	\$1,250.00	\$1,250.00
9	6"x6"x6" Tee	1	EA	\$130.00	\$130.00	\$253.00	\$253.00	\$500.00	\$500.00
10	8"x8"x8" Tee	1	EA	\$175.00	\$175.00	\$368.00	\$368.00	\$650.00	\$650.00
11	8"x6" Reducer	2	EA	\$175.00	\$350.00	\$209.88	\$419.76	\$450.00	\$900.00
12	6" 11.25° Bend	3	EA	\$125.00	\$375.00	\$195.50	\$586.50	\$450.00	\$1,350.00
13	6" 22.50° Bend	6	EA	\$110.00	\$660.00	\$195.50	\$1,173.00	\$450.00	\$2,700.00
14	Dry Bore for 6" Waterline	103	LF	\$100.00	\$10,300.00	\$65.55	\$6,751.65	\$100.00	\$10,300.00
15	Concrete Encasement for Waterline	14	LF	\$40.00	\$560.00	\$16.10	\$225.40	\$50.00	\$700.00
16	Trench Safety for Waterline	1,331	LF	\$0.50	\$665.50	\$0.06	\$79.86	\$0.45	\$598.95
BASE BID SUBTOTAL					\$50,740.50		\$59,462.59		\$80,033.95
17	Replace 2" Water Service & Meter Box (Short)	16.00	EA	\$400.00	\$6,400.00	\$77.05	\$1,232.80	\$750.00	\$12,000.00
18	Replace 2" Water Service & Meter Box by Bore (Long)	9.00	EA	\$850.00	\$7,650.00	\$724.50	\$6,520.50	\$1,500.00	\$13,500.00
ALTERNATE BID SUBTOTAL					\$14,050.00		\$7,753.30		\$25,500.00
TOTALS:					\$64,790.50		\$67,215.89		\$105,533.95

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OAK CREEK DRIVE WATER MAIN REPLACEMENT
Project No. SHN08348
City of Sherman
BID TABULATION REPORT

Engineer's Estimate = \$78,432.50 BID OPENING DATE: 03/12/09 BID OPENING TIME: 10:30 AM				BIDDERS					
				Wilson Contractor Services LLC		Granbury Contracting & Utilities Inc.		We Build Inc.	
ITEM NO.	DESCRIPTION OF ITEMS	QUANTITY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	Remove & Replace 6" Concrete Pavement	115	SY	\$120.00	\$13,800.00	\$1.00	\$115.00	\$146.20	\$16,813.00
2	Remove & Replace 6" HMAC Pavement	3	SY	\$200.00	\$600.00	\$1.00	\$3.00	\$664.50	\$1,993.50
3	Remove & Replace 4" Concrete Sidewalk	230	SF	\$15.00	\$3,450.00	\$1.00	\$230.00	\$13.10	\$3,013.00
4	Remove & Replace 6" Concrete Curb and Gutter	14	LF	\$60.00	\$840.00	\$1.00	\$14.00	\$89.70	\$1,255.80
5	6" DR-18, Class 150 PVC Waterline	1,321	LF	\$30.00	\$39,630.00	\$50.00	\$66,050.00	\$28.60	\$37,780.60
6	8" DR-18, Class 150 PVC Waterline	10	LF	\$107.00	\$1,070.00	\$50.00	\$500.00	\$142.60	\$1,426.00
7	6" Gate Valve	5	EA	\$1,050.00	\$5,250.00	\$1,000.00	\$5,000.00	\$954.90	\$4,774.50
8	8" Gate Valve	1	EA	\$1,200.00	\$1,200.00	\$1,300.00	\$1,300.00	\$1,285.70	\$1,285.70
9	6"x6"x6" Tee	1	EA	\$300.00	\$300.00	\$500.00	\$500.00	\$1,970.50	\$1,970.50
10	8"x8"x8" Tee	1	EA	\$300.00	\$300.00	\$500.00	\$500.00	\$2,002.40	\$2,002.40
11	8"x6" Reducer	2	EA	\$100.00	\$200.00	\$500.00	\$1,000.00	\$190.30	\$380.60
12	6" 11.25° Bend	3	EA	\$500.00	\$1,500.00	\$100.00	\$300.00	\$162.60	\$487.80
13	6" 22.50° Bend	6	EA	\$225.00	\$1,350.00	\$500.00	\$3,000.00	\$606.80	\$3,640.80
14	Dry Bore for 6" Waterline	103	LF	\$100.00	\$10,300.00	\$50.00	\$5,150.00	\$66.40	\$6,839.20
15	Concrete Encasement for Waterline	14	LF	\$50.00	\$700.00	\$1.00	\$14.00	\$73.70	\$1,031.80
16	Trench Safety for Waterline	1,331	LF	\$0.10	\$133.10	\$0.10	\$133.10	\$1.30	\$1,730.30
BASE BID SUBTOTAL					\$80,623.10		\$83,809.10		\$86,425.50
17	Replace 2" Water Service & Meter Box (Short)	16.00	EA	\$2,500.00	\$40,000.00	\$1,500.00	\$24,000.00	\$593.00	\$9,488.00
18	Replace 2" Water Service & Meter Box by Bore (Long)	9.00	EA	\$3,500.00	\$31,500.00	\$2,500.00	\$22,500.00	\$720.40	\$6,483.60
ALTERNATE BID SUBTOTAL					\$71,500.00		\$46,500.00		\$15,971.60
TOTALS:					\$152,123.10		\$130,309.10		\$102,397.10

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OAK CREEK DRIVE WATER MAIN REPLACEMENT
Project No. SHN08348
City of Sherman
BID TABULATION REPORT

Engineer's Estimate = \$78,432.50 BID OPENING DATE: 03/12/09 BID OPENING TIME: 10:30 AM				BIDDERS					
				Canary Construction Inc.		Jerry Paul Higgins Ltd.		Duval and Sons Inc.	
ITEM NO.	DESCRIPTION OF ITEMS	QUANTITY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	Remove & Replace 6" Concrete Pavement	115	SY	\$25.00	\$2,875.00	\$190.59	\$21,917.85	\$122.00	\$14,030.00
2	Remove & Replace 6" HMAC Pavement	3	SY	\$64.00	\$192.00	\$335.00	\$1,005.00	\$105.00	\$315.00
3	Remove & Replace 4" Concrete Sidewalk	230	SF	\$31.50	\$7,245.00	\$10.52	\$2,419.60	\$16.00	\$3,680.00
4	Remove & Replace 6" Concrete Curb and Gutter	14	LF	\$40.00	\$560.00	\$45.80	\$641.20	\$58.00	\$812.00
5	6" DR-18, Class 150 PVC Waterline	1,321	LF	\$39.50	\$52,179.50	\$26.47	\$34,966.87	\$41.70	\$55,085.70
6	8" DR-18, Class 150 PVC Waterline	10	LF	\$49.00	\$490.00	\$25.25	\$252.50	\$50.00	\$500.00
7	6" Gate Valve	5	EA	\$1,035.00	\$5,175.00	\$607.70	\$3,038.50	\$940.00	\$4,700.00
8	8" Gate Valve	1	EA	\$1,340.00	\$1,340.00	\$883.80	\$883.80	\$1,200.00	\$1,200.00
9	6"x6"x6" Tee	1	EA	\$535.00	\$535.00	\$258.54	\$258.54	\$525.00	\$525.00
10	8"x8"x8" Tee	1	EA	\$657.00	\$657.00	\$338.89	\$338.89	\$600.00	\$600.00
11	8"x8" Reducer	2	EA	\$451.50	\$903.00	\$189.70	\$379.40	\$290.00	\$580.00
12	6" 11.25° Bend	3	EA	\$427.60	\$1,282.80	\$168.69	\$506.07	\$300.00	\$900.00
13	6" 22.50° Bend	6	EA	\$430.25	\$2,581.50	\$172.69	\$1,036.14	\$300.00	\$1,800.00
14	Dry Bore for 6" Waterline	103	LF	\$82.00	\$8,446.00	\$171.86	\$17,701.58	\$180.00	\$18,540.00
15	Concrete Encasement for Waterline	14	LF	\$50.00	\$700.00	\$39.28	\$549.92	\$52.00	\$728.00
16	Trench Safety for Waterline	1,331	LF	\$1.20	\$1,597.20	\$0.75	\$998.25	\$1.00	\$1,331.00
BASE BID SUBTOTAL					\$86,759.00		\$86,894.11		\$105,326.70
17	Replace 2" Water Service & Meter Box (Short)	18.00	EA	\$530.25	\$8,484.00	\$225.18	\$3,602.88	\$345.00	\$5,520.00
18	Replace 2" Water Service & Meter Box by Bore (Long)	9.00	EA	\$739.00	\$6,651.00	\$691.98	\$6,227.82	\$1,050.00	\$9,450.00
ALTERNATE BID SUBTOTAL					\$15,135.00		\$9,830.70		\$14,970.00
TOTALS:					\$101,894.00		\$96,724.81		\$120,296.70

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Civil Engineering | Surveying | Landscape Architecture | Planning

OAK CREEK DRIVE WATER MAIN REPLACEMENT

Project No. SHN08348

City of Sherman

BID TABULATION REPORT

Engineer's Estimate = \$78,432.50 BID OPENING DATE: 03/12/09 BID OPENING TIME: 10:30 AM				BIDDERS					
				Dickerson Construction Company Inc.		Saber Development Corporation		Whitewater Construction Inc.	
ITEM NO.	DESCRIPTION OF ITEMS	QUANTITY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	Remove & Replace 6" Concrete Pavement	115	SY	\$65.00	\$7,475.00	\$85.00	\$9,775.00	\$50.00	\$5,750.00
2	Remove & Replace 6" HMAC Pavement	3	SY	\$150.00	\$450.00	\$65.00	\$195.00	\$200.00	\$600.00
3	Remove & Replace 4" Concrete Sidewalk	230	SF	\$8.00	\$1,840.00	\$5.00	\$1,150.00	\$5.00	\$1,150.00
4	Remove & Replace 6" Concrete Curb and Gutter	14	LF	\$25.00	\$350.00	\$21.00	\$294.00	\$25.00	\$350.00
5	6" DR-18, Class 150 PVC Waterline	1,321	LF	\$60.00	\$79,260.00	\$62.00	\$81,902.00	\$70.00	\$92,470.00
6	8" DR-18, Class 150 PVC Waterline	10	LF	\$50.00	\$500.00	\$63.00	\$630.00	\$70.00	\$700.00
7	6" Gate Valve	5	EA	\$750.00	\$3,750.00	\$750.00	\$3,750.00	\$750.00	\$3,750.00
8	8" Gate Valve	1	EA	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
9	6"x6"x6" Tee	1	EA	\$400.00	\$400.00	\$350.00	\$350.00	\$290.00	\$290.00
10	8"x8"x8" Tee	1	EA	\$500.00	\$500.00	\$400.00	\$400.00	\$400.00	\$400.00
11	8"x6" Reducer	2	EA	\$250.00	\$500.00	\$250.00	\$500.00	\$250.00	\$500.00
12	6" 11.25° Bend	3	EA	\$325.00	\$975.00	\$200.00	\$600.00	\$226.25	\$678.75
13	6" 22.50° Bend	6	EA	\$325.00	\$1,950.00	\$200.00	\$1,200.00	\$222.50	\$1,335.00
14	Dry Bore for 6" Waterline	103	LF	\$100.00	\$10,300.00	\$95.00	\$9,785.00	\$125.00	\$12,875.00
15	Concrete Encasement for Waterline	14	LF	\$30.00	\$420.00	\$30.00	\$420.00	\$30.00	\$420.00
16	Trench Safety for Waterline	1,331	LF	\$1.00	\$1,331.00	\$0.50	\$665.50	\$0.10	\$133.10
BASE BID SUBTOTAL					\$111,001.00		\$112,616.50		\$122,401.85
17	Replace 2" Water Service & Meter Box (Short)	16.00	EA	\$300.00	\$4,800.00	\$300.00	\$4,800.00	\$1,312.50	\$21,000.00
18	Replace 2" Water Service & Meter Box by Bore (Long)	9.00	EA	\$1,400.00	\$12,600.00	\$750.00	\$6,750.00	\$2,375.00	\$21,375.00
ALTERNATE BID SUBTOTAL					\$17,400.00		\$11,550.00		\$42,375.00
TOTALS:					\$128,401.00		\$124,166.50		\$164,776.85

RESOLUTION NO. 5343

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH UTILITY CONSTRUCTION SERVICES OF TEXAS, INC. FOR REPLACEMENT OF THE OAK CREEK DRIVE WATER MAIN BETWEEN OAK CREEK CIRCLE AND ALPINE DRIVE; 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 Utility Construction Services of Texas, Inc. is hereby awarded the bid in the total amount of Fifty Thousand Seven Hundred Forty Dollars and Fifty Cents (\$50,740.50) for replacement of the Oak Creek Drive Water Main between Oak Creek Circle and Alpine Drive; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a contract with Utility Construction Services of Texas, Inc. for construction of the Oak Creek Drive Water Main Replacement Project, in accordance with the terms and provisions of all contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
BILL MAGERS, MAYOR

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

CITY OF SHERMAN §

COUNTY OF GRAYSON §

**CONTRACT
BETWEEN THE CITY OF SHERMAN AND THE CONTRACTOR**

THIS AGREEMENT is by and between the **CITY OF SHERMAN** ("CITY" or "OWNER") and **UTILITY CONSTRUCTION SERVICES OF TEXAS INC.** ("CONTRACTOR").

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

ARTICLE 1 - PROJECT

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

The replacement of approximately 1300 linear feet of 6" waterline on Oak Creek Drive from Oak Creek Circle north to Alpine Drive in Sherman TX.

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

ARTICLE 2 – INDEPENDENT CONTRACTOR

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

ARTICLE 3 - CONTRACT TIMES

3.01 *Commencement of Contract*

- A. **CONTRACTOR** agrees to commence work under this Contract on or before the date specified in the written "Notice to Proceed" of the **CITY** and to fully complete the contract within sixty (60) days.
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 *Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially completed by **CONTRACTOR** on or before 60 consecutive calendar days from the date of the Notice to Proceed.

3.03 *Liquidated Damages*

- A. **CONTRACTOR** and **CITY** recognize that time is of the essence of this Contract and that **CITY** will suffer loss that is difficult to calculate if the Work is not completed within the times specified in

paragraph 3.02 above, plus any extensions thereof allowed in accordance with paragraph 4.02 of the General Conditions. The parties also recognize the expense, and difficulties involved with a delay make it impossible to evaluate the actual loss suffered by CITY due to the nature of this project if the Work is not completed on time. Accordingly, CITY and CONTRACTOR agree that as liquidated damages for the delay (but not as a penalty), CONTRACTOR shall Bidder must agree to commence work on or before a date to be specified in written "Notice to Proceed" of the Owner, and to fully complete the project within sixty (60) consecutive calendar days thereafter. Bidder must also agree to pay liquidated damages as indicated in NCTCOG Section 108.8 and according to Schedule 108.8.1.(a) below for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

Schedule 108.8.1.(a) Liquidated Damages	
Amount of Contract (\$)	Amount of Liquidated Damages (\$)
Less than 25,000.00	100.00 per Day
25,000.000 to 99,999.99	160.00 per Day
100,000.00 to 999,999.99	240.00 per Day
1,000,000.00 or More	500.00 per Day

ARTICLE 4 - CONTRACT PRICE/CONSIDERATION

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

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

Fifty Thousand Seven Hundred Forty Dollars and Fifty Cents (\$50,740.50)

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

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

ARTICLE 5 - PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 5 of the General Conditions. Applications for Payment will be processed by the ENGINEER (defined in Article 9 of this Contract) as provided in the General Conditions.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

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

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

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

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

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

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

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

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

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 - CONTRACT DOCUMENTS

7.01 *Contents*

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

1. This Contract;
2. Performance Bond;
3. If applicable, the Unit Pricing in the Proposal;
4. Payment Bond;

-
5. Any Other Bonds;
 6. General Conditions of Agreement;
 7. Special Conditions of Agreement;
 8. Any Other Documents listed in the Table of Contents of the Specifications and Contract Documents;
 9. Any Drawings associated with the Project;
 10. Addenda (if applicable);
 11. Exhibits to this Contract(enumerated as follows):
 - a. Notice to Proceed;
 - b. CONTRACTOR'S Bid;
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award;
 - d. Any other documentation submitted by the CONTRACTOR that is applicable to this Project.
 12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Order(s), if permissible under the Resolution enacted by the City.
- B. There are no Contract Documents other than those listed above in this Article 7.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 9.09 of this Contract.

ARTICLE 8 – NOTICE

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

If intended for CITY to:

If intended for CONTRACTOR, to:

Designee:
Mark Gibson, Director of Utility Services
Address:
P.O. Box 1106
Sherman, TX 75091-1106
903-892-7210

Designee:
Dan Rolen, Project Manager
Address:
702 Sheperd Dr.
Garland, TX 75042
972-272-7229

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

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

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

9.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

A. CITY and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability and Conflict*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

9.05 *Captions*

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

9.06 *Indemnity and Duty to Defend*

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

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

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

9.07 *Deletion of Arbitration Clause*

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

9.08 *Choice of Law: Venue.*

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

9.09 *Binding Authority*

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

9.10 *Entire Agreement*

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

9.11 *Contract Interpretation*

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

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

This Contract will be effective on April 6th, 2009 (which is the Effective Date of the Contract).

CITY: CITY OF SHERMAN, TEXAS

CONTRACTOR:

By: _____
City Manager

By: _____

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

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

GIVEN UNDER MY HAND and seal of office this _____ day of _____, 2009.

(Stamp)

Print Name: _____
Notary Public
Date of Expiration: _____

Attest _____
City Clerk

Agent for service of process: _____

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

Approved as to form:

City Attorney

PROJECT YEAR: 2008-2009

PROJECT NAME:

Oak Creek Drive Water Replacement

DESCRIPTION:

Replace 1,300' of 6" water main along Oak Creek Drive from Oak Creek Circle north to Alpine Drive.

ESTIMATED COST:

\$140,000

ESTIMATED O&M COST:

Not Applicable

PROPOSED FINANCING:

Utility Improvement Fund

PROJECT NECESSITY:

Replacement is due to a badly deteriorated line requiring frequent service interruptions and costly repairs.

