CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, FEBRUARY 20, 2023
5:00 P.M.

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

A. 2. **PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER HENRY MARROQUIN**

A. 3. **INVOCATION BY COUNCIL MEMBER HENRY MARROQUIN**

A. 4. **APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 6, 2023 AND THE CALLED TAX INCREMENT FINANCING BOARD #2 OF FEBRUARY 6, 2023.**

Citizen Comments

B. 1. **CITIZEN COMMENTS**
During this meeting, the City Council welcomes public comment **only** on agenda items listed under the Open Meeting portion of the agenda, in accordance with Texas Government Code Section 551.007. For items not listed on the agenda, those matters may be discussed with City staff during regular business hours, or with the Mayor or any Council member by contacting them at times other than at City Council meetings.

Consent Agenda

C. 1. **CONSENT AGENDA**
Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Public Hearing

D. 1. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6567**
Amending Chapter 9 of the Code of Ordinances, Entitled "Personnel", Article 9.05, Entitled "Civil Service for Firefighters and Police Officers", at Section 9.05.026, Entitled "Authorized Number of Positions", To Revise the Number of Authorized Positions in the Fire Department; Providing for Inclusion in the Code of Ordinances; Providing for Severability; Providing for a Repealer

D. 2. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6568**
Abandoning One (1) Twenty Foot (20') Water Easement Located in the Proposed Plat of Estates at Baker Park, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Water Easement is Established in Volume 1648, Page 491 of the Deed Records of Grayson County, Texas

D. 3. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6569**

Abandoning One (1) Twenty Foot (20') Utility Easement for City Water and Sewer Located in the Proposed Plat of Washington Meadows, Phase Two, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easement is Established in Volume 5416, Page 697 of the Official Public Records of Grayson County, Texas

Close Public Hearing and Consider Adoption of Ordinances

D. 4. **ADOPTION OF ORDINANCES**

Consider Adoption of Ordinance Numbers 6567, 6568 & 6569.

Resolutions

E. 1. **RESOLUTION NO. 7033**

Authorizing Execution of a TIRZ #8 Reimbursement Agreement with Heritage Ranch Municipal Utility District No. 1 of Grayson County for the Construction of Public Infrastructure within Sherman Tax Increment Reinvestment Zone, Number Eight (#8) in the City of Sherman

E. 2. **RESOLUTION NO. 7034**

Authorizing Execution of a Professional Services Agreement with Bureau Veritas for the Plan Review and Building Inspection Services for the Global Wafers Project

E. 3. **RESOLUTION NO. 7035**

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Freese and Nichols, Inc. for the Lake Texoma Pump Station Expansion Preliminary Design Project

E. 4. **** RESOLUTION NO. 7036***

Authorizing the Purchase of a 2023 Ford E-450 Utility Van from Sam Pack's Five Star Ford for the Building Maintenance Department through the Texas Local Government Purchasing Cooperative (Buyboard)

E. 5. **** RESOLUTION NO. 7037***

Authorizing Execution of a Professional Services Agreement with Freeman-Millican, Inc. for Engineering Services for the Westside Drive Replacement Wastewater Line

Requests to Advertise

F. 1. **REQUEST TO ADVERTISE**

Sale of Approximately 0.9 Acres of Land Located at 1400 West Taylor Street

Change Orders

G. 1. **CHANGE ORDER NO. 3**

Northwest Sewer and Force Main Project; Lynn Vessels Construction, LLC; $33,613.93 increase

Other Business

H. 1. **OTHER BUSINESS**

Receive an Update on Leadership Sherman's Class Project.

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

H. 2. **OTHER BUSINESS**

Presentation from Fire Department Captain Mason Beaver on the Paramedic School

H. 3. **OTHER BUSINESS**

Receive an Update on the City of Sherman's Ongoing Projects

H. 4. **OTHER BUSINESS**

Discuss and Consider Approval of the Budget Calendar for Fiscal Year (FY) 2023-2024

H. 5. **** OTHER BUSINESS***

Receive 2022 Racial Profiling Report

I. **COUNCIL COMMENTS**

Executive Session

J. 1. **EXECUTIVE SESSION**

In accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council may hold an Executive Session if the discussion of any of the items identified in this agenda, or any of the items identified below, concern one or more of the following:

Tex. Gov't Code § 551.071	Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.
Tex. Gov't Code § 551.072	Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.073	Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.074	Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing.
Tex. Gov't Code § 551.076	Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit.
Tex. Gov't Code § 551.087	Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. (a) Sherman Hospital Project

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

Tex. Gov't Code § 551.089	Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices.

The Council reconvenes into General Session

K. 1. OPEN MEETING

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

L. ADJOURNMENT

COUNCIL CALENDAR

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on February 17, 2023 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 17th day of February 2023.
City of Sherman, Texas

_____
City Clerk

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time.

All agenda items are subject to final action by the City Council.

An unscheduled closed executive session may be held if the discussion of any of the above agenda items concerns the purchase, exchange, lease or value of real property; the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; the deployment or use of security personnel or equipment; or requires consultations with the City Attorney.

At the discretion of the City Council, non-agenda items under the headings of "Citizens Requests", "Media Questions", and "Council Concerns" may be presented to the Council for informational purposes; however, by law, the Council shall not discuss, deliberate, or vote upon such matters except that a statement of specific factual information, a recitation of existing policy, and deliberations concerning the placing of the subject on a subsequent agenda may take place.

The City Attorney has approved the Executive Session items on this agenda.

PERSONS WITH DISABILITIES, WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED ASSISTANCE, ARE REQUESTED TO CONTACT LINDA ASHBY AT (903) 892-7204, TWO (2) WORKING DAYS PRIOR TO THE MEETING SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.

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

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

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 6, 2023 AND THE CALLED TAX INCREMENT FINANCING BOARD #2 OF FEBRUARY 6, 2023.

Attachments

February 6, 2023

February 6, 2023 - Called TIRZ #2 Meeting

STATE OF TEXAS §

February 6, 2023

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on February 6, 2023.

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

MEMBERS ABSENT: **COUNCIL MEMBERS DOBBS, HOLLAND, TEAMANN.**

CALL TO ORDER — **CALL TO ORDER**

Mayor Plyler called the meeting to order at 5:00 p.m. The Pledge of Allegiance and Invocation were led by Deputy Mayor Josh Stevenson.

TAX INCREMENT FINANCING BOARD #2 — **TIRZ #2 MEETING**

Mayor Plyler called the Tax Increment Financing Board #2 Meeting to order at 5:02 p.m. and the meeting adjourned at 5:04 p.m. Council Members proceeded with the Regular Council Meeting.

APPROVE MINUTES — **APPROVE MINUTES**

The Council reviewed the Minutes of the Regular City Council Meeting of January 17, 2023. Deputy Mayor Stevenson moved to approve the Minutes, as presented; Second by Council Member Howeth; All present voted AYE.
MOTION CARRIED.

CITIZEN'S COMMENTS — **CITIZEN'S COMMENTS**

There were no citizen's comments.

RESOLUTION NO. 7024 – CONFIRMING THE EMPLOYMENT OF THE SHERMAN FIRE DEPARTMENT'S FIRE CHIEF — **RES 7024 FIRE CHIEF**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CONFIRMING THE EMPLOYMENT OF THE SHERMAN FIRE DEPARTMENT'S FIRE CHIEF.

Robby Hefton, City Manager, said that Fire Chief Danny Jones has retired, effective January 1, 2023. There was an internal search for a replacement for that position. There were good candidates internally, and Mr. Hefton said he felt comfortable and didn't feel the need to look outside the department for a replacement.

He said he was pleased with the interest in the position and held interviews with the candidates. After the interviews, it was his decision to appoint Billy Hartsfield as Sherman's new Fire Chief. He said the City's Charter requires that the Council confirm the City Manager's appointment for any director level position.

He asked the City Council to confirm his appointment of Billy Hartsfield as Fire Chief for the City of Sherman.

Chief Hartsfield introduced his family and recognized the fire support staff that was in attendance for the confirmation. He said he was honored with Mr. Hefton's appointment of him as Fire Chief, and said it has been a goal of his family for over a decade.

Council Members expressed their support for Fire Chief Billy Hartsfield and congratulated him on the appointment.

ACTION TAKEN.

Motion by Council Member Howeth to approve Resolution No. 7024, confirming the appointment of Billy Hartsfield as the new Sherman Fire Chief, as presented. Second by Deputy Mayor Stevenson.

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

CONSENT AGENDA — **CONSENT AGENDA**

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

Mayor Plyler removed Item F-2, entitled "Request to Advertise – Hickory Hill Offsite Water and Sanitary Sewer Project," from the Consent Agenda, for discussion in its regular order of business.

The Council reviewed the Consent Agenda. Council Member Howeth moved to approve the Consent Agenda, with the exception of Item F-2, which will be discussed in its regular order of business. Second by Deputy Mayor Stevenson. All present voted AYE.

CONSENT AGENDA — **CONSENT AGENDA**

Double Asterisked (**) items are considered to be routine and will be enacted in one motion, subject to the Staff Review Letter, without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately.

The Council reviewed the Consent Agenda. Deputy Mayor Stevenson moved to approve the Consent Agenda, subject to the Staff Review Letter. Second by Council Member Howeth. All present voted AYE.

Mayor Plyler introduced Ordinance No. 6560 and called for a public hearing: — **ORD 6560**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING AND APPROVING THE AMENDED PROJECT PLAN AND THE FINANCING PLAN FOR THE SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER TWO (#2); PROVIDING FOR FINDINGS OF FACT. — **TIRZ #2 AMEND PROJECT & FINANCING PLAN**

Nate Strauch, Community and Support Services Manager, said this is legislation for the program that will replace the Historical Building Restoration Grant with a new, and more streamlined version of the same concept. The major changes include, increasing the maximum grant from $25,000 to $50,000, providing

for multi-year eligibility for projects, providing for residential eligibility for projects, and many other smaller changes.

If the Council approves this plan, they will then consider the first application under the new program.

No citizens appeared before the City Council to discuss Ordinance No. 6560.

ORD 6561 SUP FOR TATTOO STUDIO (4909 TEXOMA PKWY, SUITE 104)

Mayor Plyler introduced Ordinance No. 6561 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14 AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A TATTOO STUDIO, ON A TRACT OF LAND ZONED C-2 (GENERAL COMMERCIAL) DISTRICT LOCATED AT 4909 TEXOMA PARKWAY, SUITE 104, LOT 1, BLOCK 1, SHERMAN I-75 ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS (NORCAN ENTERPRISES, INC., OWNER; JOSEPH JENNINGS, TENANT; AND COPLEY LAND SUVEYING, SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Rob Rae, Director of Development Services, said this request is for a Specific Use Permit for a tattoo studio. The applicant currently has a tattoo studio in McKinney and would like to open a second location at 4909 Texoma Parkway. The Planning and Zoning Commission recommended approval of the Specific Use Permit.

The applicant was in attendance and available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6561.

ORD 6562 ZONE CHANGE FOR MULTI-FAMILY RESIDENTIAL (1231 N. LOY LAKE RD)

Mayor Plyler introduced Ordinance No. 6562 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 6.226 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 2131 NORTH LOY LAKE ROAD, HERETOFORE ZONED C-2 (GENERAL COMMERCIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE MF-30 (MULTI-FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION (MATTHEW GRYNWALD, OWNER; HONEY GOEL, REPRESENTATIVE; KOHINOOR RAHMAN, FK + ARCHITECT, LLC, REPRESENTATIVE/ARCHITECT; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said this item is for a rezoning from a C-2 (General Commercial) District to a MF-30 (Multi-Family) District. The applicant is proposing 172 units at this location at Peyton and Loy Lake Streets.

The Planning and Zoning Commission received one letter of opposition, and they also requested that a traffic study be completed and reviewed by the Engineering Department. This was completed. The Planning and Zoning Commission recommended approval of the Zone Change. He added that the proposed use is compatible with the City's Master Plan.

The developer was in attendance and available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6562.

Mayor Plyler introduced Ordinance No. 6563 and called for a public hearing:

ORD 6563 SUP FOR AUTO, MOTORCYCLE, BOAT. TRAILER SALES (2500 TEXOMA PKWY)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14 AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AUTOMOBILE, MOTORCYCLE, BOAT OR TRAILER SALES, NEW OR USED, ON A TRACT OF LAND ZONED C-2 (GENERAL COMMERCIAL) DISTRICT LOCATED AT 2500 TEXOMA PARKWAY, CONSISTING OF 5.933 ACRES IN THE R. HENDRIX SURVEY, ABSTRACT NO. 504, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS (JOHN E. RUSSELL, RFJ AUTO PROPERTIES, LLC, OWNER; JEREMY NELSON, REPRESENTATIVE; KIRKMAN ENGINEERING, ENGINEER; LANDPRINT LANDSCAPE ARCHITECTURE AND URBAN DESIGN, LANDSCAPE ARCHITECT; AND BARTON CHAPA SURVEYING, LLC, SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Mr. Rae said this item would amend the Specific Use Permit currently in effect for Texoma Hyundai. They plan to demolish their existing building and reconstruct a new 21,000 square foot building, with showroom and offices, at the same location. The Planning and Zoning Commission recommended approval of the Specific Use Permit.

The engineer was in attendance and available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6563.

Mayor Plyler asked that the captions of Ordinance Nos. 6564 and 6565 be read together.

ORD 6564 ZONE CHANGE FOR SINGLE-FAMILY RESIDENTIAL (101-201 BLOCKS E. SHEPHERD RD & 6601-6801 BLOCKS

Mayor Plyler introduced Ordinance No. 6564 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING

ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 24.535 ACRES IN THE ROBERT FOSTER SURVEY, ABSTRACT NO. 420 AND THE JAMES A. FOSTER SURVEY, ABSTRACT NO. 418, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 101-201 BLOCKS EAST SHEPHERD ROAD AND THE 6601-6801 BLOCKS SOUTH HIGHWAY 75, HERETOFORE ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-1 (RETAIL BUSINESS) DISTRICT ZONING CLASSIFICATION (BADRESH TRIFDEI, PROGRACE SHEPHERD LLC, OWNER; BOHLER ENGINEERING, ENGINEER; AND NEXMETRO COMMUNITIES, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

S. HIGHWAY 75)

Mayor Plyler introduced Ordinance No. 6565 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 29.776 ACRES IN THE ROBERT FOSTER SURVEY, ABSTRACT NO. 420 AND THE JAMES A. FOSTER SURVEY, ABSTRACT NO. 418, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 101-201 BLOCKS EAST SHEPHERD ROAD AND THE 6601-6801 BLOCKS SOUTH HIGHWAY 75, HERETOFORE ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE MF-15 (MULTI-FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION (BADRESH TRIFDEI, PROGRACE SHEPHERD LLC, OWNER; BOHLER ENGINEERING, ENGINEER; AND NEXMETRO COMMUNITIES, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6565
ZONE CHANGE FOR MULTI-FAMILY RESIDENTIAL (101-201 BLOCKS E. SHEPHERD RD & 6601-6801 BLOCKS S. HIGHWAY 75)

Mr. Rae said these two zone changes are from the same developer. The first one is rezoning 24 acres from R-6 (Single-Family) to C-1 (Commercial) for a proposed commercial development. The Planning and Zoning Commission recommended approval of the zone change. The zone change is compatible with the City's Comprehensive Master Plan.

The second one is rezoning to MF-15, which is low density multi-family. The applicant is planning to build 239 units of Single-Family for rent, which would consist of one, two, and three bedroom units, on almost 30 acres.

The Planning and Zoning Commission recommended approval of the zone change. The zone change is compatible with the City's Comprehensive Master Plan.

A representative was in attendance and available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance Nos. 6564 or 6565.

ORD 6566
ADOPT REVISED ZONING MAP

Mayor Plyler introduced Ordinance No. 6566 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ADOPTING A REVISED OFFICIAL ZONING MAP; PROVIDING A PENALTY CLAUSE, REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said this was the annual adoption of all the zoning changes that have been approved throughout the year.

No citizens appeared before the City Council to discuss Ordinance No. 6566.

The Public Hearing was closed.

ORD 6560
TIRZ #2
AMEND PROJECT & FINANCING PLAN

Ordinance 6560
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING AND APPROVING THE AMENDED PROJECT PLAN AND THE FINANCING PLAN FOR THE SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER TWO (#2); PROVIDING FOR FINDINGS OF FACT.

ORD 6561
SUP FOR TATTOO STUDIO (4909 TEXOMA PKWY, SUITE 104)

Ordinance 6561
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14 AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A TATTOO STUDIO, ON A TRACT OF LAND ZONED C-2 (GENERAL COMMERCIAL) DISTRICT LOCATED AT 4909 TEXOMA PARKWAY, SUITE 104, LOT 1, BLOCK 1, SHERMAN I-75 ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS (NORCAN ENTERPRISES, INC., OWNER; JOSEPH JENNINGS, TENANT; AND COPLEY LAND SUVEYING, SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

ORD 6562
ZONE CHANGE FOR MULTI-FAMILY RESIDENTIAL (1231 N. LOY LAKE RD)

Ordinance 6562
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 6.226 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 2131 NORTH LOY LAKE ROAD, HERETOFORE ZONED C-2 (GENERAL COMMERCIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE MF-30 (MULTI-FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION (MATTHEW GRYNWALD, OWNER; HONEY GOEL, REPRESENTATIVE; KOHINOOR RAHMAN, FK + ARCHITECT, LLC, REPRESENTATIVE/ARCHITECT; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Council Member Howeth was concerned that a traffic study completed now may not accurately show what traffic will be like in

a year from now. She asked how the traffic changes for the Highway 75 construction would impact the traffic for the future.

Wayne Lee, Director of Engineering, said there could be additional traffic on the roads, but they also look at historical data, as well as population projections. He agreed that the road detours and construction could skew the traffic counts.

Mr. Rae was asked about the zoning classifications, and he said all the districts that were previously zoned R-2 are now transitioned to MF-30.

Ordinance 6563 — **ORD 6563 SUP FOR AUTO, MOTORCYCLE, BOAT. TRAILER SALES (2500 TEXOMA PKWY)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14 AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AUTOMOBILE, MOTORCYCLE, BOAT OR TRAILER SALES, NEW OR USED, ON A TRACT OF LAND ZONED C-2 (GENERAL COMMERCIAL) DISTRICT LOCATED AT 2500 TEXOMA PARKWAY, CONSISTING OF 5.933 ACRES IN THE R. HENDRIX SURVEY, ABSTRACT NO. 504, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS (JOHN E. RUSSELL, RFJ AUTO PROPERTIES, LLC, OWNER; JEREMY NELSON, REPRESENTATIVE; KIRKMAN ENGINEERING, ENGINEER; LANDPRINT LANDSCAPE ARCHITECTURE AND URBAN DESIGN, LANDSCAPE ARCHITECT; AND BARTON CHAPA SURVEYING, LLC, SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Ordinance 6564 — **ORD 6564 ZONE CHANGE FOR SINGLE-FAMILY RESIDENTIAL (101-201 BLOCKS E. SHEPHERD RD & 6601-6801 BLOCKS S. HIGHWAY 75)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 24.535 ACRES IN THE ROBERT FOSTER SURVEY, ABSTRACT NO. 420 AND THE JAMES A. FOSTER SURVEY, ABSTRACT NO. 418, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 101-201 BLOCKS EAST SHEPHERD ROAD AND THE 6601-6801 BLOCKS SOUTH HIGHWAY 75, HERETOFORE ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-1 (RETAIL BUSINESS) DISTRICT ZONING CLASSIFICATION (BADRESH TRIFDEI, PROGRACE SHEPHERD LLC, OWNER; BOHLER ENGINEERING, ENGINEER; AND NEXMETRO COMMUNITIES, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Ordinance 6565 — **ORD 6565 ZONE CHANGE FOR MULTI-FAMILY RESIDENTIAL (101-201 BLOCKS E. SHEPHERD RD & 6601-6801 BLOCKS S. HIGHWAY 75)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 29.776 ACRES IN THE ROBERT FOSTER SURVEY, ABSTRACT NO. 420 AND THE JAMES A. FOSTER SURVEY, ABSTRACT NO. 418, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 101-201 BLOCKS EAST SHEPHERD ROAD AND THE 6601-6801 BLOCKS SOUTH

HIGHWAY 75, HERETOFORE ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE MF-15 (MULTI-FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION (BADRESH TRIFDEI, PROGRACE SHEPHERD LLC, OWNER; BOHLER ENGINEERING, ENGINEER; AND NEXMETRO COMMUNITIES, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Ordinance 6566

ORD 6566
ADOPT REVISED ZONING MAP

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ADOPTING A REVISED OFFICIAL ZONING MAP; PROVIDING A PENALTY CLAUSE, REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ACTION TAKEN.

Motion by Council Member Howeth to adopt Ordinance Nos. 6560, 6561, 6562, 6563, 6564, 6565, and 6566, as presented. Second by Deputy Mayor Stevenson.

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

RESOLUTION NO. 7025 – DECLARING THE CITY OF SHERMAN'S INTENTION TO PARTICIPATE IN AN ECONOMIC DEVELOPMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN TAX INCREMENT REINVESTMENT ZONE NUMBER 2; ESTABLISHING GUIDELINES AND CRITERIA

RES 7025
TIRZ NO. 2 GUIDELINES & CRITERIA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DECLARING THE CITY OF SHERMAN'S INTENTION TO PARTICIPATE IN AN ECONOMIC DEVELOPMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN TAX INCREMENT REINVESTMENT ZONE NUMBER 2; ESTABLISHING GUIDELINES AND CRITERIA.

Mr. Strauch said this resolution actually creates the Downtown Building Improvement Grant program.

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to approve Resolution No. 7025, as presented. Second by Council Member Howeth.

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

RESOLUTION NO. 7026 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH DAVID DOWNTAIN, D/B/A RP SHERMAN PROPERTIES II, LLC UNDER THE CITY OF SHERMAN'S CENTRAL BUSINESS DISTRICT HISTORIC BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM FOR IMPROVEMENTS TO 211 WEST LAMAR STREET

RES 7026
CBD HISTORIC BLDG RESTORATION GRANT
(211 W. LAMAR ST)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH DAVID DOWNTAIN, D/B/A RP SHERMAN PROPERTIES II, LLC UNDER THE CITY OF SHERMAN'S CENTRAL BUSINESS DISTRICT HISTORIC BUILDING RESOTRATION AND

IMPROVEMENT GRANT PROGRAM FOR IMPROVEMENTS TO 211 WEST LAMAR STREET.

Mr. Strauch said this was the first grant application under the new program that was approved a few minutes ago. He said this was the next project for David Downtain in the downtown area.

The property is located at 211 West Lamar Street, and has been an eyesore for many years. Mr. Downtain plans to renovate the building, both inside and outside.

Mr. Downtain, applicant, said he was very grateful tonight for the new programs to help improve the historical buildings downtown. The facility is the old Carpet Store, across from the Justice Center. He said they would "do their best" to honor whatever historical elements are behind the current façade.

ACTION TAKEN.
Motion by Deputy Mayor Stevenson to approve Resolution No. 7026, as presented. Second by Council Member Marroquin.
VOTING AYE: Howeth, Marroquin, Stevenson.
VOTING NAY: None.
MOTION CARRIED.

RES 7027
NEOGOV SOFTWARE

RESOLUTION NO. 7027 – REQUESTING AUTHORIZATION TO PURCHASE NEOGOV APPLICANT TRACKING AND E-FORMS SOFTWARE-AS-SERVICE FROM SHI INTERNATIONAL CORPORATION THROUGH THE OMNIA PARTNERS PURCHASING COOPERATIVE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REQUESTING AUTHORIZATION TO PURCHASE NEOGOV APPLICANT TRACKING AND E-FORMS SOFTWARE-AS-SERVICE FROM SHI INTERNATIONAL CORPORATION THROUGH THE OMNIA PARTNERS PURCHASING COOPERATIVE.
CONSENT AGENDA.

RES 7028
SOLID WASTE SOFTWARE

RESOLUTION NO. 7028 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH RUBICON GA GLOBAL, LLC, FOR THE PURCHASE AND IMPLEMENTATION OF SOLID WASTE SOFTWARE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH RUBICON GLOBAL, LLC, FOR THE PURCHASE AND IMPLEMENTATION OF SOLID WASTE SOFTWARE.
CONSENT AGENDA.

RES 7029
VICTIM ASSISTANCE GRANT

RESOLUTION NO. 7029 – AUTHORIZING SUBMISSION OF A GRANT APPLICATION AND THE ACCEPTANCE OF THE GENERAL VICTIM ASSISTANCE GRANT PROGRAM, PY 2024 THROUGH THE OFFICE OF THE GOVERNOR – CRIMINAL JUSTICE DIVISION TO FUND THE ADDITION OF A VICTIM ADVOCATE FOR THE SHERMAN POLICE DEPARTMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING SUBMISSION OF A GRANT

APPLICATION AND THE ACCEPTANCE OF THE GENERAL VICTIM ASSISTANCE GRANT PROGRAM, PY 2024 THROUGH THE OFFICE OF THE GOVERNOR – CRIMINAL JUSTICE DIVISION TO FUND THE ADDITION OF A VICTIM ADVOCATE FOR THE SHERMAN POLICE DEPARTMENT.
CONSENT AGENDA.

RESOLUTION NO. 7030 – AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE OFFICE OF THE GOVERNOR – CRIMINAL JUSTICE DIVISION TO FUND THE PURCHASE OF RIFLE-RESISTANT BODY ARMOR FOR THE SHERMAN POLICE DEPARTMENT

RES 7030 POLICE BODY ARMOR GRANT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE OFFICE OF THE GOVERNOR – CRIMINAL JUSTICE DIVISION TO FUND THE PURCHASE OF RIFLE-RESISTANT BODY ARMOR FOR THE SHERMAN POLICE DEPARTMENT.
CONSENT AGENDA.

RESOLUTION NO. 7031 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH EL DORADO CHEVROLET FOR THE PURCHASE OF TWO (2) NEW THREE QUARTER-TON AND TWO (2) NEW HALF-TON TRUCKS

RES 7031 VEHICLE PURCHASES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH EL DORADO CHEVROLET FOR THE PURCHASE OF TWO NEW THREE-QUARTER-TON TRUCKS AND TWO NEW HALF-TON TRUCKS.
CONSENT AGENDA.

RESOLUTION NO. 7032 – AUTHORIZING THE PURCHASE OF A NEW FORD F-750 DUMP TRUCK FROM RUSH TRUCK CENTER FOR THE DISTRIBUTION SERVICES DEPARTMENT THROUGH BUYBOARD

RES 7032 DISTRIBUTION SVCS VEHICLE PURCHASE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW FORD F-750 DUMP TRUCK FROM RUSH TRUCK CENTER FOR THE DISTRIBUTION SERVICES DEPARTMENT THROUGH BUYBOARD.
CONSENT AGENDA.

REQUEST TO ADVERTISE
ANNUAL PURCHASE OF WATER METERS FOR THE CITY OF SHERMAN AUTOMATED METER READING SYSTEM

REQ TO ADVERTISE ANNUAL PURCHASE OF WATER METERS

The City Council approved the Request to Advertise for the annual purchase of water meters for the City's automated meter reading system. The water meters must be compatible with the ITRON automated reading systems, MRVS and AMI.
CONSENT AGENDA.

HICKORY HILL OFFSITE WATER AND SANITARY SEWER PROJECT

HICKORY HILL WATER & SANITARY SEWER PROJECT

Mayor Plyler removed Item F-2, from the Consent Agenda, for discussion in its regular order of business.

Clint Philpott, Assistant City Manager, said this planned development was approved in August 2022, and the staff has been working on engineering plans for the shared costs to install utilities and split the cost of the Lamberth Road and Friendship Road extensions.

Initially, it was the plan that the developer would do all the work along with the single-family portion of the development. Since that time, the 20 acre portion for multi-family, and the single-family portion for 25 acres, on either side of Friendship Road, have "messed the schedule up."

This is a request to keep those two projects on schedule, to bid out the utilities, water and sewer, so the City can take over management of that. This would separate the utility package from the other, so they could be constructed in a timely manner, to help the other 50 acres of development stay on schedule.

Deputy Mayor Stevenson asked if there were any additional costs. Mr. Philpott said if they can bid a project all together at the same time, there is a savings, from a mobility standpoint. He felt that there would be some local contractors bid on the project, with a good price, in a timely manner.

He said the road package would be along shortly after that, and the request to advertise would be presented to the Council.

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to approve the Request to Advertise, for the Hickory Hill Offsite Water and Sanitary Sewer Project, as presented. Second by Council Member Howeth.

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

CHANGE ORDER
IDA ROAD GROUND STORAGE TANK

CHANGE ORDER NO. 1
IDA ROAD GROUND STORAGE TANK REHABILITATION; O&J COATINGS, INC.; $198,000.00 INCREASE

Tom Pruitt, Utility Engineer, said the original scope of this project was the repainting and a small amount of maintenance on the Ida Road Ground Storage Tank. Some of the pumps had some rust at the pump base and the seals needed to be replaced. When the pumps were pulled, it was determined that they also needed to be replaced.

Three of the pumps that have been in service for over 30 years will need to be replaced. He asked the Council to approve the replacement of the three pumps. The pump motors will be rehabilitated.

ACTION TAKEN.

Motion by Council Member Howeth to approve Change Order No. 1, for a $198,000 increase to O&J Coatings, Inc., for the Ida Road Ground Storage Tank Rehabilitation, as presented. Second by Deputy Mayor Stevenson.

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

OTHER BUSINESS

APPROVE REPLAT PLYLER ADDITION (3505 TEXOMA PKWY & 3512-3702 FRISCO RD)

REPLAT OF PLYLER ADDITION, BEING PART OF HILLIARD JENNINGS SURVEY, ABSTRACT NO. 639, AND PART OF SAMUEL M. McGLOTHLEN SURVEY, ABSTRACT NO. 811, AND BEING PART OF LOTS 4, 5, AND 6, BLOCK 2, REDICK ADDITION, CONSISTING OF 8.972 ACRES, AND CURRENTLY ZONED C-2 (GENERAL COMMERCIAL) DISTRICT AND M-1 (LIGHT MANUFACTURING) DISTRICT; DAVID PLYLER, LLOYD PLYLER CONSTRUCTION, LLC, OWNER AND UNDERWOOD DRAFTING & SURVEYING, INC, SURVEYOR (3505 TEXOMA PARKWAY AND 3512-3702 FRISCO ROAD)

Mayor Plyler excused himself from the meeting and turned the gavel over to Deputy Mayor Stevenson, at 5:29 p.m.

The Council considered the proposed Replat for the Plyler Addition, being part of the Hilliard Jennings Survey, and part of the Samuel M. McGlothlen Survey. The 8.972 acre tract is located at 3505 Texoma Parkway and 3512 to 3702 Frisco Road. The owner would like to plat the property into one lot for commercial development.

Mr. Rae said the proposed Replat conforms to all the City's ordinances, and the Planning and Zoning Commission recommended approval of the Replat.

ACTION TAKEN.

Motion by Council Member Howeth to approve the Replat of Plyler Addition, located at 3505 Texoma Parkway and 3512 through 3702 Frisco Road, as presented. Second by Council Member Marroquin.

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

Deputy Mayor Stevenson turned the meeting back over to Mayor Plyler at 5:30 p.m.

QUARTERLY INVESTMENT REPORT

APPROVE QUARTERLY INVESTMENT REPORT FOR QUARTER ENDED DECEMBER 31, 2022

The City Council reviewed the Investment Report for the quarter ended December 31, 2022, which was presented in accordance with State law and the Investment Policy.

The total operating portfolio book value of about $29.1 million increased by about $900,000 from the previous quarter, due to purchases of $2 million in U.S. Agency Securities, $0.5 million in deposits in an FDIC Insured Investment Account, combined with withdrawals of $1.6 million from the Local Government Investment Pools.

The underlying investments were adequately diversified among six different types of securities. The portfolio's weighted-average

maturity of 397 days increased from 382 days last quarter. The portfolio yield of 2.44% was 232 basis points below the City's benchmark 1-year Constant Maturity Treasury Index. Book value slightly exceeds market value, due to an increase in market interest rates.

The debt proceeds portfolio balance of $16.5 million had decreased by about $5.7 million, due to payments for capital projects. The portfolio includes a Local Government Investment Pool, an FDIC insured investment account, and U.S. Agencies.

The portfolio's weighted-average maturity of 80 days increased from 68 days last quarter. The portfolio yield of 2.99% was 113 basis points below the benchmark yield for this portfolio, the 4-week Constant Maturity Index of 4.12%. Book value approximated market value.
CONSENT AGENDA.

APPROVE FINAL PLAT BINKLEY ADDITION (1628 W. FM 1417)

FINAL PLAT OF BINKLEY ADDITION, BEING 2.051 ACRES IN THE WILLIAM MARTIN SURVEY, ABSTRACT 765, AND CURRENTLY ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT/FM HIGHWAY 1417 OVERLAY DISTRICT; JOHN ROBERT TURLEY ESTATE, OWNER; JAMES RAY BRINKLEY, REPRESENTATIVE/POWER OF ATTORNEY; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYOR (1628 WEST FM 1417 (HERITAGE PARKWAY))
The City Council approved the Final Plat of the Binkley Addition, a 2.051 acre tract, located at 1628 West FM 1417. The property is zoned R-6 (Single-Family Residential) District/FM Highway 1417 Overlay District. The owner would like to plat the property into one lot for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE REPLAT PRESTON CLUB THE CLASSICS, PHASE THREE (171 & 187 ROBERTS RUN)

REPLAT OF LOT 10R, BLOCK TWO, PRESTON CLUB THE CLASSICS, PHASE THREE, BEING PART OF THE DANIEL BICKENBACK SURVEY, ABSTRACT NO. 128 AND THE J.M. THOMAS SURVEY, ABSTRACT 1234, AND ALSO BEING A REPLAT OF LOTS 10 AND 11, BLOCK TWO, PRESTON CLUB THE CLASSICS, PHASE THREE, CONSISTING OF 0.541 ACRES AND CURRENTLY ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; HEARRELL ENTERPRISES, OWNER; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (171 AND 187 ROBERTS RUN)
The City Council approved the Replat of Lot 10R, Block Two, Preston Club The Classics, Phase Three, a 0.541 acre tract, located at 171 and 187 Roberts Run. The property is zoned R-6 (Single-Family Residential) District. The owner would like to plat the property into one lot for residential development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

FINAL PLAT OF QUAIL RUN, PHASE TWO A, BEING 11.098 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 AND THE JASON STAMPS SURVEY, ABSTRACT NO. 1115, AND IS CURRENTLY ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; 300 SHERMAN LP, OWNER AND PRESTON TRAIL LAND SURVEYING, SURVEYOR (4701-4801 BLOCKS QUAIL RUN ROAD)

APPROVE FINAL PLAT QUAIL RUN, PHASE 2 (4701-4801 BLOCKS QUAIL RUN RD)

The City Council approved the Final Plat of Quail Run, Phase Two A, an 11.098 acre tract, located in the 4701 to 4801 blocks of Quail Run Road. The property is zoned R-6 (Single-Family Residential) District. The owner would like to plat the property into 47 lots for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

FINAL PLAT OF QUAIL RUN, PHASE TWO B, BEING 9.331 ACRES IN THE JASON STAMPS SURVEY, ABSTRACT NO. 1115, AND IS CURRENTLY ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; 300 SHERMAN LP, OWNER AND PRESTON TRAIL LAND SURVEYING, SURVEYOR (4901-5201 BLOCKS QUAIL RUN ROAD)

APPROVE FINAL PLAT QUAIL RUN, PHASE 2 (4901-5201 BLOCKS QUAIL RUN RD)

The City Council approved the Final Plat of Quail Run, Phase Two B, a 9.331 acre tract, located in the 4901 to 5201 blocks of Quail Run Road. The property is zoned R-6 (Single-Family Residential) District. The owner would like to plat the property into 38 lots for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

FINAL PLAT OF WESTMOOR PHASE 1, BEING 26.424 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, AND IS CURRENTLY ZONED R-6 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; W.W. COLLINS HOLDING, L.P., OWNER AND KIMLEY-HORN, SURVEYOR (2100 BLOCK WEST HOUSTON STREET)

APPROVE FINAL PLAT WESTMOOR PHASE 1 (2100 BLOCK W. HOUSTON ST)

The City Council approved the Final Plat of Westmoor Phase 1, a 26.424 acre tract, located in the 2100 block of West Houston Street. The property is zoned R-6 (One Family Residential) District. The owner would like to plat the property into 128 residential lots.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

HISTORICAL PRESERVATION BOARD (1)

HISTORICAL PRESERVATION BOARD

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to appoint Sheri Fallon to the Historical Preservation Board to fill an unexpired term from February 7, 2023 to March 2, 2025. Second by Council Member Howeth.

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

COUNCIL COMMENTS

APPOINTMENT OF FIRE CHIEF — **APPOINTMENT OF FIRE CHIEF**

Deputy Mayor Stevenson congratulated Chief Hartsfield on his appointment as Fire Chief. He said he was very happy and proud for the appointment.

RECENT WEATHER INCIDENT — **RECENT WEATHER INCIDENT**

Council Member Marroquin recognized the Police Department for their hard work during the recent ice and snow event. He said they did a good job.

APPOINTMENT OF FIRE CHIEF — **APPOINTMENT OF FIRE CHIEF**

Mayor Plyler congratulated Chief Hartsfield on this appointment as Fire Chief, and said he was looking forward to "great things."

