

**KENNEDALE CITY COUNCIL
AGENDA
REGULAR MEETING
January 12, 2012
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE**

**WORK SESSION - 5:30 PM
EXECUTIVE SESSION - 6:00PM
REGULAR SESSION - 7:00 PM**

I. CALL TO ORDER

II. WORK SESSION

***NOTE: Pursuant to Section 551.071, Texas Government Code, the City Council reserves the right to adjourn into Executive Session at any time during the work session or the regular session to discuss posted executive session items or to seek legal advice from the City Attorney on any item posted on the agenda.**

- A. Presentation and update from the Youth Advisory Commission
- B. Discuss potential 38th Year CDBG Project
- C. Discuss standardization of city speed limits.

III. EXECUTIVE SESSION (6:00PM)

A. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and legal issues regarding regulation of sexually oriented businesses, litigation, settlement offers, and/or claims regarding the following matters:

- 1. H & A Land Corporation, et al. v. City of Kennedale - Cause No. 402-CV-0458-Y (Showtime)

B. The City Council will meet in closed session pursuant to Section 551.072 of the Texas Government Code to deliberate the purchase, exchange, lease, or value of real property for the following:

- 1. Oak Crest Addition Blk 14 Lot 2
- 2. 209 N New Hope Road

IV. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

V. REGULAR SESSION

VI. ROLL CALL

VII. INVOCATION

VIII. UNITED STATES PLEDGE

IX. TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State under God; One and Indivisible."

X. VISITOR/CITIZENS FORUM

At this time, any person with business before the City Council not scheduled on the Agenda may speak, provided that an official 'Visitor/Citizen Request to Speak' Form has been completed and submitted to the City Secretary prior to the start of the meeting. All comments must be directed towards the Council as a whole, rather than individual councilmembers or staff. All speakers must limit their comments to the subject matter as listed on the 'Speaker's Request Form.' No formal action can be taken on these items.

XI. REPORTS/ANNOUNCEMENTS

In addition to any specific matters listed below, the city council may receive a report about items of community interest, including but not limited to recognition of individual officials, citizens or departments, information regarding holiday schedules, upcoming or attended events, etc.

- A. Mayor: Updates and information, if any
 - Presentation of Government Finance Officers Association (GFOA) Award of Financial Reporting Achievement to City of Kennedale Finance Department and Sakura Moten Dedrick, Director of Finance & Information Technology.
- B. Councilmembers: Updates and information, if any.
- C. City Manager: Updates & information, if any.

XII. CONSENT ITEMS

All matters listed under consent agenda have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately.

- A. Consider approval of December 8, 2011 regular meeting minutes.
- B. Discuss and consider authorizing the City Manager to sign an agreement with Tarrant County for the reconstruction of Bloxom Park Road.
- C. Discuss and consider approval of a Memorandum of Understanding regarding the adoption of TxDOT's federally-approved Disadvantaged Business Enterprise program.
- D. Consider authorizing the City Manager to execute a City Pride Sign Agreement with TxDOT for the 9/11 Memorial sign on Kennedale Parkway.
- E. Consider authorizing the Mayor to execute Interlocal Agreement for Administrative Costs Funding for Section 5310 Program with Fort Worth Transportation Authority.

XIII. REGULAR ITEMS

- A. Discuss and consider approval to authorize City Manager to execute contract to perform a Water & Sewer Rate Study update.

B. Discuss and consider adopting AN ORDINANCE OF THE CITY OF KENNEDALE, TEXAS AMENDING CHAPTER 15, ARTICLE V AND CHAPTER 17, ARTICLE VI OF THE KENNEDALE CITY CODE (1991), AS AMENDED, TO MAKE CHANGES TO THE CITY'S ZONING REGULATIONS AND TO THE CITY'S NUISANCE REGULATIONS; ADDING DEFINITIONS OF C-WEIGHTING, FREQUENCY, OCTAVE BANDS, AND PURE TONES; AMENDING REGULATIONS GOVERNING NOISE REGULATIONS FROM 7 PM TO 8 AM FOR CERTAIN USES; PROVIDING REGULATIONS GOVERNING LOW-FREQUENCY SOUNDS AND PURE TONES; PROVIDING REGULATIONS REQUIRING AMBIENT SOUND TESTING; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

C. Discuss and consider authorizing temporary permission to Art in the Park to sell alcohol in TownCenter Park during the Art in the Park event from March 30, 2012 through April 1, 2012.

D. Discuss and consider appointments to the Building Board of Appeals.

E. Discuss and consider appointments to the Planning and Zoning Commission.

XIV. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending City Council meetings. This building is wheelchair accessible, and parking spaces for disabled citizens are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meetings. Please contact Amethyst Cirno, City Secretary, at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the January 12, 2012, agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said agenda was posted at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.



Amethyst G. Cirno, City Secretary

Date: January 12, 2012

Agenda Item No: WORK SESSION - A.

I. Subject:

Presentation and update from the Youth Advisory Commission

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

The YAC will be giving a general update to the council, as well as making a short presentation regarding the property for sale at the corner of the WalMart lot.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: January 12, 2012

Agenda Item No: WORK SESSION - B.

I. Subject:

Discuss potential 38th Year CDBG Project

II. Originated by:

Larry Ledbetter, Director of Public Works

III. Summary:

The City of Kennedale is proposing the rehabilitation of the 6" sanitary sewer line in Municipal Drive for the 38th year CDBG Project in cooperation with Tarrant County. The replacement of the old clay pipe in Municipal Drive is part of the Utilities strategy for upgrading utilities in old town.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

1.	CDBG	38th year CDBG Proposal Form_2012.doc
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Tarrant County Community Development
Community Development Block Grant
38th Year – PY 2012

PROJECT PROPOSAL FORM

Part 1: City Information

City Name	City of Kennedale
City Contact Name(s)	Larry Ledbetter
Contact Person Phone	817-985-2170
Contact Person E-mail	lledbetter@cityofkennedale.com
City Annual Financial Summary	☒ Check here if you have included
City Demographics	☒ Check here if you have included
Comp Plan Summary	☒ Check here if you have included
City Match Amount	\$ 50,000

Part 2: Public Participation

Date of Public Hearing	January 10, 2012
Supporting records of hearing	☒ Check here if you have attached a copy of the public notice, public hearing and minutes from the hearing.
Citizen Input	☒ Comments attached ☒ No comments received.

Part 3: Engineering Information

Engineering Firm Name	Teague Nall and Perkins, Inc.
Firm Address	1100 Macon Street Fort Worth, TX 76102
Firm Contact Person 1	Joseph Patterson
Contact Person Phone 1	817-665-7116
Contact Person E-mail 1	jpatterson@tnp-online.com
Firm Contact Person 2	Greg Saunders
Contact Person Phone 2	817-336-5773
Contact Person E-mail 2	gsaunders@tnp-online.com
Project Cost/ Engineering Estimate	\$ 135,280



CDBG 38th Year – PY 2012 Project Proposal Form
2 of 6

**Part 5: Detailed Cost Estimate – 38th Year – PY 2012**

City Name	City of Kennedale
Date	January 6, 2012
Project Address	Municipal Drive

Please fill in the below information

Item No.	Description	Quantity	Unit Price	Amount
1	Mobilization, Preparation and Restoration	Lump Sum	\$7,500	\$7,500
2	San. Sewer Manhole	4 EA	\$4,500	\$18,000
3.	8" PVC San. Sewer (Open Cut/Pipe Burst)	1,200 LF	\$45	\$54,000
4.	4" PVC SS Service with Cleanout	11 EA	\$900	\$9,900
5.	Miscellaneous Utility Adjustments	Lump Sum	\$5,000	\$5,000
6.	Pavement Repair	600 LF	\$25	\$15,000
7.	Trench Safety	1,200 LF	\$2	\$2,400
8.	Contingency (10%)			\$11,180

Construction Subtotal: \$122,980

Design/Engineering Subtotal: \$12,300

TOTAL ESTIMATED PROJECT COSTS: _____

\$135,280 ☐ ☐

City Match Amount <i>(if applicable)</i>	\$ 50,000
City Paid Design/Engineering <i>(if applicable)</i>	\$ N/A
Other Sources <i>(if applicable)</i>	\$ N/A
Assumed CDBG award	\$ 85,280
Estimated Funds Available	\$ 135,280

Note: Project Costs must balance with Funds Available.

Prepared By: Greg D. Saunders, P.E.



Part 6: Description of Need and Problem to be Addressed. Will this project complement another project within the city or surrounding cities?

Due to its age, the existing gravity sewer line in Municipal Drive experiences stoppages, failures and root intrusion. The gravity sewer is undersized. While repairs are made on the line, the surrounding neighborhood's wastewater collection is susceptible to backups. The new PVC gravity sewer will be less susceptible to blockages and overflows and immediately improve wastewater collection in the neighborhood.

Part 7: Financial Need Explanation *(Include statement and/or audit results)*

The City of Kennedale relies on property taxes, sales tax, and water and sewer billing as revenue sources for public works projects. CDBG funding for this project will ensure its construction in the upcoming year.

Part 8: Project Performance Objectives and Outcome

OBJECTIVE (Select one)	☒ Suitable Living Environment <i>(most public works)</i> ☐ Decent Housing ☐ Economic Opportunity
OUTCOME (Select One)	☐ Availability or Accessibility ☐ Affordability ☒ Sustainability <i>(most public works)</i>

Part 9: Environmental and Neighborhood Conditions

The service area of this project consists of a developed older residential neighborhood served by sewer mains and services that are past their service life. This project will improve the current conditions by immediately providing improved wastewater service to the neighborhood. There will be no negative impacts on the environment due to this project.



Part 10: CDBG Environmental Review Statutory Checklist

City **City of Kennedale**

Project Location **Municipal Drive**

Place an "X" in the appropriate response. If compliance response is other than "Not Applicable" please indicate needed requirement and any additional information.

Area of Statutory or Regulatory Compliance	Not Applicable to this project	Consultation Required	Review Required	Permits Required	Determination of Consistency Approvals, Permits Obtained	Conditions and/or Mitigation Actions Required	Provide Compliance Documentation. Additional material may be attached.
Historic Properties	X						
Flood Plain	X						
Wetlands	X						Tarrant County, Texas does not contain any protected wetlands. US Dept. of Interior National Wetlands Inventory, 1992, Map.
Coastal Zone Management	X						Tarrant County, Texas is not located along a coastal area. Map on File.
Sole-Source Aquifers	X						Edwards Aquifer is the only sole source aquifer exchange zone in Texas. This Aquifer is not located in Tarrant County, Texas. Map on file.
Endangered Species	X						
Wild and Scenic River	X						No wild and scenic rivers are located in Tarrant County, Texas. Map on file.
Air Quality	X						
Farmlands Protection	X						
Manmade Hazards:							
Thermal/Explosive	X						
Noise	X						
Airport Clear Zones	X						
Toxic Sites	X						
Solid Waste	X						

Environmental Justice	X						
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Date: January 12, 2012

Agenda Item No: WORK SESSION - C.