DEPARTMENT/DIRECTOR:

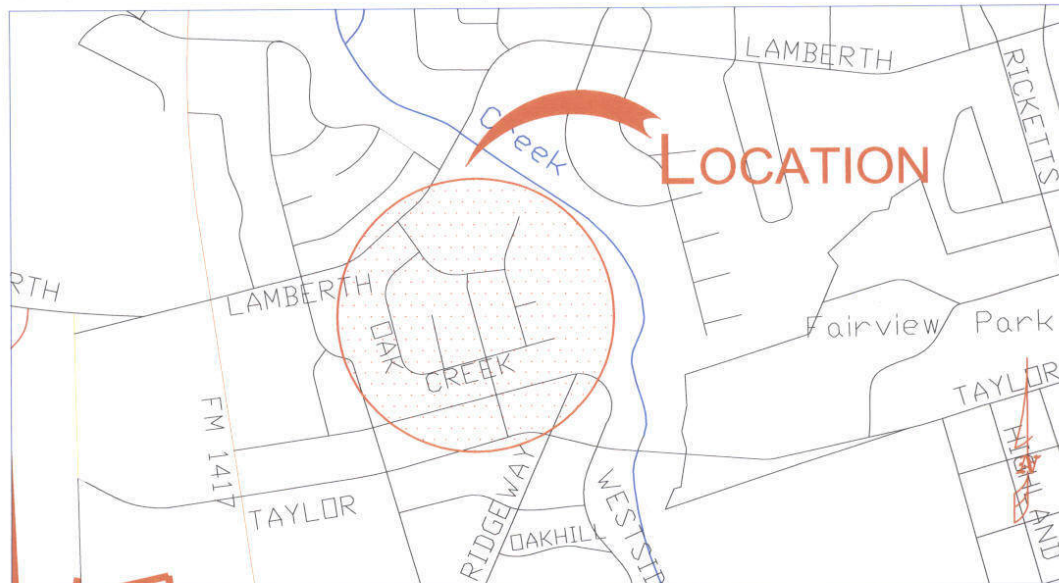
Utility and Engineering Services, Mark Gibson

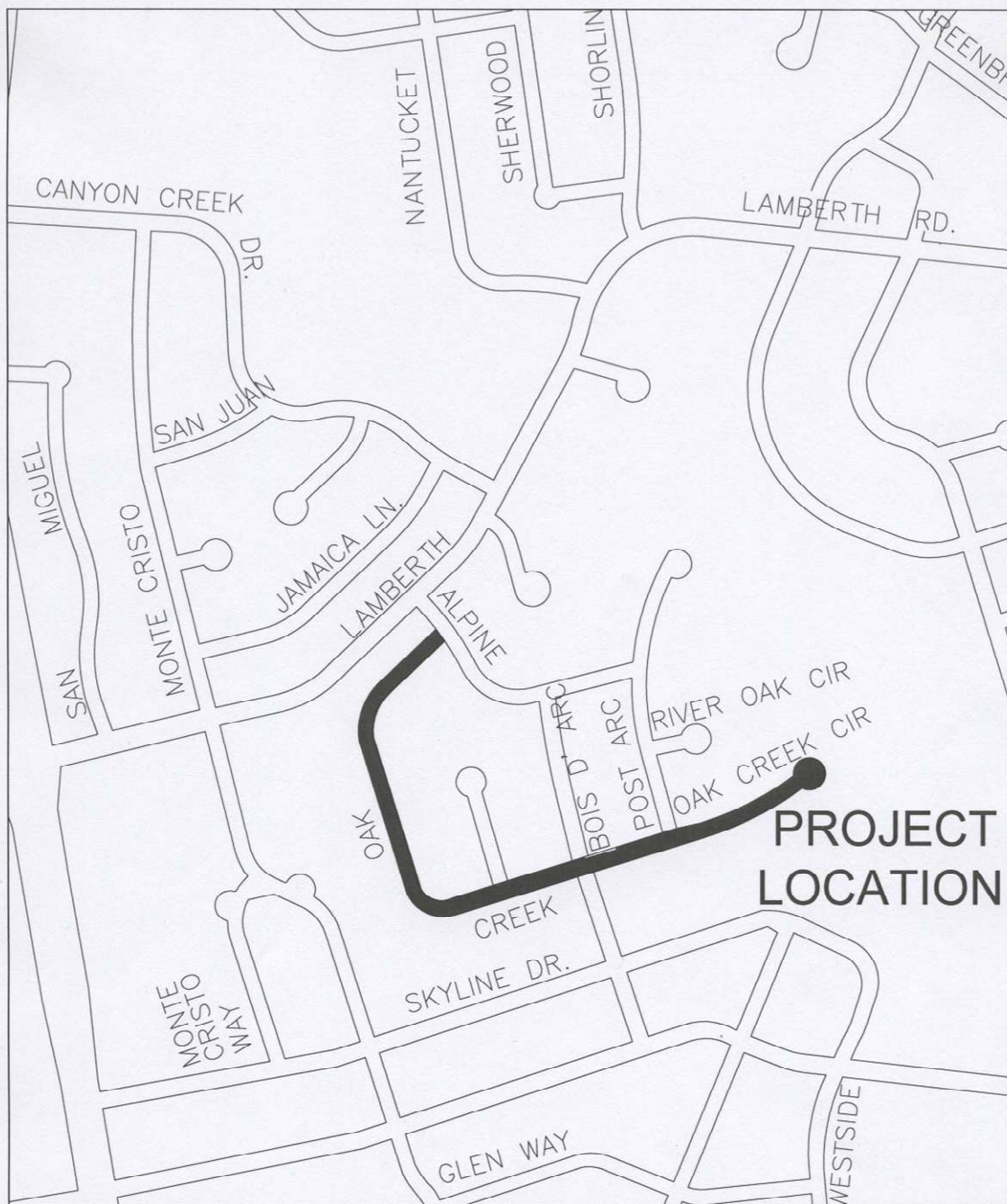
PROPOSED START DATE:

May, 2009

PROPOSED END DATE:

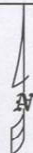
September, 2009





**OAK CREEK DRIVE WATER MAIN REPLACEMENT
OAK CREEK CIRCLE NORTH TO ALPINE DRIVE**

City of Sherman, Texas





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.4

*** RESOLUTION NO. 5344**

Awarding a Bid to and Authorizing Execution of a Contract with Utility Construction Services of Texas Inc. for Construction of the Fallon Drive Water Main from U.S. Highway 75 to Pecan Grove Road

Issue

Contracting for the replacement of the Fallon Drive water main between U.S. Highway 75 and Pecan Grove Road

Background

The current Capital Improvement Program contains a project to replace the water main on Fallon Drive, between U.S. Highway 75 and Pecan Grove Road. Ten (10) bidders responded to the request for bids. A bid tabulation is attached.

Origination

Department of Utilities Administration

Financial Consideration

The project budget in this year's Capital Improvement Program is \$250,000.

Staff Recommendation

It is recommended that the contract for the replacement of the Fallon Drive water main be awarded to the low bidder, Utility Construction Services of Texas Inc., located in Garland, Texas, in the amount of \$72,808.00 and that the City Manager be authorized to execute the required contract documents.

Alternatives

As may be directed by the City Council

Attachments

Engineer's Recommendation with Bid Tabulation
Resolution No. 5344
Contract
CIP Project Sheet and Location Map

Prepared by:
Mark Gibson, Utilities and Engineering Director

Approved by:
George Olson, City Manager

TNP TEAGUE NALL AND PERKINS

Civil Engineering | Surveying | Landscape Architecture | Planning

March 30, 2009

Mark Gibson
Director of Utilities
P O Box 1106
Sherman, TX 75091

**RE: City of Sherman Fallon Drive Water Main Construction
US Hwy 75 to Pecan Grove Road
Contract Recommendation
TNP Job No: SHN 08347**

Dear Mark,

On Thursday, March 12th, 2009, at 10:00 am, bids were received at the City of Sherman Department of Engineering and Planning for the Fallon Drive Water Main Construction project. The low bidder was Utility Construction Services with a bid of \$72,808.00.

After checking their references, we recommend the City of Sherman award the contract to Utility Construction Services for Fallon Drive Water Main Construction project.

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

Sincerely,

TEAGUE NALL AND PERKINS INC.

Chris Schmitt, P.E.

Cc: TNP file

TEAGUE NALL AND PERKINS

Civil Engineering | Surveying | Landscape Architecture | Planning

**FALLON DRIVE WATER MAIN CONSTRUCTION - US HWY
75 TO PECAN GROVE RD**
Project No. SHN08347
City of Sherman
BID TABULATION REPORT

Engineer's Estimate = \$138,248.00 BID OPENING DATE: 03/12/09 BID OPENING TIME: 10:00 AM				BIDDERS							
				Utility Construction Services		Quality Excavation Ltd.		Wilson Contractor Services LLC		Lynn Vessels Construction LLC	
ITEM NO.	DESCRIPTION OF ITEMS	QTY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	12" DR-18, Class 150 PVC Waterline	1,833.00	LF	\$22.00	\$40,326.00	\$25.70	\$47,108.10	\$26.00	\$47,658.00	\$26.33	\$48,262.89
2	12" Ductile Iron Pipe w/ Restraining Joints	285.00	LF	\$45.00	\$12,825.00	\$43.00	\$12,255.00	\$53.00	\$15,105.00	\$54.24	\$15,458.40
3	12" Gate Valve with Valve Box	2.00	EA	\$1,450.00	\$2,900.00	\$1,900.00	\$3,800.00	\$2,300.00	\$4,600.00	\$1,690.48	\$3,380.96
4	6" Gate Valve with Valve Box	1.00	EA	\$650.00	\$650.00	\$780.00	\$780.00	\$800.00	\$800.00	\$615.85	\$615.85
5	Ductile Iron Fittings - 12"x6" Tee	1.00	EA	\$450.00	\$450.00	\$750.00	\$750.00	\$650.00	\$650.00	\$581.32	\$581.32
6	Ductile Iron Fittings - 12" 11.25° Bend	5.00	EA	\$400.00	\$2,000.00	\$750.00	\$3,750.00	\$500.00	\$2,500.00	\$435.05	\$2,175.25
7	Ductile Iron Fittings - 12" 22.50° Bend	1.00	EA	\$325.00	\$325.00	\$750.00	\$750.00	\$500.00	\$500.00	\$438.87	\$438.87
8	Ductile Iron Fittings - 12" 45° Bend	2.00	EA	\$325.00	\$650.00	\$750.00	\$1,500.00	\$500.00	\$1,000.00	\$438.53	\$877.06
9	Blowoff Manhole and Marker Post	1.00	EA	\$2,200.00	\$2,200.00	\$2,850.00	\$2,850.00	\$3,200.00	\$3,200.00	\$2,440.80	\$2,440.80
10	Cut-Off Wall	24.00	EA	\$100.00	\$2,400.00	\$50.00	\$1,200.00	\$200.00	\$4,800.00	\$169.50	\$4,068.00
11	Gabion Matress w/ 8" Rock Riprap	31.00	CY	\$100.00	\$3,100.00	\$50.00	\$1,550.00	\$80.00	\$2,480.00	\$267.81	\$8,302.11
12	Vegetative Reinforcement Matting	145.00	SY	\$9.00	\$1,305.00	\$8.00	\$1,160.00	\$20.00	\$2,900.00	\$18.40	\$2,668.00
13	Trench Safety	2,118.00	LF	\$1.50	\$3,177.00	\$0.50	\$1,059.00	\$0.20	\$423.60	\$0.34	\$720.12
14	Erosion Control	1.00	LS	\$500.00	\$500.00	\$2,900.00	\$2,900.00	\$2,800.00	\$2,800.00	\$1,130.00	\$1,130.00
TOTALS:				\$72,808.00		\$81,412.10		\$89,416.60		\$91,119.63	

TEAGUE NALL AND PERKINS

Civil Engineering | Surveying | Landscape Architecture | Planning

**FALLON DRIVE WATER MAIN CONSTRUCTION - US HWY
75 TO PECAN GROVE RD
Project No. SHN08347
City of Sherman
BID TABULATION REPORT**

Engineer's Estimate = \$138,248.00 BID OPENING DATE: 03/12/09 BID OPENING TIME: 10:00 AM				BIDDERS					
				RD Moorman Inc.		Dickerson Construction Company Inc.		Granbury Contracting and Utilities Inc.	
ITEM NO.	DESCRIPTION OF ITEMS	QTY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	12" DR-18, Class 150 PVC Waterline	1,833.00	LF	\$40.00	\$73,320.00	\$35.00	\$64,155.00	\$40.00	\$73,320.00
2	12" Ductile Iron Pipe w/ Restraining Joints	285.00	LF	\$50.00	\$14,250.00	\$90.00	\$25,650.00	\$50.00	\$14,250.00
3	12" Gate Valve with Valve Box	2.00	EA	\$2,125.00	\$4,250.00	\$1,750.00	\$3,500.00	\$2,000.00	\$4,000.00
4	6" Gate Valve with Valve Box	1.00	EA	\$850.00	\$850.00	\$700.00	\$700.00	\$1,000.00	\$1,000.00
5	Ductile Iron Fittings - 12"x6" Tee	1.00	EA	\$750.00	\$750.00	\$750.00	\$750.00	\$750.00	\$750.00
6	Ductile Iron Fittings - 12" 11.25° Bend	5.00	EA	\$525.00	\$2,625.00	\$500.00	\$2,500.00	\$500.00	\$2,500.00
7	Ductile Iron Fittings - 12" 22.50° Bend	1.00	EA	\$550.00	\$550.00	\$500.00	\$500.00	\$500.00	\$500.00
8	Ductile Iron Fittings - 12" 45° Bend	2.00	EA	\$265.00	\$530.00	\$500.00	\$1,000.00	\$750.00	\$1,500.00
9	Blowoff Manhole and Marker Post	1.00	EA	\$2,750.00	\$2,750.00	\$2,200.00	\$2,200.00	\$4,000.00	\$4,000.00
10	Cut-Off Wall	24.00	EA	\$200.00	\$4,800.00	\$50.00	\$1,200.00	\$500.00	\$12,000.00
11	Gabion Matress w/ 8" Rock Riprap	31.00	CY	\$150.00	\$4,650.00	\$100.00	\$3,100.00	\$200.00	\$6,200.00
12	Vegetative Reinforcement Matting	145.00	SY	\$5.00	\$725.00	\$30.00	\$4,350.00	\$25.00	\$3,625.00
13	Trench Safety	2,118.00	LF	\$0.35	\$741.30	\$1.00	\$2,118.00	\$1.00	\$2,118.00
14	Erosion Control	1.00	LS	\$750.00	\$750.00	\$4,000.00	\$4,000.00	\$1,500.00	\$1,500.00
TOTALS:				\$111,541.30		\$115,723.00		\$127,263.00	

TEAGUE NALL AND PERKINS

Civil Engineering | Surveying | Landscape Architecture | Planning

**FALLON DRIVE WATER MAIN CONSTRUCTION - US HWY
75 TO PECAN GROVE RD**
Project No. SHN08347
City of Sherman
BID TABULATION REPORT

Engineer's Estimate = \$138,248.00 BID OPENING DATE: 03/12/09 BID OPENING TIME: 10:00 AM				BIDDERS					
				We Build Inc.		Saber Development Corporation		Canary Construction Inc.	
ITEM NO.	DESCRIPTION OF ITEMS	QTY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	12" DR-18, Class 150 PVC Waterline	1,833.00	LF	\$30.10	\$55,173.30	\$40.50	\$74,236.50	\$47.00	\$86,151.00
2	12" Ductile Iron Pipe w/ Restraining Joints	285.00	LF	\$127.60	\$36,366.00	\$125.00	\$35,625.00	\$80.50	\$22,942.50
3	12" Gate Valve with Valve Box	2.00	EA	\$2,475.40	\$4,950.80	\$1,500.00	\$3,000.00	\$2,215.10	\$4,430.20
4	6" Gate Valve with Valve Box	1.00	EA	\$1,518.20	\$1,518.20	\$675.00	\$675.00	\$1,140.00	\$1,140.00
5	Ductile Iron Fittings - 12"x6" Tee	1.00	EA	\$299.60	\$299.60	\$500.00	\$500.00	\$804.00	\$804.00
6	Ductile Iron Fittings - 12" 11.25° Bend	5.00	EA	\$414.60	\$2,073.00	\$450.00	\$2,250.00	\$690.00	\$3,450.00
7	Ductile Iron Fittings - 12" 22.50° Bend	1.00	EA	\$420.30	\$420.30	\$450.00	\$450.00	\$694.00	\$694.00
8	Ductile Iron Fittings - 12" 45° Bend	2.00	EA	\$418.90	\$837.80	\$450.00	\$900.00	\$693.50	\$1,387.00
9	Blowoff Manhole and Marker Post	1.00	EA	\$3,510.80	\$3,510.80	\$3,000.00	\$3,000.00	\$4,115.00	\$4,115.00
10	Cut-Off Wall	24.00	EA	\$134.10	\$3,218.40	\$250.00	\$6,000.00	\$350.00	\$8,400.00
11	Gabion Mattress w/ 8" Rock Riprap	31.00	CY	\$418.50	\$12,973.50	\$100.00	\$3,100.00	\$130.00	\$4,030.00
12	Vegetative Reinforcement Matting	145.00	SY	\$16.60	\$2,407.00	\$2.00	\$290.00	\$11.50	\$1,667.50
13	Trench Safety	2,118.00	LF	\$1.20	\$2,541.60	\$1.00	\$2,118.00	\$1.15	\$2,435.70
14	Erosion Control	1.00	LS	\$3,000.00	\$3,000.00	\$850.00	\$850.00	\$6,300.00	\$6,300.00
TOTALS:				\$129,290.30		\$132,994.50		\$147,946.90	

TEAGUE NALL AND PERKINS

Civil Engineering Surveying Landscape Architecture Planning

**FALLON DRIVE WATER MAIN CONSTRUCTION - US HWY
75 TO PECAN GROVE RD
Project No. SHN08347
City of Sherman
BID TABULATION REPORT**

Engineer's Estimate = \$138,248.00 BID OPENING DATE: 03/12/09 BID OPENING TIME: 10:00 AM				BIDDERS					
				Jerry Paul Higgins Ltd.		Duval and Sons Inc.		Whitewater Construction Inc.	
ITEM NO.	DESCRIPTION OF ITEMS	QTY	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
1	12" DR-18 Class 150 PVC Waterline	1,833.00	LF	\$49.66	\$91,026.78	\$35.38	\$64,851.54	\$60.00	\$109,980.00
2	12" Ductile Iron Pipe w/ Restraining Joints	285.00	LF	\$81.53	\$23,236.05	\$96.95	\$27,630.75	\$95.00	\$27,075.00
3	12" Gate Valve with Valve Box	2.00	EA	\$1,957.65	\$3,915.30	\$1,944.94	\$3,889.88	\$2,000.00	\$4,000.00
4	6" Gate Valve with Valve Box	1.00	EA	\$808.25	\$808.25	\$1,659.49	\$1,659.49	\$750.00	\$750.00
5	Ductile Iron Fittings - 12"x6" Tee	1.00	EA	\$752.82	\$752.82	\$1,267.33	\$1,267.33	\$576.25	\$576.25
6	Ductile Iron Fittings - 12" 11.25° Bend	5.00	EA	\$581.00	\$2,905.00	\$1,125.92	\$5,629.60	\$435.00	\$2,175.00
7	Ductile Iron Fittings - 12" 22.50° Bend	1.00	EA	\$826.00	\$826.00	\$1,365.12	\$1,365.12	\$440.00	\$440.00
8	Ductile Iron Fittings - 12" 45° Bend	2.00	EA	\$587.00	\$1,174.00	\$1,835.28	\$3,670.56	\$440.00	\$880.00
9	Blowoff Manhole and Marker Post	1.00	EA	\$5,575.00	\$5,575.00	\$2,750.46	\$2,750.46	\$2,250.00	\$2,250.00
10	Cut-Off Wall	24.00	EA	\$250.00	\$6,000.00	\$398.62	\$9,566.88	\$600.00	\$14,400.00
11	Gabion Matress w/ 8" Rock Riprap	31.00	CY	\$231.00	\$7,161.00	\$674.94	\$20,923.14	\$93.75	\$2,906.25
12	Vegetative Reinforcement Matting	145.00	SY	\$4.40	\$638.00	\$22.13	\$3,208.85	\$21.25	\$3,081.25
13	Trench Safety	2,118.00	LF	\$1.25	\$2,647.50	\$3.51	\$7,434.18	\$0.50	\$1,059.00
14	Erosion Control	1.00	LS	\$6,396.36	\$6,396.36	\$2,764.10	\$2,764.10	\$2,500.00	\$2,500.00
TOTALS:				\$153,062.06		\$156,611.88		\$172,072.75	

RESOLUTION NO. 5344

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH UTILITY CONSTRUCTION SERVICES OF TEXAS INC. FOR CONSTRUCTION OF THE FALLON DRIVE WATER MAIN FROM U.S. HIGHWAY 75 TO PECAN GROVE ROAD; 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 Utility Construction Services of Texas Inc. is hereby awarded the bid in the total amount of Seventy-Two Thousand Eight Hundred Eight Dollars and No Cents (\$72,808.00) for construction of the Fallon Drive Water Main from U.S. Highway 75 to Pecan Grove Road; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a contract with Utility Construction Services of Texas Inc. for construction of the Fallon Drive Water Main Project, in accordance with the terms and provisions of all contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
BILL MAGERS, MAYOR

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

CITY OF SHERMAN §

COUNTY OF GRAYSON §

**CONTRACT
BETWEEN THE CITY OF SHERMAN AND THE CONTRACTOR**

THIS AGREEMENT is by and between the CITY OF SHERMAN ("CITY" or "OWNER") and UTILITY CONSTRUCTION SERVICES OF TEXAS INC. ("CONTRACTOR").

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

ARTICLE 1 - PROJECT

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

The installation of approximately 1800 linear feet of 12" waterline on Fallon Drive from US Highway 75 to Pecan Grove Road in Sherman TX.

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

ARTICLE 2 – INDEPENDENT CONTRACTOR

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

ARTICLE 3 - CONTRACT TIMES

3.01 *Commencement of Contract*

- A. CONTRACTOR agrees to commence work under this Contract on or before the date specified in the written "Notice to Proceed" of the CITY and to fully complete the contract within sixty (60) days.
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 *Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially completed by CONTRACTOR on or before 60 consecutive calendar days from the date of the Notice to Proceed.

3.03 *Liquidated Damages*

- A. CONTRACTOR and CITY recognize that time is of the essence of this Contract and that CITY will suffer loss that is difficult to calculate if the Work is not completed within the times specified in

paragraph 3.02 above, plus any extensions thereof allowed in accordance with paragraph 4.02 of the General Conditions. The parties also recognize the expense, and difficulties involved with a delay make it impossible to evaluate the actual loss suffered by CITY due to the nature of this project if the Work is not completed on time. Accordingly, CITY and CONTRACTOR agree that as liquidated damages for the delay (but not as a penalty), CONTRACTOR shall Bidder must agree to commence work on or before a date to be specified in written "Notice to Proceed" of the Owner, and to fully complete the project within sixty (60) consecutive calendar days thereafter. Bidder must also agree to pay liquidated damages as indicated in NCTCOG Section 108.8 and according to Schedule 108.8.1.(a) below for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

Schedule 108.8.1.(a) Liquidated Damages

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

ARTICLE 4 - CONTRACT PRICE/CONSIDERATION

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

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

Seventy Two Thousand Eight Hundred Eight Dollars and No Cents (\$72,808.00)

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

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

ARTICLE 5 - PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 5 of the General Conditions. Applications for Payment will be processed by the ENGINEER (defined in Article 9 of this Contract) as provided in the General Conditions.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

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

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

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

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

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

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

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

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

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 - CONTRACT DOCUMENTS

7.01 *Contents*

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

1. This Contract;
2. Performance Bond;
3. If applicable, the Unit Pricing in the Proposal;
4. Payment Bond;

5. Any Other Bonds;
 6. General Conditions of Agreement;
 7. Special Conditions of Agreement;
 8. Any Other Documents listed in the Table of Contents of the Specifications and Contract Documents;
 9. Any Drawings associated with the Project;
 10. Addenda (if applicable);
 11. Exhibits to this Contract(enumerated as follows):
 - a. Notice to Proceed;
 - b. CONTRACTOR'S Bid;
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award;
 - d. Any other documentation submitted by the CONTRACTOR that is applicable to this Project.
 12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Order(s), if permissible under the Resolution enacted by the City.
- B. There are no Contract Documents other than those listed above in this Article 7.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 9.09 of this Contract.

