

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, FEBRUARY 19, 2018
5:00 P.M.**

- A. 1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A. 2. PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER WILLIE STEELE**
- A. 3. INVOCATION BY COUNCIL MEMBER WILLIE STEELE**
- A. 4. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 5, 2018**

Public Hearing

- B. 1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6099**
Designating a Certain Area as Industrial Reinvestment Zone, Number 022018-01, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance
- B. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6100**
Approving a Tariff Authorizing an Annual Rate Review Mechanism ("RRM") as a Substitution for the Annual Interim Rate Adjustment Process Defined by Section 104.301 of the Texas Utilities Code, and as Negotiated Between Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") and the Steering Committee of Cities Served by Atmos; Requiring the Company to Reimburse Cities' Reasonable Ratemaking Expenses; Declaring an Effective Date; Requiring Delivery of this Ordinance to the Company and Legal Counsel for the Steering Committee

Close Public Hearing and Consider Adoption of Ordinances

- B. 3. ADOPTION OF ORDINANCES**
Consider Adoption of Ordinance Numbers: 6099 and 6100
- B. 4. CONSENT AGENDA**
Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Resolutions

- C. 1. RESOLUTION NO. 6341**
Authorizing Execution of an Early Completion Bonus Addendum to the Awarded Contractor Construction Manager-at-Risk (CMAR) for the Construction of Fire Station No. 4

- C. 2. **RESOLUTION NO. 6342**
Authorizing Execution of a Contract for Professional Engineering Services with Halff Associates, Inc. to Design Improvements to the Lamberth Road Stream Crossings along the East Fork of Post Oak Creek and East Lamberth Branch
- C. 3. **RESOLUTION NO. 6343**
Authorizing Execution of a Development Agreement with Barton Capital, Ltd. for the Construction of Public Facilities in Sweetwater Springs Subdivision, a 17.112-acre Development off of Marshall Street and Hilltop Drive, along Dripping Springs Road in the City of Sherman
- C. 4. **RESOLUTION NO. 6344**
Authorizing Execution of a Development Agreement with Brookhaven Development Joint Venture for the Construction of Public Facilities in Brookstone Garden Homes Addition, a 4.085-acre Development off of F.M. 1417 (Heritage Parkway), Southeast of Quail Run Road in the City of Sherman
- C. 5. *** RESOLUTION NO. 6345**
Awarding a Bid to and Authorizing Execution of a Contract with SF Landscaping for Annual Right-of-Way Finish Mowing Services

Change Orders

- D. 1. **CHANGE ORDER NO. 2**
Approving the Greater Texoma Utility Authority's Intent to Execute Change Order No. 2; Sherman Industrial Park Replacement Sewer; Lynn Vessels, LLC; \$21,199.10 Increase

Other Business

- E. 1. **OTHER BUSINESS**
Setting the Public Hearing on the Proposed Agreement with Finisar Sherman RE HOLDCO, LLC, a Texas Limited Liability Company, for the Abatement of Ad Valorem Property Taxes for Improvements within Industrial Reinvestment Zone, Number 022028-01, City of Sherman, Texas
- E. 2. **OTHER BUSINESS**
Consider Calling a Special Meeting of the City Council for a Training Workshop to be Conducted by E. Allen Taylor, Jr., Founding Partner of Taylor, Olson, Adkins, Sralla and Elam, LLP on Wednesday, March 28, 2018
- E. 3. **OTHER BUSINESS**
Discuss and Consider Approval of the Budget Calendar for Fiscal Year (FY) 2018-2019
- E. 4. *** OTHER BUSINESS**
Approve the Quarterly Investment Reports for Quarter Ended December 31, 2017
- F. **CITIZEN REQUESTS**
- G. **MEDIA QUESTIONS**
- H. **COUNCIL COMMENTS**

Executive Session

I. 1. EXECUTIVE SESSION

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

- | | |
|-----------------|--|
| Section 551.071 | Consultation with City Attorney concerning Pending or Contemplated Litigation |
| Section 551.071 | Consult with the City Attorney on a Matter in which the Duty of the Attorney to the Governmental Body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Chapter |
| Section 551.074 | Personnel Matters:
(a) Consider the Qualifications, Appointment and Removal of Members to Boards and Commissions
(1) Planning and Zoning Commission (1) |
| Section 551.087 | Deliberation Regarding Economic Development Negotiations:
(a) Deliberate Regarding Commercial or Financial Information that the City has Received from a Business Prospect and Deliberate any Offers or Incentives to the Business Prospect |

The Council reconvenes into General Session

J. 1. OPEN MEETING

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

K. ADJOURNMENT

COUNCIL CALENDAR

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on February 15, 2018 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 15th day of February, 2018
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

David Plyler

Deputy Mayor

Pamela L. Howeth

Council Members

Willie Steele, Council-At-Large, PL #1

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

Shawn C. Teamann, Council – District #1

Josh Stevenson, Council – District #2

Pamela L. Howeth, Council – District #3

Daron Holland, Council – District #4



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

A.4.

Meeting Date: 02/19/2018

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 5, 2018

Attachments

February 5, 2018

Parks and Recreation Presentation

STATE OF TEXAS **§**

February 5, 2018

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 5, 2018.

**MEMBERS PRESENT: MAYOR DAVID PLYLER; DEPUTY MAYOR PAM HOWETH.
COUNCIL MEMBERS HOLLAND, SOFEY, STEELE,
STEVENSON, TEAMANN.**

MEMBERS ABSENT: NONE.

CALL TO ORDER

Mayor Plyler called the meeting to order at 5:00 p.m. The Pledge of Allegiance and Invocation were given by Deputy Mayor Pam Howeth.

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of January 15, 2018. Council Member Steele moved to approve the Minutes as presented; Second by Council Member Teamann. All present voted AYE.
MOTION CARRIED.

SPECIAL PRESENTATION

RECOGNIZING THE HEROIC, LIFE SAVING EFFORTS OF JAKE JONES

Danny Jones, Fire Chief, introduced Jake Jones, and recognized the 13 year old for his heroism and lifesaving efforts on October 31, 2017. After attending Fright Fest on the Municipal Grounds, Jake and his grandmother, Deborah Boyer were driving on U.S. Hwy 75 when she had a major medical emergency, becoming unconscious.

The vehicle, at highway speed, began drifting toward the barricade. Jake immediately took control of the steering wheel and put his leg over her leg to reach the brake bringing the vehicle to a safe stop on the shoulder of the roadway. He exited the vehicle and told other motorists that had stopped to call 911.

Sherman Fire Rescue arrived on scene and treated and transported Ms. Boyer to the hospital, where it was determined that she had experienced a major medical issue. She was in attendance at the meeting tonight.

Chief Jones said without the quick thinking of her grandson Jake, they feel this event would have had a much worse ending. Because of Jake's heroic actions, the Sherman Fire Rescue and the City of Sherman would like to present him with the "Life Saver Award" in the form of a fire helmet with a custom made shield and a Certificate of Appreciation.

CALL TO ORDER

APPROVE MINUTES

**SPECIAL
PRESENTATION
LIFESAVING – JAKE
JONES**

Chief Jones said Jake was only the second person to ever receive this award. He added that the members of Sherman Fire Rescue and the citizens of Sherman are very proud of him.

INTRODUCTION AND PUBLIC HEARING OF ORDINANCES

Mayor Plyler introduced Ordinance No. 6098 and called for a public hearing:

ORD 6098
SUP FOR
OIL/GAS WELL

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW THE DRILLING OF AN OIL/GAS WELL IN A C-2 (GENERAL COMMERCIAL) DISTRICT AT 1220 EAST PEYTON STREET, BEING 6.817 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 (JIREH PROPERTIES COMPANY AND SHERMAN H&P CORPORATION, OWNERS; CURRY VOGELSANG, REPRESENTATIVE; FRANK McCOLLOCH, BMW RESOURCES, LLC, REPRESENTATIVE; ROFF OPERATING COMPANY, LLC, DRILLING COMPANY; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00.

Scott Shadden, Director of Development Services, said the Specific Use Permit was approved by the Planning and Zoning Commission in February 2017, however the applicant was waiting for the Railroad Commission to issue their permit. The Planning and Zoning Commission recommended approval of the SUP, subject to the Staff Review Letter.

No citizens appeared before the City Council to discuss Ordinance No. 6098

The Public Hearing was closed.

ADOPTION OF ORDINANCES

Ordinance 6098

ORD 6098
SUP FOR
OIL/GAS WELL

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW THE DRILLING OF AN OIL/GAS WELL IN A C-2 (GENERAL COMMERCIAL) DISTRICT AT 1220 EAST PEYTON STREET, BEING 6.817 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 (JIREH PROPERTIES COMPANY AND SHERMAN H&P CORPORATION, OWNERS; CURRY VOGELSANG, REPRESENTATIVE; FRANK McCOLLOCH, BMW RESOURCES, LLC, REPRESENTATIVE; ROFF OPERATING COMPANY, LLC, DRILLING COMPANY; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00.

COUNCIL MINUTES – FEBRUARY 5, 2018

Council Member Steele asked if drilling would be limited to certain hours. He said sound barriers and light barriers are normally required.

Mr. Shadden said they would be required to comply with the items in the Staff Review Letter. He said the location of the drilling is on Texoma Parkway. Council Member Steele said there are some residences that are fairly close.

ACTION TAKEN.

Motion by Deputy Mayor Howeth to adopt Ordinance No. 6098, as presented. Second by Council Member Sofey.

VOTING AYE: Holland, Howeth, Sofey, Steele, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED

CONSENT AGENDA

The Council reviewed the Consent Agenda. Council Member Teamann moved to approve the Consent Agenda, as presented. Second by Council Member Holland. All present voted AYE.

CONSENT AGENDA

RESOLUTIONS

RESOLUTION NO. 6334 – CANCELING AN AWARD OF BID AND CONTRACT WITH AUSTIN RAYMOND CONSTRUCTION BASED ON AN INVITATION TO BID FOR CONSTRUCTION OF THE SHERMAN STREETSCAPES PHASE II PROJECT RE-BID
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CANCELING AN AWARD OF BID AND CONTRACT WITH AUSTIN RAYMOND CONSTRUCTION BASED ON AN INVITATION TO BID FOR CONSTRUCTION OF THE SHERMAN STREETSCAPES PHASE II PROJECT RE-BID.

**RES 6334
SHERMAN
STREETSCAPES
PHASE II RE-BID**

Clint Philpott, Director of Engineering, said this project was funded by a grant from the Texas Department of Transportation. The project was bid in August 2017 and two bids were received. One of the bids was incomplete and the other was deemed unqualified.

The project was re-bid in October 2017 and the City again received two bids. The lowest bid was deemed unqualified and the other bid was awarded to Austin Raymond Construction.

Mr. Philpott said because of the grant funding, the award of bid does require concurrence with TxDOT. They were sent the paperwork and did concur with the City. They, in turn sent the information to the Federal Highway Department, who said they would not award funding because the low bid was not accepted.

With this decision, the City's options are to award the bid to the unqualified contractor, to re-bid the project for a third time, to cancel the project, or for the City to pay for the project. The City has decided to re-bid the project again.

He said the next agenda item will be to reject the bids and re-bid the project, in the hope that there is a low bidder that is qualified.

Council Member Teamann asked what the City found unqualifying about the contractor that the Highway Department thought was okay. Mr. Philpott said after the City received the bid, they ask for a "Statement of Qualification," a part of which is references.

Multiple references were contacted and "they didn't have the best to say about the contractor." They contacted the contractor for additional references or for his version of the situation. He provided them with another reference, which was also bad.

Council Member Stevenson asked what could be done if the Federal Government doesn't think it is important to be a qualified bidder. Robby Hefton, City Manager, said most of the City's projects don't include Federal funding. TxDOT was okay with the way the City was proceeding.

He said there are very few projects that include Federal funding, so it shouldn't be a problem, however he always wanted to be sure the staff qualifies the bidders. References are very basic, and the City relies on the references provided by the contractor to check their work history.

He said the staff would rather re-bid the project, rather than select someone that doesn't give "clean references." Hopefully this time the bids will be from qualified bidders.

ACTION TAKEN.

Motion by Council Member Sofey to adopt Resolution No. 6334, as presented. Second by Deputy Mayor Howeth.

VOTING AYE: Holland, Howeth, Sofey, Steele, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

CONSIDER REJECTION OF BIDS FOR CONSTRUCTION OF THE SHERMAN STREETScape PHASE II PROJECT

Mr. Hefton said Resolution 6334 canceled the contract for Austin Raymond Construction, and this item rejects the bids.

**REJECTION OF BIDS
SHERMAN
STREETScape
PHASE II PROJECT**

ACTION TAKEN.

Motion by Council Member Sofey to reject the bids for construction of the Sherman Streetscape Phase II Project, as presented. Second by Council Member Teamann.

VOTING AYE: Holland, Howeth, Sofey, Steele, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

**RESOLUTION NO. 6335 – AUTHORIZING THE PURCHASE OF
PLAYGROUND EQUIPMENT FOR THE PARKS AND
RECREATION DEPARTMENT FROM MIRACLE RECREATION
THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING
COOPERATIVE (BUYBOARD)**

**RES 6335
PLAYGROUND
EQUIPMENT**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF
PLAYGROUND EQUIPMENT FOR THE PARKS AND
RECREATION DEPARTMENT FROM MIRACLE RECREATION
THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING
COOPERATIVE (BUYBOARD).**

Theresa Hutchinson, Parks and Recreation Manager, said two playgrounds would be replaced, at Martin Luther King, Jr. Park and Rex Cruse Park.

Council Member Steele said the bid indicated that installation was not included, but the proposal says the Council is also approving installation. Ms. Hutchinson said the bid does include installation.

Council Member Teamann asked if the staff is still making an effort to use local companies, before using BuyBoard. Mr. Hefton said local companies are used to the extent possible. This bid includes two components, the equipment and the installation. He verified that, on occasion, the City does do some of their own installation. However, the equipment is fairly specialized. He said they were not aware of anyone in Sherman that provided this type of equipment.

BuyBoard is a government cooperative that the City is able to use and comply with the State bidding laws. The cooperative bids these items out on a statewide level and member cities can take advantage of their bidding process to obtain economies of scale in the costs.

He added that a lot of the equipment that the City buys is purchased through BuyBoard, the Houston-Galveston Area Council, or other purchasing cooperatives. Sometimes there is a local vendor that is able to bid the purchases, and the City does have the ability to give a local preference if the bidder is within 5% of the lowest bid.

Council Member Teamann said there was a vendor in Howe that could provide this specialized type of equipment. Mr. Hefton said, by law, the preference for local bidders can only be used for vendors within the City of Sherman, not for surrounding cities.

Deputy Mayor Howeth verified that wood fiber would be used for the safety surface at the parks.

Ms. Hutchinson said the City is using the Howe vendor for Hawn Park.

ACTION TAKEN.

Motion by Council Member Steele to adopt Resolution No. 6335, as presented. Second by Council Member Stevenson.

VOTING AYE: Holland, Howeth, Sofey, Steele, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6336 – AUTHORIZING THE PURCHASE OF A NEW 2018 WILKENS STEEL FRONT LOAD EJECTOR TRANSFER TRAILER FOR THE SOLID WASTE DEPARTMENT FROM WILKENS INDUSTRIES, INC. THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD)

RES 6336
SOLID WASTE
EQUIPMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2018 WILKENS STEEL FRONT LOAD EJECTOR TRANSFER TRAILER FOR THE SOLID WASTE DEPARTMENT FROM WILKENS INDUSTRIES, INC. THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD).
CONSENT AGENDA.

RESOLUTION NO. 6337 – AWARDING BIDS TO AND AUTHORIZING EXECUTION OF CONTRACTS WITH MULTIPLE VENDORS FOR AN ANNUAL SUPPLY OF CHEMICALS FOR THE SHERMAN WATER TREATMENT PLANT

RES 6337
ANNUAL SUPPLY
OF CHEMICALS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING BIDS TO AND AUTHORIZING EXECUTION OF CONTRACTS WITH MULTIPLE VENDORS FOR AN ANNUAL SUPPLY OF CHEMICALS FOR THE SHERMAN WATER TREATMENT PLANT.
CONSENT AGENDA.

RESOLUTION NO. 6338 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH ALAN UPTERGROVE COMPANY, INC. FOR THE SHERMAN WASTEWATER TREATMENT PLANT SLUDGE THICKENER EQUIPMENT REPLACEMENT

RES 6338
WWTP SLUDGE
THICKENER EQUIPT
REPLACEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH ALAN UPTERGROVE COMPANY, INC. FOR THE SHERMAN WASTEWATER TREATMENT PLANT SLUDGE THICKENER EQUIPMENT REPLACEMENT.
CONSENT AGENDA.

RESOLUTION NO. 6339 – AUTHORIZING EXECUTION OF AN ENCROACHMENT EASEMENT TO TOBAR'S PROPERTIES GENERAL CONSTRUCTION FOR THE INSTALLATION OF A WATER LINE WITHIN THE PUBLIC RIGHT-OF-WAY ALONG VERNON HOLLAND MEMORIAL DRIVE AKA KERR STREET TO EAST STREET TO PROVIDE WATER SERVICES FOR 416 VERNON HOLLAND MEMORIAL DRIVE IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 IN THE CITY OF SHERMAN

RES 6339
ENCROACHMENT
EASEMENT FOR
WATER LINE
(VERNON HOLLAND
MEMORIAL DR)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT EASEMENT TO TOBAR'S PROPERTIES GENERAL CONSTRUCTION FOR THE INSTALLATION OF A WATER LINE WITHIN THE PUBLIC RIGHT-OF-WAY ALONG VERNON HOLLAND MEMORIAL DRIVE AKA KERR STREET TO EAST STREET TO PROVIDE WATER SERVICES FOR 416 VERNON HOLLAND MEMORIAL DRIVE IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 IN THE CITY OF SHERMAN.
CONSENT AGENDA.

RESOLUTION NO. 6340 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH TOBAR PROPERTIES, LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 416 VERNON HOLLAND MEMORIAL DRIVE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH TOBAR PROPERTIES, LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 416 VERNON HOLLAND MEMORIAL DRIVE.
CONSENT AGENDA.

RES 6340
AD VALOREM TAX
ABATEMENT
(416 VERNON
HOLLAND MEMORIAL
DR)

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

The City Council approved the request to advertise for the annual purchase of water meters for the City's Automated Meter Reading System. The bids will establish a price for the meters, ranging in size from 5/8" to 2". The meters must be compatible with the ITRON automated reading systems, MRVS and AMI.

CONSENT AGENDA.

REQ TO ADVERTISE
WATER METERS

OTHER BUSINESS

RECEIVE PRESENTATION FROM PARKS AND RECREATION
MANAGER THERESA HUTCHINSON ON THE PARKS MASTER
PLAN AND PLANNED PARK PROJECTS

Ms. Hutchinson briefed the City Council on planned park projects from the Parks Master Plan. This year there was \$5,125,000 budgeted for park improvements, with the majority of that designated for the Pecan Grove Athletic Complex.

PARKS MASTER PLAN
& PLANNED PROJECTS

The remainder of the projects included the Ely Park Playground, Fairview Park Sidewalks, the Lamar Street Greenspace, and additional park improvements from the Master Plan.

Ms. Hutchinson said most of the money is designated for the Pecan Grove Athletic Complex, which is a two phased project, with the first phase including four ballfields and a wide open greenspace that will include soccer fields. She said there is enough space at this location to handle all of the fields that are currently located at Fairview Park, as well as five or six smaller fields. This phase also includes parking and a walking trail.

The second phase includes the spray ground, the playground, lighting for the fields, and park amenities to the east. Mr. Hefton reiterated that the project is in two phases.

He said Terrence Steele, Director of Administration, has contacted the Texoma Health Foundation to see if they would be willing to participate in the costs for phase two of the project. He said they are interested, but details will be worked out later.

Council Member Steele asked if the ultimate goal is to not have any fields at Fairview Park. Ms. Hutchinson said she envisioned that the fields that were currently at Fairview Park, would become practice fields.

She said new equipment will be installed at Ely Park Playground, including two play structures and some swings. The park is located in south Sherman, on Rusk Street. It is surrounded by veteran markers and crepe myrtles. The equipment that was replaced was old and not as safe. A fall zone was also added.

The Fairview Park walking path, parallel to Taylor Street from The Splash to the western edge has been replaced with a wider, more level concrete sidewalk.

Ms. Hutchinson said the City purchased about 12 acres on West Lamar Street, where the old mobile homes were located. Some of the area has been cleared and plans are to add a natural surface walking trail. The site is located next to both Binkley Park, Center Street Park, and the Lamar Street Playground. In the future, the City might build a bridge across the creek and extend the biking trails.

After holding public input meetings, and meeting with the staff and the Parks and Recreation Board, a plan was devised for use of the \$500,000 funding. The plan addresses the top three items that were identified in community input sessions.

The first three items deal with walking trails, such as the Fairview Lighting Project, which will add eight new LED lights within the 735 foot span that is currently pretty dark. A bridge will also be replaced on Baker Park Lake Trail.

They are currently working on a Bike and Trail Master Plan and the first step will be to install Bicycle Boulevard Signs on Cleveland Street, Mulberry Street, and Brockett Street. Hopefully the plan will include current and future streets, as well as easements to increase the connectivity.

Mr. Hefton said the City has communicated their desire to the Texas Department of Transportation, as they plan their redo of U.S. Hwy 75, that they want to have connectivity from east to west, across Sherman. He said the design should include places where citizens can safely cross the Hwy 75 corridor.

The second project identified by the community input was the Skate Park. At the last Council Meeting, a contract was approved with SPA Skateparks to design a new skate park for Hawn Park.

The third item from the community input session was a Dog Park. The first specific community input session about the Dog Park will be held on February 10, 2018, in conjunction with the Mardi Paws event on the Municipal Grounds.

Additional money will be spent on signage to replace old signage at some of the parks, windscreen netting at some of the softball fields, and some play amenities that could be added to the parks.

Ms. Hutchinson said the Sherman Rotary Club approached the City about donating \$10,000 for a playground in a lower income area. In conjunction with this, new playground equipment was installed at Hawn Park. The Rotary Club has discussed donating another \$10,000 this next year for a similar project at another park. She recognized the cooperation between the two entities, adding that it was a great project.

With these projects, Ms. Hutchinson said the City has addressed 11 of the top 20 issues from the public input meetings. She added that these projects touch all four quadrants of the City.

Council Member Holland asked if Little League Football had addressed any issues with practice fields. Ms. Hutchinson said they are apparently not using any of the City's facilities. She said the greenspace at Pecan Grove Park could be used for practice fields and Center Street is also available. Texoma Christian School Football has used the Center Street fields.

She added that the open space at Pecan Grove Park is very flexible and could be used for anything from soccer to lacrosse, football, or rugby.

Deputy Mayor Howeth asked about picnic tables or benches for parents when they take their kids to the park. Ms. Hutchinson said those items are normally addressed through the regular budget.

Council Member Teamann asked about the plan for the property across the street from Pecan Grove West Park. She said the area is currently greenspace and is used for soccer practice. It is also used for overflow parking for events such as Lights on the Lake. She had not heard that it would be paved as a parking lot.

Mr. Hefton said the staff will take a look at on-street parking. As Pecan Grove West and Canyon Creek West develop and houses are added, parking on the north side might not be possible. However, it is a wide street, and he felt there should

be plenty of parking on one side of the street for game days. There are also 365 parking spots at the new ballfield.

RECEIVE PRESENTATION FROM POLICE CHIEF ZACHARY FLORES ON THE POLICE DEPARTMENT'S UPCOMING PROGRAMS

UPCOMING POLICE PROGRAMS

Zach Flores, Police Chief, briefed the City Council on the Police Department's upcoming programs. He said they plan to instigate a Chaplain Program on a volunteer basis. He introduced Nathan Cain, Pastor, Harvest Time Assembly of God Church, who will serve as the Lead Chaplin.

He explained that the police officers respond to many types of situations that the citizens aren't equipped to handle. The Chaplain Program will be used to help citizens deal with emotional types of situations.

He added that Pastor Cain will assist the Department in identifying and vetting other members of the community to serve as chaplains in order to foster diversity. Pastor Cain said it was an honor to serve the citizens alongside Chief Flores and the other police officers. Through the program, he hoped they would meet both the physical and spiritual needs of the citizens.

Mr. Hefton verified that the program should begin in the next couple of weeks. He said there needs to be a policy on when they will be called out. He said the Chaplains would be used to assist with death notifications.

Another program he briefed the Council on is an internal Police Academy which would help them get their newly hired police officers out on the street quicker. Currently new hires attend the Police Academy at either Grayson College or Collin County Community College and must adhere to their schedule.

It has been determined that Sherman meets the State requirements to have their own Police Academy, which would allow them to train the officers on their own schedule and get them on the street quicker. They would also have control over the frequency of the training, the curriculum, and the instructors, and could better control the quality of Sherman's police officers and how they will be presented to the public.

Chief Flores said they have also had good feedback from neighboring agencies, that don't meet the qualifications to have their own Academy. They would be able to send their officers to Sherman and help supplement the cost. The Fire Department could also send their officers to the Academy to train them for investigations.

Deputy Mayor Howeth asked if the curriculum was already available or would it need to be developed. Chief Flores said the State mandates the minimum curriculum and there is no cost for them to provide it to the City.

He said, at the Academy now, the trainees don't learn the specific policies, procedures, and codes for Sherman. With an internal Academy, they will be able to consolidate the training, making it specific to Sherman's officers and reducing the time.

Deputy Mayor Howeth asked if the City would need to hire instructors or would use someone in-house. Chief Flores said, many times, Sherman officers leave work and go teach at the Academy. He added that if it wasn't financially beneficial to hold an Academy, Sherman could still send their officers to another Academy. They plan to maintain a good working relationship with them.

Council Member Teamann said there seemed to be a substantial cost savings, or at least the City would breakeven, but would have more control in offering the in-house Academy.

Mr. Hefton said there would be savings in the "hard dollar" costs by not having to pay the Academy. But Sherman also pays the newly hired officers while they are attending the Academy, and if that timeframe can be shortened, it would benefit the City and put trained officers on the street more quickly.

He recognized the staff for thinking about this in-house program, but said there may need to be "tweaks" as it is developed. Chief Flores said neighboring agencies are excited about the option that the Academy will provide for their training too. Sherman could also receive money from other agencies to provide their training.

Council Member Teamann confirmed that there is space at the Police Department to house the Academy. Chief Flores said they are also working with other governmental entities to use their facilities too, such as a driving facility.

CONSIDER REQUEST OF SHERMAN DOWNTOWN NOW (FORMERLY DOWNTOWN SHERMAN PRESERVATION & REVITALIZATION) TO TEMPORARILY CLOSE CERTAIN STREETS FOR "CRAFT THE NIGHT AWAY" ON SATURDAY, APRIL 7, 2018

**CLOSE STREETS
"CRAFT THE
NIGHT AWAY"**

The City Council approved the request of Sherman Downtown NOW to temporarily close certain streets for "Craft the Night Away," which will be held on April 7, 2018.

They will be closing Crockett and Travis Streets, between Lamar and Houston Streets, from 11:00 a.m. until 10:30 p.m. The event will include food trucks and/or vendors, a band, and other activities. They will also obtain the necessary permits from the Texas Alcoholic Beverage Commission for the sale of craft beer at the event.

The City will provide barricades, cones, and solid waste receptacles. Sherman Downtown NOW will make arrangements with the Police Department for the necessary

security officers. Emergency vehicle accessibility must be maintained through the closed streets at all times.
CONSENT AGENDA.

FINAL PLAT APPROVAL OF CHEN ADDITION LOCATED AT 1523 AND 1609 TEXOMA PARKWAY, BEING 1.572 ACRES IN THE J.B. McANAIK SURVEY, ABSTRACT NO. 763; SHOU-HUNG CHEN AND TAO-MIN CHEN, OWNERS; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYOR (1523 AND 1609 TEXOMA PARKWAY)

The City Council approved the Final Plat of Chen Addition, being 1.572 acres located at 1523 and 1609 Texoma Parkway. The property is zoned a C-2 (General Commercial) District. The owners would like to plat the property into three lots for future development.

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

APPROVE FINAL PLAT
CHEN ADDITION
(1523 & 1609
TEXOMA PKWY)

REPLAT APPROVAL OF GEO RAMBLER ADDITION, A REPLAT OF LOT 2, BLOCK 2, BROOKWOOD ADDITION AND ADJOINING FOUR TRACTS, BEING ALL OF LOT 2 AND PART OF LOT 10, BLOCK 2, BROOKWOOD ADDITION AND 2.186 ACRES IN THE J.B. McANAIK SURVEY, ABSTRACT NO. 763, FOR A TOTAL OF 2.402 ACRES; GARY AND KAREN WHITE, OWNERS; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (2706 NORTH WOODS STREET AND 606 WEST OXFORD DRIVE)

The City Council approved the Replat of the Geo Rambler Addition, a total of 2.402 acres located at 2706 North Woods and 606 West Oxford. The property is zoned an R-1 (One Family Residential) District. The owners would like to plat the property into two lots for residential development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA.

APPROVE REPLAT
GEO RAMBLER
ADDITION
(2706 N. WOODS &
606 W. OXFORD)

FINAL PLAT APPROVAL OF QUAIL RUN, PHASE ONE ADDITION, BEING 17.492 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625; 1417 LAND HOLDINGS LLC, OWNERS; 300 SHERMAN, LP, DEVELOPER; GREG EDWARDS ENGINEERING SERVICES, INC., CIVIL ENGINEER; AND PRESTON TRAIL LAND SURVEYING, LLC, SURVEYOR (4500-4600 BLOCKS OF QUAIL RUN ROAD AND 4600 BLOCK OF CORMORANT DRIVE)

The City Council approved the Final Plat of Quail Run, Phase One Addition, being 17.492 acres located in the 4500 to 4600 blocks of Quail Run Road and the 4600 block of Cormorant Drive. The property is zoned an R-1 (One Family Residential) District. The owners would like to plat the property into 76 lots for single family residential development.

APPROVE FINAL PLAT
QUAIL RUN – PHASE 1
ADDITION
(4500-4600 BLOCKS OF
QUAIL RUN & 4600
BLOCK OF
CORMORANT DR)

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

FINAL PLAT APPROVAL OF DRAKE HANTLA ADDITION LOCATED IN THE EXTRA TERRITORIAL JURISDICTION (ETJ) OF THE CITY OF SHERMAN, BEING 1.389 ACRES IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765; DRAKE HANTLA, OWNER; AND COX LAND SURVEYING, SURVEYOR (700 BLOCK OF FARMINGTON ROAD)

The City Council approved the Final Plat of Drake Hantla Addition, being 1.389 acres located in the 700 block of Farmington Road in the City's Extra Territorial Jurisdiction. 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.

CITIZENS REQUESTS

There were no citizens requests

MEDIA QUESTIONS

There were no media questions.

KEEP SHERMAN BEAUTIFUL COMMISSION (5)
ACTION TAKEN.

Motion by Council Member Stevenson to appoint Stephanie Waitt and Trace Rossi to the Keep Sherman Beautiful Commission, for a term from February 6, 2018 to January 1, 2020. Second by Council Member Steele.

VOTING AYE: Holland, Howeth, Sofey, Steele, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

COUNCIL COMMENTS

COFFEE WITH THE MAYOR

Council Member Teamann thanked Mayor Plyler and Ms. Hutchinson for presenting an update on the Parks and Recreation activities.

WORK AROUND CITY

Council Member Holland recognized the City for work on the new Fire Station and for the Parks and Recreation program.

ANNOUNCEMENTS

Mayor Plyler announced the following:

- Melida Ailshire will be hosting a Community Blood Drive on February 6, 2018, from 8:00 a.m. until 5:00 p.m., at the Municipal Building.
- The Sherman Main Street community will be hosting a Mardi Gras celebration on February 10, 2018. It will be held downtown.

APPROVE FINAL PLAT
DRAKE HANTLA
ADDITION
(700 BLOCK OF
FARMINGTON RD)

CITIZENS REQUESTS

MEDIA QUESTIONS

KEEP SHERMAN
BEAUTIFUL

COFFEE WITH
THE MAYOR

WORK AROUND
CITY

ANNOUNCEMENTS

COUNCIL MINUTES – FEBRUARY 5, 2018

- A Community Input Session about the proposed dog park, will be held in conjunction with the Mardi Paws event on February 10, 2018, on the Municipal Grounds.
- The Second Annual Sherman Celtic Festival will be held March 24, 2018.
- There was an article in the Dallas Morning News on February 4, 2018, about Sherman's recent success.

RESIDENTIAL BUILDING PERMITS

Council Member Sofey confirmed that there were 23 new building permits for January 2018. Mr. Hefton said January is usually the slowest month for building permits with eight or ten issued.

**RESIDENTIAL
BUILDING PERMITS**

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

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

EXECUTIVE SESSION

- | | |
|--------------------|--|
| SECTION 551.071 – | CONSULTATION WITH CITY ATTORNEY CONCERNING PENDING OR CONTEMPLATED LITIGATION |
| SECTION 551.071 -- | CONSULT WITH THE CITY ATTORNEY ON A MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE GOVERNMENTAL BODY UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THIS CHAPTER |
| SECTION 551.087 -- | DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS:
DELIBERATE REGARDING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT AND DELIBERATE ANY OFFERS OR INCENTIVES TO THE BUSINESS PROSPECT |

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:52 p.m.

COUNCIL MINUTES – FEBRUARY 5, 2018

On Motion duly made and carried, the Executive Session recessed at 7:00 p.m. and reconvened in Open Meeting.

OPEN MEETING

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

OPEN MEETING

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 7:01 p.m.

ADJOURNMENT

MAYOR

CITY CLERK



PARKS & RECREATION

FY 2018 Capital Improvement Program

Pecan Grove Athletic Complex	\$ 4,500,000
Ely Park Playground	\$ 50,000
Fairview Sidewalk	\$ 50,000
Lamar Street Greenspace	\$ 25,000
Additional Park Improvements from Master Plan	\$ 500,000
Total	\$ 5,125,000

PECAN GROVE ATHLETIC COMPLEX



Sherman
CLASSIC TOWN. BROAD HORIZON.

DeVaux
Saw
Sheffield
Inc.

Pecan Grove West Athletic Complex

MASTER PLAN

FEBRUARY 2018

0 60 120 180 feet
SCALE 1" = 60'



ELY PARK PLAYGROUND



FAIRVIEW WALKING PATH



LAMAR STREET GREEN SPACE



MASTER PLAN CITIZEN INPUT

Public Input Meetings

- | | |
|-----|------------------------------|
| 1. | Hike & Bike Trails (19) |
| 2. | Skate Park (14) |
| 3. | Dog Park (13) |
| 4. | Basketball Courts (7) |
| 5. | Tennis/Pickleball Courts (3) |
| 6. | Paved Bike Lanes (2) |
| 7. | Baseball Fields (2) |
| 8. | Football Fields (2) |
| 9. | Sports Complex (2) |
| 10. | Open Space/Nature (2) |

- | | |
|-----|---|
| 11. | Swimming Pool (2) |
| 12. | Additional Parks (1) |
| 13. | Soccer Fields (1) |
| 14. | Volleyball Courts (1) |
| 15. | Disc Golf (1)  |
| 16. | Recreation Center (1) |
| 17. | Pavilions (1) |
| 18. | Softball Fields (1) |
| 19. | Playgrounds (1) |
| 20. | Splash Pad (1) |

\$500K from Master Plan

Fairview Lighting Project	\$ 30,000
Baker Park Bridge	\$ 15,000
Bicycle Trail Plan & Signage	\$ 40,000
Skatepark	\$250,000
Dog Park	\$ 30,000
Rex Cruse Playground Upgrade	\$ 50,000
MLK Playground Upgrade	\$ 40,000
Additional Upgrades	\$ 45,000
Total	\$500,000

FAIRVIEW WALKING PATH

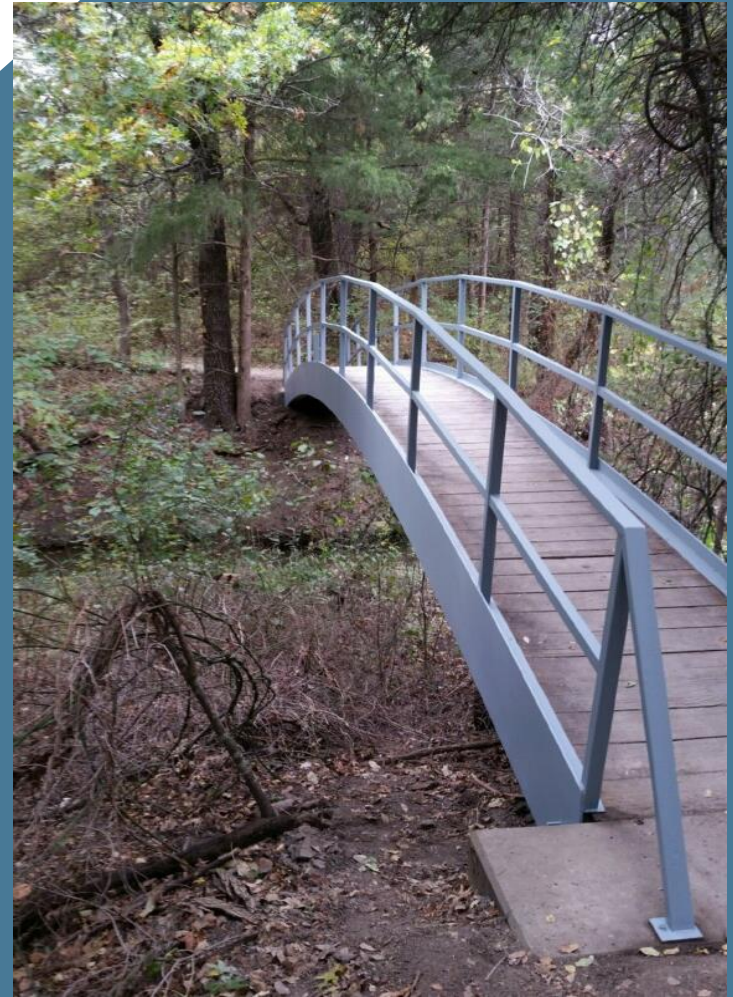


**ITEM #1 AT PUBLIC INPUT MEETINGS
HIKE & BIKE TRAILS**

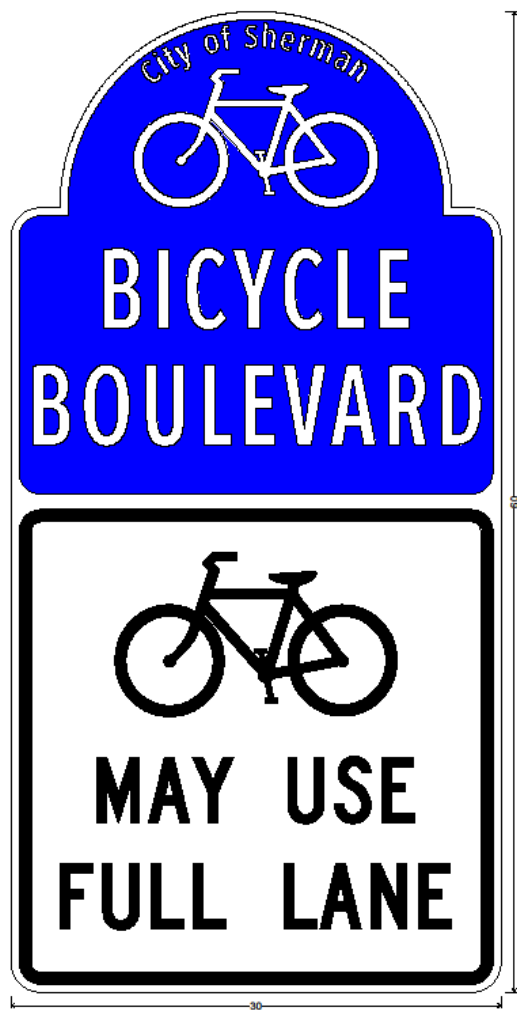
BAKER PARK BRIDGE REPLACEMENT



ITEM #1 AT PUBLIC INPUT MEETINGS
HIKE & BIKE TRAILS



BICYCLE TRAIL PLAN & SIGNAGE



166920 City of Sherman; Custom Combo-Sign 30" x 60"

Item #1 on Public Input Meetings

Plan for current and future streets and easements to increase connectivity

Bicycle Street Markings & Signage

HAWN SKATE PARK



ITEM #2 AT PUBLIC INPUT
MEETINGS
SKATEPARK

DOG PARK @ FAIRVIEW



ITEM #3 AT PUBLIC INPUT
MEETINGS
DOG PARK

PLAYGROUND IMPROVEMENTS



MLK Park
Rex Cruse Park



ADDITIONAL UPGRADES



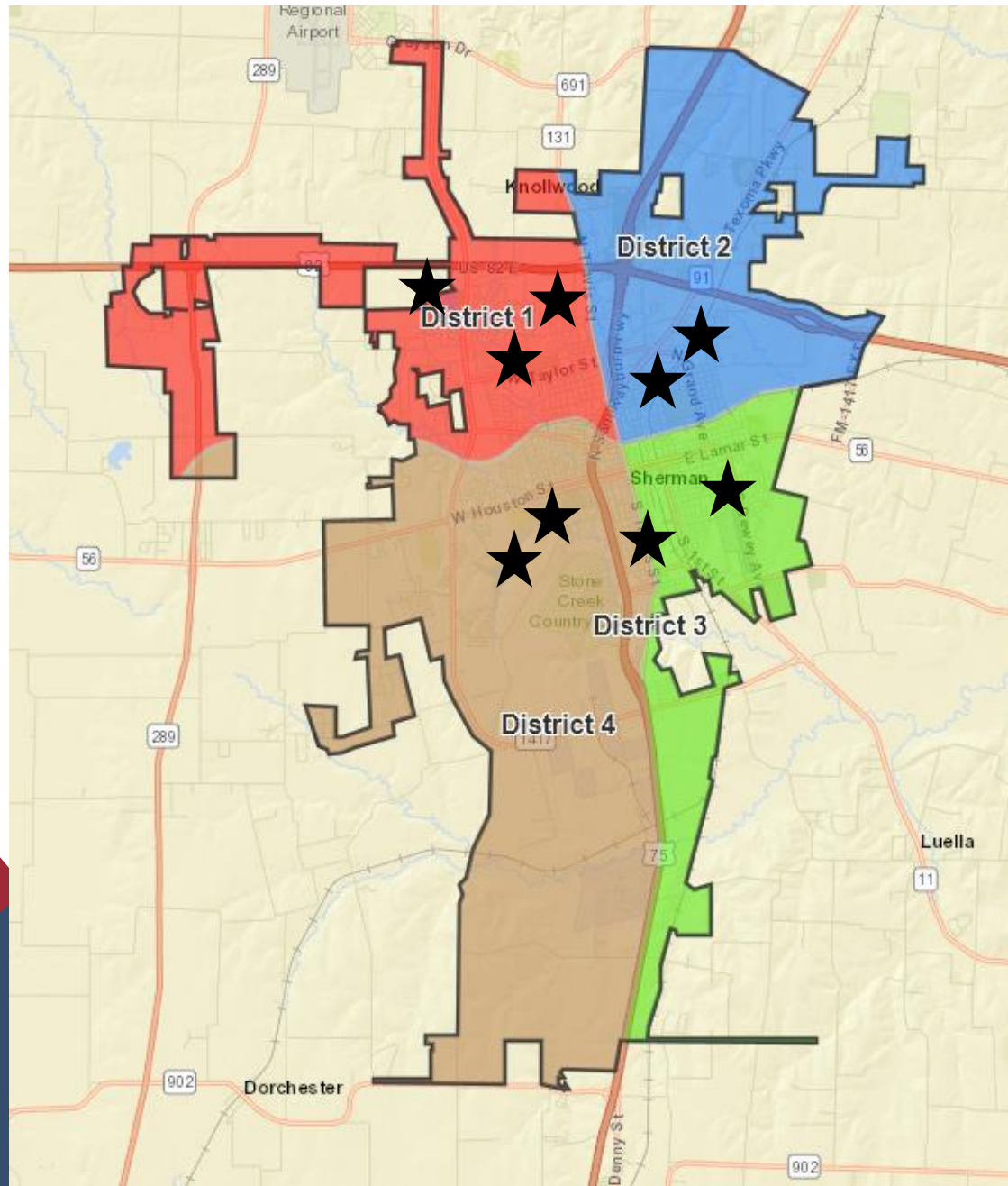
ROTARY PROJECT AT HAWN PARK



Public Input Meetings

1.	Hike & Bike Trails (19)	✓
2.	Skate Park (14)	✓
3.	Dog Park (13)	✓
4.	Basketball Courts (7)	
5.	Tennis/Pickleball Courts (3)	
6.	Paved Bike Lanes (2)	✓
7.	Baseball Fields (2)	✓
8.	Football Fields (2)	
9.	Sports Complex (2)	✓
10.	Open Space/Nature (2)	✓

11.	Swimming Pool (2)	
12.	Additional Parks (1)	
13.	Soccer Fields (1)	✓
14.	Volleyball Courts (1)	
15.	Disc Golf (1)	✓
16.	Recreation Center (1)	
17.	Pavilions (1)	
18.	Softball Fields (1)	✓
19.	Playgrounds (1)	✓
20.	Splash Pad (1)	





PARKS & RECREATION



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.1.

Meeting Date: 02/19/2018

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6099

Designating a Certain Area as Industrial Reinvestment Zone, Number 022018-01, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance

Issue:

The creation of a new industrial reinvestment zone in response to a tax abatement requested by Finisar Sherman RE HOLDCO, LLC (Finisar)

Background:

On Wednesday, January 17, 2018, the Tax Reinvestment Committees of the City of Sherman, the Sherman Independent School District, Grayson County, and Grayson College (the "Committee") met to consider a request from Finisar Sherman RE HOLDCO, LLC, a Texas Limited Liability Company, for a tax abatement involving a project to invest \$20 million to \$30 million in facility and land and an additional \$120 million in manufacturing equipment in Sherman. The taxable value of Finisar's current property is about \$12 million. The project began at the end of 2017 and is expected to be fully operational by the Fall of 2018 with approximately 600 highly paid employees, including management, engineering and executive level jobs, and highly-skilled and semi-skilled line and technical jobs.

The Committee voted to recommend an abatement and the creation of the Zone to the City Council and other taxing entities. The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. The attached ordinance is the first step in accomplishing the creation of a new commercial/industrial reinvestment zone, which would cover only Finisar's property. Prior to its adoption, a public hearing must be held to allow for interested parties to speak to the issue. The Tax Abatement Agreement will be addressed at the City Council's regular meeting on Monday, March 5, 2018, in the form of a resolution.

Origination:

Finisar Sherman RE HOLDCO, LLC, Applicant
Tax Reinvestment Committee

Financial Consideration:

There is no direct cost to creating Industrial Reinvestment Zone, Number 022018-01 and providing the medium for granting tax abatement agreements within the designated zone.

Staff Recommendation:

The staff recommends that the City Council introduce and hold the public hearing on the ordinance and consider its adoption.

