

**CITY OF SHERMAN  
CITY COUNCIL REGULAR MEETING AGENDA  
COUNCIL CHAMBERS OF THE CITY HALL  
220 WEST MULBERRY STREET  
SHERMAN, TEXAS  
MONDAY, DECEMBER 7, 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 WILLIE STEELE](#)
- A.4 [APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF NOVEMBER 16, 2009](#)

**Public Hearing**

- B.1 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5632](#)  
Providing for Permanent “No Parking” Signs Restricting Parking along Portions of the North Side of the 300 Block of West McLain Street within the City Limits of the City of Sherman
- B.2 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5633](#)  
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow an Automobile Parking Lot in an R-1 (One Family Residential) District at 2917 Overland Trail, being Lot 4, Block 2, O’Hanlon Ranch Addition, Phase 2 (Bluestone Partners, LLC, Owners); 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.3 [ADOPTION OF ORDINANCES](#)  
Consider Adoption of Ordinance Numbers:
  - (a) 5632
  - (b) 5633
- B.4 [CONSENT AGENDA](#)  
Asterisked (\*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

## **Resolutions**

- C.1 [\\* RESOLUTION NO. 5438](#)  
Certifying Funding and Support for the Texas Transportation Enhancement Program Nomination Form 2009 with the Texas Department of Transportation for the Application to Receive Funding to Build the Downtown Sherman Streetscape Enhancement Project
- C.2 [\\* RESOLUTION NO. 5439](#)  
Authorizing the Submission of a Joint Grant Application with the City of Denison and Grayson County for and the Acceptance of Grants under the Annual Justice Assistance Grant (JAG) Program Distributed by the U.S. Department of Justice - CFDA #16.738
- C.3 [\\* RESOLUTION NO. 5440](#)  
Authorizing Execution of an Interlocal Agreement between the City of Sherman, the City of Denison, and Grayson County for Grant Funding to be Awarded by the U.S. Department of Justice under the Annual Justice Assistance Grant (JAG) Program - CFDA #16.738
- C.4 [RESOLUTION NO. 5441](#)  
Authorizing Execution of an NCITE Mobile Detective Service Agreement with Iberon, LLC for the Installation of Smart Phone Applications for the Police Department
- C.5 [\\* RESOLUTION NO. 5442](#)  
Authorizing Execution of a Professional Services Agreement with Timothy L. Morris, P.E. d/b/a Morris Engineers for Design of the Brents Street Sewer Replacement Project
- C.6 [\\* RESOLUTION NO. 5443](#)  
Authorizing Execution of a Professional Services Agreement with Timothy L. Morris, P.E. d/b/a Morris Engineers for Design of the Pelton Street Water Main Replacement Project
- C.7 [\\* RESOLUTION NO. 5444](#)  
Awarding Bids to and Authorizing Execution of Contracts with Multiple Vendors for an Annual Supply of Chemicals for the Sherman Water Treatment Plant
- C.8 [\\* RESOLUTION NO. 5445](#)  
Authorizing Execution of a Fairview Elevated Water Tank Use Agreement with AT&T Mobility Texas LLC

## **Request to Advertise**

- D.1 [\\* REQUEST TO ADVERTISE](#)  
Construction of the South Lane of West Lamberth Road, from Heritage Parkway to Shady Oaks Lane

## **Payment Approval**

### **D.2    \* PAYMENT APPROVAL**

Texas Commission on Environmental Quality (TCEQ) Annual Fee for Public Water Systems Fiscal Year 2009-2010: \$35,214.85

## **Other Business**

### **D.3    OTHER BUSINESS**

Receive Report from Tourism Director April Patterson

### **D.4    OTHER BUSINESS**

Receive the Fire Department's Presentation on Certification and Training Levels, Capabilities and Accomplishments

### **D.5    \* OTHER BUSINESS**

Approval of the 2009 Ad Valorem Tax Roll Value and Tax Levy

### **D.6    \* OTHER BUSINESS**

Replat Approval of Lots 18, 20 and 21, Block 2, O'Hanlon Ranch Addition, Phase 2, containing 1.076 acres; Jeremy and Sherry Knight, Bluestone Partners, LLC, and DGR Development Group, LTD, Owners; Underwood Drafting and Surveying, Surveyors (2505 Sedalia Circle, 2912 and 2916 Sedalia Trail)

### **D.7    CITIZEN REQUESTS**

### **D.8    MEDIA QUESTIONS**

## **Consider Board/Commission Appointments**

### **D.9    APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS**

(a)      Parks and Recreation Advisory Board (3)

### **D.10   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 551.074

Personnel Matters

- (a) Deliberate the Evaluation of a Public Officer or Employee:
  - (i) Annual Performance Evaluation of the City Manager
  - (ii) Six-Month Evaluation of the City Attorney

**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:** 12-7-2009

**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:** 12-7-2009

**Subject:** Agenda Item No. A.2

### PLEDGE OF ALLEGIANCE

The Honorable Willie Steele, Council Member



# **SHERMAN CITY COUNCIL**

## **Agenda Communication Form**

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. A.3

**INVOCATION BY COUNCIL MEMBER WILLIE STEELE**



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. A.4

**APPROVE MINUTES**  
**OF THE REGULAR CITY COUNCIL MEETING OF NOVEMBER 16, 2009**

STATE OF TEXAS

§

November 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 November 16, 2009.

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

MEMBERS ABSENT: NONE.

CALL TO ORDER

Mayor Bill Magers called the meeting to order at 5:01 p.m. The Pledge of Allegiance and the Invocation were given by Council Member Chip Adami.

CALL TO ORDER

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of November 2, 2009. Council Member Adami moved to approve the Minutes as presented; Second by Deputy Mayor Smith. All present voted AYE.  
MOTION CARRIED.

APPROVE MINUTES

SPECIAL PRESENTATION

ANNOUNCING THE WINNER OF THE SECOND ANNUAL  
"SHERMAN TODAY" PHOTO CONTEST

Traci Carlson, President of the Sherman Area Chamber of Commerce, announced the winner of the Second Annual "Sherman Today" Photo Contest.

SHERMAN TODAY  
PHOTO CONTEST  
WINNER

She added that "Sherman Today" now reaches a broader audience and will be renamed "Texoma Today." Circulation has increased from 20,000 copies to 44,000 copies and is distributed in Sherman, Denison, Gainesville, and Durant. The project is managed by the Sherman Chamber of Commerce with cooperation through the other Chambers of Commerce.

Ms. Carlson introduced Jillian Duncan as the winner of the Second Annual Photo Contest. The photo will hang in the Sherman City Hall for the next year.

INTRODUCTION AND PUBLIC HEARING OF ORDINANCES

Mayor Magers introduced Ordinance 5630 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING ORDINANCE NO. 5103 TO PROVIDE FOR THE REMOVAL OF "NO PARKING" SIGNS RESTRICTING PARKING ALONG PORTIONS OF NORTH WALNUT STREET, BETWEEN BROCKETT STREET AND

ORD 5630  
NO PARKING SIGNS  
(N. WALNUT ST.)

COLLEGE STREET; PROVIDING FOR A REPEALER;  
PROVIDING FOR SEVERABILITY.  
No citizens appeared before the City Council to discuss  
Ordinance 5630.

Mayor Magers introduced Ordinance 5631 and called for a  
public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SHERMAN, TEXAS, ESTABLISHING MAXIMUM,  
REASONABLE AND PRUDENT RATES OF SPEED ON  
CERTAIN PORTIONS OF FRISCO ROAD IN THE CITY OF  
SHERMAN; FIXING PENALTIES FOR VIOLATION THEREOF;  
PROVIDING FOR SEVERABILITY; PROVIDING FOR A  
REPEALER.

ORD 5631  
SPEED LIMITS  
(FRISCO RD.)

No citizens appeared before the City Council to discuss  
Ordinance 5631.

The Public Hearing was closed.

CLOSE PUBLIC  
HEARING

ADOPTION OF ORDINANCES

Ordinance 5630

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SHERMAN, TEXAS, AMENDING ORDINANCE NO. 5103 TO  
PROVIDE FOR THE REMOVAL OF "NO PARKING" SIGNS  
RESTRICTING PARKING ALONG PORTIONS OF NORTH  
WALNUT STREET, BETWEEN BROCKETT STREET AND  
COLLEGE STREET; PROVIDING FOR A REPALER;  
PROVIDING FOR SEVERABILITY.

ORD 5630  
NO PARKING SIGNS  
(N. WALNUT ST.)

Council Member Steele asked what the origination was for  
this proposed ordinance. Jeff Miller, Director of Public  
Works, said the City has received a request from John Markl,  
owner of Markl Heating & Air Conditioning, asking to remove  
the no parking restriction because his employees have no  
place to park. The signs have been removed for a 90 day  
trial period and there have been no complaints.

Ordinance 5631

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SHERMAN, TEXAS, ESTABLISHING MAXIMUM,  
REASONABLE AND PRUDENT RATES OF SPEED ON  
CERTAIN PORTIONS OF FRISCO ROAD IN THE CITY OF  
SHERMAN; FIXING PENALTIES FOR VIOLATION THEREOF;  
PROVIDING FOR SEVERABILITY. PROVIDING FOR A  
REPEALER.

ORD 5631  
SPEED LIMITS  
(FRISCO RD.)

Mayor Magers verified that the speed limit on Frisco Road is  
now 30 miles per hour. Tom Watt, Police Chief, said Frisco  
Road has been 30 mph with some variations at the curves.  
The proposed change would increase the speed limit to 35  
mph behind where the old Sher-Den Mall was located.

Deputy Mayor Smith expressed concern that the speed limits  
would change from 30 to 35 and back to 30. Chief Watt said

they had received a complaint on the 30 mph limit in that location, which is pretty slow since the area is wide open and there is less traffic since the mall has closed.

A speed survey showed that 85% of the people are driving 38 mph. This is generally the method used to determine speed limits. Chief Watt felt the 35 mph speed limit would be adequate in the proposed area. His concerns were for the portion of road north of Gallagher Road which is reduced in width and includes a curve near Dripping Springs Road. There have also been a couple of fatality accidents in that area and he felt it should remain at 30 mph.

Council Member Howeth clarified that the speed limit change would basically be from Baker Road to Gallagher Road.

#### **ACTION TAKEN.**

Motion by Council Member Steele to approve Ordinance Nos. 5630 and 5631, as presented. Second by Council Member Adami.

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

VOTING NAY: None.

MOTION CARRIED.

#### **CONSENT AGENDA**

The Council reviewed the Consent Agenda. Council Member Steele asked to remove Item D-1 entitled "Request to Advertise – Construct Phase IV Concrete Solid Waste Parking Lot" from the Consent Agenda for consideration in its regular order of business.

Council Member Wacker moved to approve the Consent Agenda, with the exception of Item D-1, which will be considered in its regular order of business. Second by Council Member Adami. All present voted AYE.

#### **RESOLUTIONS**

**RESOLUTION NO. 5436 -- APPOINTING A SUCCESSOR PAYING AGENT/REGISTRAR FOR THE "CITY OF SHERMAN, TEXAS, COMBINATION TAX AND TAX INCREMENT REVENUE CERTIFICATES OF OBLIGATION, SERIES 2004 (REINVESTMENT ZONE NUMBER ONE)"; APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT WITH SAID BANK; RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPOINTING A SUCCESSOR PAYING AGENT/REGISTRAR FOR THE "CITY OF SHERMAN, TEXAS, COMBINATION TAX AND TAX INCREMENT REVENUE CERTIFICATES OF OBLIGATION, SERIES 2004 (REINVESTMENT ZONE NUMBER ONE)"; APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT WITH SAID BANK; RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.**

**CONSENT AGENDA.**

#### **CONSENT AGENDA**

**RES 5436  
CERTIFICATES OF  
OBLIGATION**

**RESOLUTION NO. 5437 – AUTHORIZING EXECUTION OF A CONTRACT WITH WEISINGER WATER WELL, INC. FOR REPAIRS TO RUSSELL 1 TRINITY WATER WELL**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONTRACT WITH WEISINGER WATER WELL, INC. FOR REPAIRS TO RUSSELL 1 TRINITY WATER WELL.

CONSENT AGENDA.

RES 5437  
WATER WELL  
REPAIRS

**REQUEST TO ADVERTISE**

**CONSTRUCT PHASE IV CONCRETE SOLID WASTE PARKING LOT**

Council Member Steele asked to remove Item D-1 from the Consent Agenda for consideration in its regular order of business.

REQ TO ADVERTISE  
SOLID WASTE  
PARKING LOT

He asked if this was a Capital Improvement Project. He remembered that the City recently reconstructed some ramps at the Solid Waste facility with money that was left from a previous project.

Mr. Miller said earlier in the year there was a project to rebuild the wall at the Transfer Station. With savings from that project, the staff was able to rebuild a ramp and pad on top of the Transfer Station. These projects were completed during the last Fiscal Year.

This project is in the CIP for the current Fiscal Year. There is an area of asphalt that is not holding up to the weight of the trucks. Robby Hefton, Assistant City Manager/CFO, added that this project is phase four of five phases and would reconstruct the specified area in concrete.

**ACTION TAKEN.**

Motion by Council Member Steele to approve the request to advertise for the construction of Phase IV, which is the concrete Solid Waste parking lot, as presented.

Second by Council Member Wacker.

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

VOTING NAY: None.

MOTION CARRIED.

**REPAIR OF A DAMAGED STORM SEWER AT ARCHER DRIVE**

The City Council approved the request to advertise for bids to repair a damaged storm sewer near Archer Drive. Recent heavy rains and high water levels in Sand Creek have contributed to significant bank erosion and the failure of a portion of the storm sewer constructed from Archer Drive to Sand Creek, located near Westwood Village Shopping Center. Funding is available in this year's Capital Improvement Program Budget.

CONSENT AGENDA.

ARCHER DR.  
STORM SEWER

PAYMENT APPROVAL

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
(TCEQ) ANNUAL CONSOLIDATED WATER QUALITY  
ASSESSMENT FEE FOR FISCAL YEAR 2009-2010:  
\$69,645.00

The City Council approved payment of the Annual Consolidated Water Quality Assessment Fee to the Texas Commission on Environmental Quality for Fiscal Year 2009-2010 in the amount of \$69,645.

The fee is imposed to fund the Clean Rivers Program and to pay TCEQ expenses for administering water quality programs, including the City's Wastewater Permit.

CONSENT AGENDA.

OTHER BUSINESS

CONSIDER REQUEST OF THE SHERMAN CHAMBER OF  
COMMERCE AND THE SHERMAN TOURISM DEPARTMENT  
TO TEMPORARILY CLOSE CERTAIN STREETS FOR THE  
ANNUAL SHERMAN CHRISTMAS PARADE ON FRIDAY,  
DECEMBER 4, 2009

Mr. Hefton said the normal parade route will be used, but the staff wanted to announce that the parade will be held on Friday, December 4, 2009 at 7 p.m.

Council Member Wacker confirmed that parade entries will be accepted through November 19, 2009. Mayor Magers said it was nice that the Chamber of Commerce was once again involved in the Christmas Parade.

ACTION TAKEN.

Motion by Council Member Wacker to close certain streets for the Annual Sherman Christmas Parade on December 4, 2009, as presented. Second by Council Member Howeth.

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

VOTING NAY: None.

MOTION CARRIED.

REPLAT APPROVAL OF CARRUS MEDICAL PLAZA, A  
REPLAT OF LOT 2 OF POST OAK CROSSING EAST  
ADDITION, BEING 19.749 ACRES IN THE URIAH BURNS  
SURVEY, ABSTRACT NO. 121; SDB PARTNERS DBA  
CARRUS SPECIALTY HOSPITAL, OWNERS; STERLING  
ENGINEERING & DESIGN GROUP, LTD, DEVELOPER;  
TEAGUE, NALL AND PERKINS, INC., ENGINEERS; AND  
UNDERWOOD DRAFTING AND SURVEYING, SURVEYORS  
(1810 U.S. HIGHWAY 82 WEST)

The City Council approved the Replat of Carrus Medical Plaza, a Replat of Lot 2 of Post Oak Crossing East Addition, which is 19.749 acres in the Uriah Burns Survey, Abstract No. 121. The property is located at 1810 U.S. Highway 82 West.

PAYMENT APPROVAL

TCEQ WATER  
QUALITY FEE

CLOSE STREETS  
FOR CHRISTMAS  
PARADE

APPROVE REPLAT  
CARRUS MEDICAL  
PLAZA  
(1810 HWY 82 WEST)

The Replat will reconfigure four adjacent lots into five lots, realigning the tracts with the creek to maximize the lots for commercial development. The Planning and Zoning Commission recommended approval of the Replat.  
CONSENT AGENDA.

REPLAT APPROVAL OF LOTS 1, 2, & 3, BLOCK 5, EXSTEIN'S MAPLE ADDITION, BEING 0.48 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763; HORACE A. ROBERSON, OWNER; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYORS (316 AND 320 NORTH WOODS STREET)

The City Council approved the Replat of Lots 1, 2, and 3, Block 5, Exstein's Maple Addition, which is 0.48 acres in the J.B. McAnair Survey, Abstract No. 763. The property is located at 316 and 320 N. Woods Streets.

The owner would like to replat the property into two lots for development possibilities. The Planning and Zoning Commission recommended approval of the Replat.  
CONSENT AGENDA.

CITIZENS REQUESTS

There were no citizen's requests.

MEDIA QUESTIONS

CHRISTMAS PARADE

Kathy Williams, Herald Democrat Reporter, asked what the theme was for the Christmas Parade. April Patterson, Director of Tourism, said the theme is "Old Time Christmas."

COUNCIL COMMENTS

VETERANS DAY MEMORIAL CELEBRATION

Council Member Steele recently attended the Veterans Day Memorial Celebration in Fairview Park and he said it was a great experience. It was well attended and well planned and he recognized Ms. Patterson for her part in the preparation. He added that the park looked great and the speakers were great.

VETERANS DAY MEMORIAL CELEBRATION

Council Member Softly added that being a veteran, he also attended the Veterans Day Memorial Celebration. He felt it was well done and he really appreciated it.

FUNKY FEST SIDEWALK FESTIVAL

Council Member Howeth recently attended the Funky Fest held Downtown and was excited to see some new businesses opening. There is a new restaurant opening Downtown and she felt things were moving in a positive direction.

VETERANS DAY MEMORIAL CELEBRATION

Mayor Magers said in the past, there has been a concern among veterans that the City did not do a good enough job

APPROVE REPLAT  
EXSTEIN'S MAPLE  
ADDITION  
(316 AND 320 N.  
WOODS ST.)

CITIZEN'S REQUESTS

CHRISTMAS PARADE

VETERANS DAY  
MEMORIAL  
CELEBRATION

VETERANS DAY  
MEMORIAL  
CELEBRATION

FUNKY FEST  
SIDEWALK  
FESTIVAL

VETERANS DAY  
MEMORIAL  
CELEBRATION

recognizing Veterans Day. He thanked Ms. Patterson for the good job she did in organizing this year's event.

He added that Hotel/Motel Taxes fund the City's Tourism Department and he said the Council has a responsibility for handling those funds wisely. He thanked Ms. Patterson for lowering the administrative cost of the Tourism Budget. He said he has heard only positive feedback about the Tourism Department and Ms. Patterson.

#### LOSS OF CITIZEN

Mayor Magers said the City lost a courageous citizen this weekend. Martha Sutherland had been fighting a courageous fight against ovarian cancer. She went out like a fighter and he offered his condolences to her family.

#### 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.

SECTION 551.074

PERSONNEL MATTERS:  
DELIBERATE THE EVALUATION  
OF A PUBLIC OFFICER OR  
EMPLOYEE:  
ANNUAL PERFORMANCE  
EVALUATION OF THE CITY  
MANAGER

SIX-MONTH EVALUATION OF THE  
CITY ATTORNEY

Mayor Magers asked the Council Members if they felt there was any need for an Executive Session. Council Members have turned in their evaluation sheets but did not have any questions at this time.

#### ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 5:17 p.m.

LOSS OF CITIZEN

EXECUTIVE SESSION

ADJOURNMENT

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MAYOR

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CITY CLERK



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. B.1

### **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5632**

**Providing for Permanent “No Parking” Signs Restricting Parking  
along Portions of the North Side of the 300 Block of West McLain 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 north side of McLain Street, east of Hickory Street

#### **Background**

The Director of the Mental Health Mental Retardation Services of Texoma (MHMR) facility located at 315 West McLain Street requested that parking be restricted along the north side of McLain Street in front of the facility. His concern was that patients, visitors, and staff were parking in front of the facility nearest to the front door and, due to the width of the street, there was a dangerous situation for individuals getting out of their automobiles as cars and ambulances passed by. City staff met with the Director and an area was identified where parking would not be permitted in the street. Street Services staff installed “No Parking” signs on a 90-day trial to give both the facility and the public time to react to the “No Parking” restrictions. No complaints or comments have been received.

#### **Origination**

MHMR of Texoma and the Public Works Department

#### **Financial Consideration**

It was necessary to install four signs to restrict parking in this area, for a total cost of less than \$350.00.

#### **Staff Recommendation**

Adopt the proposed ordinance to provide for the restricted parking on the north side of the 300 block of McLain Street, for a distance of approximately 518 feet east of Hickory Street.

#### **Alternatives**

Those as may be recommended by the City Council

#### **Attachments**

Ordinance No. 5632

Location Map

**Prepared by:**  
**Jeff Miller, Director of Public Works**

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

**ORDINANCE NO. 5632**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR PERMANENT “NO PARKING” SIGNS RESTRICTING PARKING ALONG PORTIONS OF THE NORTH SIDE OF THE 300 BLOCK OF WEST MCLAIN 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 north side of West McLain Street for a distance of approximately 518 feet east of Hickory 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:** \_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

| DIMENSIONING TABLE |                                             |        |
|--------------------|---------------------------------------------|--------|
| ITEM               | DE DESCRIPTION                              | UNIT   |
| A                  | POWER POLE NO. 1 TO EDGE OF FIRST DRIVEWAY  | 88 FT  |
| B                  | EDGE OF FIRST DRIVEWAY TO POWER POLE NO. 2  | 40 FT  |
| C                  | POWER POLE NO. 2 TO POWER POLE NO. 3        | 104 FT |
| D                  | EDGE OF SECOND DRIVEWAY TO POWER POLE NO. 4 | 130 FT |
| E                  | POWER POLE NO. 4 TO EDGE OF HICKORY ST.     | 120 FT |



City of Sherman, Texas  
Engineering Department

**NO PARKING ZONE  
MCLAIN STREET FROM TRAVIS  
TO HICKORY STREET AT  
MHMR SERVICES**



0 25 50 100 Feet



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. B.2

### **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5633**

**Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow an Automobile Parking Lot in an R-1 (One Family Residential) District at 2917 Overland Trail, being Lot 4, Block 2, O'Hanlon Ranch Addition, Phase 2 (Bluestone Partners, LLC, Owners); 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 Bluestone Partners, LLC (Owners) concerning the property located at 2917 Overland Trail, being Lot 4, Block 2 of the O'Hanlon Ranch Addition, Phase 2, to allow an automobile parking lot in an R-1 (One Family Residential) District.

### **Background**

The property is located at 2917 Overland Trail in Phase 2 of the O'Hanlon Ranch Addition; the lot is located west of the office buildings on Overland Trail. The owners would like to construct a parking lot on the lot to be used for the three office buildings on Overland Trail.

### **Origination**

Bluestone Partners, LLC (Owners)

### **Board Recommendation**

At the November 17, 2009 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

### **Attachments**

Ordinance No. 5633

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. 5633**

**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 AN AUTOMOBILE PARKING LOT IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AT 2917 OVERLAND TRAIL, BEING LOT 4, BLOCK 2, O'HANLON RANCH ADDITION, PHASE 2 (BLUESTONE PARTNERS, LLC, OWNERS); 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, Bluestone Partners, LLC (Owners) are granted a Specific Use Permit to allow an automobile parking lot in an R-1 (One Family Residential) District at 2917 Overland Trail, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

**BEING** Lot 4, Block 2, O'Hanlon Ranch Addition, Phase 2.

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

**Zoning:**

1. All aspects of the R-1 (One Family Residential) District and the Commercial Tree and Landscaping Ordinance must be followed.
2. Screening is required adjacent to residential districts.

3. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering

4. Drive approaches and sidewalks shall conform to City of Sherman standards.
5. The parking lot shall not be drained to the detriment of adjoining properties.