ARTICLE 8 – NOTICE

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

If intended for CITY to:

If intended for CONTRACTOR, to:

Designee:
Mark Gibson, Director of Utility Services
Address:
P.O. Box 1106
Sherman, TX 75091-1106
903-892-7210

Designee:
Dan Rolen, Project Manager
Address:
702 Sheperd Dr.
Garland, TX 75042
972-272-7229

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Contract will have the meanings indicated in the General Conditions.
- B. In addition to the terms in the General Conditions, the term "ENGINEER" in this Contract shall mean a person designated as the ENGINEER by the City.

9.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. CITY and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability and Conflict*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- B. If there are any conflicts between the Contract and the Contract Documents, the provisions in the Contract prevail over the provisions in the Contract Documents.

9.05 *Captions*

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

9.06 *Indemnity and Duty to Defend*

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

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

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

9.07 *Deletion of Arbitration Clause*

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

9.08 *Choice of Law: Venue.*

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

9.09 *Binding Authority*

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

9.10 *Entire Agreement*

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

9.11 *Contract Interpretation*

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

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

This Contract will be effective on April 6th, 2009 (which is the Effective Date of the Contract).

CITY: CITY OF SHERMAN, TEXAS

CONTRACTOR:

By: _____
City Manager

By: _____

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

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

GIVEN UNDER MY HAND and seal of office this _____ day of _____, 2009.

(Stamp)

Print Name: _____
Notary Public
Date of Expiration: _____

Attest _____
City Clerk

Agent for service of process: _____

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

Approved as to form:

City Attorney

PROJECT YEAR: 2008-2009

PROJECT NAME:

Oak Creek Drive Water Replacement

DESCRIPTION:

Replace 1,300' of 6" water main along Oak Creek Drive from Oak Creek Circle north to Alpine Drive.

ESTIMATED COST:

\$140,000

ESTIMATED O&M COST:

Not Applicable

PROPOSED FINANCING:

Utility Improvement Fund

PROJECT NECESSITY:

Replacement is due to a badly deteriorated line requiring frequent service interruptions and costly repairs.

DEPARTMENT/DIRECTOR:

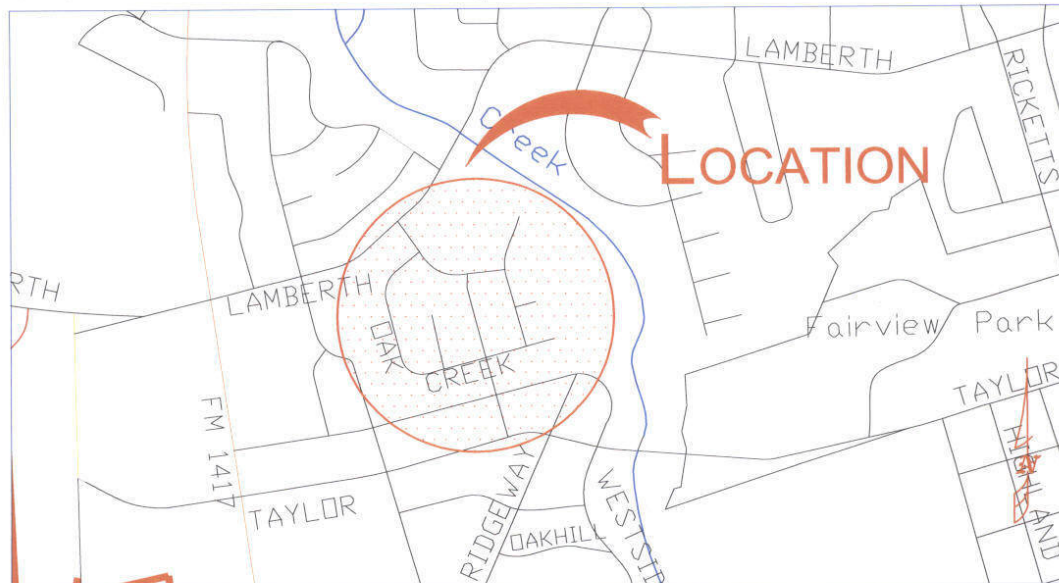
Utility and Engineering Services, Mark Gibson

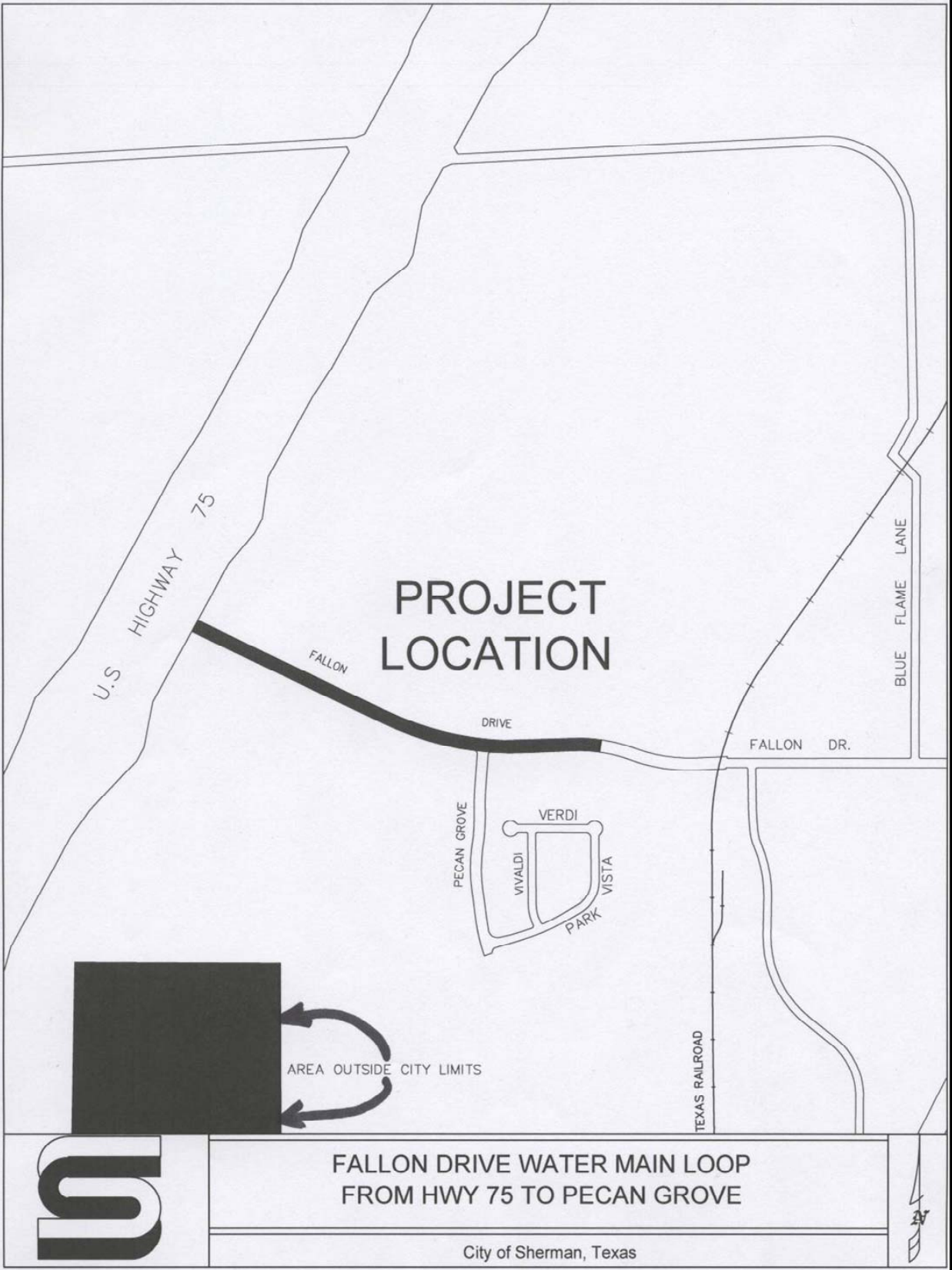
PROPOSED START DATE:

May, 2009

PROPOSED END DATE:

September, 2009







SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.5

RESOLUTION NO. 5345

Authorizing Execution of a Professional Services Agreement with Teague, Nall and Perkins, Inc. for the Improvement of Taylor Street at the Intersections of Crockett Street and Alexander Street

Issue

Approval of a contract for professional engineering services with Teague, Nall and Perkins, Inc. for the re-design of two sections of Taylor Street

Background

Taylor Street is scheduled to be improved from Heritage Parkway (F.M. 1417) to Texoma Parkway as part of the City's Thoroughfare Enhancement Program. A section of the street, from Woods Street to Travis Street, is designed with north/south "valley gutters" causing severe dips across Taylor in two locations, at Crockett and at Alexander. Teague, Nall and Perkins has submitted an engineering proposal to prepare a design that will transition the elevation of Taylor Street smoothly across these two intersections. This design approach will save the City a significant number of Capital Improvement Program dollars by avoiding the installation of a new storm water system in this area of the city. Improving this portion of Taylor Street, along with improvements to Grand Avenue, is an important part of a project to upgrade a major east/west thoroughfare across the city.

Origination

Public Works Department

Financial Consideration

The fee for engineering services will be \$27,000.00 and includes surveying, engineering design, bidding services, and construction services. Funds for this work will be available through street sales tax funds.

Staff Recommendation

It is recommended that the contract for engineering services with Teague, Nall and Perkins, Inc. to re-design two sections of Taylor Street be approved.

Alternatives

As may be directed by the City Council

Attachments

Resolution No. 5345, Professional Services Agreement, Location Map

Prepared by:
Jeff Miller, Director of Public Works

Approved by:
George Olson, City Manager

RESOLUTION NO. 5345

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH TEAGUE, NALL AND PERKINS, INC. FOR THE IMPROVEMENT OF TAYLOR STREET AT THE INTERSECTIONS OF CROCKETT STREET AND ALEXANDER STREET; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the Interim City Attorney, to execute a Professional Services Agreement with Teague, Nall and Perkins, Inc. for the improvement of Taylor Street at the intersections of Crockett Street and Alexander Street, in accordance with the specifications and conditions of 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 _____, 2009.

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, **TEAGUE, NALL AND PERKINS, 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 **IMPROVEMENT OF TAYLOR STREET AT THE INTERSECTIONS OF CROCKETT STREET AND ALEXANDER STREET** 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:

Chris Schmitt, P.E.
Teague, Nall & Perkins, Inc.
200 N Travis St # 500
Sherman, TX 75090
(903) 870-1089

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:
CITY OF SHERMAN

ENGINEER:
TEAGUE, NALL AND PERKINS, INC.

By: _____
George Olson
City Manager

By: _____
Chris Schmitt, P.E.
Office Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

Interim City Attorney



Civil Engineering | Surveying | Landscape Architecture | Planning

EXHIBIT A AUTHORIZATION FOR PROFESSIONAL SERVICES

PROJECT NAME: City of Sherman ~ Taylor Street Intersection Improvements

TNP PROJECT NUMBER: SHN XXXX

CLIENT: Jeff Miller
Public Works Director

ADDRESS: City Of Sherman
P.O. Box 1106
Sherman, TX 75091-1106
903 892 7200 (P)
903 892-7355 (F)

The City of Sherman (the CLIENT) hereby requests and authorizes Teague Nall and Perkins, Inc., (the ENGINEER) to perform the following services:

Article I

SCOPE: Provide Civil Engineering services for redesign of intersections at Taylor Street and Crockett and Taylor Street and Alexander Street in order to eliminate existing valley gutters. A detailed scope of **BASIC SERVICES** is included as Attachment 'A' and is made a part hereto.

Article II

COMPENSATION: Compensation will be on a basis of the following:

1) **BASIC SERVICES:** The CLIENT agrees to pay the ENGINEER a fixed fee as follows:

a)	Survey	\$ 4,000
b)	Engineering	
i)	Design	\$18,000
ii)	Bidding	\$ 2,000
iii)	Construction	\$ 3,000

2) **ADDITIONAL SERVICES:** Services provided by the ENGINEER which are not specifically included in BASIC SERVICES as defined above or delineated in Attachment 'A' shall be reimbursed on an hourly basis at standard TNP hourly rates. Examples of **ADDITIONAL SERVICES** are shown at Attachment 'B'.

3) **BASIC SERVICES** and **ADDITIONAL SERVICES** shall be billed monthly based on the percentage of work complete. The CLIENT shall pay promptly upon receipt of invoice. Delays of payment in excess of 21 days after receiving the invoice or 30 days of the invoice date may result in cessation of services

until full payment is received. Time shall be added to the project schedule for any work stoppages resulting from the CLIENT's failure to render timely payment.

Agreement to this contract acknowledges available funding for the proposed engineering and surveying services. Payment for engineering and surveying services shall not be contingent upon the CLIENT's available project-specific funds, or anticipated future funding.

SCHEDULE: The proposed services shall begin within 5 working days of authorization to proceed. A project design schedule is included as Attachment 'C', and made a part hereto.

SUPPLEMENTAL PROVISIONS: The attached supplemental provisions are incorporated and made a part of this agreement.

Article III

Please execute and return a signed copy for our files.

Approved by CLIENT:
George Olson
City Manager
City of Sherman

Accepted by ENGINEER:
Chris Schmitt PE
Office Manager
Teague Nall and Perkins, Inc.

By: _____

Title: _____

Date: _____

By: _____

Title: Principal

Date: _____

PROVISIONS

1. AUTHORIZATION TO PROCEED

Signing this form shall be construed as authorization by CLIENT for TNP, Inc. to proceed with the work, unless otherwise provided for in the authorization.

2. LABOR COSTS

TNP, Inc.'s Labor Costs shall be the amount of salaries paid TNP, Inc.'s employees for work performed on CLIENTS Project plus a stipulated percentage of such salaries to cover all payroll-related taxes, payments, premiums, and benefits.

3. DIRECT EXPENSES

TNP, Inc.'s Direct Expenses shall be those costs incurred on or directly for the CLIENT's Project, including but not limited to necessary transportation costs including mileage at TNP, Inc.'s current rate when its, or its employee's, automobiles are used, meals and lodging, laboratory tests and analyses, computer services, word processing services, telephone, printing and binding charges. Reimbursement for these EXPENSES shall be on the basis of actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by TNP, Inc.

4. OUTSIDE SERVICES

When technical or professional services are furnished by an outside source, when approved by CLIENT, an additional amount shall be added to the cost of these services for TNP, Inc.'s administrative costs, as provided herein.

5. ENGINEER'S OPINION OF PROBABLE COST

Any cost opinions provided by TNP, Inc. will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures TNP, Inc. cannot warrant that bids or ultimate construction costs will not vary from these cost opinions.

6. PROFESSIONAL STANDARDS

TNP, Inc. shall be responsible, to the level of competency presently maintained by other practicing professional engineers in the same type of work in CLIENT's community, for the professional and technical soundness, accuracy, and adequacy of all design, drawings, specifications, and other work and materials furnished under this Authorization. TNP, Inc. makes no other warranty, expressed or implied.

7. TERMINATION

Either CLIENT or TNP, Inc. may terminate this authorization by giving 30 days written notice to the other party. In such event CLIENT shall forthwith pay TNP, Inc. in full for all work previously authorized and performed prior to effective date of termination. TNP shall deliver all such work to CLIENT in all then existing forms, including electronic CAD systems. If no notice of termination is given, relationships and obligations created by this Authorization shall be terminated upon completion of all applicable requirements of this Authorization.

8. ARBITRATION

All claims, disputes, and other matters in question arising out of, or relating to, this Authorization or the breach thereof may be decided by arbitration in accordance with the rules of the American Arbitration Association then obtaining. Either CLIENT or TNP, Inc. may initiate a request for such arbitration, but consent of the other party to such procedure shall be mandatory. No arbitration arising out of, or relating to this Authorization shall include, by consolidation, joinder, or in any other manner, any additional party not a party to this Authorization.

9. LEGAL EXPENSES

In the event legal action is brought by CLIENT or TNP, Inc. against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses as may be set by the court.

10. PAYMENT TO TNP, INC.

Monthly invoices will be issued by TNP, Inc. for all work performed under the terms of this agreement. Invoices are due and payable within 30 days of receipt. Interest at the rate of 1½% per month will be charged on all past-due amounts, unless not permitted by law, in which case, interest will be charged at the highest amount permitted by law.

11. LIMITATION OF LIABILITY

TNP, Inc.'s liability to the CLIENT for any cause or combination of causes is in the aggregate, limited to an amount no greater than the fee earned under this agreement.

12. ADDITIONAL SERVICES

Services in addition to those specified in Scope will be provided by TNP, Inc. if authorized in writing by CLIENT. Additional services will be paid for by CLIENT as indicated in attached Basis of Compensation or as negotiated.

13. SALES TAX

In accordance with the State Sales Tax Codes, certain surveying services are taxable. Applicable sales tax is not included in the above proposed fee. Sales tax at an applicable rate will be indicated on invoice statements.

14. SURVEYING SERVICES

In accordance with the Professional Land Surveying Practices Act of 1989, the CLIENT is informed that any complaints about surveying services may be forwarded to the Texas Board of Professional Land Surveying, 7701 N. Lamar, Suite 400, Austin, Texas 78752, (512) 452-9427.

15. INVALIDITY CLAUSE

In case any one or more of the provisions contained in this Agreement shall be held illegal, the enforceability of the remaining provisions contained herein shall not be impaired.

16. PROJECT SITE SAFETY

TNP, Inc. has no duty or responsibility for site safety.

17. DRAINAGE CLAUSE

TNP, Inc. in the performance of its services may be required to assess the impact of the Project on neighboring property owners. The parties to this Agreement recognize that the development of real property has the potential to increase water runoff on downstream properties, and that such increase in runoff increases the possibility of water damage to downstream properties. The CLIENT agrees to indemnify and hold the ENGINEER harmless from any and all claims and damages arising, directly or indirectly, from water or drainage damage to downstream properties resulting from the development and construction of the Project. CLIENT shall not be required to reimburse ENGINEER for any claims or expenses arising out of the Project if it is determined by a court of competent jurisdiction that ENGINEER was negligent in the performance of its duties and obligations, and that ENGINEER's negligence was the direct cause of damage to a property downstream of the Project.

18. CONSTRUCTION MEANS AND METHODS

Means and methods of construction are the sole responsibility of the contractor.

ATTACHMENT 'A'

BASIC SERVICES

DESIGN PHASE

The ENGINEER will provide surveying and engineering services consisting of necessary field surveys, engineering and bid documents, and opinion of probable construction costs for the reconstruction of the intersections of Taylor Street and Crockett and Taylor Street and Alexander Street. Provisions will also be made for the design and construction of wheel chair ramps at the intersection of Taylor Street and Woods Street.

This project involves the reconstruction of the aforementioned intersections in order to eliminate the existing valley gutters which currently convey drainage from north to south along Crockett and Alexander Streets. Additionally, the ENGINEER will perform a site drainage study as needed in order to determine if additional drainage improvements are necessary for these intersections. At this time it is anticipated that the only drainage improvements will involve the reconstruction of the existing curb inlets and lateral lines.

The ENGINEER will prepare plans and specifications as needed for bidding the project. The plan sheets will consist of the following:

- Title/Cover Sheet
- Site Plan
- Demolition Plan
- Intersection Grading Plan
- Drainage Area Map & Volume Calculations (including depth of flow in gutter)
- Drainage Plan (Inlet Reconstruction)
- Details

The ENGINEER will provide 10 copies of the plan and specifications for bidding purposes.

BIDDING AND NEGOTIATIONS PHASE

Once final plans have been delivered to the CLIENT, the ENGINEER will assist with advertising the job and provide, as necessary, any supplemental documents or information required to clarify the Contract Documents. This clarification may be in the form of written Addendums or verbal interpretations of the Contract Documents. The ENGINEER will also confer with the CLIENT when responding to questions that arise during the Bidding Phase of the project.

ENGINEER will distribute plans to prospective bidders and assist CLIENT with bid opening by developing a bid tabulation once the bids are received. The ENGINEER will evaluate the bids and proposals as well and make recommendation to the CLIENT to award the construction contract.

CONSTRUCTION PHASE

ENGINEER will advise owner and act as owners representative as necessary. ENGINEER will assist CLIENT in review and processing of Pay Requests from the Contractor and review shop drawings and provide written contract document clarification as necessary. ENGINEER will provide final inspection and assist with job close out procedures as necessary. The ENGINEER will also provide the CLIENT with As Built information in both electronic and a set of 24"X36" reproducible drawings.