Alternatives:

No alternatives are recommended.

Attachments

Ordinance No. 6099

ORDINANCE NO. 6099

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DESIGNATING A CERTAIN AREA AS INDUSTRIAL REINVESTMENT ZONE, NUMBER 022018-01, CITY OF SHERMAN, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF AGREEMENTS WITHIN THE ZONE, AND OTHER MATTERS RELATING THERETO; PROVIDING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE FOR THE COMMENCEMENT OF THE REINVESTMENT ZONE AND THIS ORDINANCE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

WHEREAS, a hearing before the City Council was set for 5:00 p.m. on the 19th day of February, 2018, such date being at least seven (7) days after the date of publication of the notice of such public hearing in a newspaper of general circulation in the City of Sherman; and

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

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

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

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

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

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

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

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

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

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

SECTION 3. That the City hereby creates a Reinvestment Zone over the area described by the description in Exhibit “A”, attached hereto and depicted in a drawing attached hereto as Exhibit “B”, and such Reinvestment Zone shall hereafter be identified as the Industrial Reinvestment Zone, Number 022018-01, City of Sherman, Texas (the “Zone”).

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

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

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

SECTION 7. That the contents of the notice of public hearing, which hearing was held before the City Council on the 19th day of February, 2018, and the publication of said notices, is hereby ratified, approved, and confirmed.

INTRODUCED on this the _____ day of _____, 2018.

ADOPTED on this the _____ day of _____, 2018.

EFFECTIVE DATE on this the _____ day of _____, 2018.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

EXHIBIT "A"
INDUSTRIAL REINVESTMENT ZONE, NUMBER 022018-01,
CITY OF SHERMAN, TEXAS
FIELD NOTES

As-Surveyed Legal Description

Being the Lot created by the final plat of MEMC southwest addition, an addition to the City of Sherman, Grayson County, Texas, according to the plat of record in Volume 11, Page 1, plat records, Grayson County, Texas, and being more fully described in exhibit "A" attached.

BEING a 76.763 acre tract of land situated in the City of Sherman, in the James A. Foster Survey, Abstract No. 418, the Robert Foster Survey, Abstract No. 420 and the Morton G. Fellers Survey, Abstract No. 427 of Grayson County, Texas and being part of the MEMC SOUTHWEST ADDITION, an addition to the City of Sherman, according to the plat thereof, recorded in Volume 11, page 1 of the Map & Plat Records of Grayson County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at 1/2 inch iron rod topped with a red plastic cap, stamped "RPLS 4701" (hereinafter referred to as "with cap"), found for the Northeast corner of and MEMC Southwest Addition, on the West right-of-way line of U.S. Highway 75 (variable width right-of-way at this point) and said point also being on the East line of that original called 470.340 acre tract of land described in a deed to Texas Instruments Incorporated; recorded in Volume 1036, Page 247 of the Deed Records of Grayson County, Texas (DRGCT):

THENCE: South 11 deg. 13 min. 59 sec. West, along the common line of said addition and highway, a distance of 1,017.15 feet Texas Department of Transportation (TXDOT) brass monument in concrete, found for the North corner of that certain called 1,506 acre tract of land described in a deed from MEMC Southwest, Inc. to the State of Texas, dated December 15, 2003 and recorded in Volume 3562, Page 651, DRGCT;

THENCE: Departing from the original East line of said MEMC Southwest Addition and along the West line of said 1,506 acre tract as follows:

South 22 deg. 32 min. 59 sec. West - 407.99 feet to a TXDOT monument found for corner;
South 11 deg. 13 min. 57 sec. West - 444.88 feet to a TXDOT monument found for corner;
South 50 deg. 56 min. 32 sec. West - 78.08 feet to a TXDOT monument found for corner;
South 11 deg. 15 min. 08 sec. West - 84.36 feet to a 1/2 inch iron rod, with cap, set for the Southwest corner of said 1,506 acre tract, on the South line of said MEMC Southwest Addition and same being the North right-of-way line of Shepherd Road as described to the City of Sherman by the above described plat recorded in Volume 11, page 1 of the Map & Plat Records of Grayson County, Texas;

THENCE: Along the common line of said MEMC Southwest Addition and said Shepherd Road as follows:

North 89 deg. 54 min. 01 sec. West - 384.25 feet to a 1/2 inch iron rod, with cap found for corner;
North 89 deg. 47 min. 22 sec. West - 741.16 feet to a 1/2 inch iron rod, with cap found for corner;
South 89 deg. 55 min. 15 sec. West - 308.42 feet to a 1/2 inch iron rod, with cap, found for the Southwest corner of said MEMC Southwest Addition and same being the East line of the above described Texas Instruments Incorporated original 470.340 acre tract;

THENCE: North 00 deg. 15 min. 45 sec. East, along the common line of said MEMC Southwest Addition and said Texas Instruments tract, a distance of 1,943.26 feet to a 1/2 inch iron rod, with cap, found for the Northwest corner of said MEMC Southwest Addition;

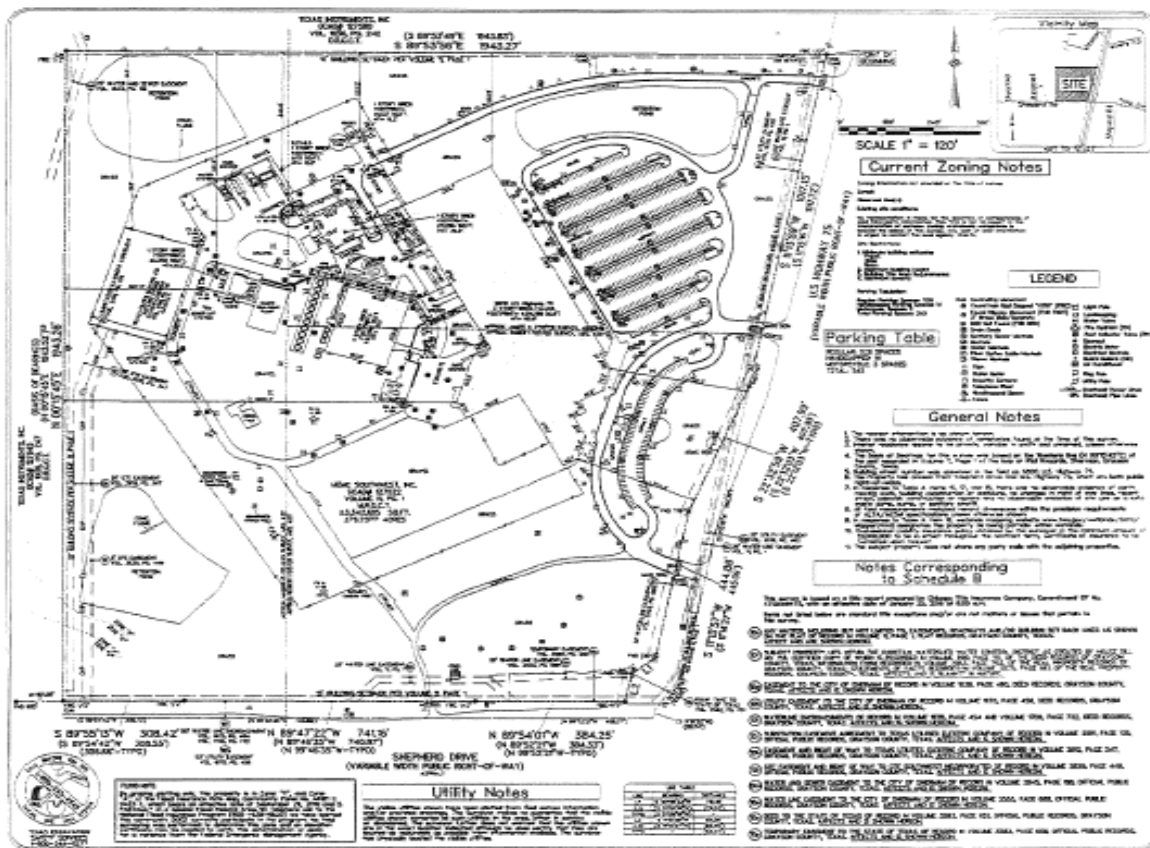
THENCE: South 89 deg. 53 min. 56 sec. East, continuing along the common line of said addition and said Texas Instrument tract, a distance of 1,943.27 feet to the POINT OF BEGINNING and containing 3,343,764 square feet 76.763 acres of land, more or less.

The above description describes the same property described in Title Commitment GF No. 4712009475, issued by Chicago Title Insurance Company with and effective date of January 25, 2016 at 8:00 a.m.

For Review Only. Not for Use in Final Record. Ordinance No. 6099 - Date 11-14-2018

Sheet 2 of 2

DRAWING



**INDUSTRIAL REINVESTMENT ZONE, NUMBER 022018-01,
CITY OF SHERMAN, TEXAS
VICINITY MAP**





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.2.

Meeting Date: 02/19/2018

Prepared By: Brandon Shelby, City Attorney

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6100

Approving a Tariff Authorizing an Annual Rate Review Mechanism ("RRM") as a Substitution for the Annual Interim Rate Adjustment Process Defined by Section 104.301 of the Texas Utilities Code, and as Negotiated Between Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") and the Steering Committee of Cities Served by Atmos; Requiring the Company to Reimburse Cities' Reasonable Ratemaking Expenses; Declaring an Effective Date; Requiring Delivery of this Ordinance to the Company and Legal Counsel for the Steering Committee

Issue:

Ratification of a Negotiated Settlement between Atmos Cities Steering Committee ("ACSC") and Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company")

Background:

The Rate Review Mechanism ("RRM") Tariff was approved by ACSC Cities as part of the settlement agreement to resolve the Atmos Mid-Tex 2007 system-wide rate filing at the Railroad Commission. The RRM allows cities to conduct a more comprehensive review of all of the information regarding changes to Atmos's revenues and expenses, as well as its invested capital. Since 2007, there have been several modifications to the original RRM Tariff; and the ordinance that resolved the Company's application under the RRM Tariff in 2017 also terminated the existing RRM Tariff and required a renegotiation of the terms of that tariff. Negotiations that have taken place over the past several months have resulted in a revised RRM Tariff that has been agreed to by the Company.

The proposed Ordinance reflects a negotiated settlement of Atmos's 2018 RRM filing, reducing the RRM Tariff's rate of return on equity from 10.50% to 9.8% and capturing the reduction in federal income tax rates from 35% to 21%, which should result in a rate reduction effective by mid-March, 2018.

The ACSC General Counsel recommends the City adopt the proposed ordinance approving the negotiated settlement agreement resolving the 2018 RRM filing and implementing the rate changes to take effect October 1, 2018.

Origination:

Geoffrey M. Gay, General Counsel to the ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C.

Financial Consideration:

Approval of this ordinance will result in rates that implement an increase that will be made known on April 1, 2018, when Atmos files its RRM request. ACSC's general counsel advises that they always negotiate an increase that is less than the original request, so the actual impact of the RRM filing will not be known until late August 2018. We should see monthly increases of no more than \$0.60 in the initial filing and \$0.70 in any subsequent year, for the average residential customer.

Staff Recommendation:

It is recommended that the City Council adopt the ordinance and approve the Negotiated Settlement with Atmos Mid-Tex.

Alternatives:

As the ACSC Negotiation Team has negotiated the most beneficial settlement, no other alternatives are recommended.

Attachments

Ordinance No. 6100

Attachment to Ordinance - RRM - Rate Review Mechanism

Exhibit A to RRM Tariff

Staff Report

ORDINANCE NO. 6100

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CITY OF SHERMAN, TEXAS, APPROVING A TARIFF AUTHORIZING AN ANNUAL RATE REVIEW MECHANISM (“RRM”) AS A SUBSTITUTION FOR THE ANNUAL INTERIM RATE ADJUSTMENT PROCESS DEFINED BY SECTION 104.301 OF THE TEXAS UTILITIES CODE, AND AS NEGOTIATED BETWEEN ATMOS ENERGY CORP., MID-TEX DIVISION (“ATMOS MID-TEX” OR “COMPANY”) AND THE STEERING COMMITTEE OF CITIES SERVED BY ATMOS; REQUIRING THE COMPANY TO REIMBURSE CITIES’ REASONABLE RATEMAKING EXPENSES; DECLARING AN EFFECTIVE DATE; REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND LEGAL COUNSEL FOR THE STEERING COMMITTEE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR SEVERABILITY; 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 (“City”) is a gas utility customer of Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City and similarly-situated Mid-Tex municipalities created the Steering Committee of Cities Served by Atmos to efficiently address all rate and service matters associated with delivery of natural gas; and

WHEREAS, the Steering Committee formed an Executive Committee to direct legal counsel and to recommend certain specific actions to all aligned Mid-Tex Cities through resolution or ordinance; and

WHEREAS, pursuant to the terms of a November 2007 agreement between the Steering Committee and Atmos Mid-Tex that settled the Company’s interim rate filing under Section 104.301 of the Texas Utilities Code (a “GRIP” rate case), the Steering Committee and the Company collaboratively developed a Rate Review Mechanism (“RRM”) Tariff, ultimately authorized by the City in 2008, that allows for an expedited rate review process as a substitute for the GRIP process; and

WHEREAS, the City has kept some form of an RRM Tariff in place until 2017 when it adopted an ordinance approving an RRM Tariff filing settlement and specifically calling for termination of the existing RRM Tariff and negotiation of a replacement RRM Tariff following the Railroad Commission’s decision in a then-pending Atmos Texas Pipeline case (GUD No. 10580); and

WHEREAS, the Steering Committee’s Executive Committee has recently approved a settlement with the Company on the attached RRM Tariff that contains certain notable

improvements, from a consumer perspective, over the prior RRM Tariff, including a reduced rate of return on equity, acceptance of certain expense adjustments made by the Railroad Commission in the Order in GUD No. 10580, and the addition of two months to the time for processing an RRM Tariff application; and

WHEREAS, the RRM Tariff contemplates reimbursement of Cities' reasonable expenses associated with RRM Tariff applications; and

WHEREAS, the Steering Committee's Executive Committee recommends that all Steering Committee member cities adopt this ordinance and the attached RRM Tariff; and

WHEREAS, the attached RRM Tariff is just, reasonable and in the public interest,

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

SECTION 1. That the findings set forth in this Ordinance are hereby in all things approved.

SECTION 2. That the attached RRM Tariff re-establishing a form of Rate Review Mechanism is just and reasonable and in the public interest, and is hereby adopted.

SECTION 3. That Atmos Mid-Tex shall reimburse the Cities' reasonable expenses associated with adoption of this Ordinance and the attached RRM Tariff and in processing future RRM Tariff applications filed pursuant to the attached tariff.

SECTION 4. That this Ordinance shall become effective from and after its passage.

SECTION 5. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Chris Felan, Vice President of Rates and Regulatory Affairs, Atmos Energy Corporation, Mid-Tex Division, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to Mid-Tex Cities, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

SECTION 6. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 7. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 8. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the _____ day of _____, 2018.

ADOPTED on this the _____ day of _____, 2018.

EFFECTIVE DATE on this the _____ day of _____, 2018.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

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

ATMOS ENERGY CORPORATION
MID-TEX DIVISION

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE	
EFFECTIVE DATE:	Bills Rendered on and after 04/01/2018	PAGE: 1

I. Applicability

Applicable to Residential, Commercial, Industrial, and Transportation tariff customers within the city limits of cities identified in Exhibit A that receive service from the Mid-Tex Division of Atmos Energy Corporation (“Company”). This Rate Review Mechanism (“RRM”) provides for an annual adjustment to the Company’s Rate Schedules R, C, I and T (“Applicable Rate Schedules”). Rate calculations and adjustments required by this tariff shall be determined on a System-Wide cost basis.

II. Definitions

“Test Period” is defined as the twelve months ending December 31 of each preceding calendar year.

The “Effective Date” is the date that adjustments required by this tariff are applied to customer bills. The annual Effective Date is October 1.

Unless otherwise provided in this tariff the term Final Order refers to the final order issued by the Railroad Commission of Texas in GUD No. 10170 and elements of GUD No. 10580 as specified in Section III below.

The term “System-Wide” means all incorporated and unincorporated areas served by the Company.

“Review Period” is defined as the period from the Filing Date until the Effective Date.

The “Filing Date” is as early as practicable, but no later than April 1 of each year.

III. Calculation

The RRM shall calculate an annual, System-Wide cost of service (“COS”) that will be used to adjust applicable rate schedules prospectively as of the Effective Date. The Company may request recovery of its total cost of service but will include schedules showing the computation of any adjustments. The annual cost of service will be calculated according to the following formula:

$$\text{COS} = \text{OM} + \text{DEP} + \text{RI} + \text{TAX} + \text{CD}$$

Where:

OM = all reasonable and necessary operation and maintenance expenses from the Test Period adjusted for known and measurable items and prepared

ATMOS ENERGY CORPORATION
MID-TEX DIVISION

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE	
EFFECTIVE DATE:	Bills Rendered on and after 04/01/2018	PAGE: 2

consistent with the rate making treatments approved in the Final Order. Incentive compensation (Management Incentive Plan, Variable Pay Plan and Long Term Incentive Plan) related to Atmos' Shared Services Unit will be applied consistent with treatment approved in GUD 10580. Additionally, O&M adjustments will be incorporated and applied as modified by a final order, not subject to appeal, issued by the Railroad Commission of Texas in subsequent rate cases involving the Atmos Mid-Tex or West Texas divisions. Known and measurable adjustments shall be limited to those changes that have occurred prior to the Filing Date. OM may be adjusted for atypical and non-recurring items. Shared Services allocation factors shall be recalculated each year based on the latest component factors used during the Test Period, but the methodology used will be that approved in the Final Order in GUD 10580.

DEP = depreciation expense calculated at depreciation rates approved by the Final Order. Additionally, if depreciation rates are approved in a subsequent final order, not subject to appeal, issued by the Railroad Commission of Texas for the Mid-Tex division those rates would be applicable for subsequent RRM filings.

RI = return on prudently incurred investment calculated as the Company's pretax return multiplied by rate base at Test Period end. Rate base is prepared consistent with the rate making treatments approved in the Final Order, and as in GUD 10580 as specifically related to capitalized incentive compensation (Management Incentive Plan, Variable Pay Plan and Long Term Incentive Plan) for Atmos' Shared Services Unit. However, no post Test Period adjustments will be permitted. Additionally, adjustments will be incorporated and applied as modified by a final order, not subject to appeal, issued by the Railroad Commission of Texas in subsequent rate cases involving the Atmos Mid-Tex or West Texas divisions. Pretax return is the Company's weighted average cost of capital before income taxes. The Company's weighted average cost of capital is calculated using the methodology from the Final Order including the Company's actual capital structure and long term cost of debt as of the Test Period end (adjusted for any known and measurable changes that have occurred prior to the filing date) and the return on equity of 9.8%. However, in no event will the percentage of equity exceed 58%. Regulatory adjustments due to prior regulatory rate base adjustment disallowances will be maintained. Cash working capital will be calculated using the lead/lag days approved in the Final Order. With respect to pension and other postemployment benefits, the Company will record a regulatory asset or liability for these costs until the amounts are included in the next annual rate adjustment implemented under this tariff. Each year, the Company's filing under this Rider RRM will clearly state the level of pension

ATMOS ENERGY CORPORATION
MID-TEX DIVISION

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE	
EFFECTIVE DATE:	Bills Rendered on and after 04/01/2018	PAGE: 3

and other postemployment benefits recovered in rates.

TAX = income tax and taxes other than income tax from the Test Period adjusted for known and measurable changes occurring after the Test Period and before the Filing Date, and prepared consistent with the rate making treatments approved in the Final Order. Atmos Energy shall comprehensively account for, including establishing a regulatory liability to account for, any statutory change in tax expense that is applicable to months during the Test Period in the calculation to ensure recovery of tax expense under new and old income tax rates.

CD = interest on customer deposits.

IV. Annual Rate Adjustment

The Company shall provide schedules and work papers supporting the Filing's revenue deficiency/sufficiency calculations using the methodology accepted in the Final Order. The result shall be reflected in the proposed new rates to be established for the effective period. The Revenue Requirement will be apportioned to customer classes in the same manner that Company's Revenue Requirement was apportioned in the Final Order. For the Residential Class, 50% of the increase may be recovered in the customer charge. However, the increase to the Residential customer charge shall not exceed \$0.60 per month in the initial filing and \$0.70 per month in any subsequent year. The remainder of the Residential Class increase not collected in the customer charge will be recovered in the usage charge. For all other classes, the change in rates will be apportioned between the customer charge and the usage charge, consistent with the Final Order. Test Period billing determinants shall be adjusted and normalized according to the methodology utilized in the Final Order.

V. Filing

The Company shall file schedules annually with the regulatory authority having original jurisdiction over the Company's rates on or before the Filing Date that support the proposed rate adjustments. The schedules shall be in the same general format as the cost of service model and relied-upon files upon which the Final Order was based. A proof of rates and a copy of current and proposed tariffs shall also be included with the filing. The filing shall be made in electronic form where practical. The Company's filing shall conform to Minimum Filing Requirements (to be agreed upon by the parties), which will contain a minimum amount of information that will assist the regulatory authority in its review and analysis of the filing. The Company and regulatory authority will endeavor to hold a technical conference regarding the filing within twenty (20) calendar days after the Filing Date.

ATMOS ENERGY CORPORATION
MID-TEX DIVISION

RATE SCHEDULE:	RRM – Rate Review Mechanism	
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EFFECTIVE DATE:	Bills Rendered on and after 04/01/2018	PAGE: 4

A sworn statement shall be filed by an Officer of the Company affirming that the filed schedules are in compliance with the provisions of this Rate Review Mechanism and are true and correct to the best of his/her knowledge, information, and belief. No testimony shall be filed, but a brief narrative explanation shall be provided of any changes to corporate structure, accounting methodologies, allocation of common costs, or atypical or non- recurring items included in the filing.

VI. Evaluation Procedures

The regulatory authority having original jurisdiction over the Company's rates shall review and render a decision on the Company's proposed rate adjustment prior to the Effective Date. The Company shall provide all supplemental information requested to ensure an opportunity for adequate review by the relevant regulatory authority. The Company shall not unilaterally impose any limits upon the provision of supplemental information and such information shall be provided within seven (7) working days of the original request. The regulatory authority may propose any adjustments it determines to be required to bring the proposed rate adjustment into compliance with the provisions of this tariff.

The regulatory authority may disallow any net plant investment that is not shown to be prudently incurred. Approval by the regulatory authority of net plant investment pursuant to the provisions of this tariff shall constitute a finding that such net plant investment was prudently incurred. Such finding of prudence shall not be subject to further review in a subsequent RRM or Statement of Intent filing.

During the Review Period, the Company and the regulatory authority will work collaboratively and seek agreement on the level of rate adjustments. If, at the end of the Review Period, the Company and the regulatory authority have not reached agreement, the regulatory authority shall take action to modify or deny the proposed rate adjustments. The Company shall have the right to appeal the regulatory authority's action to the Railroad Commission of Texas. Upon the filing of an appeal of the regulatory authority's order relating to an annual RRM filing with the Railroad Commission of Texas, the regulatory authority having original jurisdiction over the Company's rates shall not oppose the implementation of the Company's proposed rates subject to refund, nor will the regulatory authority advocate for the imposition of a third party surety bond by the Company. Any refund shall be limited to and determined based on the resolution of the disputed adjustment(s) in a final, non-appealable order issued in the appeal filed by the Company at the Railroad Commission of Texas.

ATMOS ENERGY CORPORATION
MID-TEX DIVISION

RATE SCHEDULE:	RRM – Rate Review Mechanism	
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EFFECTIVE DATE:	Bills Rendered on and after 04/01/2018	PAGE: 5

In the event that the regulatory authority and Company agree to a rate adjustment(s) that is different from the adjustment(s) requested in the Company's filing, the Company shall file compliance tariffs consistent with the agreement. No action on the part of the regulatory authority shall be required to allow the rate adjustment(s) to become effective on October 1. To the extent that the regulatory authority does not take action on the Company's RRM filing by September 30, the rates proposed in the Company's filing shall be deemed approved effective October 1. Notwithstanding the preceding sentence, a regulatory authority may choose to take affirmative action to approve a rate adjustment under this tariff. In those instances where such approval cannot reasonably occur by September 30, the rates finally approved by the regulatory authority shall be deemed effective as of October 1.

To defray the cost, if any, of regulatory authorities conducting a review of the Company's annual RRM filing, the Company shall reimburse the regulatory authorities on a monthly basis for their reasonable expenses incurred upon submission of invoices for such review. Any reimbursement contemplated hereunder shall be deemed a reasonable and necessary operating expense of the Company in the year in which the reimbursement is made. A regulatory authority seeking reimbursement under this provision shall submit its request for reimbursement to the Company no later than December 1 of the year in which the RRM filing is made and the Company shall reimburse regulatory authorities in accordance with this provision on or before December 31 of the year the RRM filing is made.

To the extent possible, the provisions of the Final Order shall be applied by the regulatory authority in determining whether to approve or disapprove of Company's proposed rate adjustment.

This Rider RRM does not limit the legal rights and duties of a regulatory authority. Nothing herein shall abrogate the jurisdiction of the regulatory authority to initiate a rate proceeding at any time to review whether rates charged are just and reasonable. Similarly, the Company retains its right to utilize the provisions of Texas Utilities Code, Chapter 104, Subchapter C to request a change in rates. The provisions of this Rider RRM are implemented in harmony with the Gas Utility Regulatory Act (Texas Utilities Code, Chapters 101-105).

The annual rate adjustment process set forth in this tariff shall remain in effect during the pendency of any Statement of Intent rate filing.

ATMOS ENERGY CORPORATION
MID-TEX DIVISION

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE	
EFFECTIVE DATE:	Bills Rendered on and after 04/01/2018	PAGE: 6

VII. Reconsideration, Appeal and Unresolved Items

Orders issued pursuant to this mechanism are ratemaking orders and shall be subject to appeal under Sections 102.001(b) and 103.021, et seq., of the Texas Utilities Code (Vernon 2007).

VIII. Notice

Notice of each annual RRM filing shall be provided by including the notice, in conspicuous form, in the bill of each directly affected customer no later than forty-five (45) days after the Company makes its annual filing pursuant to this tariff. The notice to customers shall include the following information:

- a) a description of the proposed revision of rates and schedules;
- b) the effect the proposed revision of rates is expected to have on the rates applicable to each customer class and on an average bill for each affected customer;
- c) the service area or areas in which the proposed rates would apply;
- d) the date the annual RRM filing was made with the regulatory authority; and
- e) the Company's address, telephone number and website where information concerning the proposed rate adjustment can be obtained.

ACSC Cities (172 Members)**Exhibit A**

Abilene
Addison
Albany
Allen
Alvarado
Angus
Anna
Argyle
Arlington
Aubrey
Azle
Bedford
Bellmead
Benbrook
Beverly Hills
Blossom
Blue Ridge
Bowie
Boyd
Bridgeport
Brownwood
Buffalo
Burkburnett
Burleson
Caddo Mills
Canton
Carrollton
Cedar Hill
Celeste
Celina
Centerville
Cisco
Clarksville
Cleburne
Clyde
College Station
Colleyville
Colorado City
Comanche
Commerce
Coolidge
Coppell
Copperas Cove
Corinth
Crandall
Crowley
Dalworthington Gardens
Denison
Denton
DeSoto
Draper
Duncanville
Eastland
Edgecliff Village
Emory
Ennis
Euless
Everman

Fairview
Farmers Branch
Farmersville
Fate
Flower Mound
Forest Hill
Forney
Fort Worth
Frisco
Frost
Gainesville
Garland
Garrett
Grand Prairie
Grapevine
Groesbeck
Gunter
Haltom City
Harker Heights
Haskell
Haslet
Hewitt
Highland Park
Highland Village
Honey Grove
Hurst
Hutto
Iowa Park
Irving
Justin
Kaufman
Keene
Keller
Kemp
Kennedale
Kerens
Kerrville
Killeen
Krum
Lakeside
Lake Worth
Lancaster
Lewisville
Lincoln Park
Little Elm
Lorena
Madisonville
Malakoff
Mansfield
McKinney
Melissa
Mesquite
Midlothian
Murphy
Newark
Nocona
North Richland Hills
Northlake

Oak Leaf
Ovilla
Palestine
Pantego
Paris
Parker
Pecan Hill
Petrolia
Plano
Ponder
Pottsboro
Prosper
Quitman
Red Oak
Reno (Parker County)
Rhome
Richardson
Richland
Richland Hills
River Oaks
Roanoke
Robinson
Rockwall
Roscoe
Rowlett
Royse City
Sachse
Saginaw
Sansom Park
Seagoville
Sherman
Snyder
Southlake
Springtown
Stamford
Stephenville
Sulphur Springs
Sweetwater
Temple
Terrell
The Colony
Trophy Club
Tyler
University Park
Venus
Vernon
Waco
Watauga
Waxahachie
Westlake
Westover Hills
Whitesboro
White Settlement
Wichita Falls
Woodway
Wylie

February 13, 2018

STAFF REPORT

BACKGROUND AND SUMMARY

The City, along with 171 other Mid-Texas Cities Served by Atmos Energy Corporation, Mid-Tex Division (“Atmos Mid-Tex” or “Company”), is a member of the Steering Committee of Cities Served by Atmos (“Cities”). In 2007, the Cities and Atmos Mid-Tex settled a rate application filed by the Company pursuant to Section 104.301 of the Texas Utilities Code for an interim rate adjustment commonly referred to as a GRIP filing (arising out of the Gas Reliability Infrastructure Program legislation). That settlement created a substitute rate review process, referred to as Rate Review Mechanism (“RRM”), as a substitute for future filings under the GRIP statute.

Since 2007, there have been several modifications to the original RRM Tariff. The Ordinance that resolved the Company’s application under the RRM Tariff in 2017 also terminated the existing RRM Tariff and required a renegotiation of the terms of that tariff. Negotiations have taken place over the past several months and have resulted in a revised RRM Tariff that has been agreed to by the Company. The Cities’ Executive Committee has recommended acceptance of the revised RRM Tariff, which is attached to the Ordinance.

CITIES’ OBJECTION TO THE SECTION 104.301 GRIP PROCESS

Cities strongly opposed the GRIP process because it constitutes piecemeal ratemaking by ignoring declining expenses and increasing revenues and rewarding the Company for increasing capital investment. The GRIP process does not allow any review of the reasonableness of capital investment and does not allow cities to participate in the Railroad Commission’s review of annual GRIP filings or recover their rate case expenses. The Railroad Commission undertakes a mere administrative review of GRIP filings (instead of a full hearing) and rate increases go into effect

without any material adjustments. In the Steering Committee's view, the GRIP process unfairly raises customers' rates without any regulatory oversight. In contrast, the RRM process has allowed for a more comprehensive rate review and annual evaluation of expenses and revenues, as well as capital investment.

CHANGES TO THE RRM TARIFF

The RRM Tariff on which the 2017 rates were based allowed a rate of return on equity of 10.50%. The revised RRM Tariff reduces that to 9.8%. The revised RRM Tariff also captures the reduction in federal income tax rates from 35% to 21% and should result in a rate reduction effective by mid-March, 2018. Prior RRM tariffs allowed Cities only three months to review the Company's filing. The new revised Tariff expands that time period by two months. New applications by the Company should be made on or about April 1 of each year, with new rates effective October 1. A rate order from the Railroad Commission in an Atmos Texas Pipeline rate case adopted the position of Cities with regard to incentive compensation related to Atmos' Shared Services Unit that reduced allowed expenses, and that reduced level of expenses will be applicable under the new RRM Tariff.

EXPLANATION OF "BE IT ORDAINED" PARAGRAPHS

1. This section approves all findings in the Ordinance.
2. This section adopts the attached RRM Tariff and finds the adoption of the Tariff to be just, reasonable, and in the public interest. The prior tariff expired by its own terms.
3. This section requires the Company to reimburse the City for expenses associated with adoption of the Ordinance and RRM Tariff and in processing future applications pursuant to the Ordinance.
4. This section provides for an effective date upon passage.

5. This section directs that a copy of the signed Ordinance be sent to a representative of the Company and legal counsel for the Steering Committee.
6. This section is a savings clause, which provides that if any section is later found to be unconstitutional or invalid, that finding shall not affect, impair, or invalidate the remaining provisions of this Ordinance. This section further directs that the remaining provisions of the Ordinance are to be interpreted as if the offending section or clause never existed.
7. This section repeals any resolution or ordinance that is inconsistent with this Ordinance.
8. This section finds that the meeting was conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.3.

Meeting Date: 02/19/2018

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers: 6099 and 6100

Issue:

- B. 1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6099**
Designating a Certain Area as Industrial Reinvestment Zone, Number 022018-01, City of Sherman, Texas, Providing for the Establishment of Agreements within the Zone, and Other Matters Relating Thereto; Providing Findings of Fact; Providing an Effective Date for the Commencement of the Reinvestment Zone and this Ordinance
- B. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6100**
Approving a Tariff Authorizing an Annual Rate Review Mechanism ("RRM") as a Substitution for the Annual Interim Rate Adjustment Process Defined by Section 104.301 of the Texas Utilities Code, and as Negotiated Between Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") and the Steering Committee of Cities Served by Atmos; Requiring the Company to Reimburse Cities' Reasonable Ratemaking Expenses; Declaring an Effective Date; Requiring Delivery of this Ordinance to the Company and Legal Counsel for the Steering Committee
-



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.4.

Meeting Date: 02/19/2018

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

CONSENT AGENDA

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

Issue:

C. 5. * RESOLUTION NO. 6345

Awarding a Bid to and Authorizing Execution of a Contract with SF Landscaping for Annual Right-of-Way Finish Mowing Services

E. 4. * OTHER BUSINESS

Approve the Quarterly Investment Reports for Quarter Ended December 31, 2017



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.1.

Meeting Date: 02/19/2018

Prepared By: Steve Ayers, Assistant City Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6341

Authorizing Execution of an Early Completion Bonus Addendum to the Awarded Contractor Construction Manager-at-Risk (CMAR) for the Construction of Fire Station No. 4

Issue:

As an incentive to expedite the construction of the new Fire Station No. 4, City staff is requesting approval of an Early Completion Bonus Addendum to the currently awarded Construction Manager-at-Risk (CMAR), Crossland Construction, Inc.

Background:

At the November 6, 2017 meeting, the City Council authorized the award of a CMAR contract for the construction of a new Fire Station No. 4 to Crossland Construction, Inc. of Prosper, Texas. The current site of Fire Station No. 4, at the southeast corner of U.S. Highway 75 and F.M. 1417 (Heritage Parkway), is the future site of Schulman's Movie Bowl Grille (MBG). The requested approval of an early completion bonus addendum to the Crossland Construction contract will incentivize the early completion of the new Fire Station No. 4, allowing the Fire Department to relocate personnel and equipment currently housed at the current location. The goal to incentivize the early completion of the new Fire Station No. 4 is to accelerate the construction schedule of Schulman's MBG.

Origination:

Finance Department

Financial Consideration:

If Crossland Construction, Inc. completes the project 30 days early, they will receive a bonus of Thirty Thousand Dollars and No Cents (\$30,000.00). They will receive an additional One Thousand Dollars and No Cents (\$1,000.00) for every additional day completed more than 30 days early. If Crossland Construction completes the project less than 30 days early, they will receive their base fee and no bonus.

Staff Recommendation:

City Staff recommends that the City Council approve the request to add an Early Completion Bonus Addendum to the previously awarded CMAR contract with Crossland Construction, Inc. for the construction of the new Fire Station No. 4.

Alternatives:

As may be recommended by City Council

Attachments

Resolution No. 6341

Addendum to CMAR Contract

Resolution No. 6286 with CMAR Contract

RESOLUTION NO. 6341

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN EARLY COMPLETION BONUS ADDENDUM TO THE AWARDED CONTRACTOR CONSTRUCTION MANAGER-AT-RISK (CMAR) FOR THE CONSTRUCTION OF FIRE STATION NO. 4; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, at the November 6, 2017 meeting, the City Council of the City of Sherman, Texas, approved Resolution No. 6286 and an Agreement with Crossland Construction, Inc., as Construction Manager-at-Risk (CMAR) for the Construction of Fire Station No. 4; and

WHEREAS, the City wishes to amend the agreement to provide for an early completion bonus addendum;

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

SECTION 1. That the Mayor be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from Crossland Construction, Inc. and subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Early Completion Bonus Addendum to the agreement with Crossland Construction, Inc. to serve as Construction Manager-at-Risk (CMAR) for the construction of Fire Station No. 4, in the same or substantially same form as the contract documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2018.

CITY OF SHERMAN, TEXAS

BY: _____

DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

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

**ADDENDUM
TO
AGREEMENT BETWEEN THE CITY OF SHERMAN
AND CROSSLAND CONSTRUCTION, INC.,
AS CONSTRUCTION MANAGER-AT-RISK (CMAR),
FOR THE CONSTRUCTION OF FIRE STATION NO. 4**

**THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §**

THIS ADDENDUM is entered into between the City of Sherman, Texas, a home rule city and municipal corporation of Grayson County, Texas ("City"), duly acting herein by and through its City Manager, and Crossland Construction, Inc. of Prosper, Texas ("Crossland"), acting by and through its authorized officers, as amended to witness the following:

WHEREAS, the parties entered into an Agreement for Crossland to serve as Construction Manager-at-Risk (CMAR) for the construction of Fire Station No. 4 that was approved by the Sherman City Council on November 6, 2017, in Resolution No. 6286 (hereinafter "Contract"), and is incorporated herein by reference; and

WHEREAS, the parties hereto wish to amend that Contract to properly reflect the intent of the parties;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, warranties and representations herein, the parties hereto agree to amend certain portions of certain paragraphs and exhibits as follows:

I.

By their representative signatures below, the parties wish to amend Article 9, Payments and Completion, Section 9.10, Completion and Final Payment of the Contract to provide for a new Subsection 9.10.6, such subsection to read as follows:

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.10 Completion and Final Payment

§ 9.10.6 CMAR Early Completion Bonus Language

The agreed upon construction duration of the project is ten (10) months. If the CMAR completes the project 30 days early, they will receive a bonus of Thirty Thousand Dollars and No Cents (\$30,000.00). They will receive an additional One Thousand Dollars and No Cents (\$1,000.00) for every additional day completed more than 30 days early. If the CMAR completes the project less than 30 days early, they will receive their base fee and no bonus. Time shall start with the

notice to proceed dated January 15, 2018, and shall end with substantial completion in accordance with the contract dated November 6, 2017.

IN WITNESS WHEREOF, the parties have executed this Addendum to stated Contract by signing below. The effective date of this Addendum shall be the date of execution by the City Manager or his designee.

CITY OF SHERMAN, TEXAS

By: _____

Robby Hefton, City Manager

ATTEST:

By: _____

Linda Ashby, City Clerk

**APPROVED AS TO FORM
AND CONTENT:**

By: _____

Brandon S. Shelby, City Attorney

CROSSLAND CONSTRUCTION, INC.

By: _____

Name: Rocky Hussman

Title: Vice President

MAYOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS §
COUNTY OF GRAYSON §
CITY OF SHERMAN §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Robby Hefton, City Manager of the City of Sherman, Texas, a municipal corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sherman, Texas, a municipal corporation, that he was duly authorized to perform the same by appropriate resolution of the City Council for the City of Sherman and that he executed the same as the act of the said City for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, A.D., 2018.

Notary Public in and for the State of Texas

(Typed/Printed Name of Notary)

My Commission Expires:

CROSSLAND'S ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF COLLIN

§
§

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Rocky Hussman, Vice President of Crossland Construction, Inc. of Prosper, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as a duly authorized officer of such corporation, and as the act and deed 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 14th day of February, A.D., 2018.

Michelle Meeks
Notary Public in and for the State of Texas

Michelle Meeks
(Typed/Printed Name of Notary)

My Commission Expires:

August 31, 2020



RESOLUTION NO. 6286

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF AN AGREEMENT WITH CROSSLAND CONSTRUCTION, INC., AS CONSTRUCTION MANAGER-AT-RISK (CMAR), FOR THE CONSTRUCTION OF FIRE STATION NO. 4; 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 Crossland Construction, Inc. of Prosper, Texas, is hereby awarded an agreement to serve as Construction Manager-at-Risk (CMAR) for the construction of Fire Station No. 4, in accordance with all bid documentation attached hereto and incorporated herein for all purposes.

SECTION 2. That the City Manager is hereby authorized and directed, subject to all contract documents being completed and approved as to form and content by the City Attorney, to execute an agreement with Crossland Construction, Inc., as Construction Manager-at-Risk (CMAR), for construction of Fire Station No. 4, in accordance with all contract documents attached hereto and made a part here for all purposes.

SECTION 3. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the 6th day of November, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

BY: David Plyler
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: Brandon S. Shelby
**BRANDON S. SHELBY,
CITY ATTORNEY**

**CITY OF SHERMAN
RFP EVALUATION SUMMARY**

Date: 10/23/17

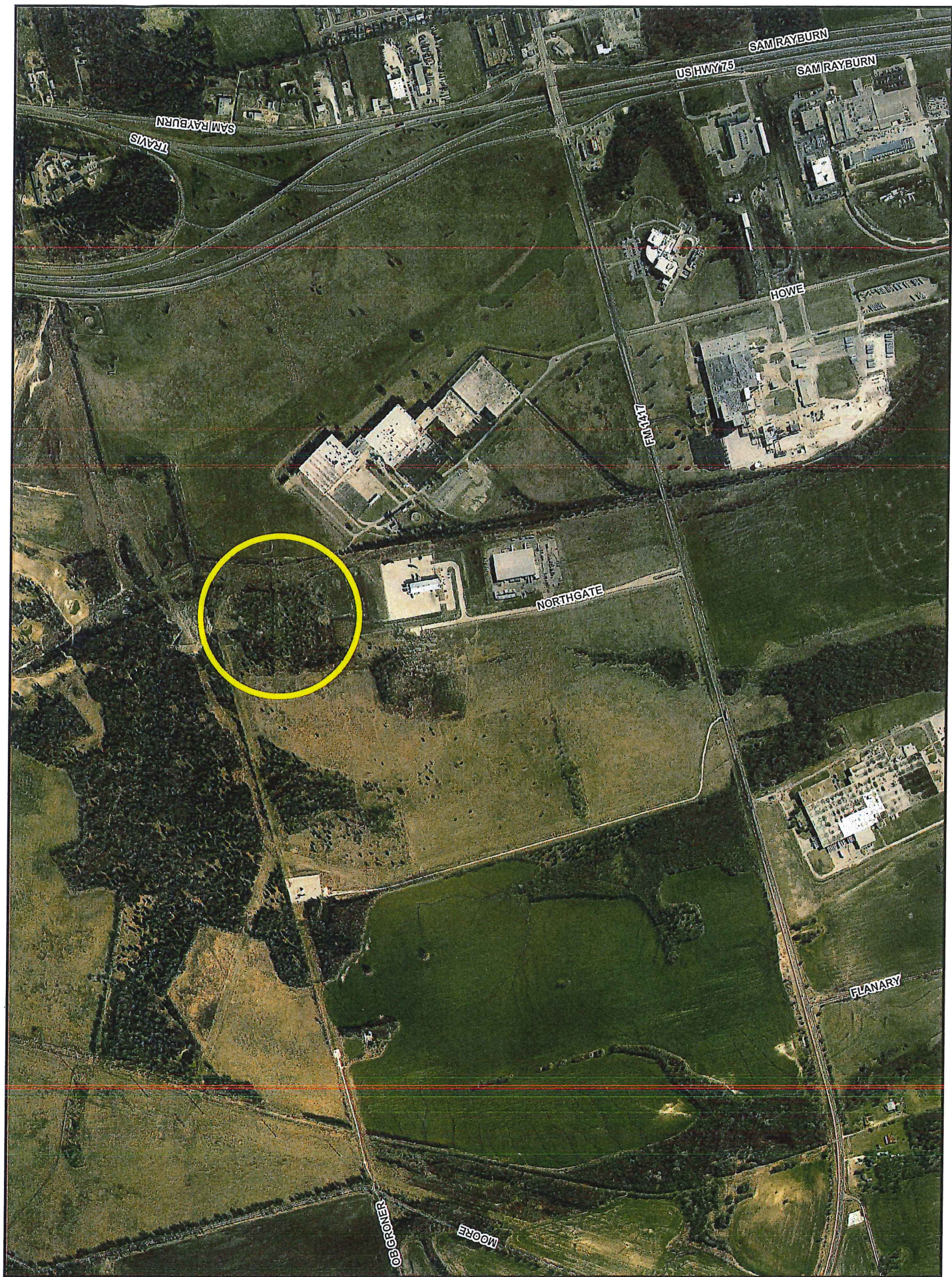
Bid Title: CMAR for Fire Station #4 Construction Project

SCORING SUMMARY

	Crossland Construction	Pete Durant and Associates	Piazza Construction	Schmoldt Construction	W.B. Kibler Construction
Chief Danny Jones - Fire/Rescue	96.0	91.0	92.0	89.0	95.0
Div. Chief Dan Wood - Fire/Rescue	96.0	92.0	89.0	83.0	95.0
Mike Grant - Facility Maintenance	96.0	80.0	83.0	88.0	94.0
Clint Philpott - Engineering	92.8	83.3	85.5	91.3	91.0
Craig Long - Finance	90.0	81.0	86.0	89.0	89.0
Michael Tubiolo - Architect	96.0	86.0	87.0	86.0	95.0
Scoring Average	94	86	87	88	93

NOTES:

Fire Station No. 4



N

1 inch = 1,000 feet

Additions and Deletions Report for

AIA® Document A133™ – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:28:15 on 11/01/2017.

PAGE 1

City of Sherman
405 N. Rusk Street
Sherman, TX 75090

...

(Name, legal status and address)

Crossland Construcion, INC.
861 N. Coleman, Suite 100
Prosper, TX 75078

...

Fire Station # 4
Northgate Drive
Sherman, TX 75090

...

Eikon
1405 W Chapman Dr.
Sanger, TX 76266

...

TBD

...

Rocky Hussman
861 N. Coleman, Suite 100
Prosper, Texas 75071

PAGE 2

Michael Tubiolo
1405 W Chapman Dr.
Sanger, TX 76266

EXHIBIT A – GUARANTEED MAXIMUM PRICE AMENDMENT

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. ~~The Subject to limitations on the Construction Manager's obligations set forth herein and in the A201–2007, the Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Subject to limitations on the Construction Manager's obligations set forth herein and in the A201–2007, the Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.~~

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and ~~Specifications.~~ Specifications of which Construction Manager becomes aware.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, ~~whether or not yet and~~ effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event a sales, consumer, use or similar tax for the Work provided by the Construction Manger is enacted and becomes effective during the course of the Project, the parties shall execute a change order to address the increased cost.

...

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be ~~accepted~~, accepted (subject to 2.3.2.1 above), then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a ~~cost-plus-cost-plus a fee~~ basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems,~~ systems sustainability and site requirements.

PAGE 8

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2014, B103™ 2007, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

\$ 5500

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 6() months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

PAGE 9

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

5 %

...