**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**

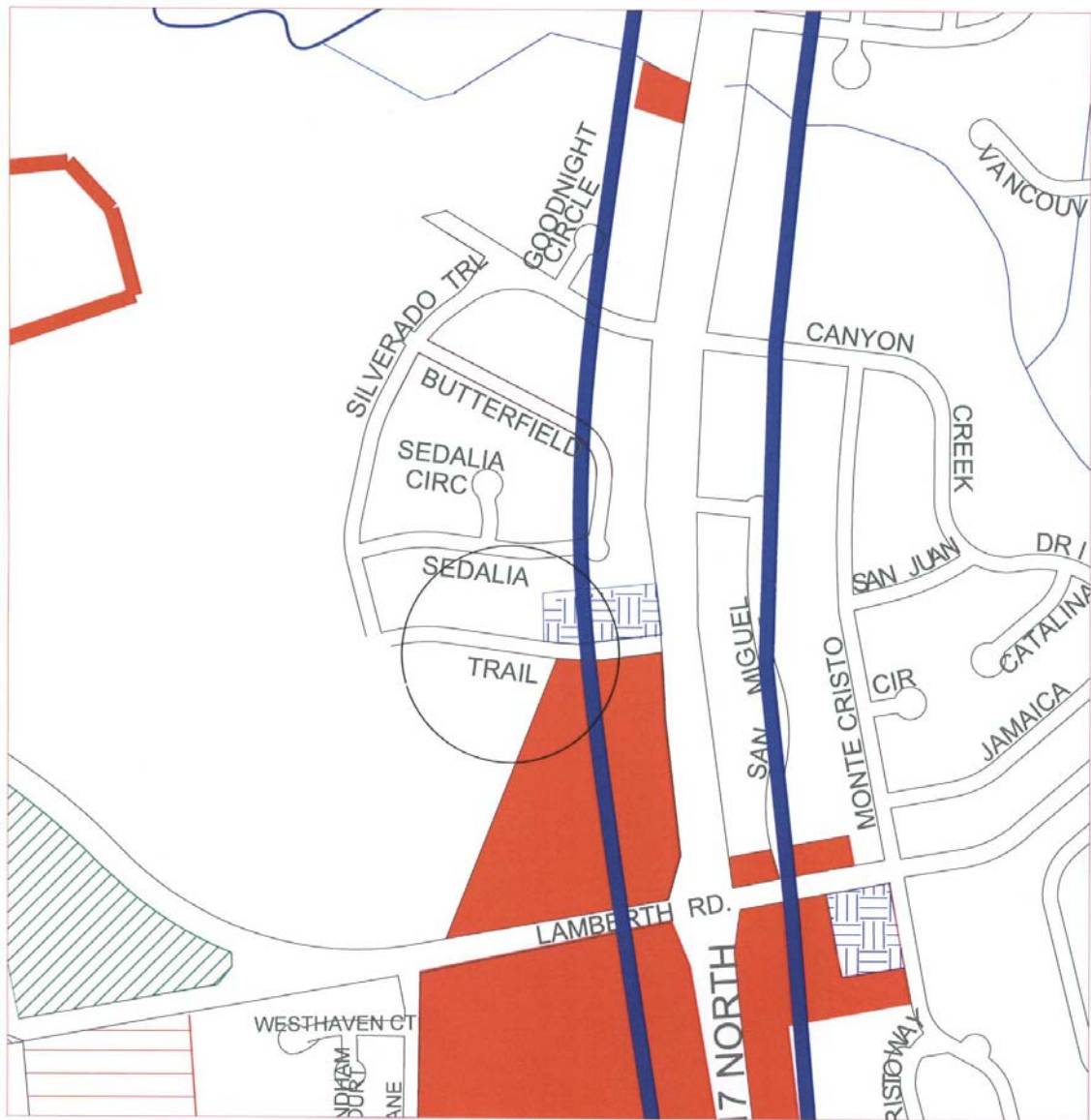
**BY:** \_\_\_\_\_  
**BILL MAGERS, MAYOR**

**ATTEST:**

**BY:** \_\_\_\_\_  
**LINDA ASHBY, CITY CLERK**

**APPROVED AS TO FORM AND CONTENT:**

**BY:** \_\_\_\_\_  
**BRANDON SHELBY,**  
**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 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              |



2917 OVERLAND TRAIL

ENGINEERING DEPARTMENT



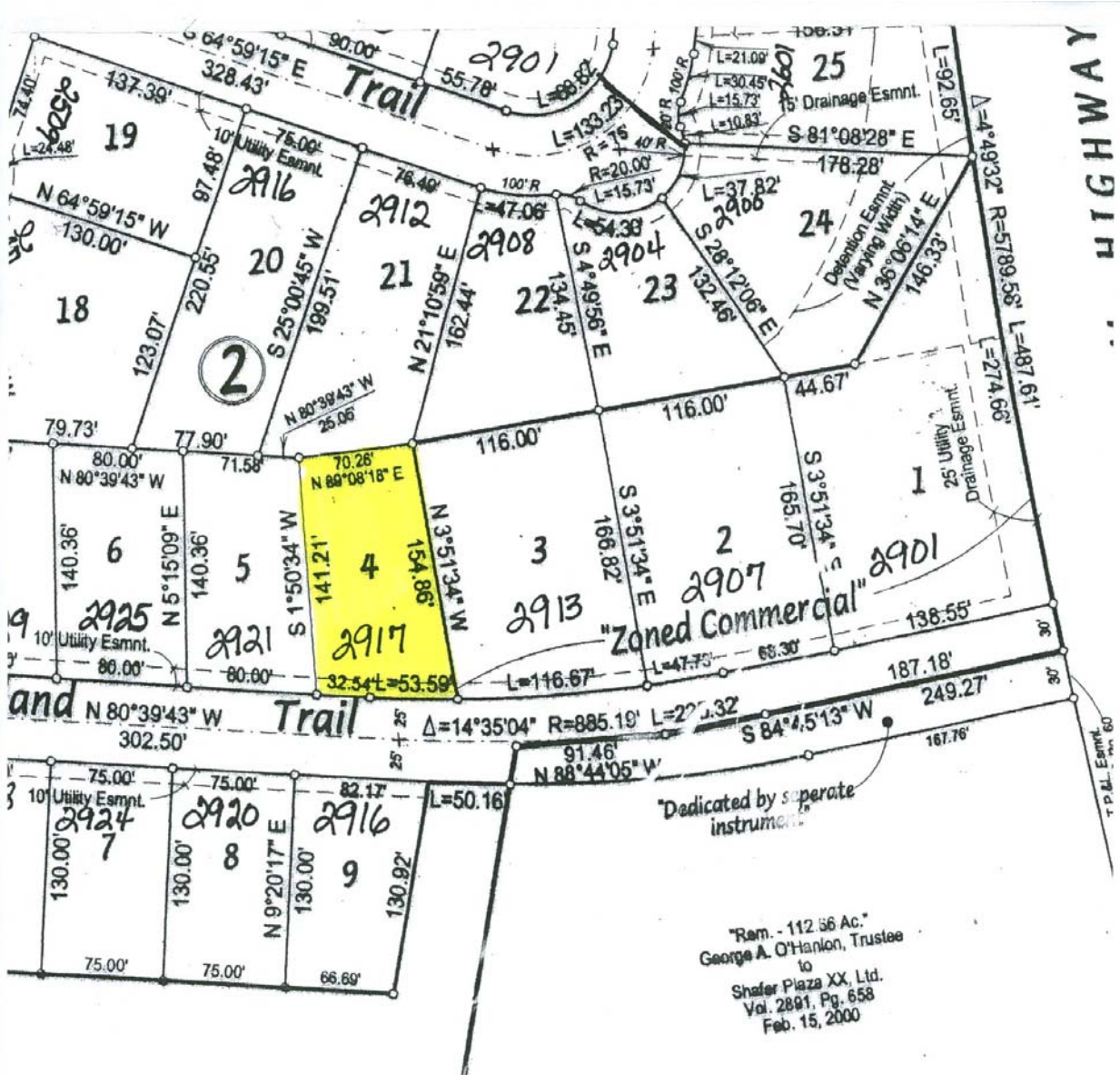


City of Sherman, Texas  
Engineering Department

0 100 200 400 600 800 Feet

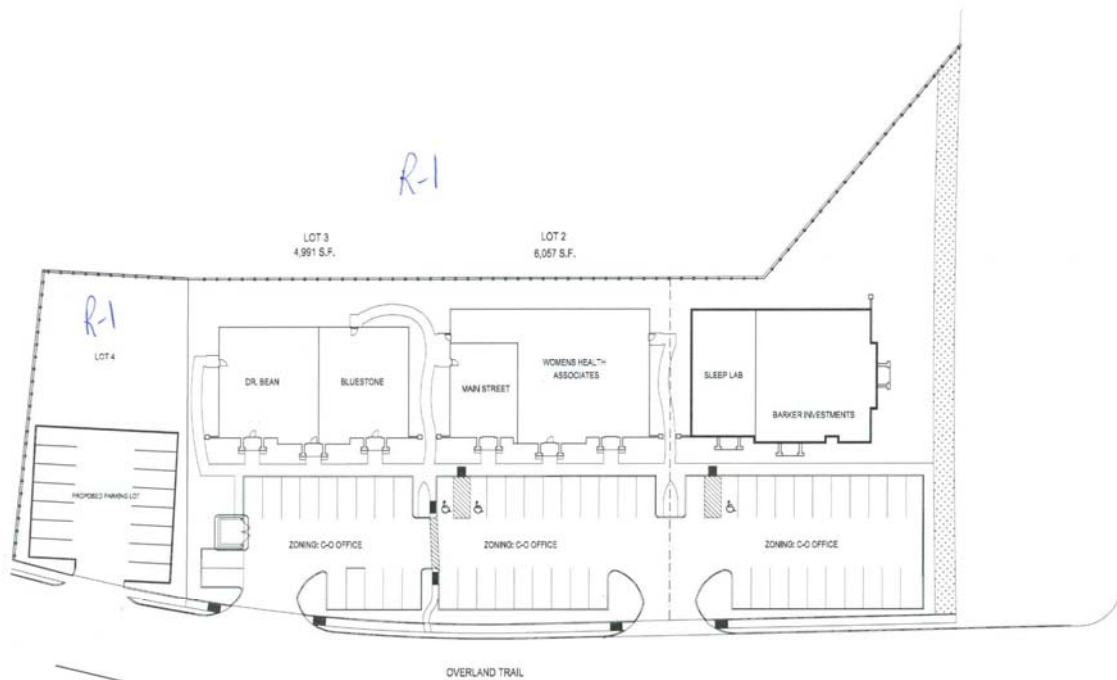
## 2917 Overland Trail





NCH  
SE 2  
the

ADDITION



P.M. 1417

R-1

C-1

*City of Sherman*  
**Planning and Zoning Commission**  
**Board of Adjustments**  
*Agenda Communication Form*  
*November 17, 2009*  
**Jason Sofey, Chairman**

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

**Don Hicks, Commissioner**  
**Ron Barton, Commissioner**  
**David Plyler, Commissioner**  
**Darren Tankersley, Commissioner**

**2917 Overland Trail**  
**Being Lot 4, Block 2, O'Hanlon Ranch Addition, Phase 2**  
**Specific Use Permit & Site Plan**

**Requested Action/Proposed Use:**  
***Planning and Zoning Commission***

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

**Background:**

The property is located at 2917 Overland Trail in the O'Hanlon Ranch Addition off F.M. 1417 North (Heritage Parkway). The owners would like to construct a parking lot on this lot to be used for the three office buildings located on Overland Trail.

**Adjacent Zoning:**

C-1 (Retail Business) District, C-O (Office) District and R-1 (One Family Residential) District

**Origination:**

Bluestone Partners, LLC (Owners)

**Master Plan Designation:**

Agricultural and Rural

**Number of notices mailed:**

5

**Objections Received:**

0

**Attachments:**

Location map, Photographs, Site Plan and Staff Review Letter

**Prepared by:**  
**Patsy Reeves,**  
**Development Services Secretary**

**Approved by:**  
**Scott Shadden,**  
**Director of Development Services**

## STAFF REVIEW LETTER

November 12, 2009

Bluestone Partners, LLC  
2913 Overland Trail, Ste. 100  
Sherman, Texas 75092

Bluestone Partners, LLC  
Joe Dell  
2913 Overland Trail, Ste. 100  
Sherman, Texas 75092

Dear Applicants,

The request for a Specific Use Permit and site plan approval to allow an automobile parking lot in an R-1 (One Family Residential) District located at 2917 Overland Trail, has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, November 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:

Zoning:

1. All aspects of the R-1 (One Family Residential) District and the Commercial Tree and Landscaping Ordinance must be followed.
2. Screening is required adjacent to residential districts.
3. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required

Engineering

4. Drive approaches and sidewalks shall conform to City of Sherman standards.
5. The parking lot shall not be drained to the detriment of adjoining properties.

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 and Zoning Commission.

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 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  
Brandon Shelby, City Attorney

Danny Fuller, Fire Marshal  
Jeff Miller, Director of Public Works  
Lisa Whitfield, Engineering & Development Coordinator



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. B.3

### ADOPTION OF ORDINANCES

**Consider Adoption of Ordinance Numbers: 5632 and 5633**

**B.1 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5632**

Providing for Permanent “No Parking” Signs Restricting Parking along Portions of the North Side of the 300 Block of West McLain Street within the City Limits of the City of Sherman

**B.2 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5633**

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow an Automobile Parking Lot in an R-1 (One Family Residential) District at 2917 Overland Trail, being Lot 4, Block 2, O’Hanlon Ranch Addition, Phase 2 (Bluestone Partners, LLC, Owners); 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:** 12-7-2009

**Subject:** Agenda Item No. B.4

### CONSENT AGENDA

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

**C.2 \* RESOLUTION NO. 5439**

Authorizing the Submission of a Joint Grant Application with the City of Denison and Grayson County for and the Acceptance of Grants under the Annual Justice Assistance Grant (JAG) Program Distributed by the U.S. Department of Justice - CFDA #16.738

**C.3 \* RESOLUTION NO. 5440**

Authorizing Execution of an Interlocal Agreement between the City of Sherman, the City of Denison, and Grayson County for Grant Funding to be Awarded by the U.S. Department of Justice under the Annual Justice Assistance Grant (JAG) Program - CFDA #16.738

**C.5 \* RESOLUTION NO. 5442**

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

**C.6 \* RESOLUTION NO. 5443**

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

**C.7 \* RESOLUTION NO. 5444**

Awarding Bids to and Authorizing Execution of Contracts with Multiple Vendors for an Annual Supply of Chemicals for the Sherman Water Treatment Plant

**C.8 \* RESOLUTION NO. 5445**

Authorizing Execution of a Fairview Elevated Water Tank Use Agreement with AT&T Mobility Texas LLC

**D.1 \* REQUEST TO ADVERTISE**

Construction of the South Lane of West Lamberth Road, from Heritage Parkway to Shady Oaks Lane

**D.2 \* PAYMENT APPROVAL**

Texas Commission on Environmental Quality (TCEQ) Annual Fee for Public Water Systems Fiscal Year 2009-2010: \$35,214.85

**D.5 \* OTHER BUSINESS**

Approval of the 2009 Ad Valorem Tax Roll Value and Tax Levy

**D.6 \* OTHER BUSINESS**

Replat Approval of Lots 18, 20 and 21, Block 2, O'Hanlon Ranch Addition, Phase 2, containing 1.076 acres; Jeremy and Sherry Knight, Bluestone Partners, LLC, and DGR Development Group, LTD, Owners; Underwood Drafting and Surveying, Surveyors (2505 Sedalia Circle, 2912 and 2916 Sedalia Trail)



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. C.1

### **RESOLUTION NO. 5438**

**Certifying Funding and Support for the Texas Transportation Enhancement Program Nomination Form 2009 with the Texas Department of Transportation for the Application to Receive Funding to Build the Downtown Sherman Streetscape Enhancement Project**

#### **Issue**

To consider submitting a 2009 Texas Transportation Enhancement Program nomination package to the Texas Department of Transportation (TxDOT)

#### **Background**

TxDOT is calling for nominations for the 2009 Texas Transportation Enhancement Program. Sherman's Comprehensive Master Plan includes reinvestment in the Central Business District as one of the priorities. City staff worked with local architects, David Baca and Jared Tredway, and developed a plan to enhance the streetscapes of State Highway 56 (Houston and Lamar Streets) between U.S. Highway 75 and the downtown area. This plan, identified as the Downtown Sherman Streetscape Enhancement Project, meets the criteria for the TxDOT Transportation Enhancement Program and, if selected, would be eligible for 80% funding. The enhancements would not only beautify the heavily traveled corridors, but would also address pedestrian and traffic safety issues. Nomination forms are due December 11, 2009 and, if selected, work would not begin until 2011. David Baca Studios will make a presentation to describe the proposed project and present architectural renderings and schematic drawings.

#### **Origination**

Public Works Department and Grant Writer, Finance Department

#### **Financial Consideration**

Matching funds are required for 20% of the project. Project costs are estimated at \$485,000 (\$388,000 funded by TxDOT; and \$97,000 funded by the City).

#### **Staff Recommendation**

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

#### **Alternatives**

Those as may be recommended by the City Council

#### **Attachments**

Resolution No. 5438

Downtown Sherman Streetscape Enhancement Project - Exhibit

**Prepared by:**

**Jeff Miller, Public Works Director**

**Approved by:**

**George Olson, City Manager**

## **RESOLUTION NO. 5438**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CERTIFYING FUNDING AND SUPPORT FOR THE TEXAS TRANSPORTATION ENHANCEMENT PROGRAM NOMINATION FORM 2009 WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE APPLICATION TO RECEIVE FUNDING TO BUILD THE DOWNTOWN SHERMAN STREETScape ENHANCEMENT PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**WHEREAS**, the proposed Downtown Sherman Streetscape Enhancement Project would provide pedestrian and landscaping improvements along State Highway 56 (Houston and Lamar Streets) between U.S. Highway 75 and Montgomery Street; and

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

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

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

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

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

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

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

**PASSED AND APPROVED** on this the \_\_\_\_\_ day of December, 2009.

**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_  
**BILL MAGERS, MAYOR**

**ATTEST:**

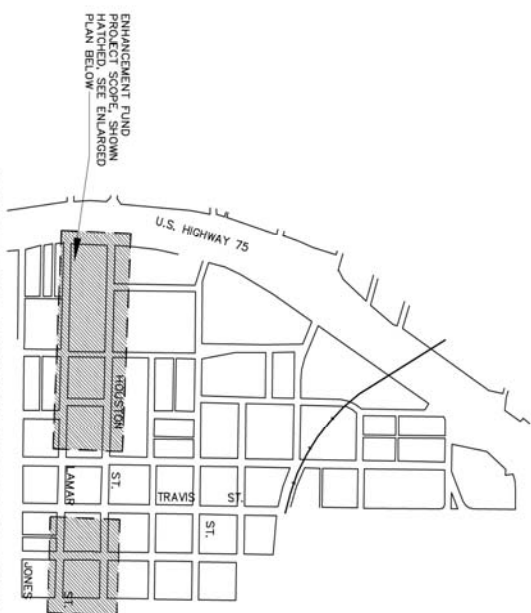
**BY:** \_\_\_\_\_  
**LINDA ASHBY, CITY CLERK**

**APPROVED AS TO FORM AND  
CONTENT:**

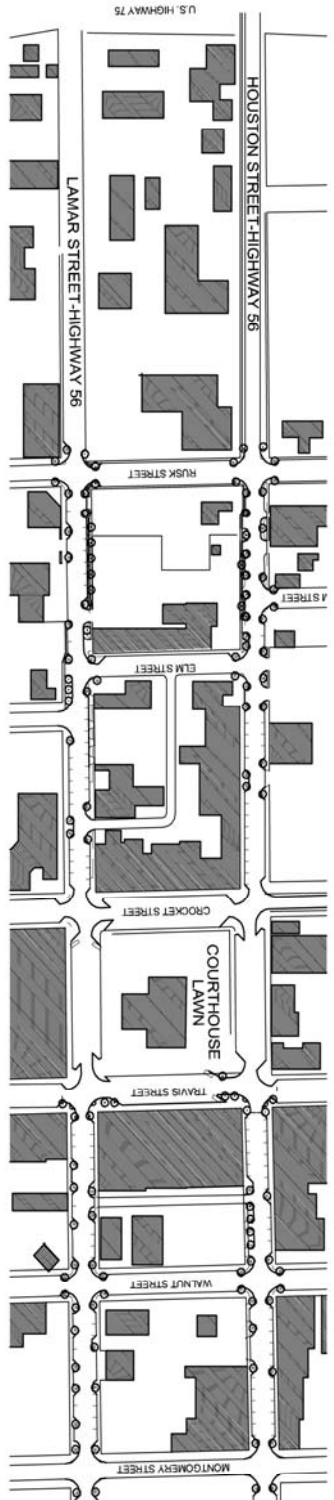
**BY:** \_\_\_\_\_  
**BRANDON S. SHELBY,  
CITY ATTORNEY**



### 3 CENTRAL BUSINESS DISTRICT SATELLITE PHOTO NO SCALE



### 1 CENTRAL BUSINESS DISTRICT RIGHT OF WAY MAP NO SCALE



### 2 ENLARGED STREET PLAN SCALE: 1" = 300'-0"

- GENERAL NOTES:
1. NEW PEDESTRIAN PLAZAS AND SHORTENED CROSSWALKS AT STREET INTERSECTIONS.
  2. NEW DRIVE ENTRANCES AS REQUIRED.
  3. LANDSCAPE ISLANDS AT ENDS OF PARKING ROWS.
  4. REGULAR PLANTING OF STREET TREES.
  5. GENERAL SIDEWALK REPAIR AND EXPANSION.

overall street plan

PROJECT NUMBER  
0000  
DATE  
12.01.09  
SHEET NUMBER  
S1.0

DESIGN  
DEVELOPMENT  
REVIEW  
CONSTRUCTION  
davidboca



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. C.2

**\* RESOLUTION NO. 5439**

**Authorizing the Submission of a Joint Grant Application with the City of Denison and Grayson County for and the Acceptance of Grants under the Annual Justice Assistance Grant (JAG) Program Distributed by the U.S. Department of Justice - CFDA #16.738**

**Issue**

Seeking approval to resubmit a joint grant application with the City of Denison and Grayson County for the annual Justice Assistance Grant (JAG) program

**Background**

This is a companion resolution to item C.3 on the December 7<sup>th</sup> agenda. Grayson County was excluded from the original submission in June 2009 due to timing issues. The Department of Justice has extended our application period in order to include all parties. The Sherman Police Department still plans to use its JAG funding as originally approved, to purchase a second Automated License Plate Recognition (ALPR) system. The new allocations are based on the same percentages used for the Recovery Act JAG awarded earlier in 2009: City of Sherman - \$15,921.00, City of Denison - \$10,024.00, and Grayson County - \$3,538.00. The total eligible joint allocation remains \$29,483.00.

**Origination**

Sherman Police Department and Finance Department

**Financial Consideration**

In general, the price of ALPR systems is currently lower than pricing at the time the grant application was originally submitted, so no additional funds should be required for the Sherman Police Department to complete the purchase.

**Staff Recommendation**

The staff recommends resubmitting the annual JAG application.

**Alternatives**

The Council could decline this grant opportunity.

**Attachments**

Resolution No. 5439

**Prepared by:**  
**Tom Watt, Police Chief**

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

## **RESOLUTION NO. 5439**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE SUBMISSION OF A JOINT GRANT APPLICATION WITH THE CITY OF DENISON AND GRAYSON COUNTY FOR AND THE ACCEPTANCE OF GRANTS UNDER THE ANNUAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM DISTRIBUTED BY THE U.S. DEPARTMENT OF JUSTICE - CFDA #16.738; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the U.S. Department of Justice is offering grants in support of a wide range of projects designed to reduce crime and improve the criminal and juvenile justice systems under the annual Justice Assistance Grant (JAG) Program - CFDA #16.738; and

**WHEREAS**, the City of Sherman desires to submit a joint grant application with the City of Denison and Grayson County under this program; and

**WHEREAS**, the City of Sherman understands that there is no matching requirement for grants awarded under the annual JAG Program; and

**WHEREAS**, the City of Sherman agrees that, in the event of loss or misuse of the JAG funds, the City of Sherman assures that the funds will be returned to the U.S. Department of Justice in full;

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

**SECTION 1.** That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to submit a joint application for and, once granted by the U. S. Department of Justice, to accept a Twenty-Nine Thousand Four Hundred Eighty-Three Dollars and No Cents (\$29,483.00) grant under the annual JAG Program, said joint allocation to be distributed for specific purposes in the following manner: Ten Thousand Twenty-Four Dollars and No Cents (\$10,024.00) to the City of Denison for its Law Enforcement - Safety and Security Supplies Program; Three Thousand Five Hundred Thirty-Eight Dollars and No Cents (\$3,538.00) to Grayson County for its - Law Enforcement Equipment Upgrade and Enhancement Program and Fifteen Thousand Nine Hundred Twenty-One Dollars and No Cents (\$15,921.00) to the City of Sherman to purchase a second Automated License Plate Recognition (ALPR) system for its Sherman Police Department.

**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:** \_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. C.3

**\* RESOLUTION NO. 5440**

**Authorizing Execution of an Interlocal Agreement between  
the City of Sherman, the City of Denison, and Grayson County for Grant Funding  
to be Awarded by the U.S. Department of Justice under the Annual Justice  
Assistance Grant (JAG) Program - CFDA #16.738**

**Issue**

Approving an Interlocal Agreement with the City of Denison and Grayson County for grant funding

**Background**

This is a companion resolution to item #C.2 on the December 7, 2009 agenda. Execution of an Interlocal Agreement with the City of Denison and Grayson County is one of the required components of the joint grant application to be submitted under the U.S. Department of Justice's annual Justice Assistance Grant (JAG) Program. The total grant award would be \$29,483.00 of which Denison's portion would be \$10,024.00 to be used for their Law Enforcement - Safety and Security Supplies Program; Grayson County's portion would be \$3,538.00 to be used for its Law Enforcement Equipment Upgrade and Enhancement Program; and Sherman's portion would be \$15,921.00 to be used to purchase an Automated License Plate Recognition (ALPR) system for the Sherman Police Department.

**Origination**

Sherman Police Department and Finance Department

**Financial Consideration**

Denison's and Grayson County's portions of the total grant award would be passed through to them.

**Staff Recommendation**

The staff recommends approval of this Interlocal Agreement.

**Attachments**

Resolution No. 5440

Interlocal Agreement between the City of Sherman, the City of Denison, and Grayson County

**Prepared by:**  
**Tom Watt, Police Chief**

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

**RESOLUTION NO. 5440**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN, THE CITY OF DENISON, AND GRAYSON COUNTY FOR GRANT FUNDING TO BE AWARDED BY THE U.S. DEPARTMENT OF JUSTICE UNDER THE ANNUAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM - CFDA #16.738; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That the City Manager be and is hereby authorized, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Interlocal Agreement with the City of Denison and Grayson County for award of a portion of a total Twenty-Nine Thousand Four Hundred Eight-Three Dollars and No Cents (\$29,483.00) annual Justice Assistance Grant, as set forth below and in accordance with the terms and provisions of the Interlocal Agreement attached hereto and incorporated herein for all purposes:

- An award to the City of Denison of Ten Thousand Twenty-Four Dollars and No Cents (\$10,024.00) to be expended specifically for the City of Denison's Law Enforcement - Safety and Security Supplies Program;
- An award to Grayson County of Three Thousand Five Hundred Thirty-Eight Dollars and No Cents (\$3,538.00) to be expended specifically for Grayson County's Law Enforcement Equipment Upgrade and Enhancement Program; and
- An award to the City of Sherman of Fifteen Thousand Nine Hundred Twenty-One Dollars and No Cents (\$15,921.00) to be used specifically to purchase an Automated License Plate Recognition (ALPR) System for the Sherman Police Department.

**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:** \_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

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

**INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF SHERMAN, TEXAS,  
THE CITY OF DENISON, TEXAS AND  
GRAYSON COUNTY, TEXAS**

**JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD – CFDA 16.738**

**THIS AGREEMENT** is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF SHERMAN, TEXAS**, acting by and through its governing body, the City Council, hereinafter referred to as “**SHERMAN**”, the **CITY OF DENISON, TEXAS**, acting by and through its governing body, the City Council, hereinafter referred to as “**DENISON**”, and the **COUNTY OF GRAYSON, TEXAS**, hereinafter referred to as “**GRAYSON**” of Grayson County, State of Texas;

**W I T N E S S E T H:**

**WHEREAS**, this Agreement is made under the authority of the Interlocal Cooperation Act, Sections 791.001-791.033, Texas Government Code; and

**WHEREAS**, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement; and

**WHEREAS**, SHERMAN agrees to provide DENISON Ten Thousand Twenty-Four Dollars and No Cents (\$10,024.00) from the annual Justice Assistance Grant (JAG) Program award for DENISON’S Law Enforcement - Safety and Security Supplies Program; and

**WHEREAS**, SHERMAN agrees to provide GRAYSON Three Thousand Five Hundred Thirty-Eight Dollars and No Cents (\$3,538.00) from the annual Justice Assistance Grant (JAG) Program award for GRAYSON’S Law Enforcement Equipment Upgrade and Enhancement Program; and

**WHEREAS**, SHERMAN, DENISON and GRAYSON believe it to be in their best interests to reallocate the JAG funds;

**NOW, THEREFORE,** SHERMAN, DENISON and GRAYSON agree as follows:

**Section 1.** SHERMAN agrees to pay DENISON a total of Ten Thousand Twenty-Four Dollars and No Cents (\$10,024.00) of annual JAG funds.