ATTACHMENT 'B'

ADDITIONAL SERVICES

ADDITIONAL SERVICES: **ADDITIONAL SERVICES** shall be any service provided by the ENGINEER which is not specifically included in **BASIC SERVICES** as defined above or delineated in Attachment 'A'. **ADDITIONAL SERVICES** shall include, but not be limited to:

- a.) Trips and meetings beyond a 50-mile radius of Sherman;
- b.) Subcontract charges not described in **BASIC SERVICES** or Attachment 'A';
- c.) Printing, copying, plotting and document reproduction beyond that required to complete the **BASIC SERVICES**, as described herein;
- d.) Revisions to plans to reduce costs after bidding;
- e.) Environmental Assessments or permitting;
- f.) Additional Surveying required to accommodate scope of either onsite or offsite design efforts;
- g.) Preparing applications and supporting documents for government loans, grants or planning advances and providing data for detailed applications;
- h.) FEMA Flood Plain Studies, assessments, amendments;
- i.) Surveying beyond that stated in the Basic Services;
- j.) Construction Staking;
- k.) Franchise Utility Design;
- l.) Water and/or Sewer Studies and modeling;
- m.) Traffic Studies or counts;
- n.) Work related to acquiring easements or right-of-way;
- o.) Preparation of detailed landscape or lighting plans;
- p.) Correspondence and work requests related to Franchise Utility Design;
- q.) Serving as right of way and easement acquisition agent;
- r.) *Any offsite improvements: street improvements, drainage improvements, grading improvements, water or sanitary sewer improvements not defined in the Basic Services;*
- s.) Preparation of easements or ROW documents;
- t.) Permitting or inspection fees;
- u.) Filing/Inspection fees will be paid by the **CLIENT**.
- v.) Construction administration services are excluded. These services can be provided upon request.
- w.) Marketing Exhibits;
- x.) Irrigation Design;
- y.) Tree Survey or mitigation plans;
- z.) Client requested revisions to a proposed layout occurring after zoning, preliminary plat, or replat documents have been submitted to the City or County;
- aa.) Design of retaining walls, foundations for structures, soil conditioning plans, landscape features, automated entry gates and water features.

ADDITIONAL SERVICES shall be considered additional work and shall be reimbursed at standard TNP hourly rates or TNP standard rates as outlined in Attachment 'D'.

ATTACHMENT 'C'
PROJECT DESIGN SCHEDULE

ENGINEER shall endeavor to accomplish the work in accordance with the following schedule:

1. Design survey	March 31, 2009
2. 100 % Bid Docs	April, 21, 2009
3. Advertise for Construction	April 19, 2009
4. Bid Opening	May 7, 2009
5. Council Award	May 18, 2009

ENGINEER shall endeavor to complete the work per the above schedule. It is understood and agreed that the objective of all involved in this project is to produce and provide quality and complete information and deliverables, which requires a considerable amount of coordination and cooperation, as well as adequate time for research, analysis and development. It is also understood that ENGINEER's ability to perform the scope of service is dependent upon timely receipt of information and data from the CLIENT, as well as other requested materials as may be needed to complete the work. Adjustments in schedule may be required should information or data from the CLIENT become delayed or not provided in a timely manner.

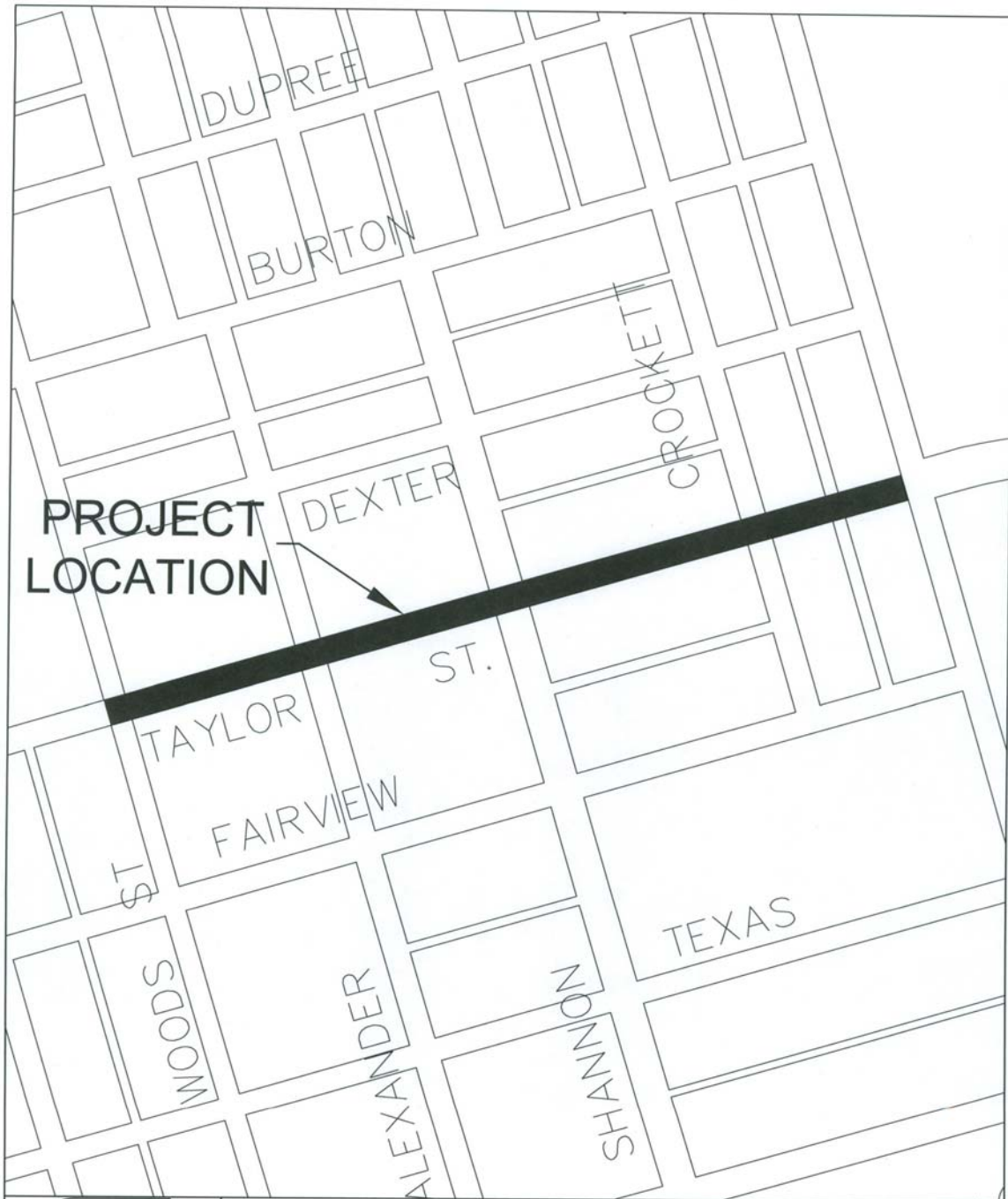
ATTACHMENT D

TEAGUE NALL AND PERKINS, INC.
Standard Rate Schedule for Reimbursable/Multiplier Contracts
Effective January 1, 2009 to December 31, 2009*

<u>Engineering / Technical</u>	<u>From</u>	<u>-</u>	<u>To</u>	
Principal	\$160	-	\$210	Per Hour
Project Manager	\$115	-	\$190	Per Hour
Senior Engineer	\$110	-	\$210	Per Hour
Engineer	\$80	-	\$140	Per Hour
Landscape Architect / Planner	\$70	-	\$160	Per Hour
Designer	\$85	-	\$120	Per Hour
Senior Designer	\$100	-	\$145	Per Hour
CAD Technician	\$60	-	\$90	Per Hour
Senior CAD Technician	\$75	-	\$110	Per Hour
IT Consultant	\$120	-	\$150	Per Hour
IT Technician	\$70	-	\$120	Per Hour
Clerical	\$50	-	\$80	Per Hour
Resident Project Representative	\$70	-	\$110	Per Hour
<u>Surveying</u>				
Survey Office Manager	\$125	-	\$170	
Registered Professional Land Surveyor	\$110	-	\$150	
S.I.T.	\$70	-	\$100	
Senior Survey Technician	\$70	-	\$100	
Junior Survey Technician	\$60	-	\$85	
2-Person Field Crew w/Equipment	\$100			
3-Person Field Crew w/Equipment	\$110			
4-Person Field Crew w/Equipment	\$135			
1-Person G.P.S. Crew w/Equipment	\$110			
2-Person G.P.S. Crew w/Equipment	\$130			
3-Person G.P.S. Crew w/Equipment	\$150			
1-Person Robotic Crew w/Equipment	\$90			
2-Person Robotic Crew w/Equipment	\$110			
<u>Direct Cost Reimbursables</u>				
Photocopies, Scans & PDF Files:	\$0.10/page	letter and legal size bond paper, B&W		
	\$0.20/page	11" x 17" size bond paper, B&W		
	\$1.00/page	letter, legal and 11" x 17" size bond paper, color		
	\$2.00/page	22" x 34" and larger bond paper or vellum, B&W		
	\$4.00/page	22" x 34" and larger bond paper or vellum, color		
Plots:	\$1.00/page	11" x 17" size bond paper, B&W		
	\$2.00/page	11" x 17" size bond paper, color		
	\$4.00/page	22"x34" and larger bond paper or vellum, B&W		
	\$6.00/page	22"x34" and larger bond paper or vellum, color		
	\$6.00/page	22"x34" and larger mylar or acetate, B&W		
Mileage	\$0.55/mile			

All Subcontracted and outsourced services billed at rates comparable to TNP's billing rates shown above.

** Rates shown are for calendar year 2009 and are subject to change in subsequent years.*



**TAYLOR STREET IMPROVEMENT
FROM TRAVIS STREET TO WOODS STREET**

City of Sherman, Texas





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.6

*** RESOLUTION NO. 5346**

**Awarding a Bid to and Authorizing Execution of a Contract with Gilco Contracting, Inc.
to Construct the Extension of West Canyon Creek Drive from Shady Oaks Lane
to Silverado Trail**

Issue

Awarding a bid and executing a contract to construct a new section of West Canyon Creek Drive

Background

Plans and specifications to build a new section of West Canyon Creek Drive, from its current west end at Silverado Trail to Shady Oaks Lane, were completed in February of this year. On March 24, 2009, ten (10) bids for construction were received and opened (see the attached bid tab). The qualified low bid was received from Gilco Contracting, Inc. of Benbrook, Texas. Our engineering consultant has reviewed Gilco's performance, checked their references, and recommends that the contract be awarded to them. Gilco's bid is 57 percent below the Capital Improvement Program budget for this project. The design provides for a 37' concrete curb and gutter street with sidewalks. Construction should begin in early May on this street project and will be an important entrance to the new Phase II Pecan Grove Park.

Origination

Department of Public Works

Financial Consideration

Funds for the design and construction of this new section of street were budgeted in this fiscal year's Capital Improvement Program budget in the amount of \$1.2 million.

Staff Recommendation

The City's consulting engineer has recommended that Gilco Contracting, Inc. be awarded the contract (see the attached recommendation letter) for the West Canyon Creek Drive extension project in the amount of \$514,944.75.

Alternatives

Customarily, the contract award is to the low bidder. However, the second lowest bid (Lynn Vessels Construction) is within 5% of the low bid (Gilco Contracting, Inc.). Therefore, the City Council may exercise an option provided by state law and award the contract to the local company, Lynn Vessels Construction.

Attachments

Bid Tabulation, Consultant Recommendation Letter, Resolution No.5346, Contract, Location Map

Prepared by:

Jeff Miller, Director of Public Works

Approved by:

George Olson, City Manager

BID TAB-WEST CANYON CREEK EXTENSION

<u>BIDDER</u>	<u>TOTAL</u>
Mitchell	\$676,055.60
Quality Excavation	\$586,212.00
Lynn Vessels	\$517,688.97
Weir	\$564,816.50
JRJ Paving	\$565,530.48
Gilco	\$514,944.75
Lambert & King	\$547,516.47
RK Hall	\$736,718.10
J&T Excavating	\$519,897.40
Texas United Excavators	\$584,641.90



Partners for a Better Quality of Life

March 27, 2009

Mr. Jeff Miller
City of Sherman
405 N. Rusk
Sherman, Texas 75090-5857

**RE: CITY OF SHERMAN
EXTENSION OF CANYON CREEK DRIVE
BID TABULATION AND RECOMMENDATION**

Dear Mr. Miller,

CP&Y has tabulated the bids received on March 24, 2009 for the above listed project. The low bid of \$514,944.75 was submitted by Gilco Contracting, with no errors found in the calculations. All required documents were submitted as part of the bid package and all reference checks were positive. Therefore, CP&Y recommends award of the construction contract to Gilco Contracting.

If there are any questions concerning this bid tabulation or you need additional assistance to proceed with the award process, please contact me at 972-542-7315

Respectfully,

A handwritten signature in blue ink, appearing to read 'Ryan Hague', written over a light blue circular stamp.

Ryan Sean Hague, P.E.

1700 Redbud Boulevard, Suite 460
McKinney, Texas 75069
972.542.7315 • 972.562.9770 metro • 972.542.7308 fax
www.cpyl.com



RESOLUTION NO. 5346

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH GILCO CONTRACTING, INC. TO CONSTRUCT THE EXTENSION OF WEST CANYON CREEK DRIVE FROM SHADY OAKS LANE TO SILVERADO TRAIL; 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 Gilco Contracting, Inc. of Benbrook, Texas, is hereby awarded the bid in the total amount of Five Hundred Fourteen Thousand Nine Hundred Forty-Four Dollars and Seventy-Five Cents (\$514,944.75) for the construction of a portion of West Canyon Creek Drive, from its current west end at Silverado Trail to Shady Oaks Drive; 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 a contract with Gilco Contracting, Inc. in accordance with the terms and provisions of all contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

CONSTRUCTION AGREEMENT

THE STATE OF TEXAS)
)
COUNTY OF GRAYSON)

KNOW ALL MEN BY THESE PRESENTS:

WEST CANYON CREEK DRIVE EXTENSION FROM SHADY OAKS LANE TO SILVERADO TRAIL

This construction agreement (the "Construction Agreement") is made by Gilco Contracting, Inc. (the "Contractor") and the City of Sherman, Texas, a municipal corporation (the "City"). In consideration of the promises specified in this Construction Agreement, the City and Contractor agree:

The Work under this contract includes furnishing all labor, tools, material and equipment, and for performing all work necessary for **the Extension of West Canyon Creek Drive from Shady Oaks Lane to Silverado Trail**, plus additional appurtenances as shown on plans. Construction plans were prepared and provided by Contractor.

Contract Documents and Order of Precedence

The Contract Documents shall consist of the following documents:

1. This Construction Agreement;
2. Properly authorized change orders;
3. The Special Conditions;
4. Technical Specifications;
5. Construction Drawings;
6. The City's Standard Construction Details;
7. The Standard Specifications for Public Works Construction (fourth edition, October 2004) as published by the North Central Texas Council of Governments, as amended by the City (collectively, the "City's Standard Specifications");
8. The City's written notice to proceed to Contractor;
9. Bid materials distributed by the City that relate to the Project.

These Contract Documents are incorporated by reference into this Construction Agreement as if set out here in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above.

Project Location

Commencing in the 1000 block of Shady Oaks Lane, proceeding east approximately 1,900 linear feet and terminating in the 3000 block of Canyon Creek Drive.

Total of Payments Due Contractor

For performance of the work in accordance with the Contract Documents, the City shall pay the Contractor in current funds an amount not to exceed Five Hundred Fourteen Thousand, Nine Hundred Forty-Four Dollars and Seventy Five Cents **(\$514,944.75)**. This amount is subject to adjustment by change order in accordance with the Contract Documents.

Dates to Start and Complete Work

Contractor shall begin work within ten (10) calendar days after receiving a written notice to proceed or written work order from the City. All work required under the Contract Documents shall be completed within **65 consecutive working days** after the date of the notice to proceed for the base bid. The City may assess the Contractor for liquidated damages and Contractor agrees to pay, an amount equal to \$200.00 per calendar day for every calendar day said construction remains incomplete after the completion date set forth in the Construction Agreement.

Right of the City to Complete

Contractor agrees that, should construction of the Improvements be delayed or suspended for a period in excess of five (5) days without cause reasonably deemed satisfactory by the City, or should Contractor fail to supply workmen and materials as shall be satisfactory to the City at any time during the progress of construction, or if Contractor or any other third parties engaged in such construction or any part thereof refuse, omit, or neglect to supply a quantity of material or workmen necessary to complete the work within the time period required, or should Contractor fail to complete or construct the Improvements as shall be satisfactory to the City, or if Contractor shall default with respect to any provision of this Agreement, or of any instrument, document, or writing referenced in this Agreement, the City may and is hereby authorized, in its sole discretion, to proceed with the construction in such manner and with such original contractors or subcontractors as the City may choose, and the cost or expense of so doing shall for all purposes be considered as advances made by the City to Contractor under the provisions of this Agreement. For these purposes, the City and any persons authorized or employed by it are expressly authorized to enter into and upon the Property and Improvements and take charge thereof, together with all Contract Documents set forth in the Construction Agreement, materials,

equipment, and other personal property thereon, and to proceed with the construction of said Improvements or to require Contractor to complete construction with any such changes, alterations, additions, or modifications as may be deemed necessary or expedient by the City and to do whatever the City may, in its sole discretion, deem necessary to insure completion of the construction.

Under this Construction Agreement, all references to "day" are to be considered "working days" unless noted otherwise.

CONTRACTOR'S INDEMNITY TO THE CITY AND OTHERS

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the City shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the City. Contractor shall retain approved counsel for the City within seven (7) business days after receiving written notice from the City that it is invoking its right to indemnification under this Construction Agreement. If Contractor does not retain counsel for the City within the required time, then the City shall have the right to retain counsel and the Contractor shall pay these attorneys' fees and expenses.

The City retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so.

Workers' Compensation Insurance

The Contractor agrees to comply with all applicable provisions of Texas Administrative Code Title 28, Section 110.110, a copy of which is attached to the Construction Agreement as

Exhibit A, and the contractual requirements of which are incorporated by reference in this Construction Agreement. Under section 110.110:

1. certain language must be included in this Construction Agreement and in the Contractor's contracts with subcontractors and others relating to the work;
2. the Contractor is required to submit to the City certificates of coverage for its employees and for all others providing services relating to the work. The Contractor is required to obtain and submit updated certificates showing extension of coverage until all project work is completed; and
3. the Contractor is required to post certain notices at job sites.

Builder's Risk Insurance (NOT REQUIRED)

Under the Special Conditions, the City may require that the Contractor obtain and pay for builder's risk insurance to be in effect until the City has accepted all work to be completed under the Contract Documents. The Contractor shall be responsible for paying any insurance policy deductible. If builder's risk insurance is required, the insurance shall be provided by an insurer acceptable to the City and the coverage shall be an all-risk, completed-value form.

Proof of Insurance Coverage

The Contractor shall provide proof that it and its subcontractors are maintaining in effect insurance required under the Contract Documents by submitting to the City appropriate insurance policy endorsements and/or other evidence of coverage.

Performance and Payment Bonds

The Contractor shall procure and pay for performance and payment bonds applicable to the work. The performance and payments bonds shall be issued in a form acceptable to the City. Among other things, these bonds shall apply to any work performed during the one-year warranty period after acceptance as described in this Construction Agreement.

The performance and payment bonds shall be issued by a corporate surety that is authorized to issue performance and payment bonds in Texas. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance and payment bonds upon City request.

Progress Payments and Retainage

As it completes portions of the work, the Contractor may request progress payments from the City. Progress payments shall be made by the City based on the City's estimate of the value of the work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site

only if the Contractor provides to the City satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the City:

1. Copies of documents reasonably necessary to aid the City in preparing an estimate of the value of work properly completed;
2. Full or partial releases of liens, including releases from subcontractors providing materials or delivery services relating to the work. Such releases shall be in a form acceptable to the City and shall release all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment; and
3. Any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the City determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the City determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the City the overpayment amount specified by the City within thirty (30) calendar days after it receives written demand from the City.

The fact that the City makes a progress payment shall not be deemed to be an admission by the City concerning the quantity, quality or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the City shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set depending upon the value of the contract work on the effective date of the contract:

<u>Contract Amount</u>	<u>Retainage Percentage</u>
Up to \$25,000	15%
\$25,000 to \$400,000	10%
Over \$400,000	5%

Retainage shall be withheld and may be paid to:

- a. ensure proper completion of the work. The City may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
- b. ensure timely completion of the work. The City may use retained funds to pay liquidated damages; and
- c. provide an additional source of funds to pay claims for which the City is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the City in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

Advances

The City shall have no obligation to make any advance if, at the time the request for such advance is made:

(a) Contractor is in default with respect to any provision of this Agreement or of any instrument, document, or writing referenced herein. Each Requisition shall be deemed a representation and warranty by Contractor that no such default exists.

(b) The City determines that there are insufficient monies remaining to be advanced to complete the Improvements in accordance with the Contract Documents. The City may make such advance upon the deposit with the City of funds deemed sufficient by the City, when added to remaining monies to be advanced, to so complete the Improvements.

(c) The City determines that construction of the Improvements has not been in accordance with the provisions of the Plans and Specifications.

Withholding Payments to Contractor

The City may withhold payment of some or all of any progress or final payment that would otherwise be due if the City determines, in its discretion, that the work has not been performed in accordance with the Contract Documents. The City may use these funds to pay replacement or substitute contractors to complete unfinished or defective work.

The City may withhold payment of some or all of any progress or final payment that would otherwise be due if the City determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the City is entitled to indemnification from Contractor under the Contract Documents.

Amounts withheld under this section shall be in addition to any retainage.

Acceptance of the Work

When the work is completed, the Contractor shall request that the City perform a final inspection. The City shall inspect the work. If the City determines that the work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the work. If the City determines that the work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that work shall be deemed accepted on the date specified in the City's written notice of acceptance of the work. The work shall not be deemed to be accepted based on "substantial completion" of the work, use or occupancy of the work, or for any reason other than the City's written notice of acceptance. Further, the issuance of a certificate of occupancy for all or any part of the work shall not constitute a notice of acceptance for that work.