I. Subject:

Discuss standardization of city speed limits.

II. Originated by:

Bob Hart, City Manager

III. Summary:

This is on the agenda as a follow-up to a discussion last year on standardizing speed limits. It is timed such that this will be complete by the time Sublett and Little-School Roads are open. The police department has conducted several speed and traffic counts throughout town. We are finding that speeds can be classified as follows:

- Residential streets – 25 MPH
- Collector streets – 30 MPH
- Minor arterial streets – 35 MPH
- Major arterial streets – 40 or 45 MPH

Kennedale Parkway is the only major arterial street.

Minor arterials include Dick Price Road, Mansfield Cardinal, Bowman Springs, Little-School, Sublett, Gilman, Eden, Swiney-Hiett, and New Hope.

Collector streets include Broadway, Third, Averett, Corry Edwards, Village, Tower, Steeple Chase, Coker Valley, Pennsylvania, Linda, Wildcat Way, Hillside, Mistletoe, and portions of Shady Oak and Oak Ridge.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:
None

VII. Alternative Actions:

VIII. Attachments:

Date: January 12, 2012

Agenda Item No: EXECUTIVE SESSION - A.

I. Subject:

The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and legal issues regarding regulation of sexually oriented businesses, litigation, settlement offers, and/or claims regarding the following matters:

1. H & A Land Corporation, et al. v. City of Kennedale - Cause No. 402-CV-0458-Y (Showtime)

II. Originated by:

Bob Hart, City Manager

III. Summary:

Bob Hart will present information on these topics during executive session.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

Any action that is necessary on this topic will be taken once council has reconvened into open session.

VIII. Attachments:

1.	TAD Information	TAD Showtime.pdf
2.	11/2002	Settlement Agreement - Showtime 11_2002.pdf
3.	05/2004	Settlement Agreement - Showtime 05_2004.pdf
4.	06/2004	Settlement Agreement - Showtime 06_2004.pdf
5.	10/2006	Settlement Agreement - Showtime 10_2006.pdf

Tarrant Appraisal District

Real Estate

01/05/2012

Account Number: 40349950

Georeference: 14764-1-1

Property Location: 1298 W Kennedale Pkwy, Kennedale

Owner Information: Freeman, Kelli

1350 Stoney Creek Dr

Cedar Hill Tx 75104-3400

1 Prior Owner

Legal Description: Freeman, M J

Blk 1 Lot 1

Taxing Jurisdictions: 014 City of Kennedale

220 Tarrant County

224 Tarrant County Hospital Dist

225 Tarrant County College Dist

905 Fort Worth ISD

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Proposed Values for Tax Year 2012

	Land	Impr	2012 Total**
Market Value	\$0	\$0	\$0
Appraised Value*	\$0	\$0	\$0
Approximate Size***			7,471
Land Acres			1.1613
Land SqFt			50,587

* Appraised value may be less than market value due to state-mandated limitations on value increases

** A zero value indicates that the property record has not yet been completed for the indicated tax year

*** Rounded

5-Year Value History

Tax Year	XMPT	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2011	000	\$101,174	\$860,406	\$961,580	\$101,174	\$860,406	\$961,580
2010	000	\$101,174	\$860,406	\$961,580	\$101,174	\$860,406	\$961,580
2009	000	\$101,174	\$969,196	\$1,070,370	\$101,174	\$969,196	\$1,070,370
2008	000	\$101,174	\$969,196	\$1,070,370	\$101,174	\$969,196	\$1,070,370
2007	000	\$101,174	\$799,057	\$900,231	\$101,174	\$799,057	\$900,231

Protest Deadline:

Exemptions: None

Property Data

Deed Date: 09/21/2009

Instrument: D210127844

Year Built: 2003

TAD Map: 2078 360

MAPSCO: 093U

Agent: None

Class:076

State Code: F1 Commercial

Garage Bays: 00

Central Air:

Central Heat:

Pool: N

SETTLEMENT AGREEMENT

ORIGINAL

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TARRANT §

This Agreement is made this 14 day of November, 2002, by and between H & A Land Corporation (hereinafter the Club), the Freeman Family Trust, and the City of Kennedale, Texas (hereinafter the City).

STIPULATED FACTUAL RECITALS

WHEREAS, the Club is currently operating a sexually oriented business (adult cabaret) known as Showtime Cabaret on property owned by the Freeman Family Trust at 1298 W. Mansfield Highway, Kennedale, Texas; and

WHEREAS, the Club has filed a lawsuit against the city styled *H&A Land Corporation, et al. v. City of Kennedale; Beverly Van Dusen, et. al v. City of Kennedale, Texas*, U.S. District Court Case No. 402-CV-0458-Y, now pending in the United States District Court for the Northern District of Texas, contending that the present locational restrictions applicable to sexually oriented businesses in the City deny access to protected expression, in violation of the First Amendment to the United States Constitution; and

WHEREAS, the City contends that it presently provides sufficient sites for the location of sexually oriented businesses within the City, and, if necessary may designate additional sites for such businesses in compliance with the requirements of the First Amendment; and

WHEREAS, current City regulations prohibit the operation of a sexually oriented business at the Club's present location; and

WHEREAS, the Club desires to remain in its present location; and

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WHEREAS, the Club and the City recognize that due to its present location and the existing development of surrounding properties, the Club property is unlikely to be redeveloped by combining the Club property with other adjacent tracts; however, the Club property can be redeveloped at its present location to ameliorate negative secondary effects which the City has identified with the respect to operation of sexually oriented businesses, including the Club; and

WHEREAS, the parties do hereby agree to compromise and settle the pending litigation on the following terms and conditions:

I.

The present site of the Club, 1298 W. Mansfield Highway, as more particularly described in Exhibit "A" attached hereto (hereinafter the Site) may be operated as an adult cabaret as defined in the City's Sexually Oriented Business Ordinance (as amended from time to time), for so long as it is owned and/or controlled by H & A Land Corporation, or the Freeman Family Trust. The Site is currently owned by the Freeman Family Trust and leased to H & A Land Corporation. Upon transfer of ownership of the adult cabaret or the Site, or upon dissolution of H & A Land Corporation or the Freeman Family Trust, the use of the Site as a sexually oriented business shall immediately cease. Notwithstanding the above, the adult cabaret and/or Site may be leased or subleased to any entity in which the Freeman Family Trust or Harry Freeman holds a majority interest. The Site shall be designated by the City as a conforming location for the operation of an adult cabaret.

II.

The Site may be utilized as an adult cabaret by the parties identified above provided that the Club facilities are remodeled and reconstructed to constitute a "first class" building.

so as to appear as shown on the architect's renderings for the Showtime Cabaret master plan and the visual "finished look" site plan attached hereto as Exhibits "B" and "C" respectively, except as modified in Exhibit "D". The construction of the facility and the operation of the Site shall be in accordance with all regulations of the City, including but not limited to the Business 287 Overlay District regulations, except as specifically modified in this Agreement. In addition, the facility and the Site shall conform to the requirements set forth in Exhibit "D" attached hereto.

III.

The construction of the adult cabaret and pizzeria facility shall further be in compliance with the City's building and fire codes.

IV.

Upon dismissal of the lawsuit as provided below, the City shall issue a sexually oriented business license to the Club to operate an adult cabaret on the Site, which license may be renewed year to year, provided the Club complies with all applicable Kennedale City Code provisions. The Club reserves the right to challenge any future amendments to the City's regulation of sexually oriented businesses which impact its ability to operate its business at the designated location and any action by the City which would alter the status of an issued and valid sexually oriented businesses license pertaining to the Site.

V.

The Club may continue to be open and operate under the license issued by the City, during the construction process, except as determined by the Club due to necessary down time for construction needs. The City shall use its best efforts to facilitate all necessary building permits, inspections and approvals, and the Club shall begin construction within

ninety (90) days of the approval of this Agreement by the Kennedale City Council and complete construction within six (6) months of the beginning date.

VI.

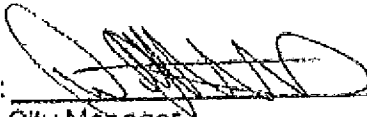
The Club shall dismiss with prejudice and at its sole cost, waiving any claim for costs or attorney's fees, Cause No. 402-CV-0458-Y now pending in the United States District Court for the Northern District of Texas, forthwith upon the approval of this Agreement.

This is the final and complete Agreement between the parties.

This Agreement is entered into in Tarrant County, Texas and venue shall be in Tarrant County, Texas and it shall be governed by the law of Texas.

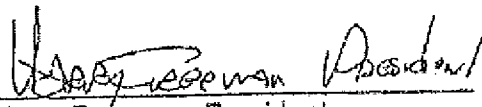
Signed and agreed this 14 day of November, 2002.