**Section 2.** DENISON agrees to use Ten Thousand Twenty-Four Dollars and No Cents (\$10,024.00) for the Law Enforcement - Safety and Security Supplies Program to be expended during the following three (3) years, for a total of four (4) grant period years.

**Section 3.** DENISON agrees that, in the event of loss or misuse of the JAG Program Award funds, as determined by SHERMAN, DENISON assures that the funds will be returned to SHERMAN in full for return to the U.S. Department of Justice.

**Section 4.** SHERMAN agrees to pay GRAYSON a total of Three Thousand Five Hundred Thirty-Eight Dollars and No Cents (\$3,538.00) of annual JAG funds.

**Section 5.** GRAYSON agrees to use Three Thousand Five Hundred Thirty-Eight Dollars and No Cents (\$3,538.00) for the Law Enforcement Equipment Upgrade and Enhancement Program to be expended during the following three (3) years, for a total of four (4) grant period years.

**Section 6.** GRAYSON agrees that, in the event of loss or misuse of the JAG Program Award funds, as determined by SHERMAN, GRAYSON assures that the funds will be returned to SHERMAN in full for return to the U.S. Department of Justice.

**Section 7.** Nothing in the performance of this Agreement shall impose any liability for claims against DENISON other than claims for which liability may be imposed by the Texas Tort Claims Act.

**Section 8.** Nothing in the performance of this Agreement shall impose any liability for claims against GRAYSON other than claims for which liability may be imposed by the Texas Tort Claims Act.

**Section 9.** Nothing in the performance of this Agreement shall impose any liability for claims against SHERMAN other than claims for which liability may be imposed by the Texas Tort Claims Act.

**Section 10.** Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

**Section 11.** The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

**Section 12.** By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

**Section 13.** This Agreement is authorized under and governed by the laws of the State of Texas. Venue for any action arising under this Agreement shall lie in state district court, Grayson County, Texas.

**Section 14.** If, by reason of Force Majeure as hereinafter defined, any party to this Agreement shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the particulars of such Force Majeure to the other parties within a reasonable time after the occurrence thereof. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and such party shall, in good faith, exercise its best efforts to remove and overcome such inability. The term "Force Majeure" as utilized in this Agreement shall mean and refer to Acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, or other natural disasters; arrest; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not necessarily within the control of the party claiming such inability.

**Section 15.** This Agreement is subject to all applicable federal, state and local laws, ordinances, rules and regulations, including but not limited to all provisions of SHERMAN'S Charter and Ordinances, as amended.

**Section 16.** The failure of any party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**Section 17.** It is expressly understood and agreed that, in the execution of this agreement, no party waives, nor shall hereby be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising during the exercise of governmental powers and functions.

**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_  
**George Olson, City Manager**

**ATTEST:**

**BY:** \_\_\_\_\_  
**Linda Ashby, City Clerk**

**APPROVED AS TO FORM:**

**BY:** \_\_\_\_\_  
**Brandon S. Shelby, City Attorney**

**CITY OF DENISON, TEXAS**

**BY:** \_\_\_\_\_  
**Larry Cruise, City Manager**

**ATTEST:**

**BY:** \_\_\_\_\_  
**Julie Lollar, City Clerk**

**APPROVED AS TO FORM:**

**BY:** \_\_\_\_\_  
**Tom Akins, City Attorney**

**COUNTY OF GRAYSON, TEXAS**

**BY:** \_\_\_\_\_  
**Drue Bynum, County Judge**

**ATTEST:**

**BY:** \_\_\_\_\_  
**Wilma Bush, Grayson County Clerk**

**APPROVED AS TO FORM:**

**BY:** \_\_\_\_\_  
**David Van Brunt Price,  
Attorney for Grayson County**



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. C.4

### **RESOLUTION NO. 5441**

#### **Authorizing Execution of an NCITE Mobile Detective Service Agreement with Iberon, LLC for the Installation of Smart Phone Applications for the Police Department**

#### **Issue**

To authorize a service agreement between Iberon, LLC (“NCITE”) and the Sherman Police Department (PD) for the installation of smart phone applications allowing authorized users to query local, state, and federal databases for investigative purposes via a smart phone

#### **Background**

This smart phone application allows authorized Police Department smart phone (currently Blackberry) users to query local, state, and federal databases for investigative purposes. Investigators will have access to these databases while in the field and away from their computers thereby expediting their investigations. All software and equipment, other than the smart phones, will be provided by Iberon. This application is called “Mobile Detective”.

The “Mobile Detective” application is being offered to the Sherman Police Department at effectively no charge as a part of Iberon’s business model, a model that would use the police department as a reference for future prospective clients.

Once the server for this application (Mobile Detective) is in place, the police department would then, under the same arrangement, start the process of field testing a second product for possible future use by the PD - an advanced electronic handheld citation device.

Even though these products and services are only being tested at this time, a service agreement is necessary because the Texas Department of Public Safety will not authorize the Mobile Detective application (the Iberon Server) to operate without the attached agreement being executed. Though both applications, the Mobile Detective and the handheld citation device, are separate items, they are related in that they would both utilize the same Iberon server. If the handheld citation device were to pass the field testing by the department, it would then be put on the Council's agenda for further consideration.

#### **Origination**

Police Department

#### **Financial Consideration**

Iberon agrees to provide fifteen (15) licenses for the cost of one dollar (\$1.00). Renewals and additional licenses are available for the cost of one dollar (\$1.00).

**Staff Recommendation**

It is recommended that the Council authorize the execution of this agreement.

**Alternatives**

To deny this agreement and the investigators continue accessing these databases from their offices and through the dispatchers

**Attachments**

Resolution No. 5441

NCITE Mobile Detective Service Agreement

**Prepared by:**  
**Tom Watt, Police Chief**

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

**RESOLUTION NO. 5441**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN NCITE MOBILE DETECTIVE SERVICE AGREEMENT WITH IBERON, LLC FOR THE INSTALLATION OF SMART PHONE APPLICATIONS FOR THE POLICE DEPARTMENT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That the City Manager or his designee 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 an NCITE Mobile Detective Service Agreement with Iberon, LLC for the installation of Smart Phone Applications for the Police Department, 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: \_\_\_\_\_**  
**BRANDON S. SHELBY,  
CITY ATTORNEY**

## **NCITE**

### **MOBILE DETECTIVE SERVICE AGREEMENT**

This MOBILE DETECTIVE SERVICE AGREEMENT ("Agreement") is entered into by and between Iberon, LLC, a Nevada limited liability corporation ("NCITE"), and the client as identified and with the address set forth on the signature page below ("Client"). This Agreement shall be effective as of the later date of execution by the parties hereto (the "Effective Date").

#### **RECITALS**

WHEREAS NCITE is the developer, owner, and copyright holder of Mobile Detective—a smart phone application that allows authorized government agencies and officials to query local, state, and federal databases for information on individuals and assets, including warrants, licenses and stolen property—as such application may be modified, enhanced, or supplemented from time to time, and which includes the application software, all copies and forms thereof, and any materials, information, documentation, or data that may be provided by NCITE to Client in connection with or related to the application (the "Application");

WHEREAS, operation of the Application is facilitated, in part, through a mini-server (NCITE Mini-Server); and

WHEREAS NCITE desires to provide to and grant to Client a non-exclusive right to use the Application and an NCITE Mini-Server subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. ***License to Use Application and NCITE Mini-Server.***

(a) Upon Client's payment of all fees and costs specified in this Agreement, NCITE hereby grants to Client, and Client hereby accepts, subject to the terms and conditions set forth in this Agreement, the following (collectively, the "NCITE License"):

- (i) fifteen (15) non-exclusive licenses to use the Application (each license separately referred to herein as an "Application License"); and
- (ii) a license to use an NCITE Mini-Server (the "Mini-Server License") solely for Client's operation of the Application.

(b) NCITE may grant to Client Application Licenses in addition to the Application Licenses granted in Section 1(a) subject to the terms and conditions set forth in this Agreement for consideration as described in Section 2(b) below.

(c) In connection with the Mini-Server License granted in Section 1(a)(ii), NCITE shall provide to Client (i) one (1) NCITE Mini-Server to be used by Client according to the terms of this Agreement and (ii) instructions for installation of the NCITE Mini-Server.

(d) The Application and NCITE Mini-Server are furnished to Client under this Agreement solely for use as specified hereunder. Specifically, no right is granted to Client to sell, reproduce, publish, license, distribute, disseminate, rent and/or lease any portion of, or allow any other party access to or use of the Application or the Mini-Server. Further, Client shall have no right to reverse engineer, decompile, disassemble, modify, translate, or make any attempt to discover the source code of the Application. The rights granted to Client herein are restricted to access or use by Client alone.

(e) NCITE shall retain all title in and to the NCITE Mini-Server provided to Client and the Application, installed or copied or in use on all physical media or on any other media including, without limitation, disks, CD-ROM, or similar storage devices.

## **2. Service Fees.**

(a) In consideration of the NCITE License, Client shall tender to NCITE within thirty (30) days of the Effective Date a single nonrefundable fee in the amount of one dollar (\$1).

(b) If Client wishes to obtain additional Application Licenses granting use of the Application in connection with additional smartphone devices or renew any of the initial Application Licenses granted in Section 1(a)(i), Client shall tender to NCITE consideration in the amount of one dollar (\$1) no later than (i) thirty (30) days from the date NCITE provides to Client the Application License in the case of additional Application Licenses or (ii) within thirty (30) days of the commencement of a renewed License Term in the case of renewal of an Application License.

## **3. Client's Use of the Application and NCITE Mini-Server.**

(a) Client hereby acknowledges and understands that, as of the Effective Date, the Application is solely compatible for use with Blackberry® smartphone devices. Client further acknowledges and understands that Client shall be solely responsible for providing, furnishing and maintaining compatible smartphone devices or any other equipment or technology required to operate the Application, other than as expressly set forth in this Agreement.

(b) Client shall be solely responsible for installation, operation and maintenance of the NCITE Mini-Server. Client shall further be solely responsible for installation of the Application on each smartphone device for which Client has obtained an Application License.

(c) Client shall be solely responsible for taking all steps and obtaining and furnishing to Client's employees or representatives all equipment necessary for attaining, maintaining and ensuring any and all connections to the Internet to facilitate use of the Application, including the payment of any fees or expenses relating thereto. NCITE shall have no responsibility to ensure Client acquires and maintains Internet connectivity with respect to this Agreement.

(d) Client shall be solely responsible for ensuring the confidentiality and security of any password associated with the Application, and shall bear all liability or loss resulting from unauthorized use of any Application password.

(e) Client shall be solely responsible for complying with any and all local, state and federal laws, rules, and regulations related to the access and distribution of information of the nature provided by or through the Application.

(f) Client shall not allow any other party or agency to access or use the Application or the NCITE Mini-Server or provide to any other party or agency information that is obtained from the Application, except as is necessary for Client to further its law enforcement purposes.

(g) Client acknowledges and understands, and shall instruct employees and representatives with access to the Application, that the Application shall not be used during the operation of a motor vehicle or any other potentially dangerous machinery, or while discharging a firearm or other weapon or electronic shock weapon (*i.e.*, a taser or stun gun).

(h) Each Application License granted herein shall only be authorized for use with one (1) smartphone device telephone number; provided, however, that Client may, on no more than three (3) occasions during a License Term, transfer an Application License to a different smartphone device telephone number in Client's control.

#### 4. **Term.**

(a) The initial term of this Agreement shall commence as of the Effective Date and shall continue for a period of three (3) years thereafter (the "Agreement Term"). Notwithstanding the foregoing, this Agreement shall be terminated in the event of (i) an earlier termination of all Application Licenses pursuant to Section 4(b) hereof; or (ii) termination in accordance with Section 5 hereof.

(b) Each Application License granted in connection with this Agreement shall continue for a period of one (1) year from the date of such grant (the "License Term"); provided, however, that a License Term shall not extend beyond the Agreement Term. Upon renewal of the License Term of an Application License, Client agrees to tender to NCITE consideration in the amount and as instructed in Section 2(b).

(c) The term of the Mini-Server License shall commence as of the Effective Date and shall continue during the term of this Agreement so long as Client continues to renew a minimum of one (1) Application License.

#### 5. **Termination.**

(a) This Agreement and the NCITE License granted hereunder may be terminated by either party if the other party is in material breach of any provision hereof and such breach is not cured within thirty (30) days after the non-breaching party gives written notice thereof to the

breaching party. The non-breaching party shall not unreasonably withhold approval of a longer cure period provided the breaching party promptly commences to cure the breach and continues to diligently pursue cure of the breach.

(b) NCITE may terminate this Agreement and the NCITE License immediately if Client fails to timely pay any of the fees described in Section 2.

6. ***Obligations of Client Upon Termination of this Agreement.*** Upon termination of this Agreement, the NCITE License granted hereunder shall terminate and Client shall immediately: (a) discontinue use of the Application and the NCITE Mini-Server; (b) deliver to NCITE any NCITE Mini-Server then in Client's possession or control and any copy(ies) of the Application (whether or not such copies were permitted under this Agreement); (c) remove the Application from any and all smartphone devices, computers, data storage devices, computer programs, or any other hardware or software in Client's possession or control that incorporates or uses the Application in whole or in part; and (d) certify in writing to NCITE not later than five (5) days after termination of this Agreement that the foregoing actions have been taken by Client. The expiration or termination of this Agreement shall not affect Sections 8, 9, 10, 11, 12 and 15.

7. ***"AS IS" Warranty.*** THE APPLICATION, NCITE MINI-SERVER AND INFORMATION PROVIDED IN CONNECTION THEREWITH ARE PROVIDED BY NCITE TO CLIENT "AS IS" AND "AS AVAILABLE" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND. NCITE DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH RESPECT TO THE APPLICATION, THE NCITE MINI-SERVER OR THE INFORMATION PROVIDED IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

8. ***Limitation on Liability.*** IN NO EVENT SHALL NCITE BE LIABLE TO CLIENT FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, LOSS OF REVENUE OR LOSS OF USE ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSE GRANTED HEREUNDER, THE PERFORMANCE OR BREACH THEREOF, THE PERFORMANCE OR FAILURE OF THE APPLICATION OR THE NCITE MINI-SERVER, OR THE INFORMATION PROVIDED IN CONNECTION WITH THE APPLICATION, OR ANY CLAIM MADE AGAINST NCITE BY ANY OTHER PARTY, EVEN IF NCITE HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH CLAIM.

9. ***Copyright.***

(a) Client shall promptly notify NCITE of any known or suspected infringement of or challenge to NCITE's rights in and to the Application, as well as any patent, copyright or other intellectual property associated with the Application (collectively, the "Intellectual Property Rights").

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Client acknowledges that NCITE shall have the sole right to direct and control any administrative proceeding or litigation involving the Intellectual Property Rights, including any settlement thereof. NCITE shall also have the sole right, but not the obligation, to take action against uses by others that may constitute infringement of the Intellectual Property Rights.

(i) If Client has used the Application in accordance with this Agreement, NCITE will defend Client at NCITE's expense against any third party claim, suit, or demand involving the Intellectual Property Rights arising out of Client's use thereof. If Client has not used the Application in accordance with this Agreement, NCITE will defend Client, at Client's expense, against such third party claims, suits, or demands.

(ii) If NCITE undertakes the defense or prosecution of any litigation relating to the Intellectual Property Rights, Client shall execute any and all documents and do such acts and things as may, in the opinion of counsel for NCITE, be necessary to carry out such defense or prosecution, including, but not limited to, becoming a nominal party to any legal action if Client is not already a party to such action. Except to the extent that such litigation is the result of Client's use of the Application in a manner inconsistent with the terms of this Agreement, NCITE agrees to reimburse Client for its out of pocket costs in doing such acts and things, except that Client shall bear the salary costs of its employees, and NCITE shall bear the costs of any judgment or settlement. To the extent such claim or litigation is the result of Client's use of the Application in a manner inconsistent with the terms of this Agreement, Client shall reimburse NCITE for NCITE's costs in defending such litigation, except that NCITE shall bear the salary costs of its employees, and Client shall bear the costs of any judgment or settlement. NCITE shall have the right, in its sole discretion and without payment to Client, to: (a) defend and/or settle any such claim; (b) procure for Client the right to continue using the Application or part thereof; (c) modify the Application so that it is non-infringing; and/or (d) terminate this Agreement and the license granted hereunder.

(iii) **THIS SECTION 9(a) AND ITS SUBPARTS STATE THE EXCLUSIVE REMEDY OF CLIENT WITH RESPECT TO ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR TRADE SECRET MISAPPROPRIATION.**

(b) Client shall not alter or delete any copyright and/or trademark notices or any other proprietary legends or indicia as may be specified by NCITE for the Application or included therein.

**10. Confidentiality; Proprietary Information; Remedy for Breach.**

(a) Client acknowledges that the Application contains NCITE's trade secrets and proprietary data. Accordingly, Client covenants and agrees: (a) to ensure that the Application is not disclosed, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Agreement; (b) not to copy, reverse engineer, disassemble, decompile, bypass, or decrypt the Application or any portion thereof; (c) to restrict access to the Application to only those employees of Client authorized to use the Application; (d) not to sublicense, rent or lease the Application or any portion thereof; (e) not to permit any person or entity to take any action prohibited under the foregoing (a), (b), (c), and (d).

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(b) At NCITE's request, Client shall obtain and furnish to NCITE executed covenants similar in substance to those set forth in Section 10(a), from all employees and/or officers of Client with access to the Application. All such covenants shall be in a form approved by NCITE and shall include NCITE as a party with an independent right to enforce the covenants.

(c) Any and all intellectual property or proprietary rights, including but not limited to any copyrights, moral rights, trademarks, service marks, trade names (including without limitation logos and slogans), patent rights, know-how, inventions, rights of priority, and trade secret rights in the Application, and any derivative, output, modification or alteration thereto, including, but not limited to, software, programs, source code and object code, specifications, documents, abstracts and summaries thereof are and shall belong exclusively to NCITE.

(d) Client acknowledges that failure to comply with the requirements of this Agreement will result in irreparable injury to NCITE for which no adequate remedy at law may be available. Therefore, in the event of a breach or threatened breach by Client of this Agreement, Client agrees to be enjoined from engaging in any activity prohibited by this Agreement by injunction issued by a court of competent jurisdiction. Nothing herein shall be construed as prohibiting NCITE from pursuing any other remedies available to it for such breach or threatened breach of this Agreement, including the recovery of damages.

**11. *Indemnification by Client.* CLIENT AGREES TO RELEASE, INDEMNIFY, DEFEND, REIMBURSE AND HOLD HARMLESS NCITE AND ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "NCITE INDEMNITEES") HARMLESS FROM AND AGAINST ANY LOSS, CLAIM, DEMAND, CAUSE OF ACTION, DEBT, LIABILITY, COST AND EXPENSE (INCLUDING, BUT NOT LIMITED TO, ALL COSTS OF DEFENSE, SETTLEMENT AND REASONABLE ATTORNEY'S FEES), AND JUDGMENTS OF ANY KIND OR CHARACTER (INCLUDING THOSE ARISING FROM, RELATED TO OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE SOLE, JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE OF NCITE OR ANY OTHER NCITE INDEMNITEE) ARISING OUT OF OR RELATED TO (i) CLIENT'S OR ITS EMPLOYEES', REPRESENTATIVES', OR AGENTS' USE OF OR INABILITY TO USE THE APPLICATION, NCITE MINI-SERVER, OR INFORMATION PROVIDED IN CONNECTION WITH THE APPLICATION, OR NEGLIGENCE OR WILLFUL MISCONDUCT OR BREACH OF ANY REPRESENTATION, WARRANTY OR CONTRACTUAL OBLIGATION HEREUNDER; OR (ii) INFORMATION TRANSMITTED, PROVIDED OR FURNISHED BY OR THROUGH THE APPLICATION.**

**IN THE EVENT NCITE INCURS COSTS OR EXPENSES IN CONNECTION WITH THE DEFENSE OF ANY CLAIM, DEMAND, OR CAUSE OF ACTION (INCLUDING COSTS OR EXPENSES INCURRED FOR ANY APPEAL THEREFORE), CLIENT AGREES TO PAY SUCH COSTS OR EXPENSES AS THEY ARE INCURRED AND IN ADVANCE OF THE FINAL DISPOSITION OF ANY ACTION OR SUIT WITHIN 30 CALENDAR DAYS OF SUBMISSION OF BILLS OR VOUCHERS FOR THE COSTS OR EXPENSES.**

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12. **Assignment.** Client shall not sublicense, transfer, sell, donate, rent, lease, loan, convey, translate, convert to another programming language, encumber, distribute, or otherwise assign this Agreement, the NCITE License granted hereunder, the Application, or any interest therein, without the express prior written consent of NCITE. This Agreement may be assigned by NCITE; however, NCITE must provide Client with (30) days notice of such assignment.

13. **Modifications and Interruptions of Service.** CLIENT HEREBY ACKNOWLEDGES AND UNDERSTANDS THAT NCITE DOES NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO INFORMATION PROVIDED BY OR THROUGH THE APPLICATION AND THAT NCITE RESERVES THE RIGHT TO MODIFY OR DISCONTINUE SERVICES PROVIDED IN CONNECTION WITH THE APPLICATION AT ANY TIME WITH OUR WITHOUT NOTICE TO CLIENT. NCITE SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY IN THE EVENT NCITE EXERCISES ITS RIGHT TO MODIFY OR DISCONTINUE SERVICES PROVIDED IN CONNECTION WITH THE APPLICATION.

14. **Disclaimer Regarding Accuracy of Information.** THE INFORMATION PROVIDED BY OR THROUGH THE APPLICATION HAS BEEN COLLECTED FROM THE STATE OF TEXAS, THE UNITED STATES GOVERNMENT, OR THROUGH OTHER PUBLICLY AVAILABLE SOURCES. ALTHOUGH NCITE MAKES AN EFFORT TO ENSURE THE ACCURACY OF INFORMATION PROVIDED BY THE APPLICATION, NCITE MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION PROVIDED BY OR THROUGH THE APPLICATION. WITH THIS UNDERSTANDING, CLIENT ACKNOWLEDGES THAT ANY INFORMATION PROVIDED BY OR THROUGH THE APPLICATION SHOULD BE VERIFIED USING LOCAL, STATE, OR FEDERAL PROTOCOLS, AS APPLICABLE.

15. **General Provisions.**

(a) **Compliance with All Laws; Partial Invalidity.** Each party hereto agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect. If any term or provision of this Agreement shall be found to be illegal, unenforceable or invalid, then such term or provision shall be severed from the remaining terms and provisions of this Agreement, which shall continue to be valid and enforceable to the fullest extent permitted by law.

(b) **Amendments.** No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of both parties.

(c) **Waiver.** No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, any breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach of any term or provision.

(d) Authority. Each party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each has been properly authorized and empowered to enter into this Agreement.

(e) Notice. All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given: (i) if personally delivered, when so delivered; (ii) if mailed, three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below; (iii) if given by telex or telecopier, once such notice or other communication is transmitted to the telex or telecopier number specified below and the appropriate answer back or telephonic confirmation is received, provided that such notice or other communication is promptly thereafter mailed in accordance with the provisions of clause (ii) above; or (iv) if sent through a reputable overnight delivery service in circumstances to which such service guarantees next day delivery, the day following being so sent:

Notices to NCITE:

NCITE, Ltd.  
P.O. Box 782449  
San Antonio, Texas 78278  
Facsimile: (866) 419-5996  
Attention: Jeremy Mattern

Notices to Client shall be made to the address set forth on the signature page below.

Either party may give any notice, request, demand, claim or other communication hereunder using any other means (including ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it is actually received by the individual for whom it is intended. Either party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other party notice in the manner set forth herein.

(f) Governing Law and Forum. Except with regard to the Mandatory Arbitration provisions set forth in Section 15(g), the laws of the state of Texas shall apply to any claim or controversy regarding the making, entering into, performance, or interpretation of this Agreement, without giving effect to any conflict-of-law rules of such jurisdiction.

(g) Mandatory Arbitration. **ALL DISPUTES PERTAINING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO DISPUTES CONCERNING THE ENFORCEABILITY OF THIS SECTION ON MANDATORY ARBITRATION, SHALL BE RESOLVED EXCLUSIVELY BY BINDING MANDATORY ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN HOUSTON, TEXAS. ONE ARBITRATOR SHALL BE USED AND THE AAA RULES GOVERNING COMMERCIAL DISPUTES SHALL APPLY. THE ARBITRATOR'S FEE SHALL BE BORNE EQUALLY BY THE PARTIES. EXCEPT AS OTHERWISE PROVIDED BY THE TERMS OF THIS**

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AGREEMENT, THE PARTIES HEREBY AGREE THAT THE ARBITRATOR MAY MAKE ANY AWARD OR AWARDS OR ENTER SUCH ORDERS AS MAY BE DEEMED APPROPRIATE BY THE ARBITRATOR, INCLUDING COSTS AND EXPENSES OF THE PARTIES IN THE PROCEEDING, BUT SHALL HAVE NO AUTHORITY TO AWARD PUNITIVE OR EXEMPLARY DAMAGES. JUDGMENT ON THE ARBITRATOR'S AWARD MAY BE ENTERED IN ANY COURT OF PROPER JURISDICTION. NOTHING CONTAINED IN THIS SECTION SHALL PREVENT EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF FROM A COURT WITHIN THE STATE OF TEXAS IN A SITUATION IN WHICH AN IMMEDIATE DANGER OF IRREPARABLE HARM EXISTS. ANY ACTION FOR INJUNCTIVE RELIEF FILED IN CONNECTION WITH THIS AGREEMENT SHALL BE FILED EXCLUSIVELY IN THE DISTRICT COURTS OF HARRIS COUNTY, TEXAS OR IN THE FEDERAL COURTS FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION. THIS SECTION ON MANDATORY ARBITRATION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT, WITHOUT REGARD TO THE REASON FOR SUCH TERMINATION.

(h) Entire Agreement. This Agreement constitutes the entire, full, and complete Agreement between NCITE and Client concerning the subject matter hereof, and supersedes all prior agreements, no other representations having induced Client to execute this Agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date first written above.

**NCITE:**

Iberon, LLC, a Nevada limited liability corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CLIENT:**

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Client Address:

\_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. C.5

**\* RESOLUTION NO. 5442**

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

**Issue**

To consider a contract for professional engineering services with Timothy L. Morris, P.E. d/b/a Morris Engineers for design of the Brents Street Sewer Replacement Project along an alley west of Brents Street from College Street to Richards Street

**Background**

The current Capital Improvement Program contains the Brents Street Sewer Replacement Project. Engineering services are required to design the project in a timely manner.