In its discretion, the City may issue a notice of acceptance covering only a portion of the work. In this event, the notice shall state specifically what portion of the work is accepted.

Acceptance of Erosion Control Measures

When the erosion control measures have been completed, the Contractor shall request that the City perform a final inspection. The city shall inspect the work. If the City determines that the work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written notice of acceptance of the work. If the City determines that the work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

Final Payment

After all work required under the Contract Documents has been completed, inspected, and accepted, the City shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of work properly completed since the date of the most recent previous progress payment;
2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides full or partial releases of liens, or other evidence satisfactory to the City to show that all sums due for labor, services, and materials furnished for or used in connection with the work have been paid

or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The City may, but is not obligated to issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the City copies of all documents that the City determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the City has satisfied its obligation to administer the Construction Agreement in accordance with applicable law.

Subject to the requirements of the Contract Documents, the City shall pay the Final Payment within thirty (30) calendar days after the date specified in the notice of acceptance. This provision shall apply only after all work called for by the Contract Documents has been accepted.

Contractor's Warranty

For a one-year period after the date specified in a written notice of acceptance of work, Contractor shall provide and pay for all labor and materials that the City determines are necessary to correct all defects in the work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

Forty-five (45) to sixty (60) calendar days before the end of the one-year warranty period, the City may make a warranty inspection of the work. The City shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the one-year warranty period, the City shall mail to the Contractor a written notice that specifies the defects in the work that are to be corrected.

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the City. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the City may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the performance bond surety, or both.

If the City determines that a hazard exists because of defective materials and workmanship, then the City may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety. Expenses incurred by the City to alleviate the hazard shall be paid by the Contractor, the performance bond surety, or both.

Any work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that work performed during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

Work performed during the one-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The City may make as many warranty inspections as it deems appropriate.

Representations, Covenants, and Warranties

Contractor further warrants, covenants, agrees, and represents, which warranties, covenants, agreements, and representations shall survive the making of any and all advances, as follows:

(a) That the actual construction of the Improvements shall be completed free of liens or rights of liens of mechanics, materialmen, laborers, or any governmental agencies, in accordance with the Plans and Specifications, and that no materials, fixtures, or any other arrangements exist wherein the right is reserved or accrued to anyone to remove or to repossess any such items or to consider them as personal property.

(b) To keep the Property free and clear of any and all liens other than the Security Instruments, and any financing statement filed in connection herewith, and to protect the Property and Improvements from events and circumstances that cause or may cause the Property or Improvements to decrease in value.

(c) That the Contract Documents and the Construction Agreement constitute the entire agreement between the City and Contractor in connection with the construction of the Improvements, and that no change in said Contract Documents and the Construction Agreement shall be binding upon the City unless approved by the City in writing.

(d) That Contractor shall commence construction of the Improvements, that the Improvements shall be completed substantially in accordance with the provisions of the Contract Documents and the Construction Agreement with only such changes as may be approved in writing by the City, and that the construction of the Improvements shall be completed in accordance with completion provisions contained in the Construction Agreement.

Compliance with Laws

The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

Other Items

The Contractor shall sign the Construction Agreement, and deliver signed performance and payment bonds and proper insurance policy endorsements (and/or other evidence of coverage) within ten (10) calendar days after the City makes available to the Contractor copies of

the Contract Documents for signature. Six (6) copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the City.

The Construction Agreement "effective date" shall be the date on which the City Council acts to approve the award of the contract for the work to Contractor. It is expressly provided, however, that the City Council delegates the authority to the City Manager or his designee to rescind the contract award to Contractor at any time before the City delivers to the Contractor a copy of this Construction Agreement that bears the signature of the City Manager and City Secretary or their authorized designees. The purpose of this provision is to ensure:

1. that Contractor timely delivers to the City all bonds and insurance documents; and
2. that the City expressly retains discretion to reject any and all bids and specifically is not required to accept the lowest bidder.

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST CITY, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE CITY BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE CITY DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

The Contract Documents shall be construed and interpreted by applying Texas law. Venue for any litigation concerning the Contract Documents shall be proper in Grayson County, Texas.

Although the Construction Agreement has been drafted by the City, should any portion of the Construction Agreement be disputed, the City and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the City and Contractor and shall insure to their benefit and as well as that of their respective successors and assigns.

If City Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the City Manager and City Secretary or their designees have signed the Construction Agreement. If the City Manager and City Secretary sign on different dates, then the later date shall be the effective date.

[Remainder of Page Left Blank]

GILCO CONCONTRACTING, INC.

CITY OF SHERMAN, TEXAS

By: Dale R. Gilreath
Title: President

By: George Olson
Title: City Manager

Date: _____

Date: _____

Address: 6331 Southwest Blvd.
Benbrook, TX 76132

Address: 220 West Mulberry Street
P. O. Box 1106
Sherman, TX 75091-1106

Phone: (817) 735-1600
Fax: (817) 735-1613

Phone: (903) 892-7200
Fax: (903) 892-7355

ATTEST:

Linda Ashby, City Clerk

APPROVED AS TO FORM:

Peter K. Munson
Interim City Attorney



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.7

*** RESOLUTION NO. 5347**

**Awarding a Bid to and Authorizing Execution of a Contract with
R.K. Hall Construction, LTD. for the 2009 Street Mill and Overlay Program**

Issue

Consider awarding a bid to and executing a contract with R.K. Hall Construction, LTD. for street mill and overlay services during fiscal year (FY) 2008-2009

Background

The planned street mill and overlay work for FY 2008-2009 was advertised and six bids were opened on March 30, 2009. This year, the City's overall street improvement program is proposed to change allowing completion of all of the remaining streets identified in the original *2007 Thoroughfare Enhancement Network Plan* (see attached list). Completing the five-year thoroughfare plan this year will result in the improvement of approximately sixteen miles of City streets three years ahead of schedule. The decision to take this aggressive move was made because of very favorable contractor bid prices seen so far this fiscal year on all of the construction and capital improvement projects. Additionally, receiving favorable mill and overlay bids from contractors will allow the City to mill and overlay additional collector/thoroughfare streets this year, resulting in a total of 25 miles of street improvements across the city. Again this year, staff bid an alternate to incorporate 20 percent (20%) of the street millings into the new asphalt to gain additional savings. This technique is approved by the Texas Department of Transportation.

Origination

Department of Public Works

Financial Consideration

Funds to complete this street improvement program will come from several sources including Limited Tax Notes (Notes), sales tax, and revenues from Tax Increment Financing Zone #2. Prior to funds being spent, the staff will bring back a budget amendment to reflect the accelerated timing of the street improvements and the related revenues from the proceeds of the Notes issuance.

Staff Recommendation

Award a contract to R.K. Hall Construction, LTD. of Denison, Texas based upon the unit prices submitted in their bid documents.

Alternatives

Consider other recommendations as may be put forth by the City Council

Attachments

Resolution No. 5347; List of Streets, Bid Documents; Bid Tab; Contract

Prepared by:

Jeffrey R. Miller, Director of Public Works

Approved by:

George Olson, City Manager

RESOLUTION NO. 5347

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH R.K. HALL CONSTRUCTION, LTD. FOR THE 2009 STREET MILL AND OVERLAY PROGRAM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That R.K. Hall Construction, LTD. of Denison, Texas is hereby awarded the bid based upon the unit prices included in contract/exhibit A (submitted bid documents) for the 2009 Street Mill and Overlay Program; 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 a contract with R.K Hall Construction, LTD. for construction of the 2009 Street Mill and Overlay Program, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

List of Streets

Complete Thoroughfare Enhancement

Street	From	To	Length	Width	Sq. Yds.
Washington	Woods	McKown	3151	27	9453
Washington	McKown	1417	3966	27	11898
Taylor	Texoma Pkwy.	Independence	1760	41	8018
Taylor	Independence	75	377	53	2220
Grand	Lamar	Bridge	5675	60	37833
Grand	Bridge	Texoma Pkwy	2464	41	11225
Grand	Lamar	Cherry	645	60	4300
Grand	Cherry	Odneal	1675	33	6142
Lamberth	75	1417	9872	27	29616
Lamberth	Loy Lake	75	1071	28	3332
Ricketts	Taylor	Lamberth	2355	31	8112
Leslie	Dewey	City Limits	2276	27	6828
Travis	Lamar	Park	6608	39	28635
Travis	Park	City Limits	3569	44	17448
Taylor	Travis	Ricketts	10230	34	38647
Center	75	Holly	2980	35	11589
Woods	Washington	Lamar	2370	25	6583
Woods	Beldon	Taylor	2132	25	5922

New Candidates for Mill and Overlay

250,655

Park	75	Crockett	1300	24	3467
Park	Crockett	Montgomery	1240	61	8404
Shady Oaks	Lamberth	Canyon Creek	2000	20	4444
Harrison	Lewis	Lamar	5600	28	17422
McGee	Travis	Grant	7954	30	26513
Fallon Dr.	Texoma Pkwy.	End of Street	3230	37	13279
Sunset	Lamar	Washington	3995	27	11985
Mulberry	Grand	High School	2702	27	8106
Rex Cruise	Lamberth	82	3963	24	10568
Canyon Grove	Travis	Wal Mart Parking Lot	1250	25	3472
Cypress Grove	1417	Rex Cruise	3718	25	10328
First	Olive	Cherry	4900	34	18511
Mulberry/Pecan	Travis	East	1400	35	5444
Mulberry/Pecan	East	Willow	1860	45	9300
Mulberry/Pecan	Willow	Grand	1960	32	6969

158,213

Grand Total

408,869

Bid Documents

2009 Mill and Overlay Project CONTRACT BASE BID

ITEM NO.	EST. QUANTITY	UNIT	DESCRIPTION AND UNIT PRICE (both script and figures)
1.	220,000	SY	Mill existing pavement 2" in depth, remove and haul millings to City of Sherman South plant. Words <u>ONE</u> Dollars <u>TWENTY</u> CENTS (\$ <u>12⁰⁰</u>) (\$ <u>264,000⁰⁰</u>) Unit Total
2.	220,000	SY	2" thick Type "D" Hot Mixed Asphaltic Concrete including, tack coat, rolling, and compaction complete in place. Words <u>SIX</u> Dollars <u>SIXTY</u> CENTS (\$ <u>6⁶⁰</u>) (\$ <u>1,452,000⁰⁰</u>) Unit Total
3.	N/A	N/A	Storm water pollution protection as necessary, including inlet protection. Words <u>NO</u> Dollars <u>ONE</u> CENT (\$ <u>0⁰¹</u>) Total

ITEM NO.	EST. QUANTITY	UNIT	DESCRIPTION AND UNIT PRICE (both script and figures)
4.	N/A	SY	Unit cost per inch to mill pavement greater than 2", remove and haul millings to City of Sherman South Plant. Words <u>ONE</u> Dollars and <u>NO CENTS</u> (\$ <u>1.00</u>) Unit
5.	N/A	LF	Edge mill 2" in depth, tapered over 6.0' to match existing grade level. Words <u>TWO</u> Dollars and <u>NO CENTS</u> (\$ <u>2.00</u>) Unit

In accordance with H.B. 11 which amended Section 151.311 of the V.T.C.A. Tax Code, the cost of materials to be used in this project that are exempt from the payment of State Sales Tax is:
\$ 1,100,000⁰⁰.

TOTAL BID: \$1,716,000⁰⁰

**2009 Mill and Overlay Project
ADD ALTERNATE NO. 1
(HMAC W/RAP)**

ITEM NO.	EST. QUANTITY	UNIT	DESCRIPTION AND UNIT PRICE (both script and figures)
6.	220,000	SY	2" thick type "D" Hot Mix Asphaltic Concrete with 20% RAP, including rolling and compaction complete in place. *RAP use for mix will be generated from project. Words <u>SIX</u> Dollars and <u>SIXTEEN</u> (\$ <u>6¹⁶</u>) Unit

In accordance with H.B. 11 which amended Section 151.311 of the V.T.C.A Tax Code, the cost of materials to be used in this project that are exempt from the payment of State Sales Tax is:
\$ 1,000,000⁰⁰.

TOTAL ALT 1 \$ 1,619,200⁰⁰

**2009 Mill and Overlay Project
ADD ALTERNATE NO. 2
(Additional Streets)**

ITEM NO.	EST. QUANTITY	UNIT	DESCRIPTION AND UNIT PRICE (both script and figures)
1.	420,000	SY	Mill existing pavement 2" in depth, remove and haul millings to City of Sherman South plant. Words <u>ONE</u> Dollars <u>NINETEEN CENTS</u> (\$ <u>1.19</u>) (\$ <u>499,800.00</u>) Unit Total
2.	420,000	SY	2" thick Type "D" Hot Mixed Asphaltic Concrete including, tack coat, rolling, and compaction complete in place. Words <u>SIX</u> Dollars <u>THIRTY EIGHT</u> (\$ <u>6.38</u>) (\$ <u>2,679,600.00</u>) Unit Total
3.	N/A	N/A	Storm water pollution protection as necessary, including inlet protection. Words <u>NO</u> Dollars <u>ONE CENT</u> (\$ <u>0.01</u>) Total

ITEM NO.	EST. QUANTITY	UNIT	DESCRIPTION AND UNIT PRICE (both script and figures)
4.	N/A	SY	Unit cost per inch to mill pavement greater than 2", remove and haul millings to City of Sherman South Plant. Words <u>ONE</u> Dollars and <u>NO CENTS</u> (\$ <u>1⁰⁰</u>) Unit
5.	N/A	LF	Edge mill 2" in depth, tapered over 6.0' to match existing grade level. Words <u>TWO</u> Dollars and <u>NO CENTS</u> (\$ <u>2⁰⁰</u>) Unit

In accordance with H.B. 11 which amended Section 151.311 of the V.T.C.A. Tax Code, the cost of materials to be used in this project that are exempt from the payment of State Sales Tax is:
\$ 2,050,000⁰⁰.

TOTAL ALT 2 \$ 3,179,400⁰⁰

**2009 Mill and Overlay Project
ADD ALTERNATE NO. 3
(Additional Streets w/RAP)**

ITEM NO.	EST. QUANTITY	UNIT	DESCRIPTION AND UNIT PRICE (both script and figures)
6.	420,000	SY	2" thick type "D" Hot Mix Asphaltic Concrete with 20% RAP, including rolling and compaction complete in place. *RAP use for mix will be generated from project. Words <u>SIX</u> Dollars and <u>FIVE CENTS</u> (\$ <u>6.05</u>) Unit

In accordance with H.B. 11 which amended Section 151.311 of the V.T.C.A Tax Code, the cost of materials to be used in this project that are exempt from the payment of State Sales Tax is: \$ 1,900,000⁰⁰.

*NOTE: If funds are available, the City may mill and overlay an additional 200,000 square yards of streets.

TOTAL ACT NO. 3 \$ 3,040,800⁰⁰

Bid Tab

Mill & Overlay Bid Tab Calculation

Bidder	QTY	BASE BID					ALT # 1	BASE TOTAL	TOTAL W/ ALT #1	QTY	ALTERNATE #2					ALT # 3	ALT #2 TOTAL	TOTAL W/ ALT #3
		MILL	OVERLAY	SWMP	>2"	EDGE					MILL	OVERLAY	SWMP	>2"	EDGE			
Jagoe Public Company	220,000	\$ 1.65	\$ 10.00	\$ 2,500.00	\$ 0.60	\$ 2.00	\$ 9.00	\$ 2,565,500	\$ 2,345,500	420,000	\$ 1.65	\$ 9.75	\$ 2,500.00	\$ 0.60	\$ 2.00	\$ 8.75	\$ 4,790,500	\$ 4,370,500
JRJ Paving	220,000	\$ 0.94	\$ 6.96	\$ 5,000.00	\$ 0.47	\$ 1.20	\$ 6.83	\$ 1,743,000	\$ 1,714,400	420,000	\$ 0.93	\$ 6.95	\$ 10,000.00	\$ 0.46	\$ 1.20	\$ 6.82	\$ 3,319,600	\$ 3,265,000
RK Hall Construction	220,000	\$ 1.20	\$ 6.60	\$ 0.01	\$ 1.00	\$ 2.00	\$ 6.16	\$ 1,716,000	\$ 1,619,200	420,000	\$ 1.19	\$ 6.38	\$ 0.01	\$ 1.00	\$ 2.00	\$ 6.05	\$ 3,179,400	\$ 3,040,800
Austin Bridge & Road	220,000	\$ 1.34	\$ 7.51	\$ 1,800.00	\$ 0.55	\$ 1.90	\$ 6.76	\$ 1,948,800	\$ 1,783,800	420,000	\$ 1.34	\$ 7.35	\$ 3,600.00	\$ 0.55	\$ 1.90	\$ 6.69	\$ 3,653,400	\$ 3,376,200
Peachtree Construction	220,000	\$ 1.33	\$ 7.62	\$ -	\$ 0.43	\$ 1.12	\$ 7.10	\$ 1,969,000	\$ 1,854,600	420,000	\$ 1.33	\$ 7.62	\$ -	\$ 0.43	\$ 1.12	\$ 7.10	\$ 3,759,000	\$ 3,540,600
Advanced Paving	220,000	\$ 1.45	\$ 7.37	\$ 1,500.00	\$ 0.55	\$ 1.90	\$ 7.24	\$ 1,941,900	\$ 1,913,300	420,000	\$ 1.45	\$ 7.37	\$ 1,500.00	\$ 0.55	\$ 1.90	\$ 7.24	\$ 3,705,900	\$ 3,651,300

359116

0.176871

Taylor Street	\$ 422,322
Center Street	\$ 171,267
Loy Lake	<u>\$ 335,500</u>

CITY OF SHERMAN §
COUNTY OF GRAYSON §

**CONTRACT
BETWEEN THE CITY OF SHERMAN AND THE CONTRACTOR**

THIS AGREEMENT is by and between the **CITY OF SHERMAN** ("CITY" or "OWNER") and
and _____ ("CONTRACTOR").

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

ARTICLE 1 - PROJECT

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

2009 Mill and Overlay Project located in Sherman, Texas.

This Project will be completed with change orders and all extra work in connection with the project, as described in the contract documents, shall be at the **CONTRACTOR'S** sole cost and expense all the materials, supplies, machinery, equipment, tools, superintendence, labor, necessary and customary insurance, and other accessories and services necessary to complete the Project in accordance with the Contract Documents.

ARTICLE 2 – INDEPENDENT CONTRACTOR

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

ARTICLE 3 - CONTRACT TIMES

- 3.01 *Commencement of Contract*

A. **CONTRACTOR** agrees to commence work under this Contract within ten (10) days after the written "Notice to Proceed" issued by the **CITY** and to fully complete the contract as specified herein.

B. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 3.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed by **CONTRACTOR** on or before sixty (60) consecutive calendar days from the date of the Notice to Proceed.

3.03 *Liquidated Damages*

- A. CONTRACTOR and CITY recognize that time is of the essence of the Contract and that CITY will suffer loss that is difficult to calculate if the Work is not completed within the times specified in paragraph 3.02 above, plus any extensions thereof allowed in accordance with paragraph 4.02 of the General Conditions. The parties also recognize the expense, and difficulties involved with a delay make it impossible to evaluate the actual loss suffered by CITY due to the nature of this project if the Work is not completed on time. Accordingly, CITY and CONTRACTOR agree that as liquidated damages for the delay (but not as a penalty), CONTRACTOR shall pay accordingly to the Liquidated Damages Schedule 108.8.1 (a).

Schedule 108.8.1 (a) Liquidated Damages

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

ARTICLE 4 - CONTRACT PRICE/CONSIDERATION

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

- A. For all Project work, as set forth in the Unit Pricing portion as shown in "Exhibit A," 2009 Mill and Overlay Bid Proposal, submitted by the CONTRACTOR.
- B. The above price reflects the consideration for the performance of this Contract.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

- A. CONTRACTOR shall submit Applications for Payment to, and they will be processed by the Director of Public Works, as provided in this Contract and "Exhibit A."

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

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

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

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

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

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

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

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

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 - CONTRACT DOCUMENTS

7.01 *Contents*

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

1. This Contract;
2. "Exhibit A" Bid Proposal for the 2009 Mill and Overlay Project, including, but not limited :
 - a. Performance Bond;
 - b. If applicable the Unit Pricing in the Proposal;

- c. Payment Bond;
 - d. Bid Bond;
 - e. General Conditions of Agreement;
 - f. Special Conditions of Agreement;
 - g. Any Other Documents listed in the Table of Contents of the Bid Proposal;
 - h. Any Addenda;
3. Any drawings associated with the Project;
4. Exhibits to this Contract (enumerated as follows):
- a. Notice to Proceed;
 - b. CONTRACTOR'S Bid;
 - c. Documentation submitted by CONTRACTOR;
5. The Following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
- a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Order(s), if permissible under the Resolution enacted by the City.
- B. There are no Contract Documents other than those listed above in this Article 7.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 9.09 of this Contract.

ARTICLE 8 – NOTICE

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

If intended for CITY to:

Designee:
Jeff Miller
Director of Public Works

Address:
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

If intended for CONTRACTOR, to:

Designee: _____

Address: _____

ARTICLE 9 - MISCELLANEOUS

9.01 Terms

A. Terms used in this Contract will have the meanings indicated in the Bid Proposal.

9.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

A. CITY and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability and Conflict*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

9.05 *Captions*

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

9.06 *INDEMNITY AND DUTY TO DEFEND*

A. CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES INCLUDING ATTORNEYS FEES, FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, STRICTLY LIABLE ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT (HEREINAFTER "CLAIMS"); EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS,

EMPLOYEES OR SEPARATE CONTRACTORS. IN ADDITION, THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY.