3.5%

...

10%

...

15%

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (10 %) of the standard rate paid at the place of the Project.

...

N/A

N/A

N/A

...

TBD

PAGE 13

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than (30) days after the Architect receives the Application for Payment.

PAGE 14

- .3 Add the Construction Manager's Fee, less retainage of percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of percent (5 %) from that portion of the Work that the Construction Manager self-performs;

PAGE 16

TBD

TBD

...

[X] Litigation in a court of competent jurisdiction

PAGE 17

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, ~~purchase orders and rental agreements~~ entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

...

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed ~~Maximum~~-Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

PAGE 18

N/A

...

N/A

...

N/A

...

N/A

...

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rocky Hussman, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:28:15 on 11/01/2017 under Order No. 3235357146 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)



(Title)



(Dated)



AIA[®] Document A133[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Sherman
405 N. Rusk Street
Sherman, TX 75090

and the Construction Manager:
(Name, legal status and address)

Crossland Construcion, INC.
861 N. Coleman, Suite 100
Prosper, TX 75078

for the following Project:
(Name and address or location)

Fire Station # 4
Northgate Drive
Sherman, TX 75090

The Architect:
(Name, legal status and address)

Eikon
1405 W Chapman Dr.
Sanger, TX 76266

The Owner's Designated Representative:
(Name, address and other information)

TBD

The Construction Manager's Designated Representative:
(Name, address and other information)

Rocky Hussman
861 N. Coleman, Suite 100
Prosper, Texas 75071

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

The Architect's Designated Representative:
(Name, address and other information)

Michael Tubiolo
1405 W Chapman Dr.
Sanger, TX 76266

The Owner and Construction Manager agree as follows.

Init.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and

Init.

Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Subject to limitations on the Construction Manager's obligations set forth herein and in the A201–2007, the Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. Subject to limitations on the Construction Manager's obligations set forth herein and in the A201–2007, the Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of

construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications of which Construction Manager becomes aware.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, and effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event a sales, consumer, use or similar tax for the Work provided by the Construction Manager is enacted and becomes effective during the course of the Project, the parties shall execute a change order to address the increased cost.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted (subject to 2.3.2.1 above), then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other

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information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$ 5500

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 6 () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

5 %

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

3.5%

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

10%

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15%

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (10 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A	N/A	N/A

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

TBD

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements,

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customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed

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above, payment shall be made by the Owner not later than (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond
TBD

Limit of Liability or Bond Amount (\$0.00)
TBD

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time

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of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
and

- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

N/A

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

N/A

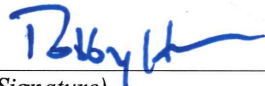
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

N/A

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

N/A

This Agreement is entered into as of the day and year first written above.


OWNER (Signature)

Robby Hefton, City Manager
(Printed name and title)


CONSTRUCTION MANAGER (Signature)

Rocky Hussman, Vice President
(Printed name and title)

AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Fire Station No. 4
Northgate Drive
Sherman, TX 75090

THE OWNER:

(Name, legal status and address)

City of Sherman, Texas
405 N. Rusk Street
Sherman, TX 75090

THE ARCHITECT:

(Name, legal status and address)

Eikon
1405 W. Chapman Drive
Sanger, TX 76266

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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(3B9ADA13)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees unless otherwise specified in the Contract Documents. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, unless otherwise specified by the Contract Documents, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the

Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or

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death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the

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insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for

convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public

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authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 5 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial uncured breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

Init.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

Init.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:29:34 on 11/01/2017.

PAGE 1

Fire Station No. 4
Northgate Drive
Sherman, TX 75090

...

City of Sherman, Texas
405 N. Rusk Street
Sherman, TX 75090

...

Eikon
1405 W. Chapman Drive
Sanger, TX 76266

PAGE 16

The Contractor shall pay all royalties and license fees. ~~fees unless otherwise specified in the Contract Documents.~~
The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. ~~Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, quantities, unless otherwise specified by the Contract Documents.~~ all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise

specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than ~~10 years~~ 5 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

PAGE 35

- .4 otherwise is guilty of substantial uncured breach of a provision of the Contract Documents.

PAGE 36

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. ~~Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rocky Hussman, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:29:34 on 11/01/2017 under Order No. 3235357146 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)



(Title)



(Dated)



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.2.

Meeting Date: 02/19/2018

Prepared By: Clint Philpott, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6342

Authorizing Execution of a Contract for Professional Engineering Services with Halff Associates, Inc. to Design Improvements to the Lamberth Road Stream Crossings along the East Fork of Post Oak Creek and East Lamberth Branch

Issue:

To authorize the execution of a contract with Halff Associates, Inc. for Lamberth Road Drainage Improvements

Background:

The City of Sherman would like to enter into a contract with Halff Associates, Inc. to design improvements to the Lamberth Road stream crossings along the East Fork of Post Oak Creek and East Lamberth Branch. This year the city of Sherman implemented the Storm Water Program. Part of that program is to help improve access within Sherman during flooding events. The Post Oaks Flood Study (2013) identified the Lamberth Road crossing as one of the thoroughfares needing improvement. The goal of this project is to increase the capacity under Lamberth Road to handle the 100-year storm event and remain open for emergency services at all times.

Origination:

Engineering Department

Financial Consideration:

The total cost for this project is estimated at \$153,500.00. Funding is available through the 2017A Certificates of Obligation, which is the bond issue related to the Stormwater Program.

Staff Recommendation:

Staff recommends execution of the contract with Halff Associates, Inc.

Alternatives:

As directed by City Council

Attachments

Resolution No. 6342

Agreement for Professional Services

Exhibit A - Scope of Services

Location Map

RESOLUTION NO. 6342

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES WITH HALFF ASSOCIATES, INC. TO DESIGN IMPROVEMENTS TO THE LAMBERTH ROAD STREAM CROSSINGS ALONG THE EAST FORK OF POST OAK CREEK AND EAST LAMBERTH BRANCH; 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 Contract for Professional Engineering Services with Halff Associates, Inc., to design improvements to the Lamberth Road stream crossings along the East Fork of Post Oak Creek and East Lamberth Branch, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the _____ day of _____, 2018.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

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

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES ON A DEFINED SCOPE OF SERVICES BASIS

This Agreement for Professional Engineering Services, hereinafter called "Agreement," is entered into by the City of Sherman, Texas, a Home Rule City, duly authorized to act by the City Council of said Client, hereinafter called "Client," and **Halff Associates, Inc.**, a Texas corporation, acting through a duly authorized officer, herein called "Engineer," relative to Engineer providing professional engineering services to the Client. Client and Engineer when mentioned collectively shall be referred to as the "Parties".

W I T N E S S E T H:

For the mutual promises and benefits herein described, the Client and Engineer agree as follows:

I. Term of Agreement. This Agreement shall become effective on the date of its execution by both Parties, and shall continue in effect thereafter until terminated as provided herein.

II. Services to be Performed by Engineer. Engineer shall provide to the Client basic engineering services as described in the scope of services attachment and fully incorporated herein as "**Exhibit A**" which services may include, but will not be limited to, those services normally rendered by an engineer to a Home Rule City. Engineer shall perform its obligations under this agreement as an independent contractor and not as an agent or fiduciary of any other party.

III. Compensation - Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1 percent (1%) per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date Engineer receives payment. Such interest is due and payable when the overdue payment is made.

It is understood and agreed by the Parties that Engineer's receipt of payment(s) from Client is not contingent upon Client's receipt of payment, funding, reimbursement or any other remuneration from others.

Time-related charges will be billed as specified in this Agreement. Unless stated otherwise in this Agreement, direct expenses, subcontracted services and direct costs will be billed at actual cost plus a service charge of 10 percent. Mileage will be billed at current IRS rates.

IV. Client's Obligations. The Client agrees that it will (i) designate a specific person to act as the Client's representative, (ii) provide Engineer with any previous studies, reports, data, budget constraints, special Client requirements, or other pertinent information known to the Client, when necessitated by a project, (iii) Client agrees to provide site access, and to provide those services described in the attached Scope of Services assist Engineer in obtaining access to property necessary for performance of Engineer's work for the Client, (iv) make prompt payments in response to Engineer's statements and (v) respond in a timely fashion to requests from Engineer. Engineer is entitled to rely upon and use, without independent verification and without liability, all information and services provided by the Client or the Client's representatives.

V. Termination of Work - Either the Client or the Engineer may terminate this Agreement at any time with or without cause upon giving the other Party ten (10) calendar days' prior written notice. Client agrees that termination of Engineer for Client's convenience shall only be utilized in good faith, and shall not be utilized if either the purpose or the result of such termination is the performance of all or part of Engineer's services under this Agreement by Client or by another service provider. Following Engineer's receipt of such termination notice the Client shall, within ten (10) calendar days of Client's receipt of Engineer's final invoice, pay the Engineer for all services rendered and all costs incurred up to the date of Engineer's receipt of such notice of termination.

VI. Ownership of Documents - Upon Engineer's completion of services and receipt of payment in full, Engineer shall grant to Client a non-exclusive license to possess the final drawings and instruments produced in connection with Engineer's performance of the work under this Agreement, if any. Said drawings and instruments may be copied, duplicated, reproduced and used by Client for the purpose of constructing, operating and maintaining the improvements. Client agrees that such documents are not intended or represented to be suitable for reuse by Client or others for purposes outside the Scope of Services of this Agreement. Notwithstanding the foregoing, Client understands and agrees that any and all computer programs, GIS applications, proprietary data or processes, and certain other items related to the services performable

under this Agreement are and shall remain the sole and exclusive property of Engineer and may not be used or reused, in any form, by Client without the express written authorization of Engineer. Client agrees that any reuse by Client, or by those who obtain said information from or through Client, without written verification or adaptation by Engineer, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's employees, agents, representatives, officers, directors, affiliates, shareholders, owners, members, managers, attorneys, subsidiary entities, advisors, subconsultants or independent contractors or associates. Engineer may reuse all drawings, reports, data and other information developed in performing the services described by this Agreement in Engineer's other activities.

VII. Notices. Any notices to be given hereunder by either party to the other may be affected either by personal delivery, in writing, or by registered or certified mail.

VII. Sole Parties and Entire Agreement. This Agreement shall not create any rights or benefits to anyone except the Client and Engineer, and contains the entire agreement between the parties. Oral modifications to this Agreement shall have no force or effect.

IX. Insurance. Engineer shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of three years thereafter, professional liability insurance. The limits of liability shall be \$1,000,000 per claim and in the aggregate. For coverage provided on a claims-made basis, Engineer agrees to use its best efforts to maintain this policy for a period of four (4) years after the cessation of any work for the Client or shall purchase the extended reporting period or "tail" coverage insurance providing equivalent coverage for the same period of time. Engineer shall submit to the Client a certificate of insurance prior to commencing any work for the Client.

X. Prompt Performance by Engineer. All services provided by Engineer hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of the engineering profession in the State of Texas applicable to such engineering services contemplated by this Agreement.

XI. Client Objection to Personnel. If at any time after entering into this Agreement, the Client has any reasonable objection to any of Engineer's personnel, or any personnel, professionals and/or consultants retained by Engineer, Engineer shall promptly propose substitutes to whom the Client has no reasonable objection, and Engineer's compensation shall be equitably adjusted to reflect any difference in Engineer's costs occasioned by such substitution.

XII. Assignment and Delegation. Neither the Client nor Engineer may assign their rights or delegate their duties without the written consent of the other party. This Agreement is binding on the Client and Engineer to the fullest extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Client officer, employee or agent.

XIII. Jurisdiction and Venue - This Agreement shall be administered under the substantive laws of the State Texas (and not its conflicts of law principles) which shall be used to govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation, its validity, interpretation, construction, performance and enforcement. Exclusive venue shall lie in Grayson County, Texas.

INTENTIONALLY LEFT BLANK

XIV. Integration, Merger and Severability – This Agreement and the Scope of Services, including fee and schedule are fully incorporated herein and represent the entire understanding of Client and Engineer. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both Parties. This Agreement constitutes, represents and is intended by the Parties to be the complete and final statement and expression of all of the terms and arrangements between the Parties to this Agreement with respect to the matters provided for in this Agreement. This Agreement supersedes any and all prior or contemporaneous agreements, understandings, negotiations, and discussions between the Parties and all such matters are merged into this Agreement. Should any one or more of the provisions contained in this Agreement be determined by a court of competent jurisdiction or by legislative pronouncement to be void, invalid, illegal, or unenforceable in any respect, such voiding, invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be considered as if the entirety of such void, invalid, illegal, or unenforceable provision had never been contained in this Agreement.

XV. Exclusivity of Remedies – The Parties acknowledge and agree that the remedies set forth in this Agreement, including those set forth in Article XIX. Agreed Remedies are and shall remain the Parties' sole and exclusive remedy with respect to any claim arising from, or out of, or related to, the subject matter of this Agreement. The Parties agree that Engineer is to have no liability or responsibility whatsoever to Client for any claim(s) or loss(es) of any nature, except as set forth in this Agreement. No Party shall be able to avoid the limitations expressly set forth in this Agreement by electing to pursue some other remedy.

XVI. Timeliness of Performance - Engineer shall perform its professional services with due and reasonable diligence consistent with sound professional practices.

XVII. Dispute Resolution. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to schedule a series of no less than two meetings of senior personnel of Client and Engineer in which the disagreement or conflict will be discussed. The first of such meetings will be scheduled as soon as possible following identification of such disagreement or conflict and the second meeting must occur within thirty (30) days following the initial meeting. Subsequent meetings, if any may be scheduled upon mutual agreement of the parties. The parties agree that these two meetings are conditions precedent to the institution of legal proceedings unless such meetings will adversely affect the rights of one or more of the parties as such rights relate to statutes of limitation or repose.

XVIII. Signatories. The Client and Engineer mutually warrant and represent that the representation of each who is executing this Agreement on behalf of the Client or Engineer, respectively, has full authority to execute this Agreement and bind the entity so represented.

XIX. AGREED REMEDIES - IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND THE ENGINEER, AND ACKNOWLEDGING THAT THE ALLOCATION OF RISKS AND LIMITATIONS OF REMEDIES ARE BUSINESS UNDERSTANDINGS BETWEEN THE PARTIES AND THESE RISKS AND REMEDIES SHALL APPLY TO ALL POSSIBLE LEGAL THEORIES OF RECOVERY. CLIENT FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR ANY REFERENCE TO INSURANCE OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE ENGINEER AND ENGINEER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO, THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES OF THE ENGINEER OR THE ENGINEER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED THE ENGINEER'S FEE FOR THE SERVICES PERFORMED UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. INCREASED LIMITS MAY BE NEGOTIATED FOR ADDITIONAL FEE.

Further, it is the intent of the Parties to this Agreement that Engineer's services under this Agreement shall not subject Engineer's individual employees, officers or directors to any personal legal exposure for claims and risks associated with the services performed or performable under this Agreement.

XX. WAIVER - Any failure by Engineer to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Engineer may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

IN WITNESS WHEREOF, the parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the ____ day of _____, 20____.

HALFF ASSOCIATES, INC.

By:


Signature

Jeffrey J. Alvarez, P.E., CFM
Printed Name

Water Resources Team Leader
Title

Date

2/9/18

CITY OF SHERMAN , TEXAS

By:

Signature

Robby Hefton
Printed Name

City Manager
Title

Date

CITY OF SHERMAN , TEXAS

By:

Signature

Clint Philpott, P.E.
Printed Name

Director of Engineering
Title

Date



EXHIBIT A SCOPE OF SERVICES

February 9, 2018
AVO P33985

Clint Philpott, P.E.
Director of Engineering
City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

Re: Lamberth Road Drainage Improvements for the City of Sherman.

Dear Mr. Philpott:

Halff Associates Inc. is pleased to present this proposal to provide professional engineering services to design improvements to the Lamberth Road stream crossings along the East Fork of Post Oak Creek and East Lamberth Branch. Figure 1 shows the subject project area.

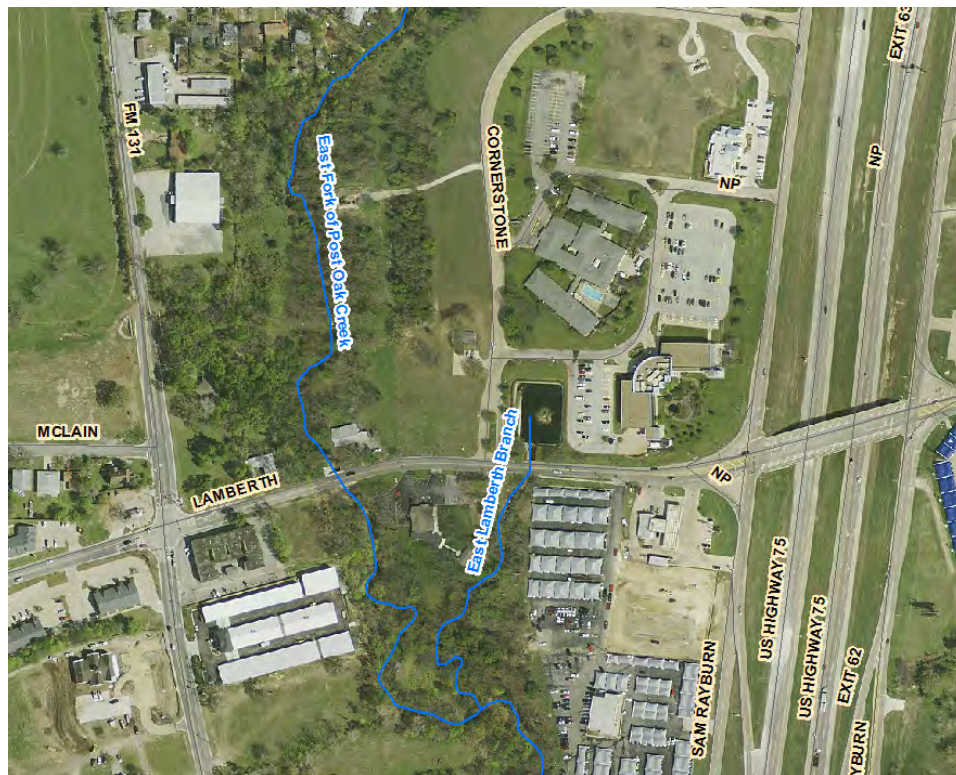


Figure 1: Project Location

This project is to provide the City with construction drawings and specifications to improve the drainage capacity of the road at these two stream locations. The design will be based upon the improved hydrology and hydraulics models currently being developed as part of the Sherman Mapping Updates Study.

The project involves construction of two culverts in Lamberth Road at East Fork of Post Oak Creek and East Lamberth Branch crossings, and associated reconstruction of Lamberth Road (Approximately 1100 feet), construction of a new storm drain system, and relocation of existing utilities.

This scope of services (Exhibit A) includes the following exhibits:

Exhibit A	Scope of Services
Exhibit A1	Additional Services
Exhibit B	Information to be provided to Engineer

BASIC SERVICES

SURVEYING (\$13,500):

1. On-the-ground topographic survey for design;
2. Perform tree survey;
3. Boundary survey to establish road and creek right-of-ways and adjacent property boundaries.
4. Prepare Survey Control Plan

HYDRAULIC ANALYSIS AND ROADWAY FEASIBILITY (\$15,000):

To facilitate the proper design of the culvert crossings, a hydraulic analysis of the two streams will be conducted including:

1. A site visit to confirm culvert dimensions, channel conditions, and existing detention/retention pond details just north of the roadway.
2. Update the Mapping Update Study hydraulic models with site survey information to create a revised existing conditions model for both streams.
3. Comparison of study results from the Mapping Update Study by Halff. The Mapping Update Study will include analysis of a proposed detention pond along the East Fork to be located upstream of U.S. Highway 82. This task will compare the updated study results with and without detention.
4. Simulate proposed culvert improvements at both crossings to determine the proper sizes needed to be designed. Output from these models will be utilized during the design phase to prepared plan and profiles of the culverts.
5. Prepare a technical memorandum discussing the analysis and recommendations for the design phase of the project.
6. Feasibility study of roadway geometry alteration.

CIVIL DESIGN (\$125,000):

Prepare civil design drawings (anticipated 36 sheets), specifications and estimates including:

1. Cover Sheet;

2. General Notes;
3. Erosion Control Plan and Details (two sheets);
4. Demolition Plans (two sheets);
5. Grading Plans (two sheets);
6. Paving Plans (two sheets);
7. Typical Paving Section and Details;
8. Paving Cross Sections at 50-foot intervals (6 sheets);
9. Storm Drainage Area Map and Drainage Computations;
10. Storm Drainage Plans and Profiles (two sheets);
11. Culvert Profiles;
12. Structural Design of Culverts and Headwalls (eight sheets);
13. Railing Details;
14. Water and Sanitary Sewer Plans, Profiles & Details (three sheets);
15. Construction Sequence (three sheets);
16. Special Specification and Bid Proposal Form;
17. Engineer's Opinion of Probable Construction Cost;
18. Prepare record drawings and CAD files for archiving

BID AND CONSTRUCTION PHASE SERVICES (\$5,000 Initial Budget)

1. Assist the City in bid process and during construction on an as-needed basis.

EXCLUSIONS

Listed in Exhibit A1 of this proposal are services that are not anticipated and are therefore specifically excluded from the scope of services.

SUBMITTALS

The design will be submitted to the City at following levels:

- 30 percent - schematic
- 65 percent – preliminary
- 95 percent – pre-final
- 100 percent – Issued for Bid
- Conformed – Issued for Construction

COMPENSATION

Halff Associates proposes to provide the above-described Surveying and Civil Design Services for a Lump Sum amount of **\$153,500**, and proposes to provide the above-described **Bid and Construction Phase Services on a Time and Materials basis with an initial budget of \$5,000**. Additional services listed in Appendix A are not anticipated, and no scope or fee for these services is included in the proposed fees and budgets; however, these services, and any other services not included in the above-described scope, can be



performed on a Time and Material basis if necessary and authorized by City of Sherman. Direct expenses will be billed at 1.1 times actual cost against a budget of \$3,000. Payment requests will be submitted monthly based on percent complete basis for Lump Sum services and based on the labor and direct costs for Time and Materials services.

This proposal is valid for 90 days and is based on **a twelve-month design duration** from notice to proceed. Halff reserves the right to request a fee adjustment if the proposal is not authorized within 90 days or the design duration extends beyond twelve (12) months.

We appreciate the opportunity to be of service to the City of Sherman. If you have any questions please do not hesitate to call me at 214-217-6650.

Sincerely,

HALFF ASSOCIATES, INC.

A handwritten signature in blue ink that reads "Jeffrey J. Alvarez".

Jeffrey J. Alvarez, P.E, CFM
Water Resources Team Leader

EXHIBIT A1 ADDITIONAL SERVICES

The following services are not anticipated, but Halff Associates can provide these services, if required, on Time and Materials basis. Halff will notify the City when said additional services are required and obtain approval for the additional scope and fee prior to proceeding.

1. Preparation of easement documents.
2. Geotechnical engineering.
3. Slope stability analysis.
4. Technical reports for the following: noise, indirect impacts, cumulative impacts, and public involvement.
5. Environmental impact statements, assessments, audits, and coordination with USACE.
6. Design of storm water detention facilities.
7. Hydraulic and Hydrologic analysis not specifically included in the above Scope of Services.
8. Work associated with TPDES permit requirements (Storm Water Pollution Prevention Plan)
9. Design of retaining walls.
10. Resolve structural implications associated with removal of existing retaining walls.
11. Trench excavation and shoring plans.
12. Access gate design.
13. Pavement thickness design.
14. Traffic control plans.
15. Gas, telephone, cable and or electric utility design.
16. Landscape architecture and related details.
17. Front-end contract documents including General Provisions, Special Provisions, and Division 1 specifications.
18. Construction staking.
19. Inspection services.
20. Quality control and material testing services during construction.
21. Shop drawing preparation.
22. Review submittals not required by the construction documents.
23. Modifications to documents after documents are issued for construction.
24. Graphic products except as noted herein.
25. Coordination with private utility companies.
26. Relocation of wastewater main other than collection mains.
27. Bid and construction phase services, (accept assisting the City in bid process and during construction as needed) including the following items:
 - a. attend pre-bid meeting and prepare bid addenda;
 - b. assist the City of Sherman in contract award;
 - c. attend pre-construction meeting at the City of Sherman;
 - d. review Contractor's submittals;
 - e. attend construction coordination meetings on as-needed basis;
 - f. respond to requests for information (RFT's);
 - g. perform site visits as required to monitor progress of the work and assure general conformity to the design intent;
 - h. participate in final inspection and prepare a punch-list
28. Any additional work not specifically included in the Proposed Scope of Work will be accomplished as Additional Services.

EXHIBIT B
INFORMATION TO BE PROVIDED TO THE ENGINEER

1. All GIS information including utilities, storm sewer, recent topography, and planimetrics, easements boundaries, floodplains, etc.
2. Provide all existing storm sewer, roadway, and channel design plans/record drawings pertinent to the project.
3. All current and past flooding complaints in the project area where available.
4. Any photos, high water mark data, and other pertinent information from past flood events within the project area.
5. Any City Standard details and specifications template for use in preparing design plans and specifications.



1 inch = 700 feet





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.3.

Meeting Date: 02/19/2018

Prepared By: Clint Philpott, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6343

Authorizing Execution of a Development Agreement with Barton Capital, Ltd. for the Construction of Public Facilities in Sweetwater Springs Subdivision, a 17.112-acre Development off of Marshall Street and Hilltop Drive, along Dripping Springs Road in the City of Sherman

Issue:

The construction of public facilities in Sweetwater Springs Subdivision, a 17.112-acre development off of Marshall Street and Hilltop Drive, along Dripping Springs Road in the City of Sherman

Background:

Barton Capital, Ltd. proposes to construct a 17.112-acre development off of Marshall Street and Hilltop Drive, along Dripping Springs Road, which includes the construction of storm water, water mains, sanitary sewer mains and public roads.

Origination:

Engineering Department

Financial Consideration:

The development fee to be paid by the developer for public inspection will be \$27,913.63.

Staff Recommendation:

Staff recommends approval and execution of the Development Agreement.

Alternatives:

As directed by the City Council

Attachments

Resolution No. 6343

Development Agreement

Plat - Sweetwater Springs Subdivision

Location Map

RESOLUTION NO. 6343

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT WITH BARTON CAPITAL, LTD. FOR THE CONSTRUCTION OF PUBLIC FACILITIES IN SWEETWATER SPRINGS SUBDIVISION, A 17.112-ACRE DEVELOPMENT OFF OF MARSHALL STREET AND HILLTOP DRIVE, ALONG DRIPPING SPRINGS ROAD 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 contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Development Agreement with Barton Capital, Ltd., for the construction of public facilities in the Sweetwater Springs Subdivision, a 17.112-acre development off of Marshall Street and Hilltop Drive, along Dripping Springs Road in the City of Sherman, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the _____ day of _____, 2018.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

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

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

**DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SHERMAN AND BARTON CAPITAL, LTD.**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2018 (the "Effective Date"), by and among the City of Sherman ("City"), a municipal corporation organized under the laws of the State of Texas, Barton Capital, Ltd., ("Developer").

WITNESSETH:

WHEREAS, City recognizes the importance of its continued role in local economic development; and

WHEREAS, Developer is developing a portion of the City and making improvements to the City; and

WHEREAS, Developer owns or controls lands located in Sherman, Texas, and described to the City by the Developer as Sweetwater Springs Subdivision, and attached hereto and made a part hereof as if fully set out in this paragraph as Exhibit "A" and hereinafter referred to as the "Property", and Developer intends to develop the Property by constructing improvements thereon; and

WHEREAS, the Developer desires that the City accept the dedication of the streets, utilities, and other improvements as reflected on the plans and specifications submitted by the Developer as a part of the public facilities of the City, as indicated in Paragraph 2 of Article I; and

WHEREAS, the CITY is willing to provide, in accordance with the provisions of this Agreement and the prevailing state and local laws, city services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive City services;

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

**ARTICLE I.
SPECIFIC CONTRACT PROVISIONS**

1. **Assurance of Title:** At the time of execution of this Agreement, the Developer agrees to deliver to City a copy of a Title Insurance Policy, or an opinion of title from a qualified attorney-at-law addressed to the City in a form and substance satisfactory to City with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens

and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agreement.

2. **Assurance of Accuracy of Documents:** Developer has caused the subdivision plat of the Property (the "plat") and all plans and specifications (the "plans") for the streets, utilities and other improvements to be developed on the Property (collectively the "Project") as part of the public facilities of the City, to be prepared by a Registered Professional Engineer and that Plat and Plans accurately depict such subdivision and the improvements comprising the Project. Developer understands that the City will rely on the accuracy of the Plat and Plans in making its determination as to whether the documents comply with all City ordinances, state and federal law.
3. **Development Documents:** Upon the execution of this Agreement, Plat, Plans, and orders of the City Planning and Zoning Commission and the City Council, made in connection with the approval of the subdivision depicted on the Plat (hereinafter the "Subdivision") are confirmed, ratified, and agreed upon by both parties and attached hereto as Exhibit "B". Developer agrees to comply with such orders and Ordinance No. 2684, and any amendments as of the date of the execution of the contract, as applicable to the Subdivision; and all of the work of the Project will be done under the supervision of the City Engineer (as defined in Paragraph 8 of this Article) to City standards, and in accordance with applicable City regulations. The Plat, Plans, orders of the City Planning and Zoning Commission, and the City Council and Ordinance No. 2684 (hereinafter collectively referred to as the "Development Documents") are incorporated into this Agreement a part thereof for all purposes.
4. **Delivery of Improvements:** The Developer will pay for and deliver to the City free and clear of all liens and costs, all of the improvements provided in the Development Documents.
5. **Performance Bond:** No work shall be performed within the Subdivision until directed by the City Manager or until the Developer presents to the City Manager a satisfactory Performance Bond and a Payment Bond, as provided by Chapter 2253 of the Texas Government Code, from the Contractor in favor of the Developer and the City. The City at its own election may waive this bonding requirement. If required, such bond shall be made for 100% of the contract price for all streets and utilities and public works to be installed in the Subdivision, and shall be in a form containing all other provisions set forth in Chapter 2253 of the Texas Government Code, including, but not limited to, Section 2253.021 of that Chapter.
6. **Failure to Complete Development:** If the Developer does not complete the Improvements contained in the Development Documents on or before September, 2018, City may, at its election, use the Performance Bond to complete such Improvements. The date in this Paragraph may be extended by the mutual agreement of the parties. Such extension shall be in writing, as provided in Paragraph 13 of Article II.

7. **Availability of Public Facilities:** No public facilities will be made available to any lot within any segment of this Subdivision until the work on each segment is performed and approved as agreed upon in this Agreement.
8. **Registered Civil Engineer:** All of the plans and specifications for the improvements herein mentioned in the Development Documents, shall be prepared by a Registered Professional Civil Engineer, and all of the improvements shall be built under the supervision of such engineer, and the engineer shall certify to the City that, as each segment is built, such segment as built is true and correct in accordance with the plans and specifications, and that the same was built under his supervision, and the certificate shall be signed and sealed by such engineer. All of the expense of such engineering shall be paid for by the Developer.
9. **City Engineer:** Before work is begun on any improvement, the City Engineer shall designate a person, hereinafter identified as "City Engineer," who shall be notified and arrangements made for inspection by the City Engineer at such stages of construction as required by him, and no improvement constructed underground shall be covered by the Developer until inspected by the City Engineer and approved by him. At any time any construction is contrary to the plans and specifications, the City Engineer shall be, and is, empowered to stop construction and require correct construction and installation at the Developer's risk and without liability to the City.
10. **Coordination of Work:** The work will be coordinated between the City and the Developer so that the utilities will be in place before the permanent improvements are installed.
11. **Utility Arrangements:** The Developer will make its own arrangements with gas, electric, and telephone service providers for extensions of their utilities, and upon complying with this Agreement, the City utilities will be furnished.
12. **Fees:** Other fees normally charged by the City for building permits, water taps, service connections, and similar fees will be paid as required to the City by the Developer.
13. **Guarantee or Maintenance Bond:**
 - A. If, within one year after the acceptance, defects should appear in the materials or workmanship, the Developer shall have such defects promptly repaired at its own expense, and shall leave the work as intended by the plans and specifications. This guarantee will apply to all parts of the work which have been accepted by the City.
 - B. Instead of the Guarantee set for in subparagraph (A) of this paragraph, Developer may provide a Maintenance Bond to the City at the time of final acceptance of the improvements by the City Engineer. The Bond shall name the City as an obligee under the bond and the bond shall provide a one (1) year guarantee on all the improvements contained in the Development Documents.

14. **WAIVER OF RIGHTS UNDER STATE LAW:**

- A. Developer understands that, pursuant to Section 212.904 of the Texas Local Government Code, the developer is entitled to an apportionment of the municipal infrastructure cost and that such apportionment must be done by a professional engineer. Developer hereby agrees that any land or property it donates to the City, as reflected on the Final Plat, is roughly proportionate to the need for such land. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the development of the Property and its needs related thereto. BY MY SIGNATURE ON THIS AGREEMENT, DEVELOPER HEREBY FREELY, KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHTS UNDER SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE, OR ANY OTHER RELATED CLAIMS. DEVELOPER AGREES THAT THE DEVELOPER'S AGREEMENT MAY PROCEED WITHOUT THE REQUIREMENTS IMPOSED ON THE CITY UNDER SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE, EXCEPT DEVELOPER SPECIFICALLY RESERVES ITS RIGHT TO APPEAL THE APPORTIONMENT IN ACCORDANCE WITH SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE. I CONSENT TO THIS WAIVER AFTER HAVING THE OPPORTUNITY TO REVIEW THIS AGREEMENT AND WAIVER PROVISION WITH MY ATTORNEY, OR IF I HAVE NOT REVIEWED THIS WITH AN ATTORNEY, THAT I HAVE HAD THE OPPORTUNITY TO DO SO AND HAVE VOLUNTARILY CHOSEN NOT TO SEEK THE ADVICE OF AN ATTORNEY.
- B. BOTH DEVELOPER AND THE CITY FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY *DOLAN V. TOWN OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AND WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN THE DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE FOREGOING, INCLUDING ALL DEDICATIONS OF LAND, PARKLAND, AND ANY INFRASTRUCTURE REFERENCED HEREIN. I CONSENT TO THIS WAIVER AFTER HAVING THE OPPORTUNITY TO REVIEW THIS AGREEMENT AND WAIVER PROVISION WITH MY ATTORNEY, OR IF I HAVE NOT REVIEWED THIS WITH AN ATTORNEY, THAT I HAVE HAD THE OPPORTUNITY TO DO SO AND HAVE VOLUNTARILY CHOSEN NOT TO SEEK THE ADVICE OF AN ATTORNEY.

15. **Other Provisions:**

- A. Upon Completion of the Subdivision one electronic copy and one set of reproducible "Record" drawings will be supplied to the City.
- B. The Developer shall pay to the City an engineering plan review, inspection, and testing fee of \$27,913.63.

- C. Developer agrees that the development, as set forth in the Contract Documents, will comply with all federal, state and local laws relating to the discharge of storm water upon completion of the development.
- D. Developer and City agree that any and all goods and services relative to infrastructure dedicated to the City are exempt from state and local sales tax in accordance with Texas Tax Code §§151.309 and 151.311.

ARTICLE II.

GENERAL CONTRACT PROVISIONS

1. **Force Majeure.** If the performance of any of the parties hereto is delayed by reason of war, civil commotion, acts of God, inclement weather, unanticipated subsurface conditions, fire or other casualty, court injunction or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed. The terms above shall not apply to extend the time permitted for any payment obligations set forth in this Agreement.
2. **INDEMNIFICATION AND HOLD HARMLESS.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, DEVELOPER OBLIGATES ITSELF TO THE CITY TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING DEVELOPERS EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION HERewith, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES. THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY. This indemnity does not waive any governmental immunity available to the City under Texas law and does not waive any defenses of the parties under Texas law.
3. **Authority to Bind.** Each general partner or member executing this Agreement on behalf the Developer represents that, by executing this Agreement in such capacity, it acts within the scope of its authority and does not exceed the bounds of its authority to act to bind such party regarding the obligations and assurances contained in this Agreement. City

represents that the execution of this Agreement as provided below has been duly authorized by the City Council as provided in the Approval Resolution.

4. **Events of Default.** A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement. The non-defaulting party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.
5. **Remedies Available to City.** If a default by Developer shall occur and continue, after thirty (30) day's notice to cure default, City may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law and including using the Performance Bond to complete the work, without the necessity of further notice to or demand upon Developer. City shall not, however, have the right to exercise such remedies for so long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within thirty (30) days following notice, pursues such cure with reasonable diligence and completes such cure within one hundred eighty (180) days.
6. **No Waiver of Defenses.** Nothing in this Agreement shall be construed or intended to waive any defenses available to the City, including, but not limited to, governmental immunity.
7. **Venue and Governing Law.** This Agreement is performable in Grayson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Grayson County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.
8. **Notices.** Any notice required by this Agreement shall be deemed to be properly served (i) three (3) days following deposit if deposited in the U.S. mail by certified letter, return receipt requested; (ii) on the next business day if sent by nationally recognized overnight delivery service; or (iii) upon receipt if transmitted by facsimile or electronic transmission, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

CITY:

DESIGNEE: Clint Philpott, P.E.
ADDRESS: 220 W. Mulberry Street
Sherman, TX 75090
PHONE: 903-892-7327
FAX: 903-870-7802

DEVELOPER:

DESIGNEE: Ronald C. Barton
ADDRESS: 715 S. Sam Rayburn Frwy.
Sherman, TX 75090
PHONE: (903) 868-4201
FAX: _____

9. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
10. **Counterparts.** This Agreement may be executed in any number of counterparts, which may be transmitted originally or electronically, each of which shall be deemed an original and constitute one and the same instrument.
11. **Captions.** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
12. **Successors and Assigns.** The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto, provided, however, this Agreement shall not be assigned by Developer without prior written approval by the City Manager of the City, which approval shall not be unreasonably withheld or delayed. City may assign or delegate any of its rights or obligations under this Agreement but the same shall not constitute a novation.
13. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.
14. **Interpretation of Agreement.** This is negotiated Agreement. If any part of this Agreement is in dispute, the parties stipulate that the Agreement shall not be construed more favorably for either party.

IN WITNESS WHEREOF, parties have caused this Agreement to be executed in duplicate this ____ day of _____ 2018, with an original to each party.

Developer: BARTON CAPITAL, LTD.

BY: _____
NAME: Ronald C. Barton
TITLE: Partner

ATTEST: **BY:** _____

 NAME: _____

 TITLE: _____

CITY: CITY OF SHERMAN

BY: _____
NAME: Robby Hefton
TITLE: City Manager

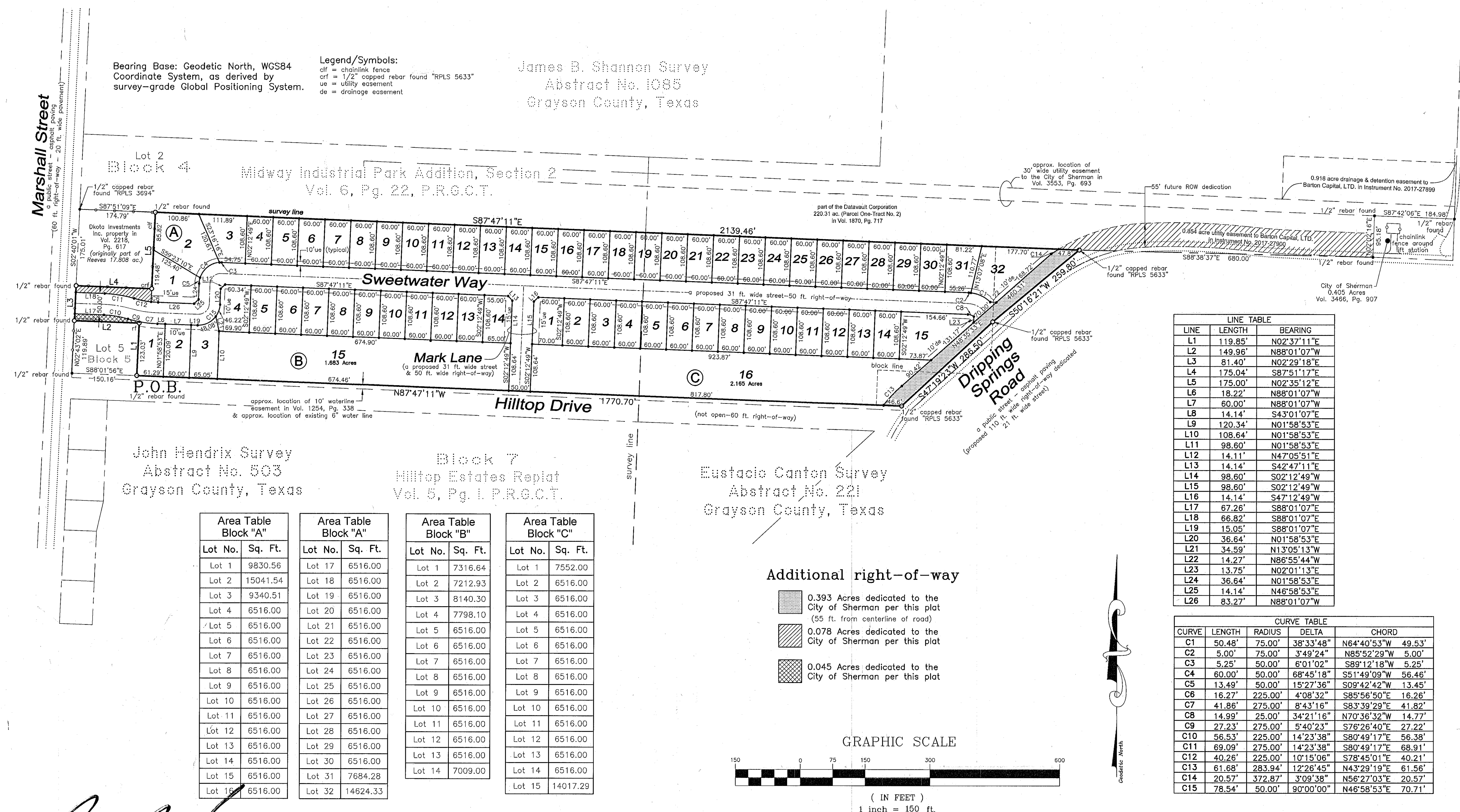
ATTEST: **BY:** _____
 NAME: Linda Ashby
 TITLE: City Clerk

APPROVAL RECOMMENDED:

Clint Philpott, P.E. / Director Engineering

APPROVED AS TO FORM:

Brandon S. Shelby, City Attorney



FIELD NOTES

SITUATED in the County of Grayson, State of Texas, and being a part of the John Hendrix Survey, Abstract No. 503, and being a part of the E. Canton Survey, Abstract No. 221, and being all of the 17.11 ac. tract of land conveyed to Barton Capital, LTD from Pauline M. Reeves by General Warranty Deed dated January 13, 2017, and recorded in Volume 5936, Page 215, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 1/2 inch rebar found in the North line of Hilltop Drive, a public street, (not open) at the Southeast corner of Lot 5, Block 5, Hilltop Estates Addition to Grayson County, Texas, as per plat of record in Volume 5, Page 1, Plat Records, Grayson County, Texas and the most Southerly Southwest corner of said Barton 17.11 ac.;

THENCE North 02 deg. 37 min. 11 sec. East, with the East line of said Lot 5, with a West line of said Barton 17.11 ac., a distance of 119.85 ft. to a 1/2 inch rebar found at the Northeast corner of said Lot 5 and an Ell corner of said Barton 17.11 ac.;

THENCE North 88 deg. 01 min. 07 sec. West, with the North line of said Lot 5 and a South line of said Barton 17.11 ac., a distance of 149.96 ft. to a 1/2 inch rebar found in the East line of Marshall Street, a public street, at the Northwest corner of said Lot 5 and the most Westerly Southwest corner of said Barton 17.11 ac.;

THENCE North 02 deg. 29 min. 18 sec. East, with the East line of said Marshall Street and a West line of said Barton 17.11 ac., a distance of 81.40 ft. to a 1/2 inch rebar found at the Southwest corner of the tract conveyed to Dakota Investments, Inc. in Volume 2218, Page 617, Real Property Records, Grayson County, Texas and the most Western Northwest corner of said Barton 17.11 ac., SAID rebar being South 01 deg. 40 min. 01 sec. West, 175.01 ft. from a 1/2 inch capped rebar found stamped "RPLS 3694" at the Northwest corner of said Dakota Investments property;

THENCE South 87 deg. 51 min. 17 sec. East, with the South line of said Dakota Investments property and a North line of said Barton 17.11 ac., a distance of 175.04 ft. to a 1/2 inch capped rebar found stamped "RPLS 5633" at the Southeast corner of said Dakota Investments property and an Ell corner of said Barton 17.11 ac.;

THENCE North 02 deg. 35 min. 12 sec. East, with the East line of said Dakota Investments property and a West line of said Barton 17.11 ac., a distance of 175.00 ft. to a 1/2 inch rebar found in the South line of both Lot 2, Block 4, Midway Industrial Park Addition, Section 2 to Grayson County, Texas, as per plat of record in Volume 6, Page 22, said Plat Records and the James B. Cannon Survey, Abstract No. 1085, in the North line of said John Hendrix Survey, at the Northeast corner of said Dakota Investments property and the most Northern Northwest corner of said Barton 17.11 ac.;

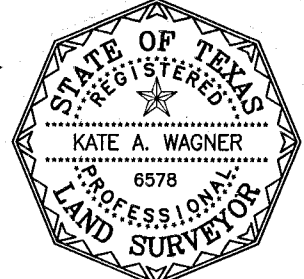
THENCE South 87 deg. 47 min. 11 sec. East, with the South line of both said Lot 2 and said James B. Cannon Survey and the North line of both said John Hendrix Survey and said Barton 17.11 ac., passing the Southeast corner of said Lot 2, the Northeast corner of said John Hendrix Survey, the Northwest corner of said E. Canton Survey and the Southwest corner of the Datavault Corporation property (being a part of the 220.31 acre tract (Parcel One-Tract No. 2) in Volume 1870, Page 717, Real Property Records, Grayson County, Texas, continuing now with the North line of said E. Canton Survey and the South line of said Datavault Corporation property for a TOTAL distance of 2,139.46 ft. to a 1/2 inch capped rebar found stamped "RPLS 5633" in the West line of Dripping Springs Road, a public road, at the Northeast corner of said Barton 17.11 ac.;

THENCE South 50 deg. 16 min. 21 sec. West, with the West line of said Dripping Springs Road and the East line of said Barton 17.11 ac., a distance of 259.80 ft. to a 1/2 inch capped rebar found stamped "RPLS 5633" at an angle point;

THENCE South 47 deg. 19 min. 23 sec. West, continuing with the West line of said Dripping Springs Road and the East line of said Barton 17.11 ac., a distance of 286.50 ft. to a 1/2 inch capped rebar found stamped "RPLS 5633" at the intersection of the West line of said Dripping Springs Road with the North line of said Hilltop Drive, at the Southeast corner of said Barton 17.11 ac.;

THENCE North 87 deg. 47 min. 11 sec. West, with the North line of said Hilltop Drive and a South line of said Barton 17.11 ac., crossing the West line of said E. Canton Survey and an East line of said John Hendrix Survey and continuing for a total distance of 1,770.70 ft. to the **PLACE OF BEGINNING** and containing 17.112 ACRES of land.
I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that a survey was made on the ground of the property shown hereon under my personal and direct supervision, and that the corner monumentation meets the standards set according to the Subdivision Regulations of the City of Sherman, Texas.