**Origination**

Utilities and Engineering, Department 119

**Financial Consideration**

The fee for engineering services will be \$6,000.00. Surveying services will be provided by Underwood Drafting & Surveying, Inc. at a cost of a \$2,500.00. Funds are available in the budget for this project.

**Staff Recommendation**

It is recommended that the contract for professional engineering services with Morris Engineers to design the Brents Street Sewer Replacement Project (alley west of Brents Street) between College Street and Richards Street be approved. Surveying services will be provided by Underwood Drafting & Surveying, Inc. at a cost of \$2,500.00.

**Alternatives**

As may be directed by the City Council

**Attachments**

Resolution No. 5442  
Contract for Professional Services  
Underwood Proposal  
Location Map

**Prepared by:**  
**Mark Gibson, Director of Utilities & Engineering**

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

**RESOLUTION NO. 5442**

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

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

**SECTION 1.** That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a Professional Services Agreement with Timothy L. Morris, P.E. d/b/a Morris Engineers for the design of the Brents Street Sewer Replacement Project from College Street to Richards Street, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

**PASSED AND APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF SHERMAN, TEXAS**

**BY: \_\_\_\_\_**  
**BILL MAGERS, MAYOR**

**ATTEST:**

**BY: \_\_\_\_\_**  
**LINDA ASHBY, CITY CLERK**

**APPROVED AS TO FORM AND CONTENT:**

**BY: \_\_\_\_\_**  
**BRANDON SHELBY,**  
**CITY ATTORNEY**

# MORRIS ENGINEERS

November 17, 2009

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

**RE: Engineering Services  
Bretns Street Sewer Replacement**

Dear Mark,

We will be pleased to provide engineering services for a sewer in the alley between Bretns Street and Ross Street. The sewer will be approximately 775 feet long. I am estimating that the construction will cost about \$45,000.00. I am proposing a lump sum engineering service fee of \$6,000.00.

For this project we will perform the following services.

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

Enclosed are two (2) copies of Agreement for Professional Services. If this agreement is acceptable to you please return one signed agreement. I appreciate the opportunity to submit this proposal.

Sincerely,



Timothy L. Morris, P.E.

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

# MORRIS ENGINEERS

## AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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

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

### SECTION 1 – BASIC SERVICES OF ENGINEER

#### 1.1. General

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

#### 1.2. Preparatory Phase

ENGINEER shall:

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

#### 1.3. Preliminary Design Phase

ENGINEER shall:

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

**1.4. Final Design Phase**

ENGINEER shall:

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

**1.5. Bidding or Negotiating Phase**

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

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

**1.6. Construction Phase**

During the Construction Phase:

- 1.6.1. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided by the Construction Contract. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Construction Contract shall not be modified except as ENGINEER may agree in writing. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided by the Contract Documents.

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

of any lien, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

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

## **SECTION 2 – ADDITIONAL SERVICES OF ENGINEER**

### **2.1. General**

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

- 2.1.1. Preparation of applications and supporting documents for governmental grants, loans, or permits in connection with the Project; preparations or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- 2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 2.1.3. Services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER's control.
- 2.1.4. Providing renderings or models for OWNER's use.

- 2.1.5. Preparing documents for alternate bids requested by OWNER for work which is not executed or documents for out-of-sequence work.
- 2.1.6. Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of the design, the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and assistance in obtaining financing for the Project; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 2.1.7. Furnishing the services of independent consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, and providing data or services of the types described in Paragraph 3.3.
- 2.1.8. Assistance in connection with bid protests, re-bidding or renegotiating contracts for construction, materials, equipment or services.
- 2.1.9. Services in connection with Change Orders and Work Change Directives to reflect changes requested by OWNER if the compensation for Basic Services is not commensurate with the additional services rendered; services in making revisions to Drawings and Specifications caused by acceptance of substitutions proposed by Contractor, and services resulting from significant delays, changes, or price increases occurring as a direct result of the Project.
- 2.1.10. Services during out-of-town travel required of ENGINEER other than visits to the Project site as required by Section 1.
- 2.1.11. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.
- 2.1.12. Preparation of operating, maintenance, and staffing manuals; extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance.
- 2.1.13. Service after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.
- 2.1.14. Serving as a consultant or witness for OWNER in any litigation, arbitration, mediation, public hearing or other legal or administrative proceeding involving the Project.
- 2.1.15. Additional service in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.

MORRIS ENGINEERS

**2.2. Resident Services During Construction**

- 2.2.1. A Resident Project Representative and assistants will be furnished by OWNER, who will act as directed by ENGINEER in order to provide further protection against defects and deficiencies in the work. OWNER and ENGINEER will cooperate to provide mutual assistance for the accomplishment of ENGINEER's responsibilities and those of the Resident Project Representative. OWNER and ENGINEER shall each be responsible for their own acts or omissions and neither may be held responsible for the acts or omissions of the other.

**SECTION 3 – OWNER'S RESPONSIBILITIES**

OWNER shall:

- 3.1. Provide full information as to his requirements for the Project.
- 3.2. Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design and construction of the Project.
- 3.3. Surveying Services. OWNER will provide, at OWNER's direct expense, surveying and mapping services necessary for the design of the project and acquisition of easements.
- 3.4. Furnish to ENGINEER, as required by him for performance of his Basic Services, data prepared by or services of others, such as core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; environmental assessment and impact statements; appropriate professional interpretations of all of the foregoing, property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions, zoning, deed, and other land use, restriction; and other special data or consultations not covered in Paragraph 2; all of which ENGINEER may rely upon in performing his services.
- 3.5. Provide, as required by the Construction Contract, engineering surveys and staking to enable Contractor(s) to proceed with the layout of the work.
- 3.6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 3.7. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as he deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.8. Pay all costs incident to obtaining bids or proposals from contractors.
- 3.9. Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, and such auditing service as OWNER may

require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract.

- 3.10. Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement. Such person shall have authority to transmit instructions, receive information, and interpret OWNER's policies and decisions with respect to ENGINEER's services.
- 3.11. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the Project.
- 3.12. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.13. Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.14. Bear all costs incident to compliance with the requirements of this Section 3.

#### **SECTION 4 – PERIOD OF SERVICE**

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

- 4.5. After acceptance by OWNER of the Contract Documents and ENGINEER's most recent opinion of typical Project Cost and upon authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with Contractor(s).
- 4.6. The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon the written recommendation by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involved more than one prime contract.
- 4.7. In the event that the work of the Project is to be performed under more than one prime contract, OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts.
- 4.8. If OWNER has requested significant modifications or changes in the scope of the Project, the time of performance of ENGINEER's services shall be adjusted appropriately.
- 4.9. If OWNER fails to give prompt authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days after the completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.
- 4.10. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in Paragraph 5.3.3. for the services delayed or suspended. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render services more than one year after Substantial Completion, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

## **SECTION 5 – PAYMENTS TO ENGINEER**

### **5.1. Methods of Payment for Services and Expenses of ENGINEER**

- 5.1.1. Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 on the following basis:
- 5.1.1.1. Lump Sum. If the work of the entire Project is awarded on the basis of one prime contract, a lump sum fee of Six Thousand and 00/100 Dollars (\$6,000.00).

- 5.1.2. Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:
- 5.1.2.1. General. For Additional Services rendered under Paragraphs 2.1.1. through 2.1.16., inclusive (except services covered by Paragraph 2.1.7. and services as a consultant or witness under Paragraph 2.1.15), on the basis of the fee schedule listed in Paragraph 7.1.
- 5.1.2.2. Special Consultants. For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to Paragraph 2.1.7., the amount billed to ENGINEER therefore times a factor of 1.05.
- 5.1.2.3. Serving as a Witness. For the services of the principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with Paragraph 2.1.15, at the rate of 1.2 times the fees listed in Paragraph 7.1. (but compensation for time spent in preparing to appear in any such litigation, hearing or proceeding will be on the basis provided in Paragraph 5.1.2.1.).
- 5.1.2.4. Resident Project Services. A Resident Project Representative will be furnished under Paragraph 2.2.1. by and at the expense of the OWNER.
- 5.1.3. Reimbursable Expenses. In addition to payments provided for in Paragraphs 5.1.1. and 5.1.2., OWNER shall pay ENGINEER the actual costs of all reimbursable expenses incurred in connection with all Basic and Additional Services.
- 5.1.4. As used in this Paragraph 5.1., the term "reimbursable expenses" will have the meanings assigned in Paragraph 5.3.1.
- 5.2. **Times of Payment**
- 5.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for reimbursement expenses incurred. When compensation is on the basis of a lump sum or percentage of construction cost the periodic statements will be based upon ENGINEER's hourly fee schedule. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.
- 5.2.2. The OWNER shall, upon conclusion of each phase of Basic Services, pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following of total compensation for all phases of Basic Services:

| <u>Phase</u>                 | <u>Fee</u>  |
|------------------------------|-------------|
| Preliminary and Final Design | \$ 4,500.00 |
| Bidding and Construction     | \$ 1,500.00 |
| Total                        | \$ 6,000.00 |

- 5.3. **General**
- 5.3.1. Reimbursable expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto;

MORRIS ENGINEERS

obtaining bids or proposals from Contractor(s); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings and Specifications, and similar Project-related items in addition to those required under Section 1; insurance in addition to that identified by Section 7.3; and, if authorized in advance by OWNER, overtime requiring higher than regular rates.

- 5.3.2. If OWNER fails to make any payment due ENGINEER for services and expenses within sixty days after receipt of ENGINEER's bill therefore, the amounts due ENGINEER shall include a charge at the rate of 1% per month from said sixtieth day, and in addition ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.
- 5.3.3. If this Agreement is terminated by OWNER, upon the completion of any phase of the Basic Services, payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. If this Agreement is terminated by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis ENGINEER's hourly fee schedule times a factor of 1.25 for services rendered during that phase to date of termination by principals and employees assigned to the Project. In the event of any termination, ENGINEER will be paid for all unpaid Additional Services and unpaid reimbursable expenses, plus all termination expenses. Termination expenses mean reimbursable expenses directly attributable to termination.

## **SECTION 6 – GENERAL CONSIDERATIONS**

### **6.1. Termination**

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

### **6.2. Reuse of Documents.**

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

### **6.3. Estimates of Cost.**

Since ENGINEER has no control over the cost of labor, materials or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable project cost, construction cost, or typical costs

provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but ENGINEER can not and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of cost prepared by him. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to the construction cost he shall employ an independent cost estimator as provided in Paragraph 3.8.

**6.4. Successors and Assigns.**

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

**6.5. Fiduciary Responsibility**

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

**SECTION 7 – SPECIAL PROVISIONS**

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

**7.1 Hourly Fee Schedule**

The hourly fee schedule primary project personnel are:

Engineering Services Payroll Costs:

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

**7.2. Resident Project Representative.**

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

7.3.

**ENGINEER's Insurance.**

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

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

Automobile Liability:

Bodily Injury:

Each Person.....\$ 50,000.00  
Each Accident ..... \$100,000.00

Property Damage:

Each Accident .....\$ 50,000.00

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

OWNER:

City of Sherman  
P.O. Box 1106  
220 W. Mulberry  
Sherman, Texas 75091-1106  
(903) 892-7210

By: \_\_\_\_\_

Title: \_\_\_\_\_

ENGINEER:

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

By:  11.17.09

Title: Professional Engineer

MASTER 06/09  
MORRIS ENGINEERS

MORRIS ENGINEERS



November 17, 2009

Mr. Tim Morris  
Morris Engineers  
225 E. Houston St.  
Sherman, TX 75090

Via Fax No.: (903) 868-1409

Re: Project Proposals

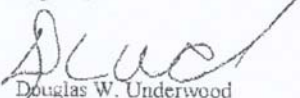
Dear Tim:

We can provide topographic surveys for the following projects for the prices listed:

|                                      |                    |
|--------------------------------------|--------------------|
| Pelton Street Water Line Replacement | \$ 4,200.00        |
| Brents Street Sewer Replacement      | <u>\$ 2,500.00</u> |
| <b>Grand Total:</b>                  | <b>\$ 6,700.00</b> |

If you have any questions or concerns, please contact me at (903) 465-2151.

Regards,

  
Douglas W. Underwood  
Registered Professional  
Land Surveyor, No. 4709



City of Sherman, Texas  
**BRENTS STREET SEWER REPLACEMENT**  
(College St to Richards St)

**PROJECT LOCATION MAP**





# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. C.6

**\* RESOLUTION NO. 5443**

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

**Issue**

To consider a contract for professional engineering services with Timothy L. Morris, P.E. d/b/a Morris Engineers for design of the Pelton Street Water Main Replacement Project between Travis Street and Ricketts Street

**Background**

The current Capital Improvement Program contains the Pelton Street Water Main Replacement Project. Engineering services are required to design the project in a timely manner.

**Origination**

Utilities and Engineering, Department 119

**Financial Consideration**

The fee for engineering services will be \$15,500.00. Surveying services will be provided by Underwood Drafting & Surveying, Inc. at a cost of \$4,200.00. Funds are available in the current budget for this project.

**Staff Recommendation**

It is recommended that the contract for professional engineering services with Morris Engineers, to design the Pelton Street Water Main Replacement Project between Travis Street and Ricketts Street be approved. Surveying services will be provided by Underwood Drafting and Surveying, Inc. at a cost of \$4,200.00.

**Alternatives**

As may be directed by the City Council

**Attachments**

Resolution No. 5443  
Contract for Professional Services  
Underwood Proposal  
Location Map

**Prepared by:**  
**Mark Gibson, Director of Utilities & Engineering**

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

**RESOLUTION NO. 5443**

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

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

**SECTION 1.** That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a Professional Services Agreement with Timothy L. Morris, P.E. d/b/a Morris Engineers for design of the Pelton Street Water Main Replacement Project along Pelton Street between Travis Street to Ricketts Street, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

**PASSED AND APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF SHERMAN, TEXAS**

**BY: \_\_\_\_\_**  
**BILL MAGERS, MAYOR**

**ATTEST:**

**BY: \_\_\_\_\_**  
**LINDA ASHBY, CITY CLERK**

**APPROVED AS TO FORM AND CONTENT:**

**BY: \_\_\_\_\_**  
**BRANDON SHELBY,**  
**CITY ATTORNEY**

# MORRIS ENGINEERS

November 17, 2009

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

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

Dear Mark,

We will be pleased to provide engineering services for a waterline along Pelton Street from Ricketts to Travis. The water pipeline will be approximately 2,500 feet long. I am estimating that the construction will cost about \$170,000. I am proposing a lump sum engineering service fee of \$15,500.00.

For this project we will perform the following services.

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

Enclosed are two (2) copies of Agreement for Professional Services. If this agreement is acceptable to you please return one signed agreement. I appreciate the opportunity to submit this proposal.

Sincerely,



Timothy L. Morris, P.E.

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

# MORRIS ENGINEERS

## AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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

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

### SECTION 1 – BASIC SERVICES OF ENGINEER

#### 1.1. General

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

#### 1.2. Preparatory Phase

ENGINEER shall:

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

#### 1.3. Preliminary Design Phase

ENGINEER shall:

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

**1.4. Final Design Phase**

ENGINEER shall:

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

**1.5. Bidding or Negotiating Phase**

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

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

**1.6. Construction Phase**

During the Construction Phase:

- 1.6.1. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided by the Construction Contract. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Construction Contract shall not be modified except as ENGINEER may agree in writing. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided by the Contract Documents.

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

of any lien, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

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

## **SECTION 2 – ADDITIONAL SERVICES OF ENGINEER**

### **2.1. General**

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

- 2.1.1. Preparation of applications and supporting documents for governmental grants, loans, or permits in connection with the Project; preparations or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- 2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 2.1.3. Services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER's control.
- 2.1.4. Providing renderings or models for OWNER's use.

- 2.1.5. Preparing documents for alternate bids requested by OWNER for work which is not executed or documents for out-of-sequence work.
- 2.1.6. Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of the design, the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and assistance in obtaining financing for the Project; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 2.1.7. Furnishing the services of independent consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, and providing data or services of the types described in Paragraph 3.3.
- 2.1.8. Assistance in connection with bid protests, re-bidding or renegotiating contracts for construction, materials, equipment or services.
- 2.1.9. Services in connection with Change Orders and Work Change Directives to reflect changes requested by OWNER if the compensation for Basic Services is not commensurate with the additional services rendered; services in making revisions to Drawings and Specifications caused by acceptance of substitutions proposed by Contractor; and services resulting from significant delays, changes, or price increases occurring as a direct result of the Project.
- 2.1.10. Services during out-of-town travel required of ENGINEER other than visits to the Project site as required by Section 1.
- 2.1.11. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.
- 2.1.12. Preparation of operating, maintenance, and staffing manuals; extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance.
- 2.1.13. Service after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.
- 2.1.14. Serving as a consultant or witness for OWNER in any litigation, arbitration, mediation, public hearing or other legal or administrative proceeding involving the Project.
- 2.1.15. Additional service in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.

**2.2. Resident Services During Construction**

- 2.2.1. A Resident Project Representative and assistants will be furnished by OWNER who will act as directed by ENGINEER in order to provide further protection against defects and deficiencies in the work. OWNER and ENGINEER will cooperate to provide mutual assistance for the accomplishment of ENGINEER's responsibilities and those of the Resident Project Representative. OWNER and ENGINEER shall each be responsible for their own acts or omissions and neither may be held responsible for the acts or omissions of the other.

**SECTION 3 – OWNER'S RESPONSIBILITIES**

OWNER shall:

- 3.1. Provide full information as to his requirements for the Project.
- 3.2. Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design and construction of the Project.
- 3.3. Surveying Services. OWNER will provide, at OWNER's direct expense, surveying and mapping services necessary for the design of the project and acquisition of easements.
- 3.4. Furnish to ENGINEER, as required by him for performance of his Basic Services, data prepared by or services of others, such as core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; environmental assessment and impact statements; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions, zoning, deed, and other land use; restriction; and other special data or consultations not covered in Paragraph 2; all of which ENGINEER may rely upon in performing his services.
- 3.5. Provide, as required by the Construction Contract, engineering surveys and staking to enable Contractor(s) to proceed with the layout of the work.
- 3.6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 3.7. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as he deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.8. Pay all costs incident to obtaining bids or proposals from contractors.
- 3.9. Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, and such auditing service as OWNER may

require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract.

- 3.10. Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement. Such person shall have authority to transmit instructions, receive information, and interpret OWNER's policies and decisions with respect to ENGINEER's services.
- 3.11. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the Project.
- 3.12. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.13. Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.14. Bear all costs incident to compliance with the requirements of this Section 3.

#### **SECTION 4 – PERIOD OF SERVICE**

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

- 4.5. After acceptance by OWNER of the Contract Documents and ENGINEER's most recent opinion of typical Project Cost and upon authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with Contractor(s).
- 4.6. The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon the written recommendation by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involved more than one prime contract.
- 4.7. In the event that the work of the Project is to be performed under more than one prime contract, OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts.
- 4.8. If OWNER has requested significant modifications or changes in the scope of the Project, the time of performance of ENGINEER's services shall be adjusted appropriately.
- 4.9. If OWNER fails to give prompt authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days after the completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.
- 4.10. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in Paragraph 5.3.3. for the services delayed or suspended. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render services more than one year after Substantial Completion, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

## **SECTION 5 – PAYMENTS TO ENGINEER**

### **5.1. Methods of Payment for Services and Expenses of ENGINEER**

- 5.1.1. Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 on the following basis:
- 5.1.1.1. Lump Sum. If the work of the entire Project is awarded on the basis of one prime contract, a lump sum fee of Fifteen Thousand Five Hundred and 00/100 Dollars (\$15,500.00).

- 5.1.2. Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:
- 5.1.2.1. General. For Additional Services rendered under Paragraphs 2.1.1. through 2.1.16., inclusive (except services covered by Paragraph 2.1.7. and services as a consultant or witness under Paragraph 2.1.15), on the basis of the fee schedule listed in Paragraph 7.1.
- 5.1.2.2. Special Consultants. For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to Paragraph 2.1.7., the amount billed to ENGINEER therefore times a factor of 1.05.
- 5.1.2.3. Serving as a Witness. For the services of the principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with Paragraph 2.1.15, at the rate of 1.2 times the fees listed in Paragraph 7.1. (but compensation for time spent in preparing to appear in any such litigation, hearing or proceeding will be on the basis provided in Paragraph 5.1.2.1.).
- 5.1.2.4. Resident Project Services. A Resident Project Representative will be furnished under Paragraph 2.2.1. by and at the expense of the OWNER.
- 5.1.3. Reimbursable Expenses. In addition to payments provided for in Paragraphs 5.1.1. and 5.1.2., OWNER shall pay ENGINEER the actual costs of all reimbursable expenses incurred in connection with all Basic and Additional Services.
- 5.1.4. As used in this Paragraph 5.1., the term "reimbursable expenses" will have the meanings assigned in Paragraph 5.3.1.
- 5.2. Times of Payment**
- 5.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for reimbursement expenses incurred. When compensation is on the basis of a lump sum or percentage of construction cost the periodic statements will be based upon ENGINEER's hourly fee schedule. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.
- 5.2.2. The OWNER shall, upon conclusion of each phase of Basic Services, pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following of total compensation for all phases of Basic Services:
- | <u>Phase</u>                 | <u>Fee</u>   |
|------------------------------|--------------|
| Preliminary and Final Design | \$ 13,000.00 |
| Bidding and Construction     | \$ 2,500.00  |
| Total                        | \$ 15,500.00 |
- 5.3. General**
- 5.3.1. Reimbursable expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto;

obtaining bids or proposals from Contractor(s); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings and Specifications, and similar Project-related items in addition to those required under Section 1; insurance in addition to that identified by Section 7.3; and, if authorized in advance by OWNER, overtime requiring higher than regular rates.

- 5.3.2. If OWNER fails to make any payment due ENGINEER for services and expenses within sixty days after receipt of ENGINEER's bill therefore, the amounts due ENGINEER shall include a charge at the rate of 1% per month from said sixtieth day, and in addition ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.
- 5.3.3. If this Agreement is terminated by OWNER, upon the completion of any phase of the Basic Services, payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. If this Agreement is terminated by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis ENGINEER's hourly fee schedule times a factor of 1.25 for services rendered during that phase to date of termination by principals and employees assigned to the Project. In the event of any termination, ENGINEER will be paid for all unpaid Additional Services and unpaid reimbursable expenses, plus all termination expenses. Termination expenses mean reimbursable expenses directly attributable to termination.

## **SECTION 6 – GENERAL CONSIDERATIONS**

### **6.1. Termination**

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

### **6.2. Reuse of Documents.**

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

### **6.3. Estimates of Cost.**

Since ENGINEER has no control over the cost of labor, materials or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable project cost, construction cost, or typical costs

provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but ENGINEER can not and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of cost prepared by him. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to the construction cost he shall employ an independent cost estimator as provided in Paragraph 3.8.

**6.4. Successors and Assigns.**

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

**6.5. Fiduciary Responsibility**

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

**SECTION 7 – SPECIAL PROVISIONS**

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

**7.1 Hourly Fee Schedule**

The hourly fee schedule primary project personnel are:

Engineering Services Payroll Costs:

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

**7.2. Resident Project Representative.**

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

7.3.

**ENGINEER's Insurance.**

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

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

Automobile Liability:

Bodily Injury:

Each Person.....\$ 50,000.00  
Each Accident..... \$100,000.00

Property Damage:

Each Accident.....\$ 50,000.00

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

OWNER:

City of Sherman  
P.O. Box 1106  
220 W. Mulberry  
Sherman, Texas 75091-1106  
(903) 892-7210

By: \_\_\_\_\_

Title: \_\_\_\_\_

ENGINEER:

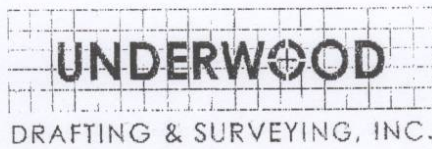
Morris Engineers  
P.O. Box 606  
225 E. Houston  
Sherman, Texas 75091-0606  
(903) 868-1644

By: *LEP Allen* 11/17/09

Title: Professional Engineer

MASTER 06/09  
MORRIS ENGINEERS

MORRIS ENGINEERS



November 17, 2009

Mr. Tim Morris  
Morris Engineers  
225 E. Houston St.  
Sherman, TX 75090

Via Fax No.: (903) 868-1409

Re: Project Proposals

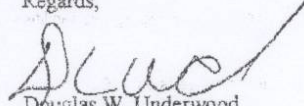
Dear Tim:

We can provide topographic surveys for the following projects for the prices listed:

|                                      |                    |
|--------------------------------------|--------------------|
| Pelton Street Water Line Replacement | \$ 4,200.00        |
| Brents Street Sewer Replacement      | <u>\$ 2,500.00</u> |
| <b>Grand Total:</b>                  | <b>\$ 6,700.00</b> |

If you have any questions or concerns, please contact me at (903) 465-2151.

Regards,

  
Douglas W. Underwood  
Registered Professional  
Land Surveyor, No. 4709



City of Sherman, Texas  
**PELTON ST WATER MAIN REPLACEMENT**  
(Ricketts St to Travis St)

**PROJECT LOCATION MAP**





# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. C.7

**\* RESOLUTION NO. 5444**

**Awarding Bids to and Authorizing Execution of Contracts with Multiple Vendors  
for an Annual Supply of Chemicals for the Sherman Water Treatment Plant**

**Issue**

To consider awarding contracts to multiple vendors for an annual supply of chemicals to be used at the Water Treatment Plant

**Background**

In accordance with Texas purchasing laws, the City solicited bids from various chemical vendors for the annual supply of chemicals for our water operations. This year, the City received bids from seventeen (17) vendors. In order to gain maximum benefit for the City, each type of chemical is considered separately for awarding purposes; thus, the staff will recommend awarding contracts to nine (9) different vendors based on the lowest price for each of the commodities. Attached is a summary of the chemical vendors' pricing by commodity.

**Origination**

Department of Utilities & Engineering

**Financial Consideration**

The total cost of fourteen (14) chemicals, based on estimated quantities used in the bid process, is \$669,482.68. Funding is available in the water production budget for fiscal year (FY) 2009-2010 for the purchase of these chemicals.

**Staff Recommendation**

It is recommended that the Council award the contracts for chemicals to the vendors as identified in the attached pricing summary.