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

9.07 *Choice of Law: Venue.*

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

9.08 *Binding Authority*

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

9.09 *Entire Agreement*

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

9.10 *Contract Interpretation*

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

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

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

CITY: CITY OF SHERMAN, TEXAS

CONTRACTOR:

By: _____
GEORGE OLSON, City Manager

By: _____

Attest _____
LINDA ASHBY, City Clerk

THE STATE OF TEXAS §
COUNTY OF GRAYSON§

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

GIVEN UNDER MY HAND and seal of office this _____ day of _____, 2009.

Notary Public
Date of Expiration:

License No. _____
(Where applicable)
Agent for service of process: _____

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

Approved as to form and content:

Interim City Attorney



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.8

*** RESOLUTION NO. 5348**

**Awarding a Bid to and Authorizing Execution of a Contract with James Thorpe Company
for the Purchase of an Annual Supply of Cover Stone for the 2009 Seal Coat Program**

Issue

To consider an award of bid for the purchase of cover stone for the 2009 Seal Coat Program

Background

Following the required advertising in the local newspaper and notices being sent to local material suppliers, two cover stone bids meeting the City's specifications were received and opened on March 12, 2009. James Thorpe Company submitted the low bid at \$17.00 per ton.

Origination

Department of Public Works

Financial Consideration

Funds for purchasing seal coat materials were appropriated in the fiscal year 2008-2009 Street Department budget. There were sufficient funds appropriated in the Street Department operating budget to purchase up to 3,000 tons of seal coat cover stone.

Staff Recommendation

Staff recommends that the City Council award the bid to James Thorpe Company of Pottsboro, Texas, to purchase seal coat cover stone at \$17.00 per ton.

Alternatives

Those as may be recommended by the City Council

Attachments

Bid Tabulation

Resolution No. 5348

Contract of Sale

James Thorpe Company Bid Sheet

Prepared by:
Jeffrey Miller, Public Works Director

Approved by:
George Olson, City Manager

Bid Tabulation
City of Sherman
Cover Stone

Vendor	Unit Price/Ton	Bid Amount
<i>Thorpe</i>	\$17.00	\$51,000.00
<i>Cransfield</i>	\$20.60	\$61,800.00

RESOLUTION NO. 5348

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH JAMES THORPE COMPANY FOR THE PURCHASE OF AN ANNUAL SUPPLY OF COVER STONE FOR THE 2009 SEAL COAT PROGRAM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That James Thorpe Company of Pottsboro, Texas, is hereby awarded the bid in the total amount of Fifty-One Thousand Dollars and No Cents (\$51,000.00) for an annual supply of cover stone and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the Interim City Attorney, to execute a contract with James Thorpe Company for an annual supply of cover stone for the 2009 Seal Coat Program, 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 _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

CONTRACT OF SALE

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT, made and entered into by and between the **CITY OF SHERMAN**, a municipal corporation of the State of Texas, hereinafter called "BUYER", and **JAMES THORPE COMPANY**, hereinafter called "SELLER",

WITNESSETH:

SELLER agrees to sell and will deliver to BUYER, and BUYER agrees to purchase from SELLER, the crushed rock cover stone as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SELLER agrees to sell such crushed rock cover stone at the prices specified therein in Exhibit "A".

Reference is hereby made to the specifications and requirements of Invitation to Bid prepared by BUYER and the Bid Sheet submitted by SELLER on, in answer to BUYER'S Invitation to Bid. The terms and content in both BUYER's Invitation to Bid and SELLER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SELLER hereby agrees to deliver the materials specified in Exhibit "A" to BUYER as directed by the BUYER.

BUYER retains the right to reject all or any materials delivered by SELLER that do not comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SELLER. Should any parts and supplies be rejected because of failure to meet specifications, and SELLER not supply conforming products from the next lowest bidder willing to honor its bid, SELLER agrees to pay to BUYER in cash the difference in the Bid Proposal.

Payment of Monies Owned to the City of Sherman. BUYER may, in its discretion, apply any monies owed to SELLER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owe the City of Sherman, which are or become delinquent during the term of this contract.

Insurance. SELLER agrees to carry insurance as specified in Exhibit "A" and to name the BUYER as an additional insured.

Indemnification. SELLER agrees to defend, indemnify, release and hold harmless BUYER, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses, including attorney fees for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by SELLER's breach of any of the terms or

provisions of this Agreement, or by any negligent, grossly negligent, strictly liable act, or any omission of SELLER, its officers, agents, employees or subcontractors, in the performance of this Agreement (hereinafter "Claims"); except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of BUYER, its officers, agents, employees or separate contractors. In addition, this indemnification and save harmless shall apply to any imputed or actual joint enterprise liability.

Amendment of Contract. This agreement may not be changed, varied or altered except by an instrument in writing, duly executed on behalf of BUYER and by SELLER.

Assignment of Contract. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract.

Severability. Any provision or part of this Contract is held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the BUYER and SELLER, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

Conflicts. If there are any conflicts between the Contract and Exhibit "A", the provisions in the Contract prevail over the provisions in Exhibit "A".

Applicable Laws and Venue: This agreement shall be construed in accordance with the laws of the State of Texas, shall be deemed performable and enforceable in the State of Texas, with venue in Grayson County, Texas.

IN WITNESS WHEREOF, this instrument, in duplicate originals of equal force, has been executed on behalf of SELLER and on behalf of BUYER, City of Sherman, by its City Manager and attested by its City Clerk, effective the _____ day of _____, 2009.

SELLER:
JAMES THORPE COMPANY

BUYER:
CITY OF SHERMAN, TEXAS

BY:_____
NAME: JAMES THORPE
TITLE: OWNER
ADDRESS: P.O. BOX 1555
POTTSBORO, TX 75076

BY:_____
GEORGE OLSON,
CITY MANAGER
220 W. MULBERRY
SHERMAN, TEXAS 75090

ATTEST:

ATTEST:

BY:_____
NAME:_____
TITLE:_____

BY:_____
LINDA ASHBY
CITY CLERK

APPROVED AS TO FORM:

INTERIM CITY ATTORNEY

**CITY OF SHERMAN
BID SHEET
CRUSHED ROCK COVERSTONE
MARCH 12, 2009, 3:00 P.M.**

Does your bid meet all specifications contained herein? Yes ☒ No ☐

Does your material and workmanship meet all specifications? Yes ☒ No ☐

If no is indicated, attached a sheet indicating exceptions

PRICE PER TON: \$ 17.00

NET BID: \$ 51,000.00

NOTICE TO BIDDERS: Any bidder who falsifies responses indicating compliance or non-compliance with minimum requirements listed will be suspended and/or disqualified from bidding

JAMES THORPE CO
BIDDER

James Thorpe
SIGNED BY

Owner
TITLE

P.O. Box 1555
ADDRESS: STREET OR PO BOX

POTTSBORO TX 75076
CITY STATE ZIP

903-786-6097 - 903-786-2755
PHONE FAX

BID SHEET MUST BE SIGNED BY AN AUTHORIZED AGENT OF YOUR FIRM



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.9

*** RESOLUTION NO. 5349**

**Awarding a Bid to and Authorizing Execution of a Contract with
Martin Asphalt Company for the Purchase of an Annual Supply of
Emulsified Asphalt Oil for the 2009 Seal Coat Program**

Issue

To consider the award of a bid to Martin Asphalt Company for the purchase of up to 80,000 gallons of CRS-2H emulsified asphalt oil for the 2009 street seal coat program

Background

Following the required advertising in the local newspaper and notices being sent to oil suppliers, three bids for emulsified oil were received and opened on March 12, 2009. No local vendors sell this type of material.

Origination

Department of Public Works

Financial Consideration

Martin Asphalt's bid for the required asphalt oil was \$1.90 per gallon. There are sufficient funds in the FY 2008-2009 Street Department operating budget to purchase up to 80,000 gallons of emulsified asphalt oil.

Staff Recommendation

Award the bid for seal coat emulsified oil to Martin Asphalt Company of Houston, Texas.

Alternatives

As may be recommended by the City Council

Attachments

Bid Tabulation

Resolution No. 5349

Contract

Martin Asphalt Bid Sheet

Prepared by:

Jeffrey Miller, Director of Public Works

Approved by:

George Olson, City Manager

Bid Tabulation
City of Sherman
Liquid Asphalt

Vendor	Unit Price/Gallon	Amount
<i>Sim</i>	N/A	No Bid
<i>Martin</i>	\$1.90	\$152,000.00
<i>Ergon</i>	\$1.98	\$158,224.00
<i>P2</i>	\$2.72	\$217,600.00

RESOLUTION NO. 5349

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH MARTIN ASPHALT COMPANY FOR THE PURCHASE OF AN ANNUAL SUPPLY OF EMULSIFIED ASPHALT OIL FOR THE 2009 SEAL COAT PROGRAM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That Martin Asphalt Company of Houston, Texas, is hereby awarded the bid in the total amount of One Hundred Fifty-Two Thousand Dollars and No Cents (\$152,000.00) for an annual supply of emulsified asphalt oil for the 2009 Seal Coat Program and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved by the Interim City Attorney, to execute a contract with Martin Asphalt Company for an annual supply of emulsified asphalt oil, 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 _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

CONTRACT OF SALE

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

THIS AGREEMENT, made and entered into by and between the **CITY OF SHERMAN**, a municipal corporation of the State of Texas, hereinafter called "BUYER", and **MARTIN ASPHALT COMPANY**, hereinafter called "SELLER",

WITNESSETH:

SELLER agrees to sell and will deliver to BUYER, and BUYER agrees to purchase from SELLER, the emulsified asphalt oil as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SELLER agrees to sell such crushed rock cover stone at the prices specified therein in Exhibit "A".

Reference is hereby made to the specifications and requirements of Invitation to Bid prepared by BUYER and the Bid Sheet submitted by SELLER on, in answer to BUYER'S Invitation to Bid. The terms and content in both BUYER's Invitation to Bid and SELLER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SELLER hereby agrees to deliver the materials specified in Exhibit "A" to BUYER as directed by the BUYER.

BUYER retains the right to reject all or any materials delivered by SELLER that do not comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SELLER. Should any parts and supplies be rejected because of failure to meet specifications, and SELLER not supply conforming products from the next lowest bidder willing to honor its bid, SELLER agrees to pay to BUYER in cash the difference in the Bid Proposal.

Payment of Monies Owned to the City of Sherman. BUYER may, in its discretion, apply any monies owed to SELLER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owe the City of Sherman, which are or become delinquent during the term of this contract.

Insurance. SELLER agrees to carry insurance as specified in Exhibit "A" and to name the BUYER as an additional insured.

Indemnification. SELLER agrees to defend, indemnify, release and hold harmless BUYER, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses, including attorney fees for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by SELLER's breach of any of the terms or

provisions of this Agreement, or by any negligent, grossly negligent, strictly liable act, or any omission of SELLER, its officers, agents, employees or subcontractors, in the performance of this Agreement (hereinafter "Claims"); except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of BUYER, its officers, agents, employees or separate contractors. In addition, this indemnification and save harmless shall apply to any imputed or actual joint enterprise liability.

Amendment of Contract. This agreement may not be changed, varied or altered except by an instrument in writing, duly executed on behalf of BUYER and by SELLER.

Assignment of Contract. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract.

Severability. Any provision or part of this Contract is held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the BUYER and SELLER, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

Conflicts. If there are any conflicts between the Contract and Exhibit "A", the provisions in the Contract prevail over the provisions in Exhibit "A".

Applicable Laws and Venue: This agreement shall be construed in accordance with the laws of the State of Texas, shall be deemed performable and enforceable in the State of Texas, with venue in Grayson County, Texas.

IN WITNESS WHEREOF, this instrument, in duplicate originals of equal force, has been executed on behalf of SELLER and on behalf of BUYER, City of Sherman, by its City Manager and attested by its City Clerk, effective the _____ day of _____, 2009.

SELLER:
MARTIN ASPHALT COMPANY

BUYER:
CITY OF SHERMAN, TEXAS

BY: _____
NAME: VERNON TURNER JR.
TITLE: SALES REPRESENTATIVE
ADDRESS: THREE RIVERWAY #400
HOUSTON, TX 77056

BY: _____
GEORGE OLSON,
CITY MANAGER
220 W. MULBERRY
SHERMAN, TEXAS 75090

ATTEST:

ATTEST:

BY: _____
NAME: _____
TITLE: _____

BY: _____
LINDA ASHBY
CITY CLERK

APPROVED AS TO FORM:

INTERIM CITY ATTORNEY

**CITY OF SHERMAN
BID SHEET
CRS-2 AND CRS-2H EMULSIFIED ASPHALT
MARCH 12, 2009 3:00 P.M.**

Does your bid meet all specifications contained herein? Yes ☒ No ☐

Does your material and workmanship meet all specifications? Yes ☒ No ☐

If no is indicated, attached a sheet indicating exceptions

PRICE PER GALLON: \$ 1.90.00

NET BID: \$ 152,000.00

NOTICE TO BIDDERS: Any bidder who falsifies responses indicating compliance or non-compliance with minimum requirements listed will be suspended and/or disqualified from bidding

Martin Asphalt
BIDDER

[Signature]
SIGNED BY

Sales Rep.
TITLE

Three Riverway #40
ADDRESS: STREET OR PO BOX

Houston, TX 77056
CITY STATE ZIP

713-350-2850

PHONE

713-350-2250

FAX

BID SHEET MUST BE SIGNED BY AN AUTHORIZED AGENT OF YOUR FIRM



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. C.10

*** RESOLUTION NO. 5350**

**Awarding a Bid to and Authorizing Execution of a Contract
with Impact Promotions, Inc. d/b/a Got You Covered Workwear Uniforms
for an Annual Supply of Uniforms for Police Department Personnel**

Issue

To award a contract to Impact Promotions, Inc. d/b/a Got You Covered Workwear Uniforms for an annual supply of uniforms for all uniformed employees in the Sherman Police Department

Background

The Police Department recently advertised for sealed bids for a new uniform contract. Four bids were received by the deadline and were opened on February 5, 2009. The following bids received reflect the cost of one complete set of uniform items. Oversize charges are additional. See attachment for complete uniform (all clothing) set.

Got You Covered	\$ 567.85
Tyler Uniform	\$ 653.50
Uniforms Inc.	\$ 632.77
GST Public Safety	\$1,684.80

Origination

Police Department

Financial Consideration

Accepting the low bid would be the most cost effective approach. Funds have been appropriated in the Fiscal Year (FY) 2008-2009 budget for the procurement of Police Department uniforms. After an initial issue of four (4) sets of uniforms, replacements are provided to officers on an as-needed basis. The uniform items being bid on are listed in the attachment.

Staff Recommendation

It is recommended that the Council award the contract for the annual supply of Police Department uniforms to Impact Promotions, Inc. d/b/a Got You Covered Workwear Uniforms of Fort Worth, Texas.

Alternatives

The Council could opt to accept one of the other three bids submitted.

Attachments

Resolution No. 5350; Bid Tabulation; Contract of Sale; Bid Proposal; Sherman Police Department Uniform Inventory List

Prepared by:
Tom Watt, Police Chief

Approved by:
George Olson, City Manager

**BID TABULATION
CITY OF SHERMAN**

BID TITLE: Police Uniforms

DATE: 2-5-09

VENDOR	UNIT PRICE	AMOUNT	DISCOUNT	NET BID	DELIVERY	BID BOND	REMARKS/ EXCEPTIONS
GT Dist.	NO BID						
Tyler Uniform		65350			Flesheimer (Brand)		
GST	-	1684.80			Blau		
Uniforms Inc		63277			Perfection/United		
Got you Covered		567.85					

RESOLUTION NO. 5350

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH IMPACT PROMOTIONS, INC. D/B/A GOT YOU COVERED WORKWEAR UNIFORMS FOR AN ANNUAL SUPPLY OF UNIFORMS FOR POLICE DEPARTMENT PERSONNEL; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED 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 Impact Promotions, Inc. d/b/a Got You Covered Workwear Uniforms of Fort Worth, Texas, is hereby awarded the bid in the amount of \$567.85 per uniform set for an annual supply of uniforms for Police Department personnel, in accordance with all bid documentation, and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the Interim City Attorney, to execute a contract with Impact Promotions, Inc. d/b/a Got You Covered Workwear Uniforms for the purchase of an annual supply of uniforms for personnel at the Sherman Police Department, in accordance with the specifications and conditions of 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 _____, 2009.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
BILL MAGERS, MAYOR

APPROVED AS TO FORM AND CONTENT:

INTERIM CITY ATTORNEY

CONTRACT OF SALE

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE**
COUNTY OF GRAYSON §

That the **CITY OF SHERMAN, TEXAS**, a municipal corporation, hereinafter referred to as "BUYER", and **IMPACT PROMOTIONS, INC. D/B/A GOT YOU COVERED WORKWEAR UNIFORMS** of Fort Worth, Texas, hereinafter referred to as "SELLER,"

WITNESSETH:

Terms of Purchase. SELLER agrees to sell and will deliver to BUYER, and BUYER agrees to purchase from SELLER, on an as-needed basis, all uniforms required for the Sherman Police Department, as described and priced in the attached bid proposal and specifications identified as Exhibit "A". SELLER agrees to sell such uniforms at the prices stated therein during the contract period which shall be for one (1) year beginning January 1, 2009, and ending December 31, 2009. BUYER reserves the option, upon mutual written consent of both parties, to renew this contract annually upon the same prices, terms and conditions, not to exceed four (4) renewals.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by BUYER and the Bid submitted by SELLER on February 5, 2009, in answer to BUYER's Invitation to Bid. All of the specifications and requirements of BUYER's Invitation to Bid and SELLER's Bid, identified as Exhibit "A", are incorporated herein by reference and made a part of this contract for all purposes.

As consideration for this Contract, SELLER agrees to make the police uniforms available for the amount specified herein; and BUYER agrees to purchase these items exclusively from the SELLER, as specified in Exhibit "A."

BUYER reserves the right to add or delete quantities of uniforms, as necessary per BUYER's requirements, during the contract period.

Payment shall be made by BUYER to SELLER upon delivery and acceptance of the above described uniforms by BUYER. Terms shall be net thirty (30).

SELLER hereby agrees to deliver the uniforms to BUYER at Sherman, Texas, within a reasonable time, not to exceed thirty (30) days, from the date that BUYER places the order. The time within which SELLER is to deliver the uniforms shall be of the essence of this contract.

BUYER retains the right to reject all or any part of the uniforms delivered by SELLER that do not comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SELLER. Should any uniforms be rejected because of failure to meet

specifications and SELLER not supply conforming uniforms within ten (10) days of date of rejection, then BUYER may purchase such uniforms from the next lowest, qualified bidder willing to honor its bids, and SELLER agrees to pay to BUYER the cash difference in the Bid Proposals.

Ownership of Items. SELLER represents that it is the record and beneficial owner of the items set forth in Exhibit "A", free and clear of any Lien and any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of the items, and will transfer and deliver to Buyer the items free and clear of any Lien and any such limitation or restriction).

Insurance. SELLER agrees to carry insurance as specified in Exhibit "A" and to name the BUYER as an additional insured.

INDEMNIFICATION. SELLER AGREES TO DEFEND, INDEMNIFY AND HOLD BUYER, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES INCLUDING ATTORNEYS FEES, FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY SELLER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, STRICTLY LIABLE ACT, OR ANY OMISSION OF SELLER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT (HEREINAFTER "CLAIMS"); EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF BUYER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. IN ADDITION, THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY.

No Waiver of Governmental Immunity. This Agreement does not waive, nor shall it be deemed to waive, any immunity or defense, including, but not limited to, governmental immunity, that would otherwise be available to the BUYER against claims arising from the exercise of governmental powers and functions.

Litigation. There is no action, suit, investigation, or proceeding pending against, or to the knowledge of SELLER threatened against or affecting, SELLER or any of their respective properties before any court or arbitrator or any governmental body, agency or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

Payment of Monies Owed to the City of Sherman. BUYER may, in its discretion, apply any monies owed to SELLER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owe the City of Sherman, which are or become delinquent during the term of this contract.

Amendment of Contract. This agreement may not be changed, varied or altered except by an instrument in writing, duly executed on behalf of BUYER and by SELLER.

Assignment of Contract. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract.

Severability. Any provision or part of this Contract is held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the BUYER and SELLER, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

Applicable Laws and Venue. This agreement shall be construed in accordance with the laws of the State of Texas, shall be deemed performable and enforceable in the State of Texas, with venue in Grayson County, Texas.

IN WITNESS WHEREOF, this instrument, in duplicate originals of equal force, has been executed on behalf of SELLER and on behalf of BUYER, City of Sherman, by its City Manager and attested by its City Clerk, effective the _____ day of _____, 2009.