NEW DOWNTOWN PROGRAMS — **NEW DOWNTOWN PROGRAMS**

Mayor Plyler thanked the staff for their hard work on the new downtown programs. He said the City is really "making gains," and he encouraged them to "keep moving forward."

ANNOUNCEMENTS — **ANNOUNCEMENTS**

Mayor Plyler announced the following:

- **Downtown Sherman will host Mardi Gras on February 18, 2023, beginning at 11:00 a.m. The event will feature live music and specials.**
- **Grayson County CASA will host its annual Chocolate Indulgence fundraiser in the Municipal Ballroom, on February 18, 2023, at 7:00 p.m. Tickets are available on Facebook.**
- **The annual St. Patrick's Day Parade will be held downtown on March 11, 2023, at 11:00 a.m.**

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

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

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

TEX. GOV'T CODE § 551.072 --
DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING

WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

(a) Purchase of real estate east of US 75, between SH 56 and US 82

TEX. GOV'T CODE § 551.073 --
DELIBERATING A NEGOTIATED CONTRACT FOR A PROSPECTIVE GIFT OR DONATION TO THE CITY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.074 --
DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE; OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE UNLESS THE OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE DELIBERATION OR HEARING REQUESTS A PUBLIC HEARING

(a) Historical Preservation Board

TEX. GOV'T CODE § 551.076 –
DELIBERATING THE DEPLOYMENT, OR SPECIFIC OCCASIONS FOR IMPLEMENTATION, OF SECURITY PERSONNEL OR DEVICES OR A SECURITY AUDIT

TEX. GOV'T CODE § 551.087 –
DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

TEX. GOV'T CODE § 551.089 --
DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY, NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY DEVICES

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:33 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:27 p.m. and reconvened in Open Meeting.

OPEN MEETING **OPEN MEETING**

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

ADJOURNMENT **ADJOURNMENT**

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

MAYOR

CITY CLERK

STATE OF TEXAS §

February 6, 2023

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Called Meeting of the Tax Increment Financing Board #2 was begun and held in the City Council Chambers on February 6, 2023.

COUNCIL MEMBERS PRESENT: Mayor David Plyler.
Council Member Howeth.

COUNCIL MEMBERS ABSENT: Council Member Holland.

CITY STAFF PRESENT: Robby Hefton, City Manager; Terrence Steele, Assistant city Manager; Clint Philpott, Assistant City Manager; Ryan Pittman, Attorney, Abernathy, Roeder, Boyd, Hullett; Wayne Lee, Director of Engineering; Mary Lawrence, Director of Finance; Rob Rae, Director of Development Services. Teri Fine, Assistant to the City Manager; Linda Ashby, City Clerk.

PURPOSE: **Call to Order, Quorum Determined, Meeting Declared Open**

Citizen Comments

Other Business
Accepting and Approving the Amended Project Plan and the Financing Plan for the Sherman Tax Increment Reinvestment Zone, Number Two (#2); Providing for Findings of Fact

Executive Session
In Accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council may hold an Executive Session if the discussion of any of the items identified in this agenda, or any of the items identified below, concern one or more of the following:

TEX. GOV'T CODE § 551.071 --
Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.

TEX. GOV'T CODE § 551.072 --
Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

TEX. GOV'T CODE § 551.073 –
Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

TEX. GOV'T CODE § 551.074 –
Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing

TEX. GOV'T CODE § 551.076 –
Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit

TEX. GOV'T CODE § 551.087 –
Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect

TEX. GOV'T CODE § 551.089 –
Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices

Open Meeting

Adjournment

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN
Mayor Plyler called the meeting to order at 5:02 p.m., declared a quorum present, and opened the Tax Increment Financing Board #2 Meeting.

CITIZEN COMMENTS
There were no citizen's comments.

OTHER BUSINESS
ACCEPTING AND APPROVING THE AMENDED PROJECT PLAN AND THE FINANCING PLAN FOR THE SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER TWO (#2); PROVIDING FOR FINDINGS OF FACT

ACTION TAKEN.
Motion by Council Member Howeth to approve the amended Project Plan and Financing Plan for the Sherman Tax Increment Reinvestment Zone Number Two, as presented. Second by Mayor Plyler.
VOTING AYE: Howeth, Plyler.
VOTING NAY: None.
MOTION CARRIED.

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.

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

TEX. GOV'T CODE § 551.072 --
DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.073 --
DELIBERATING A NEGOTIATED CONTRACT FOR A PROSPECTIVE GIFT OR DONATION TO THE CITY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.074 --
DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE; OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE UNLESS THE OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE DELIBERATION OR HEARING REQUESTS A PUBLIC HEARING

TEX. GOV'T CODE § 551.076 –
DELIBERATING THE DEPLOYMENT, OR SPECIFIC OCCASIONS FOR IMPLEMENTATION, OF SECURITY PERSONNEL OR DEVICES OR A SECURITY AUDIT

TEX. GOV'T CODE § 551.087 –
DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

TEX. GOV'T CODE § 551.089 --
DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY, NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY DEVICES

The Executive Session was not needed.

ADJOURNMENT

There being no further business to come before the Tax Increment Financing Board #2, motion was duly made and approved to adjourn the Called Meeting at 5:04 p.m.

_____
MAYOR

ATTEST

_____
CITY CLERK

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023

Approved By: Robby Hefton, City Manager

Caption:

CONSENT AGENDA

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

Issue:

E. 4. **** RESOLUTION NO. 7036***

Authorizing the Purchase of a 2023 Ford E-450 Utility Van from Sam Pack's Five Star Ford for the Building Maintenance Department through the Texas Local Government Purchasing Cooperative (Buyboard)

E. 5. **** RESOLUTION NO. 7037***

Authorizing Execution of a Professional Services Agreement with Freeman-Millican, Inc. for Engineering Services for the Westside Drive Replacement Wastewater Line

H. 5. **** OTHER BUSINESS***

Receive 2022 Racial Profiling Report

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023

Prepared By: Billy Hartsfield, Acting Fire Chief

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6567

Amending Chapter 9 of the Code of Ordinances, Entitled "Personnel", Article 9.05, Entitled "Civil Service for Firefighters and Police Officers", at Section 9.05.026, Entitled "Authorized Number of Positions", To Revise the Number of Authorized Positions in the Fire Department; Providing for Inclusion in the Code of Ordinances; Providing for Severability; Providing for a Repealer

Issue:

Sherman Fire-Rescue is modifying command staff positions and rank structure to address command staff issues.

Background:

Previous command staff structure at the Fire Department was atypical. The chain of command was also atypical. This action will eliminate the single Assistant Chief position. The Division Chief rank will change to Deputy Chief and go from 3 positions to 2 positions. The 2 Deputy Chiefs will replace the rank level of Assistant Chief. The 2 additional Battalion Chiefs will assume duties once of Division Chief rank.

Origination:

This will allow for a more typical organizational chart and chain of sommand.

Financial Consideration:

There is no direct cost associated with this change.

Staff Recommendation:

Staff recommends approval of the Ordinance

Alternatives:

As directed by City Council.

Attachments

Ordinance No. 6567

ORDINANCE NO. 6567

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES, ENTITLED "PERSONNEL", ARTICLE 9.05, ENTITLED "CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS", AT SECTION 9.05.026, ENTITLED "AUTHORIZED NUMBER OF POSITIONS", TO REVISE THE NUMBER OF AUTHORIZED POSITIONS IN THE FIRE DEPARTMENT; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That Chapter 9, Article 9.05 of the Code of Ordinances of the City of Sherman, be and is hereby amended at Section 9.05.026 so that such section shall read as follows:

Sec. 9.05.026 Authorized number of positions

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

(1) Fire department

Title	No. Positions
Firefighter	54
Engineer	15
Captain	17
Battalion Chief	~~3~~ *5*
~~Division Chief~~ *Deputy Chief*	~~3~~ *2*
~~Assistant Chief~~	~~1~~
Fire Chief	1

(a) Active staffing in the "engineer" position greater than the number allocated shall be considered overstaffed and said position shall not be filled upon the occurrence of vacancy due to promotion, demotion, attrition, termination, retirement, or any other reason.

(b) Staffing in the "firefighter" position shall be increased with each occurrence of the number of active "engineer" positions being eliminated until the total number of "engineer" positions meets the number of allocated positions set forth in subsection (1) above.

(c) Once the number of active "engineer" positions is reduced to meet the number of allocated positions set forth in subsection (1) above. The number of active "firefighter" positions shall be increased to meet the number of allocated positions set forth in subsection (1) above.

(2) Police department

Title	No. Positions
Patrolman	56
Corporal	5
Sergeant	9
Lieutenant	5
Assistant Chief-Appointed	2
Chief	1

SECTION 2. That it is the intention of the City Council of the City of Sherman, Texas, that the provisions of this ordinance shall become part of the Code of Ordinances of the City of Sherman, Texas, and that sections of this ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 3. 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 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given all as required by law.

INTRODUCED this the 20th day of February 2023.

ADOPTED on this the 20th day of February 2023.

EFFECTIVE DATE on this the 20th day of February 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
NAME: _____
CITY ATTORNEY

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6568

Abandoning One (1) Twenty Foot (20') Water Easement Located in the Proposed Plat of Estates at Baker Park, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Water Easement is Established in Volume 1648, Page 491 of the Deed Records of Grayson County, Texas

Issue:

To consider the abandonment of one (1) 20' water easement located within the property lines of the proposed plat of Estates at Baker Park, an Addition to the City of Sherman, Texas.

Background:

Said easement, which is filed of record in Volume 1648, Page 491 of the Deed Records of Grayson County, Texas, is not being utilized and is no longer deemed necessary. This easement is located at the site of development by Stonehollow Homes for their single family project known as Estates at Baker Park.

Origination:

Engineering Department

Financial Consideration:

None

Staff Recommendation:

Staff recommends approval of the one (1) 20' water easement abandonment

Alternatives:

As may be directed by City Council

Attachments

Ordinance No. 6568

Exhibit A as noted in both documents

Location Map

ORDINANCE NO. 6568

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) TWENTY FOOT (20′) WATER EASEMENT LOCATED IN THE PROPOSED PLAT OF ESTATES AT BAKER PARK, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH UTILITY EASEMENT IS ESTABLISHED IN VOLUME 1648, PAGE 491 OF THE DEED RECORDS OF GRAYSON COUNTY, TEXAS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman, Texas has received a request to abandon one (1) twenty foot (20′) Water Easement, as described herein; and

WHEREAS, the City Council has held a public hearing on the proposed abandonment and the abutting property owner(s) of the proposed abandonment have been notified; and

WHEREAS, the City Council has investigated and determined that all persons who own property adjacent to the easement concur and agree with the proposed abandonment; and

WHEREAS, the City Council has investigated and determined that the easement is not needed; and

WHEREAS, the City Council finds that it is in the best interest of the City and its citizens to abandon the City′s right and interest in the easement, and that such action will benefit the public generally.

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

SECTION 1. That the 20' Water Easement located in the proposed plat of Estates at Baker Park, and being more particularly described on the Exhibit "A" attached hereto and made a part hereof for all purposes, which Water Easement is established in Volume 1648, Page 491 of the Deed Records of Grayson County, Texas, shall be abandoned.

SECTION 2. That it is the intent of the City Council that the City′s rights and interests in such easement is hereby vacated.

SECTION 3. The abandonment approved by this Ordinance does not relinquish any right arising other than from the plat or other instrument creating the public easement or right-of-way, nor does this Ordinance create new rights.

SECTION 4. That the City Clerk is hereby directed to file and record this Ordinance after its adoption in the Official Public Records of Grayson County, Texas.

SECTION 5. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place, and purpose of said meetings were given all as required by law.

SECTION 6. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 8. This Ordinance shall become effective immediately upon its passage and adoption.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 20th day of February 2023.

ADOPTED on this the 20th day of February 2023.

EFFECTIVE DATE on this the 20th day of February 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the E. Jones Survey, Abstract No. 625, City of Sherman, Grayson County, Texas, being part of a tract conveyed to GOW Properties, LLC, by deed recorded in Document No. 2020–30707 of the Real Property Records of Grayson County, Texas, with the subject tract being more particularly described as follows:

BEGINNING at a point lying in the east right–of–way line of Farm to Market Road 1417 (variable width right–of–way) from which a concrete monument found at the southwest corner of a tract of land conveyed to Michael D. Daniel, et al, by deed recorded in Volume 4982, Page 331 of the Real Property Records of Grayson County, Texas bears N 47°45'30" E, 86.82 feet;

THENCE traversing said GOW Properties tract, the following courses and distances:

S 58°12'24" E, 152.45 feet; N 74°56'20" E, 294.92 feet;

Along a tangent curve to the right having a central angle of 35°36'00", a radius of 275.00 feet, a chord of S 87°15'40" E – 168.13 feet, an arc length of 170.87 feet;

S 69°27'40" E, 60.66 feet; N 20°32'20" E, 10.00 feet;

Along a tangent curve to the right having a central angle of 54°24'00", a radius of 200.00 feet, a chord of N 47°44'20" E – 182.84 feet, an arc length of 189.89 feet;

N 74°56'20" E, 70.00 feet;

Along a tangent curve to the right having a central angle of 70°30'00", a radius of 200.00 feet, a chord of S 69°48'40" E – 230.86 feet, an arc length of 246.09 feet;

S 34°33'40" E, 35.37;

Along a non–tangent curve to the right having a central angle of 06°53'52", a radius of 395.00 feet, a chord of N 61°42'03" E – 47.52 feet, an arc length of 47.55 feet to a 1/2 inch iron rod found at the northwest corner of Cascade Drive (50 foot right–of–way) from which a 1/2 inch iron rod found at the southwest corner of Lot 28 of Parkhaven Addition Phase Two, an addition to the City of Sherman, Grayson County, Texas, according to the map or plat thereof recorded in Volume 8, Page 63 of the Plat Records of Grayson County, Texas bears N 69°19'08" E, 58.36 feet;

THENCE, S 24°55'04" E, 20.00 feet along said Cascade Drive;

SPIARS ENGINEERING & SURVEYING
765 Custer Road, Suite 100 • Plano, TX 75075 • 972.422.0077
TBPE No F-2121 • TBLPS No. F-10043100 • www.spiarseng.com

Drawn:	Checked:	Date	Job No.
CN	DKB	12/5/22	20–173

Water Easement Abandonment
E. JONES SURVEY, A-625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

Drawing: G:\2020 JOBS\20-173 Estates at Baker Park\ADMIN – SURVEY\DWG\20-173 Water Esmt Abandonment Exhibit.dwg Saved By: Cneal Save Time: 12/5/2022 11:51:57 AM Plotted by: cneal Plot Date: 12/5/2022 11:55 AM

EXHIBIT "A"

THENCE traversing said GOW Properties tract, the following courses and distances:

Along a non–tangent curve to the left having a central angle of 09°48'30", a radius of 375.00 feet, a chord of S 60°14'57" W – 64.12 feet, an arc length of 64.20 feet;

N 34°33'40" W, 54.89 feet;

Along a tangent curve to the left having a central angle of 70°30'00", a radius of 180.00 feet, a chord of N 69°48'40" W – 207.77 feet, an arc length of 221.48 feet;

S 74°56'20" W, 70.00 feet;

Along a tangent curve to the left having a central angle of 54°24'00", a radius of 180.00 feet, a chord of S 47°44'20" W – 164.56 feet, an arc length of 170.90 feet;

S 20°32'20" W, 30.00 feet; N 69°27'40" W, 80.66 feet;

Along a tangent curve to the left having a central angle of 35°36'00", a radius of 255.00 feet, a chord of N 87°15'40" W – 155.90 feet, an arc length of 158.44 feet;

S 74°56'20" W, 303.59 feet; N 58°12'24" W, 148.06 feet to a point lying in said east right–of–way line of Farm to Market Road 1417;

THENCE, N 01°20'35" W, 23.88 feet, along said east right–of–way line of Farm to Market Road 1417 to the POINT OF BEGINNING with the subject tract containing 25,799 square feet or 0.592 acres of land.

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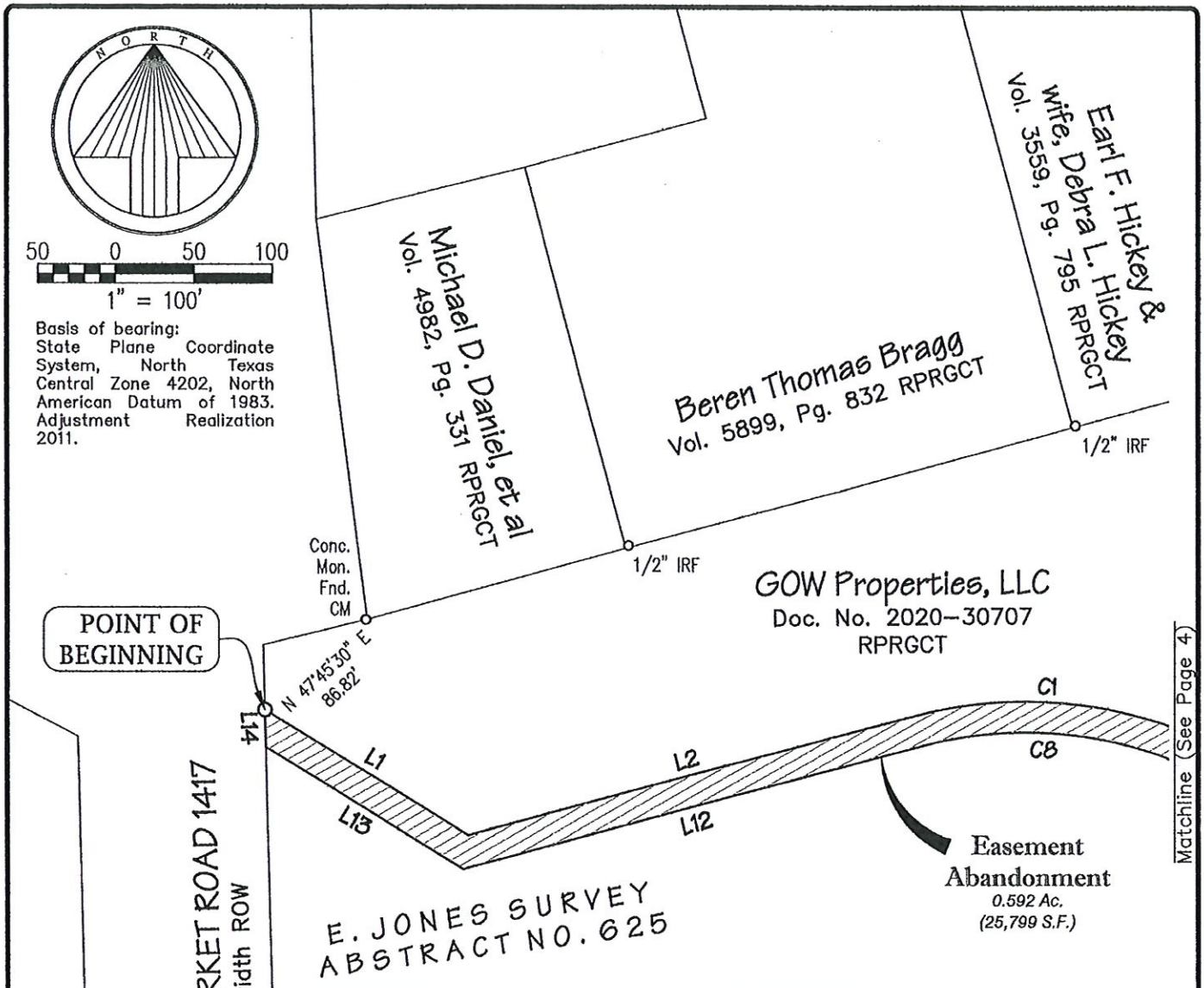
TBPE No F-2121 • TBPLS No. F-10043100 • www.spiarseng.com

Drawn:	Checked:	Date	Job No.
CN	DKB	12/5/22	20-173

Water Easement Abandonment
E. JONES SURVEY, A-625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

Drawing: G:\2020 JOBS\20-173 Estates at Baker Park\ADMIN – SURVEY\DWG\20-173 Water Esmt Abandonment Exhibit.dwg Saved By: Cneal Save Time: 12/5/2022 11:51:57 AM Plotted by: cneal Plot Date: 12/6/2022 11:55 AM



Curve Table					
Curve #	Length	Radius	Delta	Chord Bearing	Chord Dist.
C1	170.87'	275.00'	35°36'00"	S 87°15'40" E	168.13'
C2	189.89'	200.00'	54°24'00"	N 47°44'20" E	182.84'
C3	246.09'	200.00'	70°30'00"	S 69°48'40" E	230.86'
C4	47.55'	395.00'	6°53'52"	N 61°42'03" E	47.52'
C5	64.20'	375.00'	9°48'30"	S 60°14'57" W	64.12'
C6	221.48'	180.00'	70°30'00"	N 69°48'40" W	207.77'
C7	170.90'	180.00'	54°24'00"	S 47°44'20" W	164.56'
C8	158.44'	255.00'	35°36'00"	N 87°15'40" W	155.90'

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Drawn:	Checked:	Date	Job No.
CN	DKB	12/5/22	20-173

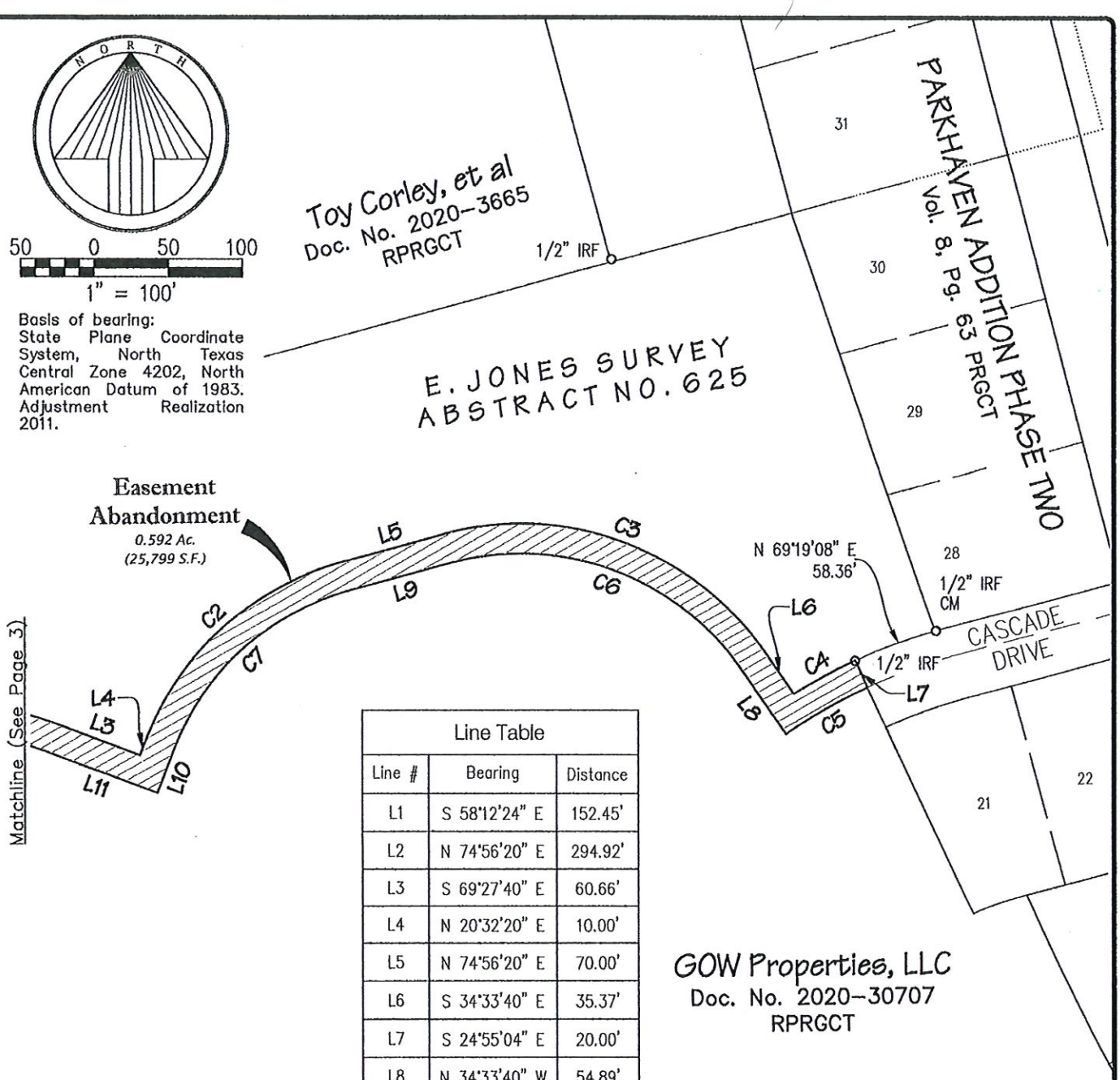
Water Easement Abandonment

E. JONES SURVEY, A-625

CITY OF SHERMAN

GRAYSON COUNTY, TEXAS

Drawing: G:\2020 JOBS\20-173 Estates at Baker Park\ADMIN - SURVEY\DWG\20-173 Water Esmt Abandonment Exhibit.dwg Saved By: Cneal Save Time: 12/5/2022 11:51:57 AM Plotted by: cneal Plot Date: 12/5/2022 11:55 AM



Line Table		
Line #	Bearing	Distance
L1	S 58°12'24" E	152.45'
L2	N 74°56'20" E	294.92'
L3	S 69°27'40" E	60.66'
L4	N 20°32'20" E	10.00'
L5	N 74°56'20" E	70.00'
L6	S 34°33'40" E	35.37'
L7	S 24°55'04" E	20.00'
L8	N 34°33'40" W	54.89'
L9	S 74°56'20" W	70.00'
L10	S 20°32'20" W	30.00'
L11	N 69°27'40" W	80.66'
L12	S 74°56'20" W	303.59'
L13	N 58°12'24" W	148.06'
L14	N 01°20'35" W	23.88'

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Water Easement Abandonment

E. JONES SURVEY, A-625

CITY OF SHERMAN

GRAYSON COUNTY, TEXAS

Drawn:	Checked:	Date	Job No.
CN	DKB	12/5/22	20-173

STATE OF TEXAS
REGISTERED
DARREN K. BROWN
5252
PROFESSIONAL
LAND SURVEYOR

DARREN K. BROWN, R.P.L.S. 5252

Drawing: G:\2020 JOBS\20-173 Estates at Baker Park\ADMIN - SURVEY\DWG\20-173 Water Esmt Abandonment Exhibit.dwg Saved By: Cneal Save Time: 12/5/2022 11:51:57 AM Plotted by: cneal Plot Date: 12/5/2022 11:55 AM

Estates at Baker Park

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 3.**

Meeting Date: 02/20/2023

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6569

Abandoning One (1) Twenty Foot (20') Utility Easement for City Water and Sewer Located in the Proposed Plat of Washington Meadows, Phase Two, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easement is Established in Volume 5416, Page 697 of the Official Public Records of Grayson County, Texas

Issue:

To consider the abandonment of one (1) 20' Utility Easement for City Water and Sewer located within the proposed plat of Washington Meadows, Phase Two to the City of Sherman, Texas

Background:

Said easement, which is filed of record in Volume 5416, Page 697 of the Official Public Records of Grayson County, Texas, is not being utilized and is no longer deemed necessary. This easement is located at the site of development by Wyldewood Homes for their single-family project Washington Meadows, Phase Two.

Origination:

Engineering Department

Financial Consideration:

None

Staff Recommendation:

Staff recommends approval of the one (1) 20' utility easement abandonment

Alternatives:

As may be directed by City Council

Attachments

Ordinance No. 6569
Filed Utility Easement Vol. 5416, Pg. 697
Location Map

ORDINANCE NO. 6569

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) TWENTY FOOT (20′) UTILITY EASEMENT FOR CITY WATER AND SEWER LOCATED IN THE PROPOSED PLAT OF WASHINGTON MEADOWS, PHASE TWO, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH UTILITY EASEMENT IS ESTABLISHED IN VOLUME 5416, PAGE 697 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman, Texas has received a request to abandon one (1) twenty foot (20′) Utility Easement for City water and sewer, as described herein; and

WHEREAS, the City Council has held a public hearing on the proposed abandonment and the abutting property owner(s) of the proposed abandonment have been notified; and

WHEREAS, the City Council has investigated and determined that all persons who own property adjacent to the easement concur and agree with the proposed abandonment; and

WHEREAS, the City Council has investigated and determined that the easement is no longer needed; and

WHEREAS, the City Council finds that it is in the best interest of the City and its citizens to abandon the City's right and interest in the easement, and that such action will benefit the public generally.

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

SECTION 1. That the 20' Utility Easement for City Water and Sewer located in the proposed plat of Washington Meadows, Phase Two, and being more particularly described on the Exhibit "A" attached hereto and made a part hereof for all purposes, which Utility Easement is established in Volume 5416, Page 697 of the Official Public Records of Grayson County, Texas, shall be abandoned.

SECTION 2. That it is the intent of the City Council that the City's rights and interests in such easement is hereby vacated.

SECTION 3. The abandonment approved by this Ordinance does not relinquish any right arising other than from the plat or other instrument creating the public easement or right-of-way, nor does this Ordinance create new rights.

SECTION 4. That the City Clerk is hereby directed to file and record this Ordinance after its adoption in the Official Public Records of Grayson County, Texas.

SECTION 5. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place, and purpose of said meetings were given all as required by law.

SECTION 6. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 8. This Ordinance shall become effective immediately upon its passage and adoption.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 20th day of February 2023.

ADOPTED on this the 20th day of February 2023.

EFFECTIVE DATE on this the 20th day of February 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Brookshires
2182-A

Grayson County
Wilma Bush
Grayson County Clerk
Sherman, Texas 75090

70 2014 00001776

Instrument Number: 2014-00001776
As
Recordings

Recorded On: January 29, 2014

Parties: WASHINGTON 1417 LP
To SHERMAN CITY OF

Billable Pages: 5
Number of Pages: 7

Comment: EASEMENT

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Recordings	32.00
Total Recording:	**32.00**

********** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT **********

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2014-00001776
Receipt Number: 393552
Recorded Date/Time: January 29, 2014 03:30:22P
Book-Vol/Pg: BK-OR VL-5416 PG-697
User / Station: G WHITE - Cashiering Station 1

Record and Return To:

SHERMAN, CITY OF
P. O. BOX 1106
SHERMAN TX 75091-1106

COUNTY COURT OF GRAYSON COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF GRAYSON
I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas.

Wilma Blackshear Bush

Wilma Blackshear Bush, Grayson County Clerk

Brookshire's

UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, THAT WASHINGTON 1417, LP. acting by and through its General Partner, Washington 1417 GP, LLC, acting by and through its Manager, Richard L. Franklin (hereinafter called "Grantor" whether one or more), in consideration of One Dollar ($1.00), and the further consideration of the benefit to be derived on account of the construction, reconstruction and maintenance by the City of Sherman of a water and sewer line, and other good and valuable consideration paid by the City of Sherman, Grayson County, Texas (hereinafter called "Grantee"), the receipt and sufficiency of which is hereby acknowledged, do hereby give, grant and convey to said Grantee, 220 W. Mulberry Street, Sherman, Texas, its successors, and assigns, a perpetual nonexclusive easement with the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, remove, upgrade and construct an underground water main and sewer main together with necessary underground appurtenances ("Easement Facilities"), in and through Grantors' land, more particularly described in instrument recorded in **Volume 4207, Page 908, Real Property Records of** Grayson County Deed Records, together with the right of ingress and egress along and upon the Easement Property and over and across Grantor's property that is adjacent to the Easement Property as may reasonably for ingress and egress By Grantee, its employees, agents, and contractors to and from the Easement Property, to construct, operate, maintain, inspect, repair and replace the Easement Facilities, ONLY to the extent that the Easement Property is not accessible by using existing rights-of-way, streets, roads, driveways; and parking areas to the maximum extent reasonably possible. The easement hereby granted shall be approximately thirty feet (30') in width as more specifically depicted in Exhibit "A" and described in Exhibit "B" ("Easement Property") for all water and sewer purposes, including, but not limited to inspection, operation, patrol, repair, replacement, construction, reconstruction, installation, improvement, maintenance, and enlargement of the Easement Facilities, , under, through, and across the tract of land described.

Grantor, reserves the right to make connections to and to utilize the Easement Facilities constructed in the Easement Property to obtain water and wastewater service to Grantor's Property and to place, construct, operate, repair, replace and maintain utility lines and facilities (including water, wastewater, , gas, electric, telephone, and cable television lines and systems), public or private streets or roads, driveways, parking areas, fences (not including brick or other permanent type walls) and landscaping, in, over, under and across the Easement Property provided such use shall not, in the reasonable judgment of Grantee, interfere with the exercise by Grantee of the rights hereby granted.

Upon the removal, repair, replacement, construction, reconstruction, installation, improvement, enlargement, and maintenance of the utility improvements, GRANTEE shall replace and restore all fences, streets, roads, driveways, parking areas, walks, or any other improvements which may have been relocated or removed by GRANTEE and shall otherwise restore the surface of the easement area to the same or better condition it was in immediately prior to such removal, repair, replacement, construction, reconstruction, installation, improvement, enlargement or maintenance.

TO HAVE AND TO HOLD THE SAME, together with, all and singular, the rights and appurtenances thereto in anywise belonging to the said GRANTEE, its successors and assigns

2022027705 09/30/2022 03:45:05 PM Page 1 of 5

forever, and GRANTOR does hereby bind himself, his heirs, successors and assigns, to Warrant and Forever Defend, all and singular, the said easement unto the said GRANTEE, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights of way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may still be in force and effect, and either shown of record in the office of the County Clerk of the County in which any part of the Property is located; or that may be apparent on the Property.

This instrument shall be constructed as conveying an easement to the GRANTEE for utility purposes, and fee title is reserved by GRANTOR, his heirs, successors and assigns, subject to such easement.

IN WITNESS WHEREOF the said Grantors has executed this instrument this 15th day of January, 2014.

GRANTOR:
WASHINGTON 1417, LP.

BY: WASHINGTON 1417 GP, LLC

BY: _____
Richard L. Franklin, Manager

CERTIFIED COPY- DOCUMENT
THIS IS CERTIFIED TO BE A TRUE COPY OF THE PERMANENT RECORD AS FILED IN THE OFFICE OF THE CITY CLERK.

Linda Ashby
CITY CLERK, SHERMAN, TEXAS

ISSUED 2/4/14

STATE OF Texas *
*
COUNTY OF Collin *

BEFORE ME, the undersigned authority, on this day personally appeared Richard L. Franklin, Manager of Washington 1417 GP, LLC, general partner of and on behalf of **WASHINGTON 1417, L.P. a Texas limited partnership,** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this the 15th day of January, 2014.

NOTARY PUBLIC STATE OF TEXAS

NOTARY PUBLIC STATE OF TEXAS
LINDSAY SAMUELS
Notary Public
STATE OF TEXAS
My Comm. Exp. October 4, 2016

SUMMIT DRAWING NO. K:\2012\12-043\ESMT-EXHIBIT.DWG

EXHIBIT A

© Copyright 2008, Summit Surveying, Inc.

UTILITY EASEMENT
WASHINGTON 1417, LP
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S77°14'55"E	30.03'
L2	S77°14'55"E	147.99'
L3	N83°10'03"E	245.91'
L4	S06°49'57"E	20.00'
L5	S83°10'03"W	249.36'
L6	N77°14'55"W	150.69'
L7	S20°45'00"W	348.85'
L8	S12°32'00"W	373.66'
L9	S15°04'58"E	267.69'
L10	S80°22'24"E	266.93'
L11	S05°50'57"W	73.70'
L12	N05°50'57"E	54.98'
L13	N80°22'24"W	261.02'
L14	N15°04'58"W	306.99'
L15	N12°32'00"E	361.61'
L16	N20°45'00"E	351.00'

WASHINGTON STREET

LOT 1, BLOCK 1
BROOKSKIRE ADDITION
VOL. 22 PG. 62-63
08/27/2013
(P.R.G.C.T.)