**Alternatives**

As may be directed by the City Council

**Attachments**

Resolution No. 5444

Chemical Bid Tabulation

Contracts of Sale (9)

**Prepared by:**  
**Mark Gibson, Director of Utilities & Engineering**

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

**RESOLUTION NO. 5444**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING BIDS TO AND AUTHORIZING EXECUTION OF CONTRACTS WITH MULTIPLE VENDORS FOR AN ANNUAL SUPPLY OF CHEMICALS FOR THE SHERMAN WATER TREATMENT PLANT; 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 bids are hereby awarded to Chemrite, Inc., DPC Industries, Inc., FSTI, Inc., General Chemical Performance Products, LLC, Harcros Chemicals, Inc., Marubeni Specialty Chemicals, Nalco Company, Southern Ionics, Inc., and Univar USA for the annual supply of chemicals to be used at the Sherman Water Treatment Plant in accordance with the City's specifications; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute contracts of sale with Chemrite, Inc., DPC Industries, Inc., FSTI, Inc., General Chemical Performance Products, LLC, Harcros Chemicals, Inc., Marubeni Specialty Chemicals, Nalco Company, Southern Ionics, Inc., and Univar USA for said supply of chemicals to be used at the Sherman Water Treatment Plant, in accordance with the terms and provisions 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: \_\_\_\_\_**  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

## Chemical Bid Tabulation

| <b>Chemical Name</b>       | <b>Low Bid Vendor</b> | <b>Bid</b> | <b>Usage</b> | <b>Total Cost of Chemical</b> |
|----------------------------|-----------------------|------------|--------------|-------------------------------|
| Liquid Chlorine 150-lbs    | DPC                   | \$81.45    | 800          | \$65,160.00                   |
| Liquid Chlorine 1-TON      | DPC                   | \$629.00   | 75           | \$47,175.00                   |
| Sodium Hypochlorite 55-gal | Univar                | \$89.10    | 5            | \$445.50                      |
| Liquid Ammonia Ton         | Southern Ionics       | \$0.893    | 18500        | \$16,527.90                   |
| Potassium Permanaganate    | Marubeni              | \$2.35     | 6800         | \$199,750.00                  |
| Hydrochloric Acid          | FSTI                  | \$0.933    | 85000        | \$79,305.00                   |
| 25% Sodium Hydroxide       | FSTI                  | \$0.468    | 80000        | \$37,440.00                   |
| 50% Sodium Hydroxide       | FSTI                  | \$0.837    | 20000        | \$16,740.00                   |
| Aluminum Sulfate           | General Chemical      | \$0.556    | 90000        | \$50,040.00                   |
| Polyelectrolyte Polymers   | General Chemical      | \$584.71   | 20           | \$11,694.20                   |
| Fluorosilicic Acid         | Harcros               | \$3.838    | 5000         | \$19,190.00                   |
| Liquid Copper Sulfate      | ChemRite              | \$319.70   | 120          | \$38,364.00                   |
| PC-191                     | Nalco                 | \$1.98     | 9496         | \$18,802.08                   |
| Poly Phosphate             | General Chemical      | \$312.95   | 220          | \$68,849.00                   |
| <b>Total</b>               |                       |            |              | <b><u>\$669,482.68</u></b>    |

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**SUPPLY CONTRACT**

**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 "CITY", and **CHEMRITE, INC.**, hereinafter called "SUPPLIER",

**WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as Liquid Copper Sulfate for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by CITY and the Bid Proposal submitted by SUPPLIER on November 11, 2009 in answer to CITY's Invitation to Bid. All of the specifications and requirements of CITY's Invitation to Bid and SUPPLIER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SUPPLIER hereby agrees to deliver ordered chemicals to CITY at the Sherman Water Treatment Plant located at 243 La Cima Drive, Sherman, Texas and/or the Sherman Wastewater Treatment Plant located at 1800 East F.M. 1417, Sherman, Texas, within three (3) business days from the date of order placement. CITY reserves the right on or before initiation of order to reasonably restrict days and hours for delivery. CITY will pay SUPPLIER for chemicals delivered within thirty (30) days from the date of the receipt of invoice.

CITY retains the right to reject without restriction all or any chemicals delivered by SUPPLIER which fail to comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SUPPLIER. Upon written notice by City to Supplier of non-conforming delivered chemicals which fail to comply with specifications, SUPPLIER shall have three (3) business days from notice of rejection to replace the non-conforming chemicals. CITY shall on notice receive credit for all charges related to non-conforming chemicals delivered. Supplier shall have twenty (20) days from notice of CITY's rejection of non-conforming chemicals to remove non-conforming chemicals from the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant at SUPPLIER's expense in default of which, CITY may, at its election, return to SUPPLIER non-conforming chemicals delivered to the CITY thirty (30) days from notice to the SUPPLIER. In the event of CITY's return of non-conforming chemicals, CITY shall be entitled to recover all costs and expense relating to reloading, removal and return of rejected non-conforming chemicals from SUPPLIER. CITY is expressly authorized to contract for return in default of

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SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

**Payment of Monies Owed to the City of Sherman.** CITY may, in its discretion, apply any monies owed to SUPPLIER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owed 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 CITY and by SUPPLIER.

**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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 this 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".

**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement. SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

**Notices Under this Agreement.** All notices under this Agreement require written notice delivered to CITY or SUPPLIER at the address indicated on this agreement or as otherwise noticed by the party in writing.

**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 SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
**CHEMRITE, INC.**

**CITY:**  
**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_  
**NAME:** AARON OPP  
**TITLE:** INSIDE SALES MANAGER  
**Address:** 5202 Belle Wood Court, Ste 104  
Buford, GA 30518

**BY:** \_\_\_\_\_  
**GEORGE OLSON,**  
**CITY MANAGER**  
**220 W. Mulberry**  
**Sherman, TX 75090**

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

---

**SUPPLY CONTRACT**

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 "CITY", and **DPC INDUSTRIES, INC.**, hereinafter called "SUPPLIER",

**WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as LIQUID CHLORINE 150-LBS AND LIQUID CHLORINE 1-TON for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by CITY and the Bid Proposal submitted by SUPPLIER on November 11, 2009 in answer to CITY's Invitation to Bid. All of the specifications and requirements of CITY's Invitation to Bid and SUPPLIER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SUPPLIER hereby agrees to deliver ordered chemicals to CITY at the Sherman Water Treatment Plant located at 243 La Cima Drive, Sherman, Texas and/or the Sherman Wastewater Treatment Plant located at 1800 East F.M. 1417, Sherman, Texas, within three (3) business days from the date of order placement. CITY reserves the right on or before initiation of order to reasonably restrict days and hours for delivery. CITY will pay SUPPLIER for chemicals delivered within thirty (30) days from the date of the receipt of invoice.

CITY retains the right to reject without restriction all or any chemicals delivered by SUPPLIER which fail to comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SUPPLIER. Upon written notice by City to Supplier of non-conforming delivered chemicals which fail to comply with specifications, SUPPLIER shall have three (3) business days from notice of rejection to replace the non-conforming chemicals. CITY shall on notice receive credit for all charges related to non-conforming chemicals delivered. Supplier shall have twenty (20) days from notice of CITY's rejection of non-conforming chemicals to remove non-conforming chemicals from the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant at SUPPLIER's expense in default of which, CITY may, at its election, return to SUPPLIER non-conforming chemicals delivered to the CITY thirty (30) days from notice to the SUPPLIER. In the event of CITY's return of non-conforming chemicals, CITY shall be entitled to recover all costs and expense relating to reloading, removal and return of rejected non-conforming chemicals from SUPPLIER. CITY is expressly authorized to contract for return in default of

---

SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

**Payment of Monies Owed to the City of Sherman.** CITY may, in its discretion, apply any monies owed to SUPPLIER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owed 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 CITY and by SUPPLIER.

**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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 this 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".

**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement. SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

**Notices Under this Agreement.** All notices under this Agreement require written notice delivered to CITY or SUPPLIER at the address indicated on this agreement or as otherwise noticed by the party in writing.

**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 SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
**DPC INDUSTRIES, INC.**

**CITY:**  
**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_  
**NAME:** TERRY COLEMAN  
**TITLE:** REPRESENTATIVE  
**ADDRESS:** 601 INDUSTRIAL BLVD  
CLEBURNE, TX 76033

**BY:** \_\_\_\_\_  
**GEORGE OLSON**  
**CITY MANAGER**  
**220 W. MULBERRY**  
**SHERMAN, TEXAS, 75090**

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

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**SUPPLY CONTRACT**

**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 "CITY", and **FSTI, INC.**, hereinafter called "SUPPLIER",

**WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as HYDROCHLORIC ACID, 25% SODIUM HYDROXIDE AND 50% SODIUM HYDROXIDE for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

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SUPPLIER hereby agrees to deliver ordered chemicals to CITY at the Sherman Water Treatment Plant located at 243 La Cima Drive, Sherman, Texas and/or the Sherman Wastewater Treatment Plant located at 1800 East F.M. 1417, Sherman, Texas, within three (3) business days from the date of order placement. CITY reserves the right on or before initiation of order to reasonably restrict days and hours for delivery. CITY will pay SUPPLIER for chemicals delivered within thirty (30) days from the date of the receipt of invoice.

CITY retains the right to reject without restriction all or any chemicals delivered by SUPPLIER which fail to comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SUPPLIER. Upon written notice by City to Supplier of non-conforming delivered chemicals which fail to comply with specifications, SUPPLIER shall have three (3) business days from notice of rejection to replace the non-conforming chemicals. CITY shall on notice receive credit for all charges related to non-conforming chemicals delivered. Supplier shall have twenty (20) days from notice of CITY's rejection of non-conforming chemicals to remove non-conforming chemicals from the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant at SUPPLIER's expense in default of which, CITY may, at its election, return to SUPPLIER non-conforming chemicals delivered to the CITY thirty (30) days from notice to the SUPPLIER. In the event of CITY's return of non-conforming chemicals, CITY shall be entitled to recover all costs and expense relating to reloading, removal and return of rejected non-conforming

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chemicals from SUPPLIER. CITY is expressly authorized to contract for return in default of SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

**Payment of Monies Owed to the City of Sherman.** CITY may, in its discretion, apply any monies owed to SUPPLIER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owed 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 CITY and by SUPPLIER.

**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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 this 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".

**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement.

SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

**Notices Under this Agreement.** All notices under this Agreement require written notice delivered to CITY or SUPPLIER at the address indicated on this agreement or as otherwise noticed by the party in writing.

**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 SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
FSTI, INC.

**CITY:**  
CITY OF SHERMAN, TEXAS

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
**ADDRESS:** 6300 BRIDGEPOINT PKWY, STE I-200  
AUSTIN, TX 78730

**BY:** \_\_\_\_\_  
**GEORGE OLSON**  
**CITY MANAGER**  
220 W. MULBERRY  
SHERMAN, TEXAS, 75090

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

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**SUPPLY CONTRACT**

**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 "CITY", and **GENERAL CHEMICAL PERFORMANCE PRODUCTS, LLC**, hereinafter called "SUPPLIER",

**WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as Aluminum Sulfate, Polyelectrolyte Polymers and Poly Phosphate for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by CITY and the Bid Proposal submitted by SUPPLIER on November 11, 2009 in answer to CITY's Invitation to Bid. All of the specifications and requirements of CITY's Invitation to Bid and SUPPLIER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SUPPLIER hereby agrees to deliver ordered chemicals to CITY at the Sherman Water Treatment Plant located at 243 La Cima Drive, Sherman, Texas and/or the Sherman Wastewater Treatment Plant located at 1800 East F.M. 1417, Sherman, Texas, within three (3) business days from the date of order placement. CITY reserves the right on or before initiation of order to reasonably restrict days and hours for delivery. CITY will pay SUPPLIER for chemicals delivered within thirty (30) days from the date of the receipt of invoice.

CITY retains the right to reject without restriction all or any chemicals delivered by SUPPLIER which fail to comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SUPPLIER. Upon written notice by City to Supplier of non-conforming delivered chemicals which fail to comply with specifications, SUPPLIER shall have three (3) business days from notice of rejection to replace the non-conforming chemicals. CITY shall on notice receive credit for all charges related to non-conforming chemicals delivered. Supplier shall have twenty (20) days from notice of CITY's rejection of non-conforming chemicals to remove non-conforming chemicals from the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant at SUPPLIER's expense in default of which, CITY may, at its election, return to SUPPLIER non-conforming chemicals delivered to the CITY thirty (30) days from notice to the SUPPLIER. In the event of CITY's return of non-conforming chemicals, CITY shall be entitled to recover all costs and expense relating to reloading, removal and return of rejected non-conforming chemicals from SUPPLIER. CITY is expressly authorized to contract for return in default of

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SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

**Payment of Monies Owed to the City of Sherman.** CITY may, in its discretion, apply any monies owed to SUPPLIER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owed 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 CITY and by SUPPLIER.

**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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 this 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".

**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement. SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

**Notices Under this Agreement.** All notices under this Agreement require written notice delivered to CITY or SUPPLIER at the address indicated on this agreement or as otherwise noticed by the party in writing.

**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 SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
**GENERAL CHEMICAL**  
**PERFORMANCE PRODUCTS, LLC**

**CITY:**  
**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_

**NAME:** CHRISTINE A. LASALA  
**TITLE:** SR. BID QUOTATION REPRESENTATIVE  
**ADDRESS:** 90 E. HALSEY ROAD  
PARSIPPANY, NJ 07054

**BY:** \_\_\_\_\_

**GEORGE OLSON**  
**CITY MANAGER**  
**220 W. MULBERRY**  
**SHERMAN, TEXAS, 75090**

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

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**SUPPLY CONTRACT**

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 "**CITY**", and **HARCROS CHEMICALS, INC.**, hereinafter called "**SUPPLIER**",

**WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as FLUOROSILICIC for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by CITY and the Bid Proposal submitted by SUPPLIER on November 11, 2009 in answer to CITY's Invitation to Bid. All of the specifications and requirements of CITY's Invitation to Bid and SUPPLIER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SUPPLIER hereby agrees to deliver ordered chemicals to CITY at the Sherman Water Treatment Plant located at 243 La Cima Drive, Sherman, Texas and/or the Sherman Wastewater Treatment Plant located at 1800 East F.M. 1417, Sherman, Texas, within three (3) business days from the date of order placement. CITY reserves the right on or before initiation of order to reasonably restrict days and hours for delivery. CITY will pay SUPPLIER for chemicals delivered within thirty (30) days from the date of the receipt of invoice.

CITY retains the right to reject without restriction all or any chemicals delivered by SUPPLIER which fail to comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SUPPLIER. Upon written notice by City to Supplier of non-conforming delivered chemicals which fail to comply with specifications, SUPPLIER shall have three (3) business days from notice of rejection to replace the non-conforming chemicals. CITY shall on notice receive credit for all charges related to non-conforming chemicals delivered. Supplier shall have twenty (20) days from notice of CITY's rejection of non-conforming chemicals to remove non-conforming chemicals from the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant at SUPPLIER's expense in default of which, CITY may, at its election, return to SUPPLIER non-conforming chemicals delivered to the CITY thirty (30) days from notice to the SUPPLIER. In the event of CITY's return of non-conforming chemicals, CITY shall be entitled to recover all costs and expense relating to reloading, removal and return of rejected non-conforming chemicals from SUPPLIER. CITY is expressly authorized to contract for return in default of

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SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

**Payment of Monies Owed to the City of Sherman.** CITY may, in its discretion, apply any monies owed to SUPPLIER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owed 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 CITY and by SUPPLIER.

**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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 this 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".

**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement. SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

**Notices Under this Agreement.** All notices under this Agreement require written notice delivered to CITY or SUPPLIER at the address indicated on this agreement or as otherwise noticed by the party in writing.

**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 SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
**HARCROS CHEMICALS, INC.**

**CITY:**  
**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_  
**NAME:** HANK WARDEN  
**TITLE:** DISTRICT MANAGER  
**ADDRESS:** 2627 WEIR STREET  
DALLAS, TX 75212-4612

**BY:** \_\_\_\_\_  
**GEORGE OLSON**  
**CITY MANAGER**  
**220 W. MULBERRY**  
**SHERMAN, TEXAS, 75090**

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

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**SUPPLY CONTRACT**

**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 "**CITY**", and **MARUBENI SPECIALTY CHEMICALS**, hereinafter called "**SUPPLIER**",

**WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as Potassium Permanganate for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by CITY and the Bid Proposal submitted by SUPPLIER on November 11, 2009 in answer to CITY's Invitation to Bid. All of the specifications and requirements of CITY's Invitation to Bid and SUPPLIER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SUPPLIER hereby agrees to deliver ordered chemicals to CITY at the Sherman Water Treatment Plant located at 243 La Cima Drive, Sherman, Texas and/or the Sherman Wastewater Treatment Plant located at 1800 East F.M. 1417, Sherman, Texas, within three (3) business days from the date of order placement. CITY reserves the right on or before initiation of order to reasonably restrict days and hours for delivery. CITY will pay SUPPLIER for chemicals delivered within thirty (30) days from the date of the receipt of invoice.

CITY retains the right to reject without restriction all or any chemicals delivered by SUPPLIER which fail to comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SUPPLIER. Upon written notice by City to Supplier of non-conforming delivered chemicals which fail to comply with specifications, SUPPLIER shall have three (3) business days from notice of rejection to replace the non-conforming chemicals. CITY shall on notice receive credit for all charges related to non-conforming chemicals delivered. Supplier shall have twenty (20) days from notice of CITY's rejection of non-conforming chemicals to remove non-conforming chemicals from the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant at SUPPLIER's expense in default of which, CITY may, at its election, return to SUPPLIER non-conforming chemicals delivered to the CITY thirty (30) days from notice to the SUPPLIER. In the event of CITY's return of non-conforming chemicals, CITY shall be entitled to recover all costs and expense relating to reloading, removal and return of rejected non-conforming chemicals from SUPPLIER. CITY is expressly authorized to contract for return in default of

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SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

**Payment of Monies Owed to the City of Sherman.** CITY may, in its discretion, apply any monies owed to SUPPLIER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owed the City of Sherman, which are or become delinquent during the term of this contract.

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**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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.

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**Conflicts.** If there are any conflicts between the Contract and Exhibit "A", the provisions in the Contract prevail over the provisions in Exhibit "A."

**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement. SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

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**IN WITNESS WHEREOF,** this instrument, in duplicate originals of equal force, has been executed on behalf of SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
**MARUBENI SPECIALTY CHEMICALS**

**CITY:**  
**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_  
**NAME:** NOEL KAVANAGH  
**TITLE:** ACCOUNT MANAGER  
**ADDRESS:** 8675 Hidden River Pkwy  
Tampa, FL 33637

**BY:** \_\_\_\_\_  
**GEORGE OLSON**  
**CITY MANAGER**  
220 W. Mulberry  
Sherman, Texas, 75090

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

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**SUPPLY CONTRACT**

**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 "CITY", and **NALCO COMPANY**, hereinafter called "SUPPLIER",

**WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as PC-191 for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by CITY and the Bid Proposal submitted by SUPPLIER on November 11, 2009 in answer to CITY's Invitation to Bid. All of the specifications and requirements of CITY's Invitation to Bid and SUPPLIER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SUPPLIER hereby agrees to deliver ordered chemicals to CITY at the Sherman Water Treatment Plant located at 243 La Cima Drive, Sherman, Texas and/or the Sherman Wastewater Treatment Plant located at 1800 East F.M. 1417, Sherman, Texas, within three (3) business days from the date of order placement. CITY reserves the right on or before initiation of order to reasonably restrict days and hours for delivery. CITY will pay SUPPLIER for chemicals delivered within thirty (30) days from the date of the receipt of invoice.

CITY retains the right to reject without restriction all or any chemicals delivered by SUPPLIER which fail to comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SUPPLIER. Upon written notice by City to Supplier of non-conforming delivered chemicals which fail to comply with specifications, SUPPLIER shall have three (3) business days from notice of rejection to replace the non-conforming chemicals. CITY shall on notice receive credit for all charges related to non-conforming chemicals delivered. Supplier shall have twenty (20) days from notice of CITY's rejection of non-conforming chemicals to remove non-conforming chemicals from the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant at SUPPLIER's expense in default of which, CITY may, at its election, return to SUPPLIER non-conforming chemicals delivered to the CITY thirty (30) days from notice to the SUPPLIER. In the event of CITY's return of non-conforming chemicals, CITY shall be entitled to recover all costs and expense relating to reloading, removal and return of rejected non-conforming chemicals from SUPPLIER. CITY is expressly authorized to contract for return in default of

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SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

**Payment of Monies Owed to the City of Sherman.** CITY may, in its discretion, apply any monies owed to SUPPLIER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owed 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 CITY and by SUPPLIER.

**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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 this 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".

**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement. SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

**Notices Under this Agreement.** All notices under this Agreement require written notice delivered to CITY or SUPPLIER at the address indicated on this agreement or as otherwise noticed by the party in writing.

**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 SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
**NALCO COMPANY**

**CITY:**  
**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_  
**NAME:** KERRY HONG  
**TITLE:** INSIDE SALES REPRESENTATIVE  
**ADDRESS:** 1601 West Diehl Road  
Naperville, IL 60563

**BY:** \_\_\_\_\_  
**GEORGE OLSON,**  
**CITY MANAGER**  
**220 W. MULBERRY**  
**SHERMAN, TEXAS, 75090**

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

## SUPPLY CONTRACT

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 "CITY", and **SOUTHERN IONICS, INC.**, hereinafter called "SUPPLIER",

### **WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as LIQUID AMMONIA TON for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by CITY and the Bid Proposal submitted by SUPPLIER on November 11, 2009 in answer to CITY's Invitation to Bid. All of the specifications and requirements of CITY's Invitation to Bid and SUPPLIER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

SUPPLIER hereby agrees to deliver ordered chemicals to CITY at the Sherman Water Treatment Plant located at 243 La Cima Drive, Sherman, Texas and/or the Sherman Wastewater Treatment Plant located at 1800 East F.M. 1417, Sherman, Texas, within three (3) business days from the date of order placement. CITY reserves the right on or before initiation of order to reasonably restrict days and hours for delivery. CITY will pay SUPPLIER for chemicals delivered within thirty (30) days from the date of the receipt of invoice.

CITY retains the right to reject without restriction all or any chemicals delivered by SUPPLIER which fail to comply with the specifications as set forth in the Invitation to Bid and the Bid Proposal submitted by SUPPLIER. Upon written notice by City to Supplier of non-conforming delivered chemicals which fail to comply with specifications, SUPPLIER shall have three (3) business days from notice of rejection to replace the non-conforming chemicals. CITY shall on notice receive credit for all charges related to non-conforming chemicals delivered. Supplier shall have twenty (20) days from notice of CITY's rejection of non-conforming chemicals to remove non-conforming chemicals from the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant at SUPPLIER's expense in default of which, CITY may, at its election, return to SUPPLIER non-conforming chemicals delivered to the CITY thirty (30) days from notice to the SUPPLIER. In the event of CITY's return of non-conforming chemicals, CITY shall be entitled to recover all costs and expense relating to reloading, removal and return of rejected non-conforming chemicals from SUPPLIER. CITY is expressly authorized to contract for return in default of

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SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

**Payment of Monies Owed to the City of Sherman.** CITY may, in its discretion, apply any monies owed to SUPPLIER, the contracting party under this agreement, in partial or complete satisfaction of any property taxes due or other monies owed 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 CITY and by SUPPLIER.

**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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 this 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".

**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement. SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

**Notices Under this Agreement.** All notices under this Agreement require written notice delivered to CITY or SUPPLIER at the address indicated on this agreement or as otherwise noticed by the party in writing.

**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 SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
**SOUTHERN IONICS, INC.**

**CITY:**  
**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_  
**NAME:** KRISTY D. TODD  
**TITLE:** MANAGER CORP. ADMIN  
**ADDRESS:** P.O. DRAWER 1217  
WEST POINT, MS 39773

**BY:** \_\_\_\_\_  
**GEORGE OLSON**  
**CITY MANAGER**  
**220 W. MULBERRY**  
**SHERMAN, TEXAS, 75090**

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

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**SUPPLY CONTRACT**

**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 "CITY", and **UNIVAR USA**, hereinafter called "SUPPLIER",

**WITNESSETH:**

SUPPLIER agrees to sell and will deliver to CITY, and CITY agrees to purchase from SUPPLIER, on an as-needed basis, chemicals specified as SODIUM HYPOCHLORITE 55-GAL for use at the Sherman Water Treatment Plant and/or the Sherman Wastewater Treatment Plant as described in the bid proposal and specifications attached hereto as Exhibit "A" and incorporated herein for all purposes. As consideration for this contract, SUPPLIER agrees to sell and deliver such chemicals at the prices specified therein in Exhibit "A" during the contract period beginning on January 1, 2010, and ending on December 31, 2010.

Reference is hereby made to the specifications and requirements of the Invitation to Bid prepared by CITY and the Bid Proposal submitted by SUPPLIER on November 11, 2009 in answer to CITY's Invitation to Bid. All of the specifications and requirements of CITY's Invitation to Bid and SUPPLIER's Bid Proposal, previously identified as Exhibit "A", are incorporated herein by reference and are part of this contract for all purposes.

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SUPPLIER's removal of non-conforming chemical supply pursuant to this agreement. CITY assumes no liability for loss or damage to non-conforming items delivered to CITY under this provision and SUPPLIER agrees to release and hold harmless CITY from any claim or liability relating to SUPPLIER's delivery of non-conforming items pursuant to this contract.

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**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 be assigned without such consent (except to the extent that the effect 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 that 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 CITY and SUPPLIER, 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.

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**Supplier's Warranty.** SUPPLIER expressly represents and warrants its compliance with all applicable laws, ordinances and regulations in its operations and material delivered under this Agreement including, but not limited to AWWA standards and NSF60 requirements. SUPPLIER further expressly represents and warrants its compliance with all applicable regulation of hazardous substances as may be present in, used, manufactured, handled, created, stored or delivered to CITY incidental to this Agreement. CITY has no duty to inspect or examine material furnished by SUPPLIER under this Agreement. CITY is entitled to fully rely on material as represented by and specified of SUPPLIER under this Agreement.

**Supplier's Indemnity of City.** SUPPLIER agrees to indemnify, defend and hold harmless CITY against all claims, damages and liabilities of whatever nature, foreseen or unforeseen under any environmental, hazardous substance law or other law including, but not limited to the following:

- a) All fees incurred in defending any action or proceeding brought by any individual, public or private entity arising from materials furnished or incidental to this Agreement. SUPPLIER's liability for fees shall include, but not be limited to legal fees, environmental consultants, engineers, surveyors and expert witnesses.

- b) Any diminution in property value attributable to:
- i.) breach of warranty under this Agreement or,
  - ii.) any cleanup, detoxification, remediation or other response action taken or incidental to any material the subject of this Agreement as may be imposed by Federal, State, local government or Court order.

**Notices Under this Agreement.** All notices under this Agreement require written notice delivered to CITY or SUPPLIER at the address indicated on this agreement or as otherwise noticed by the party in writing.