SELLER:
IMPACT PROMOTIONS, INC.
D/B/A GOT YOU COVERED
WORKWEAR UNIFORMS

BUYER:
CITY OF SHERMAN, TEXAS

BY: _____
NAME: _____
TITLE: _____
ADDRESS: 607 BAILEY AVE.
FT. WORTH, TEXAS 76107
PHONE: (817) 336-0692

BY: _____
GEORGE OLSON,
CITY MANAGER
220 W. MULBERRY STREET
SHERMAN, TEXAS 75090

DATE: _____

DATE: _____

ATTEST:

BY:_____

NAME:_____

TITLE:_____

ATTEST:

LINDA ASHBY, CITY CLERK

APPROVED:

INTERIM CITY ATTORNEY

**CITY OF SHERMAN
POLICE UNIFORMS
BJD PROPOSAL:**

*Extended total bid: 567 85

INFORMATION TO VENDORS:

Bid prices will be compared with State and Inter-local Agreement Contract prices available to the City of Sherman

VENDOR INFORMATION:

Name of Bidder: GET YOU COVERED WORKWEAR & UNIFORMS
DBA IMPACT PROMOTIONS

Address: 607 BAILEY AVE FT WORTH TEXAS 76107

Telephone Number: 817-336-0692

Authorized Signature: M Dura

Must be signed by an authorized agent of your firm

SPECIFICATIONS:

DELIVERY 30 DAYS M Dura

List any exceptions to these specifications:

MONOGRAM NAMES 2.50

ALL

NOTE OVERSIZE CHARGE:

See attached PRICE SHEET

M Dura

2-2-2009

OVERSIZE INFORMATION

OverSize Charges for In-Stock Garments

Men's Trousers: Sizes 44-50	10% extra
Men's Trousers: Sizes 42-54	20% extra
Men's Trousers: Sizes 56-68	30% extra
Men's Trousers: Sizes 60	40% extra
Women's Garments: Sizes 20-24	10% extra
Sizes 26-28	20% extra
Sizes 30-32	30% extra
Men's Coats, Jackets & Liners: Sizes 60, 54 (XXL) (Reg. & Long)	10% extra
Sizes 66-68 (XXXL) (Reg. & Long)	20% extra
Sizes 60 (XXXL) (Reg. & Long)	30% extra
Sizes 48-52 (XL) (Extra Long)	20% extra
Sizes 54-56 (XXL-XXXL) (Extra Long)	30% extra
Women's Coats: All X-Large	30% extra
Sweaters: Sizes XXL	10% extra
Sweaters: Sizes XXXL	20% extra
Attire by Footlocker Garments: Sizes XXL	10% extra
Size XXXL	20% extra
Long Sleeve Shirts: Sizes 19 and up neck size	30% extra
Long Sleeve Shirts: Sizes 37 and up sleeve length	30% extra
Short Sleeve Shirts: Sizes 19 and up neck size	30% extra
Short Sleeve Shirts: Sizes 3X and up	30% extra
Ladies sizes 46 and up bust	30% extra

Al Duran

**CITY OF SHERMAN, POLICE DEPARTMENT UNIFORMS
BID SHEET,**

Uniform Item	Style No.	Price Per Item
Shor. Sleeve Shirt	57R8786Z	46.95
Long Sleeve Shirt	07W8786Z	52.10
Short Sleeve Shirt (female)	157r8786z	46.95
Long Seeve Shirt (female)	107W8786Z	52.10
Trousers (male)	42280	49.50
Trousers (female)	42290	49.50
Trouser, Male, Tactical Twill Cargo	UD49300	38.90
Trouser, Female, Tactical Twill Cargo	UD49350	38.90
Shirt, Tactical Twill, Long Sleeve	35R5886	34.80
Shirt, Tactical Twill, Short Sleeve	85R5886	31.45
Shirt, Knit, Short Sleeve, Cool Max	85R7086Z	43.50
Shorts, Male Walking	49330	41.60
Shorts, Female Walking	49330WT	41.60



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. D.1

*** CHANGE ORDER NO. 1**
Luella 4 Woodbine Water Well Repairs

Issue

Change Order No. 1 is a final closeout change order to adjust the final contract amount.

Background

After initiating repairs on the well, the well continued to lose production. Following a discussion between the geologist, City staff and the well driller, it was decided to abandon efforts to restore the well capacity. The additional costs would be substantial; and there was no guarantee that the well could be repaired to produce adequate quantities of water. Therefore, the repair project was ended; and the well will be plugged.

Origination

Utilities Administration Department

Financial Consideration

The change order results in a net decrease of \$126,488.00 to the original contract amount of \$285,995.00, yielding a final contract price of \$159,508.00.

Staff Recommendation

It is recommended that the City Council approve this proposed change order.

Alternatives

As may be directed by the City Council

Attachments

Proposed Change Order No. 1

Prepared by:
Mark Gibson, Director of Utilities and Engineering

Approved by:
George Olson, City Manager

**CITY OF SHERMAN
CONTRACT CHANGE ORDER**

Contract No. _____
Change Order No. 1

Date: March 30, 2009
Project: Luella 4 Woodbine Water Well Repairs

To: (Contractor) Weisinger Water Wells, Inc.

You are hereby requested to comply with the following changes from the contract plans and specifications:

Item Number (1)	Description of Changes, Quantities Units, Unit Prices, change in completion schedule, etc. (2)	Decrease in Contract Price (3)	Increase in Contract Price (4)
2	Delete \$3,045.00 Mobilization	\$3,045.00	
5	Delete 1 video camera survey of well	\$2,000.00	
	Delete Bid Items 12 through 22 in total	\$169,540.00	
Additional	Provide rig, crew, & equipment to install liner plug		\$9000.00
Additional	Provide materials to fabricate packer		\$707.00
Additional	Welder		\$1,790.00
Additional	Rig labor to jet out fill		\$13,500.00
Additional	Plug Well		\$24,100.00
Total		\$174, 585.00	\$49,097.00

The sum of \$ **125,488.00** is hereby **deducted from** the total contract price, \$ **285,996.00** and the total adjusted contract price to date thereby is \$ **160,508.00** .

This document shall become an amendment to the contract, and all provisions of the contract will apply hereto.

Accepted By: _____ Date: _____
Weisinger Water Wells, Inc.

Recommended By: _____ Date: _____
Mark Gibson, Director of Utilities & Engineering

Approved By: _____ Date: _____
George Olson, City Manager



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. D.2

OTHER BUSINESS

Consider Changing the Two-Hour Parking Restriction to a Three-Hour Maximum on the Downtown Square and its Adjoining Streets

Issue

Downtown Sherman Preservation & Revitalization, Inc., represented by its President, Robert W. Minshew, has asked the City Council to consider changing the parking restrictions in the Downtown Area from two hours to three hours.

Background

Mr. Minshew will present DSP&R's request for the parking restrictions in Downtown to be changed from two hours to three hours. Attached is a copy of his March 5th letter, DSP&R's Resolution, and Minutes of the March 2nd meeting of DSP&R and Heart of Sherman.

In the research we conducted, we first contacted the City of McKinney for a history of their parking for Downtown. McKinney was facing problems similar to Sherman's in that Downtown merchants were complaining that the prime parking spaces on their square and one block outside of the square were being taken up by employees, workers, tenants, etc., leaving no room for shoppers and other visitors. McKinney did not want to be put into the position of issuing tickets to customers; and they felt two hours wasn't enough time for their customers to enjoy lunch and shop. They believed three hours to be just enough time for shoppers to do their business without incurring parking citations.

Origination

Downtown Sherman Preservation & Revitalization, Inc.

Financial Consideration

There is no financial impact to receiving this presentation.

Staff Recommendation

It is recommended that the City Council direct the staff to bring back a proposed Ordinance(s) to change the two-hour parking in Downtown and along its surrounding streets to three hours.

Alternatives

The Council could decide to hold a work session to discuss this proposed change to parking in the Downtown Area or leave it as it currently stands.

Attachments

Mr. Minshew's letter of March 5, 2009

DSP&R's Resolution dated March 2, 2009

Minutes of the March 2nd Meeting of DSP&R and Heart of Sherman

Prepared and Approved by:
George Olson, City Manager

DOWNTOWN SHERMAN REVITALIZATION & PRESERVATION, INC.

P. O. BOX 2054
SHERMAN, TEXAS 75091-2054

March 5, 2009

Via Facsimile: (903) 892-7355

Mr. George Olson
CITY MANAGER
P.O. Box 1106
Sherman, Texas 75091

Dear George:

I appreciate your talking to me recently about the problems that we are continually experiencing in Downtown Sherman by offending our guests with the two (2) hour Parking Ordinance. The employees in the downtown businesses have figured out years ago how to "beat the system." They simply move their cars at their 10:00 a.m. coffee break, again at 12:00 p.m., again at the 3:00 p.m. coffee break and then go home at 5:00 p.m. In effect, employees are just not getting any tickets even though they fill up the parking places so that the two (2) hour Ordinance has not achieved anything with regard to its intended purpose. All it has done is create a public relations nightmare for all the Downtown Merchants who have to deal with irate out-of-town customers who get caught by the two (2) hour rule.

The City of Sherman recently lost a monthly meeting of forty (40) out-of-towners who wanted to come to Kelly Square for a monthly luncheon and meeting but the four (4) member committee who made the selection upon leaving Kelly Square all had \$28.00 tickets. They got so mad that they left and went to Denison and made arrangements to meet there. There is nothing constructive about punishing our out-of-town visitors who get caught by a system that is not doing anything to prevent downtown employees from parking on the street.

The Downtown Sherman Preservation and Revitalization Organization discussed this thoroughly at our meeting of March 2, 2009, and unanimously passed a resolution, a copy of which is attached. So you will see the full picture, I am enclosing a copy of the Minutes from the March 2nd meeting and a separate copy of the Resolution itself.

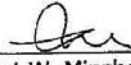
George, the City of McKinney figured out a long time ago that out-of-town visitors, especially, need three (3) hours to do any shopping and eating on the same visit. That is why they have a three (3) hour downtown Parking Ordinance. I think we can learn

George Olson
March 5, 2009
Page 2

something from the success of McKinney's downtown and hopefully the Council will see fit to make this change as soon as possible.

Very truly yours,

Downtown Sherman Preservation
and Revitalization, Inc.

By: 

Robert W. Minshew, President

P.S. Since you do not have a City Attorney at this time I would be glad to draft a proposed Ordinance without charge should you need my assistance.

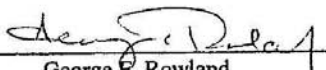
RWM/th
Enclosures—as stated



BE IT RESOLVED THAT, the members of Downtown Sherman Preservation and Revitalization at a regularly called meeting on March 2, 2009 at which a quorum was present, recommends that the present two hour parking restriction on the square and adjoining streets be changed to a three hour maximum.

BE IT FURTHER RESOLVED THAT, the two spaces on Houston Street adjacent to the former tourism center that are now marked for fifteen minute parking also be changed to a three hour maximum.

I, George E. Rowland, Secretary of Downtown Sherman Preservation and Revitalization do certify that the above is a true and correct copy of the resolution from the March 2, 2009 minutes.


George E. Rowland



**Minutes
Downtown Sherman Preservation and Revitalization
Heart of Sherman
March 2, 2009**

Place: Kellys Square

Attendance: John Arriazola, Dave Brown, Ed Burkette, Carla Carlson Traci Carlson, James Johnson, Ruth Gray, Ivert Mayhugh, Jeanette Mayhugh, Robert Minshew, Shawnda Raines, George Rowland, Amy Hoffman-Shehan

The meeting was called to order at 12:20 p.m. by President Bob Minshew. Minutes for the February 2, 2009 meeting were approved with a motion by Dave Brown and a second by James Johnson.

Bob introduced Ruth Gray from the City of Sherman. Ruth and Shawnda are responsible for the Tourism activities for the city.

Bob reported on the recent meeting with Ruth Gray and Robby Hefton of the city. Dave Brown and George Rowland also represented DSP&R. The purpose of the meeting was to understand the city's plans for tourism so that DSP&R can coordinate their activities accordingly.

Carla Carlson informed members of her store that sells lady's handbags and other accessories. She is currently operating at Travis Lofts, but is looking for larger space in the downtown area.

Ed Burkett presented the Treasurer's report. The current bank balance is \$2,815.90. A few checks have cleared for past payments. There have been only minor expenditures in the last month. A number of membership payments have been received recently.

A motion was made by Dave Brown and seconded by John Arriazola that the financial report be accepted as presented. The motion passed unanimously. It was mentioned that DSP&R need to secure additional memberships. In years past, the memberships were over 100 members.

Bob mentioned that the Christmas parade may be handled by the Chamber of Commerce. Deron Mc Craw, Bob and George will meet with the Chamber this week to discuss possibilities.

Bob described the problems with the present two hour parking restriction for the square and adjoining streets. A number of visitors have received \$28.00 tickets for overstaying the time limit. Some of the merchants have paid these parking tickets for the visitors, who were upset when receiving them. The problem of downtown employees that park and move their cars regularly to avoid tickets continues. It was requested that a resolution be presented to the city to change the time limit to three hours. A motion by Amy Hoffman-Sheehan with a second by Jeanette Mayhugh was approved unanimously that the following resolution be presented to the city:

BE IT RESOLVED THAT, the members of Downtown Sherman Preservation and Revitalization at a regularly called meeting on March 2, 2009 at which a quorum was present, recommends that the present two hour parking restriction on the square and adjoining streets be changed to a three hour maximum.

BE IT FURTHER RESOLVED THAT, the two spaces on Houston Street adjacent to the former tourism center that are now marked for fifteen minute parking also be changed to a three hour maximum.

It was discussed that additional parking is needed for the downtown area, particularly in the North West area. A motion by Ivert Mayhugh and John Arriazola was approved unanimously for the following resolution:

BE IT RESOLVED THAT, the Board of Directors for Downtown Sherman Preservation and Revitalization and Heart of Sherman at a regularly called meeting on March 2, 2009 at which a quorum was present, authorizes the President, Robert Minshew, to negotiate purchases of vacant properties in the downtown area and if unsuccessful with the owners, then to pursue condemnation by eminent domain from the City of Sherman for the purpose of establishing addition parking facilities.

The City has become work on improving the planter boxes around the square and adjacent streets. When completed and planted, this will be a significant improvement.

Bob volunteered to write a "letter to the editor" expressing appreciation on behalf of Downtown Sherman Preservation and Revitalization for the improvements now being made by the city.

George Rowland spoke on behalf on Tom Nuckols, who was unable to attend the meeting. Tom requests that consideration be given to formulating long-range

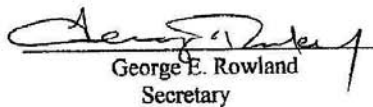
plans for Downtown Sherman Preservation and Revitalization. Tom also recommends that a membership drive be initiated. The Bell Fontana Spa will sponsor a Candidate's night for city council members to interact with the public in April.

Amy reported on the Earth Day Program that will be held on April 18 at the Municipal Building.

The American Bank has requested that a resolution be approved to revoke the signatures of past officers on the bank account. A motion by John Arriazola with a second by Dave Brown was approved unanimously that the following resolution be present to American Bank.

BE IT RESOLVED THAT, the Board of Directors for Downtown Sherman Preservation and Revitalization and Heart of Sherman at a regularly called meeting on March 2, 2009 at which a quorum was present, revokes the authority of former officers, Debbie Sartin and Shannon Scoggins, to sign checks and authorize payments for the organization.

The next meeting will be at noon on April 6 at Kelly's Square. The meeting adjourned at 1:15 pm.


George E. Rowland
Secretary

March 3, 2009
Date



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. D.3

OTHER BUSINESS

Consider Approval of the Budget Calendar for Fiscal Year 2009-2010

Issue

Set budget calendar for the fiscal year (FY) 2009-2010

Background

Several meetings are necessary to develop the budget for the upcoming fiscal year. There is some flexibility in meeting dates reflected in the proposed budget calendar. Particularly important are the dates for the Budget Planning Meeting and the Budget Workshop. The Budget Planning Meeting will be used to give a financial update to the Council and to garner Council input on Council initiatives to be included in the budget development process. The Budget Workshop will present a more detailed picture of the City budget and will be used to summarize Council direction for the upcoming year.

We are taking a slightly different approach to this year's budget process by incorporating a longer-term financial and operational perspective. Although we will only be developing a budget and appropriating funds for FY 2009-2010, we will be looking at a five-year time horizon to consider what the impacts of such things as the capital improvement program, debt service, and projected tax base changes will have on the City long term. We believe this will provide a more complete picture of the financial affairs of the City. Thus, we have added a Long-Range Planning Workshop to this year's budget calendar and tentatively set the date for Friday, June 19th, the day following the proposed Budget Workshop.

Origination

George Olson, City Manager

Robby Hefton, Assistant City Manager/Chief Financial Officer

Financial Consideration

None

Staff Recommendation

The staff recommends that the Council approve the budget calendar as presented and confirm the City Council Chambers as the site for the Budget Workshop.

Alternatives

The Council could select alternative dates for the meetings, subject to Charter requirements.

Attachments

Proposed Budget Calendar for FY 2009-2010

Prepared by:

Robby Hefton, Assistant City Manager/CFO

Approved by:

George Olson, City Manager

DRAFT BUDGET CALENDAR FISCAL YEAR 2009-2010

Budget Planning Meeting with Staff	April 21, 2009
Budget Planning Meeting with City Council*	April 30, 2009
Input Due from Departments	May 15, 2009
Management Review of Budget Requests	May 18-21, 2009
Budget Workshop	June 17-18, 2009
Long-Range Planning Workshop	June 19, 2009
Present Draft Budget to Council	July 20, 2009
Introduce Budget Ordinance	August 3, 2009
Final Action on Budget Ordinance Introduce Tax Rate Ordinance	August 17, 2009
Final Action on Tax Rate Ordinance	September 8, 2009

Notes:

Meeting times and locations to be confirmed after the Budget Calendar is approved.

* An alternative date is Wednesday, April 29th. It is recommended that the Budget Planning Meeting take place in the City Council Chambers.



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. D.4

*** OTHER BUSINESS**

**Consideration to Ordinance No. 2684, Section 26, Subsection 12(B)(2)(c)
for an Exception to Allow a Lot with 0.509 Acres In Lieu of the Requirement that the
Minimum Area of Each Lot Shall be One Acre and Shall Have Adjacent to the Rear Lot
Line a Dedicated Alley or Easement, Either for Present or Future Use in an R-1
(One Family Residential) District at 4505 Breezy Meadows Lane, being Lot 3,
Block 1 of the Replat of Seasons West Addition, Phase One (Israel Aleman, Sr., Owner;
Underwood Drafting and Surveying, Inc., Surveyors)**

Issue

To consider the request of Israel Aleman, Sr. (Owner) and Underwood Drafting and Surveying, Inc. (Surveyors) for special consideration for an exception to allow a lot with 0.509 acres in lieu of the requirement that the minimum area of each lot shall be one acre and shall have adjacent to the rear lot line a dedicated alley or easement, either for present or future use in an R-1 (One Family Residential) District concerning the property located at 4505 Breezy Meadows Lane, being Lot 3, Block 1 of the Replat of Seasons West Addition, Phase One

Background

The property is located at 4505 Breezy Meadows Lane in the Seasons West Subdivision located off of West Houston Street. The owner would like to replat the property into three lots. This lot contains 0.509 acres, which is under the minimum lot area for a rural type subdivision.

Origination

Israel Aleman, Sr. (Owner) and Underwood Drafting & Surveying, Inc. (Surveyors)

Board Recommendation

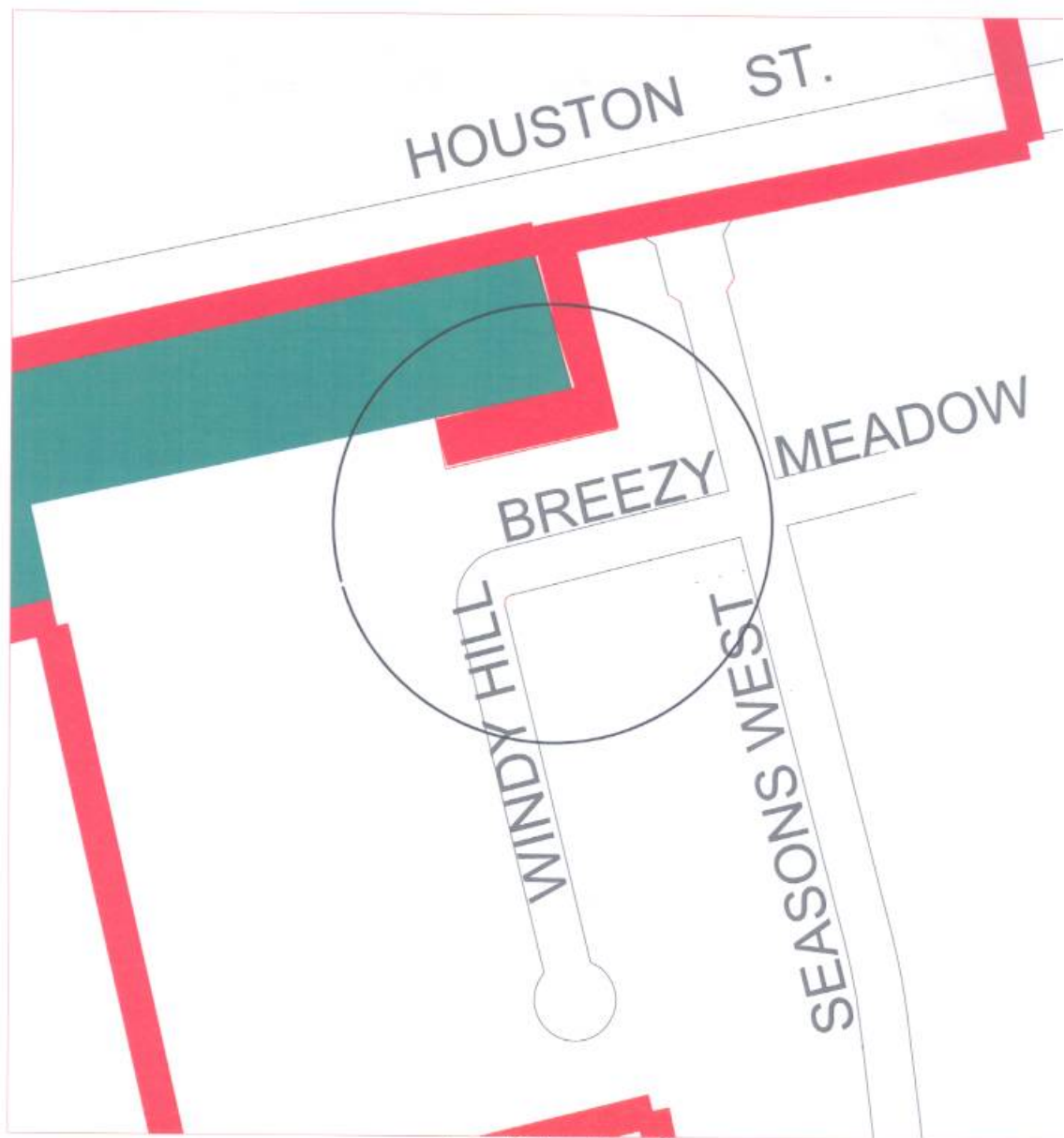
At the regular meeting on March 17, 2009, the Planning and Zoning Board voted 6/0 to approve the exception and forward the request to the City Council subject to the Staff Review.