City of Kennedale, Texas

By: 

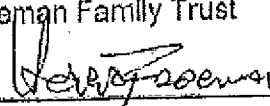
City Manager

H & A Land Corporation

By: 

Harry Freeman, President

Freeman Family Trust

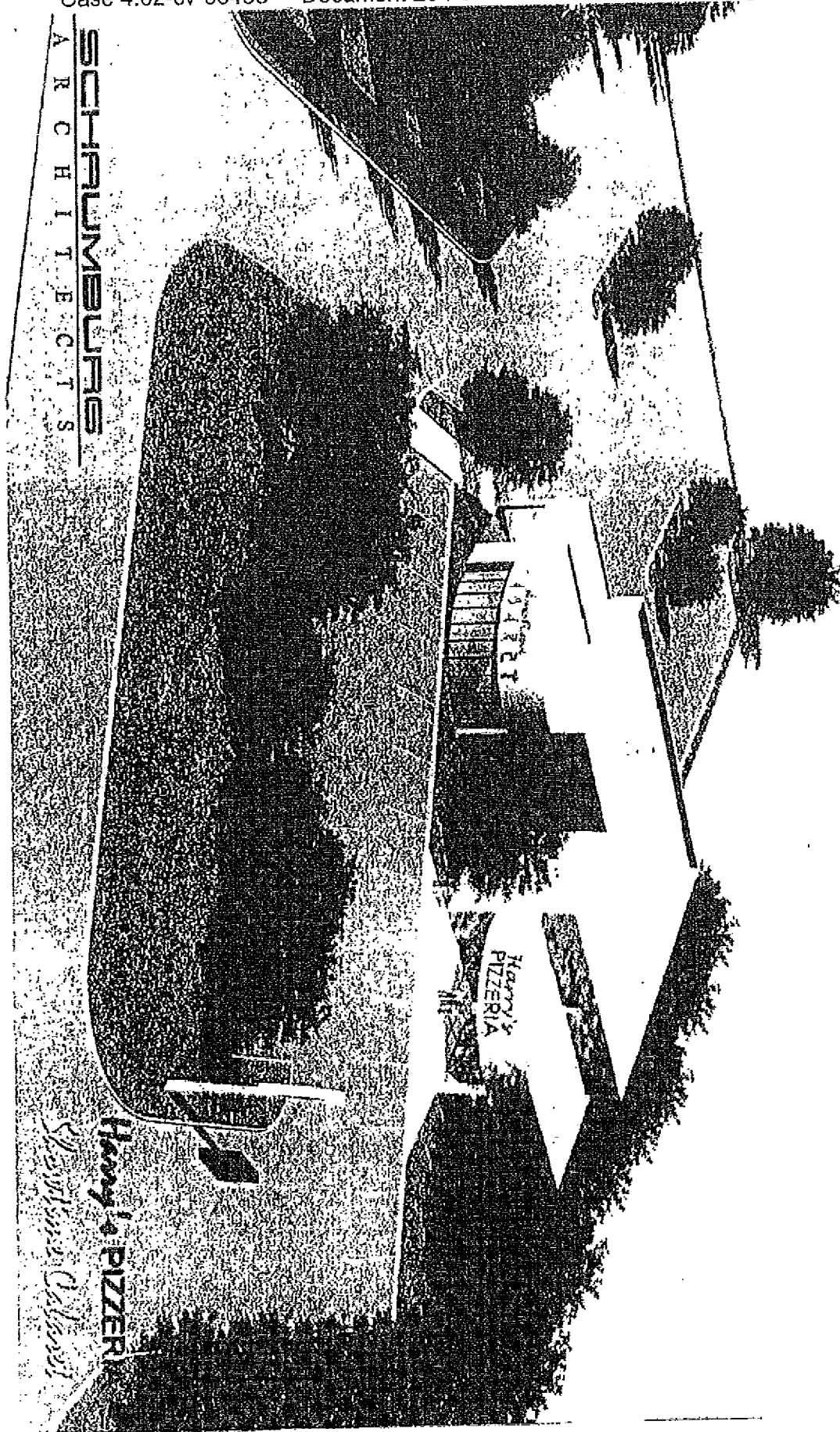
By: 

Trustee

EXHIBIT "A"

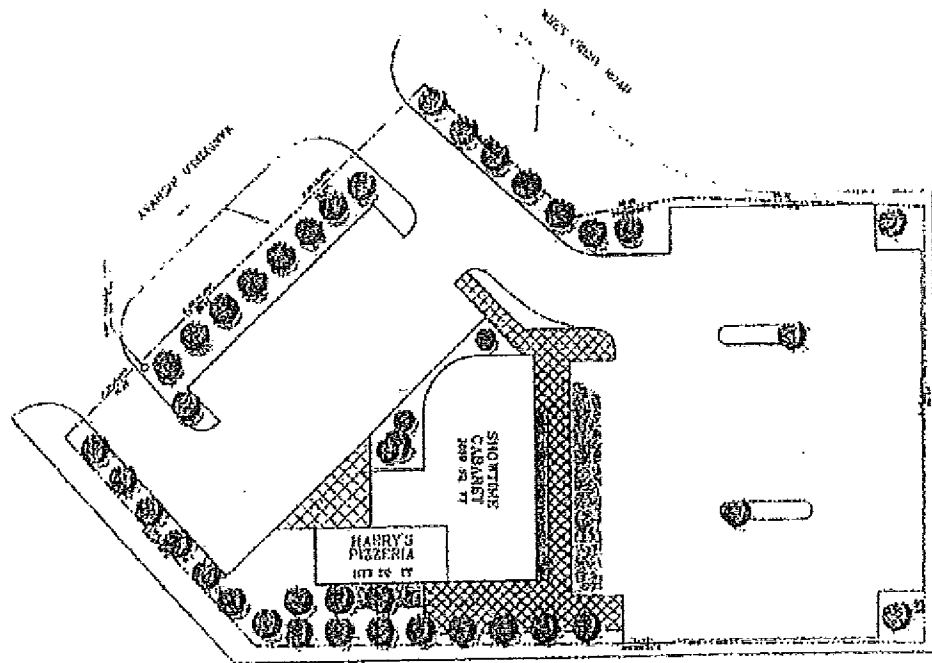
LEGAL DESCRIPTION OF THE SITE

Abstract 1376, Tract 31C, David Strickland Survey



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MASTER PLAN
1" = 20'



SHOWTIME CLUBS
101 ST. 101

STREET DATA
101 ST. 101

000066

EXHIBIT "D"

The following conditions and modifications shall apply to the development and use of the Site:

1. Six inch caliper trees of the type listed in the City's Zoning Ordinance, Section 17-420,(j)(4)b, "Street Trees", are to be used as a screening along Mansfield Hwy as depicted on the Showtime Cabaret master plan, Exhibit "B". All other landscaping will comply with City ordinances.
2. A berm is to be constructed to aid in screening the Site as depicted in the Showtime Cabaret master plan, Exhibit "B".
3. An irrigation/sprinkler system is to be installed in all landscaped areas.
4. One sign stating, "Showtime Cabaret", may be erected on the building, to be located at the northwest corner of the entrance to the club, facing west, above the covered entrance, aligned with the edge of the building. No other words, displays, depictions or signs shall be allowed on or outside the building.
5. No sign for the "Showtime Cabaret" is to be located along Mansfield Hwy. Signs for the pizzeria are acceptable on Mansfield Hwy as long as they comply with city ordinances.
6. Parking lot lighting will meet or exceed specifications outlined by city ordinance.
7. There is to be no access, opening, passageway, or other means of entrance into the Showtime Cabaret from the pizzeria.
8. A security camera system shall be installed that monitors the entire area of the Showtime Cabaret, including the parking lot. The system shall have the ability to record the covered areas and shall have the ability to store the recording for a minimum of ten (10) days.
9. Construction of the outside walls of the entire building shall be of Austin Stone or similar stone approved by the City.
10. The roof shall be a metal pitch roof, green in color or another color approved by the City.

SETTLEMENT AGREEMENT

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TARRANT

This Agreement is made this 26 day of May, 2004, by and between H & A Land Corporation (hereinafter the Club), the Freeman Family Trust, and the City of Kennedale, Texas (hereinafter the City).

STIPULATED FACTUAL RECITALS

WHEREAS, the Club is currently operating a sexually oriented business (adult cabaret) known as Showtime Cabaret on property owned by the Freeman Family Trust at 1298 W. Mansfield Highway, Kennedale, Texas; and

WHEREAS, the Club has filed a lawsuit against the City, styled *H&A Land Corporation d/b/a Showtime Cabaret v. City of Kennedale, Texas*, U.S. District Court Case No. 4-04CV-232-Y, now pending in the United States District Court for the Northern District of Texas, contending that the City of Kennedale's sign regulations applicable to Plaintiff's sexually oriented businesses in the City constitute an unlawful prior restraint in violation of the First Amendment to the United States Constitution and that the enforcement of said regulations contradicts a prior settlement agreement executed between the parties in a lawsuit styled *H&A Land Corporation, et. al. v. City of Kennedale, Texas; Beverly Van Dusen, et. al. v. City of Kennedale, Texas*, U.S. District Court Case No. 4-02CV-0458-Y (hereinafter referred to as "the settlement agreement in the prior lawsuit"); and

WHEREAS, the City contends that its sign regulations as applied to the Club are in compliance with the requirements of the First Amendment and that the enforcement of these regulations is in compliance with the settlement agreement in the prior lawsuit; and

WHEREAS, the parties do hereby agree to compromise and settle the pending litigation on the following terms and conditions:

I.

The Club shall permanently remove the present sign on the Club and replace it with a new sign to be designed and located as depicted in Exhibit "A" attached hereto. The sign shall be single script lettering that states only the word, "Showtime", with a neon-light border. The sign shall be installed on the metal underhang of the port cochere at the northwest corner of the building, facing west. The bottom of the sign shall be no higher than the bottom of the metal underhang. All aspects of the sign not described in this Agreement or depicted on Exhibit "A" shall be governed by the City's sign regulations. A City sign permit shall be required for the erection of the sign. Further, the Club shall be allowed to display a single strand of green neon lights around the lower story of the building. The Club shall permanently remove or unplug the pink and green neon lights along the upper story of the building. Signs for the pizzeria shall be allowed as long as they comply with the City's sign regulations. No other words, displays, depictions, neon lights or signs shall be allowed on or outside the building.

II.

The Club shall maintain all landscaping currently installed on the Site in a neat and attractive manner at all times. If any required plants should die, they shall be immediately replaced.

III.

The Club shall dismiss with prejudice and at its sole cost, waiving any claim for costs or attorney's fees, Cause No. 4-04CV-232-Y now pending in the United States District Court for the Northern District of Texas, forthwith upon the approval of this Agreement.

City of Kennedale, Texas

By: _____
City Manager

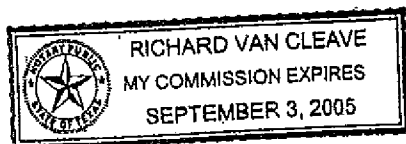
H & A Land Corporation

By: Harry Freeman President
Harry Freeman, President

Freeman Family Trust

By: Harry Freeman
Trustee

ON THIS DAY PERSONALLY APPEARED HARRY FREEMAN.
SUBSCRIBED AND SWORN TO ME THIS 26TH DAY OF MAY, 2004
Richard Van Cleave Notary Public IN AND FOR
THE STATE OF TEXAS, County OF TARRANT.