Kate A. Wagner
Kate A. Wagner, R. P. L. S. No. 6578
12/13/17
Date:



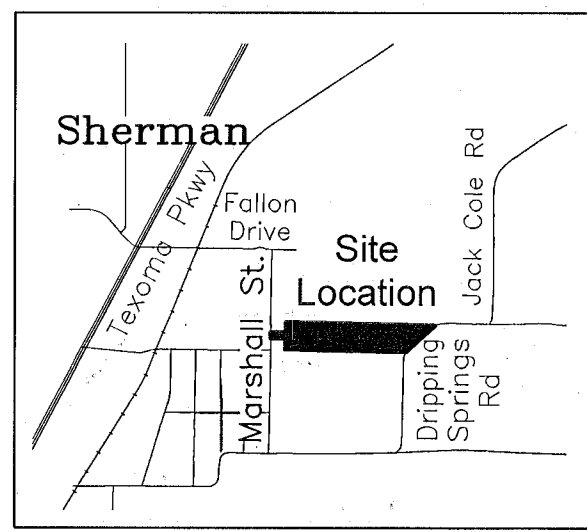
I, Authorized Representative for Barton Capital, LTD., owner of Sweetwater Springs Subdivision, to the City of Sherman, Texas, do hereby dedicate the streets and easements shown hereon to the public use forever.
Ron Barton
Ron Barton
Authorized Representative for Barton Capital, LTD.

Before me the undersigned, a notary public in and for said County and State, on this day personally appeared Ron Barton, 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 this 13th day of December, 2017

Amber Doan
Notary Public, Grayson County, Texas
AMBER DOAN
Notary Public, State of Texas
Comm. Expires 09-12-2020
Notary ID 12467837-6

Vicinity Map
(not to scale)



General Notes:

1. Water Supply to be provided by City of Sherman.
2. Sewer service to be provided by City of Sherman.
3. Electrical service is provided by Oncor Electric Delivery Co.
4. Blocking the flow of water or construction of improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Sherman will not be responsible for the maintenance and operation of said drainage ways or for the control of erosion.
7. The property shown on the plat hereon lies within a Zone "X" (areas determined to be outside 500-year floodplain) Designation, as shown on the Flood Insurance Rate Map for Grayson County, Texas and Incorporated Areas, Map No. 48181C0290 F, Revised Date: September 29, 2010.
8. Neither City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
9. The owners and builders must comply with all other state and federal regulations regarding developments of this type.

SARTIN & ASSOCIATES, INC.
REGISTERED PROFESSIONAL LAND SURVEYORS
FIRM Headquarters - #10081100
109 S. Travis Street • Sherman, TX 75090
Phone: (903)892-8003 • Fax: (903)663-6191 • Email: sartin@surveying@gmail.com
S:\Land Projects R2\Sweetwater Springs\dwg\Additional-Topo-latest.dwg Layout: Final-Arch D Plot Date Dec 12 17 Time: 5:03 PM

Owner/Developer:
Barton Capital, LTD
715 S. Sam Rayburn Frwy.
Sherman, Texas 75090

City of Sherman

The undersigned, the City Clerk of the City of Sherman, Texas, does hereby certify that the foregoing final plat of Sweetwater Springs Subdivision to the City of Sherman, Texas, was submitted to the city council of Sherman, Texas, on the 16th day of October, 2017, and that the City Council, by formal action, then and there accepted the dedication of all easements, and other public areas, as shown and set forth in and upon said plat; and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as here above subscribed.

CERTIFIED THIS 13th DAY OF December, 2017

BY *Shirley Ashby*
CITY CLERK, CITY OF SHERMAN, TEXAS



This, the final plat of Sweetwater Springs Subdivision to the City of Sherman, Texas, is hereby approved this 16th day of October, 2017, by the City Council of the City of Sherman, Texas.

ACCEPTED BY THE CITY COUNCIL OF SHERMAN, TEXAS:

Mayor
MAYOR, CITY OF SHERMAN, TEXAS
12/13/2017
DATE

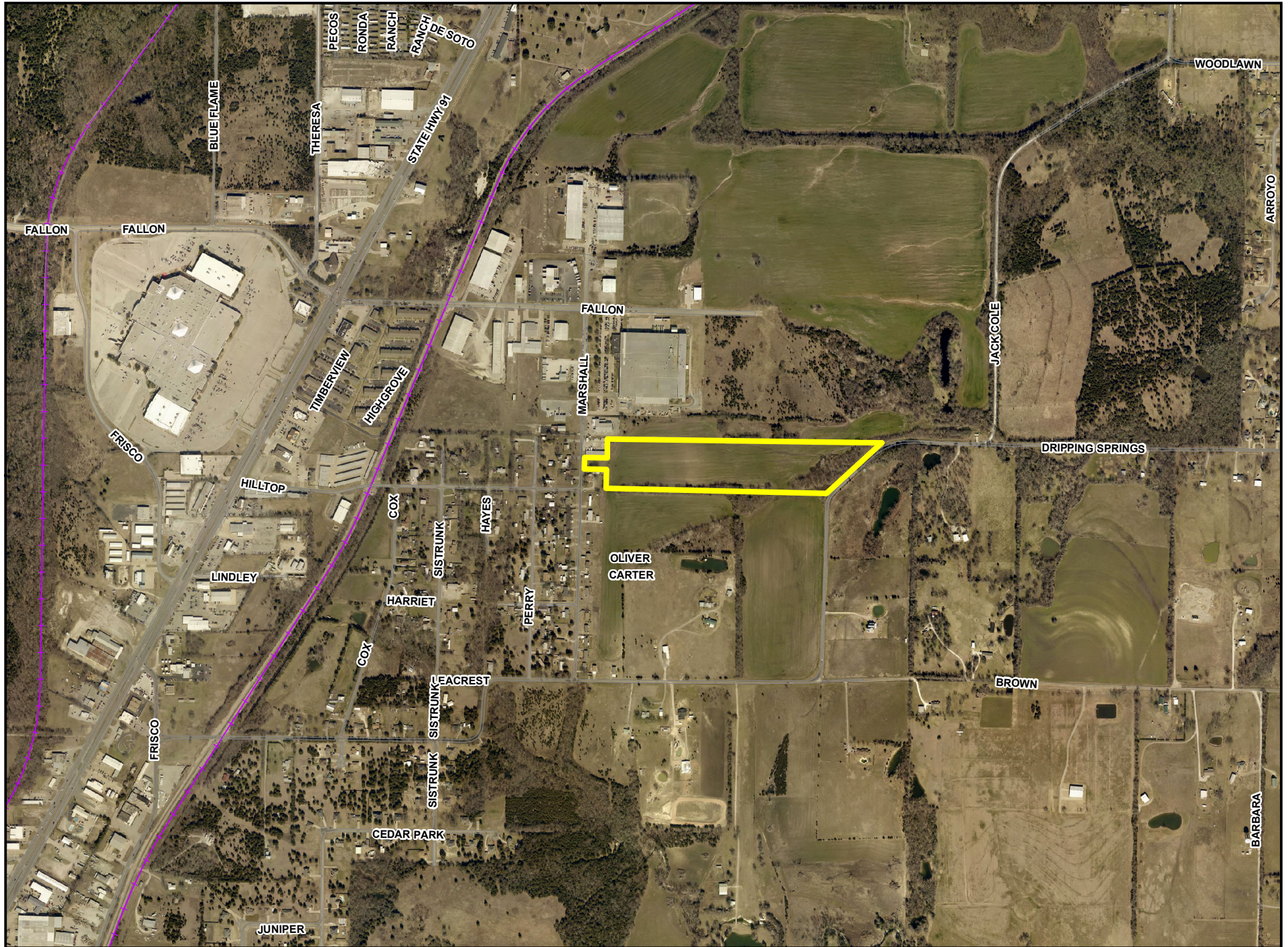
This, the final plat of Sweetwater Springs Subdivision to the City of Sherman, Texas, is hereby approved this 19th day of September, 2017, by the Planning and Zoning Commission of the City of Sherman, Texas.

Chairman
Chairman
Secretary
Secretary

Filed for Record
December 21, 2017
Document No. 2017-3293
Plat Records, Grayson County, Texas

Sweetwater Springs Subdivision
to
the City of Sherman, Texas
17.112 Acres
in the
John Hendrix Survey, Abst. No. 503 & E. Canton Survey, Abstract No. 221
Comprising of 61 residential lots and 2 "future development" lots

Sweetwater Springs Subdivision



1 inch = 1,000 feet





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.4.

Meeting Date: 02/19/2018

Prepared By: Clint Philpott, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6344

Authorizing Execution of a Development Agreement with Brookhaven Development Joint Venture for the Construction of Public Facilities in Brookstone Garden Homes Addition, a 4.085-acre Development off of F.M. 1417 (Heritage Parkway), Southeast of Quail Run Road in the City of Sherman

Issue:

The construction of public facilities in Brookstone Garden Homes Addition, a 4.085-acre development off of F.M. 1417 (Heritage Parkway), southeast of Quail Run Road in the City of Sherman

Background:

Brookhaven Development Joint Venture proposes to construct a 4.085-acre development off of F.M. 1417 (Heritage Parkway), southeast of Quail Run Road, which includes the construction of storm water, water mains, sanitary sewer mains and public roads.

Origination:

Engineering Department

Financial Consideration:

The development fee to be paid by the developer for public inspection will be \$9,439.14.

Staff Recommendation:

Staff recommends approval and execution of the Development Agreement.

Alternatives:

As directed by City Council

Attachments

Resolution No. 6344

Development Agreement - Brookhaven Development Joint Venture

Plat

Location Map

RESOLUTION NO. 6344

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT WITH BROOKHAVEN DEVELOPMENT JOINT VENTURE FOR THE CONSTRUCTION OF PUBLIC FACILITIES IN BROOKSTONE GARDEN HOMES ADDITION, A 4.085-ACRE DEVELOPMENT OFF OF F.M. 1417 (HERITAGE PARKWAY), SOUTHEAST OF QUAIL RUN ROAD 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 contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Development Agreement with Brookhaven Development Joint Venture, for the construction of public facilities in the Brookstone Garden Homes Subdivision, a 4.085-acre development off of F.M. 1417 (Heritage Parkway), southeast of Quail Run Road in the City of Sherman, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the _____ day of _____, 2018.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

**DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SHERMAN AND BROOKHAVEN DEVELOPMENT JOINT VENTURE**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2018 (the “Effective Date”), by and among the City of Sherman (“City”), a municipal corporation organized under the laws of the State of Texas, Brookhaven Development Joint Venture, (“Developer”).

WITNESSETH:

WHEREAS, City recognizes the importance of its continued role in local economic development; and

WHEREAS, Developer is developing a portion of the City and making improvements to the City; and

WHEREAS, Developer owns or controls lands located in Sherman, Texas, and described to the City by the Developer as Brookstone Garden Homes Addition, and attached hereto and made a part hereof as if fully set out in this paragraph as Exhibit “A” and hereinafter referred to as the "Property", and Developer intends to develop the Property by constructing improvements thereon; and

WHEREAS, the Developer desires that the City accept the dedication of the streets, utilities, and other improvements as reflected on the plans and specifications submitted by the Developer as a part of the public facilities of the City, as indicated in Paragraph 2 of Article I; and

WHEREAS, the CITY is willing to provide, in accordance with the provisions of this Agreement and the prevailing state and local laws, city services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive City services;

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

**ARTICLE I.
SPECIFIC CONTRACT PROVISIONS**

1. **Assurance of Title:** At the time of execution of this Agreement, the Developer agrees to deliver to City a copy of a Title Insurance Policy, or an opinion of title from a qualified attorney-at-law addressed to the City in a form and substance satisfactory to City with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens

and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agreement.

2. **Assurance of Accuracy of Documents:** Developer has caused the subdivision plat of the Property (the "plat") and all plans and specifications (the "plans") for the streets, utilities and other improvements to be developed on the Property (collectively the "Project") as part of the public facilities of the City, to be prepared by a Registered Professional Engineer and that Plat and Plans accurately depict such subdivision and the improvements comprising the Project. Developer understands that the City will rely on the accuracy of the Plat and Plans in making its determination as to whether the documents comply with all City ordinances, state and federal law.
3. **Development Documents:** Upon the execution of this Agreement, Plat, Plans, and orders of the City Planning and Zoning Commission and the City Council, made in connection with the approval of the subdivision depicted on the Plat (hereinafter the "Subdivision") are confirmed, ratified, and agreed upon by both parties and attached hereto as Exhibit "B". Developer agrees to comply with such orders and Ordinance No. 2684, and any amendments as of the date of the execution of the contract, as applicable to the Subdivision; and all of the work of the Project will be done under the supervision of the City Engineer (as defined in Paragraph 8 of this Article) to City standards, and in accordance with applicable City regulations. The Plat, Plans, orders of the City Planning and Zoning Commission, and the City Council and Ordinance No. 2684 (hereinafter collectively referred to as the "Development Documents") are incorporated into this Agreement a part thereof for all purposes.
4. **Delivery of Improvements:** The Developer will pay for and deliver to the City free and clear of all liens and costs, all of the improvements provided in the Development Documents.
5. **Performance Bond:** No work shall be performed within the Subdivision until the Developer presents to the City Manager a satisfactory Performance Bond and a Payment Bond, as provided by Chapter 2253 of the Texas Government Code, from the Contractor in favor of the Developer and the City. Such bond shall be made for 100% of the contract price for all streets and utilities and public works to be installed in the Subdivision, and shall be in a form containing all other provisions set forth in Chapter 2253 of the Texas Government Code, including, but not limited to, Section 2253.021 of that Chapter.
6. **Failure to Complete Development:** If the Developer does not complete the Improvements contained in the Development Documents on or before August ,2018, City may, at its election, use the Performance Bond to complete such Improvements. The date in this Paragraph may be extended by the mutual agreement of the parties. Such extension shall be in writing, as provided in Paragraph 13 of Article II.
7. **Availability of Public Facilities:** No public facilities will be made available to any lot within any segment of this Subdivision until the work on each segment is performed and approved as agreed upon in this Agreement.

8. **Registered Civil Engineer:** All of the plans and specifications for the improvements herein mentioned in the Development Documents, shall be prepared by a Registered Professional Civil Engineer, and all of the improvements shall be built under the supervision of such engineer, and the engineer shall certify to the City that, as each segment is built, such segment as built is true and correct in accordance with the plans and specifications, and that the same was built under his supervision, and the certificate shall be signed and sealed by such engineer. All of the expense of such engineering shall be paid for by the Developer.
9. **City Engineer:** Before work is begun on any improvement, the City Engineer shall designate a person, hereinafter identified as "City Engineer," who shall be notified and arrangements made for inspection by the City Engineer at such stages of construction as required by him, and no improvement constructed underground shall be covered by the Developer until inspected by the City Engineer and approved by him. At any time any construction is contrary to the plans and specifications, the City Engineer shall be, and is, empowered to stop construction and require correct construction and installation at the Developer's risk and without liability to the City.
10. **Coordination of Work:** The work will be coordinated between the City and the Developer so that the utilities will be in place before the permanent improvements are installed.
11. **Utility Arrangements:** The Developer will make its own arrangements with gas, electric, and telephone service providers for extensions of their utilities, and upon complying with this Agreement, the City utilities will be furnished.
12. **Fees:** Other fees normally charged by the City for building permits, water taps, service connections, and similar fees will be paid as required to the City by the Developer.
13. **Guarantee or Maintenance Bond:**
 - A. If, within one year after the acceptance, defects should appear in the materials or workmanship, the Developer shall have such defects promptly repaired at its own expense, and shall leave the work as intended by the plans and specifications. This guarantee will apply to all parts of the work which have been accepted by the City.
 - B. Instead of the Guarantee set for in subparagraph (A) of this paragraph, Developer may provide a Maintenance Bond to the City at the time of final acceptance of the improvements by the City Engineer. The Bond shall name the City as an obligee under the bond and the bond shall provide a one (1) year guarantee on all the improvements contained in the Development Documents.

14. **WAIVER OF RIGHTS UNDER STATE LAW:**

- A. Developer understands that, pursuant to Section 212.904 of the Texas Local Government Code, the developer is entitled to an apportionment of the municipal infrastructure cost and that such apportionment must be done by a professional engineer. Developer hereby agrees that any land or property it donates to the City, as reflected on the Final Plat, is roughly proportionate to the need for such land. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the development of the Property and its needs related thereto. BY MY SIGNATURE ON THIS AGREEMENT, DEVELOPER HEREBY FREELY, KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHTS UNDER SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE, OR ANY OTHER RELATED CLAIMS. DEVELOPER AGREES THAT THE DEVELOPER'S AGREEMENT MAY PROCEED WITHOUT THE REQUIREMENTS IMPOSED ON THE CITY UNDER SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE, EXCEPT DEVELOPER SPECIFICALLY RESERVES ITS RIGHT TO APPEAL THE APPORTIONMENT IN ACCORDANCE WITH SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE. I CONSENT TO THIS WAIVER AFTER HAVING THE OPPORTUNITY TO REVIEW THIS AGREEMENT AND WAIVER PROVISION WITH MY ATTORNEY, OR IF I HAVE NOT REVIEWED THIS WITH AN ATTORNEY, THAT I HAVE HAD THE OPPORTUNITY TO DO SO AND HAVE VOLUNTARILY CHOSEN NOT TO SEEK THE ADVICE OF AN ATTORNEY.
- B. BOTH DEVELOPER AND THE CITY FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY *DOLAN V. TOWN OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AND WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN THE DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE FOREGOING, INCLUDING ALL DEDICATIONS OF LAND, PARKLAND, AND ANY INFRASTRUCTURE REFERENCED HEREIN. I CONSENT TO THIS WAIVER AFTER HAVING THE OPPORTUNITY TO REVIEW THIS AGREEMENT AND WAIVER PROVISION WITH MY ATTORNEY, OR IF I HAVE NOT REVIEWED THIS WITH AN ATTORNEY, THAT I HAVE HAD THE OPPORTUNITY TO DO SO AND HAVE VOLUNTARILY CHOSEN NOT TO SEEK THE ADVICE OF AN ATTORNEY.

15. **Other Provisions:**

- A. Upon Completion of the Subdivision one electronic copy and one set of reproducible "Record" drawings will be supplied to the City.
- B. The Developer shall pay to the City an engineering plan review, inspection, and testing fee of \$9,439.14.

- C. Developer agrees that the development, as set forth in the Contract Documents, will comply with all federal, state and local laws relating to the discharge of storm water upon completion of the development.
- D. Developer and City agree that any and all goods and services relative to infrastructure dedicated to the City are exempt from state and local sales tax in accordance with Texas Tax Code §§151.309 and 151.311.

ARTICLE II.

GENERAL CONTRACT PROVISIONS

1. **Force Majeure.** If the performance of any of the parties hereto is delayed by reason of war, civil commotion, acts of God, inclement weather, unanticipated subsurface conditions, fire or other casualty, court injunction or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed. The terms above shall not apply to extend the time permitted for any payment obligations set forth in this Agreement.
2. **INDEMNIFICATION AND HOLD HARMLESS.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, DEVELOPER OBLIGATES ITSELF TO THE CITY TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING DEVELOPERS EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION HERewith, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES. THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY. This indemnity does not waive any governmental immunity available to the City under Texas law and does not waive any defenses of the parties under Texas law.
3. **Authority to Bind.** Each general partner or member executing this Agreement on behalf the Developer represents that, by executing this Agreement in such capacity, it acts within the scope of its authority and does not exceed the bounds of its authority to act to bind such party regarding the obligations and assurances contained in this Agreement. City

represents that the execution of this Agreement as provided below has been duly authorized by the City Council as provided in the Approval Resolution.

4. **Events of Default.** A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement. The non-defaulting party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.
5. **Remedies Available to City.** If a default by Developer shall occur and continue, after thirty (30) day's notice to cure default, City may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law and including using the Performance Bond to complete the work, without the necessity of further notice to or demand upon Developer. City shall not, however, have the right to exercise such remedies for so long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within thirty (30) days following notice, pursues such cure with reasonable diligence and completes such cure within one hundred eighty (180) days.
6. **No Waiver of Defenses.** Nothing in this Agreement shall be construed or intended to waive any defenses available to the City, including, but not limited to, governmental immunity.
7. **Venue and Governing Law.** This Agreement is performable in Grayson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Grayson County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.
8. **Notices.** Any notice required by this Agreement shall be deemed to be properly served (i) three (3) days following deposit if deposited in the U.S. mail by certified letter, return receipt requested; (ii) on the next business day if sent by nationally recognized overnight delivery service; or (iii) upon receipt if transmitted by facsimile or electronic transmission, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

CITY:

DESIGNEE: Clint Philpott, P.E.

ADDRESS: 220 W. Mulberry Street
Sherman, TX 75090

PHONE: 903-892-7327

FAX: 903-870-7802

DEVELOPER: Brookhaven Development Joint Venture

DESIGNEE: Joe Gilbert

ADDRESS: 801 E. Taylor Street
Sherman, TX 75090

PHONE: 903-893-5188

FAX: _____

9. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
10. **Counterparts.** This Agreement may be executed in any number of counterparts, which may be transmitted originally or electronically, each of which shall be deemed an original and constitute one and the same instrument.
11. **Captions.** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
12. **Successors and Assigns.** The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto, provided, however, this Agreement shall not be assigned by Developer without prior written approval by the City Manager of the City, which approval shall not be unreasonably withheld or delayed. City may assign or delegate any of its rights or obligations under this Agreement but the same shall not constitute a novation.
13. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.
14. **Interpretation of Agreement.** This is negotiated Agreement. If any part of this Agreement is in dispute, the parties stipulate that the Agreement shall not be construed more favorably for either party.

IN WITNESS WHEREOF, parties have caused this Agreement to be executed in duplicate this ____ day of _____ 2018, with an original to each party.

Developer: BROOKHAVEN DEVELOPMENT JOINT VENTURE

BY: _____
NAME: Joe Gilbert
TITLE: _____

ATTEST: **BY:** _____

 NAME: _____

 TITLE: _____

CITY: CITY OF SHERMAN

BY: _____
NAME: Robby Hefton
TITLE: City Manager

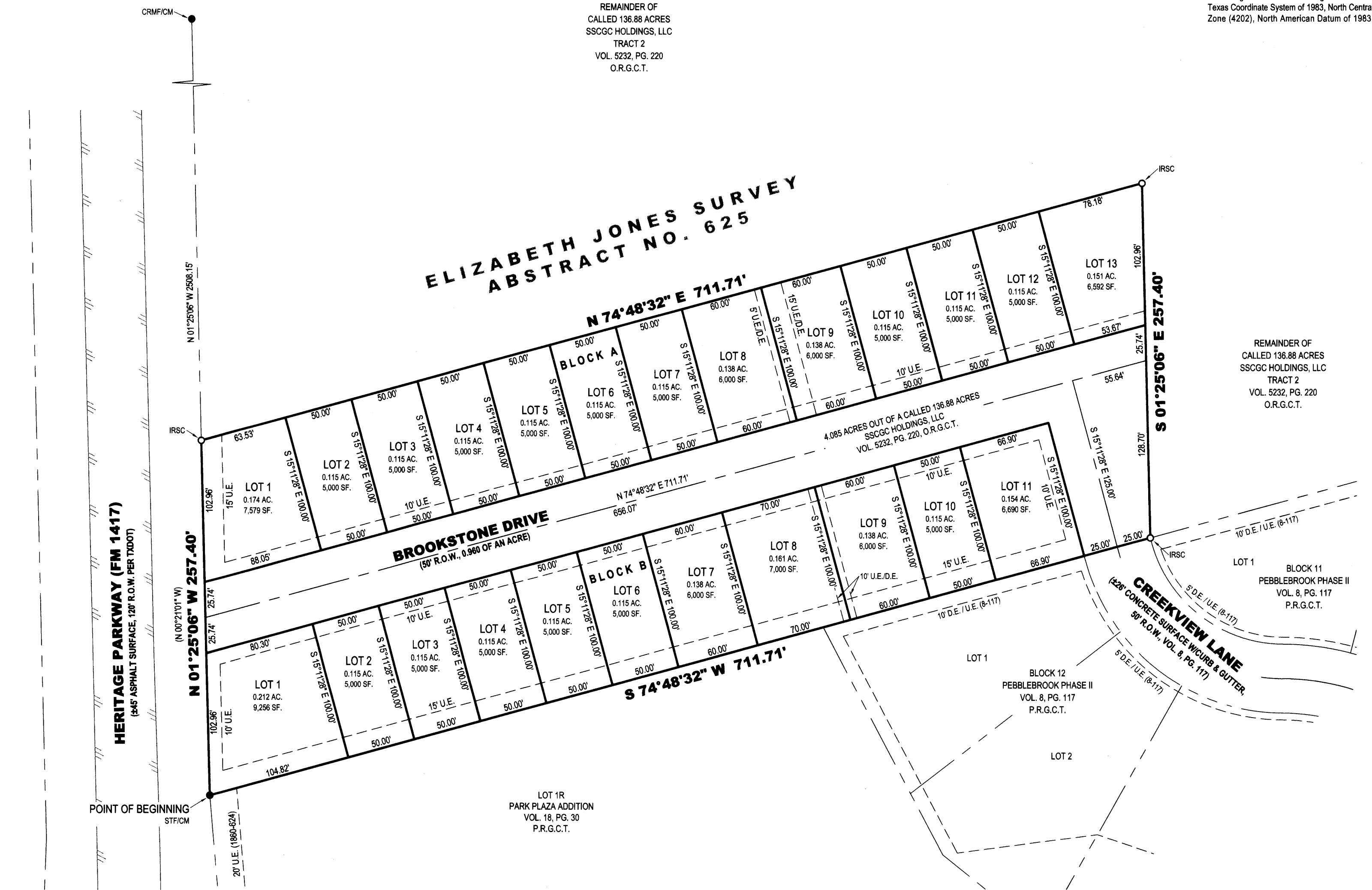
ATTEST: **BY:** _____
 NAME: Linda Ashby
 TITLE: City Clerk

APPROVAL RECOMMENDED:

Clint Philpott, P.E. / Director Engineering

APPROVED AS TO FORM:

Brandon S. Shelby, City Attorney



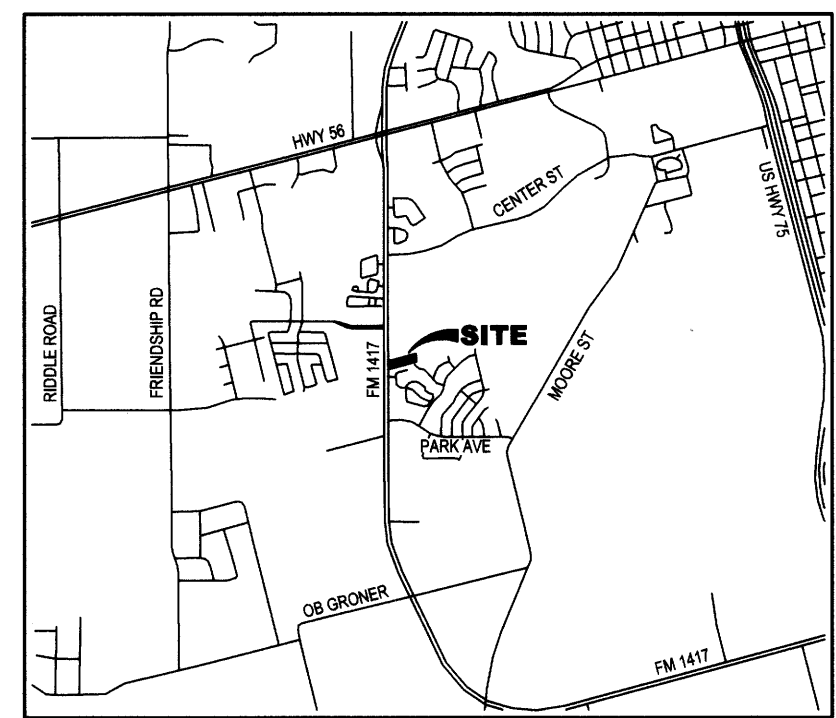
GENERAL NOTES:

- 1/2-inch iron rod with a plastic cap stamped "PRESTON TRAIL LAND SURVEYING RPLS 6585" set for all lot corners unless otherwise specified.

FLOOD STATEMENT:

I have examined the F.E.M.A. Flood Insurance Rate Map for the City of Sherman, Grayson County, Texas, Community Number 485509, effective date 09/29/2010 and that map indicates that this property is within "Non-shaded Zone X" defined as "Areas determined to be outside the 0.2% annual chance flood" as shown on Panel 0400 F of said map. This flood statement does not imply that the property and/or structures thereon will be free from flooding or flood damage, on rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This flood statement shall not create liability on the part of the surveyor.

LEGEND		
○	SET MONUMENT	P.R.G.C.T. PLAT RECORDS, GRAYSON COUNTY, TEXAS
●	FOUND MONUMENT	O.R.G.C.T. OFFICIAL RECORDS, GRAYSON COUNTY, TEXAS
IRSC	1/2" IRON ROD W/ "PRESTON TRAIL LAND SURVEYING RPLS 6585" CAP SET	
STF	SQUARE TUBE FOUND	VOL., PG. VOLUME, PAGE
CRMF	CONCRETE RIGHT-OF-WAY MONUMENT FOUND	U.E. UTILITY EASEMENT
CM	CONTROLLING MONUMENT	D.E. DRAINAGE EASEMENT
R.O.W.	RIGHT-OF-WAY	BOUNDARY LINE
AC	ACRES	ADJOINER LINE
SF	SQUARE FEET	EASEMENT
		ASPHALT



OWNER/DEVELOPER:
Brookhaven Development Joint Venture
801 East Taylor Street
Sherman, TX 75090
Ph: 903-893-5188
Contact: Joe Gilbert

ENGINEER:
Vilbig & Associates, PLLC
517 West Woodard Street
Denison, TX 75020
Ph: 214-352-7333
Contact: David A. Vilbig, P.E.

SURVEYOR:
Chris Noah, RPLS 6585
Preston Trail Land Surveying LLC
83493 N. State Highway 289
Pottsboro, TX 75076
Ph: 903-786-6029

Filed for Record
in the Official Records Of:
Grayson County Clerk
On: 2/6/2018 10:55:31 AM
In the PLAT Records
BROOKSTONE GARDEN HOMES ADDITION
Doc Number: 2018-6
Number of Pages: 2
Amount: \$5.00
Order#: 20180206000306
By: RF

**FINAL PLAT
BROOKSTONE GARDEN HOMES ADDITION
4.085 ACRES
ELIZABETH JONES SURVEY, ABSTRACT NO. 625
City of Sherman, Grayson County, Texas**

**Preston Trail
LAND SURVEYING**
83493 N. State Hwy 289, Suite 5
Pottsboro, TX 75076
www.prestontrailandsurveying.com
903-786-6029

TBPLS Firm No. 1019475
Drawn by: CRN
Checked by: BNH
Scale: 1"=60'
Date: 09/21/2017
Project No. 17-0416
Sheet No. 1 of 2

STATE OF TEXAS §
COUNTY OF GRAYSON §

OWNER'S CERTIFICATE

WHEREAS BROOKHAVEN DEVELOPMENT JOINT VENTURE is the rightful owner of all of that certain tract or parcel of land situated in the Elizabeth Jones Survey, Abstract No. 625, City of Sherman, Grayson County, Texas, and being part of a called 136.88 acre tract of land described as Tract 2 in the deed to SSCGC Holdings, LLC, recorded in Volume 5232, Page 220, Official Records of Grayson County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2-inch square tube found for the southwest corner of said 136.88 acre tract, common to the northwest corner of Lot 1R of Park Plaza Addition according to the plat thereof recorded in Volume 18, Page 30, Plat Records of Grayson County, Texas, and on the easterly right-of-way line of Heritage Parkway (F.M. 1417);

THENCE North 01°25'06" West, with the westerly line of said 136.88 acre tract, and with the easterly right-of-way line of said Heritage Parkway, a distance of 257.40 feet to a 1/2-inch iron rod with plastic cap stamped "PRESTON TRAIL LAND SURVEYING RPLS 6585" (hereinafter referred to as Capped Iron Rod) set for the northwest corner of the herein described tract of land, and from which a TxDOT concrete right-of-way monument found at an angle point on the easterly right-of-way line of said Heritage Parkway bears North 01°25'06" West a distance of 2508.15 feet;

THENCE North 74°48'32" East, crossing said 136.88 acre tract, a distance of 711.71 feet to a Capped Iron Rod set for the northeast corner of the herein described tract of land;

THENCE South 01°25'06" East, continuing across said 136.88 acre tract, a distance of 257.40 feet to a Capped Iron Rod set for the southeast corner of the herein described tract of land, on the southerly line of said 136.88 acre tract, and on the northerly line of Pebblebrook Phase II according to the plat thereof recorded in Volume 8, Page 117, said Plat Records, and at the northeast corner of Creekview Lane, a fifty-foot wide right-of-way according to said plat of Pebblebrook Phase II;

THENCE South 74°48'32" West, with the southerly line of said 136.88 acre tract, and with the northerly line of said Pebblebrook Phase II, passing an route at a distance of 247.11 feet a 1/2-inch iron rod with plastic cap stamped "GEES INC" found for the northwest corner of said Pebblebrook Phase II, common to the northeast corner of aforesaid Lot 1R of Park Plaza Addition, and continuing on said course with the northerly line of said Lot 1R of Park Plaza Addition a total distance of 711.71 feet to the POINT OF BEGINNING and enclosing 4.085 acres (177,928 square feet) of land, more or less.

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS

That BROOKHAVEN DEVELOPMENT JOINT VENTURE, does hereby adopt this plat designating the hereinbefore described property as **BROOKSTONE GARDEN HOMES ADDITION**, an Addition to the City of Sherman, Grayson County, Texas, and does hereby dedicate to the public use forever all streets, rights-of-way, alleys and easements shown thereon. The City or any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs or other improvements or growths in which any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and the City or any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Sherman, Texas.

Brookhaven Development Joint Venture, a Texas Joint Venture

By: Joe Gilbert Construction, LLC, a Texas limited liability company,
Its managing member

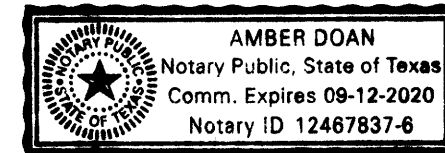
Joe Gilbert
Joe Gilbert, President

STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Joe Gilbert, 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 considerations therein.

WITNESS MY HAND AND SEAL OF OFFICE THIS 5th DAY OF February, 20 18.

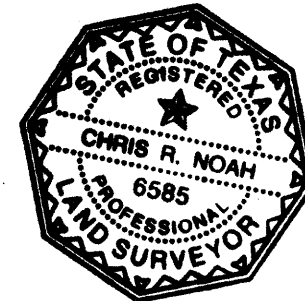
Amber Doan
Notary Public in and for the State of Texas



SURVEYORS CERTIFICATE

I, the undersigned, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that this plat is true and correct and was prepared from an actual survey of the property made under my supervision on the ground and that all monuments shown hereon actually exist and that their location, size, and material are correctly shown.

Chris R. Noah 2-5-2018
Chris R. Noah
Registered Professional Land Surveyor No. 6585



CITY COUNCIL CERTIFICATE OF ACCEPTANCE

Accepted by the City Council of the City of Sherman, Texas:

Mayor 02/03/2018
Mayor, City of Sherman, Texas Date

The undersigned, the City Clerk of the City of Sherman, hereby certifies that the foregoing plat of **BROOKSTONE GARDEN HOMES ADDITION** to the City of Sherman was submitted to the City Council on the 18th day of December, 20 17, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements and public places as shown and set forth in and upon said map or plat and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as hereinabove subscribed.

Witness my hand this 5th day of February, A.D. 20 18

Linda Ashby
Clerk, City of Sherman, Texas



**PLANNING AND ZONING COMMISSION
CERTIFICATE OF ACCEPTANCE**

Accepted this 21st day of November, 20 17, by the City Planning and Zoning Commission of the City of Sherman, Texas.

Chairman *Secretary*
Chairman Secretary

**FINAL PLAT
BROOKSTONE GARDEN HOMES ADDITION
4.085 ACRES
ELIZABETH JONES SURVEY, ABSTRACT NO. 625
City of Sherman, Grayson County, Texas**

**Preston Trail
LAND SURVEYING**
83493 N. State Hwy 289, Suite 5
Pottsboro, TX 75076
www.prestontrailandsurveying.com
903-786-6029

TBPLS Firm No. 1019475
Drawn by: CRN
Checked by: BNH
Scale: 1"=60'
Date: 09/21/2017
Project No. 17-0416
Sheet No. 2 of 2

Brookstone Garden Homes Addition



1 inch = 500 feet





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.5.

Meeting Date: 02/19/2018

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6345**

Awarding a Bid to and Authorizing Execution of a Contract with SF Landscaping for Annual Right-of-Way Finish Mowing Services

Issue:

To consider awarding a bid to and authorizing execution of a contract with SF Landscaping of Denison, Texas, for the annual right-of-way finish mowing of various City-owned properties

Background:

City staff contracts annually for right-of-way finish mowing for various City-owned properties. At the December 18, 2017 regular meeting, the City Council approved a request to advertise for public bids. Five bids were accepted and opened on January 25, 2018. City staff recommends the award and authorization of this contract to the lowest qualified bidder, SF Landscaping of Denison, Texas. Annual costs are estimated to be \$57,760.00.

Origination:

Street Maintenance Department

Financial Consideration:

Funds have been budgeted in the 2017-18 Fiscal Year Budget.

Staff Recommendation:

Award the bid and authorize the City Manager to execute a contract with SF Landscaping of Denison, Texas.

Alternatives:

As may be recommended by City Council

Attachments

Resolution No. 6345

Standard Contract - Annual Right-of-Way Finish Mowing Services

Bid Tabulation

Aerial Location Maps

RESOLUTION NO. 6345

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH SF LANDSCAPING FOR ANNUAL RIGHT-OF-WAY FINISH MOWING SERVICES; 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 SF Landscaping of Denison, Texas, is hereby awarded the City of Sherman's 2018 City Right-of-Way Finish Mowing contract, in accordance with all bid documentation attached hereto and incorporated herein for all purposes.

SECTION 2. That the City Manager is hereby authorized and directed, subject to all contract documents being completed and approved as to form and content by the City Attorney, to execute a contract with SF Landscaping for the City of Sherman's 2018 City Right-of-Way Finish Mowing Program, in the same or substantially same form as the contract documents to be attached hereto and incorporated herein for all purposes.

SECTION 3. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the ____ day of _____, 2018.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

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



**CITY OF SHERMAN
STANDARD CONTRACT**

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

Seller:

Stephen Fileneck / SF Landscaping
Name

3115 Frances Ave
Address

Dallas TX 75020
City, State, Zip

(903) 327-4266
Telephone

SFLandscaping@gmail.com
Email

DESCRIPTION OF GOODS

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

Right-of-way Finish Mowing Services

[CHECK ONE:]

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

Date of Delivery

OR

 X This Contract is for a specific duration wherein the Seller will supply, furnish and deliver at the designated point or points of delivery the specified Goods in the quantities requested by Buyer at the time of Buyer's order. The delivery date(s) shall be set forth in Buyer's order. This Contract is not intended to be and shall not be construed as an exclusive requirements contract. This Contract is non-exclusive and Buyer may acquire any or all of its requirements for the specified Goods from Seller or any other source deemed appropriate by Buyer. This Contract may extend for four additional one (1) year periods upon notice of intent to renew being issued in writing by the City within forty-five (45) days prior to Contract expiration date.

DURATION: From March 1, 2018 to February 28, 2019

PAYMENT TERMS

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

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

CONTRACT TERMS AND CONDITIONS

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

1. **SELLER TO PACKAGE GOODS:** Seller will package Goods in accordance with good commercial practice. Each shipping container shall be clearly marked and permanently

packed as follows: (a) Seller's name and address; (b) Consignee's name, address, and purchase order number; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packing unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirement of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipment not accompanied by packing lists.

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

- 10. SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or any special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
- 11. WARRANTY – PRICE:** The price to be paid by the Buyer shall be that contained in the Seller's bid which Seller warrants to be no higher than Seller's current prices on orders for products of the kind and specification covered by the agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability for breach or Seller's actual expense.
- The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 12. WARRANTY-PRODUCTS:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. No such attempts to limit, disclaim or exclude any warranties, whether of fitness, merchantability or otherwise, by Seller shall be binding or effective. Seller warrants that the Goods furnished will conform to the specifications, drawings, and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.
- 13. SAFETY WARRANTY:** Seller warrants the product sold to the Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event that the products do not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event that Seller fails to make the appropriate correction within a reasonable time, any correction made by Buyer will be at Seller's expense.
- 14. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specifications will not give rise to such claim, and in no event shall Buyer be liable to Seller in the event that Seller issued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing or the like, within two weeks after the signing of this agreement. If Buyer does not receive notice and a claim is asserted or Buyer is subsequently held liable for the infringement or the like, Seller will indemnify, defend and save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this

contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to Infringements.

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

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

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

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

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

19. **WAIVER:** No claim or right arising out of a breach in contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

20. **INTERPRETATION-PAROL EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive

statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

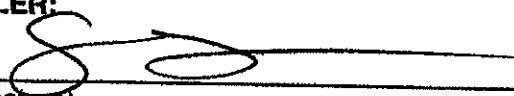
21. **APPLICABLE LAW:** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
22. **ADVERTISING:**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

INDEMNITY AND DISCLAIMER: BUYER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY SELLER FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE SELLER, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF SELLER UNDER THIS CONTRACT, INCLUDING CLAIMS AND DAMAGES ARISING IN

WHOLE OR IN PART FROM THE NEGLIGENCE OF BUYER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE BUYER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY SELLER TO INDEMNIFY AND PROTECT BUYER FROM THE CONSEQUENCES OF THE SELLER'S AS WELL AS THE BUYER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE. IN ADDITION, CONTRACTOR SHALL OBTAIN AND FILE WITH OWNER CITY OF SHERMAN A STANDARD CERTIFICATE OF INSURANCE AND APPLICABLE POLICY ENDORSEMENT EVIDENCING THE REQUIRED COVERAGE AND NAMING THE OWNER CITY OF SHERMAN AS AN ADDITIONAL INSURED ON THE REQUIRED COVERAGE.

26. **GOVERNING LAW:** The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Goods to be delivered hereunder shall be in the courts of Grayson County, Texas.
27. **SUCCESSORS AND ASSIGNS:** The Buyer and Seller bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Seller shall not assign this Contract without written consent of the Buyer.
28. **SEVERABILITY:** The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.
29. **NOTICES:** All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party at the address set forth herein or set forth in a written designation of change of address delivered to all parties.