RESIDUE OF
CALLED 7.431 ACRES
WASHINGTON 1417, LP.
TO
BROOKSKIRE GROCERY COMPANY
VOL. 5324 PG.890
CLERK FILE # 00013929
06/25/2013

1/2" IRON ROD
P.O.C. FOR LAND
DESCRIPTION

P.O.B. FOR LAND
DESCRIPTION

35.5'
12.5'
20.0'
20.0'
30.0'

1.334 ACRE
(58,093 SQ. FT.)
UTILITY EASEMENT

WASHINGTON PLACE ADDITION
VOL. 12 PG. 80
(P.R.G.C.T.)
01/11/2000

F. M. 1417

J. B. McANAIR SURVEY A- 763

RESIDUE OF
CALLED 50.990 ACRES
WASHINGTON 1417, LP.
VOL. 4207 PG. 908
VOL. 4854 PG. 275
VOL. 4853 PG. 873
VOL. 4853 PG. 878

CALLED 30.96 ACRES
WEST SHERMAN BAPTIST CHURCH, INC.
VOL. 3758 PG. 847
11/01/2004

CURVE TABLE				
CURVE	DELTA	RADIUS	CHORD	LENGTH
C1	0°27'04"	2924.79	S09°54'45"W 23.03'	23.03'
C2	0°14'33"	2954.79	S10°17'09"W 12.51'	12.51'
C3	9°57'17"	2954.79	S15°46'22"W 512.73'	513.37'
C4	0°24'00"	2864.93	N84°09'04"W 20.00'	20.00'
C5	10°36'43"	2924.79	N15°26'39"E 540.94'	541.71'
C6	7°43'19"	2864.93	N80°05'25"W 385.82'	386.11'

N SCALE: 1"=300'

30.0'
20.0'
20.0'

RAILROAD ABANDONMENT BY
MISSOURI PACIFIC RAILROAD CO.
VOL. 2351 PG. 443
08/01/1994

CENTERLINE OF ABANDONED RAILROAD

1/2" IRON ROD

PROPOSED UTILITY EASEMENT
BY SEPARATE DOCUMENT

32 ACRES +/-
KENNEDY FAMILY LTD PARTNERSHIP
TO
ROBERT W. MINSHEW, TRUSTEE
VOL. 4464 PG. 558
05/22/2008

STATE OF TEXAS
REGISTERED
JOE W. CLARK
4366
PROFESSIONAL
LAND SURVEYOR

Joe W Clark 10/04/2013

Joe W. Clark
Registered Professional Land Surveyor No. 4366
TBLS Firm # 10081000

SEE LAND DESCRIPTION ON SEPARATE SHEET

Summit Surveying, Inc. 2040 Deerbrook Drive, Tyler, Texas 75703 • (903)-561-9544

EXHIBIT B
Washington 1417, LP.
Variable width Utility Easement

All that certain tract or parcel of land situated in J. B. McAnair Survey Abstract No. 763, City of Sherman, Grayson County, Texas, and being a part of a called 50.990 acre tract as described in deeds to Washington 1417, LP., and recorded in Volume 4207 on Page 908, Volume 4853 on Page 873, Volume 4853 on Page 878 and Volume 4854 on Page 275 in the Deed Records of Grayson County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod (set) for the southwest corner of a called 7.431 acre tract as described in a deed from the Washington 1417, LP. to Brookshire Grocery Company, dated June 25, 2013 and recorded in Volume 5324 on Page 890 in said Deed Records, same being the southwest corner of Lot 1, Block 1 of the Brookshire Addition shown on a plat recorded in Volume 22 on Pages 62 and 63 in the Plat Records of Grayson County, Texas, and being in the east right of way line of F. M. No. 1417;

THENCE with the west line of said 50.990 acre tract and with the east right of way line of said F. M. No. 1417 and along a curve to the right, having a Delta of 00 deg. 27 min. 04 sec., a Radius of 2,924.79 feet, a Chord which bears South 09 deg. 54 min. 45 sec. West – 23.03 feet, and an Arc length of 23.03 feet to the **PLACE OF BEGINNING** of the herein described easement;

THENCE across said 50.990 acre tract as follows:

- South 77 deg. 14 min. 55 sec. East a distance of 30.03 feet to a point for corner and being beginning of a non-tangent curve to the right,
- Along said curve to the right, having a Delta of 00 deg. 14 min. 33 sec., a Radius of 2,954.79 feet, a Chord which bears South 10 deg. 17 min. 09 sec. West – 12.51 feet, and an Arc length of 12.51 feet to a point for corner,
- South 77 deg. 14 min. 55 sec. East a distance of 147.99 feet to a point for corner
- North 83 deg. 10 min. 03 sec. East, a distance of 245.91 feet to a point for corner ,
- South 06 deg. 49 min. 57 sec. East a distance of 20.00 feet to a point for corner,
- South 83 deg. 10 min. 03 sec. West a distance of 249.36 feet to a point for corner,
- North 77 deg. 14 min. 55 sec. West a distance of 150.69 feet to a point for corner and being in a non-tangent curve to the right,
- Along said curve to the right being parallel to and 30.00 easterly of the west line of said 50.990 acre tract and said east right of way line of said F. M. No. 1417, said curve having a Delta of 09 deg. 57 min. 17 sec., a Radius of 2,954.79 feet, a Chord which bears South 15 deg. 46 min. 22 sec. West – 512.73 feet, and an Arc length of 513.37 feet to a point for corner,
- South 20 deg. 45 min. 00 sec. West continuing along said parallel line, a distance of 348.85 feet to a point for corner,
- South 12 deg. 32 min. 00 sec. West continuing along said parallel line, a distance of 373.66 feet to a point for corner,
- South 15 deg. 04 min. 58 sec. East a distance of 267.69 feet to a point for corner,
- South 80 deg. 22 min. 24 sec. East a distance of 266.93 feet to a point for corner and,
- South 05 deg. 50 min. 57 sec. West a distance of 73.70 feet to a point for corner in the south line of said 50.990 acre tract, same being the centerline of Missouri Pacific Railroad right of way, abandoned in Volume 2351 on Page 443 in said Deed Records, and being in the north line of a called 32 acre tract as described in a deed to Robert W. Minshew, Trustee, recorded in Volume 4464 on Page 558 in said Deed Records;

Summit Surveying Inc., 2040 Deerbrook Drive Tyler, Texas 75703 (903) 561-9544
TBLS Firm # 10081000

EXHIBIT B (con't)

THENCE with the south line of said 50.990 acre tract and north line of said 32 acre tract and along a curve to the right, having a Delta of 00 deg. 24 min. 00 sec., a Radius of 2,864.93 feet, a Chord which bears North 84 deg. 09 min. 04 sec. West – 20.00 feet, and an Arc length of 20.00 feet to a point for corner, from which a 1/2 inch iron rod (set) for the southwest corner of said 50.990 acre tract bears along a curve to the right having a Delta of 07 deg. 43 min. 19 sec., a Radius of 2,864.93 feet, a Chord which bears North 80 deg. 05 min. 25 sec. West – 385.82 feet, and an Arc length of 386.11feet;

THENCE across said 50.990 acre tract as follows:

- North 05 deg. 50 min. 57 sec. East a distance of 54.98 feet to a point for corner,
- North 80 deg. 22 min. 24 sec. West a distance of 261.02 feet to a point for corner and,
- North 15 deg. 04 min. 58 sec. West a distance of 306.99 feet to a point for corner in the west line of said 50.990 acre tract, same being the east right of way line of said F. M. No. 1417;

THENCE North 12 deg. 32 min. 00 sec. East with the west line of said 50.990 acre tract and with said east right of way line, a distance of 361.61 feet to a point for corner in same;

THENCE North 20 deg. 45 min. 00 sec. East continuing with the west line of said 50.990 acre tract and with said east right of way line, a distance of 351.00 feet to a point for corner in same and being the beginning of a curve to the left;

THENCE continuing with the west line of said 50.990 acre tract and with said east right of way line and along said curve to the left, having a Delta of 10 deg. 36 min. 43 sec., a Radius of 2,924.79 feet, a Chord which bears North 15 deg. 26 min. 39 sec. East – 540.94 feet, and an Arc length of 541.71 feet to the **PLACE OF BEGINNING** and containing 1.334 acres (58,093 sq. ft.) of land.

Joe W Clark 10/06/2013
Joe W. Clark Date
Registered Professional Land Surveyor No. 4366

640121v1

Bk	Vol	Pg
00001776	OR	5416	703

Filed for Record in:
Grayson County

On: Jan 29,2014 at 03:30P

As a
Recordings

Document Number: 00001776

Amount: 32.00

Receipt Number -
393552

By,
GAIL WHITE

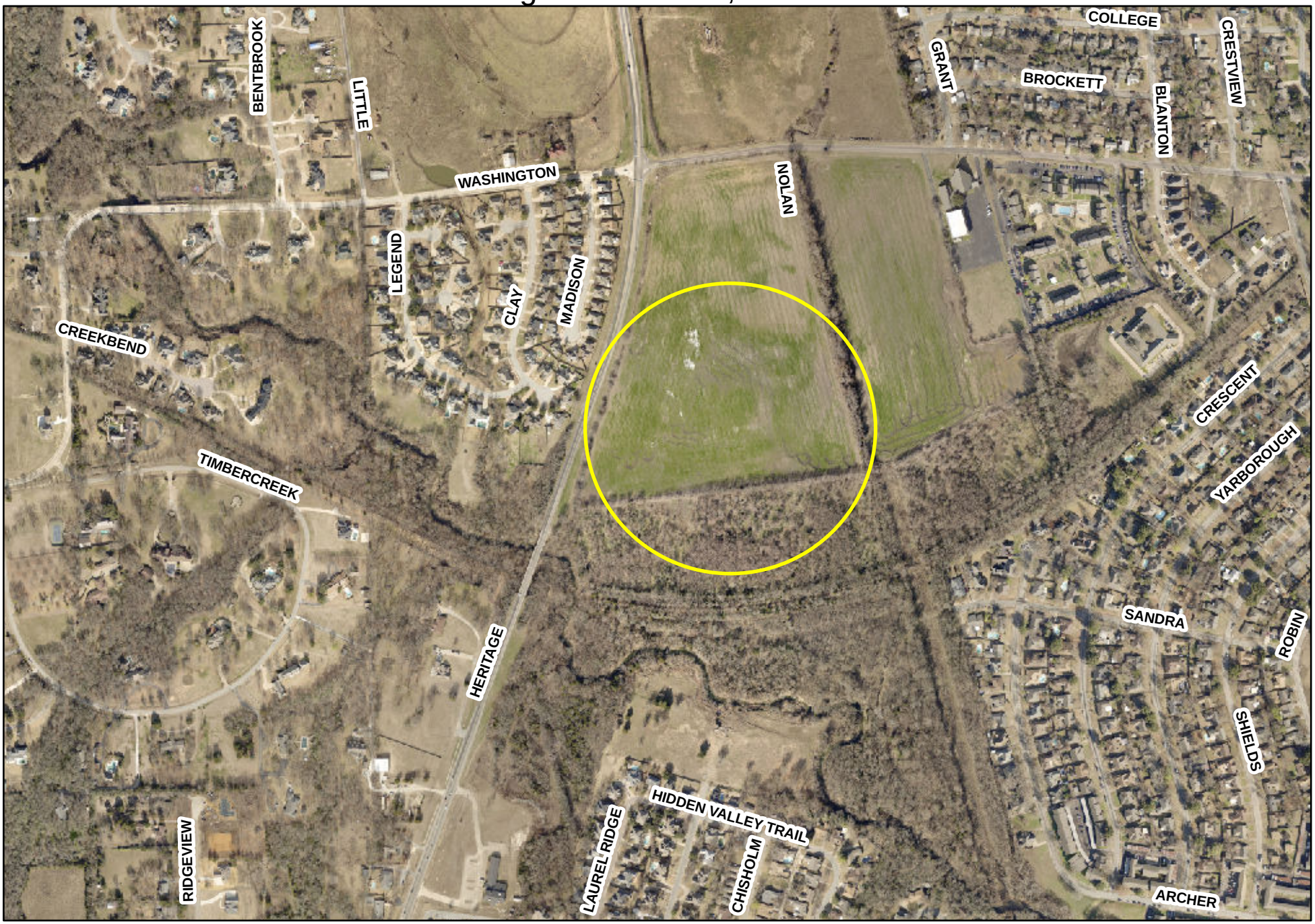
STATE OF TEXAS COUNTY OF GRAYSON

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the named records of:
Grayson County
as stamped hereon by me.

Jan 29,2014

Wilma Bush, Grayson County Clerk
Grayson County

Washington Meadows, Phase Two



SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 4.**

Meeting Date: 02/20/2023

Approved By: Robby Hefton, City Manager

Caption:

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers 6567, 6568 & 6569.

Issue:

D. 1. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6567**
Amending Chapter 9 of the Code of Ordinances, Entitled "Personnel", Article 9.05, Entitled "Civil Service for Firefighters and Police Officers", at Section 9.05.026, Entitled "Authorized Number of Positions", To Revise the Number of Authorized Positions in the Fire Department; providing for Inclusion in the Code of Ordinances; Providing for Severability; Providing for a Repealer

D. 2. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6568**
Abandoning One (1) Twenty Foot (20') Water Easement Located in the Proposed Plat of Estates at Baker Park, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Water Easement is Established in Volume 1648, Page 491 of the Deed Records of Grayson County, Texas

D. 3 **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6569**
Abandoning One (1) Twenty Foot (20') Utility Easement for City Water and Sewer Located in the Proposed Plat of Washington Meadows, Phase Two, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easement is Established in Volume 5416, Page 697 of the Official Public Records of Grayson County, Texas

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023
Prepared By: Mary Lawrence, Director of Finance
Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7033

Authorizing Execution of a TIRZ #8 Reimbursement Agreement with Heritage Ranch Municipal Utility District No. 1 of Grayson County for the Construction of Public Infrastructure within Sherman Tax Increment Reinvestment Zone, Number Eight (#8) in the City of Sherman

Issue:

To approve a Reimbursement Agreement for Public Infrastructure within Sherman Tax Increment Reinvestment Zone, Number Eight (#8)

Background:

In 2021, the Council approved a Master Development Agreement (MDA) with the developer of TIRZ #8, the residential area of Heritage Ranch. According to the MDA, the TIRZ Board of Directors and the developer shall negotiate and enter into an agreement for reimbursement to the Developer for Project Costs consistent with the terms and conditions of the MDA with payments made to the Municipal Utility District. This Reimbursement Agreement would reimburse the Municipal Utility District (MUD) for the public infrastructure, initially paid for by the developer and reimbursed to the developer from MUD bond proceeds. Reimbursement for public infrastructure to the MUD is part of the TIRZ #8 Project and Financing Plan. The reimbursement would be funded by the incremental tax revenue generated by the zone. Payments by the City under this agreement would end at the earlier of the date the bonds are repaid, the date the MDA terminates, or the date TIRZ #8 terminates.

Origination:

Mary Lawrence, Finance Director
Robby Hefton, City Manager
TIRZ #8 Board

Financial Consideration:

Reimbursement will be made from TIRZ #8 revenue upon acceptance by the City of the public improvements. The estimated cost for public infrastructure is $35 million.

Staff Recommendation:

Staff recommends approval of the TIRZ #8 Reimbursement Agreement.

Alternatives:

As directed by the City Council

Attachments

Resolution No. 7033

Reimbursement Agreement Heritage Ranch MUD

Aerial Heritage Ranch TIRZ #8

RESOLUTION NO 7033

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A TIRZ #8 REIMBURSEMENT AGREEMENT WITH HERITAGE RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF GRAYSON COUNTY FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER EIGHT (#8) IN THE CITY OF SHERMAN; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to execute a TIRZ #8 Reimbursement Agreement with Heritage Ranch Municipal Utility District No. 1 of Grayson County for the construction of public infrastructure within Sherman Tax Increment Reinvestment Zone, Number Eight (#8) located generally along U.S. Hwy 82 and between Plainview Road and Travis Street in the City of Sherman, Grayson County, Texas, in the same or substantially same form as the contract documents to be 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.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 20th day of February 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____

LINDA ASHBY, CITY CLERK **DAVID PLYLER, MAYOR**

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

BY: _____

RYAN D. PITTMAN, CITY ATTORNEY

TIRZ#8 REIMBURSEMENT AGREEMENT

Between and Among

CITY OF SHERMAN, TEXAS

and

SHERMAN TAX INCREMENT REINVESTMENT ZONE #8

and

HERITAGE RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF GRAYSON COUNTY

Dated _____

TIRZ#8 REIMBURSEMENT AGREEMENT

This TIRZ#8 Reimbursement Agreement ("Agreement") is made between and among the CITY OF SHERMAN, TEXAS, a home-rule municipal corporation situated in Grayson County, Texas, acting by and through its governing body (the "City"); SHERMAN TAX INCREMENT REINVESTMENT ZONE #8, a tax increment reinvestment zone created by the City, pursuant to Chapter 311 of the Texas Tax Code, as amended, acting by and through its governing body (the "Zone"); and HERITAGE RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF GRAYSON COUNTY, a political subdivision of the State of Texas (the "District"), effective as of _____.

RECITALS

Pursuant to Chapter 311 of the Texas Tax Code as amended, (the "TIRZ Act") and by Ordinance No. 6476, the City Council of the City (the "City Council") created the Zone located wholly in the corporate limits of the City pursuant to a Preliminary Financing Plan. The City Council for the City ("City Council") has appointed the Zone's Board of Directors ("Zone Board").

The Zone Board has adopted a First Amendment to Project and Financing Plan dated November 21, 2022 (as hereinafter amended from time to time, the "Project and Financing Plan"). The Zone Board submitted the Project and Financing Plan to the City Council for approval, and the City Council approved such Project and Financing Plan.

The Texas Tax Code provides that the City and Zone may enter into agreements as the City and Zone Board consider necessary or convenient to implement the Project and Financing Plan and achieve its purposes.

The City Council and Zone Board have determined that it is in the best interest of the City and Zone to enter into this Agreement with the District, which the District encompasses the approximately 172 acres described in the attached Exhibit "A" within the Zone (the "District Tract"), in order to provide for the efficient and effective implementation of certain aspects of the Project and Financing Plan.

The District desires to enter into this Agreement to promote the development of the District Tract with certain improvements.

The District was created to encompass the District Tract for the purposes of providing a public water supply, sanitary sewer services, drainage services, and roads to the areas within its boundaries. The District has entered into a reimbursement agreement with RCICD Heritage Ranch LLC, a Texas limited liability company, the developer of the District Tract (the "Developer"), pursuant to which Developer will construct, among other things, the TIRZ Improvements (as hereinafter defined) and the District will reimburse Developer for the costs of constructing the TIRZ Improvements with the proceeds of its ad valorem tax bonds.

The Parties hereby intend for the monies hereinafter agreed by the City and Zone to be reimbursed for the TIRZ Improvements will flow to the District so that the District can utilize such

monies to pay its ad valorem tax bonds issued to reimburse Developer for construction of the TIRZ Improvements.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the City, the Zone, and the District contract and agree as follows:

ARTICLE I
GENERAL TERMS

1.01 Definitions. The terms "TIRZ Act," "Agreement," "Developer," "District," "City," "City Council," "District Tract," "Project and Financing Plan," "Zone," and "Zone Board" have the above meanings, and the following terms have the following meanings:

"Available Tax Increment" shall mean the funds in the Tax Increment Revenue Fund derived from within the District Tract collected at 50% of the City's Maintenance and Operations ("M&O") portion of the ad valorem tax actually collected from within the District Tract and 50% of the County's M&O portion of the ad valorem tax actually collected from within the District Tract , excluding amounts necessary to pay for the operation and administration of the Zone.

"City Increment" means, for a year, 50% of the M&O portion of the ad valorem property taxes levied and collected by the City for that year on the captured appraised value of real property (as defined in Section 311.012 of the TIRZ Act) taxable by the City and located within the District Tract.

"County" shall mean Grayson County, Texas.

"County Increment" means, for a year, 50% of the M&O portion of the ad valorem property taxes levied and collected by the County for that year on the captured appraised value of real property (as defined in Section 311.012 of the TIRZ Act) taxable by the County and located within the District Tract.

"Net TIRZ Revenue" means for any given period of time the Available Tax Increment minus that portion of the costs and expenses authorized by the TIRZ Act for the establishment and administration of the TIRZ ("Administrative Costs").

"Parties" or "Party" shall mean the City, Zone and the District, and any authorized assignee thereof.

"Plans and Specifications" shall mean the designs, plans and specifications for each of the TIRZ Improvements that have been approved by the City.

"Project Costs" shall mean all costs directly related to the design and construction of the TIRZ Improvements which are eligible for financing by the Zone pursuant to the TIRZ Act, including those costs referenced in Section 3.03 and Exhibit "B".

"Tax Increment Revenue Fund" shall mean the special fund established by the City and funded with payments made by the City and the County (and any other entity which agrees to participate in the TIRZ Project and Finance Plan), which payments are attributable to incremental ad valorem property taxes paid on all taxable properties in the Zone, as such are defined by the TIRZ Act.

"Tax Increments" means for any given period the total revenue paid into the Tax Increment Revenue Fund from the incremental ad valorem property taxes paid on all taxable properties in the Zone.

"TIRZ Improvements" shall mean the water, sanitary sewer and drainage facilities or capacities, and roads necessary to serve the District Tract, as further described in Article 4 and Exhibit "B," that are dedicated and conveyed to the City upon final acceptance thereof by the City.

1.02 Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

ARTICLE 2
REPRESENTATIONS

2.01 Representations of the City. The City hereby represents to the other parties to this Agreement that as of the date hereof:

(A) The City is duly authorized, created and existing under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement. Ordinance No. 6476, adopted by the City Council of the City, remains in full force and effect and has not been amended or supplemented since the date of its adoption.

(B) The City Council has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation applicable to the City, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(C) The execution, delivery and performance of this Agreement by the City does not require the consent or approval of any person which has not been obtained.

2.02 Representations of the Zone. The Zone hereby represents to the other parties to this Agreement that as of the date hereof:

(A) The Zone is duly authorized, created and existing under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement. Ordinance No. 6476, adopted by the City Council of the City, remains in full force and effect and has not been amended or supplemented since the date of its adoption.

(B) The Zone has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation applicable to the Zone, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Zone under any agreement or instrument to which the Zone or is a party or by which the Zone or its assets may be bound or affected.

(C) The execution, delivery and performance of this Agreement by the Zone does not require the consent or approval of any person which has not been obtained.

2.03 Representations of the District. The District hereby represents to the other parties to this Agreement that as of the date hereof:

(A) The District is duly authorized, created and existing under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement. The District is a legally created municipal utility district, created pursuant to Senate Bill 2219, 87th Texas Legislature, Regular Session, codified as Chapter 7920A, Special District Local Laws Code (the "District Act"), remains in full force and effect and has not been amended or supplemented since the date of its adoption.

(B) The District has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof (i) have been duly authorized, will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the District, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the District under any agreement or instrument to which the District is a party or by which the District or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the District, enforceable in accordance with its terms.

(D) The TIRZ Improvements are components of or are consistent with the current Project and Financing Plan. The TIRZ Improvements are eligible project costs under the TIRZ Act.

ARTICLE 3
THE DISTRICT TRACT AND NEEDED TIRZ IMPROVEMENTS

3.01 District Tract. In order to promote and expedite development of the District Tract, the District, or Developer on behalf of the District, is willing to design and construct the TIRZ Improvements, and, in return the City is willing to reimburse the cost of the TIRZ Improvements with monies made available to the City as a result of the growth of ad valorem tax base within the District Tract, subject to the terms of this Agreement, the Development Agreement (hereinafter defined) and applicable law.

3.02 TIRZ Improvements. The TIRZ Improvements will consist of those improvements defined as TIRZ Improvements under this Agreement.

3.03 Project Costs. The Project Costs of the TIRZ Improvements shall include, to the maximum extent allowed by law, all of the costs directly related to the construction of the TIRZ Improvements which can be paid from the Tax Increment Revenue Fund pursuant to the TIRZ Act, including without limitation, the payment of the costs of design, engineering, reports, materials, labor, construction, and inspection arising in connection with the TIRZ Improvements, including all payments arising under any contracts entered into pursuant to this Agreement, all costs incurred in connection with obtaining governmental approvals, certificates or permits required as a part of any contracts entered in to in accordance with this Agreement, all related legal fees and out-of-pocket expenses incurred in connection therewith directly related to the TIRZ Improvements, including costs of sites and right-of-way (including all costs related to condemnation, if needed) and interest on such costs as provided herein. Notwithstanding any statement to the contrary in this Agreement, all Project Costs must be an eligible project cost under the TIRZ Act and the Project and Financing Plan.

ARTICLE 4
DESIGN AND CONSTRUCTION OF TIRZ IMPROVEMENTS

4.01 Design of the TIRZ Improvements. The District, or Developer on behalf of the District, shall be responsible for the design of the TIRZ Improvements in conformance with applicable City ordinances and all other local, state and federal regulatory requirements. Upon the completion of such design, the District, or Developer on behalf of the District, shall submit plans and specifications for review and approval by the City, along with an updated budget for all the costs to construct the TIRZ Improvements. The City shall have sixty (60) days to review and approve or disapprove such plans and specifications and budget, and all required permits shall be obtained by the District, or Developer on behalf of the District, from the City prior to the commencement of the construction of the TIRZ Improvements.

4.02 Construction of the TIRZ Improvements. The District, or Developer on behalf of the District, shall be responsible for the construction of the TIRZ Improvements in conformance with applicable City ordinances and all other local, state and federal regulatory requirements. The District's engineer, or such engineer chosen by Developer and reasonably acceptable to the District and the City, shall serve as the project engineer for the construction of the TIRZ Improvements.

The TIRZ Improvements shall be constructed in accordance with all applicable rules and regulations, including, but not limited to, state laws related to competitive bidding requirements for municipal utility districts, and in accordance with the terms and conditions of that certain Heritage Ranch Master Development Agreement by and between TPJ Properties, Ltd., and the City, effective as of October 5, 2021 (as it exists or may be amended, the "Development Agreement"). To the extent there is a conflict between this Agreement and the Development Agreement, the Development Agreement shall control. It is understood and agreed that the District, or Developer on behalf of the District, is acting independently of the City and the Zone, and the City and the Zone assumes no responsibilities or liabilities in connection with the means, methods or course of the design or construction of the TIRZ Improvements.

ARTICLE 5
PROJECT COST REIMBURSEMENT

5.01 Tax Increment Revenue Fund. The City has established and will maintain a separate Tax Increment Revenue Fund, including the City Increment and County Increment, in the City treasury into which all Tax Increments shall be accounted. During the term of this Agreement, Tax Increments shall be paid to the District from the Tax Increment Fund as herein provided, subject to the terms of this Agreement and applicable law.

5.02 Collection of Tax Increments by the City and the Zone. Pursuant to Sections 311.010(b) and 311.113 of the TIRZ Act, the City has entered into a separate agreement (as it exists or may be amended, the "Tax Participation Agreement") with the County. The Tax Participation Agreement obligates the County to timely deposit its respective "increment" into the Tax Increment Fund as required by the TIRZ Act. The above-described Tax Participation Agreement shall not be amended as to the County Increment without the written consent of the District. In consideration of the TIRZ Improvements to be constructed by the District, or Developer on behalf of the District, the City and the Zone covenant and agree that they will, as authorized under the TIRZ Act and other applicable laws, continuously collect the Tax Increments from the City and County (hereinafter the "Taxing Units" collectively or a "Taxing Unit" separately) pursuant to the Tax Participation Agreement during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. To the extent the City and the Zone may legally do so, the City and the Zone also covenant and agree that they will not permit a reduction in the Tax Increments paid by the Taxing Units except to the extent provided in the agreement with the Taxing Unit executed at the time the Taxing Unit agreed to participate in the Zone. Notwithstanding any statement to the contrary in this Agreement, the District acknowledges and agrees that neither the City nor the Zone have any control over the County's participation in the TIRZ, that the County's participation in the TIRZ may vary, and the City and the Zone have not provided and will not provide any assurance that the County will continue participating in the TIRZ at all or that the County will participate at the level of the County Increment.

5.03 Payment of Net TIRZ Revenues to District.

(a) Pursuant to Sections 311.010(b) and 311.013 of the TIRZ Act, and in consideration for

the District's services in causing the TIRZ Improvements to be designed and constructed in accordance with this Agreement and the Development Agreement, the City hereby grants, dedicates, pledges, and shall pay to the District that portion of the Net TIRZ Revenue necessary and required to pay the actual debt service required for debt issued by the District to reimburse Developer for the funding, development and construction of the TIRZ Improvements pursuant to the terms of the Project and Financing Plan, this Agreement, and the Development Agreement, including but not limited to the priority of funding provision set forth in Section 4.2 of the Development Agreement. Subject to the foregoing, the City will pay annually the required portion of the Net TIRZ Revenue to the District, not later than the first business day of April during the term of this Agreement (commencing on April 1, 2024); provided that the District has demonstrated to the City that the District actually has incurred such debt service obligations by this date. The District shall deposit the payments received pursuant to this Section into a separate District account and use the monies solely in such account for payment of the Project Costs or its obligations to the holders of its TIRZ Bonds (hereinafter defined). Notwithstanding any statement to the contrary in this Agreement, in no event shall the City have any obligation to pay to the District any portion of the Net TIRZ Revenue unless and until construction of the TIRZ Improvements is complete and the City has finally accepted the same.

(b) Upon completion of construction of the TIRZ Improvements and verification thereof by the City, the District shall submit documentation to the City and the Zone evidencing the expenditure of funds for the TIRZ Improvements qualifying as Project Costs and that all such costs have been fully paid. Such documentation shall be in a form acceptable to the City and Zone and shall be certified by the District. City shall reimburse the District within thirty (30) days after District has obtained final acceptance of the TIRZ Improvements and submitted the documentation described in this subsection, subject to subsection (d) below. Disbursements of Net TIRZ Revenues shall be subject to the reimbursement to the City, the Zone and the County for Administrative Costs before any funds are available for reimbursement to the District for Project Costs.

(c) The City's grant, dedication, pledge, and payment of such money from the Tax Increment Revenue Fund to the District (as provided in Section 5.03(a) above) shall continue until the earlier of the date all TIRZ Bonds issued to pay the Project Costs have been paid in full, the date Project Costs have otherwise been paid in full, or the termination date of the TIRZ, the earlier of which dates is referred to as the “Pledge Termination Date”.

(d) Under no circumstance shall the City or the Zone be obligated to reimburse the District unless there are sufficient funds, net of the Administrative Costs, in the Tax Increment Revenue Fund to reimburse the District for Project Costs.

5.04 Reserved.

5.05 Limitation of Source of Payment. The City and the Zone shall have no financial obligation to the District other than as provided in this Agreement or in other agreements among the City, the Zone and the District. The obligation of the City and the Zone to the District under this Agreement is limited to the Tax Increments that are collected by the City and County in the

District Tract. This Agreement shall create no obligation on the City, the Zone or the County that is payable from taxes or other moneys of the City, the Zone or the County other than the Tax Increments.

ARTICLE 6
BOND ISSUANCE PLAN

6.01 District Bond Authority for TIRZ Improvement Costs. The District may issue bonds secured by Net TIRZ Revenue and other District taxes or revenue authorized by the District Act, to pay TIRZ Improvement Costs ("TIRZ Bonds").

6.02 Approval of TIRZ Bonds. All TIRZ Bonds shall be issued on commercially reasonable terms determined by the District and shall be subject to the limitations set forth in Section 5.03 herein. Any TIRZ Bonds secured in whole or in part by ad valorem taxes imposed by the District may also be subject to additional commercially reasonable terms approved by the Board of Directors of the District. The District's ability to pledge Net TIRZ Revenue is specifically limited by Article IV, paragraph 4.1 of the Development Agreement. TIRZ Bonds shall be limited to the financing of the TIRZ Improvements. Unless approved by the City, the aggregate amount of TIRZ Bonds issued by the District to finance TIRZ Improvements (excluding refunding Bonds) shall not exceed an amount that will yield, after deducting costs of issuance, capitalized interest and any other reserve amounts funded at closing, net Bond proceeds equal to the Project Costs.

ARTICLE 7
DEFAULT AND REMEDIES; WAIVER OF IMMUNITIES; TERM AND TERMINATION

7.01 Defaults and Remedies. Each of City, Zone and District shall have committed a default under this Agreement if any of them fails to perform any of their respective duties or obligations under this Agreement and such failure is not cured within thirty (30) days after written notice from any non-defaulting Party specifying the nature and the period of existence thereof and what action, if any, the non-defaulting Party requires or proposes to require with respect to curing the default (or if the failure is not reasonably capable of being cured within thirty (30) days, the non-performing Party does not begin to cure within such 30-day period and thereafter continuously and diligently complete a cure at the earliest possible time). In enforcing the performance of the provisions of this Agreement, each Party shall have the right to the exercise of all procedures available under the law including, but without limiting the generality thereof, a Party's right to obtain a writ of mandamus to command performance of any of the other Parties' respective non-discretionary obligations. No waiver of any breach or default of any provision of this Agreement shall be deemed a waiver of any subsequent waiver or default.

7.02 Governmental Powers: Non-Waiver of Immunities. By its execution of this Agreement, no Party waives or surrenders any of its governmental powers, immunities, or rights, except as provided by applicable law.

7.03 Term. Unless otherwise terminated as provided herein, this Agreement shall be in force and effect from the referenced effective date for a term expiring on the earlier of (i) the date that the debt service payments for bonds issued to achieve full repayment of the Project Costs have been repaid in full, (ii) the date that the Development Agreement expires or terminates, or (iii) the date TIRZ#8 terminates its existence, after which time the District shall not be entitled to any further payments. In the event of expiration or any early termination hereof by either Party, except for amounts due and owing hereunder up to and including the date of any such expiration and termination, this Agreement will be null, void and of no further binding effect on either Party; neither Party will have any further obligations or liabilities under this Agreement; and, all liens on Tax Increment Funds described herein shall become null and void.

7.04 Force Majeure. In the event any Party hereto is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, other than the payment of money, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other Parties. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall mean acts of God, strikes, lockouts; insurrections, riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; breakage or accidents to pipelines, or canals; partial or entire failure of water supply; and any other inabilities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability and which such Party could not have avoided by the exercise of due diligence and care.

ARTICLE 8
GENERAL

8.01 Inspections, Audits. The District agrees to keep such operating records relating to the TIRZ Improvements, the Project Costs and the District TIRZ Bonds for four (4) years after receiving the first reimbursement from the Tax Increment Revenue Fund for any Project Costs, or as may be reasonably required by the City, or by state and/or federal law or regulation. The District shall allow the City and Zone reasonable access to documents and records in the District's possession, custody or control that the City or Zone deem necessary to assist the City or Zone in determining the District's compliance with this Agreement. The City and Zone shall allow the District reasonable access to documents and records in the City and Zone's possession, custody or control that the District deems necessary to assist the District in determining the City's or Zone's compliance with this Agreement.

8.02 District Operations and Employees. All personnel supplied or used by the District in the performance of this Agreement shall be deemed employees or subcontractors of the District and will not be considered employees, agents or subcontractors of the Zone, or the City for any purpose whatsoever. The District shall be solely responsible for the compensation of all such personnel, for withholding of income, social security and other payroll taxes and for the

coverage of all workers compensation benefits.

8.03 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving Party at the following addresses:

City of Sherman, Texas
Attn: City Manager
220 W. Mulberry Street
Sherman, Texas 75090

Sherman Tax Increment Reinvestment Zone #8
Attn: Mary Lawrence
220 W. Mulberry Street
Sherman, Texas 75090

Heritage Ranch Municipal Utility District No. 1 of Grayson County
c/o Coats Rose, P.C.
Attn: Mindy L. Koehne
14755 Preston Road, Suite 600
Dallas, Texas 75254

Each Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, the City Manager of the City, the Zone, or the District, as the case may be.

8.04 Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the Zone, City and the District. No course of dealing on the part of any party, nor any failure or delay by any party with respect to exercising any right, power or privilege of such party under this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

8.05 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

8.06 Successors and Assigns. This Agreement shall not be assignable by any Party without the express written consent of the other Parties.

8.07 Titles of Articles, Sections and Subsections. All titles or headings are only for the

convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a Section or Subsection shall be considered a reference to such Section or Subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

8.08 Construction and Venue. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect. Venue shall be proper in the District Court of Grayson County, Texas.

8.09 Entire Agreement. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

8.10 Additional Actions. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed.

TAX INCREMENT REINVESTMENT ZONE #8

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed.

CITY OF SHERMAN, TEXAS

By: _____
Robby Hefton, City Manager

ATTEST:

_____
Linda Ashby, City Secretary

APPROVED AS TO FORM:

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

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed.

HERITAGE RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF GRAYSON COUNTY

By: _____
Name: _____
Its: _____

ATTEST:

_____
Secretary, Board of Directors

EXHIBIT "A"

LEGAL DESCRIPTION OF THE DISTRICT TRACT

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the J. Jennings Survey, Abstract No. 657, and the U. Burns Survey, Abstract No. 121, City of Sherman, Grayson County, Texas, being all of Tract 1, conveyed to TPJ Properties, Ltd., by deed recorded in Volume 3203, Page 464 of the Deed Records, Grayson County, Texas (DRGCT), with the subject tract being more particularly described as follows:

BEGINNING at a concrete nail found in Canyon Grove Road, a public road, for the southwest corner of a tract conveyed to Zoe Life Outreach, Inc., recorded in Volume 5581, Page 396 DRGCT, for the southeast corner of Tract 1;

THENCE S 74°34'26" W, 1286.18 feet along said road to a MAG nail with a flasher found for the intersection of said road with the north line of U.S. Highway 82, a variable width public right-of-way;

THENCE along the north line thereof, the following:

N 03°25'22" W, 17.20 feet;

S 75°01'01" W, 778.89 feet to a concrete monument found;

Around a non-tangent curve to the right having a central angle of 04°45'50", a radius of 5579.68 feet, a chord of N 87°05'05" W - 463.79 feet, an arc length of 463.93 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

And N 84°42'10" W, 916.60 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

THENCE departing said right-of-way, the following:

N 06°19'24" W, 542.26 feet;

A tangent curve to the left having a central angle of 24°29'33", a radius of 790.00 feet, a chord of N 18°34'10" W - 335.14 feet, an arc length of 337.70 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

N 30°48'56" W, 654.89 feet;

And a tangent curve to the right having a central angle of 12°30'21", a radius of 851.00 feet, a chord of N 24°33'46" W - 185.38 feet, an arc length of 185.75 feet to a point in Plainview Road, a public road;

THENCE N 00°01'05" W, 1664.00 feet along Plainview Road to a 60d nail found for the southwest corner of a tract conveyed to Astoria Homes, LLC, recorded in Document No. 2020-30762, Official Public Records, Grayson County, Texas (OPRGCT);

THENCE S 89°06'19" E, 1495.28 feet along the south line thereof to a point for the northwest corner of a tract conveyed to BMT Global, LLC, recorded in Document No. 2018-12534 OPRGCT, from which a 60d nail found bears S 10°07'33" E, 3.63 feet;

THENCE S 00°19'22" W, 1688.82 feet along the west line thereof, and of a tract conveyed to Melissa Smith Murray, recorded in Volume 4413, Page 186 DRGCT, to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set for the southwest corner thereof;

THENCE S 89°27'10" E, 1908.49 feet along the south line of said Murray tract to a 60d nail found for the northwest corner of said Zoe Life Outreach tract;

THENCE S 26°41'36" E, 1234.81 feet along the west line thereof to the POINT OF BEGINNING with the subject tract containing 7,471,223 square feet or 171.516 acres of land.