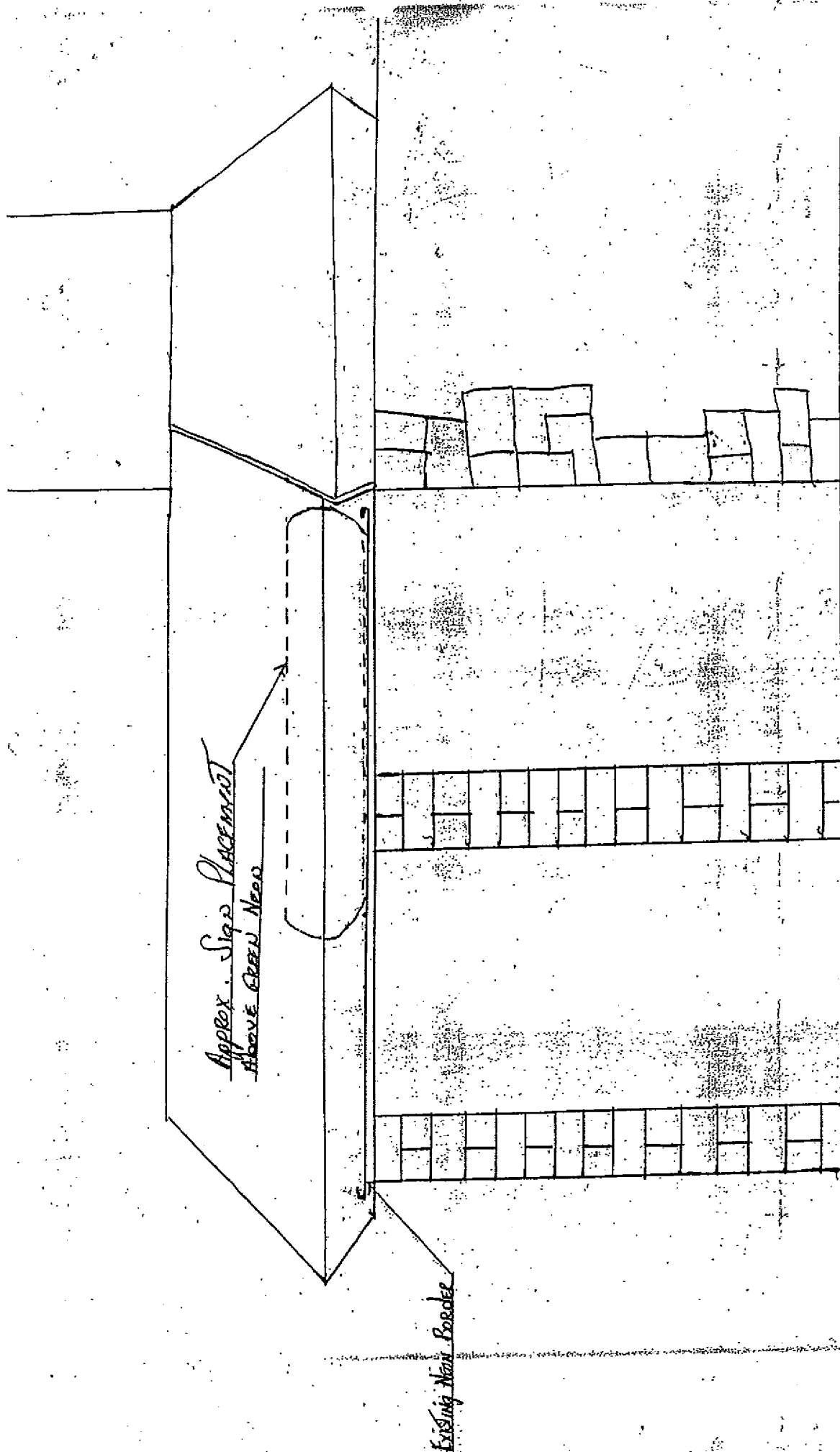


EXHIBIT
A. 2

ShowTime Cabaret 1298 W. Mansfield Hwy



SETTLEMENT AGREEMENT

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TARRANT

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This Agreement is made this 1 day of June, 2004, by and between H & A Land Corporation (hereinafter the Club), the Freeman Family Trust, and the City of Kennedale, Texas (hereinafter the City).

STIPULATED FACTUAL RECITALS

WHEREAS, the Club is currently operating a sexually oriented business (adult cabaret) known as Showtime Cabaret on property owned by the Freeman Family Trust at 1298 W. Mansfield Highway, Kennedale, Texas; and

WHEREAS, the Club has filed a lawsuit against the City, styled *H&A Land Corporation d/b/a Showtime Cabaret v. City of Kennedale, Texas*, U.S. District Court Case No. 4-04CV-232-Y, now pending in the United States District Court for the Northern District of Texas, contending that the City of Kennedale's sign regulations applicable to Plaintiff's sexually oriented businesses in the City constitute an unlawful prior restraint in violation of the First Amendment to the United States Constitution and that the enforcement of said regulations contradicts a prior settlement agreement executed between the parties in a lawsuit styled *H&A Land Corporation, et. al. v. City of Kennedale, Texas; Beverly Van Dusen, et. al. v. City of Kennedale, Texas*, U.S. District Court Case No. 4-02CV-0458-Y (hereinafter referred to as "the settlement agreement in the prior lawsuit"); and

WHEREAS, the City contends that its sign regulations as applied to the Club are in compliance with the requirements of the First Amendment and that the enforcement of these regulations is in compliance with the settlement agreement in the prior lawsuit; and

WHEREAS, the parties do hereby agree to compromise and settle the pending litigation on the following terms and conditions:

I.

The Club shall permanently remove the present sign on the Club and replace it with a new sign to be designed and located as depicted in Exhibit "A" attached hereto. The sign shall be single script ^{Neon} lettering that states only the word, "Showtime", with a neon-light border. The sign shall be installed on the metal underhang of the port cochere at the northwest corner of the building, facing west. The bottom of the sign shall be no higher than the bottom of the metal underhang. All aspects of the sign not described in this Agreement or depicted on Exhibit "A" shall be governed by the City's sign regulations. A City sign permit shall be required for the erection of the sign. Further, the Club shall be allowed to display a single strand of green neon lights around the lower story of the building. The Club shall permanently remove or unplug the pink and green neon lights along the upper story of the building. Signs for the pizzeria shall be allowed as long as they comply with the City's sign regulations. No other words, displays, depictions, neon lights or signs shall be allowed on or outside the building.

II.

The Club shall maintain all landscaping currently installed on the Site in a neat and attractive manner at all times. If any required plants should die, they shall be immediately replaced.

III.

The Club shall dismiss with prejudice and at its sole cost, waiving any claim for costs or attorney's fees, Cause No. 4-04CV-232-Y now pending in the United States District Court for the Northern District of Texas, forthwith upon the approval of this Agreement.

IV.

Upon completion of the sign requirements in this Agreement, the City shall issue a sexually oriented business license and certificate of occupancy to the Club to operate an adult cabaret on the Site, which license may be renewed year to year, provided the Club complies with all applicable Kennedale City Code provisions. The Club reserves the right to challenge any future amendments to the City's regulation of sexually oriented businesses which impact its ability to operate its business at the designated location and any action by the City which would alter the status of an issued and valid sexually oriented businesses license pertaining to the Site.

V.

Upon completion of the sign requirements in this Agreement, the City shall dismiss all municipal court citations issued to the Club or any of its managers or agents prior to the execution of this Agreement pertaining to the matters set forth in this Agreement.

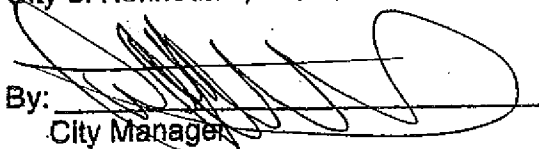
VI.

This Agreement specifically amends paragraph 4 of Exhibit "D" to the settlement agreement in the prior lawsuit. All other terms and conditions in the settlement agreement in the prior lawsuit shall remain in full force and effect and shall continue to be binding upon the parties, their successors and assigns.

VII.

This Agreement is entered into in Tarrant County, Texas and venue shall be in Tarrant County, Texas and it shall be governed by the law of Texas.

City of Kennedale, Texas

By: 

City Manager

H & A Land Corporation

By: _____

Harry Freeman, President

Freeman Family Trust

By: _____

Trustee

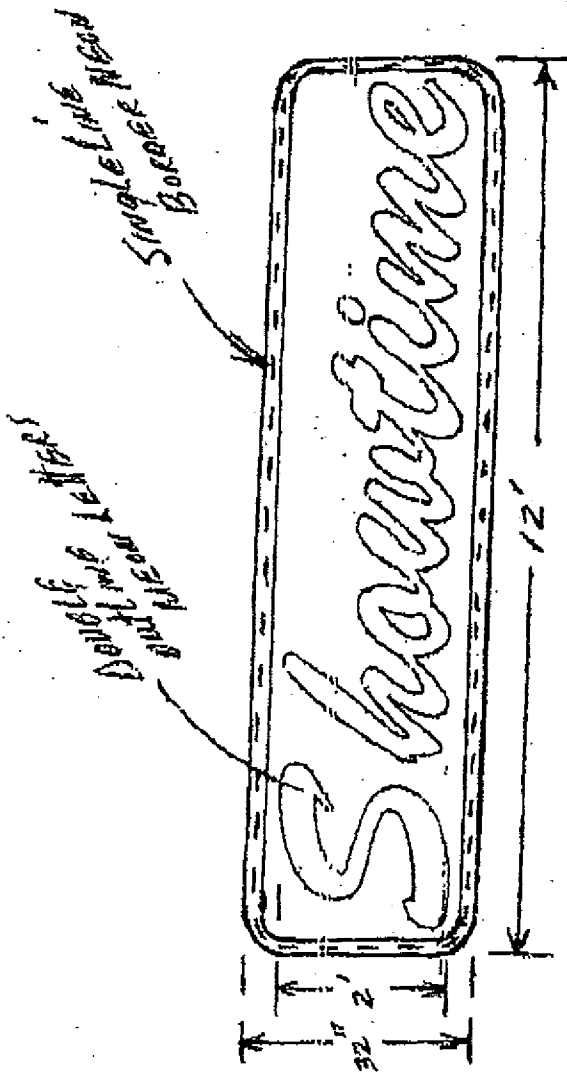
On this day personally appeared David Miller.
Subscribed and sworn to me this 1st day of June, 2004.


Notary Public

KATHY TURNER
Printed Name



2-15-05
Commission Expires



ALL CHANNEL COPY
WITH CLEAR PLEX FACES ON LETTERS

EXHIBIT

A-1

Approx. Sign Placement
Above Green Neon

Existing Neon Border

Showtime Cabaret

1298 W. Mansfield Hwy

EXHIBIT

A-2

tabbles

SETTLEMENT AGREEMENT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TARRANT §

This Agreement is made this 18th day of October, 2006, by and between H & A Land Corporation (the "Club"), the Freeman Family Trust, John Faltynski, and the City of Kennedale, Texas (the "City").