EXECUTED this _____ day of _____,
SELLER: _____


(Signature)

Stephen Folen Clark Owner
(Type/Print Name and Title/Position)

3115 Frances Ave
(Address)

Denise TX 75020
(City, State, Zip)

CITY OF SHERMAN:

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

ATTEST:

By: _____
Linda Ashby,
City Clerk

APPROVED:

Brandon Shelby
City Attorney

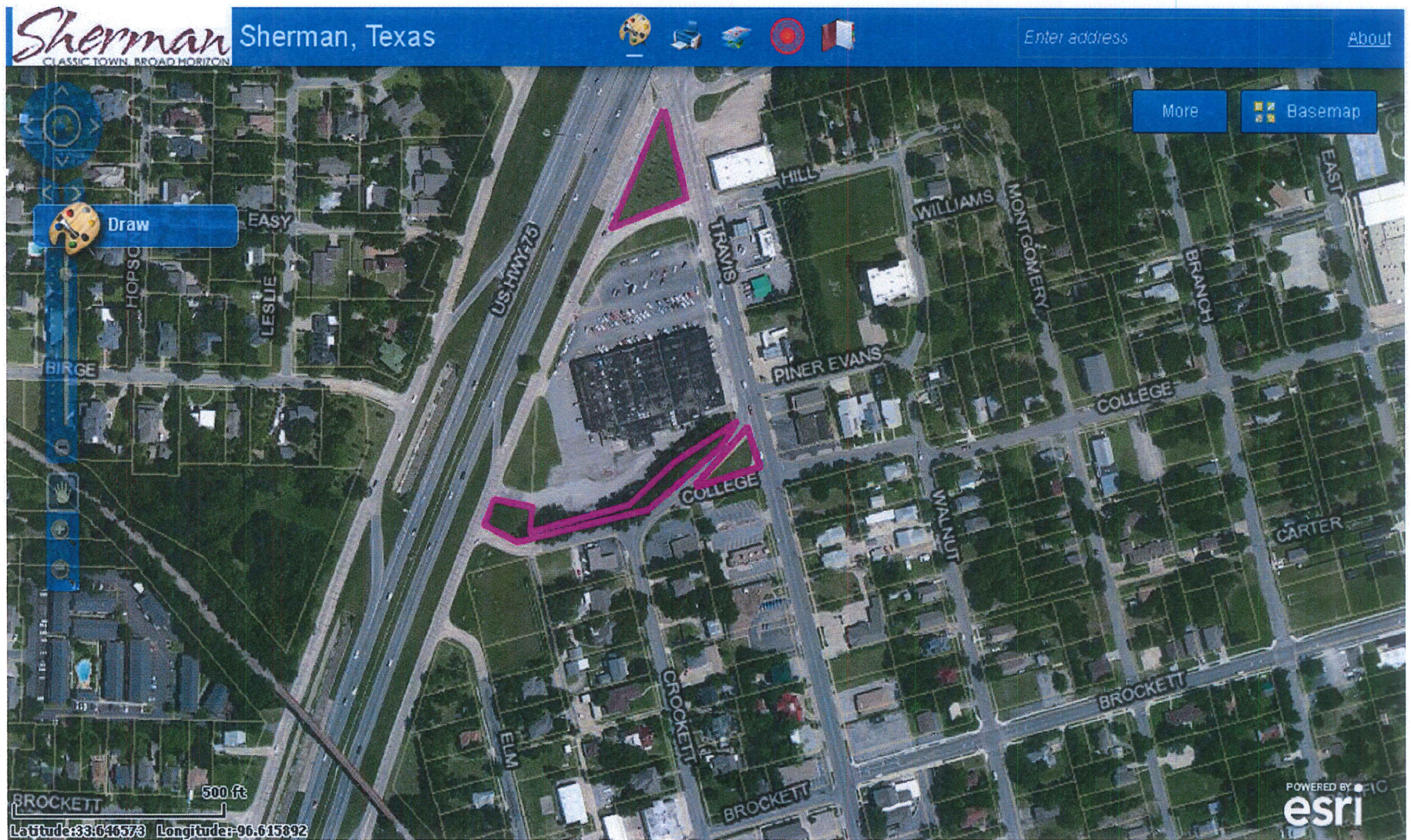
CITY OF SHERMAN
BID TABULATION
Requirements for Mowing Services
BID OPENING Thursday, January 25, 2018; 2:00 PM

Vendor	EXHIBIT A: Right-of-Way Finish Mowing (Grand Total for One Mow Per Location)	NOTES
R. Smith Enterprises	\$ 6,560.00	
WDW Tractor Work & Mowing	\$ 1,390.00	Airport only
Elite Six, LLC	\$ 4,425.00	
SF Landscaping	\$ 3,610.00	
C&M Mowing and Landscaping	\$ 6,915.00	

"EXHIBIT A"
2018 MASTER MOW LIST: RIGHT-OF-WAY FINISH MOWING LOCATIONS

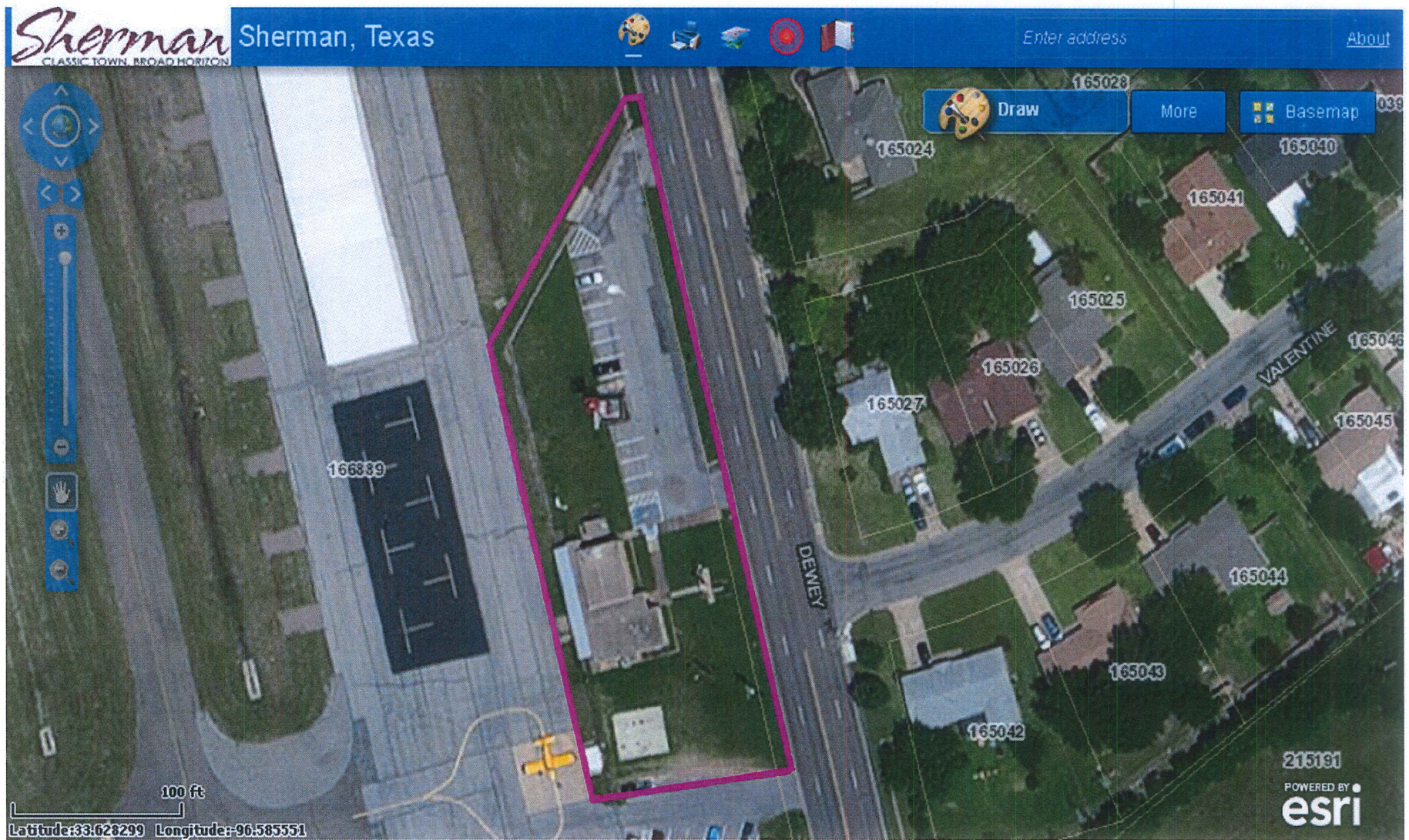
STREETS - 100-8-3132-85020					
PID	FINISH Mow - Minimum TWICE (2) Per month		MAP	PID	\$ per Mow
8	Cam Corner / College St and Travis - 2 Islands and College St ROW	Travis St. at Hwy. 75 and College St. between Travis and Sam Rayburn	6	8	\$
9	Airport - terminal grounds and inside of fence - weed eat along fence	Municipal Airport, 1200 S. Dewey	7A-B	9	\$
10	Center St. Underpass	Center St. at Hwy. 75	8	10	\$
11	Grand Ave. median Includes hard edging / weedeating curbs	Cherry St. to Carter and Richards to Tuck	9	11	\$
12	N Loy Lake and 82 ROW at Popeye's	From Popeye's bushes to Loy Lake	10	12	\$
13	Lamar St. Underpass	Lamar at Hwy. 75	11	13	\$
14	Houston St. Underpass	Houston at Hwy. 75	11	14	\$
15	Hwy 75 & 82 ROW	Hwy. 75 & 82	12	15	\$
16	Lamberth Rd. ROW / Medians - Shady Oaks and Norwood ROW	From 1417 to city limit at Shady Oaks to Norwood St. to Lamberth	13	16	\$
17	Moore St. median	300 Blk Moore St. between Elm and Rusk	14	17	\$
18	Park St. Underpass	Park St. at Hwy. 75	15	18	\$
19	Pecan St. ROW	Pecan at Maxey (2 medians, rectangle and triangle properties)	16	19	\$
20	Texoma Parkway median (Hard Edge / Weedeat curbs)	Texoma Parkway medians south from approx. service road to 691	17	20	\$
21	Travis St. Underpass	Travis St. at Hwy. 75	18	21	\$
22	Washington St underpass and Island	Washington at Hwy 75 and Washington at Ely	19	22	\$
23	Brockett St. ROW (Includes weedeating and trimming crepe mutes)	Along Brockett from Travis to Porter St.	20	23	\$
24	Island	Ricketts and Belden intersection	21	24	\$
25	Crockett St. island / Travis St. island	2000 Blk. S. Crockett St. where Crockett & Travis meet / Travis and Wilson	22	25	\$
26	Hunt Street Drainage	Hunt Street	23	26	\$
27	Houston / Lamar Frontage Road	75 South exit 58 west side frontage rd to Results building	24	27	\$
28	Park St. ROW 1417 to Moore	mow to and trim along back of fences	25	28	\$
29	Washington St.	East of 1417 to houses	26	29	\$
30	Washington St.	West of 1417 to City Limits - Maps 27A,B,C,D	27A-D	30	\$
31	Independence Dr., Peyton, Taylor, Loy Lake	Various streets at close proximity	28	31	\$
32	Cypress Grove Rd. / Rex Cruse ROW	Cypress Grove Rd (1417 to Rex Cruise) Rex Cruise (Hwy 82 to N of Glasgow Dr)	29	32	\$
33	Churchill and Marlborough lots and ROW	Various lots and ROW at Marlborough	30	33	\$
34	Hickory and Lamberth	Corner lot	31	34	\$
73	428 N Ricketts - FINISH MOW	minimum mowing 2 x per month	70	73	\$
74	Airport-front part fields	mowing front part	71	74	\$
	Airport-front part fields	mowing back part			\$
	FINISH Mow - Minimum ONCE (1) Per month				\$
71	FM 1417 and Redbud - FINISH MOW	N end of property at Redbud entrance	68	71	\$