EXHIBIT "B"

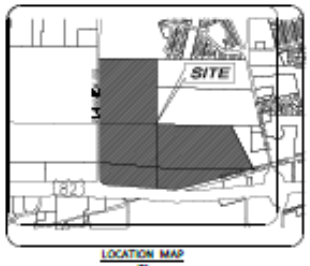
TIRZ IMPROVEMENTS DESCRIPTION AND BUDGET

City of Sherman
Tax Increment Reinvestment Zone #8
CONSTRUCTION COSTS

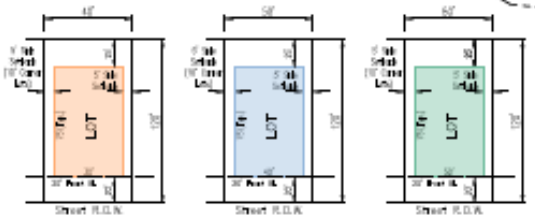
Description	Phase I	Subsequent Phases	Total
Project Costs			
Public Infrastructure			
Erosion control	$ 117,000	$ 233,041	$ 350,041
Excavation	2,500,000	888,450	3,388,450
Paving	2,785,886	5,655,314	8,441,200
Water line and fittings	1,275,499	3,020,594	4,296,093
Sanitary Sewer and manholes	1,260,480	3,098,720	4,359,200
Storm Sewer	1,830,322	5,591,142	7,421,464
Street Signs	-	32,500	32,500
Stop Signs	-	60,450	60,450
Landscape/Hardscape/Amenity Center	300,000	1,448,500	1,748,500
Dentention Ponds	-	390,000	390,000
Retaining Walls	-	864,500	864,500
Engineering/Administrative/Review Costs	-	3,457,872	3,457,872
Performance and Payment Bonds	94,903	-	94,903
Inspection Fees	286,087	-	286,087
Total Project Costs	**$10,450,177**	**$24,741,083**	**$35,191,260**
Non-project Costs			
Erosion Control	$ 117,000	$ 233,041	$ 350,041
Excavation	2,500,000	888,450	3,388,450
Franchise Utility (Gas/Electric/Fiber) Service	-	2,173,600	2,173,600
Streetlights	-	512,200	512,200
Mailboxes	-	266,760	266,760
Amenity Center	-	3,497,000	3,497,000
Retaining Walls	-	2,593,500	2,593,500
Relocation of Gatherlines/Wells	-	1,750,000	1,750,000
Engineering/Administrative/Review Costs	-	3,838,862	3,838,862
Financing Costs	-	4,031,522	4,031,522
Total Non-project Costs	**2,617,000**	**19,784,935**	**22,401,935**
Total Costs	**$13,067,177**	**$44,526,018**	**$57,593,195**

EXHIBIT "C"

CURRENT GENERAL LAND PLAN OF DISTRICT TRACT



LOCATION MAP



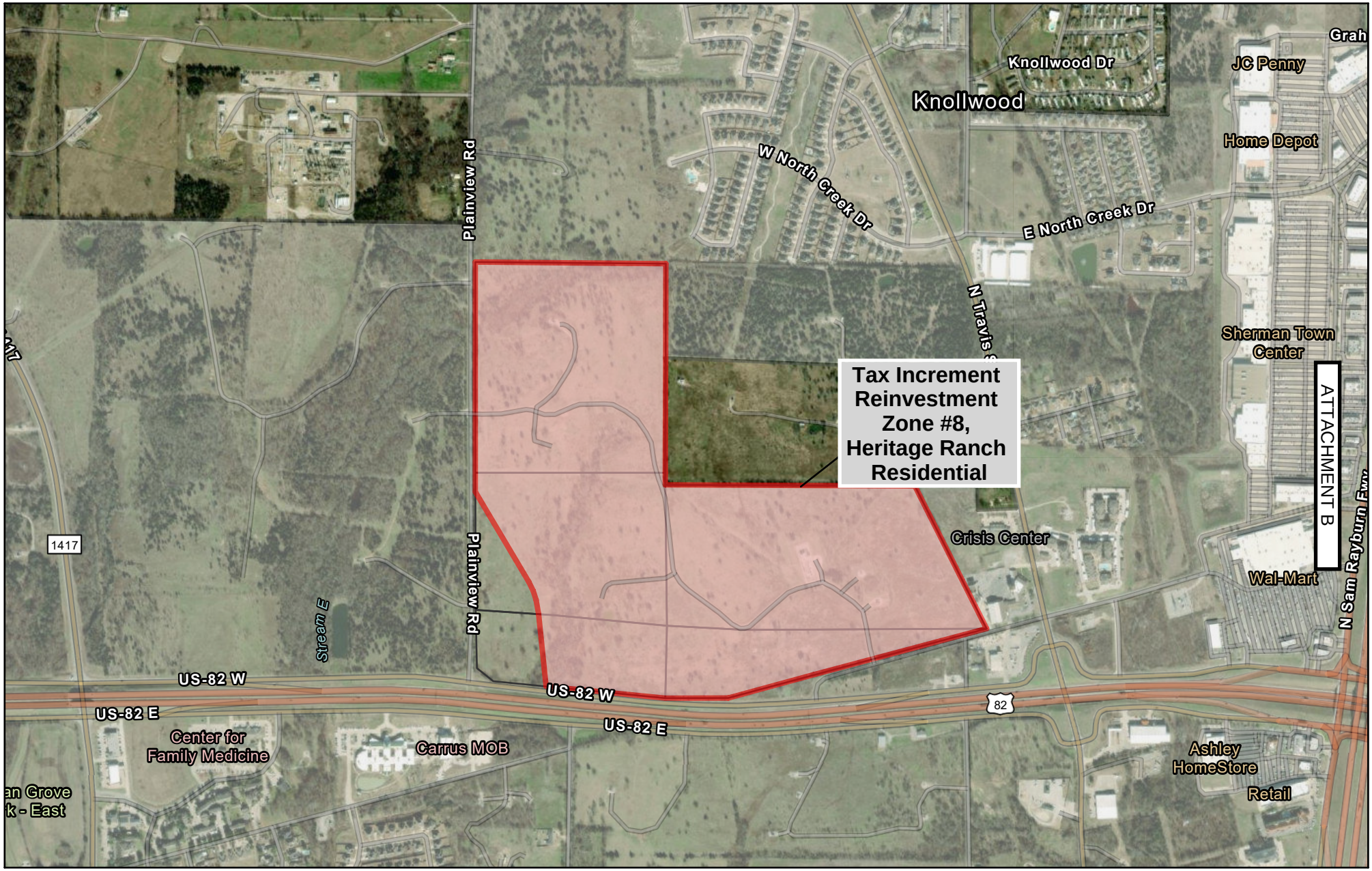
Type I
Typical Lot Detail
XX Lots

Type II
Typical Lot Detail
XX Lots

Type III
Typical Lot Detail
XX Lots

SINGLE FAMILY TRACTS HERITAGE RANCH				
PHASE	40'x120'	50'x120'	60'x120'	TOTAL
1	130	122	1	253
2	60	81	0	141
3	137	103	24	264
4	20	51	21	101
TOTAL	396	357	46	759

SITE PLAN
HERITAGE RANCH
CITY OF SHERMAN



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N
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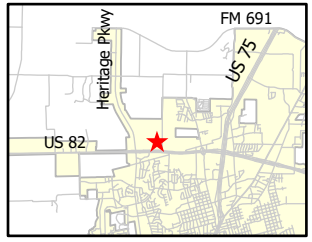
TIRZ *8
Parcels
City Limits

CITY OF SHERMAN

4/27/2022



Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7034

Authorizing Execution of a Professional Services Agreement with Bureau Veritas for the Plan Review and Building Inspection Services for the Global Wafers Project

Issue:

To consider a contract for Professional Services with Bureau Veritas for the Plan Review and Building Inspection Services for the Global Wafers Project.

Background:

As a result of the new Global Wafers project, building plan review and building inspections will be required to complete the project. To be able to serve both Global Wafers and all of the new construction that is taking place in the City, Staff has recommended that a third party contract be set up to manage plan review and building inspections for Global Wafers. This will allow for a third party inspector to be located on site at Global Wafers as the project is developed. This contract will also include plan review and inspections for fire and life safety.

Origination:

Development Services

Financial Consideration:

The total funding needed for this contract is $740,000.00. This fee will be passed onto the contractor responsible for the construction of the new Global Wafers facility in lieu of the building permit fee that is typically charged for new building construction.

Staff Recommendation:

Bureau Veritas was one of three firms in which proposals were received for this work and was determined to be the most qualified to perform these services. Staff has negotiated the scope and fee for these services based on the size of the buildings and the project schedule. Staff recommends the contract for Professional Services with Bureau Veritas for these Professional Services.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7034

Agreement_BureauVeritas

RESOLUTION NO. 7034

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH BUREAU VERITAS FOR THE PLAN REVIEW AND BUILDING INSPECTION SERVICES FOR THE GLOBAL WAFERS PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Bureau Veritas for the plan review and building inspection services for the Global Wafers Project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 20th day of February 2023.

CITY OF SHERMAN, TEXAS

ATTEST: **BY:_____**
DAVID PLYLER, MAYOR

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

AGREEMENT BETWEEN THE CITY OF SHERMAN, TEXAS
AND BUREAU VERITAS
FOR PROFESSIONAL SERVICES

THIS AGREEMENT ("Agreement") is made and entered into as of the 20th day of February, 2023, by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Bureau Veritas, ("Consultant"), to be effective from and after the date as provided above. City and Consultant are at times each referred to herein as a "party" or collectively as the "parties."

WHEREAS, City desires to engage Consultant to provide professional services for the Plan Review and Building Inspections Services for the Global Wafers Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1
CONSULTANT'S SERVICES

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

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

1.2.1 **Requirement of Written Change Order** – "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Change Order by the Sherman City Manager will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed, written Change Order shall be preceded by the Sherman City Council's authorization for the Sherman City Manager to execute said Change Order.

1.2.2 **CONSULTANT SHALL NOT PERFORM ANY "EXTRA" WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED, WRITTEN CHANGE ORDER ISSUED BY THE SHERMAN CITY MANAGER** – Project Managers, Superintendents and/or Inspectors of City are not authorized to issue verbal or written Change Orders.

1.3 **Schedule of Work** – Consultant agrees to commence work immediately on the execution of this Agreement, and to proceed diligently with said work to completion as described in the Project Budget Summary, attached hereto as **Exhibit B,** and incorporated herein by reference for all purposes. The Consultant shall not be responsible for delays caused by the City or beyond the reasonable control of the Consultant.

1.4 **Standard of Care** – Consultant represents that the services, findings, recommendations and/or advice provided to City will be prepared, performed, and rendered in accordance with procedures, protocols and practices ordinarily exercised by professional's in Consultant's profession for use in similar assignments, and prepared under similar conditions at the same time and locality. City acknowledges and agrees that Consultant has made no other implied or expressed representation, warranty or condition with respect to the services, findings, recommendations or advice to be provided by Consultant pursuant to this agreement.

ARTICLE 2
CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the Services of Consultant:

2.1 **Project Data** – City shall furnish required information that is reasonably requested by Consultant and that City has in its possession at the time of Consultant's request, as expeditiously as necessary for the orderly progress of the Project, and Consultant shall be entitled to rely upon the accuracy and completeness of the information furnished by City under this Article 2.1.

2.2 **City Project Manager** – When necessary in City's sole discretion, City shall designate a representative authorized to act on City's behalf with respect to the Project ("Project Manager"). City, the Project Manager and/or his or her authorized designee shall examine the documents submitted by Consultant and shall render any required decisions pertaining thereto as soon as practicable to avoid unreasonable delay in the progress of Consultant's Services. Consultant understands and agrees that the Project Manager and his or her authorized designee are not authorized to issue verbal or written Change Orders for "extra" work or "claims" invoiced as "extra" work.

ARTICLE 3
CONSULTANT'S COMPENSATION

3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a lump-sum basis in an amount not to exceed Seven Hundred and Forty Thousand AND 00/100 Dollars ($740,000.00); (b) for Special Services, on a lump-sum basis in an amount not to exceed Seven Hundred and Forty Thousand AND 00/100 DOLLARS ($740,000.00) (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Budget Summary as set forth in **Exhibit B**.

3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in **Exhibit C**, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.

3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the

written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City.

3.1.4 **Substantial Compliance with Architectural Barriers Act** – Should the Project fall within the regulatory requirements of the Texas Architectural Barriers Act, Chapter 68 of the Texas Administrative Code, as it exists or may be amended ("Barriers Act"), as solely determined by City, Consultant shall comply with the Barriers Act. As part of the Scope of Services defined in this Agreement, it is the responsibility of Consultant to identify and analyze the requirements of the Barriers Act and to become familiar with the governmental authorities having jurisdiction to approve the design of the Project.

3.1.4.1 **Submission of Construction Documents to TDLR** – Consultant shall mail, ship, or hand-deliver the Construction Documents to TDLR not later than five (5) calendar days after Consultant issues the Construction Documents for the Project.

3.1.4.2 **Completion of Registration Form to TDLR** – Consultant shall complete an Elimination of Barriers Project Registration Form ("Form") for each subject building or facility within the Scope of the Project and submit the registration form(s) along with the applicable fees not later than fourteen (14) calendar days after Consultant completes the submittal of the Construction Documents to TDLR.

3.1.4.3 **TDLR Approval of Construction Documents** – After review of the Construction Documents by TDLR, Consultant shall be notified in writing of the results; however, it is Consultant's responsibility to obtain TDLR's written comments. Consultant shall address all comments that prevent TDLR approval of the Construction Documents, including comments relating to conditional approval that must be addressed in the design and construction of the Project. Consultant shall resubmit Construction Documents to TDLR for review prior to the completion of construction of the Project.

3.1.4.4 **TDLR Project Inspection** – Consultant shall request an inspection from TDLR or a TDLR locally approved RAS no later than thirty (30) calendar days after the completion of construction of the Project. Consultant shall advise City in writing of the results of each Project inspection. City reserves the right to verify the written results with TDLR at any time during design, construction, or at the completion of the Project.

3.1.4.5 **Corrective Modifications following TDLR Project Inspection** – When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide Consultant a list of deficiencies and a deadline for completing the modifications. Consultant shall provide City with this list within five (5) calendar days of receipt. It is the sole responsibility of Consultant to completely address the deficiencies by the stated deadline or to

obtain a written notice of extension from the TDLR. When the corrective measures have been completed, Consultant shall provide the TDLR (and/or the RAS who completed the inspection) and City with written verification of the corrective measures completed.

3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:

3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

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

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

3.3.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Name	*Position*	*Hourly Rate*

3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit B**. On all submitted invoices for Services

rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.

3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" of the TEX. GOV'T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.

3.8 **Adjusted Compensation** – If the Scope of the Project ("Scope of the Project") or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant's compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.

3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4
OWNERSHIP OF DOCUMENTS

4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in **Exhibit A**. Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8 of this Agreement, Consultant will revise plans, data, documents, maps, and any other information as defined in **Exhibit A** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8 of this Agreement, and promptly furnish the same to City in an acceptable electronic format. All such reproductions shall be the property of City who may use them without Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at City's own risk.

4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) under this Agreement are instruments of service in respect of the Project and property of City. Upon completion of the Project, all of the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) shall thereafter be subject to the Texas Public Information Act (Chapter 552, TEX. GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Insurance Requirements, which is attached hereto and incorporated herein by reference for all purposes, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall name City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage. Such policy shall provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each claim, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If the Project's size and scope warrant, and if identified on the checklist located in **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars ($2,000,000.00). Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to City as indicated in Article 3.4 of this Agreement. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

ARTICLE 7
AUDITS AND RECORDS/PROHIBITED INTEREST/VENDOR DISCLOSURE

Consultant agrees that at any time during normal business hours and as often as City may deem reasonably necessary, Consultant shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

Consultant agrees that it is aware of the prohibited interest requirement of the City Charter and will abide by the same. Further, a lawful representative of Consultant shall execute the Prohibited Interest Affidavit, attached hereto as **Exhibit F,** and incorporated herein by reference for all purposes, no later than the Effective Date of this Agreement. Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, TEX. LOC. GOV'T CODE, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute and deliver to City the Conflict-of-Interest Questionnaire, Form CIQ, attached hereto as **Exhibit G** and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

ARTICLE 8
TERMINATION OF AGREEMENT/REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 of this Agreement and agrees to pay any costs over and above the fee which City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event, it may make good the deficiency in which the default consists and deduct the costs from Consultant's Fee due Consultant as set forth in Article 3 of this Agreement. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

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

The Consultant may terminate this Agreement for any material failure by City to comply with this Agreement, provided that the Consultant gives City thirty (30) days' prior written notice of its intention to terminate for such failure and affords to City an opportunity to cure such failure within said thirty (30) days.

ARTICLE 9
DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

In all disputes arising under this Agreement, the parties agree that the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and other legal expenses from the other party.

ARTICLE 10
INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10)

PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE

CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11
NOTICES

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

If to City, addressed to it at:

_____

With a copy to:

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

If to Consultant, addressed to it at:

_____

ARTICLE 12
MISCELLANEOUS

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

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

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

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

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

12.1.5 **Exhibit E**, Insurance Requirements.

12.1.6 **Exhibit F**, Prohibited Interest Affidavit.

12.1.7 **Exhibit G**, Conflict of Interest Questionnaire, Form CIQ.

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

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

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

12.4 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

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

12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.

12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

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

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

12.12 **Immunity** – The parties acknowledge and agree that, in executing and performing this Agreement, City has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.

12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

12.16 **No Third-Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third-party beneficiaries by entering into this Agreement.

12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.

12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.

12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees, and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

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

12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.

12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2022-2023 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2022-2023 fiscal year unless and until such funds are budgeted.

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

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

12.25 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

CITY:	**CONSULTANT:**
City of Sherman, Texas, a Texas home-rule municipality	**Bureau Veritas North America, Inc.** a Delaware Corporation
By: _____ Robby Hefton, City Manager	By: _____ Van Tran, Vice President

APPROVED AS TO FORM:

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

EXHIBIT A SCOPE OF SERVICES

EXHIBIT B PROJECT BUDGET SUMMARY

COST PROPOSAL

BUILDING PLAN REVIEW & INSPECTIONS FOR GLOBALWAFERS FACILITY CITY OF SHERMAN, TX

February 10, 2023

BV's pricing reflects our commitment to the success of your project by helping you maintain significant quality and cost saving benefits moving forward. The below cost proposal demonstrates the fee required to conduct the Building and Fire Plan Review and Inspections required by the International Building Code (IBC) and local amendments for the GlobalWafers Facility (**1.1 Million SF with an estimated 24 month construction schedule**).

TOTAL FOR SERVICES:	**$740,000.00**

This is a lump sum fee and includes all required plan reviews and/or inspections, and re-reviews and/or re-inspections, at no additional charge. All communication and inspection requests/results are handled through BV's office personnel, then forwarded to the City in accordance with the City's directives. We will provide a Lead Inspector on-site to perform and coordinate the multiple required inspections with the assigned Inspection Team. We will be available for inspections after-hours and six-days a week.

EXHIBIT C
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

1. Files shall be submitted in DWG/DXF format.

2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83.

3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.

4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.

5. The file shall contain required features for the project type as detailed below:

    a. Pre-Construction/As-Built Plans and/or Record Documents:

        i. Layers from Final Plat Requirements as Applicable to Project Type.
        ii. Water Utility Features.
        iii. Sanitary Sewer Features.
        iv. Storm Sewer Features.

6. Each required feature group should be provided as a separate layer within the file.

7. Layer names should be representative of the information contained in the layer.

8. Line work should be continuous (e.g. no dashed lines in required layers) and complete (connecting lines should meet at corners) within the subdivision/project. Layers outside of project/subdivision boundary may be dashed in CAD data as required for Final Plats by Sherman Subdivision Ordinance Section 5.02.

EXHIBIT D
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

I. CONSULTANT'S RESPONSIBILITY. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment(s) for services; however, this shall not be City's sole and exclusive remedy for said over-payment.

II. GUIDELINES FOR DIRECT EXPENSES.

A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.

C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** – Consultant shall make arrangements with City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as a prerequisite for payment, including the number of plots, the date,

time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.

G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.

H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of Consultant and/or Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.

I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by City's Project Manager.

B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT E
INSURANCE REQUIREMENTS

I. GENERAL INSURANCE REQUIREMENTS –

1. All policies shall name the City of Sherman, its officers, agents, representatives, and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance and professional liability insurance.

2. Such policies shall require the provision of written notice to City in accordance with policy provisions for cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail.

3. Such policies shall provide for a waiver of subrogation against City for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance and policy endorsement(s) evidencing the required insurance shall be submitted prior to execution of the Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and policy endorsement(s) shall also be provided to City prior to the date the Agreement is renewed or extended.

IV. INSURANCE CHECKLIST – "X" means that the following coverage(s) is required for this Agreement.

	Coverage Required	Limits
_X_	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
_X_	2. General Liability	▪ Minimum $1,000,000.00 each occurrence. ▪ Minimum $2,000,000.00 in the aggregate.
___	3. XCU Coverage	▪ Minimum $1,000,000.00 each occurrence. ▪ Minimum $2,000,000.00 in the aggregate.

EXHIBIT E
INSURANCE REQUIREMENTS

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

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

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

_X_ 8. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

_X_ 9. Insurance company has a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s).

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

___ 11. Other Insurance Requirements (State Below):

EXHIBIT F
PROHIBITED INTEREST AFFIDAVIT

THE STATE OF TEXAS §
§
THE COUNTY OF Collin §

I, Van Tran, a member of the Consultant team, make this affidavit and hereby on oath state the following:

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

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

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars ($25,000.00) or more of the fair market value of the business entity.

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

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars ($25,000.00).

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

_____ Other: _____.

__X__ None of the Above.

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

Signed this 15 day of February, 2023.

Van Tran
Signature of Official / Title

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

Sworn to and subscribed before me on this 15 day of February, 2023.

Mary E. Garcia
Notary Public in and for the State of Texas

MARY E. GARCIA
My Notary ID # 11964608
Expires July 12, 2026

EXHIBIT G
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

_____
Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

_____ _____
Signature of vendor doing business with the governmental entity Date

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

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7035

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Freese and Nichols, Inc. for the Lake Texoma Pump Station Expansion Preliminary Design Project

Issue:

To consider an amendment to the contract for professional services with Freese and Nichols, Inc. for Lake Texoma Pump Station Expansion Preliminary Design project.

Background:

The construction of the Lake Texoma Pump Station and Pipeline was a joint venture between North Texas Municipal Water District (NTMWD) and the Greater Texoma Utility Authority, who in cooperation with the City of Sherman, transport raw water to the City of Sherman Water Treatment Plant. The NTMWD operates their own pumps and the City of Sherman operates their own pumps separately. The City of Sherman currently has three 7 MGD pumps, and needs to increase the capacity of the pumping to meet future demands. The original contract identified pumping capacities and needs and determined the best-possible solution considering both the efficiency and costs of moving forward with the design. This project will contain some required yard piping as proposed by future NTMWD yard piping, which will be credited towards the City's 20% match for the future raw water transmission main project to be constructed later by NTMWD.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this contract is $1,677,500. This will be funded by GTUA Bond Funds.

Staff Recommendation:

Council to approve the design services in the aforementioned amount to Freese-Nichols Engineering for the Lake Texoma Pump Station Improvements.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7035
Agreement - Amendment (1)
Original Agreement
Location Map

RESOLUTION NO. 7035

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. FOR THE DESIGN OF THE LAKE TEXOMA PUMP STATION EXPANSION PRELIMINARY DESIGN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute Amendment No. 1 to the Professional Services Agreement with Freese and Nichols, Inc. for the design of the Lake Texoma Pump Station Expansion Preliminary Design project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 20th day of February 2023.

CITY OF SHERMAN, TEXAS

ATTEST: **BY:_____**
DAVID PLYLER, MAYOR

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

AMENDMENT NO. 1

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN THE CITY OF SHERMAN ("CITY") AND FREESE AND NICHOLS, INC. ("CONSULTANT") FOR THE LAKE TEXOMA PUMP STATION EXPANSION ("ORIGINAL AGREEMENT") DATED MAY 2, 2022

This Amendment No. 1 serves to increase the original contract fees of One Hundred Fifty-Four Thousand Dollars ($154,000) by One Million Six Hundred Seventy-Seven Thousand Five Hundred ($1,677,500) to a total amount of One Million Eight Hundred Thirty-One Thousand Five Hundred ($1,831,500) based on the following **additional** work to the Scope of Services[i]:

1. Project Description:
    a. The City of Sherman (City) desires to expand the capacity of their pumping at the existing Lake Texoma Pump Station. This project will include a preliminary phase for the installation of a new parallel header and the final design phase for the pump replacement that had been previously studied in a separate contract between the City and Freese and Nichols (FNI).
    b. There is an existing 84-inch header shared by four pumps from the North Texas Municipal Water District (NTMWD) and three pumps from the Greater Texoma Utility Authority (GTUA). When work is conducted on any of the pumps this header must be drained and shut down which adversely affects the City's ability to fulfil its raw water obligations. The City is expected to experience a significant growth in its raw water demands over the next 10 years and requires a parallel header to ensure work on the pumps from either organization will not restrict its ability to meet their raw water demand.
    c. Once completed, the header design will be incorporated into the final design and construction package to be built concurrently with the pump station expansion. The final design of the header installation will include:
        i. One 54-inch steel header with flanged connections and isolation valves for four GTUA vertical pumps.
        ii. One connection with isolation valves to the existing 84-inch pipeline outside the pump station but within the existing property line of the Lake Texoma Pump Station.
        iii. Supports/Bedding for the header and pipeline inside the pump station, under the bridge running parallel with the 84-inch pipeline and underground.
        iv. One flow meter and meter vault located near the tie in location. The flow meter vault structure will be designed per NTMWD standards
        v. Two pipe penetrations thru the existing blockouts designed for a 54-inch pipe.
    d. Pump Station expansion was previously evaluated by FNI and the City and included the installation of two 16.5 MGD pumps, one in an existing open slot and another to replace an existing 7 MGD pump. The pump motors will be variable frequency drive (VFD) ready but will be started across-the-line from a new motor control center

[i] All defined terms with initial capital letters in this Amendment No. 1 that are not defined in this Amendment No. 1 shall have the meanings ascribed to them in the Original Agreement. Other terms have the meaning commonly ascribed to them.

located in the existing pump building. This project will move the preliminary study into final design and construction. The final design for the pump replacement will include:

i. Two new 16.5 MGD vertical pumps including vertical motors, piping, hydraulically actuated control valves, manual isolation valves, thrust restraints and pipe supports.
ii. Electrical design will support the new pumps including:
    1. Demolish the existing 4160V switchgear located in the pump station and electrical associated with one 7 MGD pump, two existing 7 MGD pumps will remain. Demolish and replace power factor correction capacitors.
        a. Design new medium voltage (4160V) motor control center. This motor control center would be installed in the same location as the existing equipment.
        b. The gear will have a single incoming main section.
        c. Each starter will be a direct across the line starter.
        d. The system will be designed to operate up to (3) – 1000HP pumps at the same time.
        e. Assume a new 7.5MVA (12.47 to 4160V) transformer will be provided by NTMWD. The design for this project will include a new feeder from the secondary side of the transformer.
    2. Design a new 4160V, inverter duty rated motor (approx. 1000HP).
    3. Provide power and controls for a new 54" meter vault. Power will be fed from the pump station electrical equipment – separate electrical building on top of vault not included.
    4. Instrumentation Equipment: Provide the following major equipment:
        a. New instrumentation required for the two new pumps.
        b. The existing instrumentation at the pump station and existing meter vaults will remain as-is.
    5. SCADA Equipment: Provide the following major equipment:
        a. The existing PLC shall remain and be reused. Refeed the I/O impacted by the electrical improvements. Unaffected equipment will remain wired as-is the PLC. The new I/O from the electrical equipment will be connected to the existing PLC.
        b. The existing network enclosure shall remain and be reused. A new switch in the existing enclosure shall accommodate the new power quality meters and relays.
    6. The existing UPS enclosure shall remain and be reused.

e. The electrical designer has not included any of the following this proposal:
    i. Software licenses or hardware.
    ii. SKM Modeling during design phase
    iii. PLC or HMI programming.
    iv. Security/Access Control design
    v. Fire suppression.
    vi. Preliminary paper study or detailed physical radio path study.
    vii. Factory witnessed testing for any electrical or mechanical equipment

viii. Power systems study during design phase
ix. PLC Factory Acceptance Test (FAT)
x. O&M development

f. The following are assumptions made for the structural design:
   i. The bridge supporting the new 54-inch diameter pipeline has been assessed in "Tech Memo No.1 – Pump Station Bridge" dated October 2022 by CDM Smith. The report concludes the existing bridge is in good condition and can safely carry additional load from the new pipeline, wire and conduit. FNI will not evaluate the bridge.
   ii. There are three blockouts for pipe penetrations in existing walls. The wall thimbles were designed to accommodate a future 54-inch header. Therefore, no structural modifications are anticipated to the walls.
   iii. Provide pump column lateral bracing per the recommendations in the "Lake Texoma Pump Station Expansion" report dated December 2022.
   iv. Existing geotechnical reports of the project site will be provided by the City.
g. The following facilities are not part of The Project, and will be provided by others:
   i. Electric power service to the Project Site(s), which will be provided under a separate contract. It is anticipated that the connection will be on the secondary side of the utility transformer(s).
   ii. Generator design for the Lake Texoma Pump Station which will be provided under a separate contract.
   iii. Future proposed improvements including a new electrical room or easements required for future improvements which will be provided under a separate contract.
h. The Project will include one construction and equipment bid package:
   i. Construction of a new header and associated discharge piping and two new pumps for the Lake Texoma Pump Station.
   ii. The project delivery shall be design-bid-build.
   iii. If more construction or equipment bid packages are included, then additional compensation will be mutually agreed upon.
i. Our understanding is there are two ongoing projects at the Lake Texoma Pump Station.
   i. City of Sherman – Installation of a backup generator, design by Parkhill, Smith and Cooper.
   ii. North Texas Municipal Water District (NTMWD) – Electrical improvements, design by CDM Smith. This project includes replacement of major electrical equipment and expansions on the site for new electrical building.
   iii. Each of these projects will require coordination by Consultant in order to develop a preliminary design. The City's Program Manager will assist the Consultant with coordinating projects managed by the City.
j. Our understanding that the City will enter into an Inter Local Agreement (ILA) with NTMWD to secure funding for the Project. FNI will support the City in providing documentation as required by the ILA but will not engage in negotiations for the ILA.

2. General Requirements:
   a. Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design

criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.

b. Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
c. Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. PDF versions shall also be uploaded to the City's Program Manager's sharepoint site. These shall be reviewed and checked by City and their Program Manager and returned to Consultant for corrections. When the corrected copies of the memoranda or reports are returned to City, the original and reviewed memoranda or reports shall also be returned to City. All memoranda, reports, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
d. The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
    i. The consultant shall also provide a version of the monthly report and an updated schedule to the Program Manager for their monthly program reporting.
e. Communications and Reporting:
    i. Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
    ii. Attend update review meeting with the City as outlined in the specific tasks below.
    iii. Prepare and submit monthly invoices in the format acceptable to the City.
    iv. Prepare and submit monthly progress reports.
    v. Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
    vi. Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
    vii. With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.
    viii. Attend additional project coordination meetings, if needed.
f. Project Meetings and Workshops
    i. Project Kick-off Workshop
        1. Conduct a project kick-off workshop with the City at the City's offices to 1) review the scope of services, 2) verify the City's requirements for the Project, and 3) review and update available data.

2. Advise the City regarding necessity of the City providing or obtaining data or services from others and assist the City regarding such services.
3. Deliverables:
    a. Workshop agenda.
    b. Workshop notes.

ii. Progress Meetings
1. Conduct up to twelve (12) progress meetings with the City as needed over the span of the project to discuss progress, any data needed from the City by FNI, and any questions from the City or FNI. Progress meetings will generally be held virtually.
2. Deliverables:
    a. Meeting agenda.
    b. Meeting notes.

3. Task Summary, Basic Services
    a. Preliminary Design Phase - New Pump Header
        i. Obtain pertinent utility plans, street plans, plats, right-of-way maps, existing easement information, contour maps, and other features within and pertaining to the Project area from the City. Coordinate with franchise utilities in the area and obtain record information where available. Existing Project conditions shall also be documented using digital photography and/or video. Perform site visit to obtain necessary information/confirm information obtained from other sources. Provide analyses of City's requirements for the Project, including planning, surveys, site evaluations and comparative studies of prospective sites and solutions.
        ii. Project Coordination Meetings
            1. Attend up to one (1) meeting with NTMWD and their engineering consultant. The purpose of the first meeting will be to confirm the improvements planned in the current phase of the electrical rehabilitation project. The purpose of the second meeting will be to review preliminary design recommendations from this study and the implementation of multiple projects at the facility.
            2. Attend up to one (1) meeting with GTUA for the project.
            3. No separate meetings with USACE, Parkhill, Oncor, or other agencies are planned in this phase.
        iii. Develop Opinion of Probable Construction Costs: CONSULTANT will develop an opinion of probable construction cost for recommended header. The cost estimate will include a line-item summary of construction elements in addition to the contractor overhead and profit, and contingency.
        iv. List of specifications required for final design.
        v. List of assumptions used in preliminary design.
        vi. Cutsheets of equipment and accessories.
        vii. Develop preliminary drawings of the new header. Figures will include:
            1. Title sheet and index
            2. Proposed Site Plan and Profile from the header to the tie in location.
            3. Header Plan
            4. Header Section (proposed pump)
            5. Header Section (existing pump)

6. Pipeline at bridge (plan and section)

viii. Review Workshop: CONSULTANT will attend a workshop to review the findings and recommendations outlined in the preliminary design memorandum.

b. Final Design Phase

i. 60% Design Phase: After approval of the preliminary design, FNI shall provide professional services in this phase as follows:

1. Prepare front end documents, including bid documents, general conditions, and special conditions for the construction and equipment packages, based upon City of Sherman standard documents. Meet with City to resolve review comments, and revise documents accordingly.
2. Advise City of need for and recommend scope of Additional Services.
3. Furnish such information necessary to utility companies, NTMWD or engineering firms whose facilities or designs may be affected, or services may be required for the Project. Provide site civil design of the facility sites to support the electric utilities site requirements, including site grading, roads, underground duct banks, and equipment pads if necessary. Easements for utilities companies will be provided as a Special Service.
4. Prepare revised opinion of probable construction cost.
5. 60% Documents: Prepare drawings, specification table of contents, construction contract documents, designs, and layouts of improvements to be constructed. Furnish City two (2) half-sized (11"x17") sets and one (1) electronic copy of drawings and specification table of contents marked "Preliminary" for approval by City. Consultant will meet with the City to present the plans and specifications and receive comments. Review documents will include plan and profile sheets, pipeline appurtenances, and typical details. Consultant will receive comments from City and address comments in the 90% Review.

ii. 90% Design Phase: After approval of the 60% plans, FNI shall provide professional services in this phase as follows:

1. Prepare front end documents, including bid documents, general conditions, and special conditions for the construction and equipment packages, based upon City of Sherman standard documents. Meet with City to resolve review comments, and revise documents accordingly.
2. Advise City of need for and recommend scope of Additional Services.
3. Furnish such information necessary to utility companies, NTMWD or engineering firms whose facilities or designs may be affected, or services may be required for the Project. Provide site civil design of the facility sites to support the electric utilities site requirements, including site grading, roads, underground duct banks, and equipment pads if necessary. Easements for utilities companies will be provided as a Special Service.
4. Prepare revised opinion of probable construction cost.