STIPULATED FACTUAL RECITALS

WHEREAS, the Club is currently operating a sexually oriented business (adult cabaret) known as Showtime Cabaret on property owned by the Freeman Family Trust at 1298 W. Mansfield Highway, Kennedale, Texas (the "Property"); and

WHEREAS, the Club has filed a lawsuit against the City, styled *H&A Land Corporation d/b/a Showtime Cabaret v. City of Kennedale, Texas*, U.S. District Court Case No. 4-05-CV-210-Y, now pending in the United States District Court for the Northern District of Texas (the "lawsuit"), contending that provisions in the City's January 13, 2005 sexually oriented business ordinance (Ordinance No. 287) (the "Ordinance") which require a stage at least 18 inches in height and a six foot "buffer zone" between customers and any employee in a state of nudity, and which prohibit direct tipping, violate the First and Fourteenth Amendments of the U.S. Constitution; and

WHEREAS, the Club further contends in the lawsuit that the enactment of the Ordinance violates its civil rights under 42 U.S.C. § 1983; and

WHEREAS, the Club further contends in the lawsuit that the provisions of the Ordinance regarding hours restrictions are pre-empted by the Texas Alcoholic Beverage

Code and the Fourteenth Amendment; and

WHEREAS, the Club further contends in the lawsuit that the provisions of the Ordinance requiring employees of sexually oriented businesses to be permitted are over-broad and in violation of the First and Fourteenth Amendments; and

WHEREAS, the Club further contends in the lawsuit that the Ordinance is a breach of the settlement agreement reached in U.S. District Court Case No. 4-02-CV-458-Y; and

WHEREAS, the City contends that the stage height, buffer zone, and direct tipping provisions of the Ordinance were aimed at reducing adverse secondary effects and were adopted in reliance upon studies and case law and are not in violation of the First and Fourteenth Amendments; and

WHEREAS, the City further contends that the Ordinance is content neutral and narrowly tailored to serve the governmental interest of combatting the adverse secondary effects of sexually oriented businesses, and in so doing does not ban expressive activity and leaves open ample reasonable alternative avenues of communication; and

WHEREAS, the City further contends that the hours restriction is not preempted by the Texas Alcoholic Beverage Code because by agreement the Club is still permitted to sell alcoholic beverages during the permitted hours; and

WHEREAS, the City further contends that permitting employees of sexually oriented businesses is a reasonable time, place and manner regulation that has been upheld by the Fifth Circuit Court of Appeals; and

WHEREAS, the City further contends that the Ordinance is not a breach of any

prior settlement because the provisions challenged in this lawsuit were not addressed in any prior lawsuit; and

WHEREAS, in order to avoid the cost and uncertainty of litigation, the parties desire to compromise and settle the lawsuit on the terms and conditions set forth in this Agreement; and

WHEREAS, the City acknowledges and the Club, the Freeman Family Trust, Harry Freeman and John Faltynski understand that the Club has First Amendment protected rights to operate the Club at its current location and/or locations in the City of Kennedale, subject to reasonable regulation by the City; and

WHEREAS, the Club, the Freeman Family Trust, Harry Freeman and John Faltynski agree that it is in their respective best interests to agree to forego their rights to operate the Club or another sexually oriented business in the City of Kennedale in exchange for the agreements set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

I.

The Club will be grandfathered at its current location until February 28, 2012 from the following provisions of the Ordinance and during this time period the City will not enforce these provisions against the Club:

- a. Sec. 11-203.1 Hours of Operation;
- b. Sec. 11-214(d) Additional regulations – Adult cabarets;
- c. Sec. 11-214(h) Additional regulations – Adult cabarets;
- d. Sec. 11-214.1 Additional Regulations - Public Nudity;
- e. Sec. 11-214.2 Prohibition of Nudity in Certain Commercial Establishments;

and

f. Sec. 11-220.1 Employee permits.

It is further agreed that any additional sexually oriented business regulations that are adopted by the City will not be enforced against the Club during this time period.

II.

Prior to the sale of the Property and in no event later than February 28, 2012, the Club will deed restrict the Property to permanently prohibit the use of the Property as a sexually oriented business or by a business that offers a service or the selling, renting or exhibition of devices or any other items intended to provide sexual stimulation or gratification to its customer.

III.

The Club authorizes the City to rezone the Property to prohibit the use of the Property as a sexually oriented business after February 28, 2012.

IV.

Upon the sale of the Property, and in no event later than February 28, 2012, the Club will cease operating a sexually oriented business or a business that offers a service or the selling, renting or exhibition of devices or any other items intended to provide sexual stimulation or gratification to its customer on the Property.

V.

The Property shall not be used by a business that offers a service or the selling, renting or exhibition of devices or any other items intended to provide sexual stimulation or gratification to its customers or for any sexually oriented business other than Showtime Cabaret and the business shall be operated as Showtime Cabaret only so

long as it is owned and/or controlled by H&A Land Corporation or the Freeman Family Trust. The Club may, however, change its name from time to time in the discretion of the ownership of the Club to a new, non-sexually explicit name consistent with use as an adult cabaret, subject to the approval of the City or its designee, which approval will not be unreasonably withheld. Upon transfer of ownership of Showtime Cabaret or the Property, or upon dissolution of H & A Land Corporation or the Freeman Family Trust, the use of the Property as Showtime Cabaret shall immediately cease. Notwithstanding the above, Showtime Cabaret and/or the Property may be leased or subleased to any entity in which the Freeman Family Trust or Harry Freeman holds a majority interest.

VI.

The City agrees not to harass the Club or otherwise interfere with the operation of Showtime Cabaret beyond legitimate enforcement of the City's ordinances (other than the grandfathered provisions in Ordinance No. 287 set forth in paragraph I above) and reasonable enforcement of other applicable City ordinances and state laws. In this regard, it should be understood that the City will enforce all violations of the Penal Code and other laws and the Club will be treated the same and will be subject to enforcement action the same as other businesses in the City of Kennedale.

VII.

The Club agrees that upon ceasing operations, and no later than February 28, 2012, all signs referencing Showtime or Showtime Cabaret shall be removed from the Property.

VIII.

Upon execution of this Agreement, the Club agrees to dismiss with prejudice the

lawsuit and agrees not to file any other lawsuits challenging the provisions of the Ordinance. The Club agrees to and hereby authorizes its attorney to approve and execute on its behalf an Agreed Motion to Dismiss with Prejudice and an Agreed Order of Dismissal with Prejudice of its claims against the City in the lawsuit.

IX.

The Club, the Freeman Family Trust, Harry Freeman and John Faltynski, and each of them, agree for themselves, their heirs, executors, administrators, assigns, agents, partners, successors in interest, legal counsel and all other persons and entities in privity with them, to fully, finally and forever unconditionally release, acquit, and discharge the City, its city council members and other officers (past and present), agents, employees (past and present), legal counsel, successors, and assigns, and all persons acting by, through, under or in concert with any of them, of and from any and all claims, demands, causes of action, and liabilities of any nature, both past and present, known or unknown, resulting from any alleged acts or omissions of any kind relating to the subject matter of the lawsuit, whether asserted or not. It is specifically understood and agreed that this agreement and release includes, but is not limited to all claims, demands, causes of action (including declaratory judgment and injunction), and liabilities for past or future damages, attorney's fees, interest, and court costs.

X.

This Agreement is entered into in Tarrant County, Texas and it shall be governed by the law of Texas. In the event a lawsuit is filed relating to the provisions of this Agreement, venue shall be in Tarrant County.

XI.

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and shall not be construed strictly for or against any of the parties.

XII.

Should any provision of this Agreement be declared or be determined to be illegal, invalid, or otherwise unenforceable, the validity of the remaining parts, terms, and provisions hereof will not be affected thereby but such will remain valid and enforceable, and said illegal or invalid parts, terms, or provisions shall be deemed not to be a part of this Agreement.

XIII.

The terms of this Agreement are applicable to all principals and entities affiliated with the current Showtime Cabaret, including H&A Land Company, Inc., Freeman Family Trust, Harry Freeman, and John Faltynski.

XIV.

This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof and may not be clarified, modified, changed, or amended except in writing signed by the party against whom the clarification, modification, change or amendment is being offered or enforced. Notwithstanding the above, all terms and conditions in the settlement agreement dated November 14, 2002 in U.S. District Court Case No. 402-CV-0458-Y, as amended by the settlement agreement dated June 1, 2004 in U.S. District Court Case No. 4-04CV-232-Y, shall remain in full force and effect except as specifically addressed in this

Agreement.

XV.

The parties to this Agreement state that they have carefully read the foregoing "Settlement Agreement" and that they know and understand the contents thereof and that they executed the same as their own free act and deed. The parties further acknowledge that they have consulted with attorneys of their own choosing prior to executing this Agreement, their attorneys have explained the terms, conditions and final and binding effect of this Agreement to the parties, they have answered fully all of the parties' questions concerning same, and that the parties fully understand this Agreement and its final and binding effect.

City of Kennedale, Texas

By: Bryan Lankhorst
Bryan Lankhorst, Mayor

H & A Land Corporation

By: Harry Freeman
Harry Freeman, President

Freeman Family Trust

By: Harry Freeman
Trustee

John Faltynski

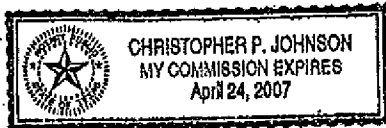
John Faltynski

THE STATE OF TEXAS §
COUNTY OF TARRANT §

Before me on this day personally appeared Bryan Lankhorst, known to me [or proved to me on the oath of _____ or through TX DL (description of identity card or other document)] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he is the Mayor of the City of Kennedale, and that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 18th day of October, A.D. 2006.

(SEAL)



[Signature]
Notary Public, State of Texas
Christopher P. Johnson
Notary's Name Printed

THE STATE OF TEXAS §
COUNTY OF TARRANT §

Before me on this day personally appeared Harry Freeman, known to me [or proved to me on the oath of _____ or through _____ (description of identity card or other document)] 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.

Given under my hand and seal of office this 12th day of Sep., A.D. 2006.



Richard Van Cleave
Notary Public, State of Texas

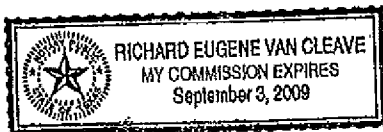
RICHARD VAN CLEAVE
Notary's Name Printed

THE STATE OF TEXAS §
COUNTY OF TARRANT §

Before me on this day personally appeared Harry Freeman, known to me [or proved to me on the oath of _____ or through _____ (description of identity card or other document)] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he is a Trustee of the Freeman Family Trust, and that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 12th day of Sep., A.D. 2006.