GRAND TOTAL (for one mow per location) \$ _____



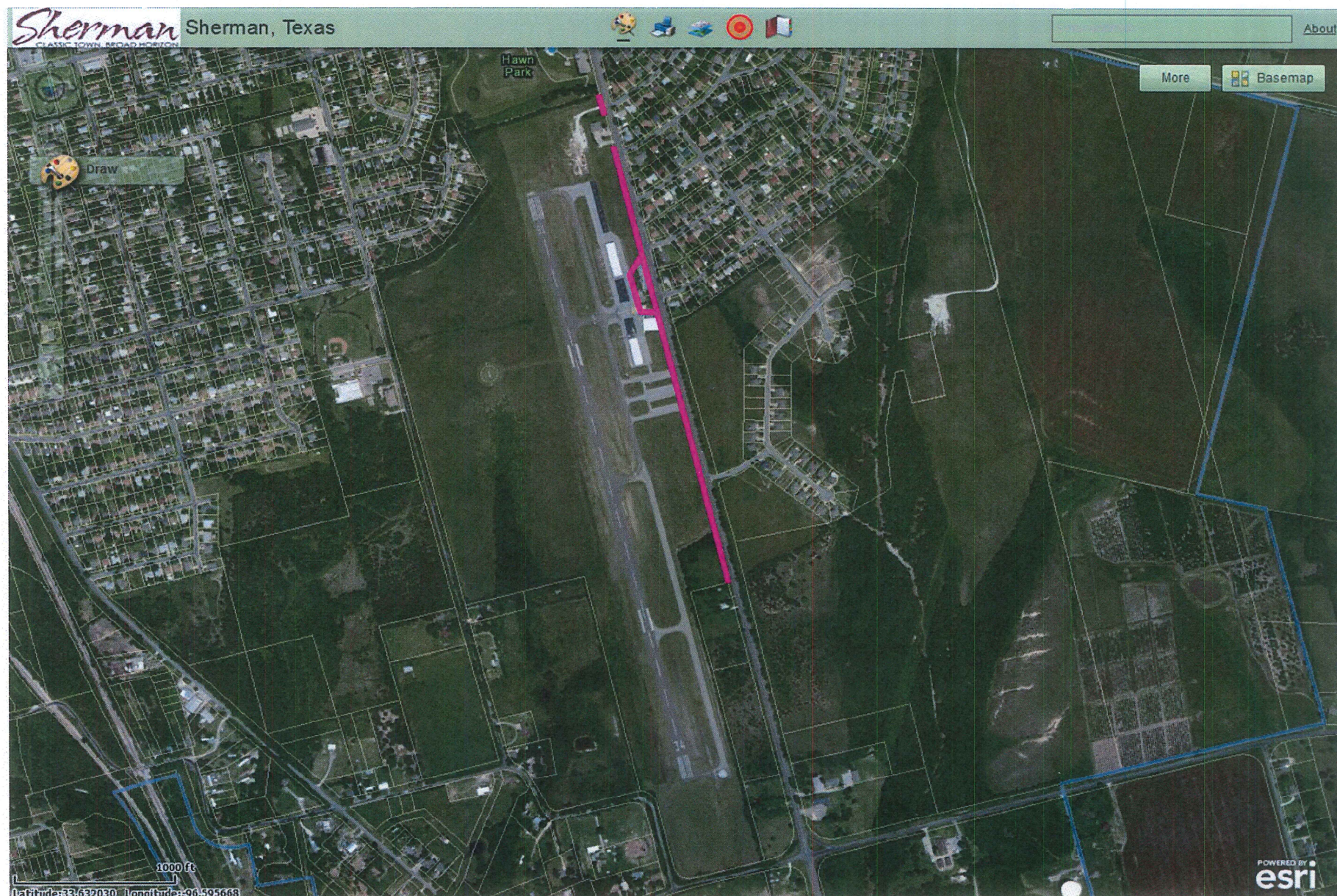
MAP 6

PID 8



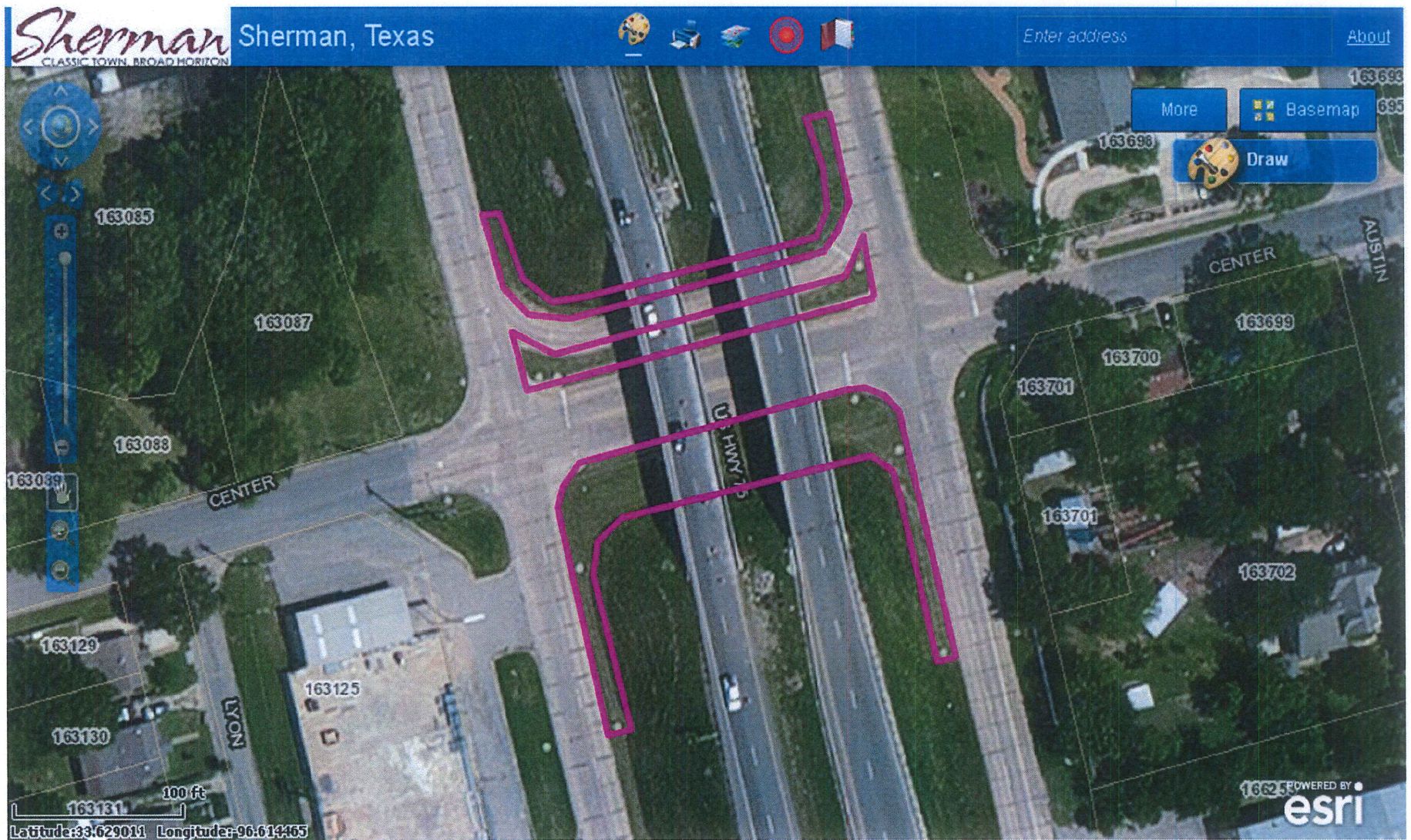
MAP 7A

PID 9



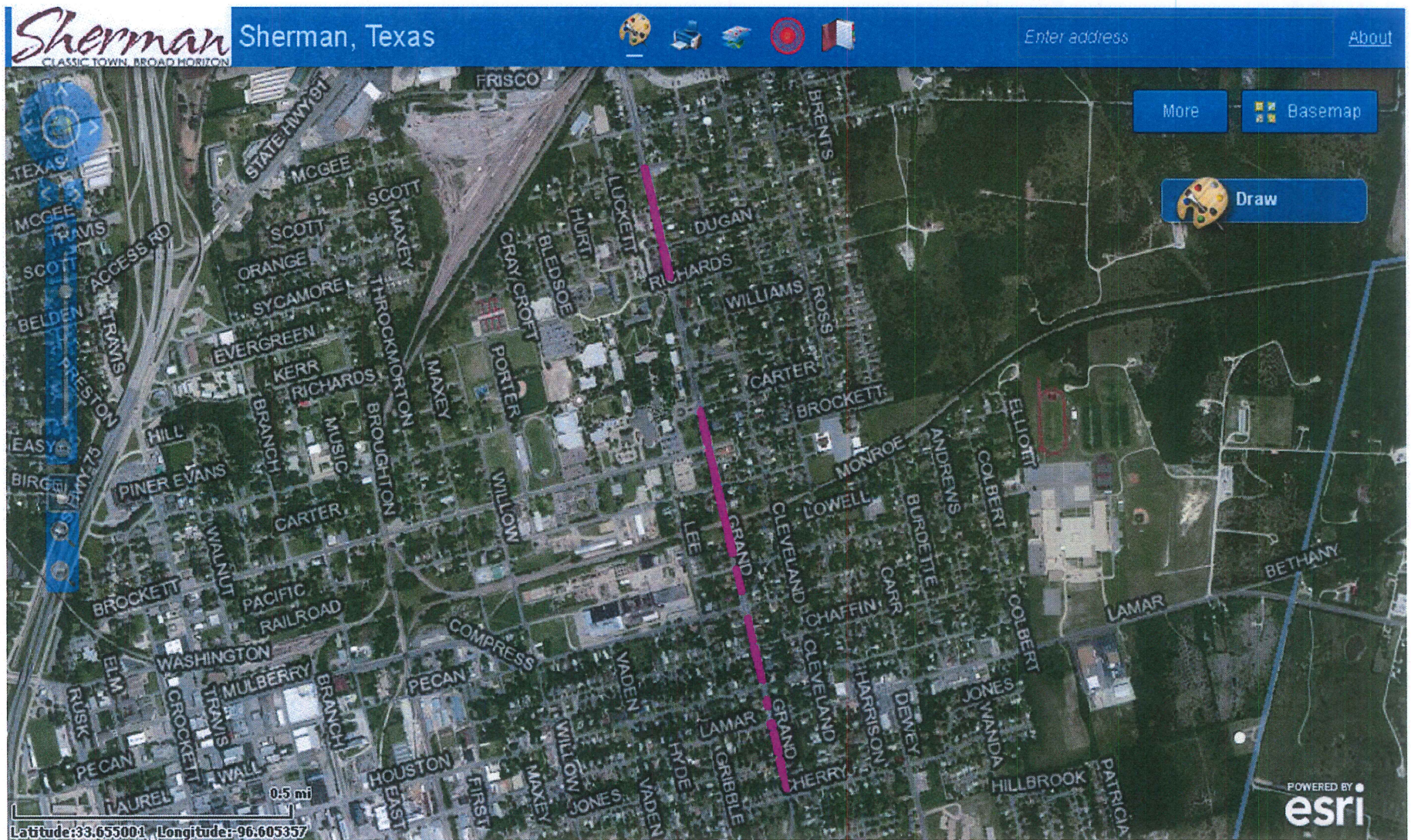
MAP 7B

PID 9



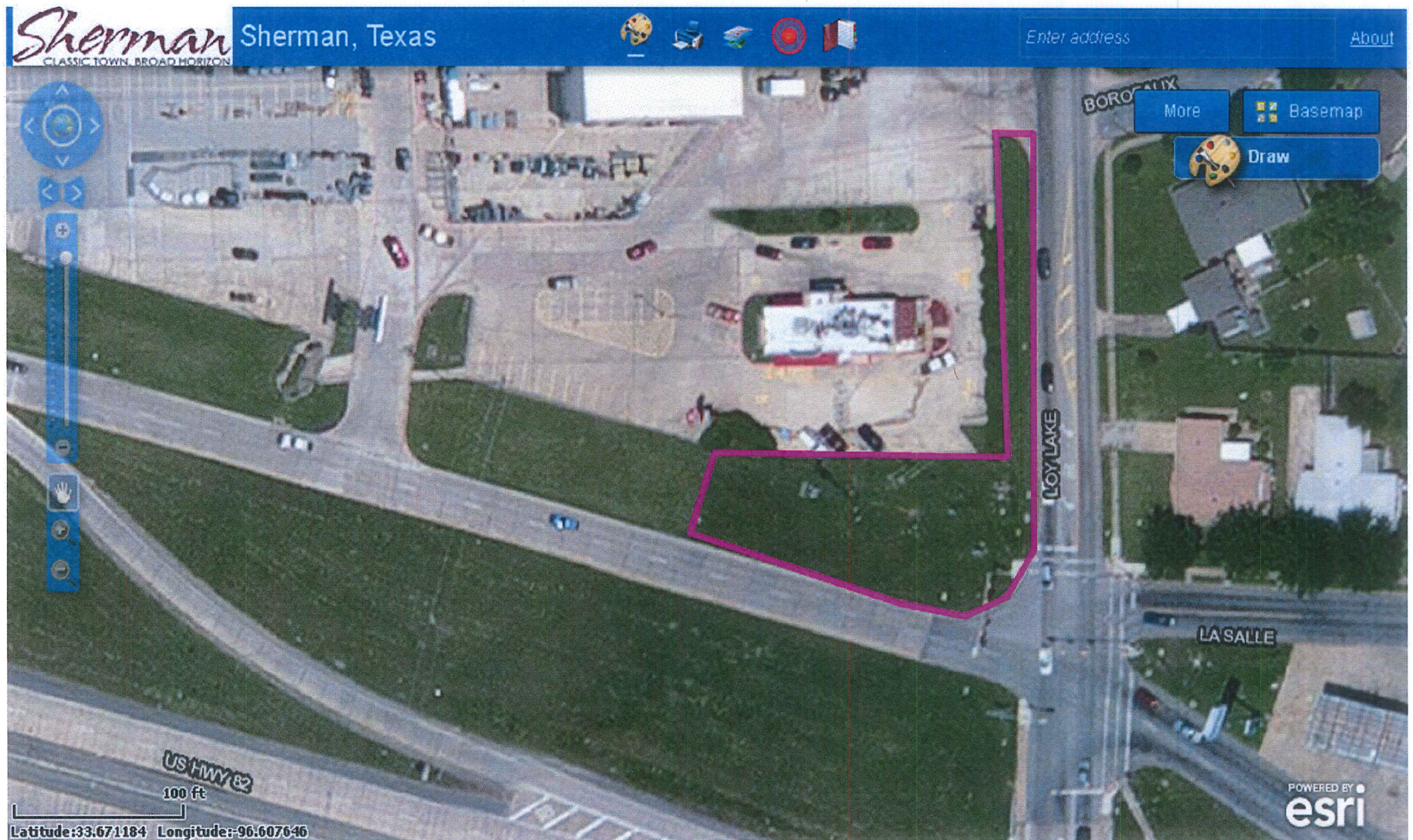
MAP 8

PID 10



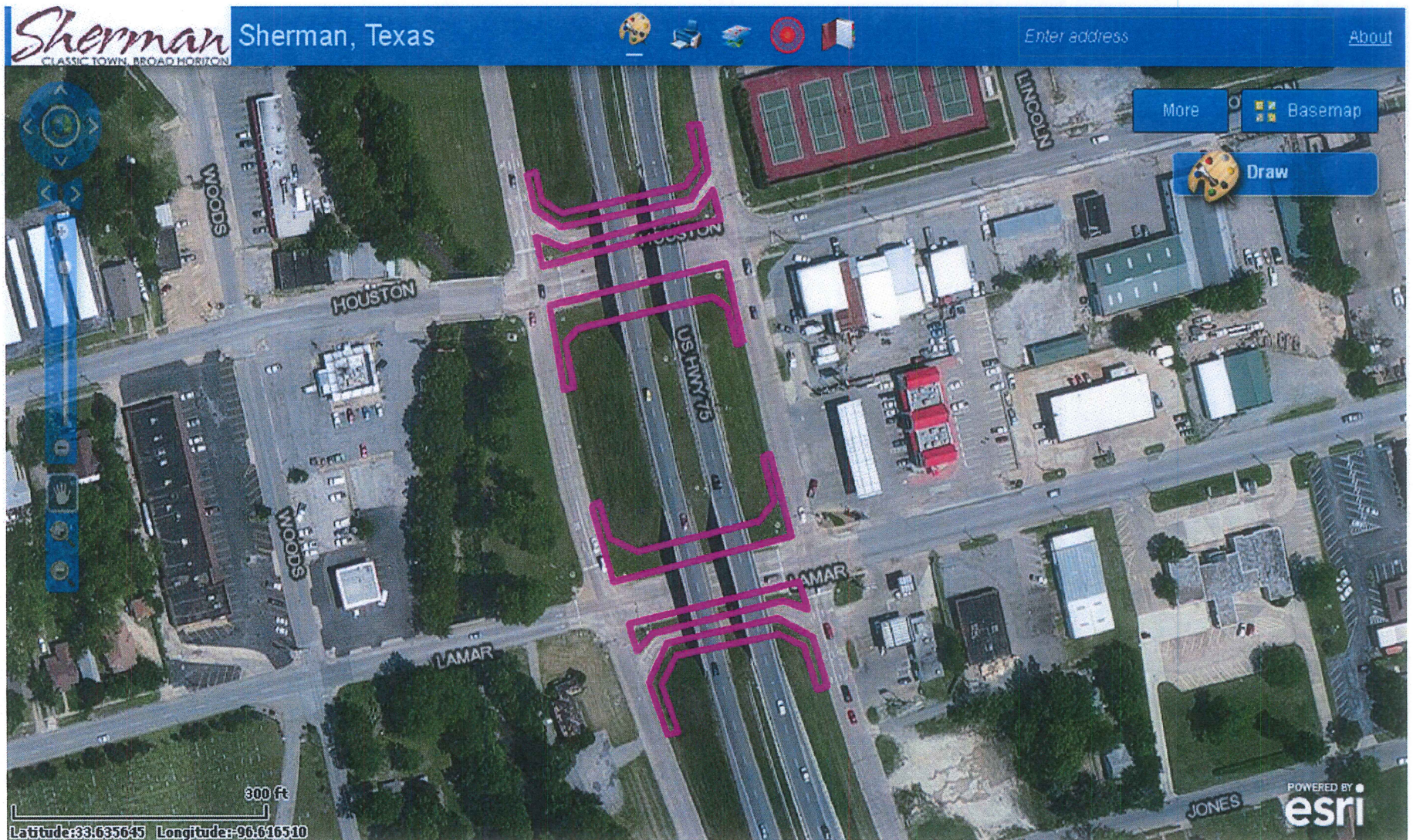
MAP 9

PID 11



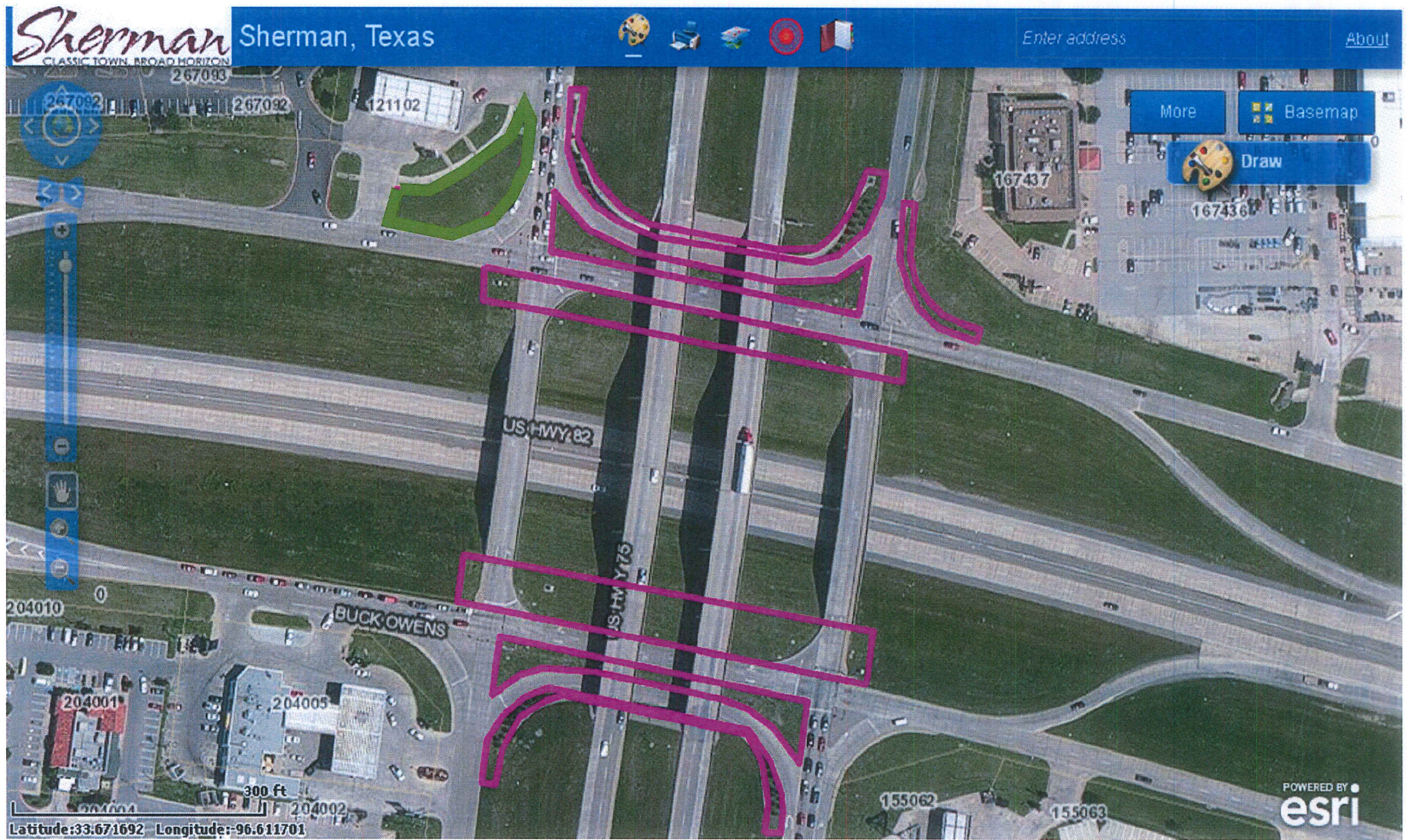
MAP 10

PID 12



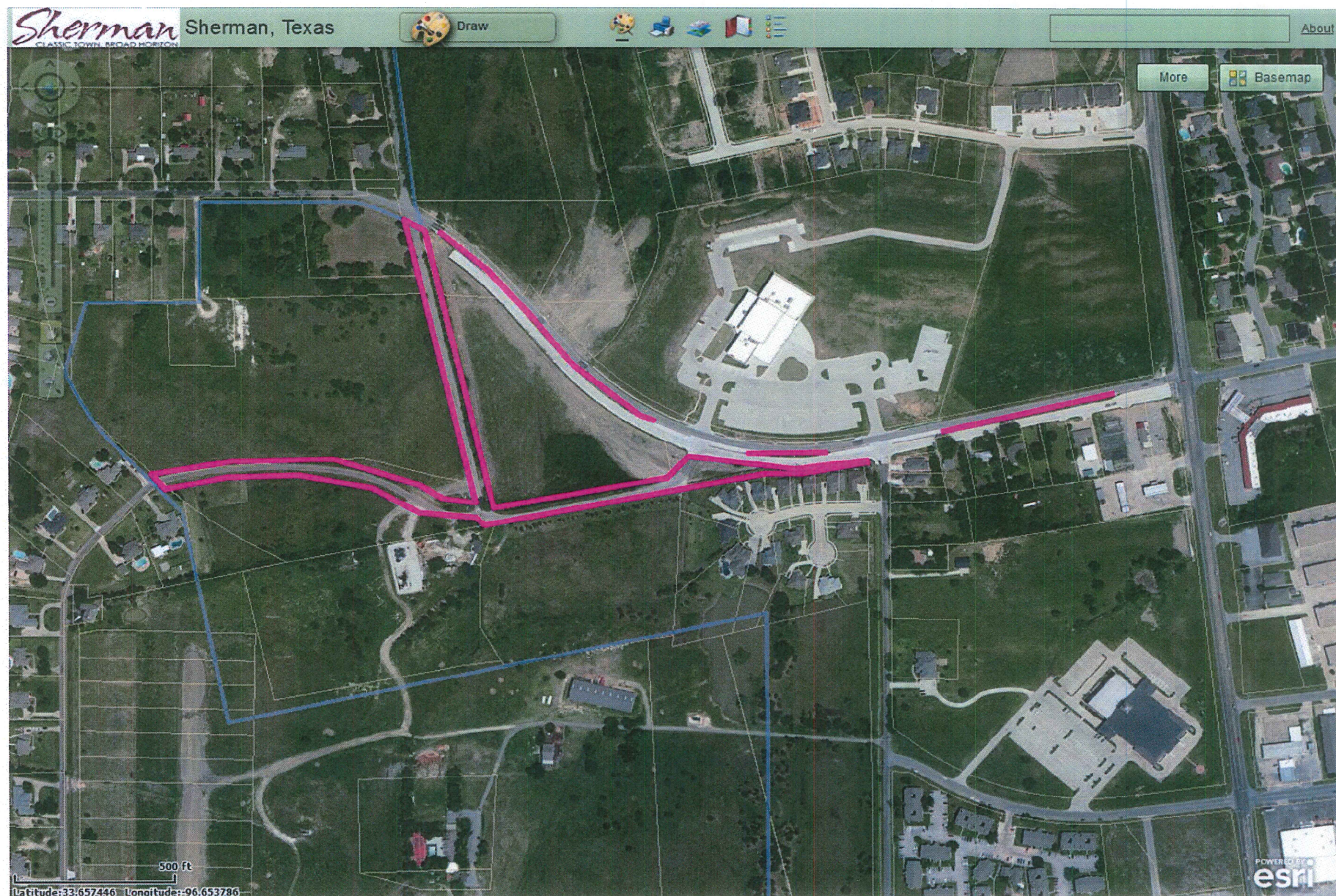
MAP 11

PID 13, 14



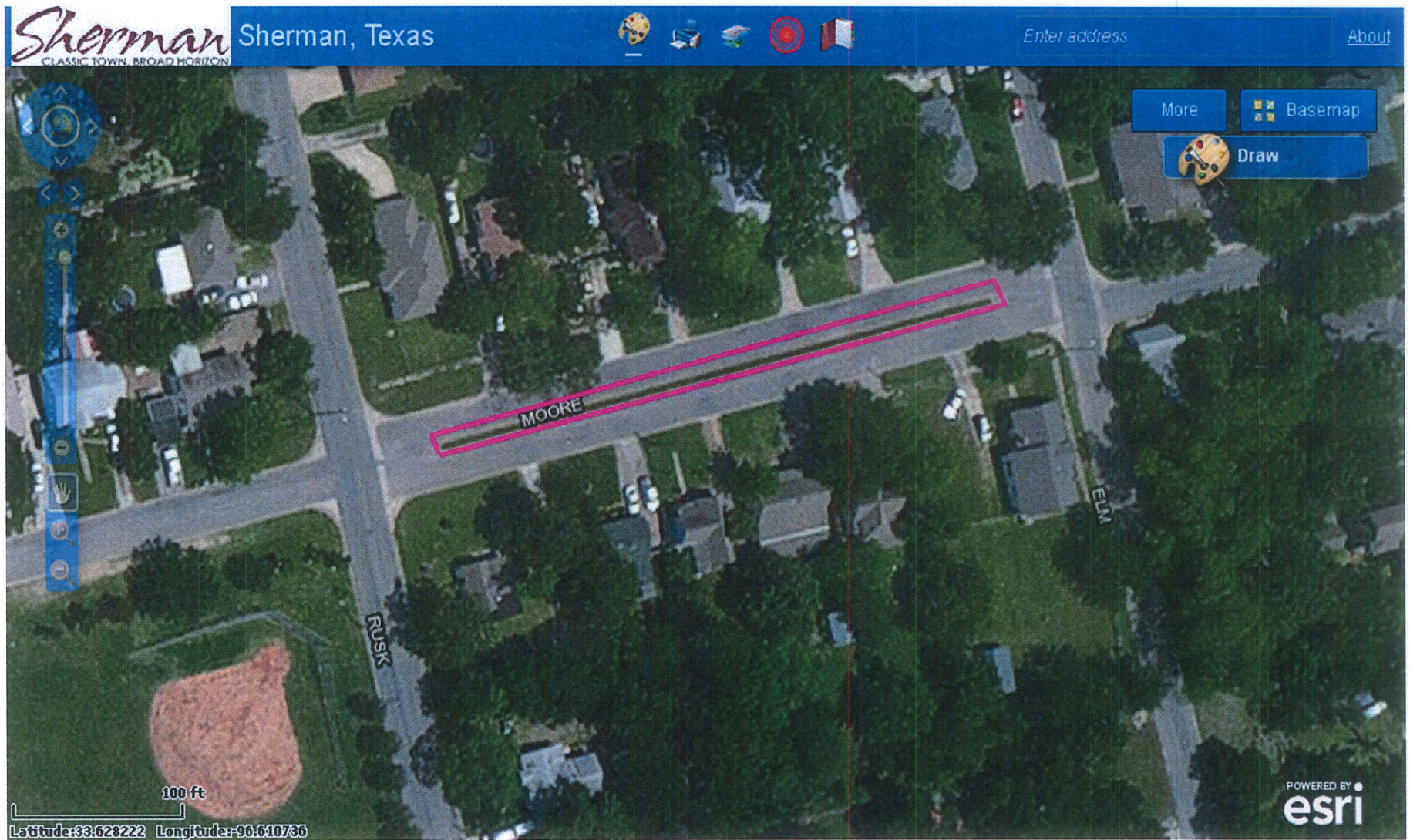
MAP 12

PID 15



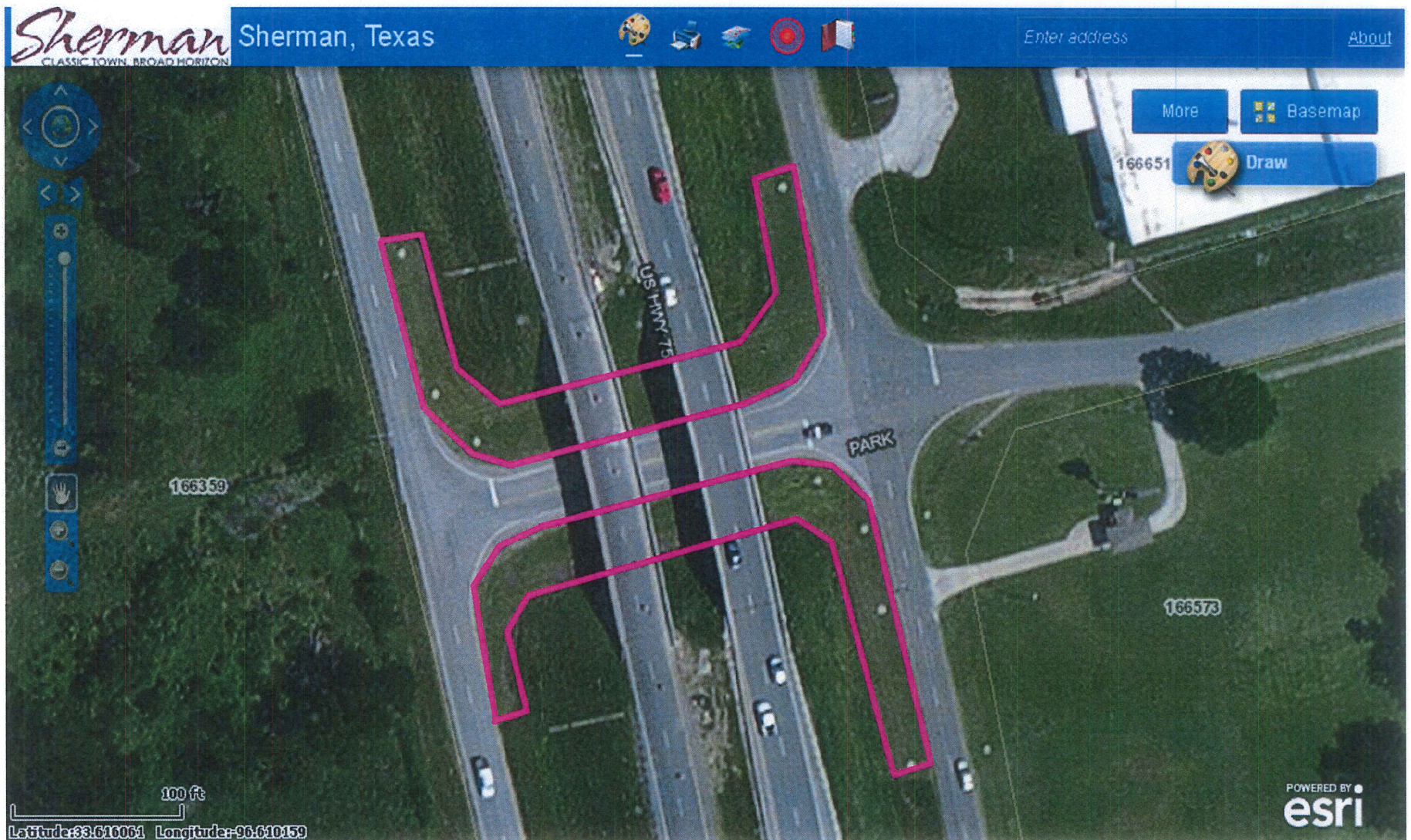
MAP 13

PID 16



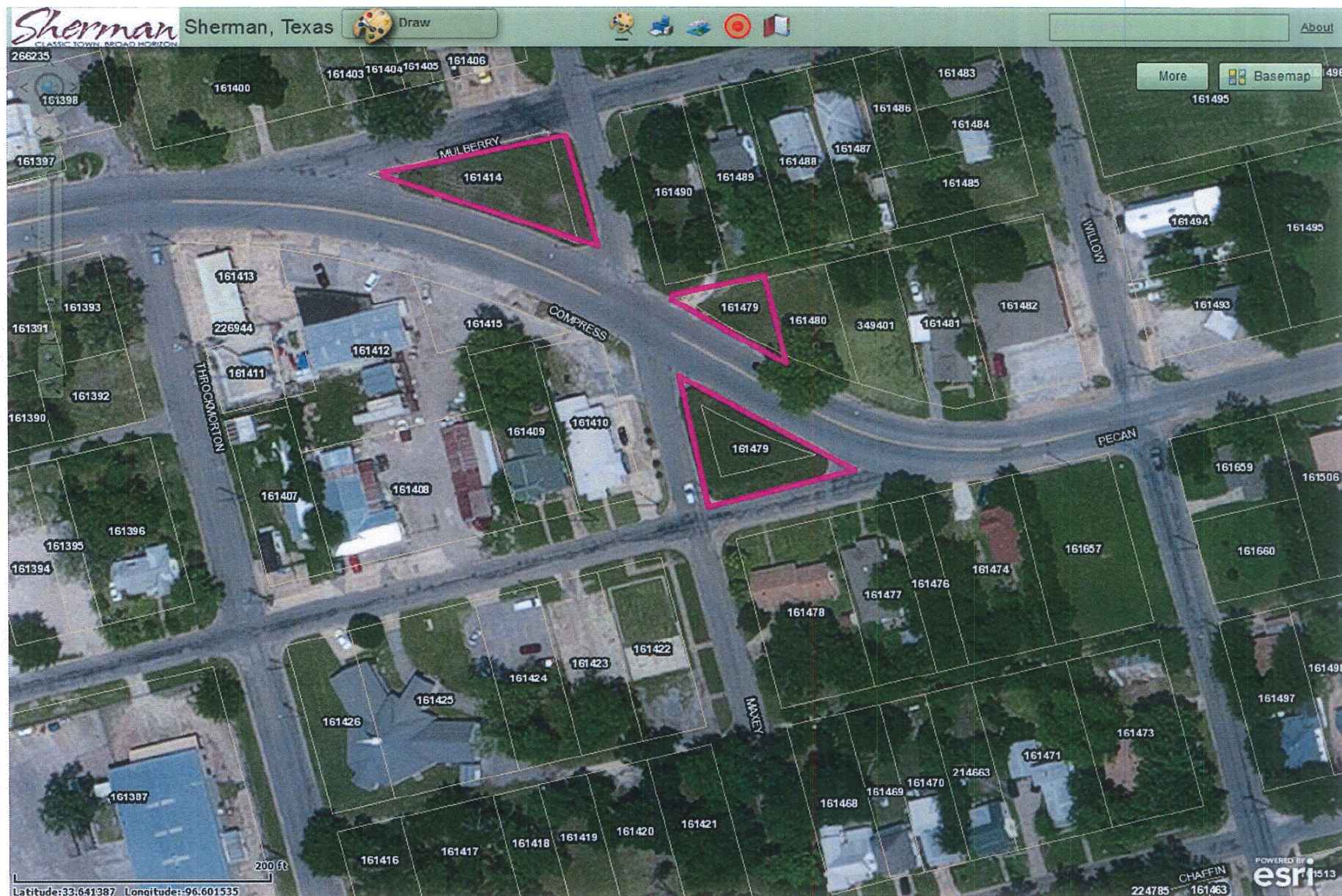
MAP 14

PID 17



MAP 15

PID 18

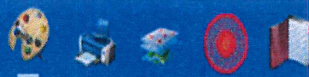


MAP 16.1
rev 8/20/14

PID 19

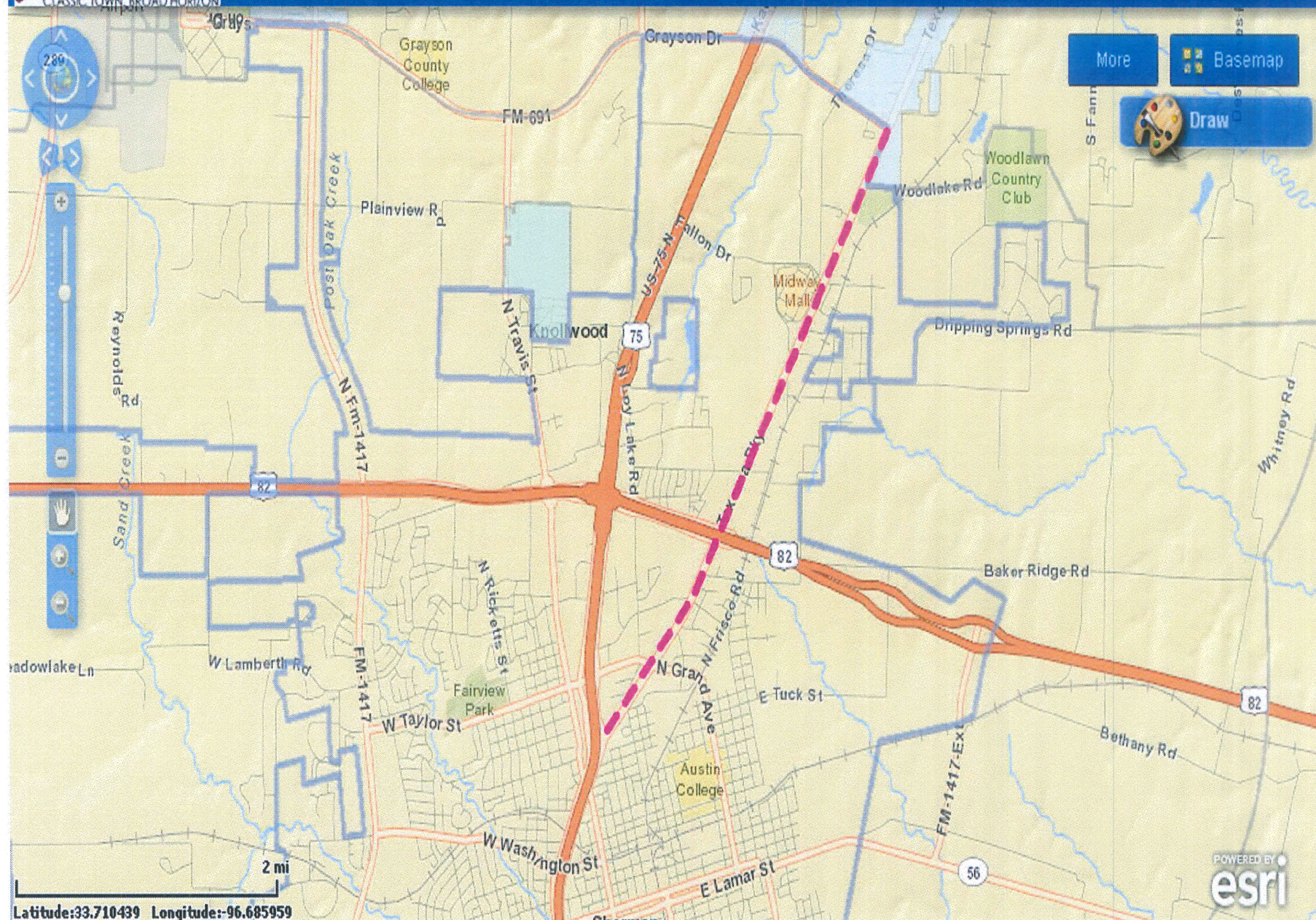
Sherman
CLASSIC TOWN ROAD HORIZON

Sherman, Texas



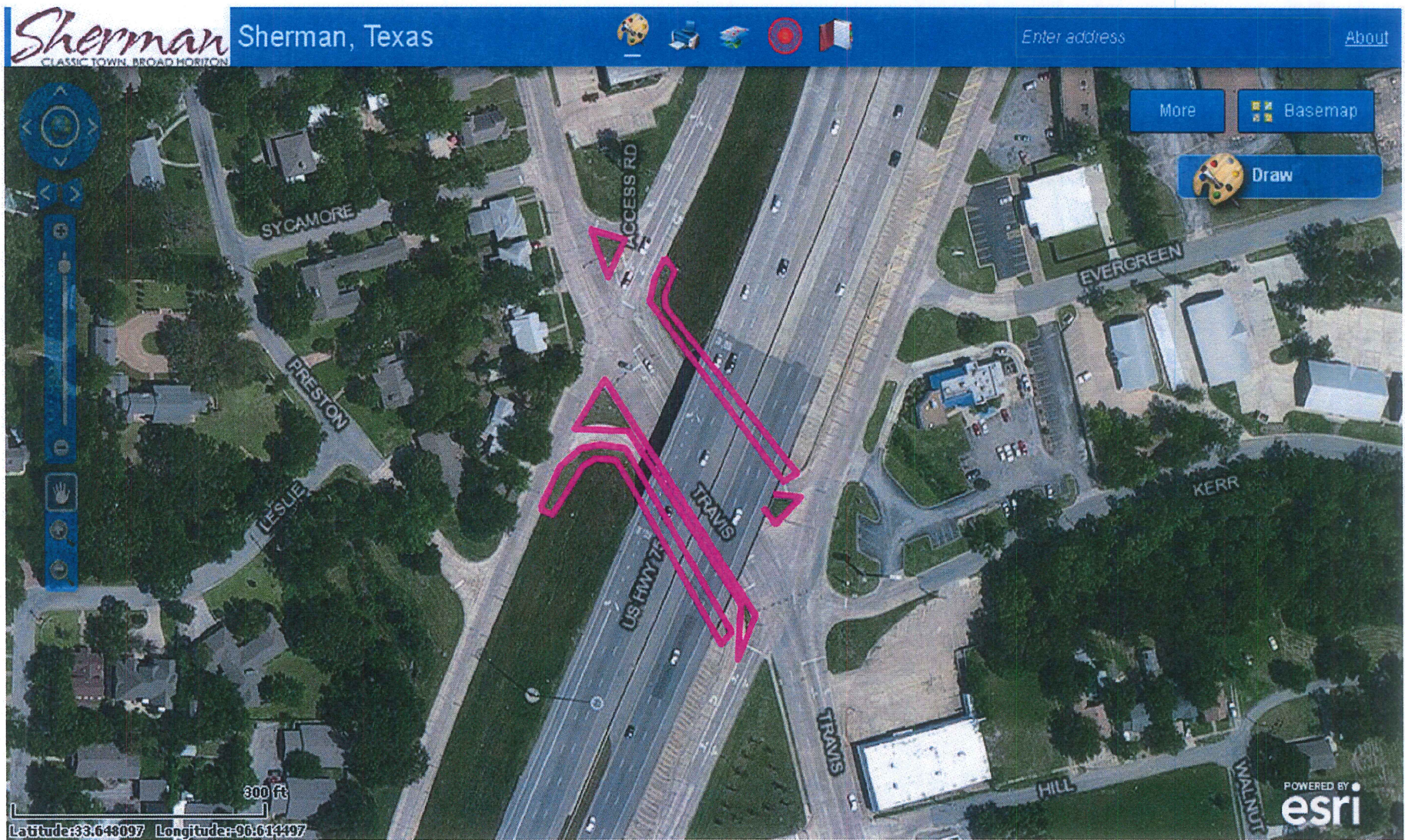
Enter address

About



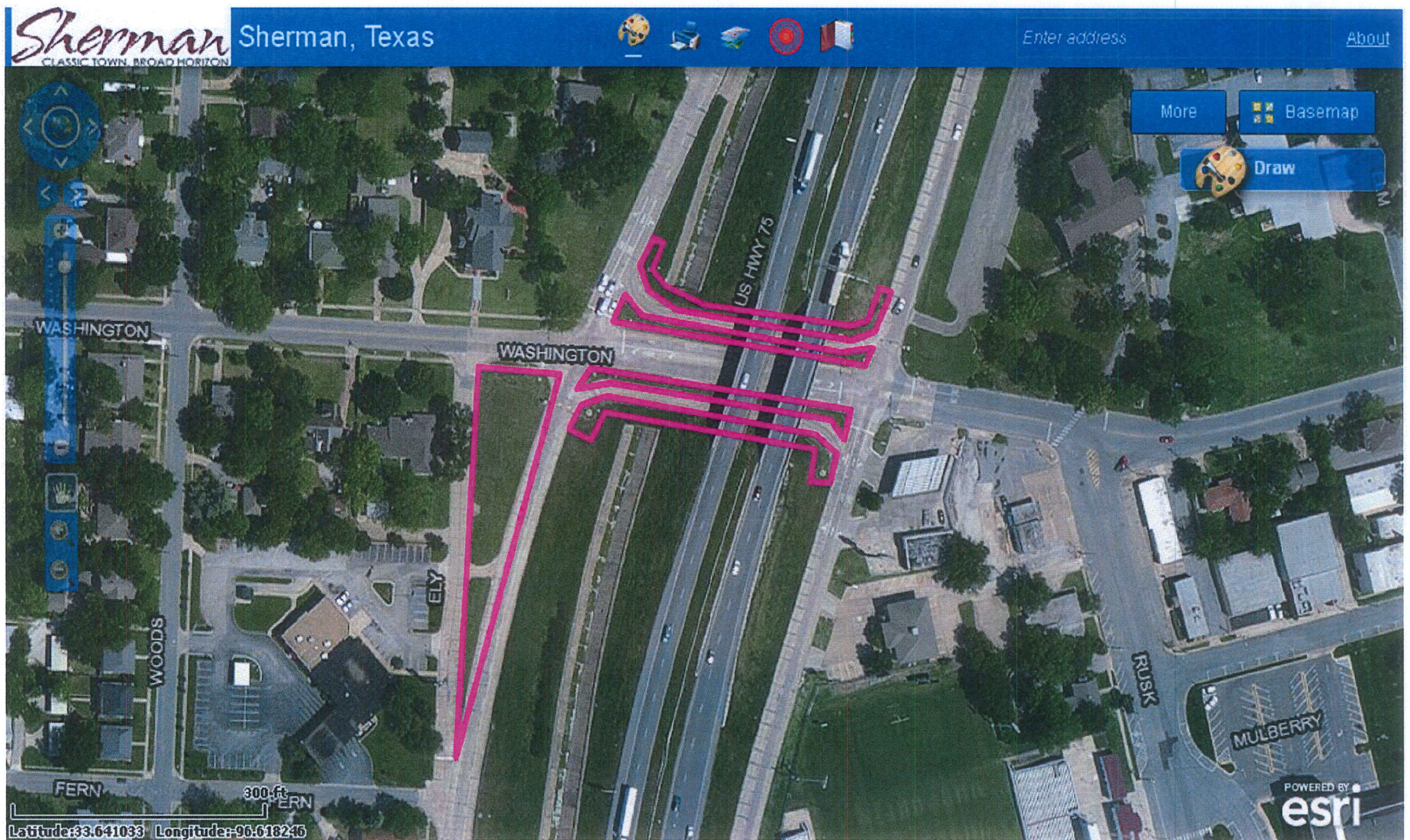
MAP 17

PID 20



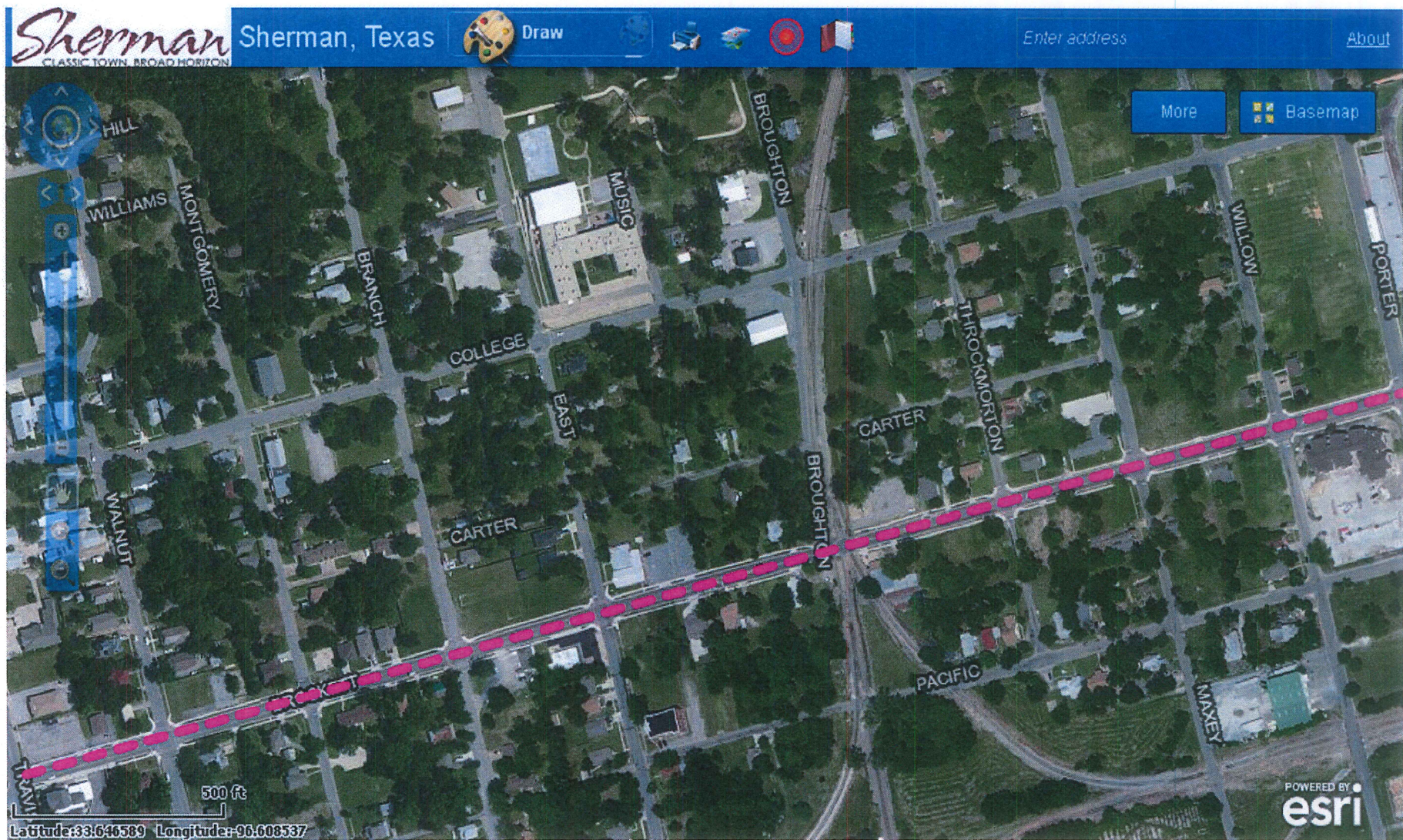
MAP 18

PID 21



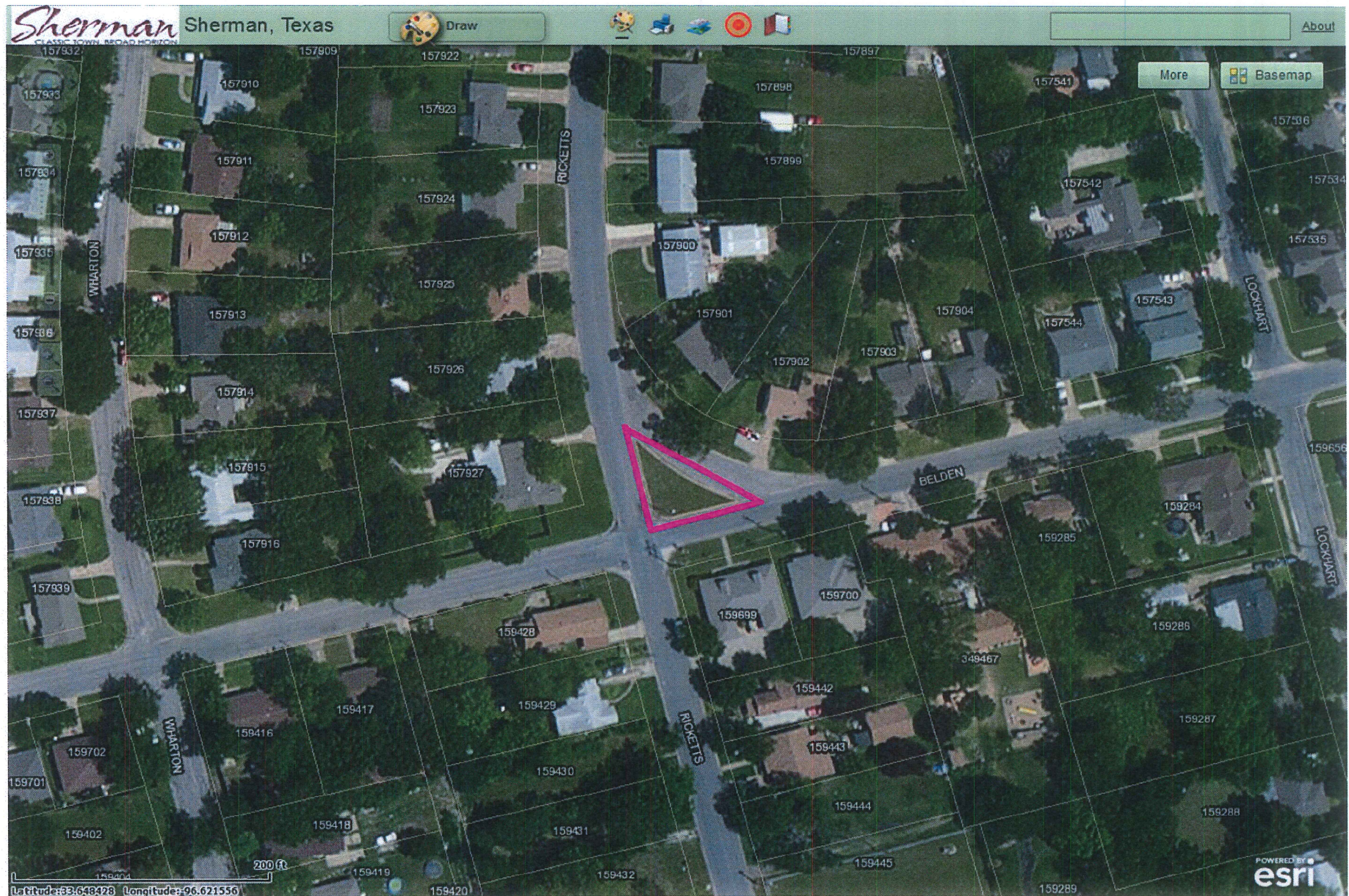
MAP 19

PID 22



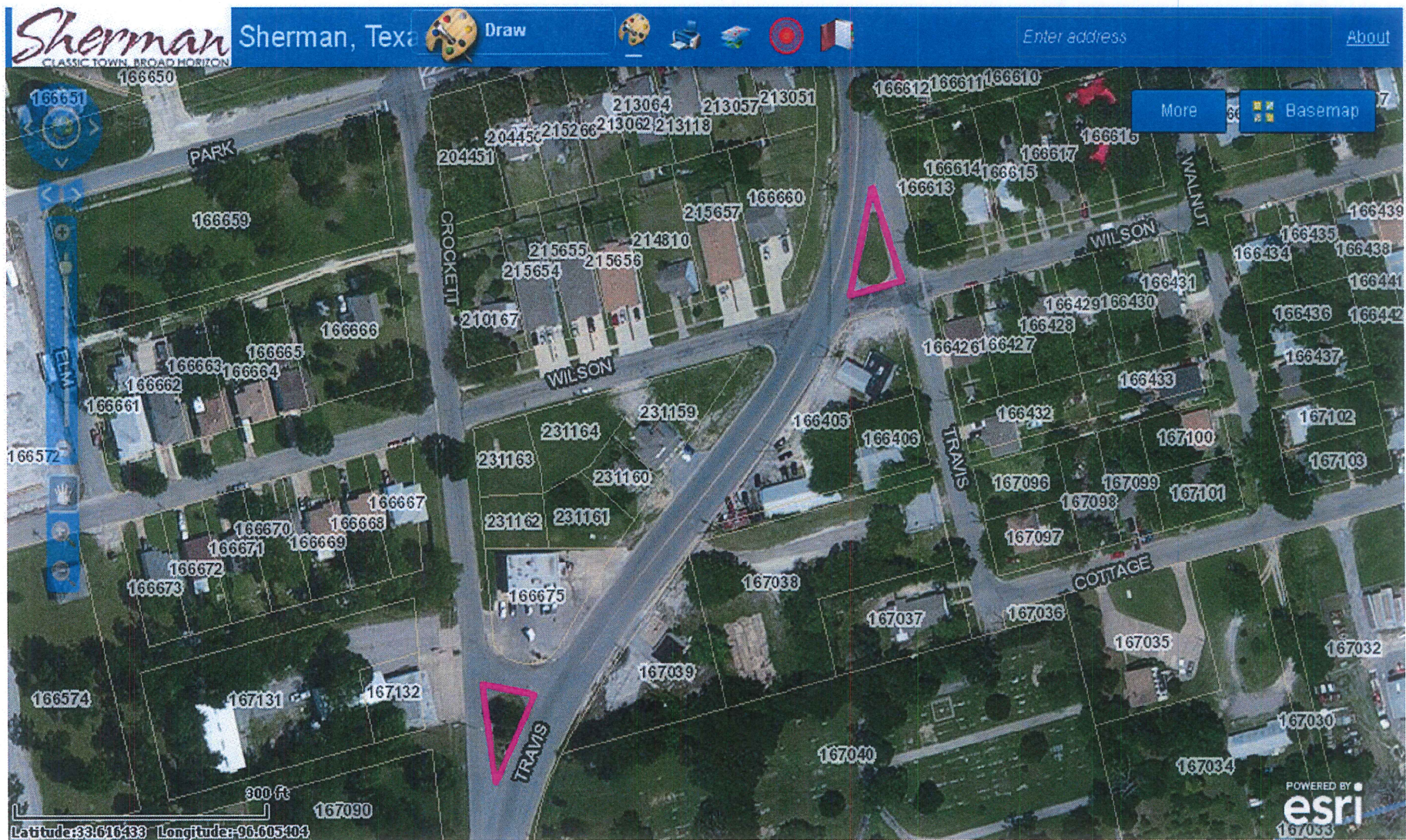
MAP 20

PID 23



MAP 21

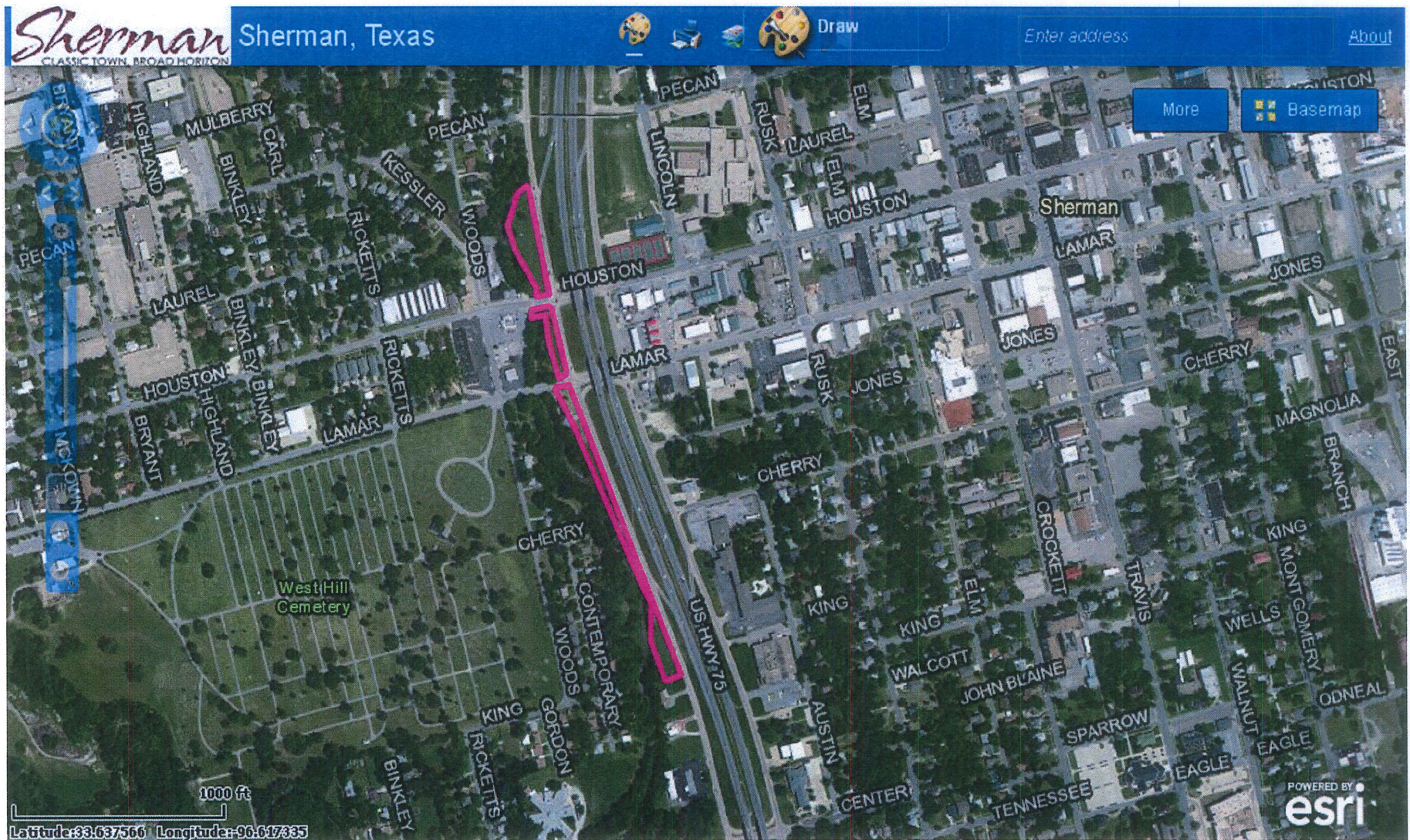
PID 24



MAP 22

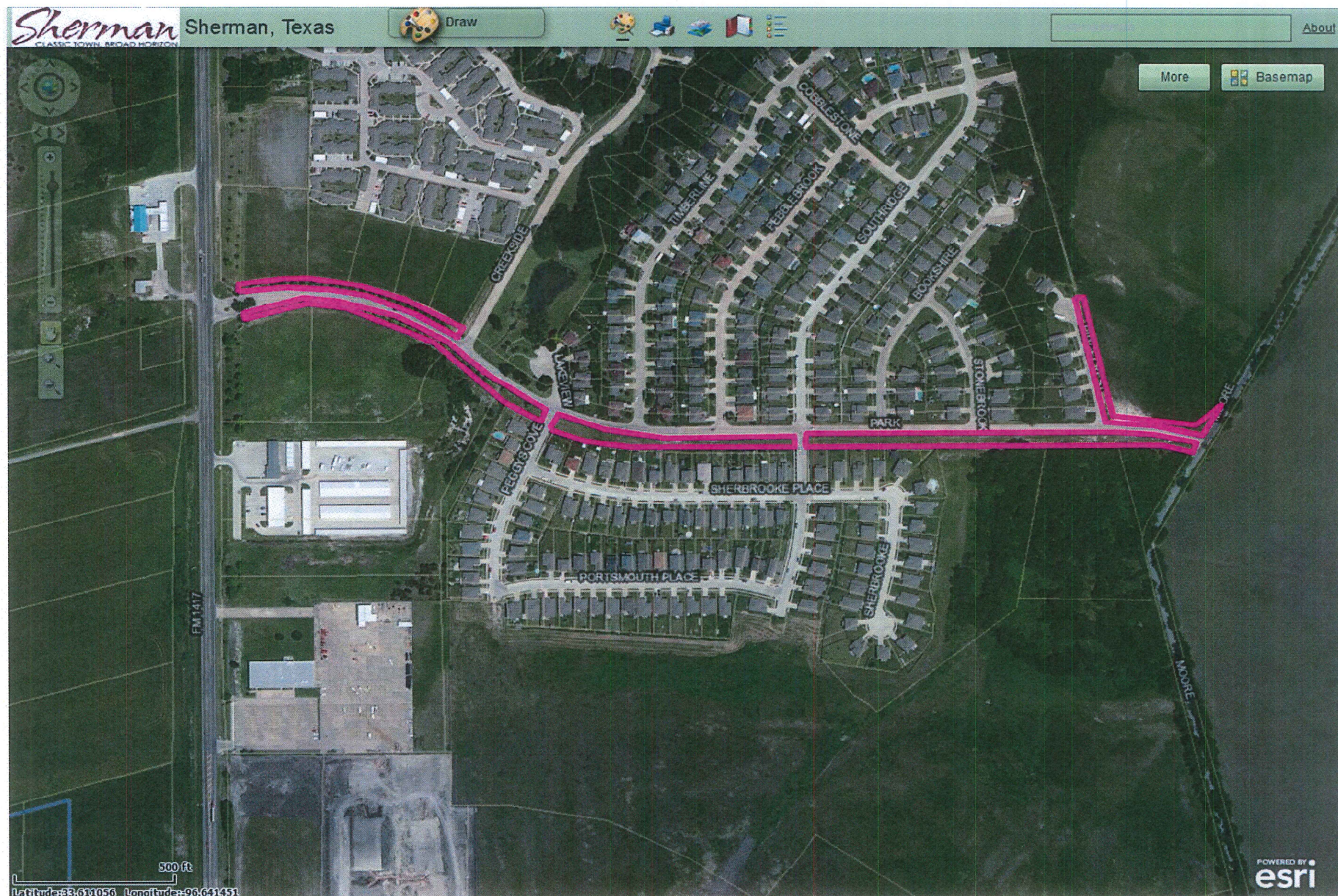
PID 25





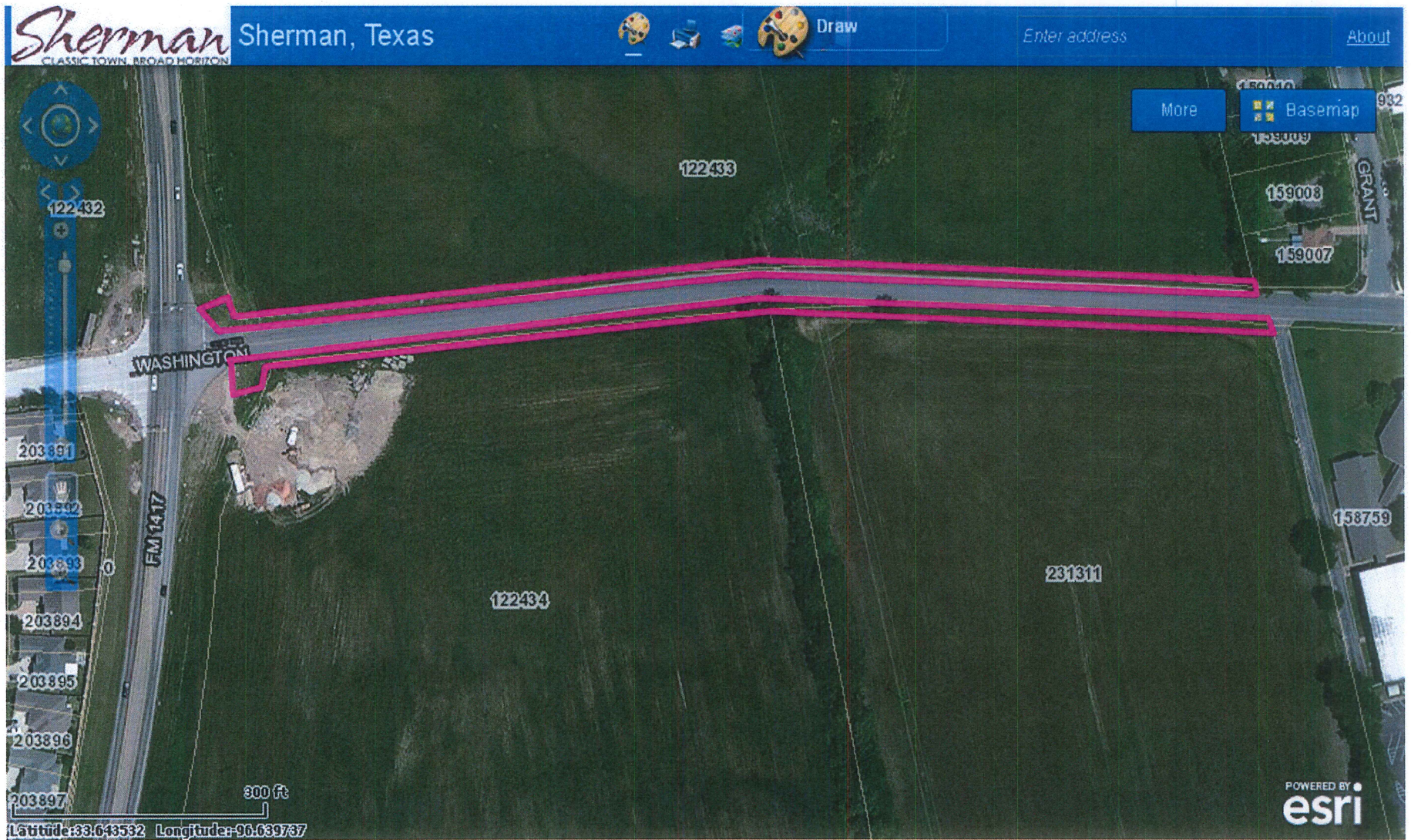
MAP 24

PID 27



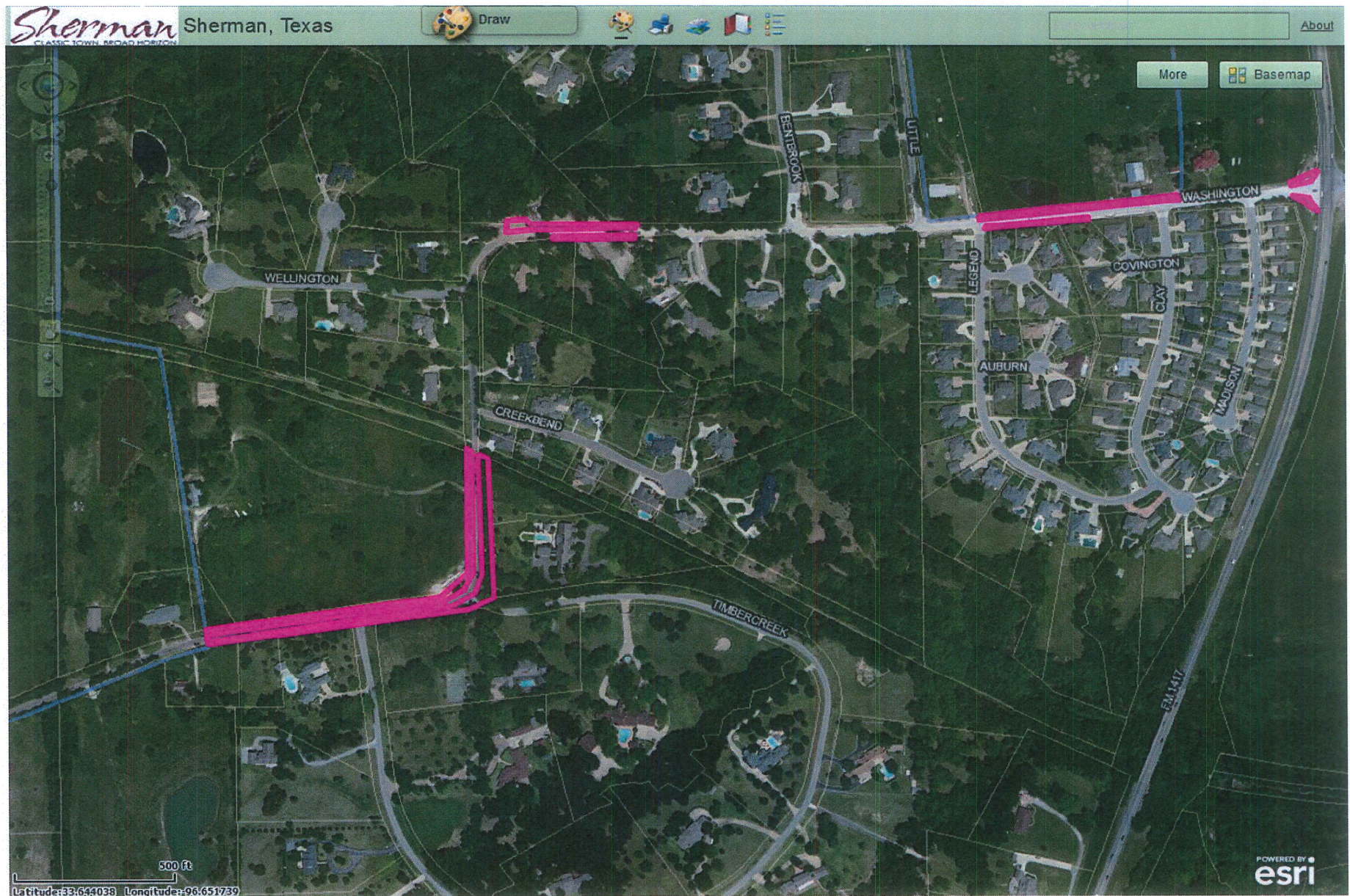
MAP 25

PID 28



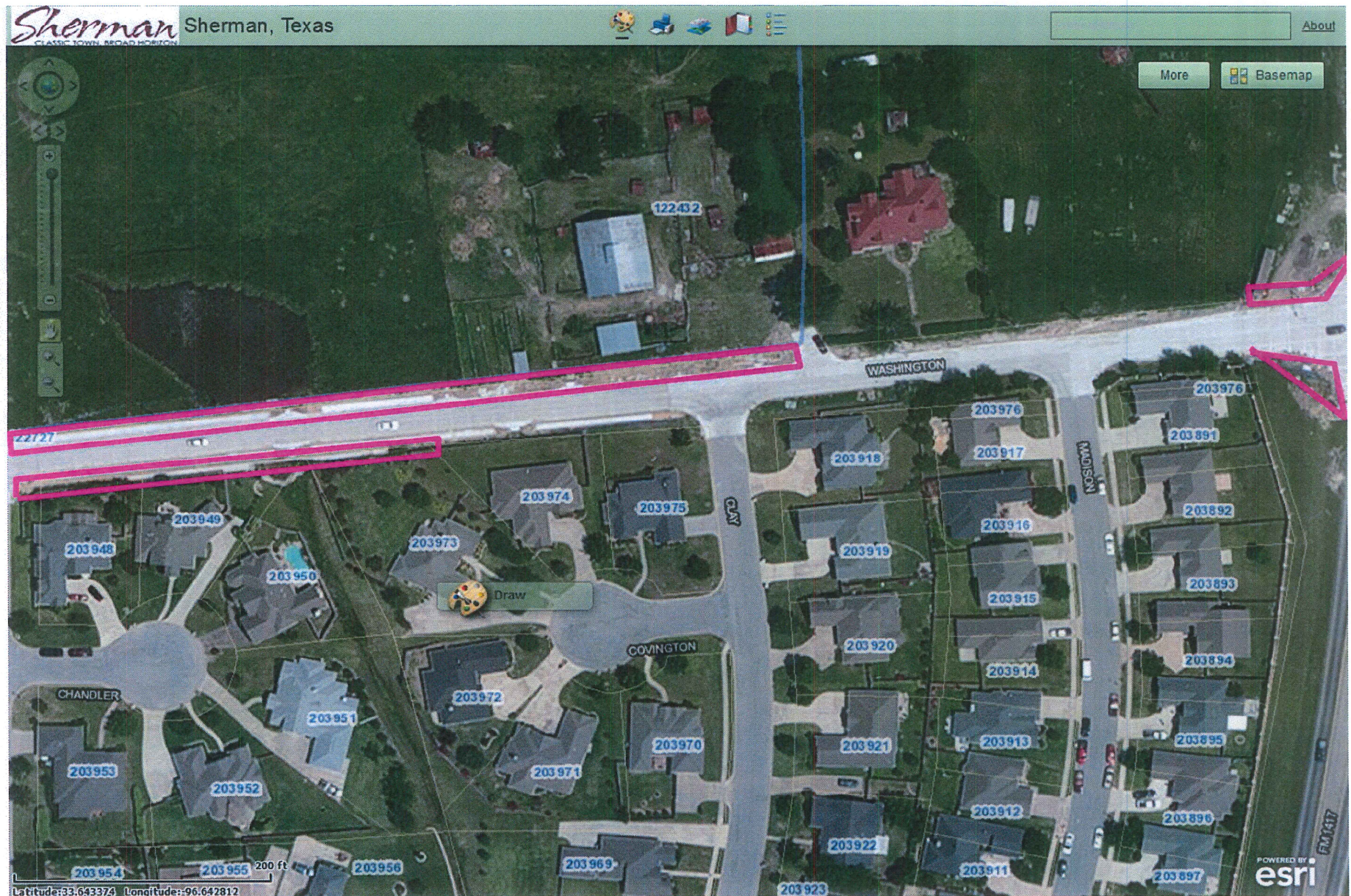
MAP 26

PID 29



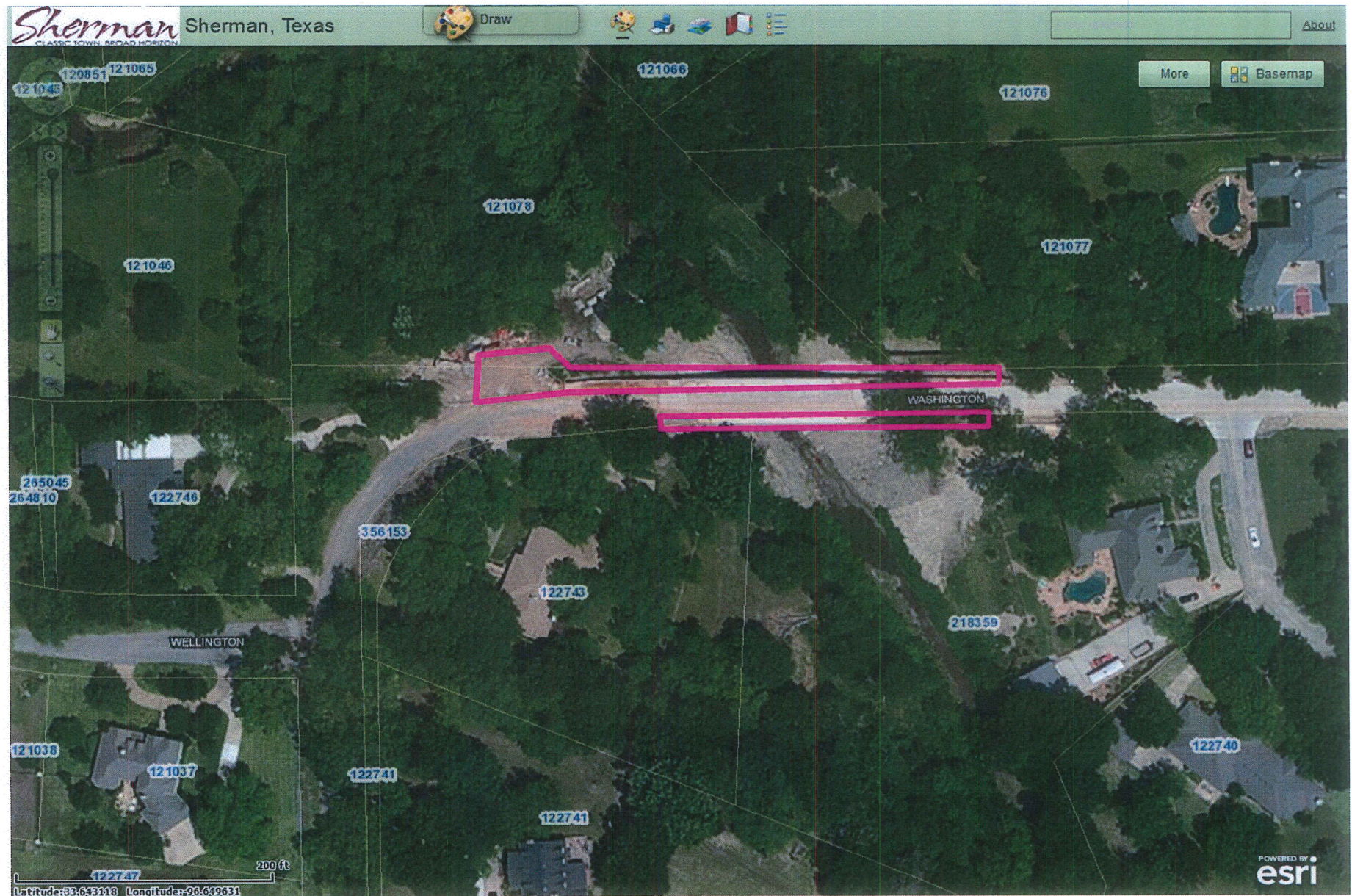
MAP 27A

PID 30



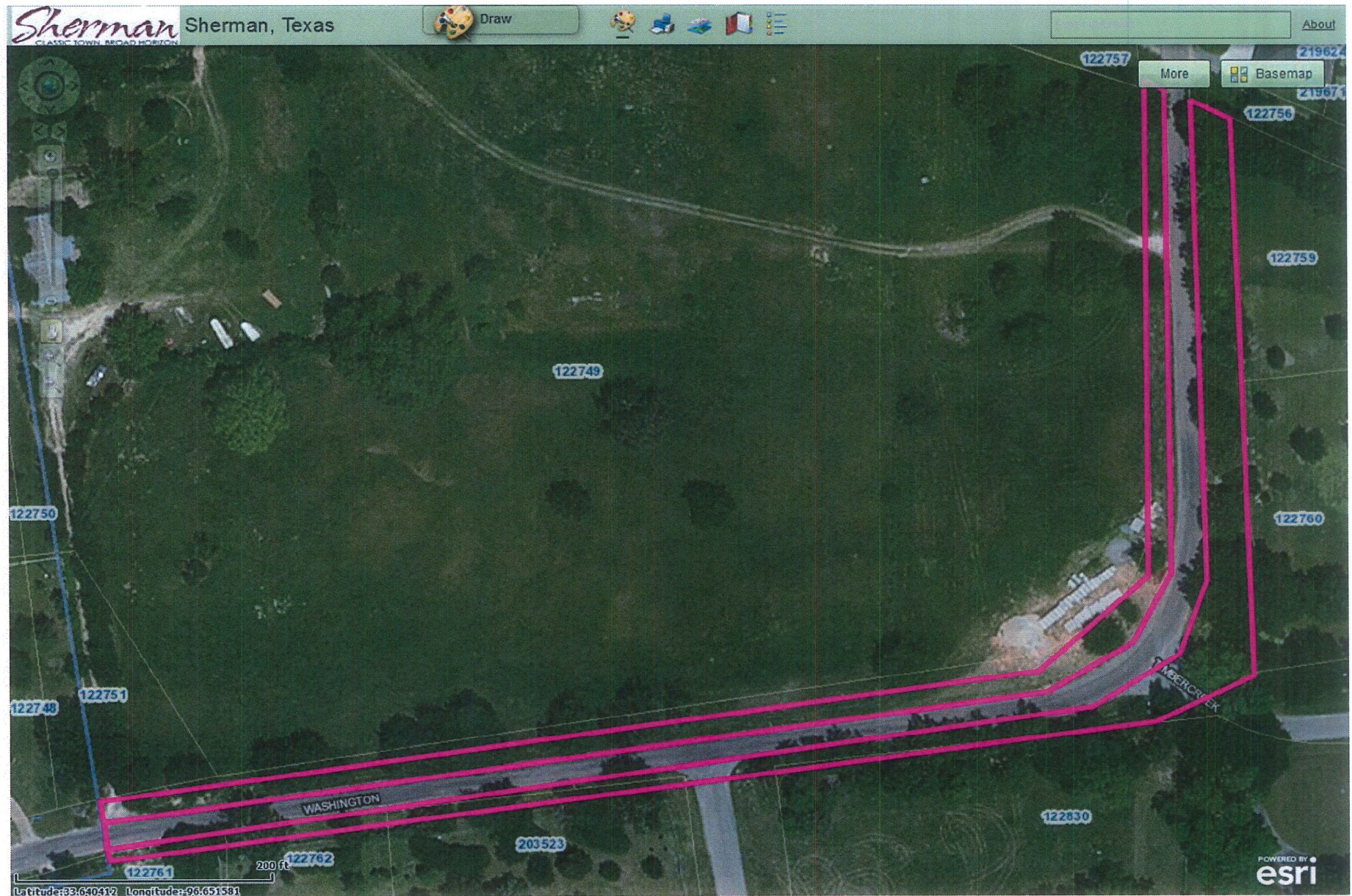
MAP 27B

PID 30



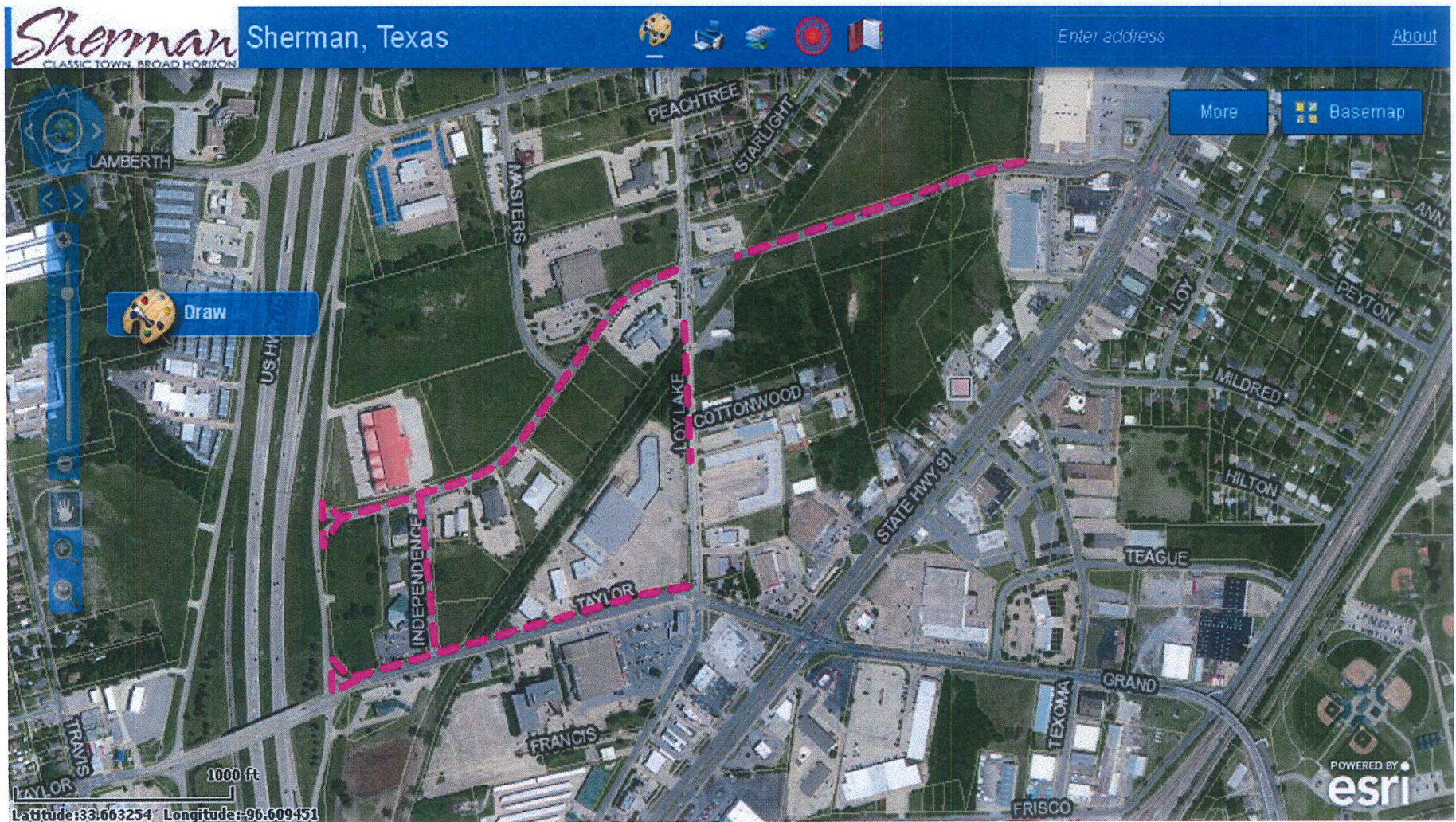
MAP 27C

PID 30



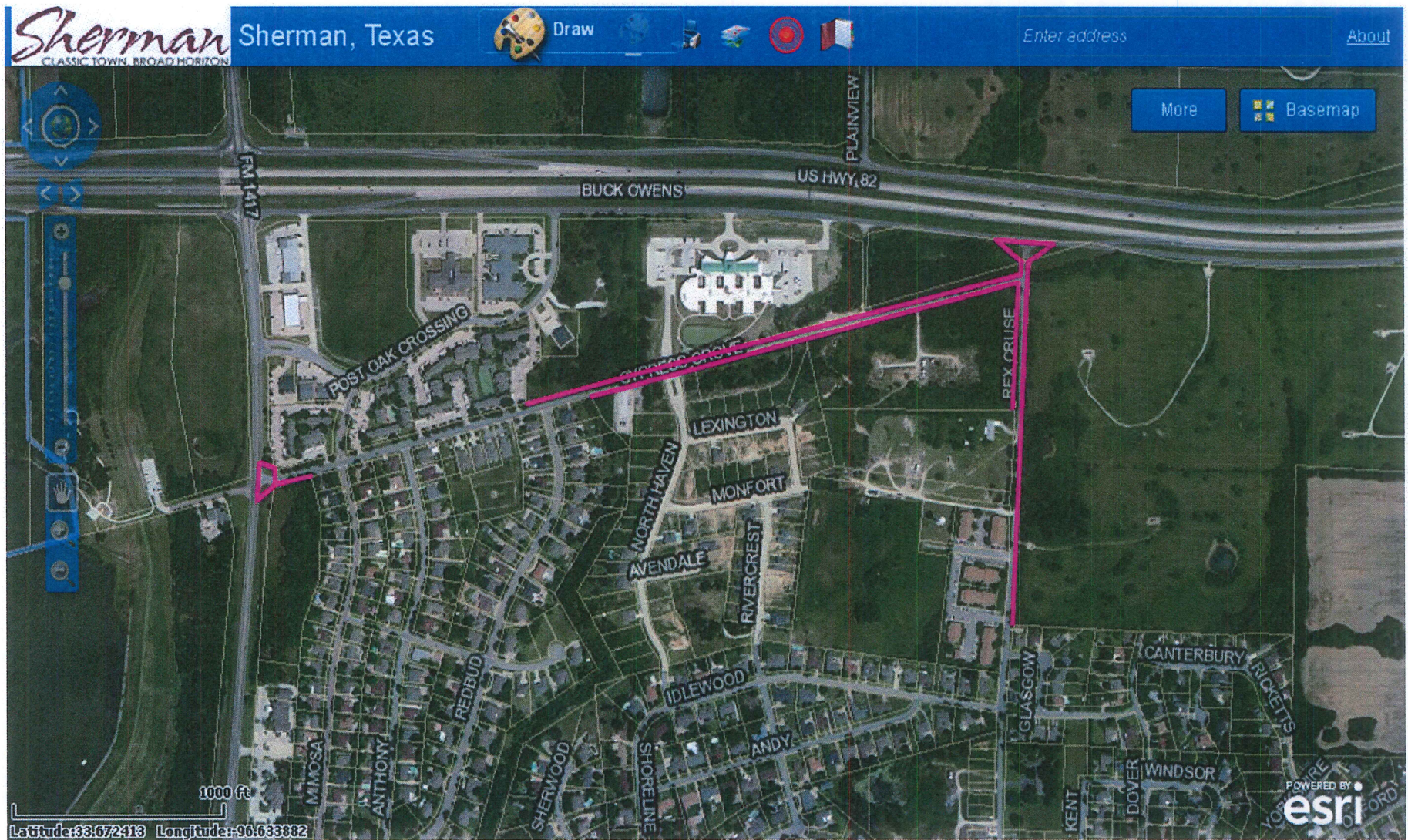
MAP 27D

PID 30



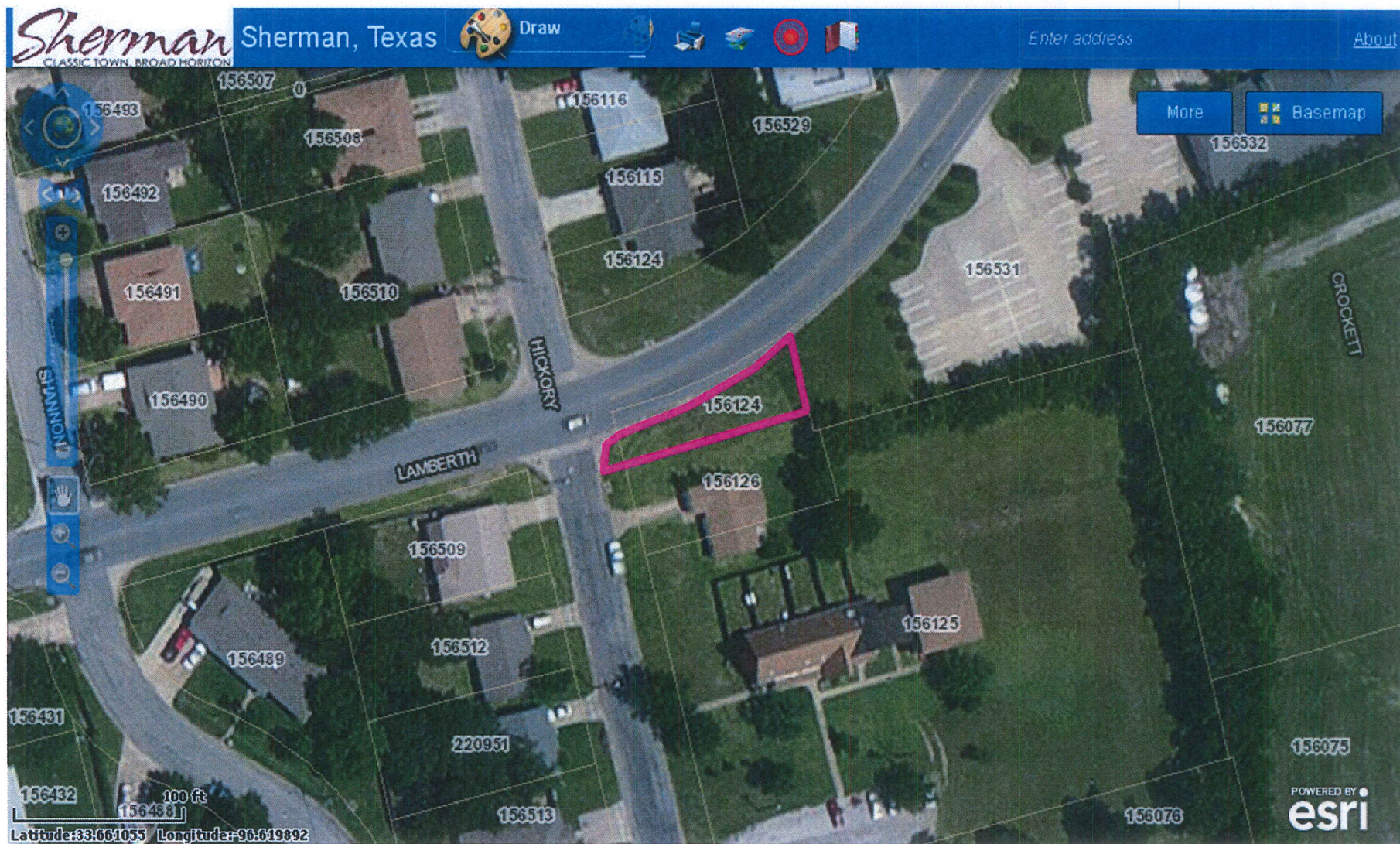
MAP 28

PID 31



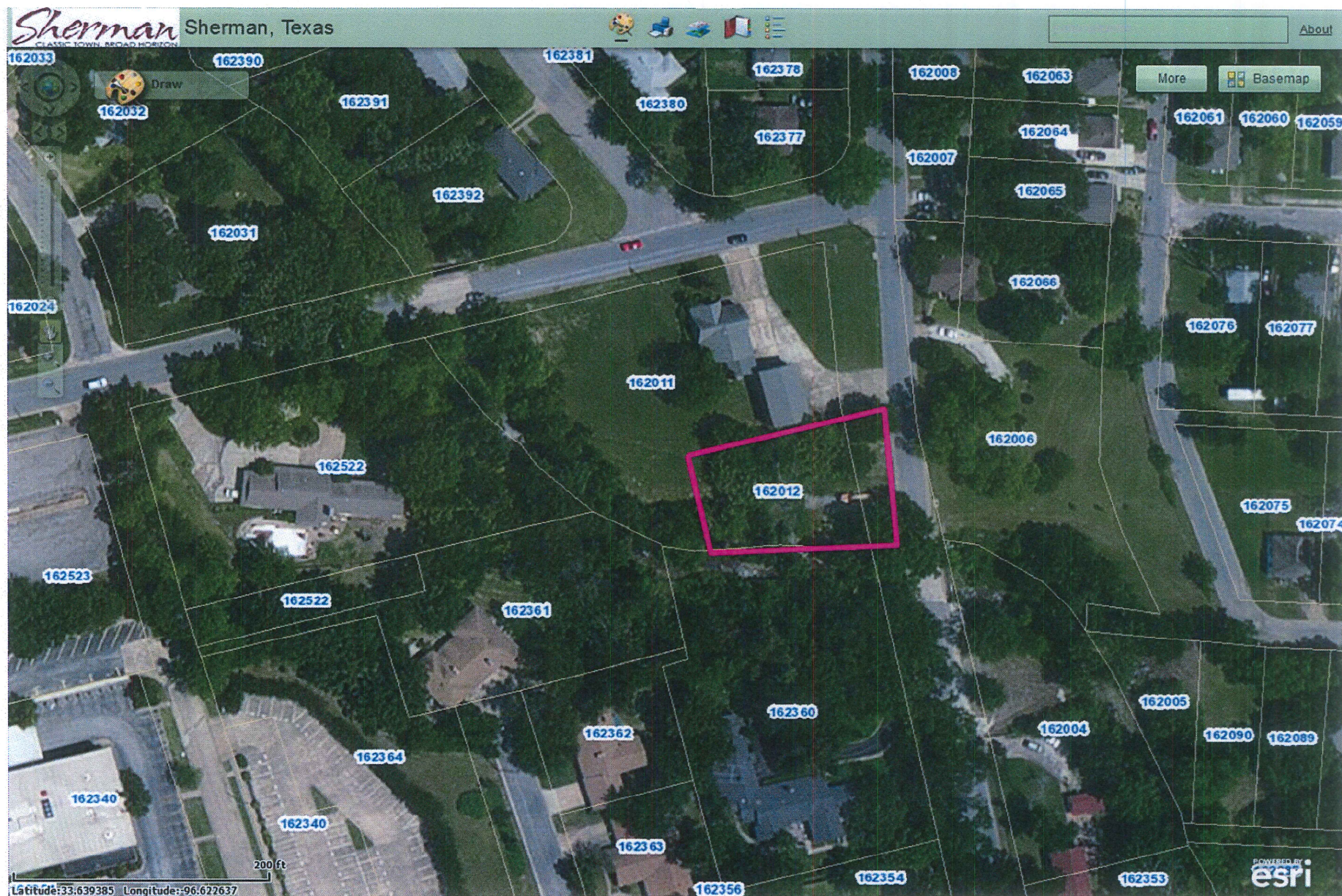
MAP 29

PID 32



MAP 31

PID 34



MAP 70

**428 N RICKETTS
Minimum 2 X PER MONTH**

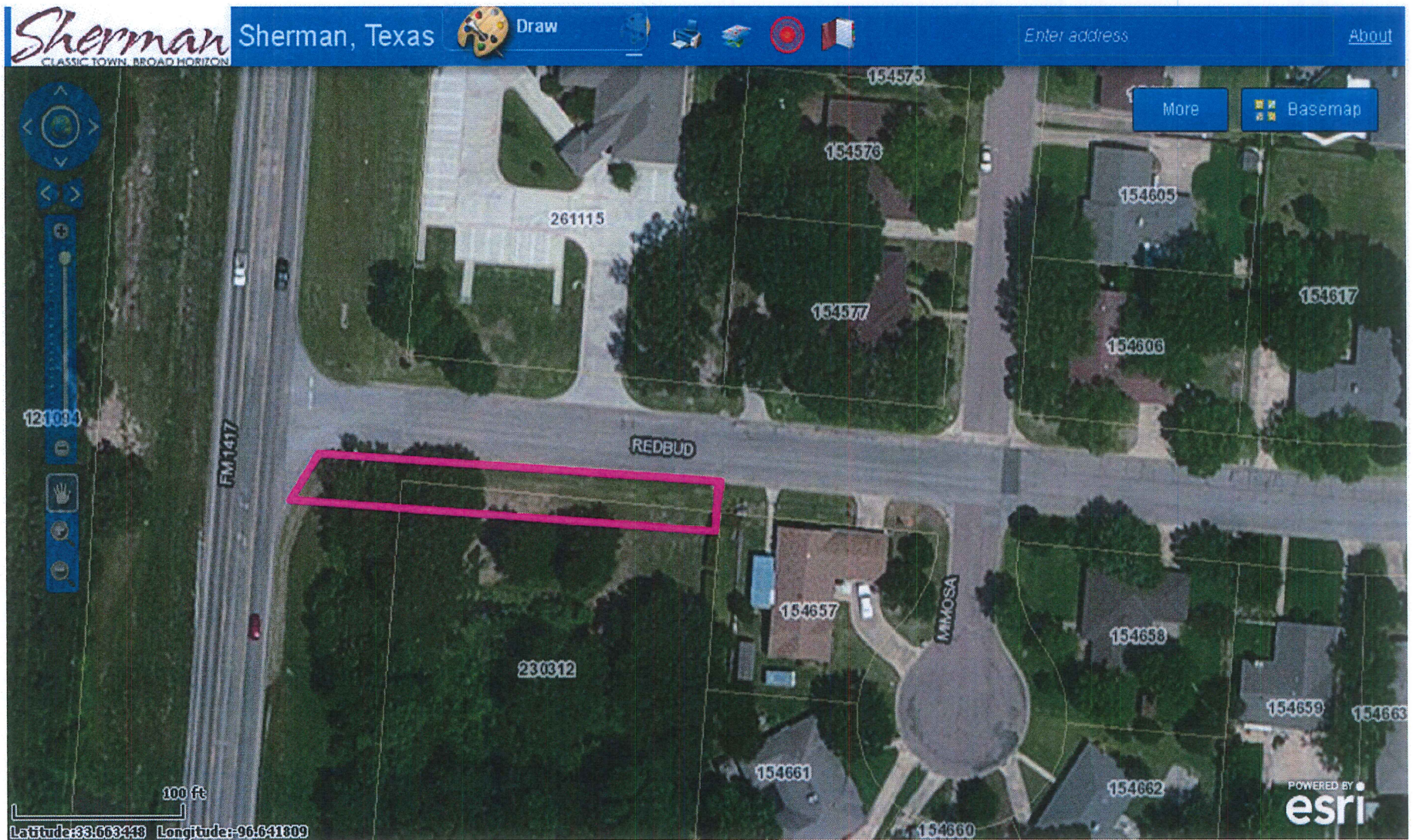
PID 73



MAP 71

AIRPORT

PID 74



MAP 68

PID 71



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

D.1.

Meeting Date: 02/19/2018

Prepared By: Mark Gibson, Director of Utilities

Approved By: Robby Hefton, City Manager

Caption:

CHANGE ORDER NO. 2

Approving the Greater Texoma Utility Authority's Intent to Execute Change Order No. 2; Sherman Industrial Park Replacement Sewer; Lynn Vessels, LLC; \$21,199.10 Increase

Issue:

To consider approval of Change Order No. 2 for the Sherman Industrial Park Replacement Sewer

Background:

Change Order No. 2 provides additional compensation to the contractor to purchase pipe for the project at increased prices due to the results of Hurricane Harvey and provides additional compensation to lower a portion of the sewer to avoid conflicts with an existing sewer that was constructed at a lower elevation than was indicated on the information used to design the project.

As a result of Hurricane Harvey, PVC resin suppliers and PVC pipe manufacturers and suppliers are claiming "Force Majeure" to increase pipe costs for PVC pipe. The change order provides for an increase of \$12,914.74 in pipe prices for the remainder of the project.

In addition, approximately 200 linear feet of sewer was increased by one pipe size to allow for flatter grades necessitated by a potential conflict with an existing sewer that was deeper than indicated on the record drawings. The cost of upsizing this pipe is \$1,017.60.

The grade conflict with the existing sewer necessitated that the subject bore under the railroad tracks be lowered by one foot. The Contractor will be required to remove/alter the existing bore pits that have been constructed and lower them by one foot to accommodate the new boring elevation. The cost of lowering the bore pits and the one foot of extra depth on four adjacent manholes is \$7,266.76.

The total cost of the three change order items is \$21,199.10.

Origination:

Utility Administration

Financial Consideration:

The change order results in a \$21,199.10 increase in the contract amount, yielding a revised contract price of \$1,562,342.25.

Staff Recommendation:

It is recommended that the Greater Texoma Utility Authority's intent to approve Change Order No. 2 be approved.

Alternatives:

As may be directed by City Council

Attachments

Change Order No. 2
Engineer's Recommendation
Pipe Suppliers Correspondence
Supporting Cost Information
Aerial Location Map

CHANGE ORDER NO. 2

PROJECT: City of Sherman – Industrial Sewer Replacement
OWNER: Greater Texoma Utility Authority
CONTRACTOR: Lynn Vessels Construction, LLC.
ENGINEER: Freeman - Millican, Inc.
Dallas, Texas
DATE: February 13, 2018

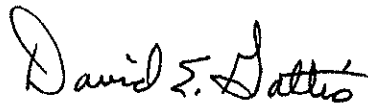
TO THE CONTRACTOR: You are hereby authorized, subject to the Contract provisions, to make the following changes:

Because of the gulf coast hurricane interruption of supplies and plant flooding's, PVC pipe suppliers are not holding bid prices. Prices initially increased about 35% and then stabilized some over the past few months too increases in the 20% followed by a 7% resins increase... Suppliers are claiming "Force Majeure". The contractor is authorized to proceed with the purchasing the remainder of project pipe in sizes 12" – 18" at the increase prices reflected in the attached SUPPORTING COST INFORMATION.

Contractor is also authorized to change the sewer size from 15" to 18" from sta. 89+65 to sta. 91+76 on a revised grade to lower the bore under the RR spurs by about 1' to avoid conflict with existing sewer field measured to be lower than show on the plans.

Original Contract Amount:	\$ 1,535,766.64
Net Addition/(Reduction) - Previous Change Order #1	\$5,376.51
Addition/(Reduction) - This Change Order #2	\$21,199.10
 Revised Contract Amount:	 \$ 1,562,342.25

RECOMMENDED:



Freeman - Millican, Inc.

2.13.2018

Date

APPROVED:



Contractor

2-13-2018

Date

Owner

Date

TERRY MILLICAN, R.P.L.S.
VICTOR ACUY, P.E.
RICHARD A. DORMIER, P.E.
JOHN D. GATTIS, A.I.A.
DAMIR LULO, P.E.
MICHAEL K. STACEY, P.E.
LARRY J. FREEMAN, P.E.

February 13, 2018

Mr. Drew Satterwhite, P.E.
General Manager
Greater Texoma Utility Authority
5100 Airport Drive
Denison, Texas 75020

**Re: Sherman Industrial Sewer Replacement Project
Construction Change Order #2**

Dear Mr. Satterwhite:

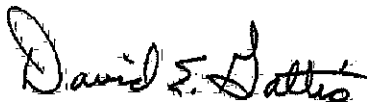
The attached proposed change order #2 authorizes the contractor to purchase the remainder of project pipe, sizes 12" – 18" at increased unit prices due to Force Majeure, hurricane Harvey. This change also increases 212' of sewer to 18" to lower the RR spur bore and avoid an existing sewer field measured to be lower than reflected on the plans.

The proposed change order increases the contract price \$21,199.10. Please refer to the SUPPORTING COST INFORMATION attachment to the charge order for cost detail. Much of the cost is based on unit bid prices. The \$5,480.00 is for removing the boring equipment, digging & grading the pit 1' lower and re-installation of equipment.

We recommend that the GTUA approve the proposed change order #2 increasing the contract with Lynn Vessels Construction, LLC to \$1,562,342.25.

Sincerely,

FREEMAN - MILLICAN, INC.



David E. Gattis, P.E

Copy: Mark Gibson, Director of Utilities
City of Sherman, Texas

NATIONAL WHOLESALE SUPPLY, INC.

1972 California Crossing • Dallas, TX 75220

972-331-7770 • 972-331-8118 Fax

TO: LYNN VESSELS CONSTRUCTION

RE: PVC PIPE INCREASES DUE TO HURRICANE HARVEY

To whom it concerns,

Due to Hurricane Harvey, there has been an unprecedented increase in PVC pipe and the resin used to create it. Pre-Harvey levels of pipe were already compromised due to the summer runs on pipe. Harvey hitting the coast of Texas where the majority of Resin Distribution and Multiple Pipe suppliers maintain warehouses was truly a disaster.

Due to these factors, all pipe manufacturers claimed Force Majeure and increased prices on PVC Pipe more than 35% in less than three weeks. Pipe has been coming down over the past few months but pipe prices are still elevated to over 20% where they were Pre-Harvey.

Recently, we have been alerted to another increase. Due to resin increases that were implemented February 1st, 2018 and the proposed increase on March 1st, 2018, these pending increases will be roughly 7% additional from current buy levels.

Please know that as a distributor, we are doing everything we can to minimize the impact from these increases. As shown above, we do not expect a decline in costs, rather further increases are expected due to the summer time buy levels getting kicked off.

Thank you for your time and business. We appreciate and look forward to helping in the future.

Regards,

Chris Cornett
Outside Sales
National Wholesale Supply – Br13
Sherman, TX
903-771-2825 office
903-267-6395 cell

NATIONAL WHOLESALE SUPPLY BR13
4009 TEXOMA PARKWAY
SHERMAN, TX 75090
903-771-2821
Fax 903-328-6640

Quotation

EXPIRATION DATE	QUOTE NUMBER
02/08/2018	S2369244
NATIONAL WHOLESALE SUPPLY BR13 4009 TEXOMA PARKWAY SHERMAN, TX 75090 903-771-2821 Fax 903-328-6640	PAGE NO.
	1 of 2

QUOTE TO:

SHIP TO:

LYNN VESSELS CONST LLC
 PO BOX 1212
 SHERMAN, TX 75091

LYNN VESSELS CONST LLC-SHERMAN SEWE
 CHOCTAW CREEK & SUNNY D
 SHERMAN, TX 75091

CUSTOMER NUMBER	CUSTOMER PO NUMBER	JOB NAME / RELEASE NUMBER	SALESPERSON		
31772	MARCH SPC PRICING		CHRIS CORNETT		
WRITER		SHIP VIA	TERMS	SHIP DATE	FREIGHT ALLOWED
CHRIS CORNETT		DIRECT	NET 10TH PROX	02/09/2018	No
ORDER QTY	DESCRIPTION		UNIT PRICE	EXT PRICE	
	SHIPPING INSTRUCTIONS PRICING VALID FOR PURCHASE AFTER MARCH 1, 2018 BUT MUST SHIP TO JOBSITE BY MARCH 15, 2018				
2814ft	BID ITEM # 4 18 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		18.459/ft	51943.63	
364ft	BID ITEM # 5 15 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		11.887/ea	4326.87	
252ft	BID ITEM # 6 15 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		11.887/ea	2995.52	
56ft	BID ITEM # 7 12 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		7.990/ea	447.44	
56ft	BID ITEM # 9 18 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		18.459/ft	1033.70	
** Continued on Next Page *			Subtotal		
			S&H Charges		
			Amount Due		



Quotation

NATIONAL WHOLESALE SUPPLY BR13
4009 TEXOMA PARKWAY
SHERMAN, TX 75090
903-771-2821
Fax 903-328-6640

EXPIRATION DATE	QUOTE NUMBER
02/08/2018	S2369244
NATIONAL WHOLESALE SUPPLY BR13 4009 TEXOMA PARKWAY SHERMAN, TX 75090 903-771-2821 Fax 903-328-6640	PAGE NO.
	2 of 2

QUOTE TO:

SHIP TO:

LYNN VESSELS CONST LLC
PO BOX 1212
SHERMAN, TX 75091

LYNN VESSELS CONST LLC-SHERMAN SEWE
CHOCTAW CREEK & SUNNY D
SHERMAN, TX 75091

CUSTOMER NUMBER	CUSTOMER PO NUMBER	JOB NAME / RELEASE NUMBER	SALESPERSON		
31772	MARCH SPC PRICING		CHRIS CORNETT		
WRITER		SHIP VIA	TERMS	SHIP DATE	FREIGHT ALLOWED
CHRIS CORNETT		DIRECT	NET 10TH PROX	02/09/2018	No
ORDER QTY	DESCRIPTION		UNIT PRICE	EXT PRICE	
224ft	BID ITEM # 10 15 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		11.887/ea	2662.69	
42ft	BID ITEM # 11 15 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		11.887/ea	499.25	
42ft	BID ITEM # 12 18 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		18.459/ft	775.28	
14ft	BID ITEMS # 13 15 x 14 SDR35 D3034 GREEN GASK SOLID PIPE ***		11.887/ea	166.42	
14ft	BID ITEM # 16 18 x 14 SDR35 D3034 GREEN GASK SOLID PIPE		18.459/ft	258.43	
National Wholesale Supply standard Terms of Sale apply. NWS reserves the right to rescind or modify any bid at any time. Pricing on bids does not include sales tax. Material quoted is based on information provided by the customer. NWS is not responsible for any items interpreted incorrectly or items that may have been left off the bid. The customer is responsible for reviewing all quotes for accuracies. Bid is based on items listed and is deemed invalid in part. Freight			Subtotal		65109.23
			S&H Charges		0.00
			Amount Due		65109.23



Ferguson Waterworks #1232
10077 West University Drive
McKinney, TX 75071

Phone: 972-434-2600
Fax: 972-434-2612

Deliver To:
From:
Comments:

FERGUSON WATERWORKS #788

Price Quotation
Phone: 972-434-2600
Fax: 972-434-2612

Bid No: B328364
Bid Date: 07/21/17
Quoted By: BAG

Cust Phone: 817-267-3900
Terms: NET 10TH PROX