5. 90% Documents: Furnish one (1) electronic copy of drawings, specifications, and bid forms marked "Preliminary" for approval by City. Consultant will meet with the City to present the plans and specifications and receive comments. Review documents will include all plans and specifications with minor corrections and notes remaining. Consultant will receive comments from City and address comments in the 100% documents. Upon final approval by City, Consultant will provide two (2) half-sized (11"x17") and one (1) electronic copy of "Final" plans and specifications.

iii. 100% Design Phase: After approval of the 90% plans, FNI shall provide professional services in this phase as follows:

1. Advise City of need for and recommend scope of Additional Services.
2. Prepare applications for routine permits building code design reviews with City of Sherman Building Inspections and Fire Marshal, accessibility (TDLR architectural barriers) permitting, and TCEQ Approval. Preparation of applications and supporting documents for government grants, Environmental and USACE permitting or for planning advances is an Additional Service.
3. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.
4. 100% Design: Furnish City six (6) sets of Final drawings, specifications, and bid proposals signed and sealed for bidding.
5. Deliverables for the Final Design Phase shall include:
    a. Routine Permit Applications
    b. Final submittal of Plans and Specifications

c. Bid Phase Services

i. Furnish to the City all necessary copies of approved Construction Contract Documents needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of Construction Contract Documents in excess of eight (8) half-sized (11"x17") copies are to be paid for separately as provided hereinafter

ii. Assist City in securing bids. Provide a copy of the notice to bidders for City to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by City.

iii. Consultant will submit the project plans to the State of Texas for the TAS/ADA review, if required for the Project. Consultant will prepare the application and make the submittal. The City will provide a check for the fee based on the construction cost of pedestrian improvements per the submittal requirements. Consultant will address comments from the review and revise plans if necessary.

iv. Assist City by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents if necessary.

v. Assist the City in conducting pre-bid conferences for the construction projects and coordinate responses with City. Response to the pre-bid conference will be in the form of addenda issued after the conference.

vi. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.

vii. Assist the City in the opening and tabulation of bids for construction of the Project.

viii. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the award of the construction contract.

ix. Assist in the preparation of formal Construction Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.

d. Construction Administration Services

i. Upon completion of the bid or negotiation phase services, Consultant will proceed with the performance of construction phase services. Detailed daily construction inspection will be performed by as described within Special Services. Construction Administration services provided by Consultant will include the following:

ii. Conformed Document submittal:

1. Update the Bid Documents (plans and Project Manual) to incorporate bid addenda items
2. Print up to ten (10) sets 11”x17” plans and Project Manuals for issuance at the Pre-Construction Conference.
3. Package and submit CAD base files upon request.

iii. Make monthly visits to the construction site over the construction period to observe progress of the work and consult with the City concerning problems and progress of the work. Twelve (12) site visits are planned for construction.

iv. Make milestone visits to the construction site to observe commissioning and testing, substantial completion and final completion inspection. Provide a commissioning report upon start up and a punch list for substantial completion.

v. Pre-Construction Meeting. Assist the City in conducting the pre-construction conference. City shall prepare an agenda for the conference and prepare and distribute minutes. The pre-construction conference shall include a discussion of the Contractor’s tentative schedules, procedures for transmittal and review of the Contractor’s submittals, processing payment applications, critical work sequencing, change orders, record documents, and the Contractor’s responsibilities for safety and first aid.

vi. Franchise Utility Coordination. Assist the City with franchise utility coordination efforts and conflict resolution during construction.

vii. Requests for information. Coordinate with Contractor and issue clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by City.

viii. Change Orders. Recommend Change Orders to City, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor. Task includes preparing plan sheet revisions.

ix. Shop Drawings, Samples, and Submittals. Review and approve or take other appropriate action in respect to Shop Drawings, Samples, Submittals and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with

the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

x. Substitutes and "or-equal." Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.

xi. Disagreements between City and Contractor. As necessary, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

xii. Limitation of Responsibilities. Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.

xiii. Record Documents:

1. Consultant shall prepare construction Record Documents based on the information received from Contractor within 30 days of final completion in accordance with the Agreement. Consultant shall submit one full size set and one pdf file of the Record Documents.

4. Task Summary, Special Services
   a. Reality Capture Services:
      i. The task will consist of scanning the interior space and exterior façade of the Lake Texoma Pump Station. Both floors of the pump station will be scanned. Deliverables will include:
      ii. 3D Scan hosted on subconsultants web site and available for download.
      iii. Laser generated point cloud from 3D photo mesh compatible with Revit (2019 version).
   b. Topographical Surveying Services:
      i. Perform necessary surveying operations for the complete design of the Project as outlined in this Exhibit A, Scope of Services. Surveying shall include the following:
      ii. Design Survey will cover approximately 2.1 acres of the Lake Texoma Pump Station site at 25 ft intervals.
      iii. Establish horizontal and vertical control using City criteria.
      iv. Tie right-of-way lines and corners, property lines and corners, trees six (6) inches in diameter and larger, fence lines and other visible surface features.
      v. Topographic information including cross sections of the existing ground features as needed for design.
      vi. Horizontal and vertical location of all existing facilities within the Project limits including existing paving, driveways, sidewalks, buildings, mailboxes, landscaping, etc.

vii. Contact TX811 and tie existing visible franchise utilities and appurtenances, and public utilities such as water valves, fire hydrants, manhole, etc.
viii. Tie underground utilities if exposed.

c. Subsurface Utility Engineering Services:
   i. Provide Subsurface Utility Engineering (SUE) to Quality Level B for all utilities within the proposed project limits and provide a base utility map of identified facilities within the existing pump station and inside the project limits. The project limits are defined as the 2.1 ac site.
   ii. Two-dimensional horizontal mapping information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. Utility indications are referenced to established survey control. Level C and D information is referenced to produce Quality Level B Deliverable.
   iii. Provide Subsurface Utility Engineering (SUE) to Quality Level A for two (2) test holes within the proposed project limits. Excavate by nondestructive means existing utilities establishing a confirmed vertical & horizontal location to be surveyed and visually depicted via Test Hole Data Sheet. QL-A Locates will be performed in accordance with CI/ASCE 38-02 to Quality Level "A".
d. Structural Analysis
   i. Provide a structural evaluation to determine the pump weight and operational speed limit based on the existing structure and pumps.
   ii. If the pumps selected in the "Lake Texoma Pump Station Expansion Study" dated December 2022 exceed the limits provide either structural rehabilitations or an alternative pump selection.
e. Equipment Procurement Packages
   i. The Engineer will develop several equipment and material procurement packages to execute the project. It is anticipated there will be three (3) packages although the actual number may be different. The Consultant will be required to provide plans and specifications as well as general input into the development of these packages. These packages may be combined with other packages. Below is a list of anticipated packages:
      1. Pipe, Valve and Fitting Material Procurement Package
      2. Pump and Motor Procurement Package
      3. Electrical and Communications Procurement Package
   ii. Furnish to the City all necessary copies of approved procurement packaged needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of procurement documents in excess of eight (8) half-sized (11"x17") copies are to be paid for separately as provided hereinafter
   iii. Assist City in securing bids. Provide a copy of the notice to bidders for City to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by City.
   iv. Assist City by responding to questions and interpreting procurement documents. Prepare and issue addenda to the procurement documents if necessary.

v. Assist the City in conducting pre-purchase conferences for the procurement projects and coordinate responses with City. Response to the pre-purchase conference will be in the form of addenda issued after the conference.
vi. Prepare addenda as appropriate to interpret, clarify, or expand the Procurement Documents.
vii. Assist the City in the opening and tabulation of bids for purchase of the materials and equipment
viii. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the award of the procurement contract.
ix. Assist in the preparation of formal Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.

f. Construction Management Services
i. The duties, responsibilities and limitations of the authority of the on-site Construction Manager (CM) is as follows:
ii. CM will be City's agent at the site and will act as directed by and under the supervision of City and Consultant. The CM will confer with City regarding CM's actions. CM's dealings in matters pertaining to the on-site work will in general be with City, Consultant, and Contractor. CM's dealings with Subcontractors will only be through, or with full knowledge and approval of, Contractor. CM will generally communicate with City and Consultant on any project issues as needed.
iii. Duties and Responsibilities of the CM:
iv. Conferences and Meetings: Facilitate meetings with Contractor, Consultant, and City, such as monthly progress meetings and other project related meetings, as requested.
v. Serve as City's and Consultant's liaison with Contractor, working principally through Contractor's project manager and superintendent. Assist in understanding the intent of contract documents and serve as Consultant's and City's representative with Contractor when Contractor's operations affect facility operations.
vi. Shop Drawings and Samples:
vii. Using the FNiManager System, use and reference a digital copy of shop drawings and other submittals for use in the field to verify materials and equipment conforms to approved submittals.
viii. Advise City, Consultant, and Contractor of the commencement of any work requiring a shop drawing or submittal if the shop drawing or submittal has not yet been approved by City.
ix. Review of Work, Rejection of Defective Work, Inspections, and Tests:
x. Conduct on-site observations of the work in progress to determine if the work is in general conformance with the contract documents.
xi. Report to City and Consultant whenever it appears observed work will not produce a completed Project which conforms generally to the contract documents or will jeopardize the integrity of the design concept of the completed Project as a functioning whole as indicated in the contract documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made. Advise City and Consultant

of work which should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

xii. Provide visual and magnetic particle inspections on pipe welds. Inspection services will be provided by a Certified Welding Inspector (CWI). CWI will be on-site more often at the first of the project to verify and inspect contractor prove-out and beginning of pipe welding operations and will reduce the trips per week, as directed by CM or the City, after prove-out is completed. 50 joints are anticipated for inspection.

xiii. Verify tests, equipment, system start-ups, and operating and maintenance training are conducted in the presence of appropriate City and Consultant personnel; verify the Contractor maintains adequate records thereof; and observe record and report to City and Consultant appropriate details relative to the test procedures and start-ups. Use the FNiManager System for reporting.

xiv. Consult with City and Consultant in advance of scheduled major tests, inspections, and start of important phases of the work.

xv. Review concrete and soil test reports and upload reports to FNiManager. Notify Consultant and City for results not in compliance with the contract documents.

xvi. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to City and Consultant.

xvii. Observe whether Contractor has performed inspections required by laws, regulations, ordinances, codes, and orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.

xviii. Reports:

1. Using the FniManager System, furnish Daily Construction Reports documenting progress of the work and of Contractor's compliance with the progress schedule.
2. Report immediately to City and Consultant the occurrence of any accident.
3. CM will provide a monthly summary report to accompany the pay request submittal to the City and Consultant detailing the project budget status including change orders along with schedule updates.
4. Payment Requests: Review Contractor prepared applications for payment. Verify quantities and stored materials with Contractor and report agreed upon quantities to City and Consultant.

xix. Completion:

1. Attend a preliminary inspection, in the company of City, Consultant, and Contractor and assist in preparation of a list of items to be completed or corrected.
2. Attend a final inspection, in the company of City, Consultant, and Contractor and assist in preparation of a final list of items to be completed or corrected.
3. Observe whether all items on the final punch list have been completed or corrected and make recommendations to City concerning acceptance and Final Completion/Payment.

xx. Limitations of Authority of CM:
    1. CM will note time on each project to ensure proper tracking of effort.
    2. Will not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized by City and Consultant via change order, field order, or other written authorization for or-equal items.
    3. Will not exceed limitations of Consultant's authority as set forth in Agreement or the contract documents.
    4. Will not undertake any of the responsibilities of Contractor, Subcontractor, Suppliers, or Superintendent. Contractor will retain responsibility for construction quality.
    5. During construction, the CM will work with the Contractor on field issues and discuss potential resolutions. However, the CM will not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the contract documents.
    6. The Contractor is responsible for the safety plan on-site. CM will not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the work or any activities or operations of City or Contractor.
    7. Will not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by City.

xxi. Consultant will provide CM services during the construction phase as indicated. The level of effort for on-site CM coverage to fulfill the scope detailed above is estimated as:
    1. Full-time CM Services at 50 hours per week for 6 months – not to exceed 1,290 hours
    2. Part-time CM Services at 24 hours per week for construction start up and completion, assumed for 3 months – not to exceed 310 hours
    3. Senior CM Services at an average of 16 hours per month for the duration of the construction project, assumed for 16 months – not to exceed 256 hours

5. Additional Services not included in this Amended Scope of Services: City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:
    a. Field layouts or the furnishing of construction line and grade surveys.
    b. Making property, boundary and right of way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
    c. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.
    d. Providing repairs of service lines found to be leaking or damaged as part of this Project.

e. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications except where identified in Exhibit A.
f. Preparing data and reports for assistance to the City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations thereof before any regulatory agency, court, arbitration panel or mediator.
g. Assisting the City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
h. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
i. Design, contract modifications, studies, or analyses required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
j. Providing Basic or Special Services on an accelerated time schedule. The scope of this service includes cost for overtime wages of employees and consultants, inefficiencies in work sequence and printing or reproduction costs directly attributable to an accelerated time schedule directed by the City.
k. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
l. Trench excavation safety plan.
m. Public Meetings
n. Tree Survey
o. Storm Water Pollution Prevention Plans.
p. Section 10 Permitting with the USACE.
q. Preparation of a formal written request for USACE authorization under a letter of permission procedure.
r. Preparation of a standard individual Section 404 permit application.
s. Preparation of Environmental Information Document, Environmental Assessment, or an Environmental Impact Statement.
t. Meetings or consultation with the USACE or other resource agencies, except as specifically noted in the scope of services.
u. Additional field investigations or analysis required to respond to public or regulatory agency comments.
v. Expert representation at legal proceedings or at contested hearings.
w. Mitigation monitoring if required by permit conditions.

The contract amount under the Original Agreement shall be increased by a fee not to exceed the following amounts:

Amendment No. 1:

1. Task Summary - Basic Services
    a. Preliminary Design Phase $99,800
    b. Final Design $749,200
    c. Bidding Phase Services $34,300
    d. Construction Administration $288,000
2. Task Summary – Special Services
    a. Reality Capture Services $4,700
    b. Topographical Surveying Services $12,800
    c. Subsurface Utility Engineering Services $17,400
    d. Structural Analysis Services $52,300
    e. Equipment Procurement Packages $65,700
    f. Construction Management Services $353,300

Total Basic Services Increase (Lump Sum)	**$1,171,300**
Total Authorized Special Services Increase (Not-To-Exceed)	**$506,200**
TOTAL FEE INCREASE (NOT-TO-EXCEED):	**$1,677,500**

TERM

1. Expected Contract Completion for shall be as follows:
    a. Preliminary Design Phase: Three (3) Months from Notice To Proceed.
    b. Design Phase: Twelve (12) Months from Notice to Proceed
    c. Bid Phase: Three (3) Months from End of Design Phase
    d. Construction Phase: Sixteen (16) Months from End of Bid Phase.

DUTY TO FACILITATE COMPLIANCE WITH PUBLIC INFORMATION ACT

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

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

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

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

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

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

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

[Rest of page left intentionally blank]

This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The City and Consultant hereby agree to amend the "Consultant Fees" of the Original Agreement to read as follows:

Proposed Total Fees

Consultant shall be compensated on the following lump sum basis. Additional Services shall be performed based on the attached rate schedule.

1. Basic Services
    a. Technical Memo ***(Original Contract)*** ***$154,000***
    b. Preliminary Design $99,800
    c. Final Design $749,200
    d. Bidding Phase Services $34,300
    e. Construction Administration $288,000
2. Special Services
    a. Reality Capture Services $4,700
    b. Topographical Surveying Services $12,800
    c. Subsurface Utility Engineering Services $17,400
    d. Structural Analysis Services $52,300
    e. Equipment Procurement Packages $65,700
    f. Construction Management Services $353,300

CONTRACT TOTAL (NOT TO EXCEED): $1,831,500

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement. This Amendment No. 1 and the Original Agreement contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 1 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

[Rest of page left intentionally blank]

EXECUTED in three (3) counterparts (each of which is an original) on behalf of CONSULTANT shown below, and on behalf of the CITY by its City Manager (thereunto duly authorized) this _____ day of _____,2023.

CITY:
CITY OF SHERMAN, TEXAS

Robby Hefton, City Manager

ATTEST:

Linda Ashby
City Clerk

CONSULTANT:
FREESE AND NICHOLS, INC.

Clayton Barnard, P.E., Principal

ATTEST:

Sam Meisner, P.E., Principal

APPROVAL RECOMMENDED:

Wayne E. Lee, P.E., CFM / Director Engineering

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

BY: _____

Ryan D. Pittman
CITY ATTORNEY

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS§
§
COUNTY OF Tarrant **§**

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Clayton Barnard of Freese and Nichols, Inc. known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Freese and Nichols, Inc, a corporation, that (s)he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 15th day of February _____, A.D. 2023.

Paula Durant
Notary Public In and For Tarrant County, Texas

My Commission Expires:

06-22-2024

PAULA DURANT
Notary Public, State of Texas
Comm. Expires 06-22-2024
Notary ID 13049336-7

RESOLUTION NO. 6882

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. FOR DESIGN OF THE LAKE TEXOMA PUMP STATION EXPANSION PRELIMINARY DESIGN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Freese and Nichols, Inc. for design of the Lake Texoma Pump Station Expansion Preliminary Design project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 2nd day of May, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
DAVID PLYLER, MAYOR

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

AGREEMENT

BETWEEN

THE CITY OF SHERMAN, TEXAS AND

FREESE AND NICHOLS, INC

FOR

PROFESSIONAL SERVICES

Made as of the 2 day of May, 2022:

Between City: **The City of Sherman, Texas**
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7208

and Consultant: **Freese and Nichols, Inc.**
5805 Main Street, Suite B
Frisco, Texas 75034
Telephone: (972) 624-9201

for the following Project: **Lake Texoma Pump Station Expansion Preliminary Design**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Freese and Nichols, Inc., a Texas corporation ("Consultant"), to be effective from and after the date as provided above. City and Consultant are at times each referred to herein as a "party" or collectively as the "parties."

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Lake Texoma Pump Station Expansion Preliminary Design Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1
CONSULTANT'S SERVICES

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

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

1.2.1 **Requirement of Written Amendment** – "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Amendment by the Sherman Director of Engineering or designee will not be authorized for payment and/or shall not become part of this Agreement. A duly executed, written Amendment requiring additional funding of $50,000 or more of the original contract shall be preceded by the Sherman City Council's authorization for the Sherman City Manager to execute said Amendment.

1.2.2 **CONSULTANT SHALL NOT PERFORM ANY "EXTRA" WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED, WRITTEN AMENDMENT ISSUED BY THE CITY**.

1.3 **Schedule of Work** – Consultant agrees to commence work immediately on the execution of this Agreement, and to proceed diligently with said work to completion as described in the Project Engineering Budget Summary, attached hereto as **Exhibit B** and incorporated herein by reference for all purposes.

1.4 **Standard of Care** – Consultant shall perform the Services required hereunder in accordance with the prevailing engineering standard of care by exercising the skill and care ordinarily utilized by engineers performing the same or similar services under the same or similar circumstances in the State of Texas.

ARTICLE 2
CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the Services of Consultant:

2.1 **Project Data** – City shall furnish required information that is reasonably requested by Consultant and that City has in its possession at the time of Consultant's request, as expeditiously as necessary for the orderly progress of the Project, and Consultant shall be entitled to rely upon the accuracy and completeness of the information furnished by City under this Article 2.1.

2.2 **City Project Manager** – When necessary in City's sole discretion, City shall designate a representative authorized to act on City's behalf with respect to the Project ("Project Manager"). City, the Project Manager and/or his or her authorized designee shall examine the documents submitted by Consultant and shall render any required decisions pertaining thereto as soon as practicable to avoid unreasonable delay in the progress of Consultant's Services.

ARTICLE 3
CONSULTANT'S COMPENSATION

3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a lump sum basis in an amount not to exceed **one hundred fifty-four thousand dollars ($154,000.00)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Project Design Budget Summary as set forth in **Exhibit B**.

3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in **Exhibit C**, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.

3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written

request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be solely responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City.

3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly

basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:

3.3.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

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

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

3.3.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Position	Hourly Rate Range	
Professional 1	85	159
Professional 2	107	168
Professional 3	131	244
Professional 4	163	262
Professional 5	199	375
Professional 6	211	427
Construction Manager 1	95	189
Construction Manager 2	116	204
Construction Manager 3	179	240
Construction Manager 4	219	310
CAD Technician/Designer 1	77	158
CAD Technician/Designer 2	112	169
CAD Technician/Designer 3	143	223
Corporate Project Support 1	56	135
Corporate Project Support 2	78	188
Corporate Project Support 3	112	285
Intern/Coop	45	115

3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit B**. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.

3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice,

or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" of the TEX. GOV'T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.

3.8 **Adjusted Compensation** – If the Scope of the Project ("Scope of the Project") or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant's compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.

3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

3.10 **Fixed Budget Limit for Construction Cost** - If a fixed budget limit for the

Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in the following paragraph. All adjustments in the scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of the agreed project budget due to the negligence of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project. Absent negligence on the part of the Consultant in making its estimates of probable Construction Cost, providing services as defined in Exhibit A shall be limit of the Consultant's Services related to the establishment of such fixed limitation of Construction Costs. The Consultant shall be entitled to compensation for all other services performed in accordance with this Agreement. This Project includes preliminary design only and as such an agreed project budget has not been established. The agreed project budget will be established at the completion of this project and used for the final design.

ARTICLE 4
OWNERSHIP OF DOCUMENTS

4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in **Exhibit A**. Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8 of this Agreement, Consultant will revise plans, data, documents, maps, and any other information as defined in **Exhibit A** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8 of this Agreement, and promptly furnish the same to City in an acceptable electronic format. All such reproductions shall be the property of City who may use them without Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not

relating to the Project shall be at City's own risk.

4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) under this Agreement are instruments of service in respect of the Project and property of City. Upon completion of the Project, all of the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) shall thereafter be subject to the Texas Public Information Act (Chapter 552, TEX. GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Contractor Insurance Guidelines, which is attached hereto and incorporated herein by reference for all purposes, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall name City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage. Such policy shall provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each claim, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-

renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If the Project's size and scope warrant, and if identified on the checklist located in **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars ($2,000,000.00). Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to City as indicated in Article 3.4 of this Agreement. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be made available if requested.

ARTICLE 7
AUDITS AND RECORDS/VENDOR DISCLOSURE

Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and

will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, TEX. LOC. GOV'T CODE, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute and deliver to City the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit F** and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

ARTICLE 8
TERMINATION OF AGREEMENT/REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of hiring a replacement Consultant exceeds Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 of this Agreement and agrees to pay any costs over and above the fee which City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from Consultant's Fee due Consultant as set forth in Article 3 of this Agreement. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

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

ARTICLE 9
DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance

of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 10
INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S

EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF

CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11
NOTICES

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

If to City, addressed to:

Wayne E. Lee, P.E., CFM
Director of Engineering
City of Sherman
220 W Mulberry St.
Sherman, TX 75091
Telephone: (903) 892-7327
Email: waynel@cityofsherman.com

With a copy to:

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

If to Consultant, addressed to:

Clayton C. Barnard, P.E.
Principal/ Vice President
Freese and Nichols, Inc.
5805 Main Street, Suite B
Frisco, TX 75034
Telephone: (972) 624-9207
Email: ccb@freese.com

ARTICLE 12
MISCELLANEOUS

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

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

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

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

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

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

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

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

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

12.3 **Attorney's Fees** – If either party files any action or brings any proceeding against

the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.

12.4 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.

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

12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.

12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

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

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

12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.

12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.

12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

12.16 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.

12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.

12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship

between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

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

12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.

12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2021-2022 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.

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

12.24 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

CITY:
City of Sherman, Texas,
a Texas home-rule municipality

By: _____
Robby Hefton, City Manager

CONSULTANT:
Freese and Nichols, Inc.
a Texas corporation

By: _____
Clayton C. Barnard
Principal / Vice President

APPROVED AS TO FORM:

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

STATE OF TEXAS §
§
COUNTY OF GRAYSON §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **ROBBY HEFTON**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE CITY MANAGER AND DULY AUTHORIZED REPRESENTATIVE FOR THE **CITY OF SHERMAN, TEXAS**, A TEXAS HOME-RULE MUNICIPALITY, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 6th DAY OF May 2022.

NOTARY PUBLIC STATE OF TEXAS
LINDA ASHBY
NOTARY PUBLIC
STATE OF TEXAS
ID # 382275-0
My Comm. Expires 06-06-2022

Linda Ashby
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 6/6/2022

STATE OF TEXAS §
§
COUNTY OF Collin §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **CLAYTON C. BARNARD**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **FREESE AND NICHOLS, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 27 DAY OF April 2022.

NOTARY PUBLIC STATE OF TEXAS
LUCINDA L LUNA
Notary Public, State of Texas
Comm. Expires 01-31-2026
Notary ID 13357818-1

Lucinda L Luna
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 01-31-2026

I. PROJECT DESCRIPTION

A. The City of Sherman desires to expand the capacity of their pumping at the existing Lake Texoma Pump Station. This project will include a preliminary design phase only to review several options available for this expansion. There are eight pump slots in the pump station. Four of these are filled by large pumps primarily used by NTMWD. Three of the slots are filled by 7 MGD pumps primarily used by City of Sherman when the large pumps are idle. The City of Sherman needs greater capacity to fill the gap in pumping between the existing size of their three pumps and the increasing demand at the Water Treatment Plant (WTP). The expansion may include a new 25 MGD pump in the remaining empty slot. Other alternatives to be evaluated include replacement of one or more of the existing pumps. This preliminary study will be completed with the goal of establishing the required firm capacity for the City of Sherman pumps. The study will include evaluation of variable frequency drives (VFDs) to determine the flow range available from the Lake Texoma Pump Station to the Sherman WTP.

B. Our understanding is there are two ongoing projects at the Lake Texoma Pump Station.

i City of Sherman – Installation of a backup generator, design by Parkhill, Smith and Cooper.

ii North Texas Municipal Water District (NTMWD) – Electrical improvements, design by CDM Smith. This project includes replacement of major electrical equipment and expansions on the site for new electrical building.

iii Each of these projects will require coordination by Consultant in order to develop a preliminary design.

C. An additional professional services agreement will be required for the final design phase, bid phase, and construction phase services by Consultant.

II. GENERAL REQUIREMENTS

A. Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.

B. Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, NTWMD, Greater Texoma Utility Authority (GTUA), City of Sherman, and any other entity which has facilities within or adjacent to the Project.

C. Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

D. The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.

E. Communications and Reporting:

- i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
- ii Attend review meeting with the City at the end of each design phase.
- iii Prepare and submit monthly invoices in the format acceptable to the City.
- iv Prepare and submit monthly progress reports.
- v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
- vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
- vii With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.
- viii Attend additional project coordination meetings, if needed.

III. TASK SUMMARY, BASIC SERVICES

A. Preliminary Design Phase

a. Focused Site Visit:
   i. CONSULTANT will perform a more detailed site visit to the PS site to document existing conditions and better define specific rehabilitation needs.
   ii. During the site visit, CONSULTANT will interview City water system Operations staff to better understand system operations and operator preferences.

b. Hydraulic Analysis: CONSULTANT will coordinate efforts with the ongoing Water Master Plan to identify recommended capacity requirements for the PS.
   i. Review available pumping records from the past five years to determine pumping from the PS and inflow to the WTP to understanding the seasonal variations. City of Sherman will make available electronic records for daily flow into the WTP. FNI with City's assistance will request daily pumping flow records from NTMWD
   ii. Review impact of new industrial customer and the expansion planned for the WTP to determine any gaps in the future needs of the PS when NTMWD pumps are idle. Consider that NTMWD pumps may be idle at any time of year and the City must have capacity to meet peak demands from WTP. No changes for the existing delivery flow rates to Panda will be considered.
   iii. Review the raw water storage planned at the WTP. Analyze the cycle time for the existing constant speed pumps and the proposed variable or constant speed pump. The basis will be on active and total storage volume assumptions agreed upon with the City. This task is not intended as optimization for the sizing of the reservoir but is intended as reviewing the size of pumps and need for variable speed.
   iv. Using previous analyses on NTMWD system, develop system curves and proposed pump curves for delivery of water from PS to WTP. Potential Pumping Alternatives include:
      a. Adding one pump, nominally 25 MGD but with the size to be confirmed as part of this study
      b. Adding two pumps, one in empty slot and one in slot replacing an existing pump
      c. Adding three pumps to replace existing pumps (see below for condition evaluation)
      d. Adding constant speed pump or adding variable speed pumps

c. Condition Assessment of Existing Equipment
   i. Following the site visit and with input from City staff, review the condition and need for replacement of existing mechanical equipment at the pump station. This will be focused on the City's existing pumps and valves.
   ii. Condition assessment will not include the structure and building systems.
   iii. It is assumed that the pump station HVAC systems will be improved as part of the NTMWD project. A detailed HVAC review will not be performed as the City's pumps will be smaller and not running concurrent with the larger NTMWD pumps.
   iv. It is assumed the pump station electrical system from Oncor to the feeder for the City of Sherman pumps will be improved as part of the NTMWD projects. The existing Motor Control Center (MCC) for the three Sherman pumps will be reviewed and identify means for replacement. This will include coordination with the NTMWD's engineer.
   v. Coordination with NTMWD's engineer on pump starting requirements. It is

assumed the improved Oncor system will be all starting of any motors installed at the station. As the proposed pumps are smaller than the existing NTMWD pumps, no direct coordination is planned with Oncor during this phase.

vi. Review improvements needed for City of Sherman SCADA, PLC and communications to the PS.

d. Rehabilitation and Expansion Alternatives:
   i. Recommendations for installation of pumps and motors.
   ii. Recommendations on the pump flow rates, pump operations and instrumentation and controls.
   iii. Contact various pump manufacturers to determine pumps that are available for the station. Evaluate selections by manufacturers.
   iv. Recommendation, one-line diagram, and a plan view layout of an electrical building for the City of Sherman's electrical improvements.
   v. Preliminary layout of the pump station, showing the proposed mechanical and electrical equipment, piping, and valves. The proposed layout would include any necessary electrical room.
   vi. Consider operational shutdowns as part of the rehabilitation and expansion. Identify information from NTMWD's project team that may require facility shutdown and impact City of Sherman WTP.
e. Project Coordination Meetings
   i. Attend up to two (2) meetings with NTMWD and their engineering consultant. The purpose of the first meeting will be to confirm the improvements planned in the current phase of the electrical rehabilitation project. The purpose of the second meeting will be to review preliminary design recommendations from this study and the implementation of multiple projects at the facility.
   ii. Attend up to one (1) meeting with City of Sherman's engineering consultant for the generator project (Parkhill).
   iii. Attend up to one (1) meeting with GTUA for the project.
   iv. No separate meetings with USACE, Oncor, or other agencies are planned in this phase.
f. Develop Opinion of Probable Construction Costs: CONSULTANT will develop an opinion of probable construction cost for recommended capacity and rehabilitation improvements at the PS. The cost estimate will include a line-item summary of construction elements in addition to engineering, survey, contractor overhead and profit, and contingency.
g. Draft Technical Memorandum: CONSULTANT will draft technical memorandum with a summary of the assumptions, methodology, recommendations, and opinion of probable construction cost (OPCC). CONSULTANT will deliver one electronic PDF copy of the technical memorandum. Technical memorandum will include figures for the recommended alternative for expansion but will not include figures for other alternatives that are not recommended. Figures will include:

i. Pump room floor plans (upper and lower level)
ii. Pump room section (proposed pump only)
iii. Electrical one-line diagram
iv. Electrical room floor plan
v. Preliminary process and instrumentation diagram
vi. Communications architecture diagram

h. Review Workshop: CONSULTANT will attend a workshop to review the findings and recommendations outlined in the technical memorandum.
i. Final Technical Memorandum: CONSULTANT will incorporate comments received from the City and finalize the technical memorandum. CONSULTANT will provide one electronic PDF copy and two (2) hard copies of the final technical memorandum.

B. Intermediate Design Plans (60%)

a. Not included in this authorization.

C. Final Design/Construction Plans (90%, 100%)

a. Not included in this authorization.

D. Bid Phase Services

a. Not included in this authorization.

E. Construction Phase Services

a. Not included in this authorization.

F. Special Services

a. None included in this authorization.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed

upon in writing by both parties before the services are performed. These Additional Services include the following:

1. Final design, bidding, and construction phase services.
2. Site topographic survey.

EXHIBIT B
PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

A. Preliminary Design Technical Memorandum (Expected Completion: Draft TM within Three Months of NTP, Final TM within One Month of Review Comments) **$154,000.00**

Total Basic Services (Lump Sum) ***$154,000.00***

II. Special Services

None: $0.00

Total Authorized Special Services ***$0.00***

Project Budget, Grand Total (Not-To-Exceed) ***$154,000.00***

1. Files shall done in DWG/DXF format.

2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.

3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.

4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.

5. The file shall contain required features for the project type as detailed below:

    a. Pre-Construction/As-Built Plans and/or Record Documents:
        i. Layers from Final Plat Requirements as Applicable to Project Type.
        ii. Water Utility Features.
        iii. Sanitary Sewer Features.
        iv. Storm Sewer Features.

6. Each required feature group should be provided as a separate layer within the file.

7. Layer names should be representative of the information contained in the layer.

8. Line work should be done per accepted industry norms.

9. Text should not be smaller than 0.08" on a full size sheet, and should be a font such at Simplex, Calibri, or Arial.

EXHIBIT D
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

I. **CONSULTANT'S RESPONSIBILITY**. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment(s) for services; however, this shall not be City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES**.

A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.

C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** – Consultant shall make arrangements with City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as

a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.

G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.

H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of Consultant and/or Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.

I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by City's Project Manager.

B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance and professional liability insurance.

B. Such policies shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail.

C. Such policies shall provide for a waiver of subrogation against City for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance and policy endorsement(s) evidencing the required insurance shall be submitted prior to execution of the Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and policy endorsement(s) shall also be provided to City prior to the date the Agreement is renewed or extended.

IV. INSURANCE CHECKLIST – "X" means that the following coverage(s) is required for this Agreement.

		Coverage Required	Limits
X	1.	Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
X	2.	General Liability	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate
___	3.	XCU Coverage	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate

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

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

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

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

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

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

___ 11. Other Insurance Requirements (State Below):

EXHIBIT F
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

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

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

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

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

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

OFFICE USE ONLY
Date Received

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

N/A

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

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

N/A
Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7 Clayton C Bernard
Signature of vendor doing business with the governmental entity

4-27-2022
Date

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

Lake Texoma Pump Station Improvements
Add High Service Pump Capacity and Piping Improvements
N
0
100
200
400
Feet
Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023

Prepared By: Chuck Carlisle, Facilities Manager

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7036***

Authorizing the Purchase of a 2023 Ford E-450 Utility Van from Sam Pack's Five Star Ford for the Building Maintenance Department through the Texas Local Government Purchasing Cooperative (Buyboard)

Issue:

To consider approval of a resolution to purchase one (1) 2023 Ford E-450 Utility Van through the Texas Local Government Purchasing Cooperative (Buyboard) for use within the Building Maintenance Department.

Background:

The requested purchase is to replace wrecked unit 706, a 2007 Ford Ranger. This new Ford E-450 Utility Van will be used in the daily operations of the Building Maintenance Department.

The Texas Local Government Purchasing Cooperative was created to increase the purchasing power of government entities and to simplify their purchasing by using a customized electronic purchasing system called the BuyBoard.

Origination:

Building Maintenance

Financial Consideration:

The new Ford F-450 Utility Van will be purchased from Sam Pack's Five Star Ford for $66,069.04 through Buyboard. Funding for this purchase was appropriated in the fiscal year 2022-2023 Building Maintenance Department Budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase a new 2023 Ford E-450 utility van from Sam Pack's Five Star Ford through Buyboard.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7036
Quote
Buyboard Agreement

RESOLUTION NO. 7036

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2023 FORD E-450 UTILITY VAN FROM SAM PACK'S FIVE STAR FORD FOR THE BUILDING MAINTENANCE DEPARTMENT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase from Sam Pack's Five Star Ford through Buyboard a new Ford E-450 Utility Van at a total price of Sixty Six Thousand Sixty-Nine Dollars and Four Cents ($66,069.04). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2022-2023 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 20th day of February 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

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

BY: _____
RYAN PITTMAN, CITY ATTORNEY

Sam Pack's Five Star Ford
1635 S. IH 35E Carrollton Texas, 75006
(888) 8 FLEET 9 (888-835-3389) - FAX 972-245-5278

CUSTOMIZED PRODUCT PRICING SUMMARY BASED ON CONTRACT

Cars and Light Trucks

Team Members - Kevin Moore - Jessica Wooten - Jorge Guerra - Alan Rosner

BuyBoard - 601-19

End User: CITY OF SHERMAN **Sam Pack's Rep:** AUSTIN MOORE

Contact: CHARLES CARLISLE **Date:** 2/6/2023

Contact TN/Email Phone #

Product Description: 2023 Ford E-450 Chassis Color Code WHITE

A. Bid Line # 146 **Base Price:** $28,021.00

B. Published Options (Itemize Each Below)

Code	Description	Bid Price	Code	Description	Bid Price
	VINYL INTERIOR	INCLUDED		FRAME PUCKS	$50.00
				16'SPORT WHEEL COVER	$120.00
99K	7.3L V8	$350.00		DUAL BATTERIES	$245.00
	4.56 REG AXLE	INCLUDED		110V A/C OUTLET	$100.00
	HIGH - SERIES EXT UPGRADE PKG	$100.00		REMTE KEYLESS ENT/ALARM	$250.00
903	POWER WINDOWS/LOCKS GROUP	$465.00		GASOLINE FFV	$335.00
43E	REAR VIEW CAMERA	$495.00		BUCKET SEATS	INCLUDED
	SPARE TIRE /WHEEL	$270.00		VINYL FLOOR COVERING	INCLUDED
	USER DEFINED SWITCHES	$85.00		INSTOCK UNITS	
	CRUISE CONTROL	$240.00			
	TRAILER TOW PKG CASS 1	$135.00			
	POWER TRAILER TOW MIRRORS	$230.00		GPC DIFF AND PRICE INC	$4,893.00
				Total of B. - Published Options	**$8,363.00**

C. Dealer Published Options

Code	Description	Bid Price	Code	Description	Bid Price
	KUV-HR ROOF PKG	$26,876.00			
	KUV153D20H				
	Trailer Plug	included			
	MASTER LOCK	INCLUDED			
	Class V Hitch	included			
	Solid Bulkhead - No Glass	included			
				Total of C. - Dealer Published Options	**$26,876.00**

D. Off Menu Options

Code	Description	Bid Price	Code	Description	Bid Price

Off Menu Options limited to 25% of Published Price Current % **0.00%** **Total of D. - Off Menu Options** **$0.00**

Delivery Charges		**30 Miles @ $1.49/mile**		**$44.70**
Floorplan Expense		**30 Days**	**$9.49 Per Diem**	**$284.67**
Lot Insurance Expense		**30 Days**	**$9.49 Per Diem**	**$284.67**
Manufacturer Delivery Fee				**$1,795.00**
			Total Each	**$65,669.04**
Quantity Ordered	**1**	**X F =**		**$65,669.04**
Administrative Fee				**$400.00**
Trade In Allowance - Non-Equipment debits and credits				
TOTAL PURCHASE PRICE INCLUDING ADMIN FEE				**$66,069.04**

RECEIVED JUL 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT

RECEIVED JUL 15 2002

for the
Texas Local Government Purchasing Cooperative

This Interlocal Participation Agreement ("Agreement") is made and entered into by and between the Texas Local Government Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the undersigned local government of the State of Texas ("Cooperative Member"). The purpose of this Agreement is to facilitate compliance with state bidding requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Cooperative Members.