**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 SUPPLIER and on behalf of CITY, City of Sherman, by its City Manager and attested by its City Clerk, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**SUPPLIER:**  
**UNIVAR USA**

**CITY:**  
**CITY OF SHERMAN, TEXAS**

**BY:** \_\_\_\_\_

**NAME:** SHERRY ZEMAN  
**TITLE:** SALES REP.  
**ADDRESS:** 10889 BEKAY STREET  
DALLAS, TX 75238

**BY:** \_\_\_\_\_

**GEORGE OLSON**  
**CITY MANAGER**  
220 W. MULBERRY  
SHERMAN, TEXAS, 75090

**ATTEST:**

**ATTEST:**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**LINDA ASHBY,**  
**CITY CLERK**

**APPROVED:**

\_\_\_\_\_  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. C.8

**\* RESOLUTION NO. 5445**

**Authorizing Execution of a Fairview Elevated Water Tank Use Agreement  
with AT&T Mobility Texas LLC**

**Issue**

To consider authorizing an agreement with AT&T Mobility Texas LLC for communications equipment on the Fairview elevated water tank

**Background**

AT&T wishes to place six antennas (approximately eight feet tall) on the catwalk of the Fairview elevated water tank. Staff has reviewed the proposed equipment installation and found it to be feasible and small relative to the tank size. A City water employee will accompany any contractor or other personnel requiring access to the site for installation/maintenance work to maintain security of the potable water facility.

**Origination**

AT&T Mobility Texas LLC

**Financial Consideration**

AT&T will pay the City \$21,600.00 per year plus fees to cover personnel expense and any other cost of equipment adjustment associated with maintaining the elevated tank facility for its primary potable water service.

**Staff Recommendation**

It is recommended that the City Council approve the proposed agreement and authorize the City Manager to execute the required documents.

**Alternatives**

Deny AT&T Mobility Texas LLC the use of the water tower for their communication antennas.

**Attachments**

Resolution No. 5445

Fairview Elevated Water Tank Use Agreement

**Prepared by:**  
**Mark Gibson, Director of Utilities & Engineering**

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

**RESOLUTION NO. 5445**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A FAIRVIEW ELEVATED WATER TANK USE AGREEMENT WITH AT&T MOBILITY TEXAS LLC; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

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

**SECTION 1.** That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Fairview Elevated Water Tank Use Agreement with AT&T Mobility Texas LLC, in accordance with the terms and provisions of the contract documents attached hereto and made a part hereof for all purposes.

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

**PASSED AND APPROVED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF SHERMAN, TEXAS**

**BY: \_\_\_\_\_**  
**BILL MAGERS, MAYOR**

**ATTEST:**

**BY: \_\_\_\_\_**  
**LINDA ASHBY, CITY CLERK**

**APPROVED AS TO FORM AND CONTENT:**

**BY: \_\_\_\_\_**  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

STATE OF TEXAS

§

COUNTY OF GRAYSON

§

FAIRVIEW ELEVATED WATER TANK USE AGREEMENT

This Use Agreement (this "Agreement" or this "Use Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF SHERMAN, a municipal corporation situated in Grayson County, Texas (hereafter referred to as "CITY"), and AT&T MOBILITY TEXAS LLC, a Delaware limited liability company (hereafter referred to as "AT&T").

**WITNESSETH:**

In consideration of the mutual covenants, payments, responsibilities and duties herein contained, CITY and AT&T contract as follows:

**1. PROPERTY:** CITY hereby grants to AT&T for AT&T'S non-exclusive use of certain portions of the CITY's Fairview Street elevated water tank (hereinafter referred to as the "Property") during the term of this Use Agreement. The Property to be used by AT&T is more particularly described on Attachment "A" which is incorporated by reference for all purposes (the "Premises"). CITY represents and warrants that it is the owner of the elevated storage tank (the "Water Tank") which is the subject of this Agreement.

**2. USE:** AT&T shall use the Premises only for the specified purpose of transmitting and receiving communications signals and installing, constructing, operating, repairing, replacing, upgrading and maintaining its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises including the equipment and related hardware described on Attachment "B" (collectively, the "Communication Facility").

**2.1** AT&T shall allow no other entity to use its equipment while it is mounted on the Water Tank.

**2.2** AT&T shall be allowed to locate and house required equipment inside an existing equipment facility or build such facility at its own expense subject to prior approval by CITY as to size and location. Equipment installation shall be done in such a manner as to minimize clutter, maximize safety, and to provide sufficient space to work on all equipment without moving it inside the facility. AT&T shall not construct and mount additional equipment at the locations shown in Attachment "A" without the written approval of CITY.

**2.3** CITY reserves the right to require AT&T to relocate its equipment at AT&T's sole expense to another location on the Water Tank that is acceptable to A&T as may be necessary and required by the City. AT&T shall complete any relocation of its equipment within ninety (90) days after written notice from CITY.

**3. TERM:** The term of this Agreement will be for five (5) years, and will commence on the date of full execution of this Agreement by both parties (hereafter referred to as "Commencement Date") and will terminate at 11:59 p.m. on the date being five (5) years from the Commencement Date, unless sooner terminated as provided in this Use Agreement. This

Agreement will automatically renew for four (4) additional five (5) year terms upon the same terms and conditions of this Agreement unless either party notifies the other in writing of its intention not to renew this Agreement at least sixty (60) days prior to the expiration of the current term.

#### **4. CONSIDERATION**

**4.1** Within thirty (30) days after the Commencement Date, AT&T will pay CITY a yearly use fee payment of Twenty-One Thousand Six Hundred Dollars and No/100 Dollars (\$21,600.00) (the "Use Fee") at the address set forth in Section 13. Beginning on the first anniversary of the Commencement Date, AT&T will pay the Use Fee in equal monthly installments of One Thousand Eight Hundred Dollars (\$1,800) on or before the first (1<sup>st</sup>) day of each month. In partial years occurring after the Commencement Date, the Use Fee will be prorated. AT&T will be subject to late charges and default in accordance with Section 9.1 of this Use Agreement if the Use Fee is not made on or before each anniversary date of this Agreement.

**4.2** The Use Fee shall be increased annually effective as of each calendar year anniversary date from the Commencement Date by an amount equal to three percent (3%) of the previous year fee, through the term of this Use Agreement.

**4.3** In further consideration for the use of the Premises during the term of this Use Agreement, AT&T will be solely responsible for the maintenance of the Premises. AT&T will notify CITY of any existing or developing hazardous or dangerous condition on the Premises. In consideration for the use of the Premises, AT&T specifically assumes any and all liability that may arise due to any site or property defects or other defects arising out of or relating to AT&T'S use of the Premises, except to the extent created or caused by CITY. AT&T accepts the Premises as is, where is and with all defects in the condition in which it is found. CITY hereby disclaims, and AT&T hereby accepts CITY's disclaimer, of any warranty, express or implied, of the conditions or fitness for use of any portions of the Premises including but not limited to, use of the Premises for the transmission, reception or operation of the Communication Facility.

#### **5. STANDARDS**

**5.1** AT&T shall, at its expense, comply with all applicable present and future federal, state, and local laws, ordinances, rules and regulations including without limitation, laws and ordinances relating to health, radio frequency emissions, or other radiation and safety requirements in connection with the use, operation, maintenance, construction and/or installation of the equipment and/or the Premises. CITY agrees to reasonably cooperate with AT&T in obtaining, at AT&T'S expense (including CITY's reasonable attorney and administrative fees), any federal licenses and permits required for or substantially required by AT&T'S use of the Premises.

**5.2** AT&T will maintain the Premises in a sanitary, safe and clean condition. AT&T and all AT&T contractors shall comply with customary safety procedures and requirements when working on elevated tanks. AT&T also agrees to clean any areas on the Premises if and when

AT&T'S activity or use results in or creates the need for such cleaning. AT&T further agrees and covenants that the Premises at any and all reasonable times and upon notice to AT&T shall be subject to inspection by CITY. However, CITY has no duty to inspect the Premises during AT&T'S use of the Premises.

**5.3** AT&T shall have the right, at its sole cost and expense, to install, operate and maintain on the Premises, in accordance with good engineering practices and with all applicable FCC rules and regulations, the Communication Facility and related equipment as generally described on Attachment "B". Specific construction details shall be addressed in the construction plans.

**5.4** AT&T'S installation of all equipment shall be done according to plans approved by CITY. The plans may be required to provide details not noted in Attachment "B". Any damage done to the Premises and/or the Water Tank or any other user's facilities during installation and/or during operations shall be repaired or replaced within five (5) days at AT&T'S expense and to CITY's sole satisfaction.

**5.5** Prior to any construction on the Premises, AT&T will provide plans depicting all equipment and construction to CITY and the exact proposed location of the equipment including the mounting system on the Water Tank, all subject to CITY approval. Either prior to or no less than thirty (30) days after the completion of installation of the Communication Facility, AT&T shall provide CITY with as-built drawings of the equipment and the improvements installed on the Premises, which show the actual location of all equipment, transmission lines and improvements consistent with Attachment "B". The drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and any other items to be located on the Premises during the term hereof.

**5.6** AT&T may perform regular maintenance and repairs necessary to continue the operation of the Communication Facility. In addition, AT&T may update or replace the equipment from time to time with the prior written approval of CITY, provided that the replacement equipment are not greater in number or size than the existing equipment and that any change in their location on the Water Tank is approved by CITY in writing prior to installation. AT&T shall submit to CITY a detailed proposal, in accordance with Section 5.5 of this Agreement, for any such replacement equipment and any supplemental materials as may be requested, for CITY's evaluation and approval. Any such approval of CITY shall not be unreasonably withheld or delayed.

**5.7** All transmitters shall be FCC type accepted for the intended application with proper shielding.

**5.9** Storage of any standby or emergency equipment or items will be with written approval of City. Owner will be fully responsible for loss or damage.

**5.10** AT&T shall have access to the Premises and the Water Tank by means designated by CITY upon twenty-four (24) hours notice to CITY for installation, repair, replacement, or maintenance of its equipment during Monday through Friday (8 a.m. to 5 p.m.) at a stand by fee of \$50.00 plus \$30.00 per hour payable to CITY. At no time shall AT&T employees or contractors be on the Water Tank or any part thereof or inside the security fencing surrounding

the Water Tank without a designated CITY employee being present. AT&T may provide such notice by calling the CITY at (903)892-7258.

At other times upon four (4) hours notice to CITY, AT&T shall have access at a stand by fee of \$100.00 plus \$50.00 per hour payable to CITY.

## **6. MAINTENANCE**

**6.1** AT&T shall, at its own expense, maintain any equipment on or attached to the Premises in a safe condition, in good repair and in a manner suitable to CITY so as not to conflict with the use of the Water Tank by CITY or other entities, if any. AT&T shall not unreasonably interfere with the use of the Water Tank, the Premises, related equipment or other equipment of other users. CITY shall not permit any other telecommunication users to interfere with the use of the Communication Facility or AT&T'S related equipment.

**6.2** AT&T shall have sole responsibility for the maintenance, repair, and security of its equipment, and personal property, and shall keep the same in good repair and condition during the term of this Use Agreement.

**6.3** AT&T shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference.

**6.4** In the event the CITY or any other tenant undertakes painting or other alterations on the Water Tank, AT&T shall be provided with at least thirty (30) days notice. AT&T shall take reasonable measures at AT&T'S cost to cover AT&T'S equipment or personal property and protect such from paint and debris fallout which may occur during the painting or alterations process. AT&T shall be responsible for any additional cost incurred by CITY as a result of special requirements or additional work due to the equipment. Temporary interruption of service may be necessary, and in such event, CITY shall permit AT&T to locate a temporary cell on wheels on the Property. CITY will only paint or alter the Water Tank in a manner that requires AT&T to protect its equipment and personal property one time during any calendar year, notwithstanding any painting or alternations necessitated by Force Majeure.

**7. COMPLIANCE WITH STATUTES, REGULATIONS AND APPROVALS.** AT&T'S use of the Premises is contingent upon its obtaining and maintaining all licenses, certificates, permits, zoning, and other approvals that may be required by any federal, state and local authority. AT&T shall erect, maintain and operate its Communication Facility in accordance with site standards, state statutes, ordinances, rules and regulations now in effect or that thereafter may be issued by the Federal Communications Commission ("FCC") or any other governing bodies.

## **8. INTERFERENCE**

**8.1** AT&T'S installation, operation, and maintenance of its transmission equipment shall not damage or interfere in any way with the Amateur Radio Emergency Service (SkyWarn) and the CITY'S existing or future use of the airwaves or equipment necessary for such use or with CITY'S Water Tank operations or related repair and maintenance activities or with activities of

other users, as currently operating on the Water Tank. AT&T agrees to cease all actions which interfere with CITY'S use of the Water Tank within twenty-four (24) hours of notice of such interference. CITY, at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the Property in connection with Water Tank operations as may be necessary, including making parts of the Water Tank available to other parties, as long as such other parties are bound by interference language in substantially similar form as contained herein. Other telecommunication users' installation, operation, and maintenance of its transmission equipment shall not damage or interfere in any way with the Communication Facility or with AT&T's operations on the Water Tank. CITY agrees to cause other telecommunication users to cease all actions which interfere with AT&T'S use of the Water Tank within twenty-four (24) hours of notice of such interference. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that AT&T will suffer irreparable injury, and therefore, AT&T will have the right, in addition to any other rights that it may have at law or in equity, for CITY'S breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to CITY.

**8.2** Before approving the placement of the Communication Facility, CITY may obtain, at AT&T'S expense, an interference study indicating whether AT&T'S intended use will interfere with any existing communications equipment on the Water Tank and an engineering study indicating whether the Water Tank is able to structurally support the AT&T'S equipment without prejudice to the CITY's primary use of the Water Tank.

**8.3** AT&T'S use, operation, transmission, maintenance, replacement, expansion or change of its equipment or frequencies shall not, in any manner or means or to any degree whatsoever, limit, disturb, disrupt or interfere with current or future CITY's use, operation, transmission, maintenance, replacement, expansion or change of its equipment or frequencies or degrade the quality of its transmissions on this Water Tank or on any other facility used by CITY. Should AT&T'S equipment or frequencies begin to cause such limitation, disturbance, disruption or interference of the CITY's equipment or frequencies or degrade the quality of its transmission, AT&T shall shut down its facilities and immediately employ its best efforts as necessary to correct and eliminate the problems before resuming operations.

**8.4** If equipment interference occurs, which is caused by AT&T, additional protection devices may be required. The need for additional filtering equipment will be determined on a case-by-case basis, and the cost of any additional devices that may be required shall be borne by AT&T. It is understood that if AT&T does not cure such problems within the periods specified herein, the CITY may disconnect (unplug) AT&T equipment if it should cause problems with CITY equipment.

## **9. DEFAULT OR BREACH AND REMEDIES**

**9.1** AT&T shall pay CITY a late payment charge equal to five percent (5%) for any payment not paid when due. It shall be a default if AT&T fails to pay any sums to CITY when due, and does not cure such default within ten (10) days following AT&T'S receipt of notice from CITY of such non-payment; or if AT&T fails in the performance of any other covenant or condition of this Use Agreement and does not cure such other default within thirty (30) days after written

notice from CITY specifying the default complained of; or if AT&T is adjudicated a bankrupt or makes any assignment for the benefit of creditors; or if AT&T becomes insolvent or AT&T reasonably believes itself to be insolvent; or if AT&T attempts to assign or transfer this Agreement or the equipment or any rights under this Agreement, without the prior written consent of the CITY, which consent may be withheld for any reason or no reason; or if AT&T fails to comply with any provision in this Use Agreement; provided however, AT&T shall have the right, without consent of CITY, to assign this Agreement to any party controlling, controlled by or in common control with AT&T. Notwithstanding the foregoing, no such failure, however, will be deemed to exist if AT&T has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of AT&T.

**9.2** In the event of a default, CITY shall have the right, at its option, in addition to and not exclusive of any other remedies CITY may have by operation of law or in accordance with this Use Agreement, without any further demand or notice, to eject all persons and equipment and removable items from the Property, and either (a) declare this Use Agreement at an end, in which event AT&T shall immediately pay CITY a sum of money equal to the total of (i) the amount of unpaid rent accrued through the date of termination, if any; and (ii) any other amount necessary to compensate CITY for its attorneys fees to enforce the terms and conditions of this Agreement, or (b) exercise any and all rights and remedies available to CITY under law and equity.

**9.3** If suit shall be brought by CITY for recovery of possession of the Property, for the recovery of any fees or any other amount due under the provisions of this Use Agreement, or because of the breach of any other covenant, the AT&T shall pay to CITY all reasonable expenses incurred therefor, including attorney fees if CITY prevails on those claims.

**9.4** This Use Agreement may be terminated by AT&T (a) if it is unable to obtain or maintain any license, permit, or other governmental approval necessary for the construction and/or operation of the equipment or AT&T'S business; (b) if CITY remains in default under this Agreement after any applicable cure periods; (c) upon written notice to CITY for any reason or no reason, at any time prior to commencement of construction by AT&T; or (d) upon sixty (60) days prior written notice to CITY for any reason, so long as AT&T pays CITY a termination fee equal to three (3) months Rent, at the then current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by AT&T under any one or more of the termination rights granted to AT&T under this Agreement. Except as otherwise provided herein, upon termination of this Agreement CITY shall refund any prepaid rent.

**9.5** This Use Agreement may be terminated by CITY if the CITY decides, in its sole discretion and for any reason, to redevelop the Property and/or discontinue use of the Water Tank. Also, CITY shall refund any prepaid rent. CITY will give notice to the extent possible but no less than ninety (90) days notice to AT&T will be provided unless an emergency condition exists as determined in the reasonable discretion of the City Manager.

**9.6** Upon termination of this Use Agreement for any reason, AT&T shall remove its equipment, personalty, and any improvements from the Property within thirty (30) days of the date of the termination, and shall repair any damage to the Property caused by such equipment,

all at AT&T'S sole cost and expense. Any such property or equipment which are not removed within thirty (30) days following the end of Use Agreement term shall become the property of CITY, subject to any prior and valid, existing security interest in same.

**9.7** Notice of AT&T'S termination pursuant to paragraph 9.4 shall be given to CITY in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice. All fees paid for the Use Agreement of the Premises prior to said termination date shall be refunded by CITY. Upon such termination, this Use Agreement shall become null and void and the parties shall have no further obligations to each other.

**9.8** The following will be deemed a default by CITY and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem within twenty-four (24) hours after receipt of written notice of such default; or (ii) CITY'S failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from AT&T specifying the failure. No such failure, however, will be deemed to exist if CITY has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of CITY. If CITY remains in default beyond any applicable cure period, AT&T will have the right to exercise any and all rights available to it under law and equity, including the right to cure CITY'S default and to deduct the costs of such cure from any monies due to CITY from AT&T.

## **10. INDEMNITY AND INSURANCE**

**10.1 Disclaimer of Liability:** City shall not at any time be liable for any injury or damage occurring to any person or property from any cause whatsoever arising out of AT&T'S construction, maintenance, repair, use, operation, condition or dismantling of the Communication Facility or AT&T'S equipment, except where caused solely by the gross negligence or willful misconduct of CITY, its agents, employees, servants or officials. In such case, CITY shall, as provided by law, at its sole cost and expense, indemnify and hold harmless AT&T and its affiliates, save and except that the monetary obligation arising by virtue of the obligation herein created by this subsection shall not exceed the statutory limitations of liability applicable to the CITY under the terms of the Texas Tort Claims Act, Title 5, Civil Practice and Remedies Code of the State of Texas. CITY shall not be liable to AT&T for any temporary interruption of use of its equipment except that which is caused by the gross negligence or willful misconduct by CITY for direct or indirect consequential, special or punitive damages, including attorney fees.

**10.2 Indemnification:** AT&T shall, as permitted by law, at its sole cost and expense, indemnify and hold harmless CITY and all associated, affiliated, allied and subsidiary entities of CITY, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereafter referred to as "Indemnitees"), from and against: (i) any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of AT&T, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease

or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Premises, except where caused in whole by the negligence or willful misconduct of CITY, its agents, employees, servants or officials, or AT&T'S equipment or the AT&T'S failure to comply with any federal, state, or local ordinance or regulation; (ii) any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to AT&T, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises or AT&T'S equipment, and, upon the written request of CITY, AT&T shall cause such claim or lien covering CITY's property to be discharged or bonded within thirty (30) days following such request; (iii) any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by AT&T or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Texas or United States, including those of the Federal Securities and Exchange Commission, whether by AT&T or otherwise; (iv) AT&T'S obligation to indemnify shall continue notwithstanding termination of this Agreement until all such claims are barred by applicable statutes of limitation.

To the extent permitted by law, CITY agrees to indemnify, defend and hold AT&T harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of CITY or its employees or agents, or CITY'S breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of AT&T, its employees, agents or independent contractors.

**10.3 Assumption of Risk:** AT&T undertakes and assumes for its officers, agents, contractors and subcontractors and employees (collectively "AT&T" for the purpose of this section), all risk of dangerous conditions, obvious or undiscoverable, on or about the Premises, and AT&T hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitee's gross negligence or willful misconduct) arising out of the AT&T'S installation, operation, maintenance, condition or use of the Premises or AT&T'S equipment or AT&T'S failure to comply with any federal, state or local statute, ordinance or regulation.

**10.4 Defense of Indemnitees:** In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, AT&T shall, upon notice from any of the Indemnitees, at AT&T'S sole cost and expense, resist and defend the same with legal counsel mutually selected by AT&T and CITY; provided however, that AT&T shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of CITY and provided further that Indemnitees shall not admit

liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of AT&T.

**10.5 Notice, Cooperation and Expenses:** CITY shall give AT&T prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent CITY from cooperating with AT&T and participating in the defense of any litigation by CITY's own counsel. AT&T shall pay all reasonable expenses incurred by CITY in response to any such actions, suits or proceedings. These reasonable expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the CITY's attorney, and the actual expenses of CITY's agents, employees or expert witnesses, and disbursements and liabilities assumed by CITY in connection with such suits, actions or proceedings but shall not include attorneys fees for services that are unnecessarily duplicative of services provided CITY by AT&T. If AT&T requests CITY to assist it in such defense then AT&T shall pay all expenses incurred by CITY in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the CITY's attorney, and the actual expenses of CITY's agents, employees or expert witnesses, and disbursements and liabilities assumed by CITY in connection with such suits, actions or proceedings.

**10.6 Insurance:** During the term of the Use Agreement, AT&T shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of Two Million Five Hundred Thousand Dollars \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by AT&T'S commercial general liability insurance shall apply to CITY as an additional insured, but only with respect to CITY'S liability arising out of its interest in the Property.

**10.7 Named Insureds:** All policies, except for business interruption and worker's compensation policies, shall name CITY and all associated, affiliated, allied and subsidiary entities of CITY, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (hereafter referred to as the "Additional Insureds").

**10.8 Evidence of Insurance:** Certificates of insurance for each insurance policy required to be obtained by AT&T in compliance with this paragraph shall be filed and maintained with CITY annually during the term of the Use Agreement. AT&T shall immediately advise CITY of any claim or litigation that may result in liability to CITY.

**10.9 Cancellation of Policies of Insurance:** All insurance policies maintained pursuant to this Use Agreement shall contain the following endorsement: "At least sixty (60) days prior written notice shall be given to CITY by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this Use Agreement."

**10.10 Insurance Companies:** All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business in the State of Texas.

**10.11 Deductibles:** AT&T agrees to indemnify and save harmless CITY, as provided by law, the Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Use Agreement.

**10.12 Contractors:** AT&T shall require that each and every one of its contractors and their subcontractors carry, in full force and effect, workers' compensation, comprehensive public liability and automobile liability insurance coverages of the type which AT&T is required to obtain under the terms of this paragraph with appropriate limits of insurance.

## **11. HAZARDOUS SUBSTANCE INDEMNIFICATION**

**11.1** AT&T represents and warrants that its use of the Premises herein will not generate any hazardous substance in violation of any applicable federal, state or local statutes or regulations, and it will not store or dispose on the Property nor transport to or over the Property any hazardous substance in violation of any applicable federal, state or local statutes or regulations. AT&T further agrees to hold CITY harmless from and indemnify CITY, as provided by law, against any release of any such hazardous substances and any damage, loss, expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of CITY, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include but be limited to, any substance which after release into the environment, in quantities in violation of applicable laws, will or may reasonably be anticipated to cause sickness, death or disease.

**11.2** CITY represents and warrants that the Property is free of hazardous substances as of the date of this Agreement, and, to the best of CITY'S knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. CITY and AT&T agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the Property.

**12. ACCEPTANCE OF PROPERTY:** By taking possession of the Premises, AT&T accepts the Premises in the condition existing as of the Commencement Date. CITY makes no representation or warranty with respect to the condition of the Premises and CITY shall not be liable for any patent defect in the Premises.

**13. NOTICE:** All notices or demands are deemed to have been given or made when delivered in person or mailed by certified, registered, or express mail, return receipt requested, postage prepaid, United States mail, and addressed to the applicable party as follows:

**CITY:**                   **Office of the City Manager**  
**City of Sherman**  
**220 West Mulberry**  
**Sherman, TX 75090**  
**(903) 892-7200**

**AT&T:**           New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #DX5382; Cell Site Name: Taylor/Ricketts\_(TX)  
Fixed Asset No: 10133702  
12555 Cingular Way, Suite 1300  
Alpharetta, GA 30004

With a copy to:           New Cingular Wireless PCS, LLC  
Attn: Legal Department  
Re: Cell Site #DX5382; Cell Site Name: Taylor/Ricketts\_(TX)  
Fixed Asset No: 10133702  
15 East Midland Avenue  
Paramus, NJ 07652

**14. CONSTRUCTION:** Both parties have participated fully in the review and revision of this Use Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Use Agreement.

**15. ASSIGNMENT**

**15.1** AT&T will have the right to assign, sell or transfer its interest under this Agreement without the approval or consent of CITY, to AT&T'S parent or member company or any affiliate or subsidiary of, or partner in, AT&T or its parent or member company or to any entity which acquires all or substantially all of the AT&T'S assets in the market defined by the FCC in which the Premises is located by reason of a merger, acquisition, or other business reorganization. Upon notification to CITY of such assignment, transfer or sale, AT&T will be relieved of all future performance, liabilities and obligations under this Agreement. AT&T may not otherwise assign or sublease this Agreement without CITY'S consent, not to be unreasonably withheld, conditioned or delayed.

**15.2** Nothing in this Use Agreement shall preclude CITY from entering into other Agreements for other space for communications equipment to any person or entity as long as such other Agreements impose similar interference language.

**16. SUCCESSORS AND ASSIGNS:** This Use Agreement shall be binding upon and inure to the benefit of the parties and their respective successors.

**17. CONDEMNATION.** In the event CITY receives notification of any condemnation proceedings affecting the Property, CITY will provide notice of the proceeding to AT&T within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in AT&T'S sole determination, to render the Premises unsuitable for AT&T, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for AT&T will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to AT&T will not diminish CITY'S recovery. AT&T will be entitled to reimbursement for any prepaid Rent on a prorata basis.