Customer: QUOTATIONS
PROJECT QUOTATIONS
EULESS, TX 76040

Ship To: QUOTATIONS
PROJECT QUOTATIONS
EULESS, TX 76040

Cust PO#: SHERMAN

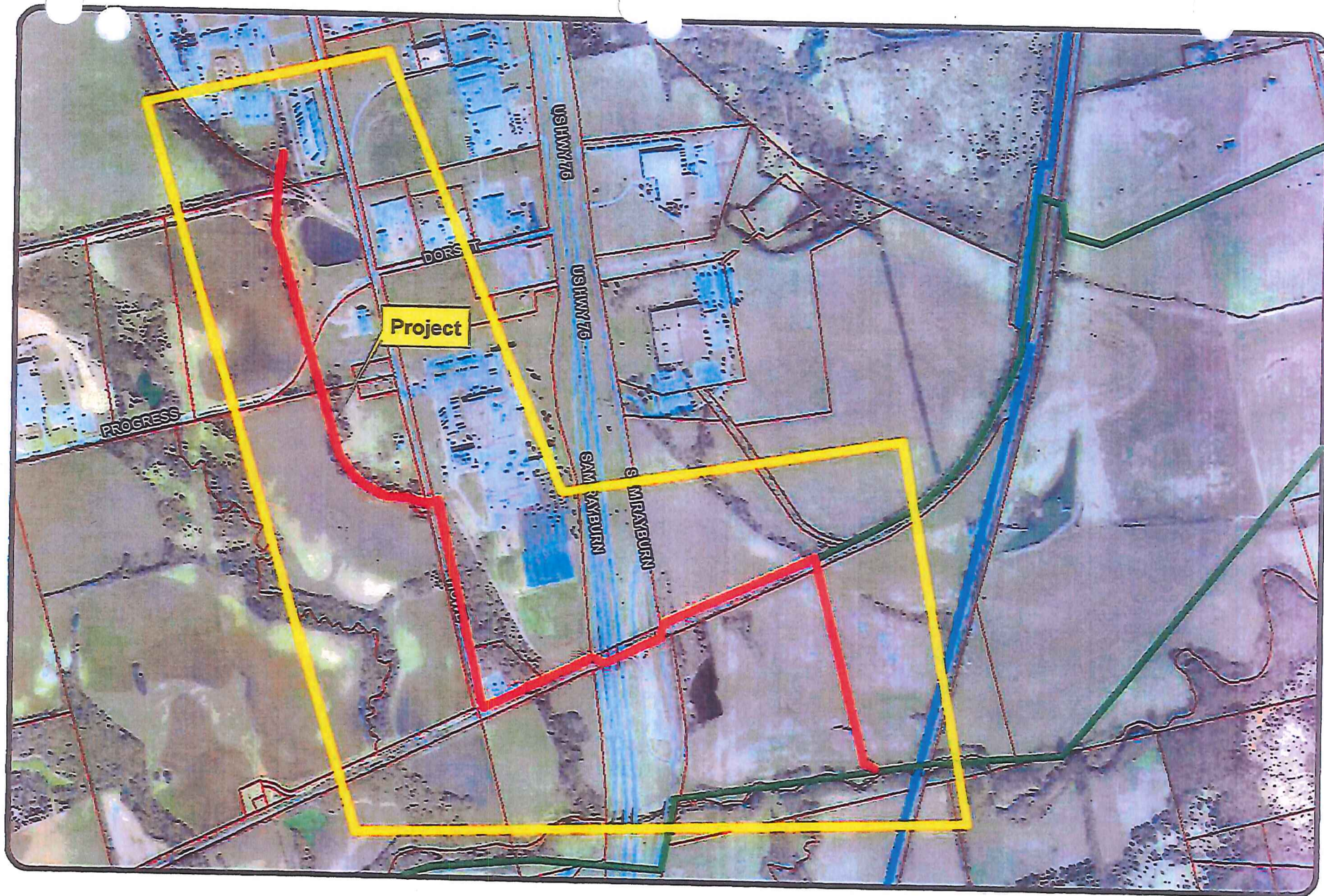
Job Name: INDUSTRIAL SEWER REP

Item	Description	Quantity	Net Price	UM	Total
	INDUSTRIAL SEWER REPLACE SHERMAN, TEXAS BID DATE: 8/15/17 2:PM ENGR: FREEMAN-MILLICAN ADDENDUMS: 7 ***** ITEM 1 - MOBILIZATION NO QUOTE ----				
SDR35P2114 PD2105G4737	ITEM 2 - 21" F679 PS46 0-10' 21X14 F679 PS46 PVC GJ SWR PIPE 2X1000 UG DET SWR GREE SUBTOTAL	3136 4	20.500 24.000	FT EA	64288.00 96.00 64384.00
SDR35P2114 PD2105G4737	ITEM 3 - 21" F679 PS46 10-15' 21X14 F679 PS46 PVC GJ SWR PIPE 2X1000 UG DET SWR GREE SUBTOTAL	1932 1	20.500 24.000	FT EA	39606.00 24.00 39630.00
SDR35P1814	ITEM 4 - 18" F679 PS46 0-10' 18X14 F679 PS46 PVC GJ SWR PIPE SUBTOTAL	2814	14.770	FT	41562.78 41562.78
SDR35P1614 PD2105G4737	ITEM 5 - 15" SDR35 0-10' 15X14 SDR35 PVC GJ SWR PIPE 2X1000 UG DET SWR GREE SUBTOTAL	364 2	9.880 24.000	FT EA	3596.32 48.00 3644.32
SDR35P1514 PD2105G4737	ITEM 6 - 15" SDR35 10-15' 15X14 SDR35 PVC GJ SWR PIPE 2X1000 UG DET SWR GREE SUBTOTAL	280 3	9.880 24.000	FT EA	2766.40 72.00 2838.40
SDR35P1214	ITEM 7 - 12" SDR35 10-15' 12X14 SDR35 PVC GJ SWR PIPE SUBTOTAL	56	6.590	FT	369.04 369.04
SP-DSCP30625 SDR35P2114	ITEM 8 - 21" PVC IN 30" 30 X .625 STL CASING PIPE 21X14 F679 PS46 PVC GJ SWR PIPE	789 798	133.721 20.500	FT FT	105505.87 16359.00

Lynn Vessels Post Harvey PVC Pipe Increase

SUPPORTING COST INFORMATION

				To Date	Net	Total
				Bid Price	Post Harvey Increase	Increase
4	18" DR 35 0-10' Deep	3026 LF	\$ 14.77	\$18.46	\$3.69	\$11,165.94
5	15" DR 35 0-10' Deep	146 LF	\$ 9.88	\$11.89	\$2.01	\$293.46
6	15" DR 35 10-15' Deep	275 LF	\$ 9.88	\$11.89	\$2.01	\$552.75
7	12" DR 35 10-15' Deep	50 LF	\$ 6.59	\$7.99	\$1.40	\$70.00
9	18" DR 35 in 26" Steel Encasement by Boring	50 LF	\$ 14.77	\$18.46	\$3.69	\$184.50
10	15" DR 35 in 24" Steel Encasement by Boring	219 LF	\$ 9.88	\$11.89	\$2.01	\$440.19
11	15" DR 35 in 24" Steel Encasement by OPEN CUT	30 LF	\$ 9.88	\$11.89	\$2.01	\$60.30
12	18" DR 35 in 26" Steel Encasement by OPEN CUT	40 LF	\$ 14.77	\$18.46	\$3.69	\$147.60
Total						\$12,914.74
Change in Pipe From Sta89+64.67 to 91+76.47				Bid		
4	18" DR 35 0-10' Deep	212 LF	\$ 51.16			\$10,845.92
5	15" DR 35 0-10' Deep	-212 LF	\$ 46.36			-\$9,828.32
Total						\$1,017.60
Lower 24" Rail Road Bore 1' deeper, Conflict with Existing Line						
Pull Trench Boxes, Lower, Regrade, Install Rock and Reset						
Track, Reset Trench Boxes in Bore pit						
		1 LS	\$ 5,480			\$5,480.00
Add Vertical Depth to Manholes 1'						
		4 EA	\$446.69			\$1,786.76
Total						\$7,266.76
Grand ToTal ----->						\$21,199.10



Sherman
CLASSIC TOWN, BROAD HORIZON.
ENGINEERING DEPARTMENT

Location Map:
Industrial Sewer



1 inch = 1,000 feet



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E.1.

Meeting Date: 02/19/2018

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Setting the Public Hearing on the Proposed Agreement with Finisar Sherman RE HOLDCO, LLC, a Texas Limited Liability Company, for the Abatement of Ad Valorem Property Taxes for Improvements within Industrial Reinvestment Zone, Number 022028-01, City of Sherman, Texas

Issue:

To consider setting a public hearing on a proposed tax abatement agreement for the City Council's regular meeting on Monday, March 5, 2018

Background:

The Tax Reinvestment Committee met on January 17, 2018, to discuss a tax abatement request from Finisar Sherman RE HOLDCO, LLC ("Finisar") for a project to invest \$20 million to \$30 million in facility and land and an additional \$120 million in manufacturing equipment at its facility located at 6800 South U.S. Highway 75 in Sherman situated within Industrial Reinvestment Zone No. 022018-01. The taxable value of Finisar's current property is \$12 million. The project began at the end of 2017 and is expected to be fully operational by the Fall of 2018 with approximately 600 highly paid employees, including management, engineering and executive level jobs, and highly-skilled and semi-skilled line and technical jobs. The proposed agreement calls for a ten-year declining abatement with abatement percentages beginning at 60% in year one (1) and ending with 50% in year ten (10). With the substantial employment level and capital investment at the plant makes this taxpayer the second largest taxpayer within the city limits by a large margin.

The Committee voted to recommend an abatement and the creation of the Zone to the City Council and other taxing entities. The law requires that a reinvestment zone be established prior to a tax abatement being granted for eligible projects. Ordinance No. 6098 creating Industrial Reinvestment Zone, Number 022018-01, City of Sherman, Texas, necessary for consideration of this tax abatement, is scheduled for public hearing and adoption at this meeting.

The City is required by state law to hold a public hearing prior to the adoption of a tax abatement agreement. The Committee agreed to propose a ten (10) year tax abatement of 60%, 60%, 60%, 55%, 55%, 55%, 50%, 50%, 50% and 50%, in accordance with the City's current tax abatement matrix. With the City Council's approval of this agenda item, approval of this abatement agreement will be considered at the March 5, 2018 Council meeting.

Origination:

Finisar Sherman RE HOLDCO, LLC, Applicant
Tax Reinvestment Committee

Financial Consideration:

There is no direct cost associated with the public hearing.

Staff Recommendation:

The staff recommends that the City Council set a public hearing on the proposed tax abatement agreement for the regular Monday, March 5, 2018 Council meeting.

Alternatives:

No alternatives are recommended.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E.2.

Meeting Date: 02/19/2018

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider Calling a Special Meeting of the City Council for a Training Workshop to be Conducted by E. Allen Taylor, Jr., Founding Partner of Taylor, Olson, Adkins, Sralla and Elam, LLP on Wednesday, March 28, 2018

Issue:

To call a special meeting of the City Council for 11:00 a.m. on Wednesday, March 28, 2018 to hold a Training Workshop in the City Council Chambers of City Hall.

Background:

Mr. Taylor will provide the Mayor and City Council members with training and a legal update regarding various City-related topics.

Origination:

City Manager Robby Hefton

Financial Consideration:

There is no financial impact to scheduling this meeting.

Staff Recommendation:

It is recommended that the City Council, **by motion and order**, call a special City Council meeting for 11:00 a.m. on Wednesday, March 28, 2018.

Attachments

E. Allen Taylor, Jr. - Biography



TOASE

TAYLOR · OLSON · ADKINS · SRALLA · ELAM

ATTORNEYS & COUNSELORS

[Home](#)
[Practice Areas](#)
[Attorneys](#)
[Representative Clients](#)
[Contact Us](#)


E. Allen Taylor, Jr.

Founding Partner

Allen is a Fort Worth native and currently serves as City Attorney to the cities of Burleson, Southlake, Mansfield, and Cleburne. He is the former Chairman of the Plan Commission of the City of Fort Worth, a former member of the Zoning Commission of the City of Fort Worth, a member of the Advisory Board of the Institute for Local Government Studies of The Center for American and International Law and was previously a member of the Pre-Application Review Panel and the Section 208 Water Quality Advisory Committee of the Lower Rio Grande Valley Development Council. He has served as a speaker and panelist for a number of conferences and seminars in these fields and has authored a number of articles in the land use and development law area.

Practice Areas

- Public Law
- Municipal Law
- Land Use Law

Education

- | | |
|---|------|
| • Master of Urban Planning, Texas A&M University | 1973 |
| • BA, Texas A & M University | 1973 |
| • Master of Public Administration, Southwest Texas State University | 1980 |
| • J.D Baylor University School of Law | 1983 |

Honors:

- Cum Laude
- National Order of Barristers
- Law Review: Research and Topics Editor

Professional Affiliations and Memberships

Licensed:

- Texas Supreme Court
- U.S. Court of Appeals 5th Circuit
- U.S. Court of Appeals 10th Circuit
- U.S. District Court Northern District of Texas
- U.S. District Court Southern District of Texas
- U.S. District Court Eastern District of Texas
- U.S. District Court Western District of Texas

Member:

- Texas Bar Association, Administrative and Public Law and Litigation Sections
- Tarrant County Bar Association

Phone: 817-332-2580

Fax: 817-332-4740

ataylor@toase.com

[Download vCard](#)

Prior to embarking on a legal career, Allen served as Planning Director of the City of Edinburg, Texas, Director of Planning & Community Development of the City of Pharr, Texas, and the Director of Planning & Community Development for the City of Killeen, Texas.

- American Bar Association – State and Local Government and Environment, Energy and Resources Sections
- American Planning Association
- Institute for Local Government Studies of the Center for American and International Law
- Texas City Attorney Association

Awards, Publications & Presentations

- *Impact Enabling Legislation A New Approach to Exactions (Co-Author)*, Zoning and Planning Law Report, No. 11, Vol. 2, February, 1988.
- *How to Develop Use Impact Fees Successfully*, Institute on Planning, Zoning and Eminent Domain, 1988.

6000 Western Place, Suite 200 | Fort Worth, Texas 76107 | Phone 817-332-2580 | Fax 817-332-4740

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SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E.3.

Meeting Date: 02/19/2018

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) 2018-2019

Issue:

Set budget calendar for FY 2018-2019

Background:

Several meetings are necessary to develop the budget for the upcoming fiscal year. There is some flexibility in meeting dates reflected in the proposed budget calendar. Particularly important are the dates for the Budget Planning Meeting and the Budget Workshop. The Budget Planning Meeting will be used to 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 2018-2019, this five-year time horizon will reflect 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.

Origination:

Robby Hefton, City Manager

Financial Consideration:

None

Staff Recommendation:

The staff recommends that the Council, **by motion and order**, approve the budget calendar as presented and confirm the City Council Chambers as the site for the Budget Planning Meeting and Budget Workshop.

Alternatives:

The City Council could select alternative dates for the meetings, subject to Charter requirements.

Attachments

Proposed Budget Calendar FY2018-2019

PROPOSED BUDGET CALENDAR

FISCAL YEAR 2018-2019

Budget Planning Meeting with City Council and Financial Update	April 20, 2018
Budget Workshop*	June 14-15, 2018
Present Draft Budget to Council	August 6, 2018
Introduction and Public Hearing of Budget Ordinance Final Action on Budget Ordinance Introduction and First Public Hearing of Tax Rate Ordinance	August 20, 2018
Second Public Hearing on Tax Rate Ordinance	September 4, 2018
Final Action on Tax Rate Ordinance	September 17, 2018

Notes:

Meeting times to be confirmed after the Budget Calendar is approved.

It is recommended that the Budget Planning Meeting and the Budget Workshop 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

E.4.

Meeting Date: 02/19/2018

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Approve the Quarterly Investment Reports for Quarter Ended December 31, 2017

Issue:

To approve the Investment Reports for the quarterly period ending December 31, 2017

Background:

These reports are being presented in accordance with the state law that requires at least quarterly presentation to the Council. A separate report is included for the Debt Proceeds portfolio that includes the Tax Note and Certificate of Obligation proceeds, as required by the Investment Policy. The reports were given to the Investment Committee prior to submittal to the Council.