WITNESSETH:

WHEREAS, the Cooperative Members are authorized by Chapter 791, et seq., The Interlocal Cooperation Act of the Government Code ("the Act"), to agree with other local governments to form purchasing cooperatives; and

WHEREAS, the Cooperative is an administrative agency of local governments cooperating in the discharge of their governmental functions; and

WHEREAS, the Cooperative Member does hereby adopt the Organizational Interlocal Agreement, together with such amendments as may be made in the future, reflecting the evolving mission of the Cooperative and further agrees to become an additional party to that certain Organizational Interlocal Agreement promulgated on the 26th day of January, 1998.

NOW, THEREFORE, BE IT RESOLVED that the undersigned Cooperative Member in consideration of the agreement of the Cooperative and the Cooperative Members to provide services as detailed herein does agree to the following terms, conditions, and general provisions.

In return for the payment of the contributions and subject to all terms of this Agreement, the parties agree as follows:

TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The Cooperative Member by the adoption and execution of this Agreement hereby adopts and approves the Organizational Interlocal Agreement dated January 26, 1998, together with such amendments as may be made in the future and further agrees to become a Cooperative Member.
2. **Term.** The initial term of this Agreement shall commence at 12:01 a.m. on the date executed and signed and shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement. The terms, conditions, and general provisions set forth below shall apply to the initial term and all renewals.
3. **Termination.**
    a. By the Cooperative Member. This Agreement may be terminated by the Cooperative Member at any time by thirty (30) days prior written notice to the Cooperative; provided all charges owed to the Cooperative and any vendor have been fully paid.
    b. By the Cooperative. The Cooperative may terminate this Agreement by:
        1. Giving ten (10) days notice by certified mail to the Cooperative Member if the Cooperative Member fails or refuses to make the payments or contributions as herein provided; or
        2. Giving thirty (30) days notice by certified mail to the Cooperative Member.

c. Termination Procedure. If the Cooperative Member terminates its participation during the term of this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the Cooperative Member under any provision of this Article, the Cooperative Member shall bear the full financial responsibility for any purchases occurring after the termination date, and for any unpaid charges accrued during its term of membership in the Cooperative. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. The Cooperative Member will not be entitled to a refund of membership dues paid.

4. **Payments.**
   a. The Cooperative Member agrees to pay membership fees based on a plan developed by the Cooperative. Membership fees are payable by Cooperative Member upon receipt of an invoice from the Cooperative, Cooperative Contractor or vendor. A late charge amounting to the maximum interest allowed by law, but not less than the rate of interest under Section 2251.021, et seq., Texas Government Code, shall begin to accrue daily on the 31st day following the due date and continue to accrue until the contribution and late charges are paid in full. The Cooperative reserves the right to collect all funds that are due to the Cooperative in the event of termination by Cooperative Member or breach of this Agreement by Cooperative Member.
   b. The Cooperative Member will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the Invitation to Bid and related procurement documents. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring party shall be the exclusive obligation of the procuring Cooperative Member.
5. **Cooperative Reporting.** The Cooperative will provide periodic activity reports to the Cooperative Member. These reports may be modified from time to time as deemed appropriate by the Cooperative.
6. **Administration.** Cooperative Member will use the BuyBoard purchasing application in accordance with instruction from the Cooperative; discontinue use upon termination of participation; maintain confidentiality and prevent unauthorized use; maintain equipment, software and testing to operate the system at its own expense; report all purchase orders generated to Cooperative or its designee in accordance with instructions of the Cooperative; and make a final accounting to Cooperative upon termination of membership.
7. **Amendments.** The Board may amend this agreement, provided that notice is sent to each participant at least 60 days prior to the effective date of any change described in such amendment which, in the opinion of the Board, will have a material effect on the Cooperative Members participation in the Cooperative.

GENERAL PROVISIONS

1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable policies and procedures established by the Cooperative.
3. **Compensation.** The parties agree that the payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the Cooperative for the services or functions performed under the Agreement, and that the portion of gross sales paid by participating vendors enables the Cooperative to pay the necessary licensing fees, marketing costs, and related expenses required to operate a statewide system of electronic commerce for the local governments of Texas.
4. **Cooperation and Access.** The Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to audit the relevant records of any Cooperative Member. Any breach of this Article shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Cooperative Member.

5. **Coordinator.** The Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Cooperative Member, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Cooperative Member. The Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.
6. **Current Revenue.** The Cooperative Member hereby warrants that all payments, contributions, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.
7. **Defense and Prosecution of Claims.** The Cooperative Member authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative and/or any past or current Cooperative Member in any litigation, claim or dispute, and to engage counsel and appropriate experts, in the Cooperative's sole discretion, with respect to such litigation, claim or disputes. The Cooperative Member does hereby agree that any suit brought against the Cooperative or a Cooperative Member may be defended in the name of the Cooperative or the Member by the counsel selected by the Cooperative, in its sole discretion, or its designee, on behalf of and at the expense of the Cooperative as necessary for the prosecution or defense of any litigation. Full cooperation by the Cooperative Member shall be extended to supply any information needed or helpful in such prosecution or defense. Subject to specific revocation, the Cooperative Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.
8. **Governance.** The Board of Trustees (Board) will govern the Cooperative in accordance with the Bylaws. Travis County, Texas will be the location for filing any dispute, claim or lawsuit.
9. **Limitations of Liability.** COOPERATIVE, ITS ENDORSERS (TEXAS ASSOCIATION OF SCHOOL BOARDS, TEXAS ASSOCIATION OF COUNTIES, AND TEXAS MUNICIPAL LEAGUE) AND SERVICING CONTRACTOR (TEXAS ASSOCIATION OF SCHOOL BOARDS) DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. COOPERATIVE, ITS ENDORSERS AND SERVICING CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT IN REGARD TO ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, Organizational Interlocal Agreement, and Exhibits, represents the complete understanding of the Cooperative, and Cooperative Member electing to participate in the Cooperative.
11. **Notice.** Any written notice to the Cooperative shall be made by first class mail, postage prepaid, and delivered to the Associate Executive Director Financial Planning, Texas Association of School Boards, Inc., P.O. Box 400, Austin, Texas 78767-0400.
12. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas.
13. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the date indicated.

TO BE COMPLETED BY THE COOPERATIVE:
TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE, as acting on behalf of all other Cooperative Members

By: _____ **Date:** 7-15-02
Gerald Brashears, Cooperative Administrator

TO BE COMPLETED BY COOPERATIVE MEMBER:

CITY OF SHERMAN, TEXAS

By: _____ **Date:** 5/28/2002
L. SCOTT WALL, CITY MANAGER

Coordinator for the Cooperative Member is:

Name:	MARYANN WINKLER
Address:	405 N. RUSK STREET
	SHERMAN, TEXAS 75090
Phone:	(903) 892-7285
Fax:	(903) 891-0255
Email:	PURCH@TEXOMA.NET

SHERMAN CITY COUNCIL
Agenda Communication Form

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

Meeting Date: 02/20/2023

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7037***

Authorizing Execution of a Professional Services Agreement with Freeman-Millican, Inc. for Engineering Services for the Westside Drive Replacement Wastewater Line

Issue:

To consider a contract for professional engineering services with Freeman-Millican, Inc. for the Westside Drive Replacement Wastewater Line

Background:

The City of Sherman desires to replace a wastewater line from North Westside Drive to the wastewater outfall main running down Post Oak Creek. The project will consist of replacing approximately 1,325-linear feet of existing 6-inch to 10-inch clay tile and PVC wastewater line and seven brick manholes. Due to the complex nature of the existing utilities, it is currently recommended to place the new wastewater line in the street. There is an underground power cable, gas line, 6-inch water line, underground telephone cable and storm water inlet on the south side of Taylor. There is a 6-inch wastewater line, underground telephone cable, a storm sewer, a sidewalk and a wood fence 2 feet from sidewalk edge on the north side of Taylor.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for this engineering contract is $55,500. This will be funded by Utility CIP Funds.

Staff Recommendation:

Council approve the design services in the aforementioned amount to Freeman-Millican, Inc. for the Westside Drive Replacement Wastewater Line Project.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7037
Signed Agreement
Location Map

RESOLUTION NO. 7037

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREEMAN-MILLICAN, INC. FOR ENGINEERING SERVICES FOR THE WESTSIDE DRIVE REPLACEMENT WASTEWATER LINE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Freeman-Millican, Inc. for engineering services for the Westside Drive Replacement Wastewater Line, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 20th day of February 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____

LINDA ASHBY, CITY CLERK **DAVID PLYLER, MAYOR**

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

BY: _____

RYAN D. PITTMANN, CITY ATTORNEY

AGREEMENT

BETWEEN

THE CITY OF SHERMAN, TEXAS AND

FREEMAN-MILLICAN, INC.

FOR

PROFESSIONAL SERVICES

Made as of the_____day of_____, 2023:

Between City: **The City of Sherman, Texas**
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7208

and Consultant: **Freeman-Millican, Inc.**
9330 LBJ FREEWAY, Ste 1225
Dallas, Texas 75243
Telephone: (214 503 0555
Facsimile: (903 503 1148

for the following Project: **Westside Drive Replacement Wastewater Line**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Freeman-Millican, Inc., a Texas corporation ("Consultant"), to be effective from and after the date as provided above. City and Consultant are at times each referred to herein as a "party" or collectively as the "parties."

WHEREAS, City desires to engage Consultant to provide professional services for the Westside Drive Replacement Wastewater Line Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1
CONSULTANT'S SERVICES

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

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

1.2.1 **Requirement of Written Amendment** – "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Amendment by the Sherman Director of Engineering or designee will not be authorized for payment and/or shall not become part of this Agreement. A duly executed, written Amendment requiring additional funding of $50,000 or more of the original contract amount shall be preceded by the Sherman City Council's authorization for the Sherman City Manager to execute said Amendment.

1.2.2 **CONSULTANT SHALL NOT PERFORM ANY "EXTRA" WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED, WRITTEN AMENDMENT ISSUED BY THE CITY**.

1.3 **Schedule of Work** – Consultant agrees to commence work immediately on the execution of this Agreement, and to proceed diligently with said work to completion as described in the Project Engineering Budget Summary, attached hereto as **Exhibit B** and incorporated herein by reference for all purposes.

1.4 **Standard of Care** – Consultant shall perform the Services required hereunder in accordance with the engineering standard of care by exercising the skill and care ordinarily utilized by engineers performing the same or similar services under the same or similar circumstances in the State of Texas.

ARTICLE 2
CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the Services of Consultant:

2.1 **Project Data** – City shall furnish required information that is reasonably requested by Consultant and that City has in its possession at the time of Consultant's request, as expeditiously as necessary for the orderly progress of the Project, and Consultant shall be entitled to rely upon the accuracy and completeness of the information furnished by City under this Article 2.1.

2.2 **City Project Manager** – When necessary in City's sole discretion, City shall designate a representative authorized to act on City's behalf with respect to the Project ("Project Manager"). City, the Project Manager and/or his or her authorized designee shall examine the documents submitted by Consultant and shall render any required decisions pertaining thereto as soon as practicable to avoid unreasonable delay in the progress of Consultant's Services.

ARTICLE 3
CONSULTANT'S COMPENSATION

3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a Lump Sum basis in an amount not to exceed **fifty-five thousand and 00/100 dollars ($55,500.00)**; and (b) for Special Services, in an amount not to exceed **zero dollars ($0.00)** (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in **Exhibit B**.

3.3.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in **Exhibit C**, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.

3.3.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to

declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.3.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be solely responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City.

3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

3.2 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:

3.3.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

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

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

3.3.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Position	Hourly Rate
Principal	$230
Senior Project Manager	$205
Professional Surveyor	$150
Project Engineer	$165
Technician	$90
Survey Crew	$175
Admin clerical	$65

3.2 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit B**. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.

3.3 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

3.4 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

3.5 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" of the TEX. GOV'T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.

3.6 **Adjusted Compensation** – If the Scope of the Project ("Scope of the Project") or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant's compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.

3.7 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or

unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed

3.8 **Fixed Budget Limit for Construction Cost** – If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in this Agreement. All adjustments in the Scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of $585,000.00 due to the negligence or other fault of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project.

ARTICLE 4
OWNERSHIP OF DOCUMENTS

4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in **Exhibit A**. Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8 of this Agreement, Consultant will revise plans, data, documents, maps, and any other information as defined in **Exhibit A** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8 of this Agreement, and promptly furnish the same to City in an acceptable electronic format. All such reproductions shall be the property of City who may use them without Consultant's permission for any purpose relating to the Project,

including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at City's own risk.

4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) under this Agreement are instruments of service in respect of the Project and property of City. Upon completion of the Project, all of the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) shall thereafter be subject to the Texas Public Information Act (Chapter 552, TEX. GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Contractor Insurance Guidelines, which is attached hereto and incorporated herein by reference for all purposes, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall name City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage. Such policy shall provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each claim, and Two Million

and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If the Project's size and scope warrant, and if identified on the checklist located in **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars ($2,000,000.00). Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to City as indicated in Article 3.4 of this Agreement. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be made available if requested.

ARTICLE 7
AUDITS AND RECORDS/VENDOR DISCLOSURE

Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, TEX. LOC. GOV'T CODE, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute and deliver to City the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit F** and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

ARTICLE 8
TERMINATION OF AGREEMENT/REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 of this Agreement and agrees to pay any costs over and above the fee which City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from Consultant's Fee due Consultant as set forth in Article 3 of this Agreement. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

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

ARTICLE 9
DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 10
INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING

OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS

EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11
NOTICES

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

If to City, addressed to:

Wayne E. Lee, P.E., CFM
Director of Engineering
City of Sherman
220 W Mulberry St.
Sherman, TX 75091
Telephone: (903) 892-7327
Email: waynel@cityofsherman.com

With a copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4054

Email: rpittman@abernathy-law.com

If to Consultant, addressed to:

Richard Dormier

President
Freeman-Millican, Inc.
9330 LBJ Freeway, Ste 1225
Dallas, Texas 75243
214 503 0555
richard@fmi-dallas.com

ARTICLE 12
MISCELLANEOUS

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

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

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

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

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

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

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

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

12.2 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting

shall be billed through Consultant, and there shall be no third party billing.

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

12.4 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.

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

12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.

12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions

of the content thereof.

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

12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.

12.13 **Incorporation of Recitals** – The acknowledgments, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.

12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

12.16 **No Third-Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.

12.18 **Acknowledgments** – All acknowledgments and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.

12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement

be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

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

12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.

12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's current fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's current fiscal year unless and until such funds are budgeted.

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

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

12.25 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

CITY:

City of Sherman, Texas,
a Texas home-rule municipality

By: _____
Robby Hefton, City Manager

CONSULTANT:

Freeman-Millican, Inc.,
a Texas corporation

By: _____
Richard Dormier
President

APPROVED AS TO FORM:

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

STATE OF TEXAS §
§
COUNTY OF ELLIS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **Richard Dormier**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **Freeman-Millican, Inc.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 15th DAY OF February 2023.

BOBBIE JO TAYLOR
Notary Public, State of Texas
Comm. Expires 12-27-2026
Notary ID 12141112

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 12/27/2026

EXHIBIT A
SCOPE OF SERVICES

I. PROJECT DESCRIPTION

This City of Sherman desires to replace a wastewater line from North Westside Drive to the sewer outfall main running down Post Oak Creek. The project will consist of replacing approximately 1,325-linear feet of existing clay tile and PVC sewer line and seven brick manholes. Due to the complex nature of the existing utilities, it is currently recommended to place the new sewer line in the street. We have an underground power cable, gas line, 6" WL, underground telephone cable and storm water inlet on the southside of Taylor. We have a 6" sewer, underground telephone cable, a storm sewer, a sidewalk and a wood fence 2' from sidewalk edge on the north side of Taylor. May have to go in northside of Taylor.

II. GENERAL REQUIREMENTS

A. Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.

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

C. Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

D. The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.

E. Communications and Reporting:

i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
ii Attend review meeting with the City at the end of each design phase.
iii Prepare and submit monthly invoices in the format acceptable to the City.
iv Prepare and submit monthly progress reports.

v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
vii With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.
viii Attend additional project coordination meetings, if needed.

III. TASK SUMMARY, BASIC SERVICES

A. Preliminary Design Phase

a. Prepare preliminary engineering review drawings (1"=20' scale or 1"=40' scale, 22"x34" sheets) to include preliminary horizontal and vertical alignments of all proposed improvements with minimal construction-related notes. Cross-sections at least every fifty (50) feet will be required for paving-related or channel-related projects. If necessary, report in sufficient detail to indicate clearly any of the problems involved and provide alternate solutions available to the City. Include preliminary layouts, a right-of-way map, sketches, and cost estimates for the Project and set forth clearly the Consultant's recommendations for any alternate designs.

b. Water, sanitary sewer, and storm drains will be shown on the plans based on field information and surveys collected by the Consultant and from existing "Record Drawings" provided by the City of Sherman. Other utilities should be shown on the plans based on field information and surveys collected by the Consultant, utility locates requested by the Consultant, and any available "Record Drawings" that the Consultant can obtain from other utilities.

c. Depending on comments received from the City's review and field investigations, another set of preliminary phase construction drawings may be required.

d. Upon completion of the Preliminary Design Phase, the Engineer will advise the City of any geotechnical, soil, foundation, or other subsurface investigations or any special surveys, Level B or A SUE, or special testing which, in the opinion of the Consultant, may be required for the proper execution of the project, and assist the City in arranging for the conduct of such investigations and tests. The performance of geotechnical investigations and tests will not be a part of

the Consultant's Basic Engineering Services and will not be included unless specifically authorized in writing under "F. Special Services."

e. Prior to the Preliminary review meeting with the City, the Consultant shall schedule and attend a project site visit with the City Project Manager and Construction personnel to walk the project. The Consultant shall summarize the City's comments from the field visit and submit this information to the City in writing.

f. The Consultant will consult with the City, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. Consultant will design City facilities to avoid or minimize conflicts with existing utilities, and where known and possible, consider potential future utilities in designs.

g. Unless otherwise expressly stated, the scope of Preliminary Design services shall be as follows:

PRELIMARY DESIGN
Locate failing creek crossing & review existing conditions
Access existing drawings from City & request opening corroded MH
On site review of existing MHs from eastside creek to Westside Dr and along Westside & Taylor with utility maintenance personnel
Review alternative solutions to correct sewer failure
Preliminary survey of existing MHs and street gutters
Preliminary replacement sewer plan & profile
Review with Sherman utility engineering
Preliminary cost estimate

B. Final Design/Construction Plans (90%, 100%)

a. Prepare final engineering review drawings that address all comments from the intermediate review.

b. Prepare detailed cost estimates based on current unit prices from the proposal of authorized construction, which shall include summaries of bid items and quantities on the unit price system of bidding, wherever practical.

c. Finalize miscellaneous plan sheets, including cover sheet, index, general notes, project control and applicable City standard details.

d. Submit three (3) final sealed copies each of any necessary right-of-way or easement documents.

e. When required by the nature of the project, the Consultant shall provide necessary exhibits and attend a public meeting with the City.

f. Upon completion of the final design review, the Consultant shall furnish to the City up to four (4) additional copies and a pdf of the construction drawings to be forwarded to the utility companies.

g. Upon completion of the final design review, the Consultant shall furnish to the City, where required by the circumstances of the assignment, the engineering data, construction plans, completed forms, and reports necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid or for planning advances not included in Basic Engineering Services).

h. Unless otherwise expressly stated, the scope of Final Design services shall be as follows:

DESIGN PHASE
Design survey replacement sewer
Design replacement sewers along Westside & Taylor
Review design with Sherman
Develop Plan & Profile Drawings
Develop detail sheets
Develop technical specifications & proposal form
Provide documents to Sherman Engineering & respond to comment

C. Bid Phase Services

a. Prepare bid set drawings and specifications that address all comments from the final design review and additional information provided by utility relocations and right-of-way negotiations.

b. Furnish to the City all necessary copies of approved Construction Contract Documents needed for competitive bidding (plans, specifications, notice to

bidders, proposals, etc.). All sets of Construction Contract Documents in excess of eight (8) copies are to be paid for separately as provided hereinafter.

c. Consultant will submit the project plans to the State of Texas for the TAS/ADA review, if required for the Project. Consultant will prepare the application and make the submittal. The City will provide a check for the fee based on the construction cost of pedestrian improvements per the submittal requirements. Consultant will address comments from the review and revise plans if necessary.

d. Assist the City in the advertisement of the Project for competitive bids.

e. Assist the City with any Pre-Bidders meetings.

f. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.

g. Assist the City in the opening and tabulation of bids for construction of the Project.

h. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the award of the construction contract.

i. Assist in the preparation of formal Construction Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.

j. The Consultant shall not be required to guarantee the accuracy of the final design Cost of Construction, but may be required to provide additional services at no cost to the City if bids for the Project exceed the fixed budget limit for the Construction Cost as provided in Article 3.

k. Unless otherwise expressly stated, the scope of Final Design services shall be as follows:

BIDDING Assistances
Respond to vendor request for information

D. Construction Phase Services

a. Conformed Document submittal:

i. Update the Bid Documents (plans and Project Manual) to incorporate bid addenda items
ii. Print up to ten (10) sets 11”x17” plans and Project Manuals for issuance at the Pre-Construction Conference.
iii. Package and submit CAD base files upon request.

b. Site Visits upon request
c. *Pre-Construction Meeting.* Attend Pre-Construction Meeting(s) prior to commencement of Work at the Site
d. *Franchise Utility Coordination*. Assist the City with franchise utility coordination efforts and conflict resolution during construction.
e. *Requests for information*. Coordinate with Engineer and issue clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by City.
f. *Change Orders*. Recommend Change Orders to City, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor. Task includes preparing plan sheet revisions.
g. *Shop Drawings, Samples, and Submittals.* Review and approve or take other appropriate action in respect to Shop Drawings, Samples, Submittals and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.
h. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
i. *Disagreements between City and Contractor.* As necessary, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
j. *Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.
k. Consultant shall prepare construction Record Documents based on the

information received from Contractor within 30 days of final completion in accordance with the Agreement. Consultant shall submit one full size set and one pdf file of the Record Documents.

l.

a. Unless otherwise expressly stated, the scope of Final Design services shall be as follows:

CONSTRUCTION Assistances
Assist City with construction questions
Review contractor submittals assistance
Site reviews, construction questions
Make record drawings per contractor as built mark ups

Revise P&P drawing as required per exposed sewer services

E. Special Services

a. Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by A., B., C., D., and E. preceding, which may be performed or arranged for separately by City, or may be added to the Consultant's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following:
   i. Design Surveying - to collect information required for design, including photogrammetry, land surveying, and related office computations and drafting. All surveys and coordinate information shall be based on the NAD 83 CORS Grid Coordinate System utilizing control monuments established within the City of Sherman. This also includes refreshing and re-establishing benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. This does not include construction staking.
   ii. Staking of the Centerline of the proposed Project for utility coordination. The Consultant or its surveyor shall stake the centerline throughout the extent of the Project. The beginning and the end of the Project shall be designated. The points of intersection, points of curvature, and points of tangency of all horizontal curves shall be designated. Stations and half-stations (50-foot and 100-foot) shall be designated throughout the entire Project, on tangential and curvilinear portions. Said centerline control is to be established in a timely fashion as directed by City staff. Said centerline control markings are to be a one-time event and shall be of a nature to last a minimum of eight months.
   iii. Furnish descriptive instruments related to the acquisition of easements and/or rights-of-way. The description of these parcels should be rotated to match the bearings of the individual deeds. The payment for these instruments will be made on a per parcel basis unless otherwise indicated.

As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the acquisition.

iv. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
v. Appearances before regulatory agencies.
vi. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.
vii. Special investigations involving detailed consideration of operation, maintenance, and overhead expense; preparation of rate schedules; preparation of special reports and an engineer's certificate as required for marketing bonds; earnings and expense statements; preparation of assessment rolls; special feasibility studies; appraisals; valuations; and material audits or inventories required for certification of force account construction performed by the City.
viii. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
ix. Geotechnical Investigation & Report - obtain the services of a qualified geotechnical engineering laboratory to conduct soil and foundation investigations, including test borings, soil tests, and analyses of test results.
x. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
xi. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
xii. Revision of reports and Construction Contract Documents after specific approval by City.
xiii. Subsurface Utility Engineering that involves Level “A” or “B” identification of a utility.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City’s written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

1.

EXHIBIT B
PROJECT BUDGET SUMMARY

I. Basic Services

A. Preliminary Design Plans (30%) (Expected Completion:1-26-23)	**$20000.00**
B. Final Design/Construction Plans (90%, 100%) (Expected Completion:3-15-23)	**$25000.00**
C. Bid Phase Services (Expected Completion:5-17-23)	**$1500.00**
D. Construction Phase Services	**$9000.00**
Total Basic Services (Lump Sum)	***$55,500.00***

II. Special Services

Descriptive instruments for 0 parcels at $0 each:	$0.00
Design Surveying	$0.00
Stake Centerline for Utility Coordination	$0.00
Project Bidding	$0.00
Level "A" Subsurface Utility Engineering Identification for 0 utilities at $0 each:	$0.00
Level "B" Subsurface Utility Engineering Identifications for 0 linear feet at $0/LF:	$0.00
Geotechnical Investigation & Report:	$0.00
Total Authorized Special Services	***$0.00***
Project Budget, Grand Total (Not-To-Exceed)	***$55,500.00***

1. Files shall done in DWG/DXF format.

2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.

3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.

4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.

5. The file shall contain required features for the project type as detailed below:

    a. Pre-Construction/As-Built Plans and/or Record Documents:
        i. Layers from Final Plat Requirements as Applicable to Project Type.
        ii. Water Utility Features.
        iii. Sanitary Sewer Features.
        iv. Storm Sewer Features.

6. Each required feature group should be provided as a separate layer within the file.

7. Layer names should be representative of the information contained in the layer.

8. Line work should be done per accepted industry norms.

Text should not be smaller than 0.08” on a full size sheet, and should be a font such at Simplex, Calibri, or Arial.

EXHIBIT D
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

I. **CONSULTANT'S RESPONSIBILITY**. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment(s) for services; however, this shall not be City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES**.

A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.

C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** – Consultant shall make arrangements with City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as

a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.

G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.

H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of Consultant and/or Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.

I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by City's Project Manager.

B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance and professional liability insurance.

B. Such policies shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail.

C. Such policies shall provide for a waiver of subrogation against City for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance and policy endorsement(s) evidencing the required insurance shall be submitted prior to execution of the Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and policy endorsement(s) shall also be provided to City prior to the date the Agreement is renewed or extended.

IV. INSURANCE CHECKLIST – "X" means that the following coverage(s) is required for this Agreement.

		Coverage Required	Limits
X	1.	Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
X	2.	General Liability	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate
___	3.	XCU Coverage	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate

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

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

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

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

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

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

___ 11. Other Insurance Requirements (State Below):

EXHIBIT E
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

Freeman - Millican, Inc.

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

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

None

Name of Officer

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

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

☐ Yes ☑ No

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

☐ Yes ☑ No

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

none

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

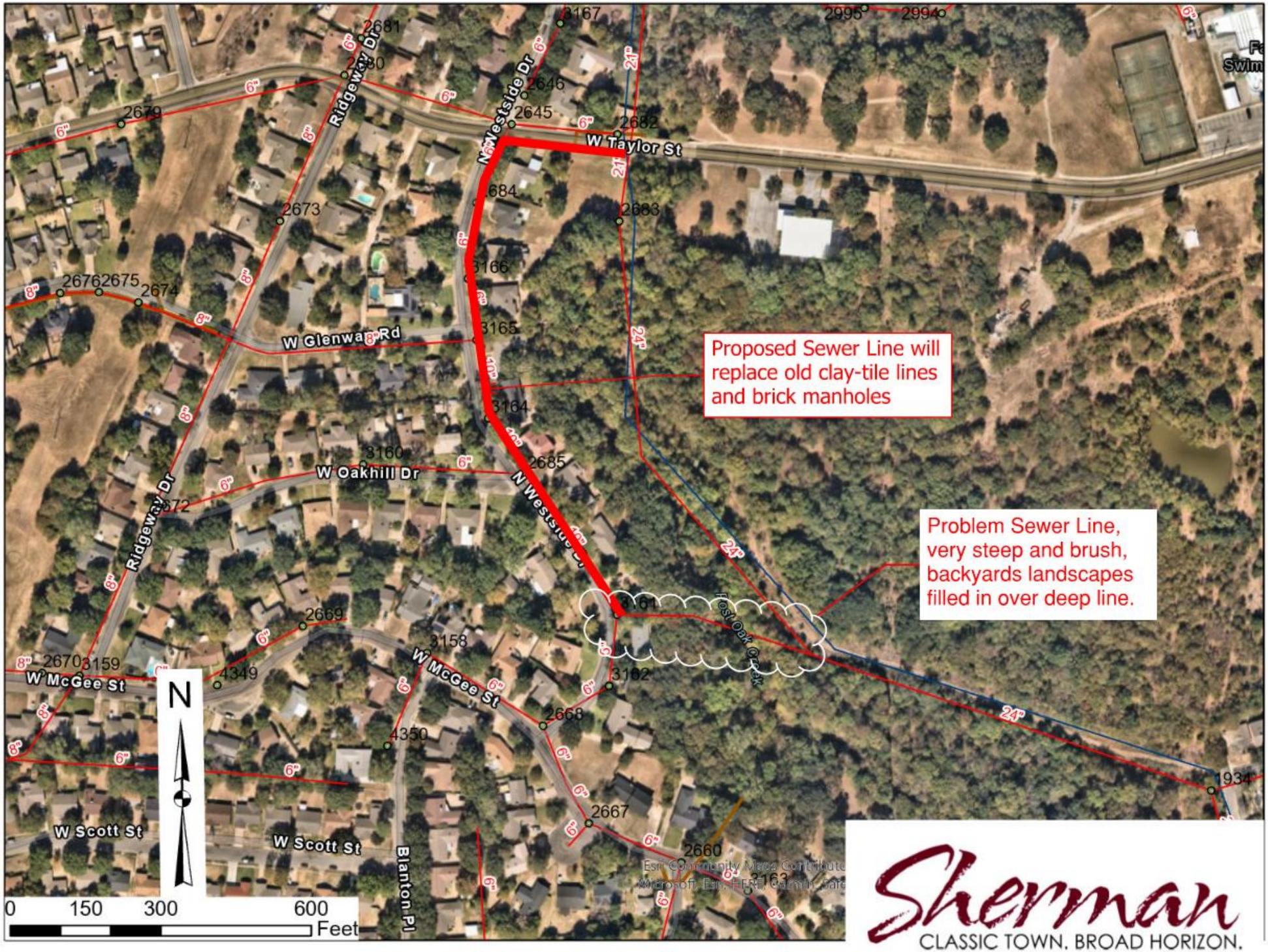
7 [signature]

Signature of vendor doing business with the governmental entity

2/8/2023

Date

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



Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **F. 1.**

Meeting Date: 02/20/2023

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

REQUEST TO ADVERTISE

Sale of Approximately 0.9 Acres of Land Located at 1400 West Taylor Street

Issue:

Seeking permission to advertise for bids for the sale of approximately 0.9 Acres of land located at 1400 West Taylor Street

Background:

Staff is recommending to proceed with the sale of approximately 0.9 Acres of land located at 1400 West Taylor Street. Staff is proposing to solicit sealed bids for the sale of this property, with a minimum "reserve" to be attached to the sale. Staff will advertise the sale of this property locally, will solicit offerings to known developers/investors who have already expressed some interest. Staff is requesting a qualified proposal seeking ways to enhance parks and trails in the vicinity of the subject property.

Staff is accumulating documentation needed on the property (boundary survey, topographic rendering, Phase I Environmental Study, etc.) to allow the sell the property in a timely manner. We expect to have this ready to advertise by the end of February 2023, with bids due back in March 2023. Staff expects to award the sale of the property by March 20, 2023.

Origination:

City Manager's Office

Financial Consideration:

The cost of advertising is expected to amount to approximately $1,200.00. The sale of the property will generate revenue for the City that will be used to fund various general capital improvements.

Staff Recommendation:

It is recommended that the City Council authorize Staff to advertise the project for bid.

Alternatives:

As may be directed by the City Council

Attachments

Location Map

dlagrone H:\PLANNING\Public Notification KT.aprx

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Development Services Department

CITY OF SHERMAN
LOCATION MAP
1400 W. TAYLOR ST.

N
W E
S

Date: 2/9/2023 12:34 PM

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 1.**

Meeting Date: 02/20/2023
Prepared By: Tom Pruitt, Utility Engineer
Approved By: Robby Hefton, City Manager

Caption:

CHANGE ORDER NO. 3
Northwest Sewer and Force Main Project; Lynn Vessels Construction, LLC; $33,613.93 increase

Issue:

To consider the approval of Change Order No. 3 with Lynn Vessels Construction, LLC for the Northwest Sewer and Force Main Project

Background:

Change Order No. 3 will direct the contractor to extend the new sewer line to pick up the farthest residences in Preston Club, specifically on Roberts Run. The existing sewer (that was installed there before City annexation) was discovered to be much deeper than the newly designed sewer line, which gives rise to this change.

Origination:

Engineering Department

Financial Consideration:

Change Order No. 3 is a $33,613.93 increase in the contract amount, yielding a final contract price of $1,816,753.38. Funding is available through the Greater Texoma Utility Authority (GTUA) debt issues.

Staff Recommendation:

It is recommended the Change Order No. 3 for the Northwest Sewer and Force Main Project be approved.