**18. CASUALTY.** CITY will provide notice to AT&T of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in AT&T'S sole determination, then AT&T may terminate this Agreement by providing written notice to the CITY, which termination will be effective as of the date of such damage or destruction. Upon such termination, AT&T will be entitled to collect all insurance proceeds payable to AT&T on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if CITY or AT&T undertake to rebuild the Communications Facility, CITY agrees to use its reasonable efforts to permit AT&T to place temporary transmission and reception facilities on the Property at no additional Rent until such time as AT&T is able to activate a replacement transmission facility at another location or the reconstruction of the Communication Facility is completed.

**19. MISCELLANEOUS**

**19.1** CITY and AT&T represent that each, respectively, has full right, power, and authority to execute this Use Agreement.

**19.2** This Use Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification or amendment to this Use Agreement must be in writing and executed by both parties.

**19.3** This Use Agreement does not establish any real property rights, franchises or other rights whatsoever in real estate to AT&T. This Use Agreement provides limited rights to use and limited rights for access to facilities subject to revocation upon the terms and conditions of this Use Agreement. It is further agreed that at no time shall AT&T'S Communication Facility be considered a fixture as such equipment shall at all times remain the personal property of AT&T.

**19.4** This Use Agreement and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State of Texas. Any litigation concerning this Use Agreement shall be conducted in Grayson County, Texas, and the parties hereby agree to the venue and personal jurisdiction of these courts.

19.5 CITY reserves the right for CITY's Director of Utilities or his designee to enter upon and have access to any portion of the Premises at any and all reasonable times upon notice to AT&T on any matters.

19.6 One or more instances of forbearance by CITY in the exercise of its rights herein shall in no way constitute a waiver thereof.

19.7 No right or remedy granted herein or reserved to the CITY is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Use Agreement may be waived without consent of the CITY. Forbearance or indulgence by CITY shall not constitute a waiver of any covenant or condition to be performed pursuant to this Use Agreement.

19.8 This Use Agreement is entered into subject to the Charter and ordinances of CITY, as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and Federal Laws.

19.9 If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this Use Agreement are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, or covenants of this Use Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**EXECUTED** on the date first written above.

**CITY OF SHERMAN, TEXAS**

BY: \_\_\_\_\_  
GEORGE OLSON, CITY MANAGER

**THE STATE OF TEXAS** §

**COUNTY OF GRAYSON** §

**CITY ACKNOWLEDGMENT**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared GEORGE OLSON known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act of the CITY OF SHERMAN, TEXAS, a municipal corporation, of the State of Texas, Grayson County, Texas, and as the \_\_\_\_\_ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public In and For  
the State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires \_\_\_\_\_

**AT&T MOBILITY TEXAS LLC**  
By AT&T Mobility Corporation, its Manager

BY \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed/Typed Name

**THE STATE OF TEXAS**

§  
**ACKNOWLEDGMENT**

**COUNTY OF \_\_\_\_\_ §**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name inscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of AT&T Mobility Corporation, the Manager of AT&T MOBILITY TEXAS LLC, and as the \_\_\_\_\_ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

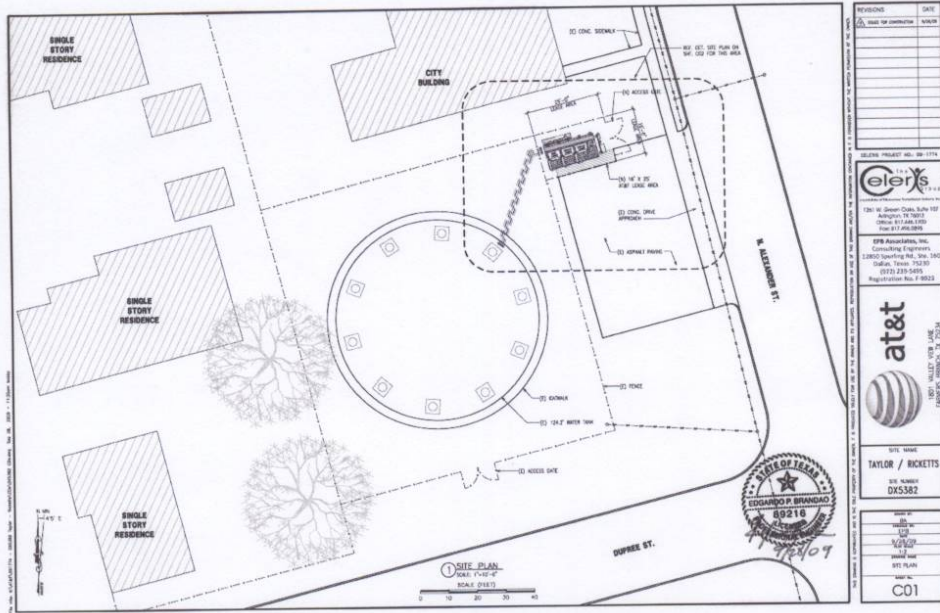
GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public In and For  
the State of Texas

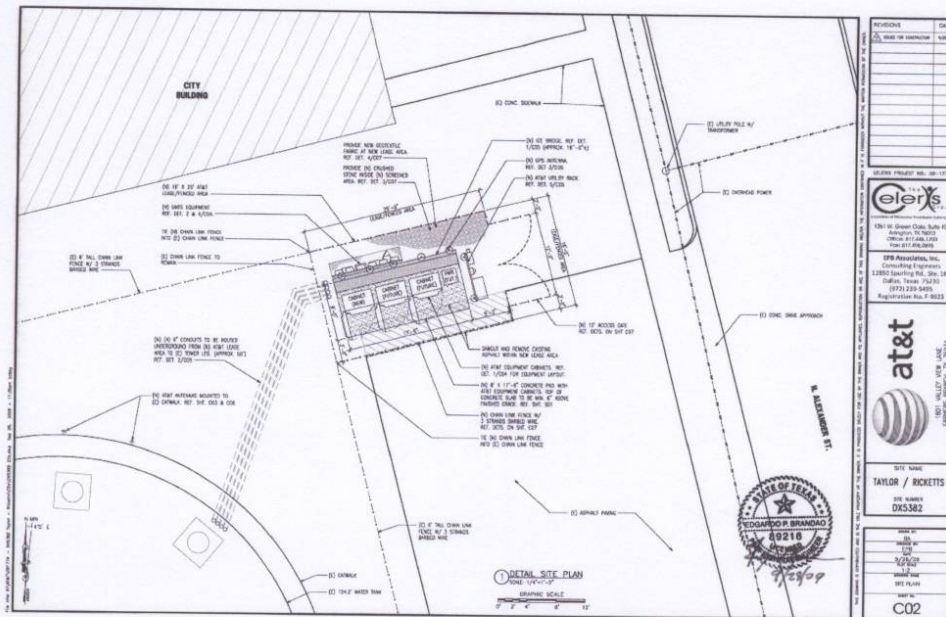
\_\_\_\_\_  
Notary's Printed Name

My Commission Expires \_\_\_\_\_

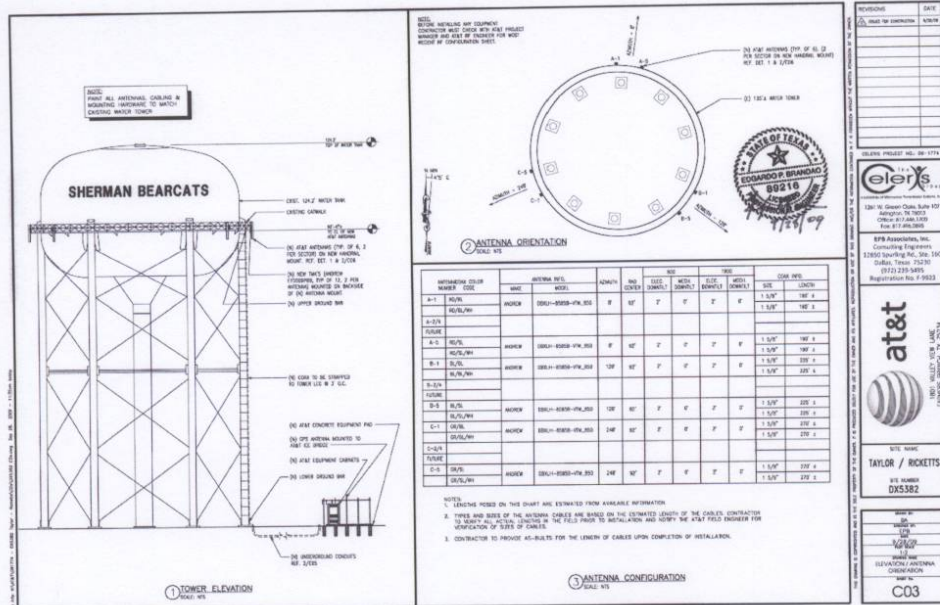
## ATTACHMENT A



## 1 of 2



ATTACHMENT B  
2 of 2





# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.1

**\* REQUEST TO ADVERTISE**

**Construction of the South Lane of West Lamberth Road,  
from Heritage Parkway to Shady Oaks Lane**

**Issue**

Request to advertise for bids to construct the south lane of Lamberth Road from Heritage Parkway to Shady Oaks Lane

**Background**

Teague, Nall & Perkins is nearing completion of the engineering plans and specifications for construction of the south lane of West Lamberth Road west of Heritage Parkway. Plans are to begin the process of advertising for bids in January 2010 and have the street ready for an early spring construction start.

**Origination**

Department of Public Works

**Financial Consideration**

Funds for the cost of advertising for bids are in the Capital Improvement Program (CIP) budget.

**Staff Recommendation**

Advertise for bids when the plans and specifications are complete.

**Alternatives**

Those as may be recommended by the City Council

**Attachments**

Location Map

**Prepared by:**  
**Jeff Miller, Public Works Director**

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



City of Sherman, Texas  
Engineering Department

**REQUEST TO ADVERTISE**  
**Lamberth Rd. West from FM 1417**  
**to Shady Oaks Rd.**



0 80 160 320 Feet



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.2

### **\* PAYMENT APPROVAL**

**Texas Commission on Environmental Quality (TCEQ) Annual Fee  
for Public Water Systems Fiscal Year 2009-2010: \$35,214.85**

### **Issue**

To approve payment of the annual fee for Public Water Systems to the Texas Commission on Environmental Quality (TCEQ) for fiscal year (FY) 2009-2010 in the amount of \$35,214.85

### **Background**

This fee is imposed to fund TCEQ expenses for administering public water systems programs. It is calculated based upon the number of water service connections. Following rate increases passed by the 2009 Texas Legislature, TCEQ now charges up \$35,214.85 for our permit. TCEQ must receive payment of this fee by January 1, 2010, or late penalties will be applied.

### **Origination**

TCEQ

### **Financial Consideration**

Funds for this expenditure are budgeted and available in the FY 2009-2010 budget.

### **Staff Recommendation**

It is recommended the City Council approve payment of this \$35,214.85 fee to TCEQ.

### **Alternatives**

As may be directed by the City Council

### **Attachments**

TCEQ Invoice

TCEQ Fee Estimate Report

**Prepared by:**  
**Mark Gibson, Director of Utilities and Engineering**

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

DETACH BOTTOM PORTION AND RETURN WITH PAYMENT - KEEP TOP PORTION FOR YOUR RECORDS -

PAGE 1

|                                                                                                                                                                                                           |                                                      |                                              |  |           |             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|----------------------------------------------|--|-----------|-------------|
| ACCOUNT NO.                                                                                                                                                                                               | THIS INVOICE REFLECTS ALL PAYMENTS RECEIVED THROUGH: |                                              |  | LATE FEES | BALANCE DUE |
| 90910006                                                                                                                                                                                                  | NOV04, 09                                            |                                              |  | 0.00      | 35,214.85   |
| INVOICE DATE                                                                                                                                                                                              | INVOICE NO.                                          | DESCRIPTION                                  |  | AMOUNT    | BALANCE     |
| NOV30, 09                                                                                                                                                                                                 | PHS0117697                                           | REG. NUMBER 0910006 FY10<br>WATER SYSTEM FEE |  | 35,214.85 | 35,214.85   |
| <p style="text-align: right;"> <i>512 239 4606</i><br/> <i>Amanda</i><br/> <i>Last spring</i><br/> <i>calculations</i><br/> <i>2.15 per conn at</i><br/> <i>Last inspection</i><br/> <i>11/30/09</i> </p> |                                                      |                                              |  |           |             |
| This fee is based on data reported from the last inspection prior to 11/30/09.<br>Please call 512-239-4601 for assistance with the calculation of your fee.                                               |                                                      |                                              |  |           | 35,214.85   |

See REVERSE SIDE for Explanation of Charges and TCEQ Contact Telephone Numbers

PLEASE PAY THIS AMOUNT   
INCLUDE ACCOUNT NUMBER ON CHECK

GEO VIPP Form AR41A 02-16-06

NOV04,09

DETACH THIS PORTION AND RETURN WITH  
CHECK OR MONEY ORDER PAYABLE TO:



**TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

| ACCOUNT NO. | BALANCE DUE |
|-------------|-------------|
| 90910006    | 35,214.85   |

☐ CHECK HERE IF YOUR ADDRESS HAS CHANGED.  
PLEASE INDICATE ADDRESS CHANGE ON BACK.

**INVOICES NOT PAID WITHIN  
30 DAYS OF INVOICE DATE WILL  
ACCRUE PENALTIES**

CITY OF SHERMAN

PO BOX 1106

SHERMAN TX 75091-1106

0090910006 1533367 00035214851230092

## Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** June 19, 2009  
**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director  
**From:** Carlos Rubinstein, Deputy Executive Director  
**Docket No.:** 2008-1866-RUL  
**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 21, Water Quality Fees  
Chapter 290, Public Drinking Water  
Consolidated Water Quality, Public Health Services, and Water Use Assessment Fees  
Rule Project No. 2009-007-021-PR

### Scope of the rulemaking:

These adopted rule changes amend Chapter 21, Water Quality Fees, and Chapter 290, Public Drinking Water. There are no changes required by federal rules. Although this rulemaking was not originally proposed in order to meet a requirement of state law, it will allow the agency to be consistent with recent changes to state law.

### Reasons for the rule package:

This adoption would amend Chapter 21 and Chapter 290 to ensure that there are sufficient funds in fiscal years (FYs) 2010 - 2011 to maintain the current level of agency activity for its existing water programs.

### Statutory Authority:

The amendments are adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs, including water programs; §5.102, concerning general powers of the commission; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §5.701, which provides statutory direction regarding the use of fees collected for deposit to the water resource management account; §26.011, which requires the commission to control water quality in the state; §26.0135, which directs the commission to apportion, assess, and recover reasonable costs of administering the water quality management program under that section; §26.0291, which establishes a water quality and water use assessment fee (WUF) for wastewater permit holders and water rights holders; §26.0292, which addresses the manner in which the commission assesses fees for aquaculture facilities; Texas Health and Safety Code (THSC), §341.0315, which establishes the commission's authority over public drinking water supply systems; and THSC, §341.041, which authorizes the commission to assess fees for public drinking water supply systems.

### Potentially controversial matters:

Fee increases tend to be controversial.

Re: Docket No. 2008-1866-RUL

**Public comment:**

The proposal was published in the March 13, 2009, issue of the *Texas Register* (34 TexReg 1780). The commission held a public hearing for this rule on April 7, 2009 in Austin, Texas. At the hearing the commission received comments from the City of Austin; the City of Houston; El Paso Water Utilities; Luminant Power; and the San Antonio Water System. The comment period closed on April 13, 2009.

The commission received written comments from: Agua Special Utility District; American Electric Power; the Association of Electric Companies of Texas, Inc.; Bethesda Water Supply Corporation; the Honorable Ronald F. Branson, Mayor of Carrollton; Calpine Corporation; City of Arlington Water Utilities Department; City of Brownwood; City of Carrollton, Public Works Department; City of Cleburne; City of Denton; City of Grandview; City of Hughes Springs, including the Honorable Reba Simpson, Mayor of City of Hughes Springs; the Honorable James Samples, Mayor Pro Tem, City of Hughes Springs, the Honorable William V. Jones, City Council Member, City of Hughes Springs, and the Honorable Lee Newsom, City Official, City of Hughes Springs; City of Jefferson; City of Lone Star; City of Odessa; City of Ore City; City of Pittsburg; City of Plainview, Public Works Department; City of Pleasanton; City of Rosenberg; City of Sugar Land; City of Taylor Landing; City of Wylie; El Paso Water Utilities; Guadalupe-Blanco River Authority; Hardin County Water Control and Improvement District No. 1; Kamira Water System; Kempner Water Supply Corp.; L&L Engineers and Planners, Inc.; Lake Corpus Christi RV Park and Marina; Lone Star Chapter of the Sierra Club; Lower Colorado River Authority; Luminant Generation Company LLC; New Ulm Water Supply Corp.; Northeast Texas Municipal Water District; NRG Texas Power LLC; SEC Energy Products; Shin-Etsu Silicones of America; the Honorable Reba Simpson, Mayor of Hughes Springs; Talty Water Supply Corporation; Texas Association of Business; Texas Chemical Council; Texas Municipal League; The Shilk Co., Inc.; Upper Guadalupe River Authority; Valley Mobile Home Properties; Water Environment Association of Texas; and 5 individuals.

The commission also received a joint comment letter from Arlington Water Utilities; Beaumont Water Utilities; El Paso Water Utilities; Houston Public Works & Engineering; Austin Water Utility; City of Dallas Water Utilities; the Fort Worth Water Department; and the San Antonio Water System.

The majority of commenters did not support the proposed rule. The concerns expressed by the commenters fell into several categories:

- the increases are too drastic; they should be phased in over a period of time;
- this is the wrong time to raise fees given the current state of the economy and the other burdens being placed upon municipalities and utilities;
- the commission should have considered all 30 water fees it assesses in order to spread out the impact of the increase;
- the commission should find other ways to address the funding shortfall, e.g. use general revenue funds or federal funds as the primary source of funding and use fees only to supplement its water fund; tighten its belt; streamline its operations;
- the methodology the commission used to generate the numbers in the rule proposal is unclear;
- the uncertainty regarding how the commission will apply the multiplier and what rate it will assess for the factors in the consolidated water quality fee make it difficult for fee payers to budget;
- small systems or large systems, depending on the commenter, were unfairly targeted by the rule proposal; and,
- the fee increases amounted to a tax.

Commissioners  
Page 3  
June 19, 2009

Re: Docket No. 2008-1866-RUL

**Significant changes from proposal:**

Two changes were made from proposal to adoption.

- In §21.3(b)(6)(D)(iii), the word "maximum" was added to make the rule language of this provision consistent with the rule language in §21.3(b)(2).
- In §21.3(c)(5), "above 2,500 acre feet per year" was added to the rule language for administrative efficiency.

**Key points in adoption rulemaking schedule:**

|                                                     |                    |
|-----------------------------------------------------|--------------------|
| <i>Texas Register</i> proposal publication date:    | March 13, 2009     |
| Six-month <i>Texas Register</i> filing deadline:    | September 14, 2009 |
| Anticipated <i>Texas Register</i> publication date: | July 24, 2009      |
| Anticipated effective date:                         | July 30, 2009      |

**Agency contacts:**

Kathleen Ramirez, Rule Project Manager, 239-6757, Water Supply Division  
Margaret Ligarde, Staff Attorney, 239-3426  
Patricia Duron, Texas Register Coordinator, 239-6087

**Attachments**

cc: Chief Clerk, 5 copies  
Executive Director's Office  
David C. Schanbacher, P.E.  
Daniel Womack  
Kevin Patteson  
Betsy Bird  
Office of General Counsel  
Kathleen Ramirez  
Patricia Duron

**TITLE 30**

ENVIRONMENTAL QUALITY

**PART 1**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**CHAPTER 290**

PUBLIC DRINKING WATER

**SUBCHAPTER E**

FEES FOR PUBLIC WATER SYSTEMS

**RULE §290.51****Fees for Services to Drinking Water System**

(a) Purpose and scope.

(1) The purpose of this section is to establish fees for services provided by the commission to public water systems.

(2) The commission will provide services to public water systems, as follows:

- (A) scheduling of analysis of drinking water for chemical content;
- (B) collection of samples of drinking water for chemical analyses;
- (C) review system data for evaluation of sampling waivers;
- (D) inspect public water systems;
- (E) review plans for new systems and major improvements to existing systems; and
- (F) provide technical assistance as needed.

(3) The fees which the commission will charge for services provided to community and nontransient noncommunity water systems under this subsection will be according to the following schedule.

(A) For a system with fewer than 25 connections, the fee will be \$100.

(B) For systems with 25 - 160 connections, the fee will be \$175.

(C) For a system with greater than or equal to 161 connections, the fee will be an amount up to a maximum of \$2.15 per connection.

(i) The number of connections will be determined from data collected from the latest agency inspection report.

(ii) All nontransient noncommunity systems, state, federal, and other community water system installations determined by the commission to serve large populations through a few connections will have the number of connections for fee purposes determined by dividing the population served by a value of ten.

(iii) Examples of such installations include, but are not limited to, universities, children's homes, correctional facilities, and military facilities which generally do not bill customers for water service.

(4) New public water systems will not be assessed a fee for services until water is supplied to the first connection.

(5) The commission will charge a fee of \$100 for services provided to noncommunity water systems which are not addressed in paragraph (3) of this subsection.

(6) All fees are due by January 1 of each year, shall be paid by check, money order, electronic funds transfer, or through the agency's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. Penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees).

(b) Failure to make payments as required under this section will subject the violator to the penalty provisions of the Texas Health and Safety Code, Chapter 341, Subchapter C.

**Source Note:** The provisions of this §290.51 adopted to be effective December 21, 1993, 18 TexReg 9105; amended to be effective February 14, 1997, 22 TexReg 1323; amended to be effective December 30, 2001, 26 TexReg 10616; amended to be effective July 30, 2009, 34 TexReg 4893

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# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.3

### OTHER BUSINESS

#### **Receive Report from Tourism Director April Patterson**

#### **Issue**

To receive Tourism Director April Patterson's report on the activities and accomplishments of her department and summary work program for FY2010

#### **Background**

The brief presentation by Tourism Director April Patterson will provide the City Council with an overview of the Department of Tourism's activities and accomplishments and plans for the current year.

#### **Origination**

Tourism

#### **Attachments**

None

**Prepared by:**  
Robby Hefton, Assistant City Manager/CFO

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



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.4

### **OTHER BUSINESS**

#### **Receive the Fire Department's Presentation on Certification and Training Levels, Capabilities and Accomplishments**

##### **Issue**

The Fire Department's presentation focusing on various fire training issues important to the City

##### **Background**

Division Chief Gregg Loyd will provide the City Council with a presentation on the certification and training levels as well as the capabilities and accomplishments of the Fire Department.

##### **Origination**

Jeffrey J. Jones, Fire Chief

##### **Financial Consideration**

There is no financial impact to this agenda item.

##### **Council Action Requested**

The Council need take no action on this agenda item.

##### **Attachments**

None

**Prepared by:**  
Jeffrey J. Jones, Fire Chief

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



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.5

### **\* OTHER BUSINESS**

#### **Approval of the 2009 Ad Valorem Tax Roll Value and Tax Levy**

#### **Issue**

To consider approval of the Ad Valorem Tax Roll Value and Tax Levy for fiscal year 2009-2010

#### **Background**

In accordance with Texas Property Tax Code Section 26.09(e), the Council must approve the final tax roll value and related tax levy. The 2009 tax year represents taxes that will be collected during the City's 2009-2010 fiscal year. The Grayson County Tax Assessor/Collector's office has provided the taxable value as \$2,220,498,836.00, which equates to a levy of \$7,080,353.95 based on the City's total tax rate of \$.32000/\$100.00 valuation.

#### **Origination**

Finance

#### **Financial Consideration**

There is no financial consideration to approving this tax levy.

#### **Staff Recommendation**

It is recommended that the Council approve the 2009 Tax Roll Value and 2009 Tax Levy at the amounts reflected above.

#### **Alternatives**

As this process is required by the Texas Property Tax Code, there are no alternatives.

#### **Attachments**

Letter of Value/Levy from Grayson County Tax Assessor/Collector

**Prepared by:**  
**Robby Hefton, Assistant City Manager/CFO**

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



OFFICE OF

**JOHN W. RAMSEY**

ASSESSOR AND COLLECTOR OF TAXES  
GRAYSON COUNTY  
www.co.grayson.tx.us

COURTHOUSE  
100 W. HOUSTON • SUITE 11  
P.O. BOX 2107  
SHERMAN, TEXAS 75091-2107

(903) 892-TAXS (8297)  
(903) 893-VOTE (8683)  
(903) 813-4225 (AUTO)  
Fax: (903) 893-4973  
e-mail: ramseyj@co.grayson.tx.us

November 17, 2009

**VALUE/LEVY**

Mr. Robbie Hefton  
Director of Finance  
City of Sherman  
400 N. Rusk Street  
Sherman, Texas 75090

Dear Mr. Hefton:

**Re: Section 26.09(e) SPTC**

Please have your district approve your 2009 Tax Roll Values and return to me as soon as possible. These figures are actual tax roll value and tax levy billed figures.

|                              |                  |
|------------------------------|------------------|
| 2009 Tax Roll Value          | \$ 2,220,498,836 |
| 2009 Tax Levy                | \$ 7,080,353.95  |
| 2009 Special Assessment Levy | \$ 81,783.06     |

If you have any questions, please contact me.

Very truly yours,

John Ramsey  
Assessor and Collector of Taxes

JR:kb

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
City Mayor



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.6

### **\* OTHER BUSINESS**

**Replat Approval of Lots 18, 20 and 21, Block 2, O'Hanlon Ranch Addition, Phase 2, containing 1.076 acres; Jeremy and Sherry Knight, Bluestone Partners, LLC, and DGR Development Group, LTD, Owners; Underwood Drafting and Surveying, Surveyors (2505 Sedalia Circle, 2912 and 2916 Sedalia Trail)**

### **Issue**

To consider Replat approval of Lots 18, 20 and 21, Block 2, O'Hanlon Ranch Addition, Phase 2, containing 1.076 acres

### **Background**

The property is located at 2505 Sedalia Circle and 2912 and 2916 Sedalia Trail in Phase 2 of the O'Hanlon Ranch Addition off of F.M. 1417 North (Heritage Parkway). This Replat is to redefine property lines to enlarge Lot 18.