As of December 31, 2017, the portfolios were in compliance with applicable state laws and with the City's internal Investment Policy.

The Operating investment portfolio had a book value of about \$12.9 million, a decrease of about \$1.1 million from prior quarter of \$14 million, due to the maturity of a Certificate of Deposit, a U.S. Agency Security, and withdrawals from a Local Government Investment Pool (LGIP). Funds were also deposited into the LGIP. The underlying investments were adequately diversified among four different types of securities. This portfolio is appropriately liquid; and its weighted-average maturity was about 482 days, a decrease of 28 days from last quarter. The portfolio yield of 1.355% for the quarter is 40 basis points below the benchmark yield of 1.76%. The portfolio value on the City's books is essentially equal to the market value of the overall portfolio.

The Debt Proceeds portfolio balance of \$21.8 million was invested in a Local Government Investment Pool, an FDIC Insured Investment Account, and a U.S. Agency security. Current period transactions included the addition of interest income and the receipt of \$4 million of debt proceeds to fund stormwater projects. Approximately \$3.7 million was disbursed for project payments. The yield of 1.13% was fifteen (15) basis points below the benchmark yield of 1.28% for this portfolio. Book value and market value were about the same.

Origination:

Finance Department

Financial Consideration:

None

Staff Recommendation:

It is recommended that the Council accept the Investment Reports as presented.

Alternatives:

The Council could offer suggestions for improvement or could request more frequent reporting.

Attachments

Investment Committee Memo with Reports for QE 12/31/2017



memorandum

DATE: Tuesday, February 12, 2018

TO: The City of Sherman Investment Committee
Councilman Jason Sofey
Councilwoman Pam Howeth
Robby Hefton, City Manager

CC: Steve Ayers, Assistant City Manager

FROM: Mary Lawrence, Director of Finance *ml*

SUBJECT: Investment Reports for the Quarter Ended December 31, 2017

Enclosed is a copy of the quarterly investment reports for December 31, 2017. As of that date, the City was in compliance with all applicable state laws and internal policies for the portfolio.

The total operating portfolio balance of about \$12.9 million decreased by about \$1.1 million from the previous quarter due to the maturities of a Certificate of Deposit (CD), a U.S. Agency, and withdrawals from a Local Government Investment Pool (LGIP). Funds were also deposited into the LGIP. The underlying investments were adequately diversified among four different types of securities. The portfolio's weighted-average maturity of about 482 days decreased from last quarter due to maturities. The portfolio yield of 1.355% was 40 basis point below our benchmark 1-year Constant Maturity Treasury Index of 1.76%. Book value closely approximated market value.

The debt proceeds portfolio balance of \$21.8 million had increased by about \$400,000 due to the net effect of the receipt of debt proceeds for storm water projects and payments for capital projects. The underlying investments were invested in a Local Government Investment Pool, a U.S. Agency security, and an FDIC insured money market account. The portfolio's weighted-average maturity of about 49 days decreased by 13 days from last quarter due to the addition of the Stormwater debt proceeds to the LGIP. The portfolio yield of 1.13% was 15 basis points below the benchmark yield for this portfolio, the 1-month Constant Maturity Index, of 1.28%. Book value closely approximated market value.

The investment reports will be on the February 19, 2018 City Council agenda for their review and approval. Please call me if you have any questions about this item.

attachment (as stated above)

CITY OF SHERMAN, TEXAS
INVESTMENT PORTFOLIO SUMMARY
For the Quarter Ending December 31, 2017

	Total Portfolio Summary		
	Current Quarter 12/31/2017	Prior Quarter 9/30/2017	Change From Prior Quarter
Book Value	\$ 12,916,211	\$ 14,027,014	\$ (1,110,803)
Market Value	\$ 12,831,309	\$ 13,990,342	\$ (1,159,033)
Weighted Average Maturity - Days	482	510	(28)
Weighted Average Yield	1.355%	1.289%	0.066%
Earned Income	\$ 41,867	\$ 24,652	\$ 17,215
Earned Income - Year-to-Date	\$ 41,867	\$ 137,055	\$ (95,188)

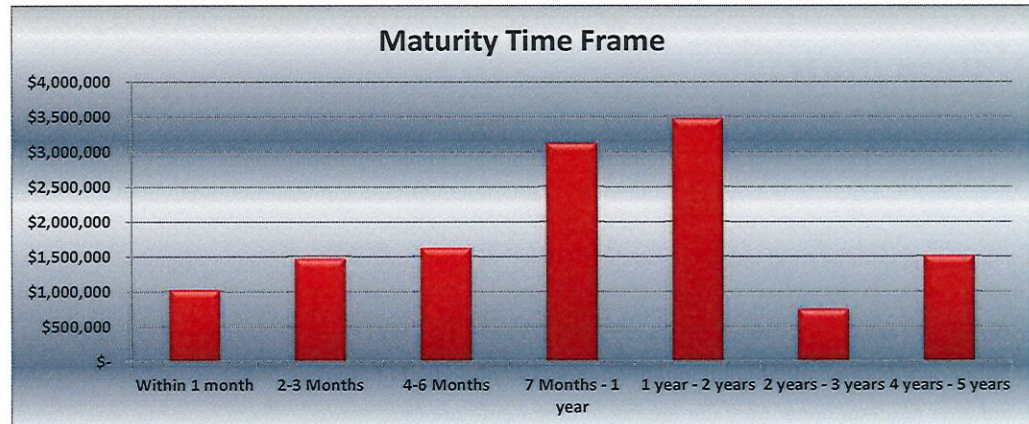
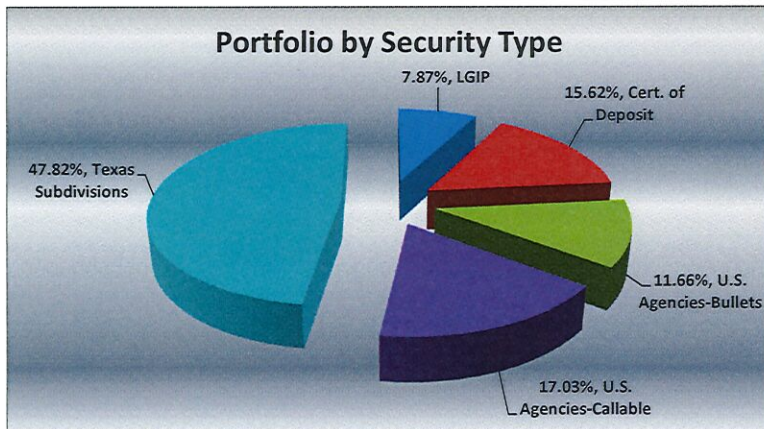
This report complies with the requirements of the public funds investment law and covers all the funds of the City of Sherman that are subject to that law.

As of December 31, 2017, the City's portfolio had a book value of about \$12.9 million, with a market value of \$12.8 million. Of this amount, approximately \$1.0 million was held in Local Government Investment Pools (LGIP), \$2.0 million was held in Certificates of Deposit (CD), \$3.7 million was held in U.S. Agency Securities and \$6.2 million was held in State of Texas political subdivision obligations.

The portfolio value decreased by \$1.1 million from the previous quarter due to maturity of \$1.0 million in Certificates of Deposit (CD), maturity of \$1.0 in U.S. Agency Securities, and \$0.4 million withdrawn from Local Government Investment Pools (LGIP). Purchases for the quarter included \$1.3 million in Local Government Investment Pools (LGIP).

The weighted average yield on the portfolio was 1.36%, 40 basis points below the 1-year Constant Maturity Treasury Index of 1.76% and 7 basis points above the previous quarter.

The weighted average maturity of the portfolio decreased from 510 days at September 30, 2017, to 482 days at December 31, 2017.



Mary Lawrence

Mary Lawrence, Finance Director and City of Sherman Investment Officer

Tammy Davis

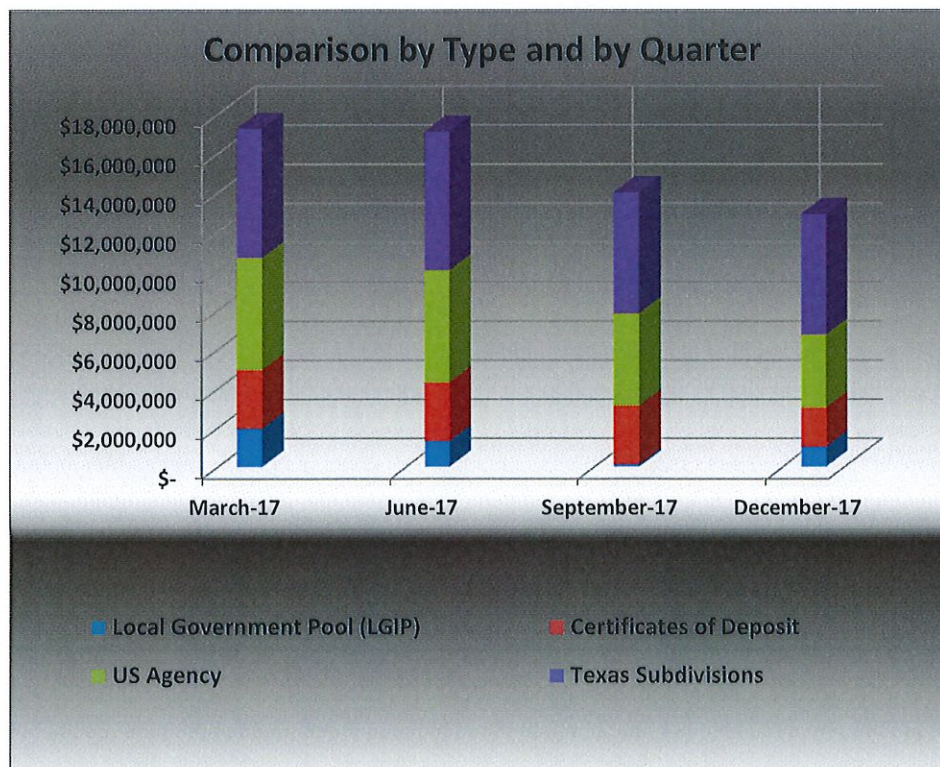
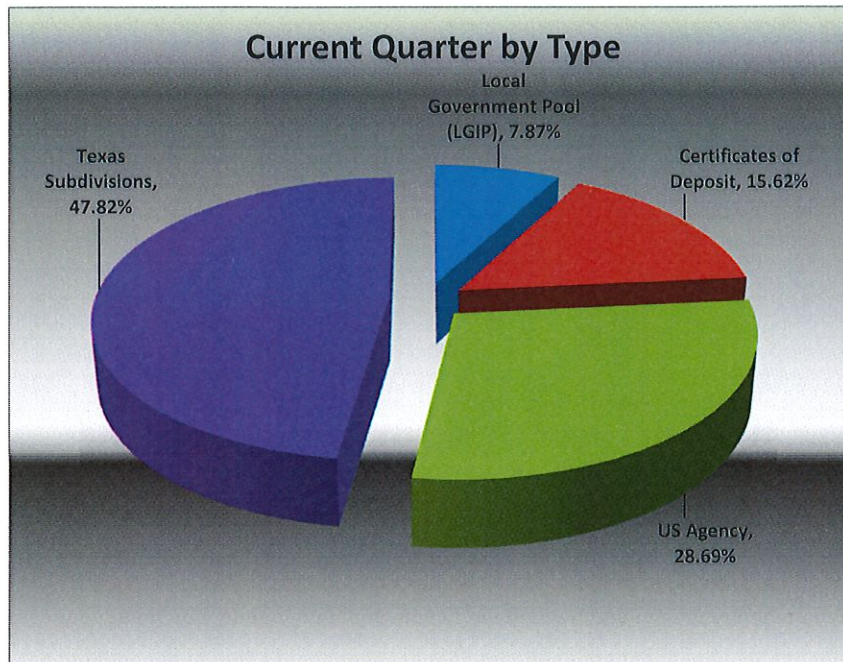
Tammy Davis, Controller and City of Sherman Investment Officer

CUSIP	Settlement Date	Security Type	Security Description	CPN Rate	Maturity Date	Credit Rating	Par Value	Purchase Price	Original Cost	Book Value	Market Price	Market Value	Days to Maturity	YTM
Tex-Pool		LGIP	TexPool			AAAm	\$ 13,310	100.00	\$ 13,310	\$ 13,310	100.00	\$ 13,310	1	1.09%
TexStar		LGIP	TexSTAR			AAAm	1,003,709	100.00	1,003,709	1,003,709	100.00	1,003,709	1	1.10%
CD 4176806562	2/22/2017	CD	Landmark Bank	1.15%	8/22/2018		1,000,000	100.00	1,000,000	1,008,626	100.00	1,008,626	234	1.15%
CD 4176806687	3/27/2017	CD	Landmark Bank	1.13%	3/27/2018		1,000,000	100.00	1,000,000	1,008,538	100.00	1,008,538	86	1.13%
67381PKE1	12/17/2014	Texas Subdivision	Oakmont TX PUD	2.00%	3/1/2018	A3	225,000	102.09	229,712	225,106	100.06	225,124	60	1.33%
232425NB0	2/24/2016	Texas Subdivision	CY-Champ TX PUD	2.00%	3/1/2018	AA	225,000	102.20	229,941	225,403	100.06	225,144	60	0.90%
667489FV5	2/24/2015	Texas Subdivision	NW Harris Co TX MUD #6	2.00%	4/1/2018	A2	210,000	102.74	215,748	210,483	100.10	210,212	91	1.10%
643161HB1	5/21/2015	Texas Subdivision	New Caney TX MUD	2.00%	4/1/2018	Aa3	270,000	101.36	273,672	270,317	100.03	270,073	91	1.51%
414911JL2	2/25/2015	Texas Subdivision	Harris Co TX MUD #119	2.00%	5/1/2018	A3	135,000	102.81	138,789	135,408	100.13	135,174	121	1.10%
313379DT3	3/1/2016	Agency Bullet	FHLB	1.25%	6/8/2018	AA+	1,000,000	100.71	1,007,060	1,001,352	99.86	998,591	159	0.94%
41421GFW4	2/27/2015	Texas Subdivision	Harris Co TX MUD # 468	2.00%	9/1/2018	A3	740,000	102.47	758,248	743,473	100.05	740,399	244	1.28%
82620YFZ1	6/19/2015	Texas Subdivision	Sienna Plantation MUD	2.00%	9/1/2018	A3	230,000	100.86	231,978	230,414	100.17	230,391	244	1.73%
34680CDA4	6/23/2015	Texas Subdivision	Ft Bend Co TX MUD #128	2.00%	9/1/2018	A3	650,000	102.02	663,130	652,760	100.23	651,463	244	1.35%
955496GC2	8/6/2015	Texas Subdivision	W Ranch TX Mgmt Dist	1.65%	9/1/2018	A3	340,000	100.60	342,030	340,441	99.56	338,507	244	1.45%
41421DRU2	3/24/2016	Texas Subdivision	Harris Co TX MUD #419	3.00%	9/1/2018	AA	140,000	104.43	146,203	141,699	100.92	141,282	244	1.15%
31331KB74	9/30/2015	Agency Bullet	FFCB	1.88%	3/29/2019	AA+	500,000	102.46	512,290	504,363	100.04	500,211	453	1.12%
88213ACF0	7/23/2015	Texas Subdivision	TX St A&M Sys Brd	4.00%	5/15/2019	AA+	500,000	108.07	540,330	514,486	102.52	512,620	500	1.80%
207435MH8	6/1/2016	Texas Subdivision	Conally TX Consol ISD	3.00%	8/15/2019	AAA	150,000	106.42	159,635	154,875	101.93	152,897	592	0.96%
34683CJU1	5/5/2016	Texas Subdivision	Ft Bend Co TX MUD #133	2.00%	9/1/2019	A3	100,000	102.76	102,762	101,392	99.94	99,939	609	1.15%
8827235D7	12/7/2016	Texas Subdivision	TXBL Ref TX Pub Fin Auth Military	4.00%	10/1/2019	AAA	250,000	106.48	266,205	260,073	103.34	258,340	639	1.64%
3134GA2P8	3/2/2017	Agency Callable	FHLMC	1.55%	11/27/2019	AA+	1,200,000	99.99	1,199,880	1,199,909	99.24	1,190,843	696	1.55%
414229FG8	5/5/2016	Texas Subdivision	Harris Co TX MUD #500	4.00%	12/1/2019	AA	315,000	107.76	339,435	328,281	102.68	323,439	700	1.75%
414935LK0	5/3/2016	Texas Subdivision	Harris Co MUD #120	2.00%	9/1/2019	AA	395,000	102.09	403,252	400,071	100.04	395,170	609	1.49%
41456PHW0	8/11/2016	Texas Subdivision	Harris-Montgomery TX MUD # 386	2.00%	8/1/2020	Aa3	350,000	103.16	361,050	357,476	100.21	350,721	944	1.20%
038395EP0	9/6/2016	Texas Subdivision	Aquilla TX Water SUD Series A	3.25%	9/1/2020	A	200,000	107.96	215,910	210,643	103.12	206,238	975	1.20%
038395FD6	9/6/2016	Texas Subdivision	Aquilla TX Water SUD Series B	3.25%	9/1/2020	A	160,000	106.95	171,114	167,435	101.77	162,832	975	1.45%
34679RNB1	6/6/2017	Texas Subdivision	Fort Bend Co TX MUD #23-A	2.00%	9/1/2021	A3	500,000	101.43	507,125	506,168	99.19	495,930	1,340	1.65%
3134GBRT1	6/29/2017	Agency Callable	FHLMC	2.00%	6/29/2022	Aaa	1,000,000	100.00	1,000,000	1,000,000	98.16	981,586	1,641	2.00%
Total							\$ 12,802,019	\$	13,032,516	\$ 12,916,211	\$	12,831,309		

CUSIP	Settle Date	Security Description	Maturity Date	Market Value 9/30/2017	Change in Market Value	Market Value 12/31/2017
Tex-Pool		TexPool		\$ 13,076	\$ 234	\$ 13,310
TexStar		TexSTAR		93,316	910,393	1,003,709
CD 4176805655	4/8/2016	Landmark Bank	10/8/2017	1,009,203	(1,009,203)	-
CD 4176806562	2/22/2017	Landmark Bank	8/22/2018	1,005,711	2,915	1,008,626
CD 4176806687	3/27/2017	Landmark Bank	3/27/2018	1,005,705	2,833	1,008,538
31315PZ28	3/17/2016	Farmer Mac	12/22/2017	1,000,574	(1,000,574)	-
67381PKE1	12/17/2014	Oakmont TX PUD	3/1/2018	225,797	(673)	225,124
23242NBO	2/24/2016	CY-Champ TX PUD	3/1/2018	225,428	(284)	225,144
667489FV5	2/24/2015	NW Harris Co TX MUD #6	4/1/2018	210,895	(683)	210,212
643161HB1	5/21/2015	New Caney TX MUD	4/1/2018	270,551	(478)	270,073
414911JL2	2/25/2015	Harris Co TX MUD #119	5/1/2018	135,671	(497)	135,174
313379DT3	2/29/2016	FHLB	6/8/2018	999,745	(1,154)	998,591
41421GFW4	2/27/2015	Harris Co TX MUD # 468	9/1/2018	745,890	(5,491)	740,399
8260YFZ1	6/19/2015	Sienna Plantation MUD	9/1/2018	231,412	(1,021)	230,391
34680CDA4	6/23/2015	Ft Bend Co TX MUD #128	9/1/2018	652,522	(1,059)	651,463
955496GC2	8/6/2015	W Ranch TX Mgmt Dist	9/1/2018	338,817	(310)	338,507
41421DRU2	3/24/2016	Harris Co TX MUD #419	9/1/2018	142,225	(943)	141,282
31331KB74	9/30/2015	FFCB	3/29/2019	502,669	(2,458)	500,211
88213ACFO	7/23/2015	TX St A&M Sys Brd	5/15/2019	518,285	(5,665)	512,620
207435MH8	6/1/2016	Conally TX Consol ISD	8/15/2019	154,697	(1,800)	152,897
34683CJU1	5/5/2016	Ft Bend CO TX MUD #133	9/1/2019	101,226	(1,287)	99,939
8827235D7	12/7/2016	TXBL Ref TX Pub Fin Auth Military	10/1/2019	261,143	(2,803)	258,340
3134GA2P8	3/2/2017	FHLMC	11/27/2019	1,197,505	(6,662)	1,190,843
414229FG8	5/5/2016	Harris Co TX MUD #500	12/19/2019	326,605	(3,166)	323,439
414935LK0	5/3/2016	Harris Co TX MUD #120	9/1/2019	398,002	(2,832)	395,170
4146PHWO	9/6/2016	Harris-Montgomery TX MUD #386	9/1/2019	352,552	(1,831)	350,721
038395EPO	9/6/2016	Aquilla TX Water SUD Series A	9/1/2019	209,602	(3,364)	206,238
038395FD6	9/6/2016	Aquilla TX Water SUD Series B	9/1/2019	164,357	(1,525)	162,832
34679RNB1	6/6/2017	Fort Bend Co TX MUD #23-A	9/1/2021	507,235	(11,305)	495,930
3134GBRT18	6/29/2017	FHLMC	6/29/2022	989,926	(8,340)	981,586
Total				\$ 13,990,342	\$ (1,159,033)	\$ 12,831,309

Trade Date	Settle Date	CUSIP	Security Description	Coupon	Maturity Date	Call Date	Par Value	Principal Amount	Interest Purchased/Received	Total Amount	YTM
<u>Maturities</u>											
	10/31/2017	TexPool	LGIP	1.09%			\$ 300,000	\$ 300,000	\$ -	\$ 300,000	1.09%
	12/15/2017	TexStar	LGIP	1.10%			90,000	90,000	-	90,000	1.10%
	10/13/2017	CD 4176085655	Landmark Bank	0.74%	10/13/2017		1,000,000	1,000,000	1,882	1,001,882	0.74%
	12/22/2017	31315PZ28	Farmer Mac	1.20%	12/22/2017		1,000,000	1,000,000	6,000	1,006,000	0.82%
<u>Purchases</u>											
	10/10/2017	TexPool	LGIP	1.09%			300,000	300,000	-	300,000	1.09%
	12/29/2017	TexStar	LGIP	1.10%			1,000,000	1,000,000	-	1,000,000	1.10%
<u>Income Payments</u>											
	12/31/2017	TexPool	LGIP	1.09%			13,310		223	223	1.09%
	12/31/2017	TexStar	LGIP	1.10%			1,003,709		313	313	1.10%
	11/22/2017	CD 4176806562	Landmark Bank	1.15%	8/22/2018		1,000,000		2,915	2,915	1.15%
	12/27/2017	CD 4176806687	Landmark Bank	1.13%	3/27/2018		1,000,000		2,833	2,833	1.13%
	10/1/2017	643161HB1	New Cany Tx MUD	2.00%	4/1/2018		270,000		2,700	2,700	1.51%
	10/1/2017	8827235D7	TXBL Ref-TX PUV Fin Auth Militar	4.00%	10/1/2019		250,000		5,000	5,000	1.64%
	10/1/2017	667489FV5	NW Harris Cnty MUD #6	2.00%	4/1/2018		210,000		2,100	2,100	1.10%
	11/1/2017	414911JL2	Harris Cnty MUD #119	2.00%	5/1/2018		135,000		1,350	1,350	1.10%
	11/15/2017	88213ACFO	TX ST A&M SUNIV SYS BD RGT	4.00%	5/15/2019		500,000		10,000	10,000	1.80%
	11/27/2017	3134GA2P8	FHLMC	1.55%	11/27/2019		1,200,000		9,300	9,300	1.55%
	12/8/2017	313379DT3	FHLB	1.25%	6/8/2018		1,000,000		6,250	6,250	0.92%
	12/1/2017	414229FG8	Harris CO TX MUD #500	4.00%	12/1/2019		315,000		6,300	6,300	1.75%
	12/29/2017	3134GBRTI	FHLMC	2.00%	6/29/2022		1,000,000		10,000	10,000	2.00%
Total									\$ 67,166		

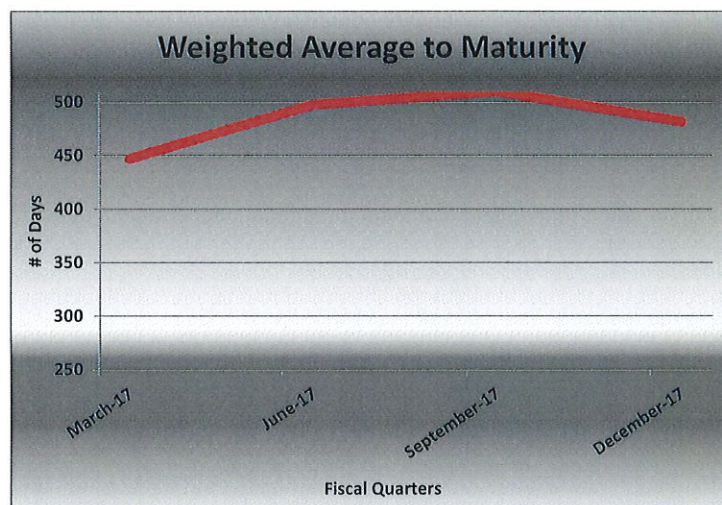
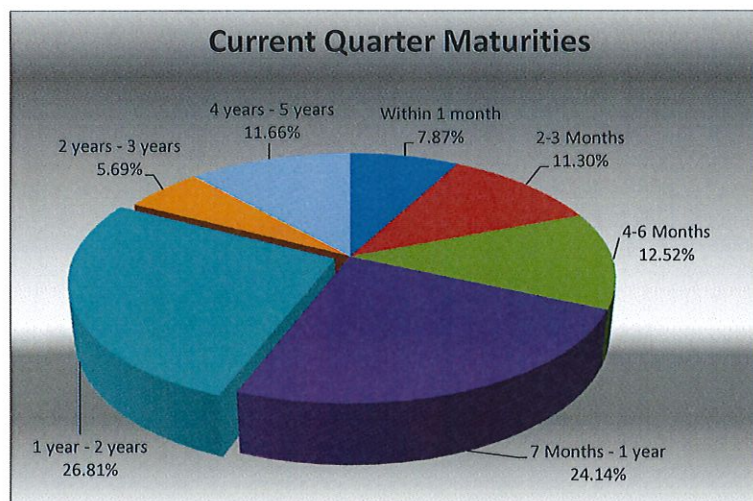
Cash/Investment Type	Balance 3/31/2017	Balance 6/30/2017	Balance 9/30/2017	Balance 12/31/2017	Percent of Portfolio	Portfolio Cap
Local Government Pool (LGIP)	\$ 1,952,609	\$ 1,305,936	\$ 106,392	\$ 1,017,019	7.87%	50.00%
Certificates of Deposit	3,005,509	3,012,997	3,020,619	2,017,164	15.62%	50.00%
US Agency	5,713,963	5,710,831	4,708,146	3,705,624	28.69%	50.00%
Texas Subdivisions	6,599,972	7,089,010	6,191,857	6,176,404	47.82%	50.00%
Total	\$ 17,272,053	\$ 17,118,774	\$ 14,027,014	\$ 12,916,211	100.00%	



Maturity Time Frame	Balance 3/31/2017	Balance 6/30/2017	Balance 9/30/2017	Balance 12/31/2017	Percent of Portfolio
Within 1 month	\$ 1,952,609	\$ 1,305,936	\$ 1,115,595	\$ 1,017,019	7.87%
2-3 Months	1,000,374	1,881,737	1,000,860	1,459,047	11.30%
4-6 Months	1,884,986	1,007,345	1,457,218	1,617,560	12.52%
7 Months - 1 year	3,461,764	4,078,468	4,737,212	3,117,413	24.14%
1 year - 2 years	5,248,828	4,144,152	2,418,144	3,463,450	26.81%
2 years - 3 years	2,579,277	3,194,121	1,791,394	735,554	5.69%
3 years - 4 years	1,144,215	-	506,591	-	0.00%
4 years - 5 years	-	1,507,015	1,000,000	1,506,168	11.66%
	\$ 17,272,053	\$ 17,118,774	\$ 14,027,014	\$ 12,916,211	100.00%

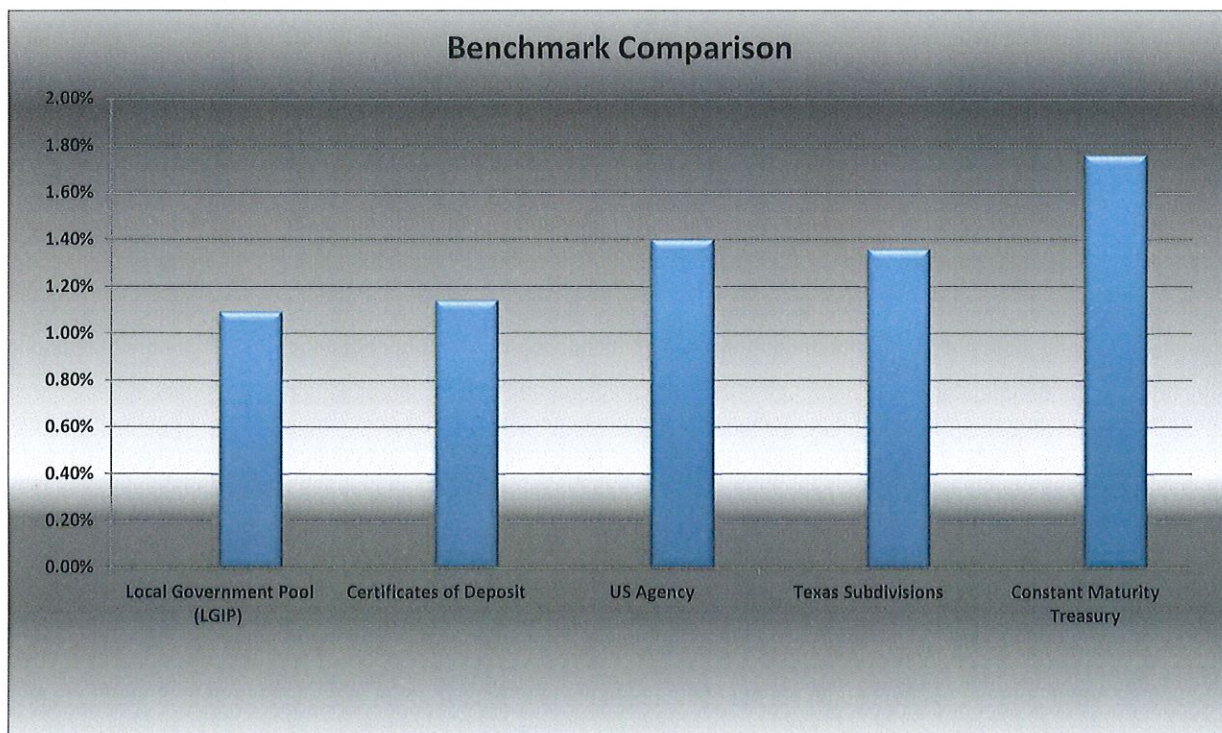
Liquidity Indicator	Maximum Allowable				
Weighted Average Maturity	447.31	498.00	510.35 ***	481.87	500.00

*** As of 9/30/2017, the Weighted Average Maturity exceeded the maximum allowed by policy by 10 days. The situation was identified and corrected on October 6, 2017 bringing it into compliance at 494 days.



Date Received/ Purchased	CUSIP	Security Description	Coupon	YTM	Interest Purchased/ Received	Accrued Interest/ Amortization	Income Earned
12/31/2017	Tex-Pool	TexPool		1.09%	223	-	223
12/31/2017	TexStar	TexSTAR		1.10%	313	-	313
10/13/2017	CD 4176805655	Landmark Bank	0.74%	0.74%	1,882	(1,616)	266
11/22/2017	CD 4176806562	Landmark Bank	1.15%	1.15%	2,915	4	2,919
12/27/2017	CD 4176806687	Landmark Bank	1.13%	1.13%	2,833	32	2,865
10/1/2017	667489FV5	NW Harris Co TX MUD #6	2.00%	1.10%	2,100	(1,512)	588
10/1/2017	643161HB1	New Caney TX MUD	2.00%	1.51%	2,700	(1,674)	1,026
10/1/2017	8827235D7	TXBL Ref TX Pub Fin Auth Milit	4.00%	1.64%	5,000	(3,935)	1,065
11/1/2017	414911JL2	Harris Co TX MUD #119	2.00%	1.10%	1,350	(972)	378
11/15/2017	88213ACF0	TX St A&M Sys Brd	4.00%	1.80%	10,000	(7,665)	2,335
11/27/2017	3134GA2P8	Freddie Mac	1.55%	1.55%	9,300	(6,193)	3,107
12/1/2017	414229FG8	Harris Co TX MUD #500	4.00%	1.75%	6,300	(4,854)	1,446
12/8/2017	313379DT3	FHLB	1.25%	0.94%	6,250	(3,908)	2,342
12/22/2017	31315PZ28	Farmer Mac	1.20%	0.82%	6,000	(4,127)	1,873
12/29/2017	31346BRT1	Freddie Mac	2.00%	2.00%	10,000	(5,000)	5,000
12/31/2017	34679RNB1	Fort Bend Co TX MUD #23-A	2.00%	1.65%	-	2,076	2,076
12/31/2017	82620YFZ1	Sienna Plantation MUD	2.00%	1.73%	-	993	993
12/31/2017	3468CDA4	Ft. Bend Co TX MUD #128	2.00%	1.35%	-	2,236	2,236
12/31/2017	954496GC2	W Ranch TX Mgmt Dist	1.65%	1.45%	-	1,236	1,236
12/31/2017	41421DRU2	Harris Co TX MUD #419	3.00%	1.15%	-	409	409
12/31/2017	038395EP0	Aquilla TX Water SUD Series A	3.25%	1.20%	-	620	620
12/31/2017	038395FD6	Aquilla TX Water SUD Series B	3.25%	1.45%	-	598	598
12/31/2017	232425NBO	CY-Champ TX PUD	2.00%	0.90%	-	507	507
12/31/2017	41456PHW0	Harris Cnty TX MUD#386	2.00%	1.20%	-	1,064	1,064
12/31/2017	67381PKE1	Oakmont TX PUD	2.00%	1.33%	-	739	739
12/31/2017	41421GFW4	Harris Co TX MUD # 468	2.00%	1.28%	-	2,390	2,390
12/31/2017	414935LK0	Harris Co MUD #120	2.00%	1.49%	-	1,486	1,486
12/31/2017	34683CJU1	Ft Bend Co TX MUD #133	2.00%	1.15%	-	291	291
12/31/2017	31331KB74	FFCB	1.88%	1.12%	-	1,476	1,476

\$ 67,166 \$ (25,299) \$ 41,867



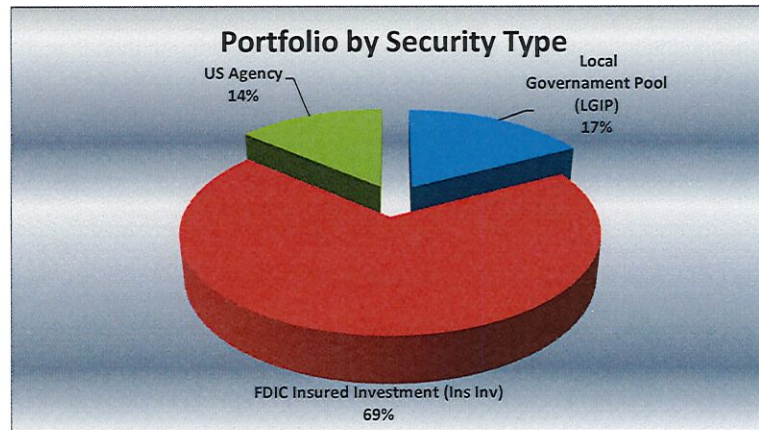
CITY OF SHERMAN, TEXAS
DEBT PROCEEDS PORTFOLIO SUMMARY
For the Quarter Ending December 31, 2017

Total Portfolio Summary			
	Current Quarter 12/31/17	Prior Quarter 9/30/2017	Change From Prior Qtr
Book Value	\$ 21,819,682	\$ 21,436,625	\$ 383,057
Market Value	\$ 21,804,519	\$ 21,386,335	\$ 418,184
Weighted Average Maturity - Days	49	62	(13)
Weighted Average Yield	1.13%	1.05%	0.08%
Earned Income	\$ 56,995	\$ 59,172	\$ (2,177)
Earned Income - Year-to-Date	\$ 56,995	\$ 132,774	\$ (75,779)

This report complies with the requirements of the public funds investment law and covers all the funds of the City of Sherman that are subject to that law.

As of December 31, 2017, the City of Sherman's debt proceeds portfolio had a book value of about \$21.8 million, which approximates the market value. Of this amount, approximately \$3.8 million was held in Local Government Investment Pools (LGIP), \$15.0 million was held in FDIC Insured Investment Accounts (Ins Inv), and \$3.0 million was held in U.S. Agency Securities.

During the current quarter interest income of \$57 thousand was added and approximately \$3.67 million was drawn down for project payments. Debt proceeds of \$4.0 million from the issuance of 2017A Tax & Muni Drainage Revenue Certificates of Obligations were deposited into a Local Government Investment Pool (LGIP) during the quarter.



Mary Lawrence

Mary Lawrence, Finance Director and City of Sherman Investment Officer

Tammy Davis

Tammy Davis, Controller and City of Sherman Investment Officer

Name/CUSIP	Debt Issuance	Settlement Date	Security Type	Security Description	Maturity Date	Credit Rating	Par Value	Purchase Price	Original Cost	Book Value	Market Price	Market Value	Days to Maturity	YTM
TexPool	2016 Tax & Rev CO's		LGIP	Texpool	1/1/2018	AAA-m	8,580	100.00	8,580	8,580	100.00	8,580	1	1.09%
TexPool	2017A Tax & Muni Drainage Rev Co's		LGIP	Texpool	1/1/2018	AAA-n	3,767,808	100.00	3,767,808	3,767,808	100.00	3,767,808	1	1.09%
Anova	2017 CO's		Ins Inv	Anova	1/1/2018		15,044,226	100.00	15,044,226	15,044,226	100.00	15,044,226	1	1.13%
3133EGW84	2017 CO's	4/21/17	US Agency Bullet	FFCB	12/19/2018	Aaa	3,000,000	99.95	2,998,397	2,999,068	99.49	2,983,905	353	1.20%
Total							\$ 21,820,614	\$	21,819,010	\$	21,819,682	\$	21,804,519	



CITY OF SHERMAN, TX
Market Value Summary
AS of 12/31/2017

CUSIP	Security Type / Description	Maturity Date	Market Value 09/30/2017	Change in Market Value	Market Value 12/31/2017
TexPool Cert of Obligation	LGIP		2,572,202	(2,563,622)	8,580
TexPool 2017A & Muni Drainage Rev Co's	LGIP		-	3,767,808	3,767,808
Anova	Ins Inv		15,825,077	(780,851)	15,044,226
3133EGW84	US Agency Bullet	12/19/2018	2,989,056	(5,151)	2,983,905
Total			\$ 21,386,335	\$ 418,184	\$ 21,804,519

Settle Date	Name	Security Description	Coupon	Maturity Date	Par Value	Price	Principal Amount	Interest Purchased/Received	Total Amount	YTM
<u>Project Payments</u>										
10/23/2017	TexPool Tax & Rev CO	LGIP			\$ 320,504		\$ 320,504	\$ -	\$ 320,504	
10/26/2017	TexPool Tax & Rev CO	LGIP			200,940		200,940		200,940	
11/2/2017	TexPool Tax & Rev CO	LGIP			574,761		574,761		574,761	
11/3/2017	2017 CO-Anova	Ins Inv			348,408		348,408		348,408	
11/29/2017	TexPool Tax & Rev CO	LGIP			261,733		261,733		261,733	
11/30/2017	TexPool Tax & Rev CO	LGIP			854,608		854,608		854,608	
12/6/2017	TexPool Tax & Rev CO	LGIP			354,528		354,528		354,528	
12/14/2017	TexPool 2017A & Muni Drainage Rev CO;s	LGIP			235,457		235,457		235,457	
12/18/2017	2017 CO-Anova	Ins Inv			516,669		516,669		516,669	
<u>Purchases</u>										
12/1/2017	TexPool 2017A & Muni Drainage Rev CO;s	LGIP			4,000,000		4,000,000	-	4,000,000	
<u>Income Payments</u>										
10/31/2017	TexPool Tax & Rev CO	LGIP	1.03%		2,572,202		2,052,896	2,138	2,138	1.03%
10/31/2017	2017 CO-Anova	Ins Inv	1.08%		15,825,077		15,880,620	15,022	13,440	1.08%
11/30/2017	TexPool Tax & Rev CO	LGIP	1.05%		2,052,896		363,047	1,252	2,960	1.05%
11/30/2017	2017 CO-Anova	Ins Inv	1.10%		15,825,077		15,546,276	14,064	14,064	1.10%
12/19/2017	3133EGW84	FFCB	1.20%	12/19/2018	3,000,000		3,000,000	18,000	18,000	1.20%
12/31/2017	TexPool Tax & Rev CO	LGIP	1.18%		363,047		8,580	61	61	1.18%
12/31/2017	2017 CO-Anova	Ins Inv	1.20%		15,044,225		15,044,225	14,618	14,618	1.20%
12/31/2017	TexPool 2017A & Muni Drainage Rev CO;s	LGIP	1.13%		3,767,807		3,767,808	3,264	3,264	1.13%
Total								\$ 68,419		



CITY OF SHERMAN, TX
Comparison by Type
AS of 12/31/2017

Cash / Investment Type	Balance 3/31/2017	Balance 6/30/2017	Balance 9/30/2017	Balance 12/31/2017	Percent of Portfolio	Portfolio Cap
Local Government Pool (LGIP)	\$ 6,437,047	\$ 4,726,042	\$ 2,572,202	\$ 3,776,388	17.31%	100.00%
FDIC Insured Investment (Ins Inv)	18,801,921	15,825,077	15,865,598	15,044,226	68.95%	100.00%
US Agency Bullet	-	2,998,582	2,998,825	2,999,068	13.74%	100.00%
Total	\$ 25,238,968	\$ 23,549,701	\$ 21,436,625	\$ 21,819,682	100.00%	



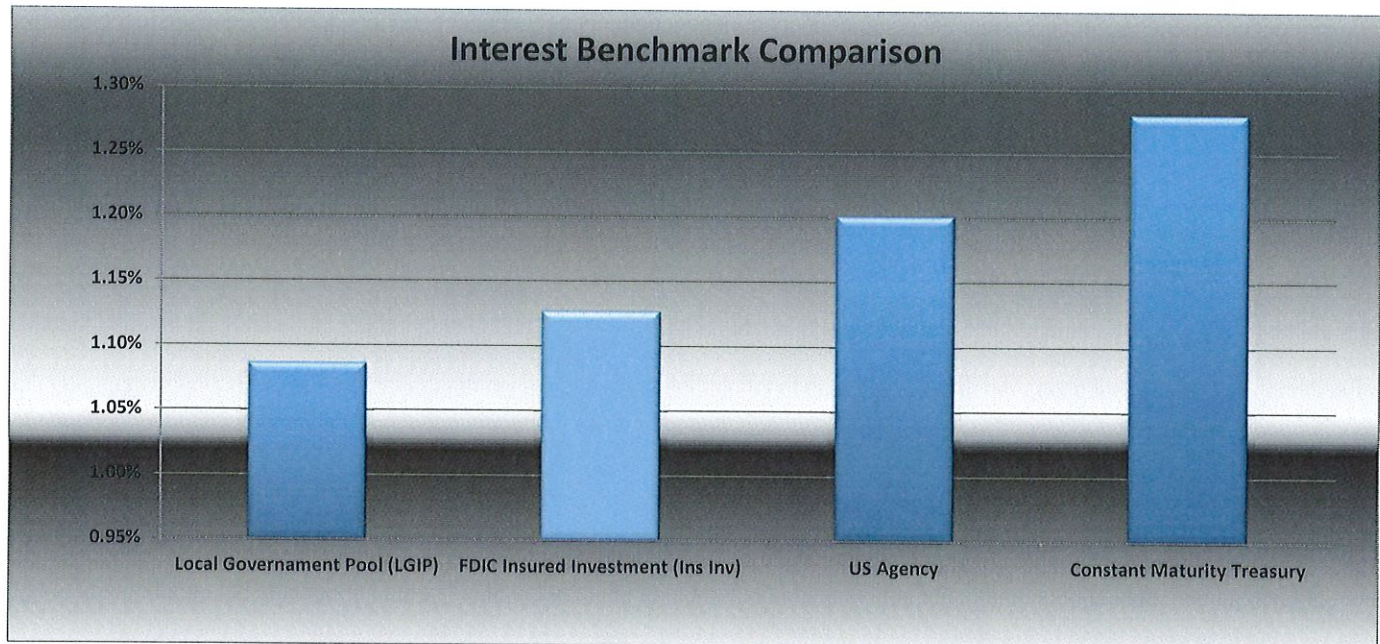
CITY OF SHERMAN, TX
Portfolio by Maturity
AS of 12/31/2017

Maturity Time Frame	Balance 3/31/2017		Balance 6/30/2017		Balance 9/30/2017		Balance 12/31/2017	Percent of Portfolio	Minimum Allowable
Within 1 month	\$	25,238,968	\$	20,551,119	\$	18,437,800	\$18,820,614	86.26%	100.00%
1 year - 2 years		-		2,998,582		2,998,825	2,999,068	13.74%	100.00%
	\$	25,238,968	\$	23,549,701	\$	21,436,625	\$	21,819,682	

Liquidity Indicator

Weighted Average Maturity	1.00	68.38	62.25	48.52
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Date Received/ Purchased	Name	Security Description	Coupon	YTM	Interest Purchased/ Received	Accrued Interest/ Amortization	Income Earned
10/31/2017	TexPool Tax & Rev CO	LGIP		1.03%	2,138	(959)	3,097
10/31/2017	2017 CO-Anova	Insured Investment		1.08%	15,022	-	15,022
11/30/2017	TexPool Tax & Rev CO	LGIP		1.05%	1,252	(1,708)	2,960
11/30/2017	2017 CO-Anova	Insured Investment		1.10%	14,064	-	14,064
12/31/2017	TexPool Tax & Rev CO	LGIP		1.18%	61	-	61
12/31/2017	2017 CO-Anova	Insured Investment		1.20%	14,618	-	14,618
12/19/2017	3133EGW84	FFCB	1.20%	1.20%	18,000	(8,757)	9,243
12/29/2017	2017A Tax & Muni Drainage Rev Co's	LGIP		1.18%	\$ 3,264	- \$	3,264
					\$ 68,419	\$ (11,424)	\$ 56,995





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Meeting Date: 02/19/2018

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2018 Council Calendar

2018

JANUARY						
S	M	T	W	T	F	S
	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						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

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

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

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

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

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

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

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

NOVEMBER						
S	M	T	W	T	F	S
				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						
S	M	T	W	T	F	S
						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					

[illegible][illegible]