Alternatives:

As may be directed by the City Council

Attachments

Change Order No.3
Location Map

Change Order

Date of Issuance: February 20, 2023

No. 3

Project: Sherman Northwest Sewer and Force main	Project No.: PW #1385-U
Owner: City of Sherman	Date of Contract: August 12, 2021
Contractor: Lynn Vessels Construction, LLC	

The Contract Documents are modified as follows upon execution of this Change Order:

Bid Item #	Quantity	Unit	Description	Unit Cost	Total Cost
CO3-1	440	LF	8" SDR 35 PVC 0-10' Deep	$45.83	$20,165.20
CO3-2	1	VF	Raise 5' diameter manhole to Lift Station Grade	$637.10	$637.10
CO3-3	1	EA	Labor to Lower Water Line	$3,384.63	$3,384.63
CO3-4	1	EA	Install Access Gate Sta 45+00	$3,530.50	$3,530.50
CO3-5	6	EA	Customer Sewer Services	$781.50	$4,689.00
CO3-6	1	EA	Sewer Clean out	$1,207.50	$1,207.50
				Total Change Order #2	$33,613.93

Justification:

CO3-1 Provide 8" sewer main in Roberts Run

CO3-2 Bring new manhole to same grade at Lift Station site (in flood plain)

CO3-3 Lower sewer line already installed in Roberts Run

CO3-4 Provide easement access gate at Sta 45+00 (82 Salvage)

CO3-5 Pickup sewer lots in Roberts Run

CO3-6 Install new main line cleanout

CHANGE IN CONTRACT PRICE:

Original Contract Price:

$1,608,996.56

Increase from previously approved Change Orders No. 0 to No. 2 :

$174,142.89

Contract Price prior to this Change Order:

$1,783,139.45

Increase of this Change Order:

$33,613.93

Contract Price incorporating this Change Order:

$1,816,753.38

CHANGE IN CONTRACT TIMES:

Original Contract Times:
Substantial completion days: 365
Substantial completion date: August 30, 2022

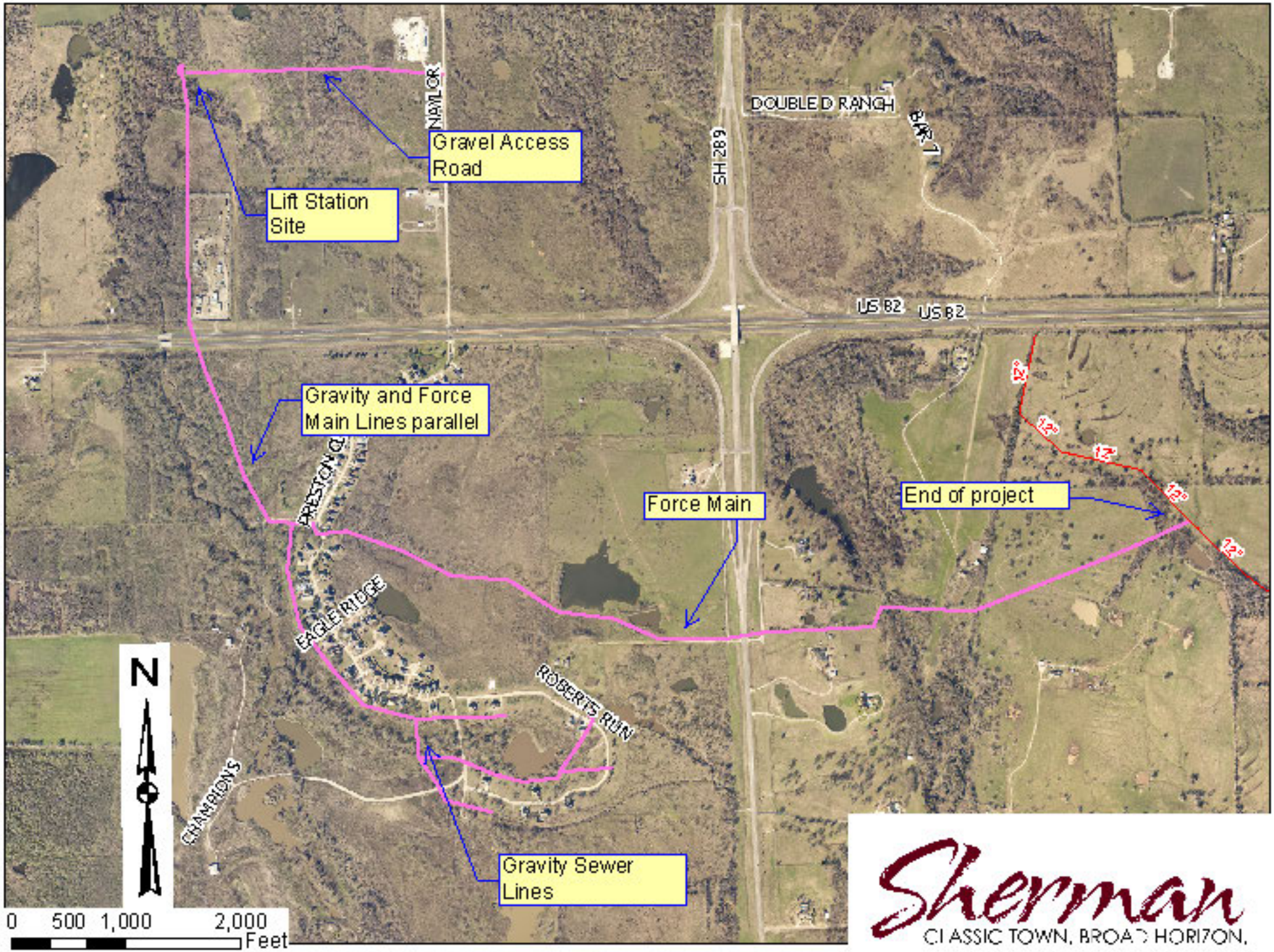
Increase from previously Change Orders No. 0 to No. 2 :
Substantial completion days: 439
Substantial completion date: November 12, 2022

Contract Times prior to this Change Order:
Substantial completion days: 439
Substantial completion date: November 12, 2022

Increase of this Change Order:
Substantial completion days: 35
Substantial completion date: December 17, 2022

Contract Times with all approved Change Orders:
Substantial completion days: 474
Substantial completion date: December 17, 2022

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____	By: _____	By: _____
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Date: 2/14/2023	Date: _____	Date: 2/13/2023


Gravel Access Road
Lift Station Site
Gravity and Force Main Lines parallel
Force Main
End of project
Gravity Sewer Lines
NAYLOR
SH 289
DOUBLE D RANCH
BAR T
US 82
US 82
PRESTON
EAGLE RIDGE
ROBERTS RUN
CHAMPIONS
12"
12"
12"
12"
12"
N
0 500 1,000 2,000
Feet
Sherman
CLASSIC TOWN, BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **H. 1.**

Meeting Date: 02/20/2023
Prepared By: Teri Fine, Assistant to the City Manager
Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS
Receive an Update on Leadership Sherman's Class Project.

Issue:

Leadership Sherman Class of 2023 is partnering with Grand Central Station for their class community reinvestment project.

Background:

Leadership Sherman is building a 15' x 35' three-sided covered pavilion located across from the main GCS location where people can sit and relax out, of the elements, and enjoy their meals. Currently, the location has picnic tables that are uncovered and susceptible to the elements making it less than desirable in the hot/cold months. The total cost for the project is approximately $23,000 and our goal is to raise $25,000 in order to cover any overage that could happen during the construction. Any funds left will be given back to the community in some fashion or another.

Origination:

Sherman Chamber of Commerce / Leadership Sherman

Financial Consideration:

There is no financial impact to be considered.

Staff Recommendation:

This presentation is for information only and requires no action by the City Council.

Alternatives:

None

Attachments

Leadership Partner Letter

2/13/2023

Dear Potential Partner,

Leadership Sharman Class of 2023 is partnering with Grand Central Station for their class community reinvestment project. Grand Central Station was opened in October of 2010 with one simple goal, “Provide for the underserved”. Their mission is to provide food, tools for learning, advocacy, and life solutions, for our neighbors in need, in an environment of safety. They serve approximately 47,000 people annually through their meal offerings and their pantry.

We are building a 15’ x 35’ three-sided covered pavilion located across from the main GCS location where people can sit and relax out, of the elements, and enjoy their meals. Currently, the location has picnic tables that are uncovered and susceptible to the elements making it less than desirable in the hot/cold months. The total cost for the project is approximately $23,000 and our goal is to raise $25,000 in order to cover any overage that could happen during the construction. Any funds left will be given back to the community in some fashion or another.

We are looking for five partners willing to donate $5,000 to help fund our project. The partners will receive publicity via social media and the local newspaper, as well as their logo being a part of the mural that will be painted on the back wall that faces Houston Street.

We want to thank you in advance for your partnership and continued support of the Sherman community without you and your support project like this could not be possible!

Respectfully, Leadership Sherman Class of 2023

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **H. 2.**

Meeting Date: 02/20/2023

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Presentation from Fire Department Captain Mason Beaver on the Paramedic School

Issue:

To switch from the Grayson College Paramedic School to Percom Online

Background:

Currently, the Sherman Fire Department is sending two students to Grayson College for paramedic school. This typically results in overtime coverage for every shift the students are off. The paramedic school program is twelve months, affecting 24 pay periods. Based on the average, the Sherman Fire Department spends approximately $100,000 in overtime to cover one student for one year.

Origination:

Sherman Fire-Rescue

Financial Consideration:

Each member going through Percom is potentially saving the City $100,000 per student per year.

Staff Recommendation:

This is for informational purposes only.

Alternatives:

None

Attachments

Percom Presentation

Sherman Fire-Rescue Paramedic Education and Retention Plan

A REMEDY FOR OUR PARAMEDIC SHORTAGE AND A PLAN FOR RETENTION

Current Practice

- We are currently sending two students to Grayson County College for paramedic school. This possibly requires overtime coverage every shift they are off.
- The program these students are currently attending is a twelve-month program, therefore affecting 24 pay periods.
- Based on the average, we are spending roughly $100,000 in overtime to cover one student for one year.
- The member also misses a complete year of working with their fellow firefighters.

Moving to Percom Online

- With Percom, all their “classroom” time is online. This means they get to stay with their crew while going through school thus reducing the overtime to cover their duty assignment.
- The student will stay on shift during paramedic training.
- They will have 720 outside hours for skills, hospital rotations, and ambulance ride outs. Skills sessions are a total of 84 hours. Their combined hospital clinical rotations and ambulance ride outs are 636 hours. They are broken down as follows:

Emergency Room 8 hrs	Obstetrics 16 hrs
Respiratory 8 hrs	Operating Room 24 hrs
EMS 276 hrs	Final Field Internship 144 hrs

Immediate Benefits

- Immediately reduces the number of overtime hours required to maintain staffing levels.
- This program allows us to increase the number of paramedics faster than utilizing Grayson.
- With our current 17 EMT-B, Grayson would take 7 years to get caught up.
- We are sending 6 guys to Percom. This means 6 new paramedics in 12 months.
- We will be starting the next round of students in 6 months. Adding paramedics in such quick succession will also contribute to retention.

Short Recap

- Current practice for paramedic school through Grayson is costing the city around $100,00 per year.
- This possibly causes members to be required to work 48-hour shifts. Increasing overtime.
- Percom students will remain on shift during their paramedic training.
- Each member going through Percom is potentially saving the city at least $100,000 per student per year.
- Thank you to Walker Kemp, Ben Williams, James Cottrell, Andrew Mraule, Chad Dooley, and Aaron Alvarado for being our first round Percom students.

Sherman Fire-Rescue thanks you for your time.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **H. 3.**

Meeting Date: 02/20/2023
Prepared By: Nate Strauch, Community & Support Services Manager
Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS
Receive an Update on the City of Sherman's Ongoing Projects

Issue:

Staff seeks to provide periodic aerial updates to keep the Council abreast of the newest developments in City projects.

Background:

Using the City of Sherman's drone, City staff has cataloged several projects underway or contemplated around town, including:

Infrastructure:

- GAP
- 1417
- 75/82
- Moore St

Housing:

- Bel Air / Luella Crossing / Sherman Heights
- The Grove / Pebblebrook

Other:

- Police Station
- TI
- GlobalWafers

Origination:

Community and Support Services Manager Nate Strauch

Financial Consideration:

NA

Staff Recommendation:

Information purposes only

Alternatives:

NA

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **H. 4.**

Meeting Date: 02/20/2023
Prepared By: Mary Lawrence, Director of Finance
Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS
Discuss and Consider Approval of the Budget Calendar for Fiscal Year (FY) 2023-2024

Issue:

Set budget calendar for FY 2023-2024

Background:

Several meetings are necessary to develop the budget for the upcoming fiscal year. There is some flexibility in meeting dates in the proposed budget calendar. Particularly important are the dates for the Budget Planning Meeting and the Budget Workshop. The Budget Planning Meeting will be used to garner Council input on Council initiatives to be included in the budget development process. The Budget Workshop will present a more detailed picture of the City budget and will be used to summarize Council direction for the upcoming year.

Included in this year's budget process will be discussion of the five-year financial and operational projections as has been the practice for the past several years. Although we will only be developing a budget and appropriating funds for FY 2023-2024, this five-year time horizon will include the impacts of such things as the capital improvement program, debt service, and projected tax base changes on the City's long-term financial outlook.

A workshop to develop the five-year Capital Improvement Plan as required by City Charter will be held separately.

Origination:

Robby Hefton, City Manager
Mary Lawrence, Finance Director

Financial Consideration:

None

Staff Recommendation:

The staff recommends that the Council, **by motion and order**, approve the budget calendar as presented.

Alternatives:

The City Council could select alternative dates for the meetings, subject to Charter requirements.

Attachments

Proposed Budget Calendar 2023-2024

PROPOSED BUDGET CALENDAR

FISCAL YEAR 2023 -2024

Budget Planning Meeting with City Council and Financial Update	April 20, 2023
Capital Improvement Program Work Session	May 25, 2023
Budget Workshop*	June 15-16, 2023

Present Draft Budget to Council Tax Rates Submitted to Council for Consideration	August 7, 2023
Public Hearing and Final Action on Budget Ordinance	August 21, 2023
Public Hearing and Final Action on Tax Rate Ordinance	August 21, 2023

Notes:

Meeting times to be confirmed after the Budget Calendar is approved.

It is recommended that the Budget Planning Meeting be held in the City Council Chambers.

* This is expected to be a one-day Workshop; but an additional day is scheduled as a placeholder in case more time is needed.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **H. 5.**

Meeting Date: 02/20/2023
Prepared By: Jason Jeffcoat, Assistant Police Chief
Approved By: Robby Hefton, City Manager

Caption:

**** OTHER BUSINESS***
Receive 2022 Racial Profiling Report

Issue:

To receive the 2022 Racial Profiling Report from the Sherman Police Department

Background:

Sherman Police Department contracts annually with Dr. Alex del Carmen to analyze the department's Motor Vehicle-Related Contact information and prepare an annual racial profiling report. Consistent with past reports, De. del Carmen's analysis identified that the Sherman Police Department "is engaging in search practices consistent with national trends in law enforcement."

No "Racial Profiling" Complaints were filed during 2022 from a traffic stop.

The information and analysis provided in this report serves as evidence that the Sherman Police Department complies with the Texas Racial Profiling Laws. The following contains the basis for Dr. del Carmen's analysis.

(i) Tier 2 Data

Motor Vehicle-Related Contact Information (01/01/2022 - 12/31/2022)

Race/Ethnicity*	Contacts	Searches	Consensual Searches	Custody Arrest
Caucasian	4843	288	119	9
African American	1379	163	50	15
Hispanic or Latino	1657	73	24	4
Asian or Pacific Islander	99	2	1	0
Alaska Native or American Indian	63	1	1	0
Other	0	0	0	0
Total	8041	527	195	28

Origination:

Sherman Police Department

Financial Consideration:

None

Staff Recommendation:

None

Alternatives:

None

Attachments

Memo to City Manager
2022 Executive Summary
2022 Racial Profiling Report

Sherman
POLICE DEPARTMENT

OFFICE OF THE CHIEF OF POLICE
JASON JEFFCOAT
MEMORANDUM

DATE: **February 13, 2023**

TO: **Mr. Robby Hefton, City Manager**

FROM: **Jason Jeffcoat, Chief of Police**

SUBJECT: **2022 Racial Profiling Report**

I am pleased to present you with a copy of our 2022 Annual Contact Report prepared by Dr. Alex del Carmen of Del Carmen Consulting, LLC.

In addition, please find the 2022 Racial Profiling Executive Summary prepared by Lieutenant Jeremy Cox, which summarizes our compliance with the Texas Racial Profiling Law.

Sherman
POLICE DEPARTMENT

MEMORANDUM

DATE: February 8, 2023

TO: Chief Jason Jeffcoat

FROM: Lt. Jeremy Cox JC/dz

SUBJECT: 2022 Racial Profiling Executive Summary

Sherman Police Department contracts annually with Dr. Alex del Carmen to analyze the Department's Motor Vehicle-Related Contact information and prepare an annual racial profiling report. Consistent with past reports, Dr. del Carmen's analysis identified that the Sherman Police Department "is engaging in search practices consistent with national trends in law enforcement". No "Racial Profiling" complaints were filed during 2022 from a traffic stop.

The information and analysis provided in this report serves as evidence that the Sherman Police Department complies with the Texas Racial Profiling Laws. The following contains the basis for Dr. Del Carmen's analysis.

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Alaska Native or American Indian	63	1	1	0
Other	0	0	0	0
Total	8041	527	195	28

2022 Racial Profiling Report

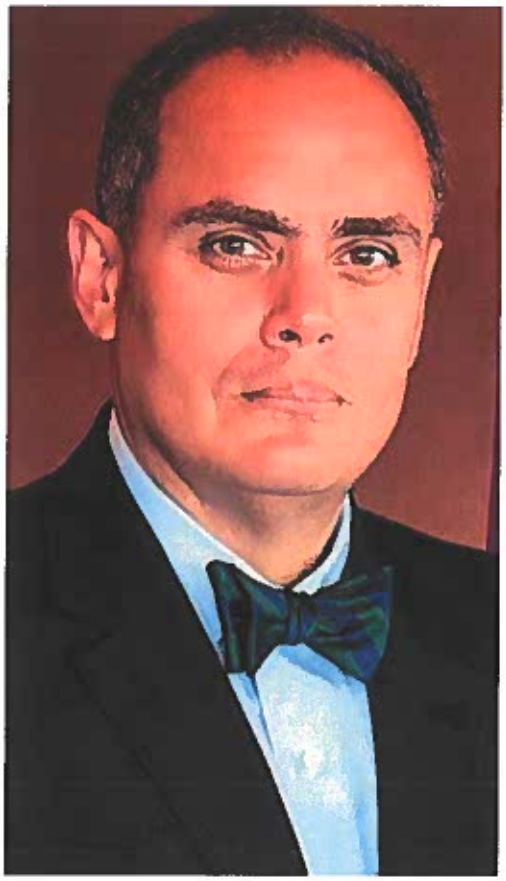
Sherman Police Department

DEL CARMEN Consulting®

LAW ENFORCEMENT EXPERTS

"Dr. Alex del Carmen's work on racial profiling exemplifies the very best of the Sandra Bland Act, named after my daughter. My daughter's pledge to fight for injustice is best represented in the high quality of Dr. del Carmen's reports which include, as required by law, the data analysis, audits, findings and recommendations. I commend the agencies that work with him as it is clear that they have embraced transparency and adherence to the law."

-Quote by Geneva Reed (Mother of Sandra Bland)



February 2, 2023

Sherman City Council
405 N. Rusk Street
Sherman, TX 75090

Dear Distinguished Members of the City Council,

In 2001 the Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. During the last calendar year, the Sherman Police Department, in accordance with the law, has collected and reported traffic and motor vehicle related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements were implemented. Further, in 2017 the Sandra Bland Act was passed and signed into law (along with HB 3051, which introduced new racial and ethnic designations). The Sandra Bland Law currently requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All of these requirements have been met by the Sherman Police Department and are included in this report.

This report consists of three sections with information on motor vehicle-related contacts. In addition, when appropriate, documentation is included which demonstrates the manner in which the Sherman Police Department has complied with the Texas Racial Profiling Law. In section one, you will find the table of contents. Section two documents compliance by the Sherman Police Department relevant to the requirements established in the Texas Racial Profiling Law. That is, you will find documents relevant to the training of all police personnel on racial profiling prevention and the institutionalization of the compliment and complaint processes, as required by law.

Finally, section three contains statistical data relevant to contacts (as defined by the law) which were made during the course of motor vehicle stops that took place between 1/1/22 and 12/31/22. Further, this section contains the Tier 2 form, which is required to be submitted to this particular organization and the law enforcement agency's local governing authority by March 1 of each year. The data in this report has been analyzed and compared to information derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report.

The last section of the report includes the original draft of the Texas Racial Profiling Law, SB1074, as well as the Sandra Bland Act (current law). Also in this section, a list of requirements relevant to the Racial Profiling Law, as established by TCOLE (Texas Commission on Law Enforcement), is included. The findings in this report support the Sherman Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.

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Public Education on Responding to Compliments and Complaints

Informing the Public on the Process of Filing a Compliment or Complaint with the Sherman Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Sherman Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by a Sherman Police Officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

All Sherman Police Officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Sherman Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Sherman has been included in this report.

It is important to recognize that the Chief of the Sherman Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Sherman Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

Racial Profiling Course 3256

Texas Commission on Law Enforcement

September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at http://www.tcleose.state.tx.us.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05
Racial profiling prohibited CCP 2.131
Law enforcement policy on racial profiling CCP 2.132
Reports required for traffic and pedestrian stops CCP 2.133
Liability CCP 2.136
Racial profiling education for police chiefs Education Code 96.641
Training program Occupations Code 1701.253
Training required for intermediate certificate Occupations Code 1701.402
Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H.Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs

2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

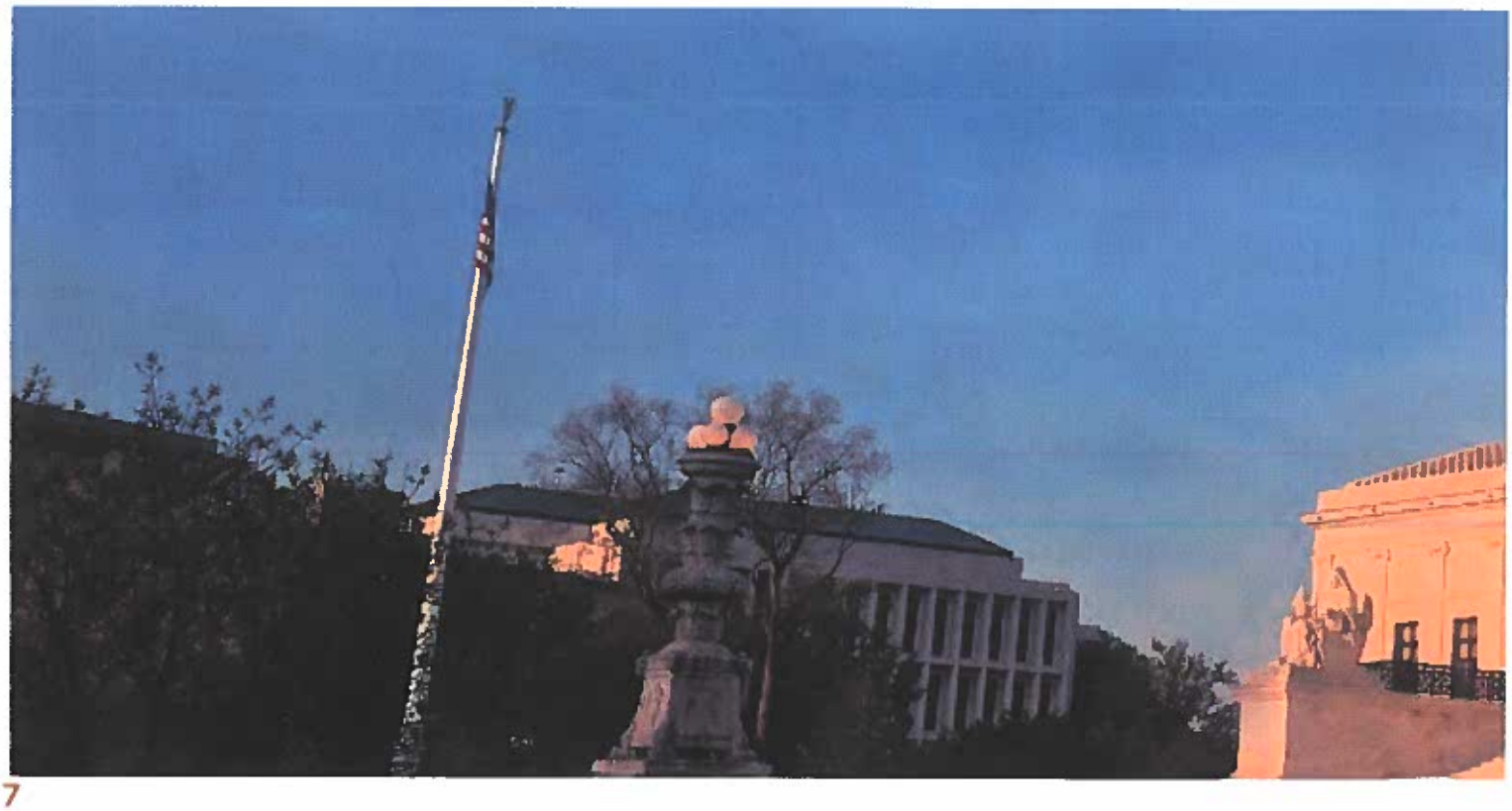
1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)



2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

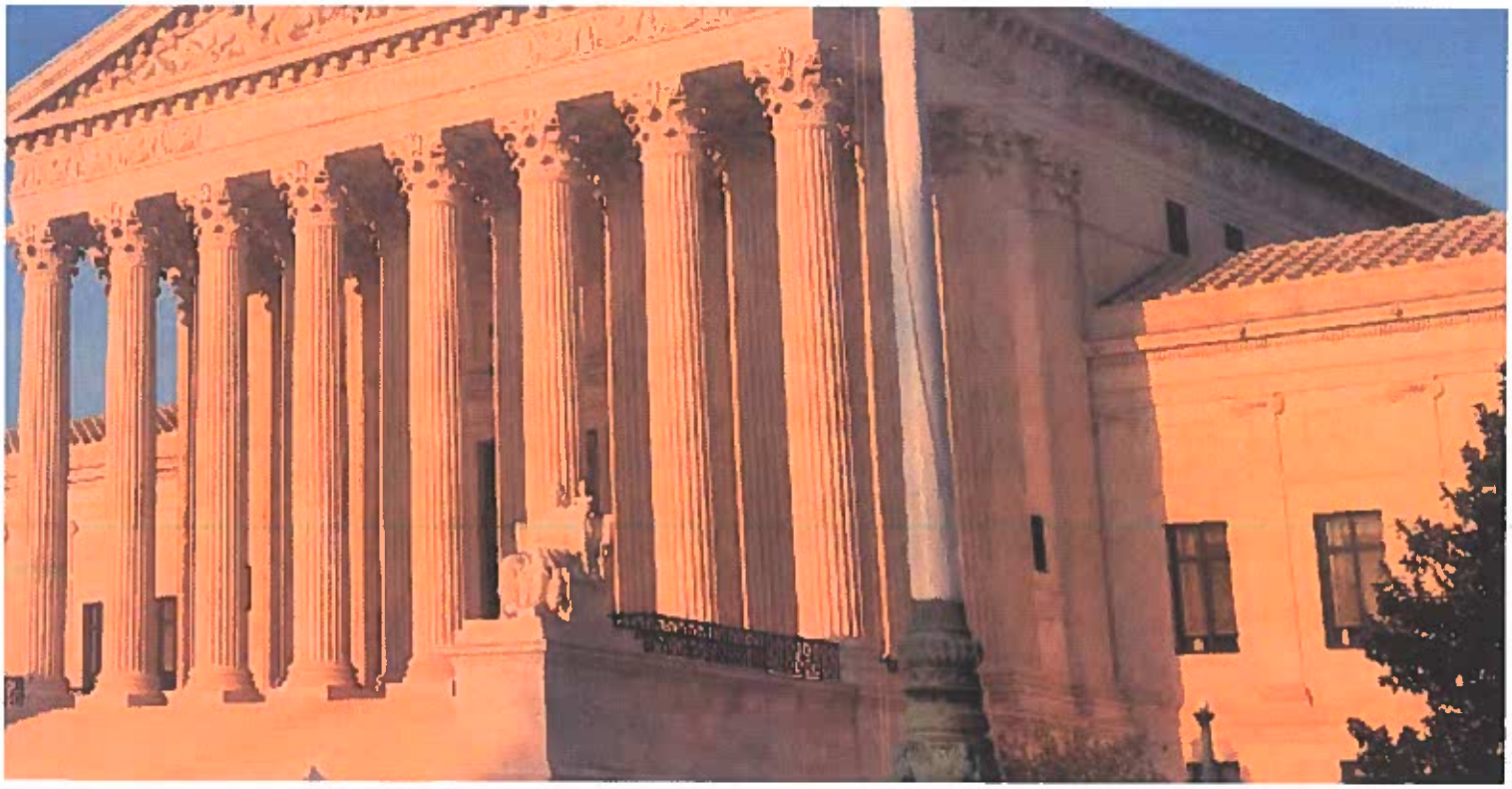
A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.

B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole .

C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.

D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.

E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.



3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers

2. The driver and passengers are questioned about things that do not relate to the traffic violation

3. The driver and passengers are ordered out of the vehicle

4. The officers visually check all observable parts of the vehicle

5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside

6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)

3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

A. Drug courier profile (adapted from a profile developed by the DEA)

1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
3. Vehicle is rented
4. Driver is a young male, 20-35
5. No visible luggage, even though driver is traveling
6. Driver was over-reckless or over-cautious in driving and responding to signals
7. Use of air fresheners

B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

A. Thinking about the totality of circumstances in a vehicle stop

B. Vehicle exterior

1. Non-standard repainting (esp. on a new vehicle)
2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)

C. Pre-stop indicators

1. Not consistent with traffic flow
2. Driver is overly cautious, or driver/passengers repeatedly look at police car
3. Driver begins using a car- or cell-phone when signaled to stop
4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior

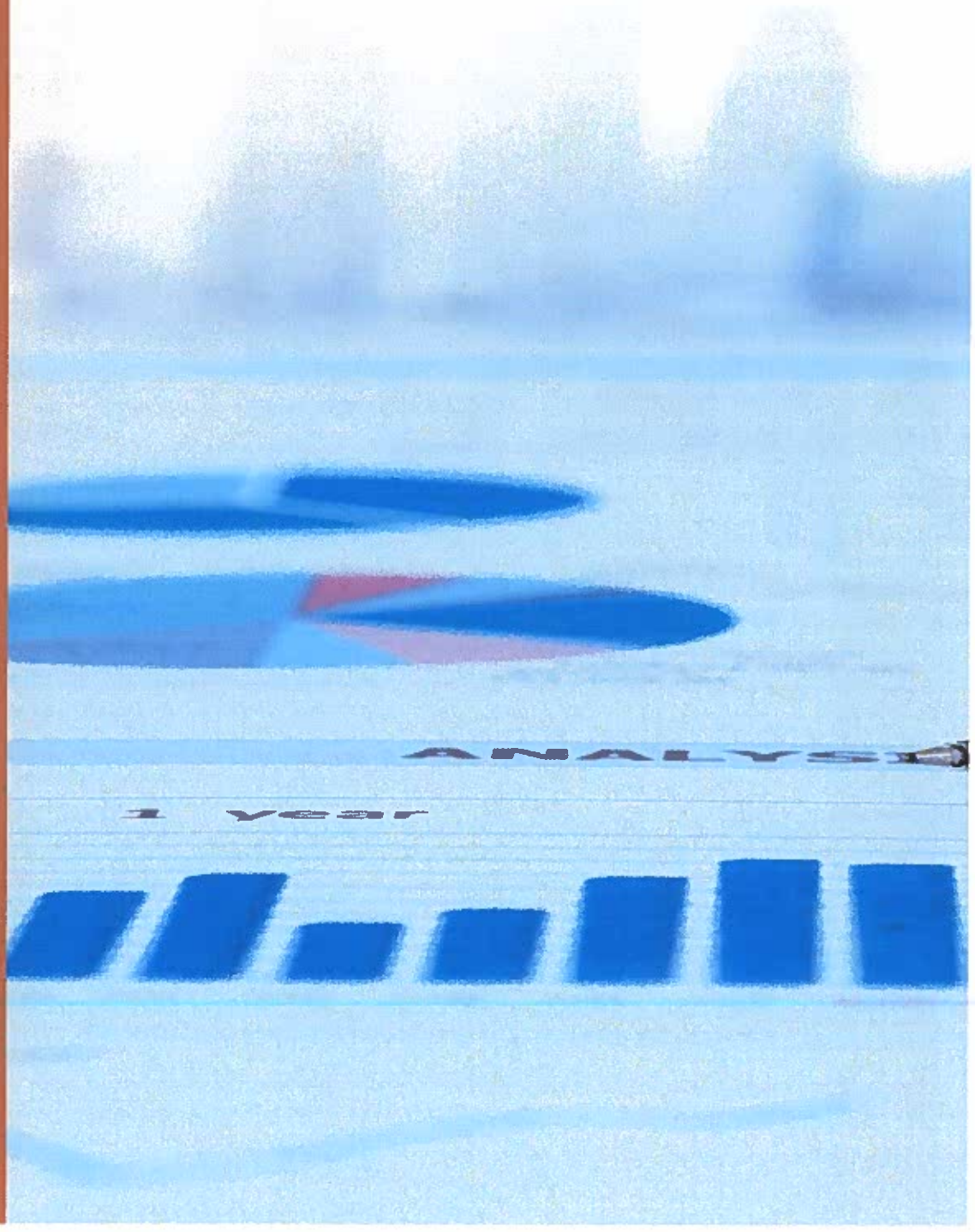
1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074: http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm

Report on Compliments and Racial Profiling Complaints



Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/22-12/31/22 based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.

A check above indicates that the Sherman Police Department has not received any complaints, on any members of its police services, for having violated the Texas Racial Profiling Law during the time period of 1/1/22-12/31/22.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint Number	Alleged Violation	Disposition of the Case

Additional Comments:
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Tables Illustrating Motor Vehicle-Related Contacts
TIER 2 DATA

TOTAL STOPS: 8,041

STREET ADDRESS OR APPROXIMATE LOCATION OF STOP.

City Street	6,341
US Highway	1,399
State Highway	292
County Road	5
Private Property	4

WAS RACE OR ETHNICITY KNOWN PRIOR TO STOP?

Yes	183
No	7,858

RACE OR ETHNICITY

Alaska Native/American Indian	63
Asian/Pacific Islander	99
Black	1,379
White	4,843
Hispanic/Latino	1,657

GENDER

Female Total: 3,243

Alaska Native/American Indian	16
Asian/Pacific Islander	34
Black	550
White	2,131
Hispanic/Latino	512

Male Total: 4,798

Alaska Native/American Indian	47
Asian/Pacific Islander	65
Black	829
White	2,712
Hispanic/Latino	1,145

REASON FOR STOP?

Violation of Law Total: 234

Alaska Native/American Indian	0
Asian/Pacific Islander	3
Black	43
White	140
Hispanic/Latino	48

Pre-existing Knowledge Total: 49

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	7
White	35
Hispanic/Latino	7

Moving Traffic Violation Total: 5,988

Alaska Native/American Indian	50
Asian/Pacific Islander	78
Black	1,015
White	3,584
Hispanic/Latino	1,261

TIER 2 DATA

Vehicle Traffic Violation Total: 1,770

Alaska Native/American Indian	13
Asian/Pacific Islander	18
Black	314
White	1,084
Hispanic/Latino	341

WAS SEARCH CONDUCTED?

	YES	NO
Alaska Native/American Indian	1	62
Asian/Pacific Islander	2	97
Black	163	1,216
White	288	4,555
Hispanic/Latino	73	1,584
TOTAL	**527**	**7,514**

REASON FOR SEARCH?

Consent Total: 195

Alaska Native/American Indian	1
Asian/Pacific Islander	1
Black	50
White	119
Hispanic/Latino	24

Contraband (in plain view) Total: 4

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	3
Hispanic/Latino	0

Probable Cause Total: 296

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	106
White	146
Hispanic/Latino	43

Inventory Total: 13

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	5
White	6
Hispanic/Latino	2

Incident to Arrest Total: 19

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	14
Hispanic/Latino	4

TIER 2 DATA

WAS CONTRABAND DISCOVERED?

	YES	NO
Alaska Native/American Indian	1	0
Asian/Pacific Islander	1	1
Black	104	59
White	165	123
Hispanic/Latino	44	29
TOTAL	**315**	**212**

Did the finding result in arrest?

	YES	NO
Alaska Native/American Indian	0	1
Asian/Pacific Islander	0	1
Black	15	89
White	9	156
Hispanic/Latino	4	40
TOTAL	**28**	**287**

DESCRIPTION OF CONTRABAND

Drugs Total: 261

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	90
White	136
Hispanic/Latino	34

Currency Total: 12

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	4
White	6
Hispanic/Latino	2

Weapons Total: 8

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	5
White	3
Hispanic/Latino	0

Alcohol Total: 30

Alaska Native/American Indian	1
Asian/Pacific Islander	0
Black	5
White	13
Hispanic/Latino	11

TIER 2 DATA

Stolen Property Total: 3

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	1
Hispanic/Latino	1

Other Total: 46

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	15
White	27
Hispanic/Latino	4

RESULT OF THE STOP

Verbal Warning Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Written Warning Total: 5,637

Alaska Native/American Indian	49
Asian/Pacific Islander	75
Black	1,009
White	3,509
Hispanic/Latino	995

Citation Total: 2,331

Alaska Native/American Indian	14
Asian/Pacific Islander	23
Black	347
White	1,302
Hispanic/Latino	645

Written Warning and Arrest Total: 45

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	14
White	19
Hispanic/Latino	11

Citation and Arrest Total: 28

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	9
White	13
Hispanic/Latino	6

Arrest Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

TIER 2 DATA

ARREST BASED ON
Violation of Penal Code Total: 42

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	14
White	18
Hispanic/Latino	10

Violation of Traffic Law Total: 6

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	2
White	2
Hispanic/Latino	2

Violation of City Ordinance Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Outstanding Warrant Total: 25

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	7
White	12
Hispanic/Latino	5

Was physical force used resulting in bodily injury during the stop?

	YES	NO
Alaska Native/American Indian	0	63
Asian/Pacific Islander	0	99
Black	0	1,379
White	2	4,841
Hispanic/Latino	0	1,657
TOTAL	**2**	**8,039**

Tables Illustrating Motor Vehicle Related Contact Data

Table 1. Citations and Warnings

Race/ Ethnicity	All Contacts	Citations	Verbal Warning	Written Warning	Contact Percent	Citation Percent	Verbal Percent	Written Percent
Alaska Native/ American Indian	63	14	0	49	1%	1%	0%	1%
Asian/ Pacific Islander	99	23	0	75	1%	1%	0%	1%
Black	1,379	356	0	1,009	17%	15%	0%	18%
White	4,843	1,315	0	3,509	60%	56%	0%	62%
Hispanic/ Latino	1,657	651	0	995	21%	28%	0%	18%
TOTAL	8,041	2,359	0	5,637	100%	100%	0%	100%

Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households that have vehicle access.

Race/Ethnicity	Contact Percentage	Households with Vehicle Access
Alaska Native/American Indian	1%	0%
Asian/Pacific Islander	1%	5%
Black	17%	14%
White	60%	60%
Hispanic/Latino	21%	19%
TOTAL	100%	98%

Table 3. Motor Vehicle Searches and Arrests.