### **Origination**

Jeremy and Sherry Knight, Bluestone Partners, LLC, and DGR Development Group, LTD (Owners); Underwood Drafting and Surveying (Surveyors)

### **Board Recommendation**

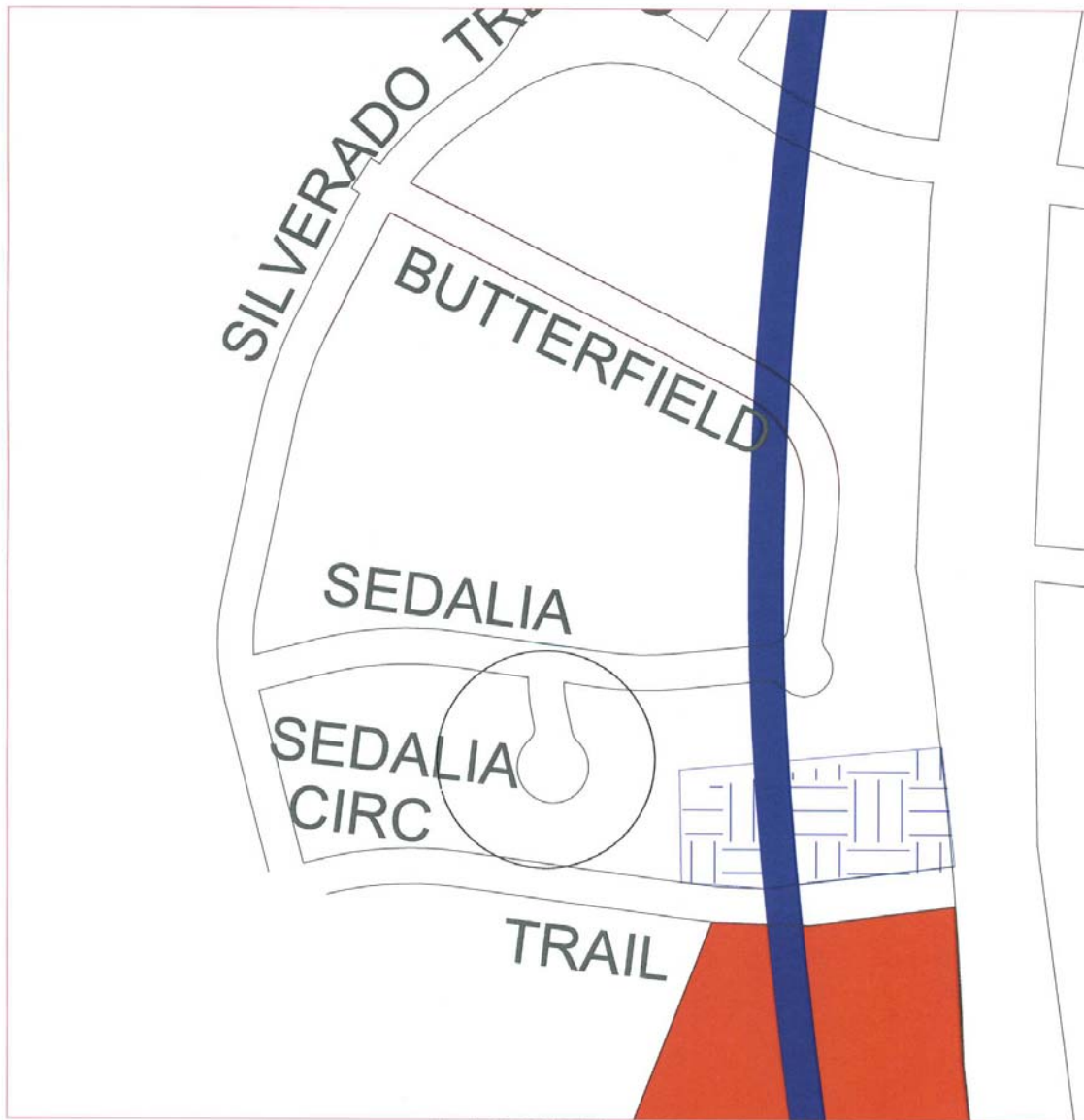
At the November 17, 2009 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Replat be approved.

### **Attachments**

Location Map  
Photos  
Plat  
P&Z Communication  
Staff Review Letter

**Prepared by:**  
Scott Shadden, Development Services Director

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



### LEGEND

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



SEDALIA

Department of Developmental Services





City of Sherman, Texas  
Engineering Department



## 2505 Sedalia Circle

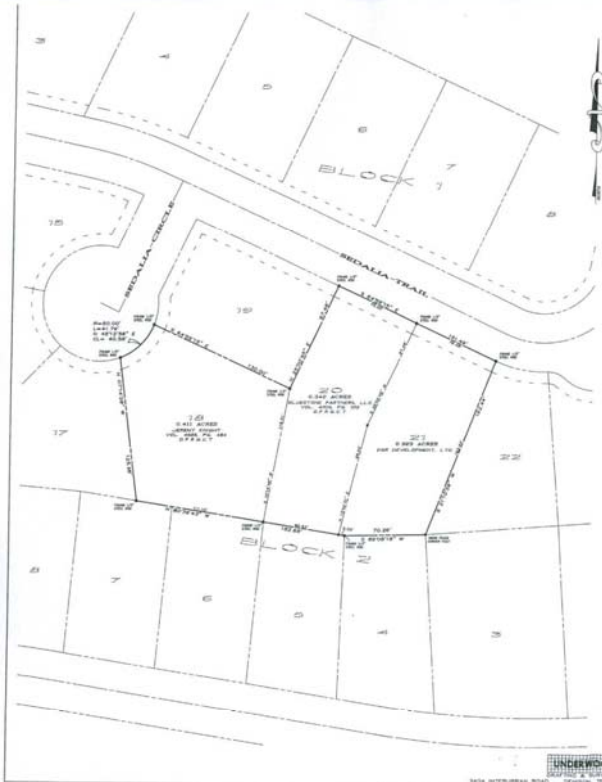


## 2912 Sedalia Trail



# 2916 Sedalia Trail





Shaded in the City of Sherman, County of Grayson, State of Texas, and is hereby acknowledged by the City of Sherman, Texas.

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

Attest: City Clerk of the City of Sherman

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

The undersigned, the City Clerk of the City of Sherman, Texas, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the City Clerk's Office, and that the same has been duly recorded in the City Clerk's Office.

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

City Clerk of Sherman, Texas

Now therefore come all and by these presents, the City of Sherman, Texas, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the City Clerk's Office, and that the same has been duly recorded in the City Clerk's Office.

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

City Clerk of Sherman, Texas

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

City Clerk of Sherman, Texas

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City Clerk of Sherman, Texas

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City Clerk of Sherman, Texas

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

City Clerk of Sherman, Texas

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

### LEGAL DESCRIPTION

Shaded in the City of Sherman, County of Grayson, State of Texas, and is hereby acknowledged by the City of Sherman, Texas.

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

Attest: City Clerk of the City of Sherman

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

The undersigned, the City Clerk of the City of Sherman, Texas, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the City Clerk's Office, and that the same has been duly recorded in the City Clerk's Office.

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City Clerk of Sherman, Texas

Witness my hand and seal of the City of Sherman, Texas, this 1st day of March, 1920.

City Clerk of Sherman, Texas

*City of Sherman*  
**Planning and Zoning Commission**  
**Board of Adjustments**  
*Agenda Communication Form*  
*November 17, 2009*  
**Jason Sofey, Chairman**

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

**Don Hicks, Commissioner**  
**Ron Barton, Commissioner**  
**David Plyler, Commissioner**  
**Darren Tankersley, Commissioner**

**2505 Sedalia Circle, 2912 and 2916 Sedalia Trail**  
**Being Lots 18, 20 & 21, Block 2, O'Hanlon Ranch Addition, Phase 2**  
**Final Replat**

**Requested Action/Proposed Use:**

Final Replat of Lots 18, 20 & 21, Block 2 of the O'Hanlon Ranch Addition, Phase 2.

**Background:**

This is a replat reconfiguring three adjacent lots.

**Adjacent Zoning:**

R-1 (One Family Residential) District

**Origination:**

Jeremy & Sherry Knight, Bluestone Partners, LLC and DGR Development Group, LTD (Owners) and Underwood Drafting & Surveying (Surveyors)

**Master Plan Designation:**

Residential

**Attachments:**

Location map  
Photographs  
Plat  
Staff Review

**Prepared by:**  
**Lisa Whitfield,**  
**Engineering & Development Coordinator**

**Approved by:**  
**Scott Shadden,**  
**Development Services Director**

## **STAFF REVIEW LETTER**

November 11, 2009

Bluestone Partners, LLC  
2913 Overland Trail, Ste. 100  
Sherman, Texas 75092

DGR Development Group, LTD  
801 E. Taylor  
Sherman, Texas 75090

Jeremy & Sherry Knight  
PO Box 626  
Sherman, Texas 75091-0626

Dear Applicants,

The request for approval of a Final Replat of Lots 18, 20 and 21, Block 2 of the O'Hanlon Ranch Addition, Phase 2 concerning the property located at 2505 Sedalia Circle, 2912 and 2916 Sedalia Trail has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, November 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. Drive approaches and sidewalks shall conform to City of Sherman standards.
4. The 10' Utility Easement shall be labeled on the plat.
5. Field notes shall be corrected.
6. Identify the P.O.B. on the plat.
7. Any other changes made to the final replat prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Lisa Whitfield, Engineering & Development Coordinator at 903-892-7212 prior to the meeting.

Respectfully,

Mark Gibson  
Director of Utilities and Engineering

cc: George Olson, City Manager Scott Shadden, Director of Development Services  
Brandon Shelby, City Attorney Danny Fuller, Fire Marshal  
Lisa Whitfield, Engineering & Development Coordinator Jeff Miller, Director of Public Works  
Underwood Drafting & Surveying, 3404 Interurban Rd., Denison, TX 75021



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.7

### CITIZEN REQUESTS

The Honorable Bill Magers, Mayor



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.8

### MEDIA QUESTIONS

The Honorable Bill Magers, Mayor



# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.9

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

#### **(a) Parks and Recreation Advisory Board (3)**

#### **Issue**

Parks and Recreation Advisory Board terms for Margie Morris and Trent Bass expired on November 8, 2009. Both are eligible to be reappointed. Mr. Bass does wish to be reappointed; but Mrs. Morris does not. There is also one vacancy on the Board. Dr. Thomas Nuckols, Donald L. Ward, and Aaron Wilson have also completed applications for service on the Board.

#### **Background**

The Parks and Recreation Advisory Board advises the City Council on long-range planning and the implementation of programs and activities conducted by the Parks and Recreation Department.

#### **Origination**

The appointments originated with the City Clerk's Office.

#### **Financial Consideration**

There is no financial consideration to the City.

#### **Staff Recommendation**

It is recommended that the City Council consider appointments to the Parks and Recreation Advisory Board.

#### **Alternatives**

The City Council could choose not to make appointments.

#### **Attachments**

A membership roster, fact sheet, applicant list, reappointment letters, and applications are attached.

**Prepared by:**  
Linda Ashby, City Clerk

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

## MEMBERSHIP ROSTER

### PARKS & RECREATION BOARD

LENGTH OF TERMS: TWO YEARS

Ord. 4112 Consecutive Term Limit (3)\*effective 7/24/89

| MEMBER        | DISTRICT | TERM<br>BEGINS             | TERM<br>EXPIRES        | TERMS  | MEMBERSHIP<br>REQUIREMENTS |
|---------------|----------|----------------------------|------------------------|--------|----------------------------|
| Jason Bethel  | 1        | A 2/23/2009                | 2/23/2011              | 1      |                            |
| Vacant        |          |                            |                        |        |                            |
| Shane Best    | 4        | A 6/19/2007<br>R 6/19/2009 | 6/19/2009<br>6/19/2011 | 1<br>2 |                            |
| Casey Peacock | 1        | U 4/8/2008<br>R 9/5/2009   | 9/5/2009<br>9/5/2011   | 1<br>2 |                            |
| Margie Morris | 4        | A 11/8/2005<br>R 11/8/2007 | 11/8/2007<br>11/8/2009 | 1<br>2 |                            |
| John Murphy   | 1        | 10/6/2009                  | 10/6/2011              | 1      |                            |
| Trent Bass    | 1        | U 3/17/2009                | 11/8/2009              | 0      |                            |

#### NOTE:

Chair: Chris Oestreich  
Vice Chair:

Term: February 2009 (resigned 9/21/2009)

CITY STAFF: Kevin Winkler, Parks and Recreation Administrator  
Revised 10/6/2009

## FACT SHEET

### PARKS AND RECREATION BOARD

Established by ORDINANCE 3181 – MARCH 28, 1977

1. Number of Members: SEVEN (7)
2. Term of Appointment: TWO (2) YEARS
3. Consecutive Term Rule: THREE (3) TERMS – ORDINANCE 4112 (7/24/89)
4. Qualifications for Membership: INTEREST IN PROGRAMS AND ACTIVITIES CONDUCTED BY PARKS AND RECREATION DEPARTMENT. A STUDENT OF SHERMAN HIGH SCHOOL DESIGNATED BY STUDENT COUNCIL, AND THE DIRECTOR OF PARKS AND RECREATION SHALL BE EX-OFFICIO, NON-VOTING MEMBERS
5. Appointed by: MAYOR AND CITY COUNCIL
6. Board Organization  
CHAIRPERSON E VICE CHAIRPERSON     SECRETARY A  
ELECTED     APPOINTED
7. Departmental Responsibility: PARKS AND RECREATION DEPARTMENT
8. Meeting Date: FIRST WEDNESDAY OF EACH MONTH
9. Attendance Requirements: WILL FORFEIT SEAT BY MISSING 3 CONSECUTIVE MEETING WITHOUT GOOD CAUSE

=====

#### PURPOSE:

To assist in long-range planning and implementation of programs and activities conducted by the Parks and Recreation Department.

#### RESPONSIBILITIES:

Advise concerning future development; to study and make recommendations concerning additional park land or sites; and to recommend means for maximum utilization of facilities.

**APPLICANT LIST**

Parks and Recreation Advisory Board

Positions Vacant   3  

| Applicant          | Address             | District | Qualifications                           |
|--------------------|---------------------|----------|------------------------------------------|
| Trent Bass         | 7 Vancouver Place   | 1        | Current Member; Wishes to be Reappointed |
| Dr. Thomas Nuckols | 2341 Canyon Creek   | 1        | Austin College<br>Professor Emeritus     |
| Donald L. Ward     | 1510 Idlewood Drive | 1        | IRS<br>Appraiser                         |
| Aaron Wilson       | 914 Valentine       | 3        | W. Energies Group<br>Administration      |

COMMENTS:

SHERMAN



PUBLIC RECORDS DEPARTMENT

Phone No. (903) 892-7204

Fax No. (903) 892-7394

October 6, 2009

Margie Morris  
420 Ridgeview Road  
Sherman, Texas 75092



RE: Parks and Recreation Advisory Board

Dear Mrs. Morris:

Your term on the Parks and Recreation Advisory Board expires on November 8, 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*

Linda Ashby  
City Clerk

cc: Kevin Winkler, Parks and Recreation Administrator

☐ I do wish to be considered for reappointed to this board

☒ I do not wish to be considered for reappointment to this board

*Margie Morris*  
Signature

10-12-09  
Date

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

October 6, 2009

Trent Bass  
7 Vancouver Place  
Sherman, Texas 75092

RE: Parks and Recreation Advisory Board

Dear Mr. Bass:

Your term on the Parks and Recreation Advisory Board expires on November 8, 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: Kevin Winkler, Parks and Recreation Administrator

☒

I do wish to be considered for reappointed to this board

☐

I do not wish to be considered for reappointment to this board

Signature

10-2-09  
Date

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





CITY OF SHERMAN  
APPLICATION FOR BOARD OR COMMISSION  
MEMBERSHIP



Return completed application to:

City Clerk's Office  
220 W. Mulberry  
P.O. Box 1106  
Sherman, TX 75091  
Fax: (903) 892-7394

Please type or use black ink

Please complete one application for each board or commission membership

Please limit attachments to two pages

For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: Thomas W. Nuckols, Ph.D.  
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: Parks & Recreation Board

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

| Personal Information                                   | Occupational Information                 |
|--------------------------------------------------------|------------------------------------------|
| Home Address: <u>2341 Canyon Creek</u>                 | Business Name: <u>Asaph College</u>      |
| Mailing Address: <u>Sherman TX 75092</u>               | Occupation: <u>Professor Emeritus</u>    |
| Telephone: <u>903 893 5725</u>                         | Address: <u>900 Mulberry, Sherman</u>    |
| E-Mail: <u>tnuckols@asaphcollege.net</u>               | Telephone: <u>903 893 5725</u>           |
| Sherman Resident for <u>44</u> years County: <u>44</u> | E-Mail: <u>tnuckols@asaphcollege.net</u> |
| Drivers License No.: <u>06188382</u>                   |                                          |
| *Voter Registration No.: <u>1024863599</u>             |                                          |

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

Prior work experience: (please include dates)  
U.S. Navy (Naval Aviator) 1956-63; Navy Chaplain 1964-1971;  
Minister 1960-62; Professor, A.C. 1965-2008; retired 1965-

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 1952  
Business College, Correspondence School, Adult Education, Other B.A., B.S., Ph.D.

Name of College/University:

Indiana University; Southern Baptist Theological Seminary; Duke University;  
Volunteer Work: (please include dates)  
Synch (Synch School, supply, preaching, etc.) 1954-2009; Minister 1960-62;  
1975-2003; Deacon Outdoor Club 1972-1985;  
Deacon, 1985-2009; Deacon, 1985-2009;  
Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No 2004-2009

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

Taxes - No

Application held for 12 months from date received

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

If so, which one? I am Charlotte Board of MHRST which

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

I am committed to the development, management & improvement of parks & recreation. I have experience & knowledge of landscaping, parks, trails, recreation. I participated in several park plans, trails efforts, & in the development of the Sherman Master Plan.

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

- 1) Efficient & effective management of the present parks & recreation assets. I am particularly concerned to include mature experience, personal experience with athletic fields, & to develop park & wooded areas of Fairview Park.
- 2) Implementing the plans for trails in the city. I am pleased to see the plan for development of linear trails.
- 3) Acquisition & planning for additional green space as proposed in the Comprehensive Master Plan. I introduced the idea of "islands of green" for green space to "islands of development" which nature may be experienced.

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

I am knowledgeable about plants, varieties, parks, trails, & athletic walking to gather community support & participation.

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

None

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

Comments: I have talked to the members & have participated with staff at several park & trails planning meetings.

Statement of Intent

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

\*I affirm that I am qualified to vote.

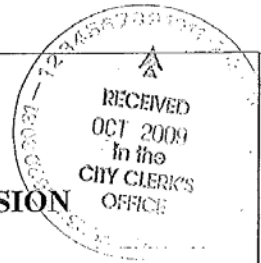
Signature: Thomas W. Nishak, Ph.D. Date: 10-6-09

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





CITY OF SHERMAN  
APPLICATION FOR BOARD OR COMMISSION  
MEMBERSHIP



Return completed application to:

City Clerk's Office  
220 W. Mulberry  
P.O. Box 1106  
Sherman, TX 75091  
Fax: (903) 892-7394

Please type or use black ink

Please complete one application for each board or commission membership

Please limit attachments to two pages

For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name:

DONALD L. WARD

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

Name of Board

or Commission:

PARKS & RECREATION

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

| Personal Information                                    | Occupational Information                                   |
|---------------------------------------------------------|------------------------------------------------------------|
| Home Address: <u>1510 IDLEWOOD DR.</u>                  | Business Name: <u>IRS</u>                                  |
| Mailing Address: <u>972</u>                             | Occupation: <u>APPRAISER</u>                               |
| Telephone: <u>903-814-8820</u> Fax: <u>903-308-7294</u> | Address: <u>4050 ALPHA RD., FARMERS BRANCH</u>             |
| E-Mail: <u>dlw@cableone.net</u>                         | Telephone: <u>903-308-7559</u> Fax: <u>903-308-7294 TX</u> |
| Sherman Resident for <u>12</u> years County: <u>12</u>  | E-Mail: <u>DONALD.L.WARD@irs.gov</u>                       |
| Drivers License No.: <u>00928618</u>                    |                                                            |
| *Voter Registration No.: <u>1025259156</u> ✓            |                                                            |

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

Prior work experience: (please include dates)

9 YEARS - CHIEF APPRAISER - GRAYSON CENTRAL APPRAISAL

4 YEARS - SHERMAN PLANNING & ZONING COMMISSION

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 1965

Business College, Correspondence School, Adult Education, Other?

Name of College/University: UNIV. of Houston ☒ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: (please include dates)

KIWANIS CLUB - 1998-2009

GRAYSON COUNCIL OF PTA'S - 2003-2008

Boy Scouts - 1999-2003

SHS ATHLETIC BOOSTER CLUB

2003-2007

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

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

Taxes - No

Application held for 12 months from date received

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

If so, which one? \_\_\_\_\_

Why do you want to become a member of this particular board or commission (how would you use this experience to benefit the City)?  
Promote city Amenities. REAL ESTATE & DEVELOPMENT EXPERIENCE

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

1) Development of Trails System. Short & Long Term Planning;  
COORDINATION

2) \_\_\_\_\_

3) \_\_\_\_\_

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

TEXAS REAL ESTATE BROKER, MAI - MEMBER APPRAISAL INSTITUTE  
AVA - BUSINESS VALUATION GENERAL REAL ESTATE ENGINEERING  
GOVERNMENT + FINANCE KNOWLEDGE

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

N/A

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

Comments: Discussions with TRENT BASS.

#### Statement of Intent

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

\*I affirm that I am qualified to vote.

Signature: \_\_\_\_\_

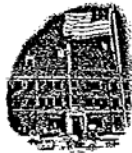
Don Swain

Date: \_\_\_\_\_

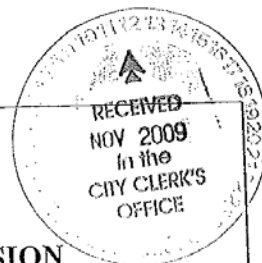
10/8/09

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





CITY OF SHERMAN  
APPLICATION FOR BOARD OR COMMISSION  
MEMBERSHIP



Return completed application to:

City Clerk's Office  
220 W. Mulberry  
P.O. Box 1106  
Sherman, TX 75091  
Fax: (903) 892-7394

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

Name: Aaron Wilson

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

Name of Board  
or Commission: Sherman Parks & Recreation

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

| Personal Information                                                           | Occupational Information                                |
|--------------------------------------------------------------------------------|---------------------------------------------------------|
| Home Address: <u>914 Valentine</u>                                             | Business Name: <u>W Energies Group</u>                  |
| Mailing Address: <u>Sherman, TX 75092</u>                                      | Occupation: <u>Administration</u>                       |
| Telephone: <u>903-436-0432</u> Fax: _____                                      | Address: <u>2009 Independence Drive</u>                 |
| E-Mail: <u>awilson@w-energies.com</u>                                          | Telephone: <u>903-870-4052</u> Fax: <u>903-898-7522</u> |
| Sherman Resident for <u>26</u> years County: <u>Grayson</u>                    | E-Mail: _____                                           |
| Drivers License No.: <u>18975562</u>                                           |                                                         |
| *Voter Registration No.: <u>1035408155</u> <input checked="" type="checkbox"/> |                                                         |

Which Council District do you live in? (see attached map) D-3 ☒

Prior work experience: (please include dates)

Highport Marina - Summer 2002-2003, W&W Enterprises 2003-2005  
Self-Employed consultant 2005-2008  
W Energies Group 2008-Present

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 2002  
Business College, Correspondence School, Adult Education, Other? \_\_\_\_\_

Name of College/University: Baylor University ☐ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: (please include dates)

Special Olympics - 2003, Meals on Wheels 2000-2008  
Organize event for Big Brothers Big Sisters - 2009, community service through church - 2004-2009

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

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

Taxes - No

Application held for 12 months from date received

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

If so, which one? \_\_\_\_\_

Why do you want to become a member of this particular board or commission (how would you use this experience to benefit the City)?  
I enjoy serving my community and would love the opportunity to provide assistance with such a great program. This is a great chance to step out and help an organization that builds a better community and help others build friendships.

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

- 1) Build element of community - In this day in age we have an increasing number of distractions. Facebook, cellphones, digital interact and tv, etc. Because of these, it is very easy to distance yourself from your community and lose the interaction with your fellow brothers & sisters. The Parks & Rec is such a great tool to be used to get people out and interact with one another again.
- 2) Promotion of our assets - One of the tools I would like to bring to the table is assisting in tapping into free marketing tools to promote our Parks & Rec. Earlier I pointed out Facebook, we can utilize this heavily trafficked site to promote activities and build groups on these sites of interested individuals to get the word out on events and establish interest groups.
- 3) Learn - A fundamental instrument to success is learning. Learning others mistakes and learning others successes can guide us on how to properly manage what we have effectively and efficiently. We have such a beautiful city to utilize, and taking even from lessons all around us can make all the difference in the world.

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

out reach committee at Western Heights CoFC, love dealing with people international bus. experience gives me a good understanding of various cultures

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

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

#### Statement of Intent

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

\*I affirm that I am qualified to vote.

Signature: \_\_\_\_\_

Date: 11/07/09

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





# SHERMAN CITY COUNCIL

## Agenda Communication Form

**From:** The Office of the City Manager

**Date:** 12-7-2009

**Subject:** Agenda Item No. D.10

### COUNCIL COMMENTS

The Honorable Bill Magers, Mayor



# **SHERMAN CITY COUNCIL**

## **Agenda Communication Form**

**From:** The Office of the City Manager

**Date:** 12-7-2009

**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 551.074**

#### **Personnel Matters**

- (a) Deliberate the Evaluation of a Public Officer or Employee:**
  - (i) Annual Performance Evaluation of the City Manager**
  - (ii) Six-Month Evaluation of the City Attorney**

The Honorable Bill Magers, Mayor



# **SHERMAN CITY COUNCIL**

## **Agenda Communication Form**

**From:** The Office of the City Manager

**Date:** 12-7-2009

**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:** 12-7-2009

**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:** 12-7-2009

**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 |
|-----|-----|-----|-----|-----|-----|-----|
|     |     |     |     |     |     |     |
| 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  
04/29/09 - 12 Noon Budget Planning Meeting in Council Chambers  
05/09/09 - City Council Election  
05/12/09 - 12 Noon Called Meeting to Canvass Election Results

06/17-18/09 - Budget Workshop in Council Chambers  
06/18/09 - Budget Workshop/Long Range Planning Workshop in Council Chambers  
06/19/09 - Long Range Planning Workshop  
09/07/09 - Labor Day / Called Council Meeting on 09/08/09  
09/17/09 - 12 Noon Joint Meeting with SEDCO Board

**2010**  
**CITY COUNCIL MEETINGS**

**JANUARY**

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

**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  |

**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  |     |     |     |     |     |     |

**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  |     |     |     |     |

**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  |     |     |     |

**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  |     |     |

**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  |     |

**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  |     |     |     |     |     |     |

**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  |     |     |     |     |     |

**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  |     |     |     |     |

**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  |     |     |     |

**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  |     |

01/04/10 - January 4th Council meeting cancelled - holiday schedules  
 01/18/10 - M.L.K., Jr. Birthday / Regular Council Meeting  
 02/15/10 - Washington's Birthday / Regular Council Meeting  
 07/05/10 - Independence Day - Called Council Meeting on 07/06/10  
 09/06/10 - Labor Day / Called Council Meeting on 09/07/10