(SEAL)



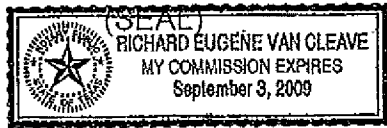
Richard Van Cleave
Notary Public, State of Texas

RICHARD VAN CLEAVE
Notary's Name Printed

THE STATE OF TEXAS §
COUNTY OF TARRANT §

Before me on this day personally appeared **John Faltynski**, known to me [or proved to me on the oath of _____ or through _____ (description of identity card or other document)] 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.

Given under my hand and seal of office this 12th day of Sep., A.D. 2006.



Richard Van Cleave
Notary Public, State of Texas

RICHARD VAN CLEAVE
Notary's Name Printed

Date: January 12, 2012

Agenda Item No: EXECUTIVE SESSION - B.

I. Subject:

The City Council will meet in closed session pursuant to Section 551.072 of the Texas Government Code to deliberate the purchase, exchange, lease, or value of real property for the following:

1. Oak Crest Addition Blk 14 Lot 2
2. 209 N New Hope Road

II. Originated by:

Bob Hart, City Manager

III. Summary:

Bob Hart will present information on this topic during executive session.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: January 12, 2012

Agenda Item No: REPORTS/ANNOUNCEMENTS - A.

I. Subject:

Mayor: Updates and information, if any

- Presentation of Government Finance Officers Association (GFOA) Award of Financial Reporting Achievement to City of Kennedale Finance Department and Sakura Moten Dedrick, Director of Finance & Information Technology.

II. Originated by:

Sakura Moten-Dedrick, Director of Finance & IT

III. Summary:

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

Plaque provided.

VIII. Attachments:

Date: January 12, 2012

Agenda Item No: REPORTS/ANNOUNCEMENTS - B.

I. Subject:

Councilmembers: Updates and information, if any.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

At this time councilmembers may present any information they deem necessary.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: January 12, 2012

Agenda Item No: REPORTS/ANNOUNCEMENTS - C.

I. Subject:

City Manager: Updates & information, if any.

II. Originated by:

Bob Hart, City Manager

III. Summary:

At this time the City Manager will present information on the recent Tarrant Appraisal District election and any other information as necessary.

The upcoming Open House event on Saturday, January 28th will also be discussed.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

1.	TAD - Election Results	TAD ELECTIONS.pdf
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Jeff Law
Executive Director
Chief Appraiser

December 19, 2011

Mr. Bob Hart
City Manager
City of Kennedale
405 Municipal Drive
Kennedale, Texas 76060

Dear Mr. Hart:

Ballots have been received from the entities entitled to vote in the election of Tarrant Appraisal District Board of Directors. A total of 4,416 votes have been counted with the following results:

Mr. David Averitt	729	Mr. Michael Glaspie	910
Mr. Roger Chavez	4	Mr. John Molyneaux	1,267
Mr. John Fegan	656	Mr. Joe Potthoff	850

The following nominees are elected and will begin a two-year term January 1, 2012.

Mr. David Averitt	Mr. John Molyneaux
Mr. John Fegan	Mr. Joe Potthoff
Mr. Michael Glaspie	

Thank you for your cooperation in returning the ballot to us, enabling the prompt report of the results. If you need further information, please do not hesitate to call.

Sincerely,

Jeff Law
Executive Director
Chief Appraiser

JL:mm

Date: January 12, 2012

Agenda Item No: CONSENT ITEMS - A.

I. Subject:

Consider approval of December 8, 2011 regular meeting minutes.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Please see the attached minutes from December 2011.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	December Minutes	12.8.2011_MINUTES_City Council.doc
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405 Municipal Drive, Kennedale, Texas 76060

**MINUTES
KENNEDALE CITY COUNCIL
REGULAR MEETING - December 8, 2011
CITY COUNCIL CHAMBERS**

**WORK SESSION - 5:30 PM
REGULAR SESSION - 7:00 PM**

I. CALL TO ORDER

Mayor Lankhorst called the meeting to order at 5:30pm.

II. WORK SESSION

***NOTE: Pursuant to Section 551.071, Texas Government Code, the City Council reserves the right to adjourn into Executive Session at any time during the work session or the regular session to discuss posted executive session items or to seek legal advice from the City Attorney on any item posted on the agenda.**

A. UTA Project Presentation: Bird Sanctuary

Ryan Spicer, Lauren Tucker, and April Anresen from UTA presented recommendations on building partnerships with property owners, creating agreements with property owners, public-private partnership best practices, and general options for community outreach.

Their report and recommendations were submitted in report form to the Council and will be on file with the city.

B. UTA Project Presentation: Board and Commission Handbook

Erin Morgan, Lucy Bowen, Ashley Douglas, and Lisa Thaqi from UTA presented background information and a draft handbook. They were tasked with creating a readable and explanatory handbook that would serve as a guiding document for all board and commission members.

Councilmember Johnson requested that additions to the glossary and other sections be made to finalize the draft.

Their draft handbook and recommendations were submitted in report form to the Council and will be on file with the city. The handbook will be finalized in early 2012 and will be distributed to all board and commission members both in paper and electronic form.

C. UTA Project Presentation: Economic Development Incentives

Shelley Broyles from UTA presented background and research findings regarding economic development along Kennedale Parkway, recommending the creation of a 'light industrial' zoning classification, establishment of an industrial reinvestment zone, and usage of property

tax abatements, Type B sales tax, and matching grants.

D. UNT Project Presentation: Kennedale Parkway Cleanup Options

Jim Cook, Emily Hudson, and Carrie Hart from UNT presented information related to how the city conducts code enforcement and how the city may be able to measure these efforts. They noted survey results and recommended the use of financial incentives, tax increment reinvestment zones, and public improvement districts to encourage the cleanup process.

III. REGULAR SESSION

IV. ROLL CALL

Roll Call.

Present: Frank Fernandez, John Clark, Brian Johnson , Kelly Turner, Liz Carrington, Bryan Lankhorst (Not Voting).

V. INVOCATION

VI. UNITED STATES PLEDGE

VII. TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State under God; One and Indivisible."

VIII. VISITOR/CITIZENS FORUM

At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.

IX. REPORTS/ANNOUNCEMENTS

In addition to any specific matters listed below, the city council may receive a report about items of community interest, including but not limited to recognition of individual officials, citizens or departments, information regarding holiday schedules, upcoming or attended events, etc.

Brian Johnson congratulated the city on a successful Christmas Tree Lighting event.

Mayor Lankhorst noted that Monte Ubanks, who had questions regarding renting KKB at the previous meeting, has since resolved this issue and will be utilizing the Kennedale ballfields beginning in January of 2012.

X. CONSENT ITEMS

All matters listed under consent agenda have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately.

A. Consider approval of meeting minutes from regular meeting held on November 17, 2011.

B. Consider approval of a professional services agreement with Modern Geosciences in the amount of \$99,250 to conduct air monitoring at gas well padsites in the City of Kennedale over a one-year period.

Motion: To approve the consent agenda with the amendments as noted in the staff report to item B.,
Action: Approve, **Moved by** John Clark, **Seconded by** Brian Johnson .
Motion passed unanimously.

XI. REGULAR ITEMS

A. Discuss and consider **deferring until February 9th, 2012** action on Case PZ 11-10, a request for a change in zoning from "C-0" Retail Commercial to "C-1" Restricted Commercial for approximately 1.014 acres located at 4850 US Hwy 287, Kennedale, Tarrant County, Texas, more particularly described as Lot 2 Block 1R Southwest Crossing Addition. The rezoning is requested by JP Morgan Chase.

Motion: To defer PZ case 11-10 to the February 2012 regular meeting., **Action:** Table, **Moved by** Brian Johnson , **Seconded by** Kelly Turner.
Motion passed unanimously.

B. Discuss and consider an AN ORDINANCE OF THE CITY OF KENNEDALE, AMENDING CHAPTER 23, ARTICLE III OF THE KENNEDALE CITY CODE (1992), REQUIRING PERMITS TO DISCHARGE INDUSTRIAL WASTE INTO THE KENNEDALE SANITARY SEWER SYSTEM; AUTHORIZING THE DIRECTOR OF THE PUBLIC WORKS TO PROMULGATE REGULATIONS PERTAINING TO SUCH PERMITTING, PROVIDING FOR DEFINITIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; REPEALING ORDINANCE NO. 308 (2005); PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

Larry Ledbetter approached the council, noting that the TCEQ and the EPA have been working with Fort Worth to streamline the industrial waste ordinance. As Kennedale uses the Fort Worth system, the city was included in this process. Kennedale will now operate under one streamlined ordinance instead of two.

John Clark asked if the model ordinance was more restrictive than what the city currently has. Mr. Ledbetter explained that this new ordinance is more flexible and gives the city additional leeway. There are currently no users that will be affected by the new ordinance.

Frank Fernandez posed a question regarding disposal of swimming pool water. Mr. Ledbetter noted that this would be covered under a different set of regulations related to stormwater, and not industrial waste.

Motion: To approve Ordinance 494., **Action:** Approve, **Moved by** Brian Johnson , **Seconded by** Liz Carrington.
Motion passed unanimously.

The City Council recessed to executive session at 7:35pm.

XII. EXECUTIVE SESSION

A. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and legal issues regarding regulation of sexually oriented businesses, litigation, settlement offers, and/or claims regarding the following matters:

1. H & A Land Corporation, et al. v. City of Kennedale - Cause No. 402-CV-0458-Y
(Dreamer's and Showtime)

B. The City Council will meet in closed session pursuant to Section 551.072 of the Texas Government Code to deliberate the purchase, exchange, lease, or value of real property for the following:

1. 945 Little School Road

XIII. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

Mayor Lankhorst called the meeting back into open session at 7:55pm.

No action pursuant to executive session was necessary.

XIV. ADJOURNMENT

Motion: To adjourn. , **Action:** Adjourn, **Moved by** Liz Carrington, **Seconded by** Frank Fernandez.
Motion passed unanimously.

The meeting was adjourned at 8:00pm.

Date: January 12, 2012

Agenda Item No: CONSENT ITEMS - B.

I. Subject:

Discuss and consider authorizing the City Manager to sign an agreement with Tarrant County for the reconstruction of Bloxom Park Road.