Race/Ethnicity	Searches	Consent Searches	Arrests
Alaska Native/American Indian	1	1	0
Asian/Pacific Islander	2	1	1
Black	163	50	23
White	288	119	32
Hispanic/Latino	73	24	17
TOTAL	527	195	73

Table 4. Instances Where Peace Officers Used Physical Force Resulting in Bodily Injury

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Arrest	Location of Stop	Reason for Stop
1	09/20/22	815 E. Odneal St.(Whitney's Grocery)	Traffic Violation
2	12/20/22	1514 N. Broughton St.	Multiple Traffic Offenses

Table 5. Search Data

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Found No	Arrests	Percent Searches	Percent Contraband Found	Percent No Contraband	Percent Arrest
Alaska Native/ American Indian	1	1	0	0	0%	0%	0%	0%
Asian/ Pacific Islander	2	1	1	1	0%	0%	0%	1%
Black	163	104	59	23	31%	33%	28%	32%
White	288	165	123	32	55%	52%	58%	44%
Hispanic/ Latino	73	44	29	17	14%	14%	14%	23%
TOTAL	527	315	212	73	100%	100%	100%	100%

Table 6. Report on Audits.

The following table contains data regarding the number and outcome of required data audits during the period of 1/1/22-12/31/22.

Number of Data Audits Completed	Date of Completion	Outcome of Audit
1	03/01/22	Data was valid and reliable
2	06/01/22	Data was valid and reliable
3	09/01/22	Data was valid and reliable
4	12/01/22	Data was valid and reliable

ADDITIONAL COMMENTS:

Table 7. Instance Where Force Resulted in Bodily Injury.

Race/Ethnicity	Number	Percent
Alaska Native/American Indian	0	0%
Asian/Pacific Islander	0	0%
Black	0	0%
White	2	100%
Hispanic/Latino	0	0%
TOTAL	2	100%

Table 8. Reason for Arrests from Vehicle Contact

Race/ Ethnicity	Violation of Penal Code	Violation of Traffic Law	Violation of City Ordinance	Outstanding Warrant	Percent Penal Code	Percent Traffic Law	Percent City Ordinance	Percent Warrant
Alaska Native/ American Indian	0	0	0	0	0%	0%	0%	0%
Asian/ Pacific Islander	0	0	0	1	0%	0%	0%	4%
Black	14	2	0	7	33%	33%	0%	28%
White	18	2	0	12	43%	33%	0%	48%
Hispanic/ Latino	10	2	0	5	24%	33%	0%	20%
TOTAL	42	6	0	25	100%	100%	0%	100%

Table 9. Contraband Hit Rate

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Hit Rate	Search Percent	Contraband Percent
Alaska Native/ American Indian	1	1	100%	0%	0%
Asian/ Pacific Islander	2	1	50%	0%	0%
Black	163	104	64%	31%	33%
White	288	165	57%	55%	52%
Hispanic/Latino	73	44	60%	14%	14%

Analysis and Interpretation of Data

In 2001, the Texas Legislature passed Senate Bill 1074, which eventually became the Texas Racial Profiling Law. This particular law came into effect on January 1, 2002 and required all police departments in Texas to collect traffic-related data and report this information to their local governing authority by March 1 of each year. This law remained in place until 2009, when it was modified to include the collection and reporting of all motor vehicle-related contacts in which a citation was issued or an arrest was made. Further, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individuals before detaining them. In addition, it became a requirement that agencies report motor vehicle-related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1 of each year. The purpose in collecting and disclosing this information is to determine if police officers in any particular municipality are engaging in the practice of racially profiling minority motorists.

One of the central requirements of the law is that police departments interpret motor vehicle-related data. Even though most researchers would likely agree that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is in fact very difficult to determine if individual police officers are engaging in racial profiling from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As previously noted, in 2009 the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1, 2010. The changes included, but are not limited to, the re-definition of a contact to include motor vehicle-related contacts in which a citation was issued or an arrest was made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. The 2009 law also required adding "Middle Eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1 of each year.

More recently, in 2017 the Texas Legislators passed HB 3051 which removed the Middle Eastern data requirement while standardizing the racial and ethnic categories relevant to the individuals that came in contact with police. In addition, the Sandra Bland Act (SB 1849) was passed and became law. Thus, the most significant legislative mandate (Sandra Bland Act) in Texas history regarding data requirements on law enforcement contacts became law and took effect on January 1, 2018. The Sandra Bland Act not only currently requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

1. A comparative analysis of the information compiled (under Article 2.133):

a. Evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;

b. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;

c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.

2. *Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.*

As part of their effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Sherman Police Department commissioned the analysis of its 2022 contact data. Hence, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2022 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians (Middle Easterners and individuals belonging to the "other" category, as optional categories), who came in contact with police in the course of a motor vehicle-related contact and were either issued a ticket, citation, or warning or an arrest was made. Also included in this data were instances when a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest, and use of physical force resulting in bodily injury.

The additional data analysis performed was based on a comparison of the 2022 motor vehicle contact data with a specific baseline. When reading this particular analysis, one should consider that there is disagreement in the literature regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Sherman Police Department accepted our recommendation to rely, as a baseline measure, on the Fair Roads Standard. This particular baseline is established on data obtained through the U.S. Census Bureau (2020) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It should be noted that the census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless whether they are among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only, thus excluding individuals who may have come in contact with the Sherman Police Department in 2022 but live outside city limits. In some jurisdictions the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

In 2002, some civil rights groups in Texas expressed their concern and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of "households" that have access to vehicles. Thus, proposing to compare "households" (which may have multiple residents and only a few vehicles) with "contacts" (an individual-based count). In essence this constitutes a comparison that may result in ecological fallacy. Despite this risk, as noted earlier, the Sherman Police Department accepted the recommendation to utilize this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its "good will" and "transparency" before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the Dallas Fort-Worth (DFW) Metroplex.

Tier 2 (2022) Motor Vehicle-Related Contact Analysis

When examining the enhanced and more detailed Tier 2 data collected in 2022, it was evident that most motor vehicle-related contacts were made with Whites, followed by Hispanics. Of those who came in contact with police, most tickets or citations were issued to Whites and Hispanics; this was followed by Blacks. However, in terms of written warnings, most of these were issued to Whites, followed by Blacks.

On searches and arrests, the data showed that most searches took place among Whites. When considering all searches, most were consented by Whites and Blacks, while most custody arrests were also of Whites. Overall, most searches resulted in contraband; of those that produced contraband, most were of Whites; this was followed by Blacks. Of the searches that did not produce contraband, most were of Whites. Most arrests were made of Whites. Most of the arrests that originated from a violation of the penal code involved Whites. Overall, the police department reports two instances where force was used that resulted in bodily injury.

Comparative Analysis

A comprehensive analysis of the motor vehicle contacts to the census data relevant to the number of "households" in DFW who indicated in the 2020 census that they had access to vehicles, produced interesting findings. Specifically, the percentage of Whites and Asians who came in contact with police was the same or lower than the percentage of White and Asian households in DFW that claimed in the 2020 census to have access to vehicles. The opposite was true of Blacks, Hispanics, and American Indians. That is, a higher percentage of Blacks, Hispanics, and American Indians came in contact with police than the percentage of Black, Hispanic, and American Indian households in DFW that claimed in the 2020 census to have access to vehicles. It should be noted that the percentage difference among Black, Hispanic, and American Indian contacts with households is of 3% or less; thus, deemed by some as statistically insignificant.

The comprehensive analysis of the searches resulting in contraband shows that the most significant contraband hit rate is of American Indians. This was followed by Blacks and Hispanics. This means that among all searches performed in 2022, the most significant percentage of these that resulted in contraband was among American Indians. The lowest contraband hit rate was among Asians.

Summary of Findings

As referenced earlier, the most recent Texas Racial Profiling Law requires that police departments perform data audits in order to validate the data being reported. Consistent with this requirement, the Sherman Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in Table 6, the audit performed reveals that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

While considering the findings produced as a result of this analysis, it is recommended that the Sherman Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected), which may prove to be useful when determining the nature of the contacts police officers are making with all individuals.

As part of this effort, the Sherman Police Department should continue to:

1) Perform an independent analysis on contact and search data in the upcoming year.

2) Commission data audits in 2023 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

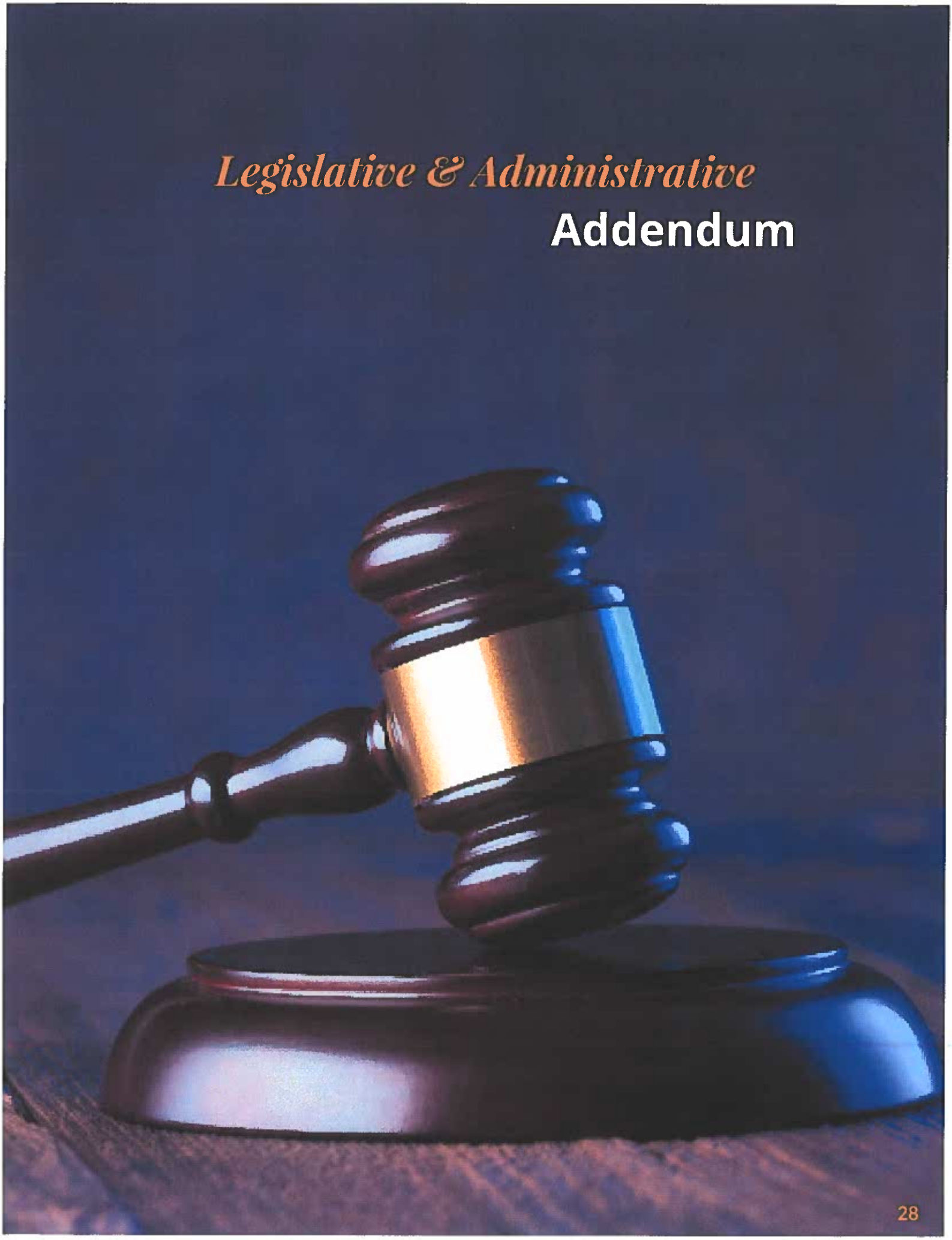
The comprehensive data analysis included in this report serves as evidence that the Sherman Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of Tier 2 data, and ensures that the practice of racial profiling will not be tolerated.

Checklist

The following requirements were met by the Sherman Police Department in accordance with The Texas Racial Profiling Law:

- Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- Include in the racial profiling policy, a statement indicating prohibition of any peace officer employed by the Sherman Police Department from engaging in racial profiling.
- Implement a process by which an individual may file a complaint regarding racial profiling violations.
- Provide public education related to the compliment and complaint process.
- Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- Collect, report and analyze motor vehicle data (Tier 2).
- Commission Data Audits and a Search Analysis.
- Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- Produce an annual report on police contacts (Tier 2) and present this to the local governing body and TCOLE by March 1, 2023.
- Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.

Legislative & Administrative
Addendum



TCOLE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of ***what*** must be accomplished by an agency but allows wide latitude in determining ***how*** the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an " agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties."

The article further defines race or ethnicity as being of "a particular descent, including Caucasian, African, Hispanic, Asian, or Native American." The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person's race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer's best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, "the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose."

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide and analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for "tier one" data for traffic stops in which a citation results are:

1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of "a particular descent, including Caucasian, African, Hispanic, Asian, or Native American");
2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
3) whether there was a custody arrest.

The minimum requirements for reporting on "tier two" reports include traffic and pedestrian stops. Tier two data include:

1) the detained person's gender and race or ethnicity;
2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
3) whether a search was conducted, and if so whether it was based on consent or probable cause;
4) facts supporting probable cause;
5) the type, if any, of contraband that was collected;
6) disposition of the stop, e.g., arrest, ticket, warning, or release;
7) location of stop; and
8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling; and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [~~(7)~~] the date of conviction; and

(9) [~~(8)~~] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

President of the Senate Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

_____

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

_____

Chief Clerk of the House

Approved:

_____

Date

_____

Governor

Modifications to the Original Law (H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION ____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle[~~traffic~~] stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, [~~or~~] Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle [~~traffic~~] stops in which a citation is issued and to arrests made as a result of [~~resulting from~~] those [~~traffic~~] stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual [~~person~~] detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit [~~to the governing body of each county or~~

~~municipality served by the agency~~] an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle [~~traffic~~] stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle [~~traffic~~] stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle [~~traffic~~] stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION ____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE [~~TRAFFIC AND PEDESTRIAN~~] STOPS. (a) In this article, "race[~~:~~

[~~(1) "Race~~] or ethnicity" has the meaning assigned by Article 2.132(a).

[~~(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.~~]

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance [~~regulating traffic or who stops a pedestrian for any suspected offense~~] shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any [~~each~~] person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop [~~traffic law or ordinance alleged to have been violated or the suspected offense~~];

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description [~~the type~~] of the contraband or evidence [~~discovered~~];

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle [~~existed and the facts supporting the existence of that probable cause~~];

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop[~~, including a description of the warning or a statement of the violation charged~~].

SECTION ____. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[~~, "pedestrian~~] stop" has the meaning assigned by Article 2.132(a) [~~means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest~~].

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each [~~local~~] law enforcement agency shall submit a report containing the incident-based data [~~information~~] compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency [~~in a manner approved by the agency~~].

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities [~~determine the prevalence of racial profiling by peace officers employed by the agency~~]; and

(B) examine the disposition of motor vehicle [~~traffic and pedestrian~~] stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [~~the~~] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle [~~traffic or pedestrian~~] stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION ____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle [~~traffic and pedestrian~~] stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle [~~traffic or pedestrian~~] stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION ____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of $1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of $1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION ____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION ____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . $20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . $40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . $25;
(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . $3;
(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . $50 [~~$5~~]; [~~and~~]
(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed $5; and
(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . $0.10.
(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.
SECTION ____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:
Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . $20;
(2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . $40;
(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . $25;
(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . $3;
(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . $50 [~~$5~~]; [~~and~~]
(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed $5; and
(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . $0.10.
(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.
SECTION ____. Section 102.101, Government Code, is amended to read as follows:
Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:
(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . $3;
(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . $3;
(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of $3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . $4;
(5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . $4;
(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed $5;
(7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed $30; [~~and~~]
(8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed $7; and
(9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . $0.10.
SECTION ____. Section 102.121, Government Code, is amended to read as follows:
Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:
(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . $3;
(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . $3;
(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of $3;
(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . $3;
(5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed $4; [~~and~~]
(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed $5; and
(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . $0.10.
SECTION ____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:
Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.
SECTION ____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:
(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:
(1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure; or

(3) a commission rule.

SECTION ____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) [~~of a particular descent, including Caucasian, African, Hispanic,~~] Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino [~~, Native American, or Middle Eastern descent~~].

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) [~~of a particular descent, including Caucasian, African, Hispanic,~~] Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino [~~, or Native American descent~~].

SECTION 3. This Act takes effect September 1, 2017.

_____ _____

President of the Senate Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

_____

Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

The Sandra Bland Act
(S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision

(1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B

or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065,
49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives thatserve two or more counties, each with a population of less than 100,000 [collaborative].

(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown

otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,] at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules
and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;

(15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;

(16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:

(A) common issues concerning jail administration;

(B) examples of successful strategies for maintaining compliance with state law and the rules,

standards, and procedures of the commission; and
(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:
(A) determine if a prisoner is pregnant; and
(B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:
(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and
(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:
(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and
(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:
(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;
(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and
(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read

as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and

(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;

(2) an attempted suicide;

(3) a death;

(4) a serious bodily injury, as that term is defined by Section 1.07, Penal Code;

(5) an assault;

(6) an escape;

(7) a sexual assault; and

(8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other

than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection (a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this

section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:
(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read

as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information

relating to:
(A) the race or ethnicity of the individual detained;
(B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]
(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
(D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
(E) the location of the stop; and
(F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
(A) the Texas Commission on Law Enforcement; and
(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
(A) the person's gender; and
(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search

and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship,

available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed $5,000 [of $1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal

Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and (B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

_____ _____ President of the Senate Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote: Yeas 31, Nays 0.

_____

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote: Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

_____

Date

_____

Governor

_____

Chief Clerk of the House

SHERMAN
POLICE DEPARTMENT
RACIAL PROFILING POLICY

	SHERMAN POLICE DEPARTMENT Policy and Procedure Manual		
	Policy 3.4	**Bias-Based Policing**	
	TPCA Best Practices Accreditation Standards 2.01		
	Effective Date: 01-01-02	Revision Date: 06-20-22	Pages - 7

I. POLICY STATEMENT

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, sexual orientation, national origin, ethnicity, age, or religion. Although it is true that all people carry biases, in law enforcement the failure to control our biases can lead to illegal arrests, searches, and detentions, thus thwarting the mission of our Department. Most importantly, actions guided by bias destroy the trust and respect essential for our mission to succeed. We live and work in communities very diverse in population. Respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions -- particularly stops of individuals for traffic and other violations, investigative detentions, arrests, searches, and seizures of persons or property -- shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and by statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions that support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, any other identifiable group, or based on racial or ethnic stereotypes. Officers shall base all of their actions on a reasonable suspicion that the person or an occupant of a vehicle committed an offense. Officers of the Sherman Police Department are strictly prohibited from initiating any action that constitutes racial or bias-based policing.

All departmental orders are informed and guided by this policy. Nothing in this policy limits non-enforcement contacts between officers and the public.

II. PURPOSE

The purpose of this order is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

III. DEFINITIONS

Most of the following terms appear in this policy statement. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

A. Bias: Prejudice or partiality based on preconceived ideas, a person's upbringing, culture, experience, or education.

B. Biased policing: Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

C. Ethnicity: A cluster of characteristics that may include race but also cultural characteristics or traits that are shared by a group with a common experience or history.

D. Gender: Unlike sex, a psychological classification based on cultural characteristics or traits.

E. Probable cause: Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.

F. Race: A category of people of a particular decent, including Caucasian, African, Hispanic, Asian, Middle Eastern, or Native American descent. As distinct from ethnicity, race refers only to physical characteristics sufficiently distinctive to group people under a classification.

G. Racial profiling: A law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

H. Reasonable suspicion: Articulable, objective facts that lead an experienced officer to suspect that a person has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be "objectively reasonable."

I. Sex: A biological classification, male or female, based on physical and genetic characteristics.

J. Stop: An investigative detention. The detention of a subject for a brief period of time, based on reasonable suspicion.

K. Motor Vehicle Stop: An occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

IV. PROCEDURES

A. General Responsibilities

1. Officers are prohibited from engaging in bias-based policing or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. (TBP 2.01)

2. Investigative detentions, motor vehicle stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative

detentions, motor vehicle stops, subject stops, arrests, nonconsensual searches, and property seizures. Except as provided in number 3 below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.

3. Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion. Except as provided above, race/ethnicity reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall be subjected to stops, seizures, or detentions only upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.

4. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
   a. As motor vehicle stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a motor vehicle stop may be crucial to a person's perception of fairness or discrimination.
   b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.

5. All personnel shall treat everyone with the same courtesy and respect that they would have others observe toward Department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
   a. Personnel shall facilitate an individual's access to other governmental services whenever possible, and shall actively provide referrals to other appropriate agencies.
   b. All personnel shall courteously accept, document, and forward to the Chief of Police any complaints made by an individual against the Department. Further, officers shall provide information on the complaint process and shall give copies of our "Citizen Complaint Process" brochure when appropriate.

6. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety.

7. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their Department identification number, name of the immediate supervisor, or any other reasonable information.

8. All personnel are accountable for their actions. Personnel shall justify their actions when required.

B. Supervisory Responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.

2. Supervisors shall use the disciplinary mechanisms of the Department to ensure compliance with this order and the constitutional requirements of law enforcement.

3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.

4. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to personnel. Lack of control over bias also exposes the Department to liability consequences.

5. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.

6. Supervisors shall ensure that all enforcement actions are duly documented per Department policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.

7. Supervisors shall facilitate the filing of any complaints about law enforcement service.

C. Disciplinary Consequences

Actions prohibited by this order shall be cause for corrective/disciplinary action, up to and including termination.

D. Training (TBP 2.01)

Officers shall be responsible for completing all training required by the Department and by state law regarding bias-based profiling.

V. PUBLIC INFORMATION

The Department will inform the public of its policy against bias-based policing and the process by which a citizen may make a complaint against a Department employee. Initially, the public will be informed through the news media, with additional efforts to educate the public about the policy and the complaint process made during presentations to civic groups, and by including information on the Sherman Police Department website and in the Department lobby.

VI. OVERSIGHT AND REVIEW

Motor vehicle stops will be accompanied by consistent, ongoing supervisory oversight to ensure that officers do not go beyond the parameters of reasonableness in conducting such activities.

A. Supervisors shall ensure compliance with this policy and other applicable directives.

B. The patrol shift supervisors shall review a minimum of one motor vehicle stop for each of their subordinates each month.

C. The patrol shift supervisors shall report the information obtained from their review of officer motor vehicle stops to their Patrol Commander each calendar quarter. The report shall contain the following:

1. The name of the officer under review,

2. The number of motor vehicle stops that were reviewed,

3. The date and time of each motor vehicle stop reviewed, and

4. A written assessment of each motor vehicle stop reviewed, which shall include:
   a. The race/ethnicity of the citizen contacted;
   b. Whether a search was conducted;
   c. If a search was conducted, whether consent was given by the citizen;
   d. If a search was conducted, whether or not contraband was found;
   e. The final disposition of the citizen contact by the officer;
   f. Whether officer's actions were in accordance with Department policy and procedures; and
   g. A summary of the feedback provided to the officer.

5. The Patrol Commanders will review these reports to ensure compliance and will submit a quarterly report to the Patrol Bureau Chief.

6. The quarterly reports will be maintained in PowerDMS, the Department's document management system.

D. Appropriate corrective/disciplinary action will be taken against any member who, after investigation, is shown to have engaged in bias-based policing in violation of this policy.

VII. DATA COLLECTION

A. Pursuant to state law, officers are required to collect information relating to all motor vehicle stops by documenting the following required data:

1. The race or ethnicity of the individual detained;
2. Whether or not a search was conducted;
3. Whether or not the search was conducted by consent, and
4. Whether the officer knew the race or ethnicity of the individual detained before detaining that individual.

B. To ensure that data related to biased/racial profiling is collected in accordance with state law and Department policy, the following procedures shall be followed;

1. For all motor vehicle stops, the officer who initiated the stop shall issue the driver a citation or warning citation for the violation using the Department-issued electronic ticket writers.

2. When completing citations or warning citations, officers are required to complete all pertinent information fields with special attention placed upon fields related to biased/racial profiling data.

3. When an arrest is made, the officer will enter the citation, warning, or FI number into the notes section of the RMS Arrest module in conjunction with other required information. The officer will also note that the arrest is based on a motor vehicle stop.

4. The on-duty supervisor is responsible for verifying that arrests resulting from motor vehicle stops are properly documented.

5. The Department-issued electronic ticket writers should not be used to document FI contacts that are not related to motor vehicle stops as this will affect the accuracy of the data.

VIII. MOTOR VEHICLE RECORDING (MVR) EQUIPMENT

A. All marked patrol vehicles are equipped with video cameras. The video and audio shall be activated before all motor vehicle stops, to record the actions of the vehicle and/or behavior of the person, and shall remain activated until the person is released (refer to Policy 3.16, VII. for additional activation requirements).

B. Patrol officers are responsible for ensuring that the mobile video recording equipment is fully operational throughout their tour of duty. Any equipment failures or repairs needed should be immediately reported to the on-duty shift supervisor.

C. Audio/Visual recordings documenting motor vehicle stops will be maintained for a minimum period of ninety (90) days before being purged. If a complaint is filed alleging bias-based policing, the audio and video record of the stop will be retained until the final disposition of the complaint.

IX. REPORTING

A. The Department will contract with a vendor who:

1. Will prepare an annual report for the calendar year consisting of a comparative analysis of the collected motor vehicle contact data;

2. Will conduct a comparative quarterly data audit throughout the calendar year;

3. The annual report will be submitted to the Chief of Police. At a minimum the report must include:
   a. A determination of the prevalence of bias-based policing.
   b. An examination of the disposition of motor vehicle stops, including searches resulting from the stops.
   c. Information relating to each complaint within the Department alleging bias-based policing.
   d. The report may not include identifying information about an officer or about the person stopped or arrested.

B. The Chief of Police shall submit the vendor's annual report to the City Manager who makes the report available to the City Council.

C. The Chief of Police shall submit an annual report of the information collected to the Texas Commission on Law Enforcement (TCOLE).

X. COMPLAINT PROCESS

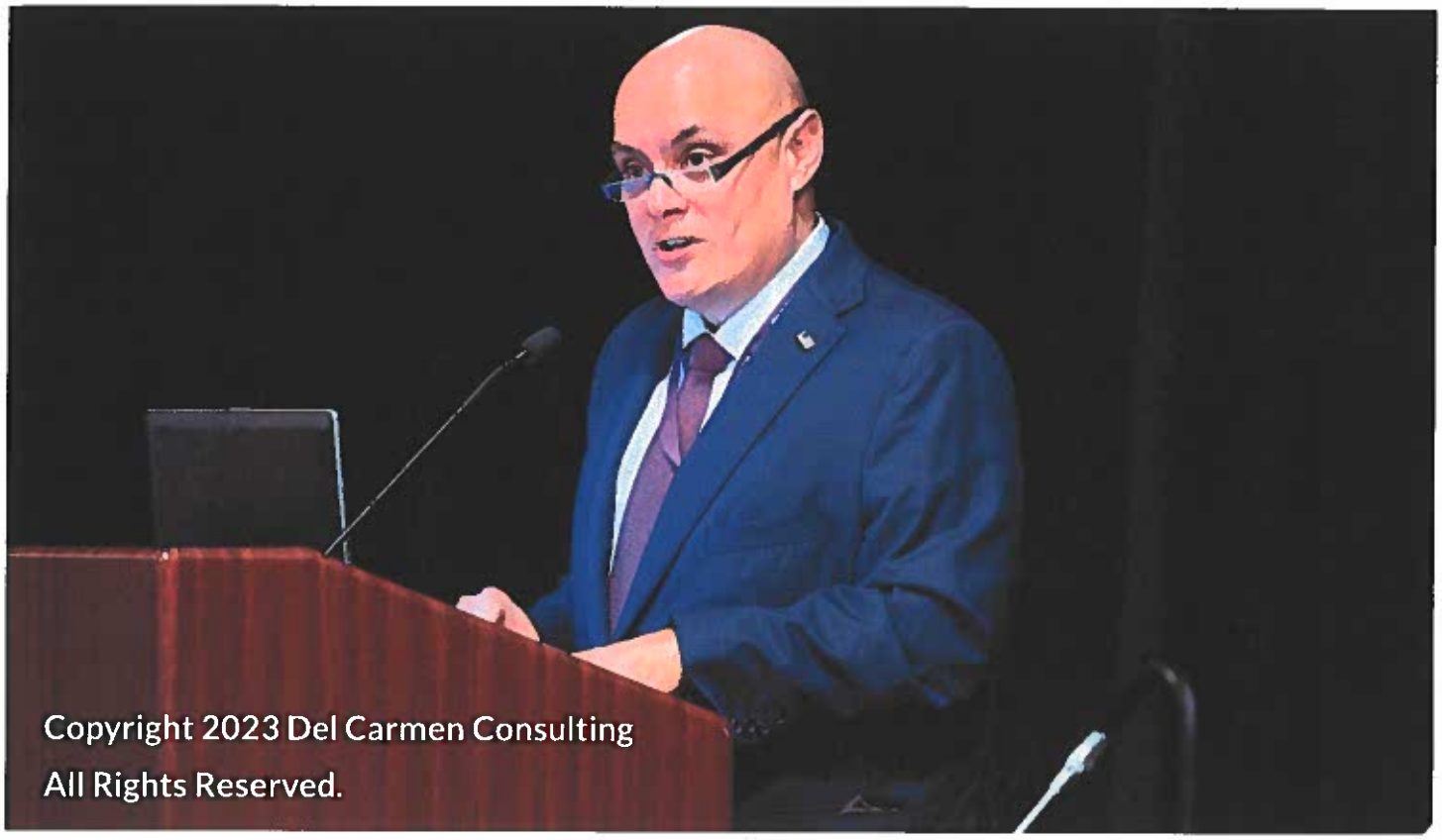
A. Any individual who believes that a peace officer employed by this Department has engaged in conduct that may constitute racial or bias-based policing with respect to the individual, may file a

complaint with any supervisor of the Department.

B. Any officer who is the subject of an investigation, based on a complaint alleging that the officer engaged in bias-based policing, who submits a written request for an audio or video copy of the recording of the occurrence will be promptly provided a copy of that recording(s). The written request shall be in a memorandum and submitted to the Investigator conducting the investigation.

C. The complaint will be received, processed, investigated, and adjudicated in accordance with applicable Sherman Police Department policies and procedures

Jason Jeffcoat, Chief of Police



For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting©
817.681.7840
www.texasracialprofiling.com
www.delcarmenconsulting.com

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Racial Profiling Report | Full report

Agency Name: Sherman Police Department
Reporting Date: 01/23/2023
TCOLE Agency Number: 181208
Chief Administrator: Terry J. Jeffcoat
Agency Contact Information: Sherman Police Department
Phone: 903-892-7290
Email: jasonj@cityofsherman.com
Mailing Address: 317 S. Travis ST. Sherman, TX 75090-7146

This Agency filed a full report

Chief Jason Jeffcoat has adopted a detailed written policy on racial profiling. Our policy:

1) clearly defines acts constituting racial profiling;

2) strictly prohibits peace officers employed by the Sherman Police Department from engaging in racial profiling;

3) implements a process by which an individual may file a complaint with the Sherman Police Department if the individual believes that a peace officer employed by the Sherman Police Department has engaged in racial profiling with respect to the individual;

4) provides public education relating to the agency's complaint process;

5) requires appropriate corrective action to be taken against a peace officer employed by the Sherman Police Department who, after an investigation, is shown to have engaged in racial profiling in violation of the Sherman Police Department policy;

6) requires collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

   a. the race or ethnicity of the individual detained;

   b. whether a search was conducted and, if so, whether the individual detained consented to the search;

c. whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;

d. whether the peace officer used physical force that resulted in bodily injury during the stop;

e. the location of the stop;

f. the reason for the stop.

7) requires the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

a. the Commission on Law Enforcement; and

b. the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

The Sherman Police Department has satisfied the statutory data audit requirements as prescribed in Article 2.133(c), Code of Criminal Procedure during the reporting period.

Executed by: Chief Jason Jeffcoat

Chief Administrator

Date: 2/13/23

Total stops: 8041

Street address or approximate location of the stop

City street: 6341

US highway: 1399

State highway: 292

County road: 5

Private property or other: 4

Was race or ethnicity known prior to stop?

Yes: 183

No: 7858

Race or ethnicity

Alaska Native/American Indian: 63

Asian/Pacific Islander: 99

Black: 1379

White: 4843

Hispanic/Latino: 1657

Gender

Female:

Total 3243

Alaska Native/American Indian 16 Asian/Pacific Islander 34 Black 550

White 2131 Hispanic/Latino 512

Male:

Total 4798

Alaska Native/American Indian 47 Asian/Pacific Islander 65 Black 829

White 2712 Hispanic/Latino 1145

Reason for stop?

Violation of law:

Total 234

Alaska Native/American Indian 0 Asian/Pacific Islander 3 Black 43

White 140 Hispanic/Latino 48

Pre existing knowledge: 49

Total 49

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 7

White 35 Hispanic/Latino 7

Moving traffic violation: 5988

Total 5988

Alaska Native/American Indian 50 Asian/Pacific Islander 78 Black 1015

White 3584 Hispanic/Latino 1261

Vehicle traffic violation: 1770

Total 1770

Alaska Native/American Indian 13 Asian/Pacific Islander 18 Black 314

White 1084 Hispanic/Latino 341

Was a search conducted?

Yes:

Total 527

Alaska Native/American Indian 1 Asian/Pacific Islander 2 Black 163

White 288 Hispanic/Latino 73

No:

Total 7514

Alaska Native/American Indian 62 Asian/Pacific Islander 97 Black 1216

White 4555 Hispanic/Latino 1584

Reason for Search?

Consent:

Total 195

Alaska Native/American Indian 1 Asian/Pacific Islander 1 Black 50

White 119 Hispanic/Latino 24

Contraband:

Total 4

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 1

White 3 Hispanic/Latino 0

Probable cause:

Total 296

Alaska Native/American Indian 0 Asian/Pacific Islander 1 Black 106

White 146 Hispanic/Latino 43

Inventory:

Total 13

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 5

White 6 Hispanic/Latino 2

Incident to arrest:

Total 19

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 1

White 14 Hispanic/Latino 4

Was Contraband discovered?

Yes:

Total 315

Did the finding result in arrest (total should equal previous column)?

Alaska Native/American Indian 1 Yes 0 No 1

Asian/Pacific Islander 1 Yes 0 No 1

Black 104 Yes 15 No 89

White 165 Yes 9 No 156

Hispanic/Latino 44 Yes 4 No 40

No:

Total 212

Alaska Native/American Indian 0 Asian/Pacific Islander 1 Black 59

White 123 Hispanic/Latino 29

Description of contraband

Drugs:

Total 261

Alaska Native/American Indian 0 Asian/Pacific Islander 1 Black 90

White 136 Hispanic/Latino 34

Currency:

Total 12

Alaska Native/American Indian ____ Asian/Pacific Islander ____ Black ____

White 6 Hispanic/Latino 2

Weapons:
Total 8

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 5

White 3 Hispanic/Latino 0

Alcohol:
Total 30

Alaska Native/American Indian 1 Asian/Pacific Islander 0 Black 5

White 13 Hispanic/Latino 11

Stolen property:
Total 3

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 1

White 1 Hispanic/Latino 1

Other:
Total 46

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 15

White 27 Hispanic/Latino 4

Result of the stop

Verbal warning:
Total 0

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 0

White 0 Hispanic/Latino 0

Written warning:
Total 5637

Alaska Native/American Indian 49 Asian/Pacific Islander 75 Black 1009

White 3509 Hispanic/Latino 995

Citation:
Total 2331

Alaska Native/American Indian 14 Asian/Pacific Islander 23 Black 347

White 1302 Hispanic/Latino 645

Written warning and arrest:

Total 45

Alaska Native/American Indian 0 Asian/Pacific Islander 1 Black 14

White 19 Hispanic/Latino 11

Citation and arrest:

Total 28

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 9

White 13 Hispanic/Latino 6

Arrest:

Total 0

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 0

White 0 Hispanic/Latino 0

Arrest based on

Violation of Penal Code:

Total 42

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 14

White 18 Hispanic/Latino 10

Violation of Traffic Law:

Total 6

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 2

White 2 Hispanic/Latino 2

Violation of City Ordinance:

Total 0

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 0

White 0 Hispanic/Latino 0

Outstanding Warrant:

Total 25

Alaska Native/American Indian 0 Asian/Pacific Islander 1 Black 7

White 12 Hispanic/Latino 5

Was physical force resulting in bodily injury used during stop

Yes:

Total 7

Alaska Native/American Indian 0 Asian/Pacific Islander 0 Black 4

White 1 Hispanic/Latino 2

No:

Total 8034

Alaska Native/American Indian 63 Asian/Pacific Islander 99 Black 1375

White 4842 Hispanic/Latino 1655

Number of complaints of racial profiling

Total 0

Resulted in disciplinary action 0

Did not result in disciplinary action 0

Submitted electronically to the

The Texas Commission on Law Enforcement

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting

Meeting Date: 02/20/2023

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2023 Council Calendar

2023
Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
11	12	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

March						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April						
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May						
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

July						
Su	Mo	Tu	We	Th	Fr	Sa
						1
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

August						
Su	Mo	Tu	We	Th	Fr	Sa
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
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10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October						
Su	Mo	Tu	We	Th	Fr	Sa
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

CALLED MEETINGS	