Attachments

Location Map
Photographs
Site Plan
P&Z Communications Form
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
CO	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



4505 BREEZY MEADOWS

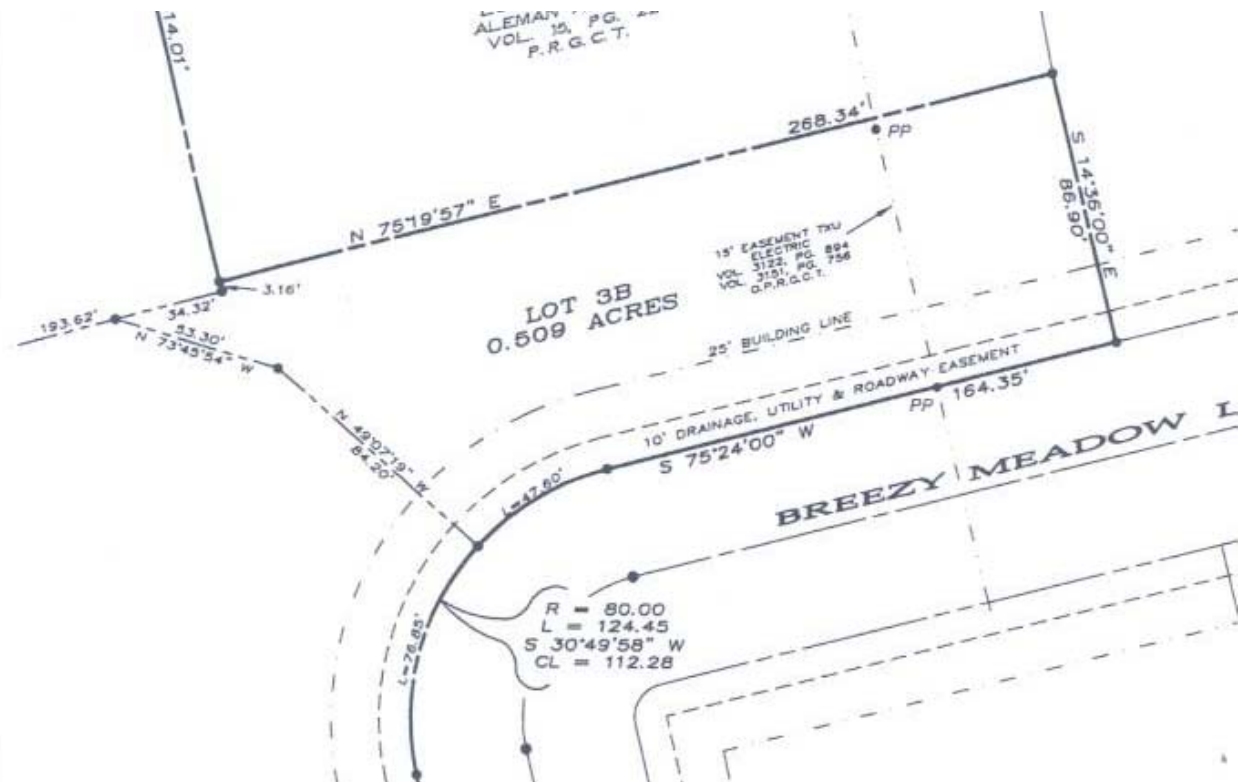
ENGINEERING DEPARTMENT





4505 Breezy Meadows Ln





City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
March 17, 2009
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

4505 Breezy Meadows Lane
Being a part of Lot 3, Block 1 of the Replat of Seasons West Addition, Phase One
Exception

Requested Action/Proposed Use:

Planning and Zoning Commission

Exception to allow a lot with 0.509 acres in lieu of the minimum area of each lot shall be one acre and each lot shall have adjacent to the rear lot line a dedicated alley or easement, either for present or future use in an R-1 (One Family Residential) District.

Background

The property is located at 4505 Breezy Meadows Lane in the Seasons West Subdivision located off West Houston Street. The owner would like to replat the property into three lots; this lot contains 0.509 acres which is under the minimum lot area for a rural type subdivision.

Adjacent Zoning:

R-1 (One Family Residential) District, SF-1 (Single Family Residential) District and C-1 (Retail Business) District

Origination:

Israel Aleman, Sr. (Owner) and Underwood Drafting & Surveying, Inc. (Surveyors)

Master Plan Designation:

Residential

Number of notices mailed:

6

Objections Received:

0

Attachments:

Location map, Photographs, Site Plan and Staff Review

Prepared by:
Patsy Reeves,
Development Services Secretary

Approved by:
Scott Shadden,
Director of Development Services

STAFF REVIEW LETTER

March 12, 2009

Israel Aleman, Sr.
4600 W. Houston
Sherman, Texas 75092

Underwood Drafting & Surveying
3404 Interurban Road
Denison, TX 75021

Dear Applicants:

The request for approval of a exception to allow a lot with 0.509 acres in lieu of the minimum area of each lot shall be one acre and each lot shall have adjacent to the rear lot line a dedicated alley or easement, either for present or future use in an R-1 (One Family Residential) District at 4505 Breezy Meadows Lane is scheduled to be heard by the Planning and Zoning Board on March 17, 2009 in the City Council Chambers, City Hall at 220 West Mulberry. The meeting will begin at 5:00 P.M.

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

Engineering

1. Lot 3B is unavailable for development since it is less than 1 acre and has no sewer service. The lot needs to be marked as "unbuildable".

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: 4-6-2009

Subject: Agenda Item No. D.5

*** OTHER BUSINESS**

Replat Approval of Lot 3, Block 1 of Seasons West Addition, Phase One and 1.120 Acres out of the Elizabeth Jones Survey, Abstract No. 625; Israel Aleman, Sr., Owner; Underwood Drafting and Surveying, Inc., Surveyors (4600 West Houston Street, 4505 Breezy Meadows Lane, and 206 Windy Hill Road)

Issue

To consider replat approval of Lot 3, Block 1 of Seasons West Addition, Phase One and 1.120 acres out of the Elizabeth Jones Survey, Abstract No. 625

Background

The property is located at 4600 West Houston Street, 4505 Breezy Meadows Lane, and 206 Windy Hill Road in the Seasons West Subdivision located off of West Houston Street. The owner would like to replat the property into three lots.

Origination

Israel Aleman, Sr. (Owner) and Underwood Drafting & Surveying, Inc. (Surveyors)

Board Recommendation

At the March 17, 2009 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Replat be approved. The owner did not agree with the following requirements on the Staff Review Letter:

4. Lot 3C is being used as commercial and a zoning change is required.
5. The use as commercial on the homeowners lot (5) needs to be removed or the homeowners association request a zone change to commercial.

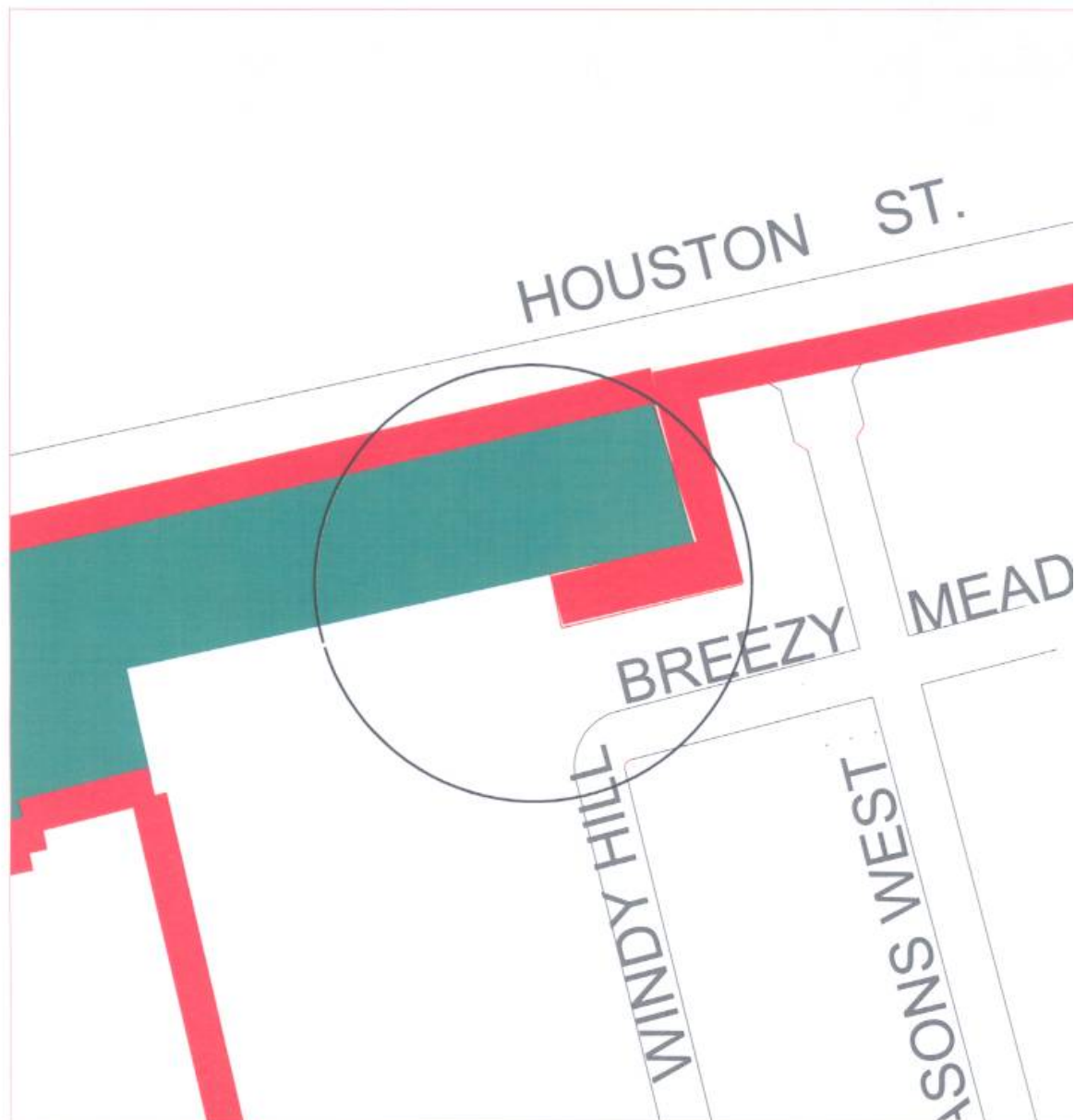
Staff agreed a zone change was not required on Lot 3C since the business was operating at the time it was annexed into the city limits of Sherman. It is an existing non-conforming use. When it goes away, it cannot reopen as this use.

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	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
CO	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



4600 WEST HOUSTON

ENGINEERING DEPARTMENT





206 Windy Hill Ln.



City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
March 17, 2009
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

**4600 West Houston Street,
4505 Breezy Meadows Lane and 206 Windy Hill Road
Being Lot 3, Block 1 of Seasons West Addition, Phase One and 1.120 Acres
out of the Elizabeth Jones Survey, Abstract No. 625
Final Replat**

Requested Action/Proposed Use:

Final Replat Lot 3, Block 1 of Seasons West Addition, Phase One and 1.120 Acres out of the Elizabeth Jones Survey, Abstract No. 625.

Background

This is redevelopment of existing property and division into three separate tracts.

Adjacent Zoning:

R-1 (One Family Residential) District and C-1 (Retail Business) District.

Origination:

Israel Aleman, Sr. (Owner) and Underwood Drafting & Surveying, Inc. (Surveyors)

Master Plan Designation:

Retail/Commercial

Attachments:

Location map
Photographs
Plat
Staff Review

Prepared by:
Rita Gaither,
Development Coordinator

Approved by:
Scott Shadden,
Development Services Director

STAFF REVIEW LETTER

March 11, 2009

Israel Aleman, Sr.
4600 W. Houston
Sherman, Texas 75092

Dear Applicants,

The request for approval of a Final Replat of Lot 3, Block 1 of Seasons West Addition, Phase One concerning the property located at 4600 West Houston Street, 4505 Breezy Meadows Lane and 206 Windy Hill Road has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, March 17, 2009 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

1. Original tax certificates shall be furnished for the purpose of recording the plat.
2. Letters from the various utility providers are required verifying availability of service and when service will be available. (City will acquire)
3. Lot 3B is unbuildable for development since it is less than 1 acre and has no sewer service. The lot needs to be marked as "unbuildable". An exception is required.
4. Lot 3C is being used as commercial and a zoning change is required.
5. The use as commercial on the homeowners lot (5) needs to be removed or the homeowners association request a zone change to commercial.
6. Any other changes made to the replat prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

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

If additional information or clarification is needed, do not hesitate to contact 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
Rita Gaither, Development Coordinator
Interim City Attorney
Underwood Drafting & Surveying, 3404 Interurban Road, Denison, TX 75021

Scott Shadden, Director of Development Services
Danny Fuller, Fire Marshal
Jeff Miller, Director of Public Works



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. D.6

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. D.7

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. D.8

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

a) Airport Advisory Board (2)

Issue

Terms for Luke Motley and Donald Makinson have expired on the Airport Advisory Board. Both are eligible and do wish to be reappointed. The reappointment would be for a term from February 21, 2009 to February 21, 2011. There are also three vacancies on the Airport Advisory Board. We do not have any other applications on file.

Background

The Airport Advisory Board makes recommendations to the City Council on changes in current fees; charges for T-hanger rentals and related airport services; and rules, regulations and operations for the Sherman Municipal Airport.

Origination

The reappointments originated with the City Clerk's Office.

Financial Consideration

There is no financial consideration.

Staff Recommendation

It is recommended that the City Council consider reappointments to the Airport Advisory Board.

Alternatives

The alternative is to delay reappointments.

Attachments

A roster, fact sheet, applicant list, and renewal letters are attached for examination.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

MEMBERSHIP ROSTER

AIRPORT ADVISORY BOARD

LENGTH OF TERMS: TWO YEARS

Ord. 3729 Consecutive Term Limit Two Terms effective 3/26/84

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
Vacant					
Donald Makinson	4	A 2/21/2007	2/21/2009	1	
Luke Motley IV	1	A 2/21/2007	2/21/2009	1	
Vacant					
Vacant					
Carlos E. Rivas	2	A 8/5/2008	8/5/2010	1	
Doug Millsap	3	A 7/17/2007	7/17/2009	1	Pilot's License

NOTE: Ord. 3729 Section 4-14(a) Not more than (3) members shall be elected from among those who hold a "current private pilots license,"

11/14/2002 – Determination by City Attorney:

Based on the language contained in Section 1 of Ordinance 3729 referring to Section 4-14(a) of the Code of Ordinances, mere possession of a pilots license does not make an individual a pilot. The ordinance requires a "current" pilots license, which means that every two years an individual must take and pass a bi-annual flight review and have that fact noted in the pilots log book. Therefore, the Board may consist of as many individuals as desired holding non-current pilots licenses.

Note:

Chairman –

CITY STAFF: Jeff Miller, Director of Public Services
Revised 3/6/2009

FACT SHEET

AIRPORT ADVISORY BOARD

Established by ORDINANCE 3729 - MARCH 26, 1984

1. Number of Members SEVEN
2. Term of Appointment TWO YEARS
3. Consecutive Term Rule ORDINANCE 3729 - TERM LIMIT - MAXIMUM OF TWO SUCCESSIVE TERMS
4. Qualifications for Membership NOT MORE THAN THREE MEMBERS TO BE SELECTED FROM THOSE WHO HOLD A CURRENT PRIVATE PILOTS LICENSE (SEE ORDINANCE SECTION 4-14(a))
5. Appointed by CITY COUNCIL
6. Board Organization

CHAIRPERSON E VICE CHAIRPERSON SECRETARY E
ELECTED E APPOINTED
7. Departmental Responsibility CITY MANAGER'S OFFICE
8. Meeting Date NO SET DATE - MEET AS CALLED BY CHAIRMAN
9. Attendance Requirements NO RULE

=====

PURPOSE:

It shall provide such other airport advisory functions as may be directed by the City Council.

RESPONSIBILITIES:

This committee shall advise City Council as to recommend changes in current fees and charges for airport T-hanger rentals and related airport services, in airport rules, regulations and operations of Sherman Municipal Airport.

APPLICANT LIST
AIRPORT ADVISORY BOARD

Positions Vacant 5

Applicant	Address	District	Qualifications
Luke Motely IV	600 Cinrose Lane	1	Current Member; Wishes to Be Reappointed
Donald Makinson	325 Arapaho East	4	Current Member, Wishes to Be Reappointed

COMMENTS:

SHERMAN



PUBLIC RECORDS DEPARTMENT

Phone No. (903) 892-7204

Fax No. (903) 892-7394

January 5, 2009

Luke Motley IV
1405 Greenbriar
Sherman, Texas 75092

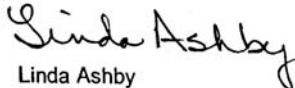
600 Cinrose Ln

RE: Airport Advisory Board

Dear Mr. Motley:

Your term on the Airport Advisory Board expires on February 21, 2009. You are eligible for reappointment to the Board. Please let me know whether or not you are interested in reappointment to this board by checking the appropriate statement at the bottom of this letter and returning a copy to me at the address below. If you have any questions or need additional information, please don't hesitate to contact me.

Best regards,


Linda Ashby
City Clerk

cc: George Olson, City Manager
Jeff Miller, Director of Public Works

☒

I do wish to be considered for reappointed to this board

☐

I do not wish to be considered for reappointment to this board

Signature 

Date 2/6/09

Please return to:

City of Sherman
City Clerk's Office
P.O. Box 1106
Sherman, Texas 75091-1106

P.O. BOX 1106 • SHERMAN, TEXAS 75091-1106 (903) 892-7206

SHERMAN



PUBLIC RECORDS DEPARTMENT

Phone No. (903) 892-7204

Fax No. (903) 892-7394

January 5, 2009

Donald Makinson
325 Arapaho East
Sherman, Texas 75092

RE: Airport Advisory Board

Dear Mr. Makinson:

Your term on the Airport Advisory Board expires on February 21, 2009. You are eligible for reappointment to the Board. Please let me know whether or not you are interested in reappointment to this board by checking the appropriate statement at the bottom of this letter and returning a copy to me at the address below. If you have any questions or need additional information, please don't hesitate to contact me.

Best regards,

Linda Ashby
City Clerk

cc: George Olson, City Manager
Jeff Miller, Director of Public Works

YES

I do wish to be considered for reappointed to this board

I do not wish to be considered for reappointment to this board

Signature

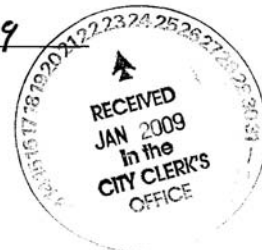
Date

1/21/09

Please return to:

City of Sherman
City Clerk's Office
P.O. Box 1106
Sherman, Texas 75091-1106

P.O. BOX 1106 • SHERMAN, TEXAS 75091-1106 (903) 892-7206





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. D.9

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. E.1

EXECUTIVE SESSION

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

**Section 551.071 Consultation with Attorney Concerning Pending or
Contemplated Litigation:
(a) *Beall vs. City of Sherman, Texas***

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. F.1

OPEN MEETING

**Reconvene into Open Meeting and consider action, if any,
on items discussed in Executive Session**

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. F.2

ADJOURNMENT

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 4-6-2009

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2009
CITY COUNCIL MEETINGS

JANUARY

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

FEBRUARY

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

MARCH

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

APRIL

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

MAY

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

JUNE

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

JULY

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

AUGUST

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

SEPTEMBER

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

OCTOBER

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

NOVEMBER

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

DECEMBER

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

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

09/07/09 - Labor Day / Called Council Meeting on 09/08/09