II. Originated by:

Bob Hart, City Manager

III. Summary:

The EDC is working to improve property located in the business park on Hudson Village Cemetery Road. Improvements are necessary to induce businesses to move into the area, thereby increasing the tax base and job opportunities. The EDC requests the city to enter into an agreement with Tarrant County to construct Bloxom Park Road. The EDC will fund the \$44,000 necessary to construct the road. The Bloxom Trust has given the EDC approximately 5.5 acres to offset the costs of these improvements. A business is prepared to lease or purchase a one-acre site on the new road. They will employ 14 persons.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	Agreement	Bloxom.pdf
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THE STATE OF TEXAS
COUNTY OF TARRANT

INTERLOCAL AGREEMENT

BACKGROUND

This Interlocal Agreement is between County of Tarrant ("COUNTY"), and the City of Kennedale ("CITY");

Sections 791.001 – 791.029 of the Texas Government Code provide legal authority for this Agreement;

During the performance of the governmental functions and the payment for the performance of those governmental functions the parties will make the performance and payment from current revenues legally available to that party; and

The Commissioners Court of the COUNTY and the City Council of the CITY each find:

- a. This Agreement serves the common interest of both parties;
- b. This Agreement will benefit the public;
- c. The division of costs fairly compensates both parties to this Agreement; and
- d. The CITY and COUNTY have authorized their representative to sign this Agreement.

The Parties therefore agree as follows:

TERMS AND CONDITIONS

1. COUNTY RESPONSIBILITY

COUNTY will furnish the labor and equipment for the following project:

The reconstruction of Bloxom Park Road at a width of 32 feet for a length of approximately .23 miles from Hudson Village Creek Road to Dead End. This construction will include:

- 1.1 Clear and remove debris from right of way;
- 1.2 Make necessary drainage Improvements;
- 1.3 Stabilize and compact sub-grade at a depth of ten inches;
- 1.4 Apply asphalt emulsion prime coat;
- 1.5 Place and compact four inches of Type B Hot Mix Asphalt Concrete;
- 1.6 Place Geosynthetic Petromat material;
- 1.7 Place and compact three inches of Type D Hot Mix Asphalt Concrete.

2. CITY RESPONSIBILITY

- 2.1 CITY will pay all trucking charges and furnish all materials for the project including stabilization materials, hot mix asphalt, asphalt emulsion, geosynthetic material and flexible base.
- 2.2 CITY will furnish a site for dumping waste materials generated during this project.
- 2.3 CITY will furnish all rights of way, plan specifications and engineering drawings.
- 2.4 CITY will furnish necessary traffic controls including Type A barricades to redirect traffic flow to alternate lanes during the construction phase of the project.
- 2.5 CITY will provide temporary driving lane markings.
- 2.6 If a Storm Water Pollution Prevention Plan is required, the CITY will be responsible for the design and development of the Plan. CITY will pay for all cost (including subcontractor materials, labor and equipment) associated with the implementation and maintenance of the Plan.
- 2.7 CITY will ensure that the project is cleared of obstructions which could damage county equipment during construction.
- 2.8 CITY will verify the location of all utility locations, mark those locations and then remove the utilities that will interfere with the progress of the project.
- 2.9 CITY will provide a stockpile site for materials used for this project.
- 2.10 CITY will provide soil lab testing for this project.

3. PROCEDURES DURING PROJECT

COUNTY retains the right to inspect and reject all materials provided for this project. CITY will provide quality assurance inspection for the project. If the CITY has a complaint regarding the construction of the project, the CITY must complain in writing to the COUNTY within 30 days of project completion. Upon expiration of 30 days after project completion, the CITY becomes responsible for maintenance of the project.

4. NO WAIVER OF IMMUNITY

This agreement does not waive COUNTY rights under a legal theory of sovereign immunity. This agreement does not waive CITY rights under a legal theory of sovereign immunity.

5. OPTIONAL SERVICES

- 5.1 If requested by CITY, the COUNTY may apply permanent striping;
- 5.2 If necessary, COUNTY may furnish flag persons;
- 5.3 If required, the CITY will pay for engineering services, storm water run-off plans, and continuation of services and plan;

- 5.4 If a Storm Water Prevention Plan is provided by CITY, COUNTY will be responsible for the implementation and maintenance of the Plan during the duration of the project.

6. TIME PERIOD FOR COMPLETION

CITY will give the COUNTY notice to proceed at the appropriate time. However, COUNTY is under no duty to commence construction at any particular time.

7. THIRD PARTY

The parties do not enter into this agreement to protect any specific third party. The intent of this agreement excludes the idea of a suit by a third party beneficiary. The parties to this agreement do not consent to the waiver of sovereign immunity under Texas law to the extent any party may have immunity under Texas law.

8. JOINT VENTURE & AGENCY

The relationship between the parties to this agreement does not create a partnership or joint venture between the parties. This agreement does not appoint any party as agent for the other party.

9. EFFECTIVE DATE

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed.

COUNTY OF TARRANT

CITY OF KENNEDALE

COUNTY JUDGE

Authorized City Official

Date: _____

Date: _____

Attest:

Attest:

APPROVED AS TO FORM*

APPROVED AS TO FORM AND
LEGALITY

ASSISTANT DISTRICT ATTORNEY

ASSISTANT CITY ATTORNEY

COMMISSIONER PRECINCT TWO
ANDY NGUYEN

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval by their own respective attorney(s).

Date: January 12, 2012

Agenda Item No: CONSENT ITEMS - C.

I. Subject:

Discuss and consider approval of a Memorandum of Understanding regarding the adoption of TxDOT's federally-approved Disadvantaged Business Enterprise program.

II. Originated by:

Bob Hart, City Manager

III. Summary:

TxDOT requires that each city receiving financial assistance through the agency adopt a disadvantage business enterprise (DBE) assistance program. Council adopted the TxDOT program by resolution in October. However, in order to actually receive funds through TxDOT, the city must enter into a memorandum of agreement (MOU) to be eligible for such funding assistance. The required MOU is included in the packet. The City anticipates receiving an estimated \$1.5 million through two grant programs: the Green Ribbon program for landscaping along Kennedale Parkway and the CMAQ grant for pedestrian and traffic flow improvements near the TownCenter.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	TxDOT MOU DBE	TxDOT DBE MOU.pdf
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**MEMORANDUM OF UNDERSTANDING
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF
TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM BY CITY OF KENNEDALE**

This Memorandum of Understanding (MOU) is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT)**, an agency of the State of Texas; and
CITY OF KENNEDALE, a political subdivision of the State of Texas.

Whereas, from time to time CITY OF KENNEDALE receives federal funds from the Federal Highway Administration (FHWA) through TxDOT to assist CITY OF KENNEDALE with the construction and design of projects partially or wholly funded through FHWA; and

Whereas, CITY OF KENNEDALE, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises (DBEs), as defined by 49 CFR 26 (DBE Program); and

Whereas, TxDOT has implemented a Disadvantaged Business Enterprise Program (DBE Program) that is approved by the FHWA pursuant to 49 CFR part 26; and

Whereas, certain aspects of CITY OF KENNEDALE's procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and

Whereas, CITY OF KENNEDALE and TxDOT undertake substantially similar roadway construction projects and design projects and construct and design their respective projects using substantially the same pool of contractors; and

Whereas, CITY OF KENNEDALE desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and CITY OF KENNEDALE find it appropriate to enter into this MOU to memorialize the obligations, expectations and rights each has as related to CITY OF KENNEDALE's adoption of the TxDOT DBE's Program to meet the federal requirements;

Now, therefore, TxDOT and CITY OF KENNEDALE, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) CITY OF KENNEDALE is a sub-recipient of federal assistance for construction projects and design projects and, in accordance with 49 CFR § 26.21, must comply with a federally approved DBE Program. The CITY OF KENNEDALE receives its federal assistance through TxDOT. As a sub-recipient, CITY OF KENNEDALE has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as CITY OF KENNEDALE, adopt the DBE program, administered through TxDOT, and CITY OF KENNEDALE by its prescribed protocol adopted the TxDOT DBE Program as of the date when adoption occurred.

(3) This MOU evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by CITY OF KENNEDALE to achieve its DBE participation in federally assisted Construction and Design Projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for CITY OF KENNEDALE and for TxDOT.

(5) CITY OF KENNEDALE and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by CITY OF KENNEDALE :

(a) CITY OF KENNEDALE will be responsible for project monitoring and data reporting to TxDOT. CITY OF KENNEDALE will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, to CITY OF KENNEDALE .

(b) CITY OF KENNEDALE will recommend contract-specific DBE goals consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. CITY OF KENNEDALE 's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. CITY OF KENNEDALE and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority regarding DBE goals.

(c) TxDOT will cooperate with CITY OF KENNEDALE in an effort to meet the timing and other requirements of CITY OF KENNEDALE projects.

(d) CITY OF KENNEDALE will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its projects that use federal funds and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT construction projects or design projects also will be eligible to participate on CITY OF KENNEDALE construction projects or design projects subject to the DBE Program. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program (TUCP).

(f) CITY OF KENNEDALE will conduct reviews and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort (GFE), Commercially Useful Function (CUF), etc. CITY OF KENNEDALE and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues and reserves the right to perform compliance reviews. CITY OF KENNEDALE shall provide TxDOT with a listing of sanctions that will be assessed against contractors for violation of federal DBE regulations and its procedures for investigation of violations and assessment of sanctions for documented violations. CITY OF KENNEDALE will require contractors for its FHWA federally assisted projects to use the attached forms as follows:

Attachment 1 – Disadvantaged Business Enterprise (DBE) Program Commitment Agreement
Form SMS 4901

Attachment 2 – DBE Monthly Progress Report Form SMS 4903

Attachment 3 – DBE Final Report Form SMS 4904

Attachment 4 – Prompt Payment Certification Form (Federal-air Projects) 2177

(g) CITY OF KENNEDALE will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding CITY OF KENNEDALE's administration of the DBE Program through TxDOT.

(h) CITY OF KENNEDALE will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.

(i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs.

CITY OF KENNEDALE and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in CITY OF KENNEDALE area.

(j) CITY OF KENNEDALE will submit DBE semi-annual progress reports to TxDOT.

(k) CITY OF KENNEDALE will participate in TxDOT sponsored training classes to include topics on Title VI of the Civil Rights Act of 1964, DBE Annual Goals, DBE Goal Setting for Construction Projects and Design Projects, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on CITY OF KENNEDALE projects in the DBE Education and Outreach Programs.

(l) The Executive Director of CITY OF KENNEDALE will implement all federal requirements, including those stated in Attachments A through F, which are incorporated as though fully set out herein for all purposes.

(m) In accordance with 23 CFR 200.1, CITY OF KENNEDALE shall develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in , and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities; develop a program to conduct Title VI review of program areas; and conduct annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels. TxDOT, in accordance with federal law, may conduct compliance reviews by TxDOT's Office of Civil Rights (OCR).

(n) CITY OF KENNEDALE will comply with 49 CFR 26.29 as stated in Attachment F.

(6) In the event there is a disagreement between TxDOT and CITY OF KENNEDALE about the implementation of the TxDOT DBE Program by CITY OF KENNEDALE the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible in consultation with FHWA. Non-compliance by CITY OF KENNEDALE can result in restitution of federal funds to TxDOT and withholding of further federal funds upon consultation with FHWA.

(7) This MOU becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this MOU is terminated for any reason, CITY OF KENNEDALE will be allowed reasonable time in which to seek approval from FHWA for an alternative DBE Program, without being deemed non-compliant with 49 CFR Part 26.

(9) This MOU applies only to projects for which CITY OF KENNEDALE is a sub-recipient of federal funds through TxDOT. CITY OF KENNEDALE may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds through TxDOT and which are not subject to the TxDOT DBE Program. CITY OF KENNEDALE may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs for its non-federally funded projects.

(10) The following attachments to this MOU are also incorporated as if fully set out herein for all purposes:

Attachment A – FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973);

Attachment B – SPECIAL PROVISION – LOCAL GOVERNMENT / RMA / NON-STANDARD CONTRACTS

Attachment C – 49 CFR §26.13 (contractual assurances)

Attachment D – DBE Program Compliance Guidance for Local Government Agencies

Attachment E – FHWA Form 1273

Attachment F – Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program with attachments as follows:

Attachment F1 – DBE Regulations: 49 CFR Part 26

Attachment F2 – DBE Special Provisions 000-1966

Attachment F3 – TxDOT's Organizational Chart

Attachment F4 – Measurement and Payment Special Provision 009-007

Attachment F5 – Texas Unified Certification Program (TUCP) DBE directory
example and website address to the directory

Attachment F6 – DBE Goal Methodology

Attachment F7 – DBE Bidder Certification

Attachment F8 – DBE Joint Check Approval Form

Attachment F9 – TUCP Standard Operating Procedures (SOP)

Attachment F10 – TUCP Memorandum of Agreement (MOA)

Attachment F11 – Forms list

(11) The following procedure shall be observed by the parties in regard to any notifications:

(a) Any notice required or permitted to be given under this MOU shall be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by

registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

CITY OF KENNEDALE

Bob Hart
City Manager

Hand Delivery:

405 Municipal Drive, Kennedale, Texas 76060

Registered or Certified Mail (Return receipt requested):

405 Municipal Drive, Kennedale, Texas 76060

TEXAS DEPARTMENT OF TRANSPORTATION

DBE Liaison
Office of Civil Rights
Address: 125 E. 11th Street
Austin, Texas 78701

(b) Notice by personal delivery or hand delivery shall be deemed effective immediately upon delivery, provided notice is given as required by Paragraph (a) hereof. Notice by registered or certified mail shall be deemed effective three (3) days after deposit in a U.S. mailbox or U.S. Post Office, provided notice is given as required by Paragraph (a) hereof.

(c) Either party hereto may change its address by giving notice as provided herein.

(12) This MOU may be modified or amended only by written instrument, signed by both

CITY OF KENNEDALE and the TxDOT and dated subsequent to the effective date(s) of this MOU. Except as authorized by the respective parties, no official, employee, agent, or representative of the parties has any authority, either express or implied, to modify or amend this MOU.

(13) The provisions of this MOU are severable. If any clause, sentence, provision, paragraph, or article of this MOU, or the application of this MOU to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not impair, invalidate, nullify, or otherwise affect the remainder of this MOU, but the effect thereof shall be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or article to other persons or circumstances shall not be affected; provided, however,

CITY OF KENNEDALE and TxDOT may mutually agree to terminate this MOU.

(14) The following provisions apply in regard to construction of this MOU:

(a) Words of any gender in this MOU shall be construed to include the other, and words in either number shall be construed to include the other, unless the context in this MOU clearly requires otherwise.

(b) When any period of time is stated in this MOU, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday, or national holiday, or state or county holiday, these days shall be omitted from the computation. All hours stated in this MOU are stated in Central Standard Time or in Central Daylight Savings Time, as applicable.

(15) This MOU shall not be construed in any way as a waiver by the parties of any immunity from suit or liability that parties may have by operation of law, and the parties hereby retain all of their respective affirmative defenses.

EXECUTED in duplicate originals by TxDOT and CITY OF KENNEDALE, acting through each duly authorized official and effective on the latest date signed.

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

CITY OF KENNEDALE

By: _____

Phil Wilson
Executive Director

By: _____

Bryan Lankhorst
Mayor

Date: _____

Date: January 12, 2012

Attachment 1



Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

Form SMS.4901
(Rev. 06/08)
Page 1 of 1

This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.

Project #:		County:		Contract-CSJ:	
Items of work to be performed (attach a list of work items if more room is required):					
Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
Total					
The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.					
IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.					
Prime Contractor:			Name/Title (please print):		
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		
DBE:			Name/Title (please print):		
Vendor No.:			Signature:		
Address:					
Phone:	Fax:		Date:		
E-mail:					
Subcontractor (if the DBE will be a second tier sub):			Name/Title (please print):		
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.

Attachment 2



Texas Department of Transportation DBE Monthly Progress Report

Form SMS 4503
(Rev. 07/08)
Page 1 of 1

Project: _____ Contract CSJ: _____
 County: _____ District: _____
 Letting Date: _____ For Month of (Mo./Yr.): _____
 Contractor: _____ Contract Amount: _____
 DBE Goal: _____ % DBE Goal Dollars: _____

Vendor Number	Name of DBE Sub/Supplier	* RC or RN	** DBE \$ Amt Paid for Work Performed this Period (X)	*** \$ Amt Paid to Non-DBE 2nd Tier Subs and Haulers (Y)	Amt Paid to DBEs to Date (X-Y)	For TxDOT use Only

* Race Conscious or Race Neutral.

** Goal/commitment progress report amount and/or race-neutral amount. Do not subtract non-DBE second-tier subcontractors and haulers from this column.

*** Report amount of payment DBE subcontractors paid to non-DBE subcontractors/haulers.

If using a non-DBE hauling firm that leases from DBE truck owner-operators, payments made to each owner-operator must be reported separately.

Any changes to the DBE commitments approved by the department must be reported to the area engineer.

Submission of this report for periods of negative DBE activity is required. This report is required until all DBE subcontracting or material supply activity is completed.

I hereby certify that the above is a true and correct statement of the amounts paid to the DBE firms listed above.

Signature: _____
Company Official

Date: _____

This report must be sent to the area engineer's office within 15 days following the end of the calendar month.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Attachment 3



DBE Final Report

Form SMS 4904
(Rev 07/03)
Page 1 of 1

The DBE final report form should be filled out by the contractor and submitted to the appropriate district office upon completion of the project. One copy of the report must be submitted to the area engineer's office. The report should reflect all DBE activity on the project. The report will aid in expediting the final estimate for payment. If the DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

Project: _____ Contract CSJ: _____
County: _____ Control Project: _____
Letting Date: _____ DBE Goal: _____ %
Contractor: _____ Contract Amount: _____

Vendor number	Name of DBE Sub/Supplier	*RC or RN	** DBE goal - total \$ amt pd to date	*** \$ amt pd to non-DBE 2nd tier subs & haulers	For TxDOT Use Only

* Race Conscious or Race Neutral.

** Goal/commitment progress report amount and/or race-neutral amount. Do not subtract non-DBE second-tier subcontractors and haulers from this column.

*** DBE subcontractors paid to non-DBE subcontractors/haulers.

This is to certify that _____ % of the work was completed by Disadvantaged Business Enterprises as stated above.

By _____ Per: _____
Name of General Contractor Contractor's Signature

Subscribed and sworn to before me, this _____ day of _____, A.D. _____

Notary Public County

My commission expires: _____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Attachment 4



Prompt Payment Certification (Federal-Aid Projects)

Form 2177
(Rev. 7/2007)
(GSD-EPC)
Page 1 of 1

In accordance with the requirements of Article 6.e of the DBE special provision and the prompt payment clause under Article 9.6.B and related special provisions, submit this certification form to the Engineer prior to the end of the month following the month payments were received from the department and the month following the month when final acceptance occurred, at the end of the project. (Final submission may be made prior to final acceptance if all subcontractor work and supplier material furnished for the project is complete and the subcontractors and suppliers final payments have been made in full.) The Engineer may withhold payments or suspend work for failure to submit this form or provide prompt payment in accordance with the contract. This certification is applicable to materials the Contractor purchases to remain as part of the final project and to first tier subcontractors on the project and associated project specific locations. (Subcontractors and suppliers are to comply with the prompt payment requirements.)

Certification

"I certify that to the best of my knowledge and with the exception of those subcontractors or suppliers listed below, all subcontractors and suppliers have been paid in accordance with the contract (10 days after receiving payment for the work performed by the subcontractor) and that any retainage held on a subcontractor or supplier's work has been released within 10 days after satisfactory completion of all of the subcontractors' or suppliers' work."

Project Number: _____ CCSJ: _____

Estimate Period: _____ or _____
Month Year Final Subcontractor and Supplier Payment Date

Signature Title Date

Printed Name: _____

The following firms have not been paid for reasons listed:

Firm	* Reason for Non-Payment
------	--------------------------

*Only reasons based on dispute on subcontractor or supplier noncompliance may be accepted.

This certification is for the department's information only and does not place any obligations on the part of the department with regard to any part, including but not limited to, any subcontractor and Contractor's surety.

Clarification of FHWA's Oversight Role in Accessibility



Memorandum

U.S. Department of Transportation

Federal Highway Administration

Subject: ACTION: Clarification of FHWA's Oversight Role in Accessibility

Date: 9-12-06

From: Frederick D. Isler
Associate Administrator for Civil Rights
King W. Gee
Associate Administrator for Infrastructure

Reply to Attn of: HCR-1
HIF-1

To: Associate Administrators
Chief Counsel
Chief Financial Officer
Directors of Field Services
Resource Center Director and Operations Managers
Division Administrators
Federal Lands Highway Division Engineers

The Federal Highway Administration (FHWA) recognizes the need for the transportation system to be accessible to all users. The purpose of this memorandum is to clarify FHWA's role and responsibility to oversee compliance on pedestrian access required by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Since 1978, FHWA has promoted accessible transportation systems through technical assistance and guidance on ADA and Section 504. In addition, accessibility improvements are eligible for Federal-aid funding.

The FHWA is responsible for implementation of pedestrian access requirements from the ADA and Section 504. This is accomplished through stewardship and oversight over all Federal, State, and local governmental agencies ("public agencies") that build and maintain highways and roadways, whether or not they use Federal funds on a particular project.

Policy

In February 2000, the FHWA issued a policy providing technical guidance to integrate facilities for pedestrians, including persons with disabilities, into the transportation infrastructure. The guidance can be found at www.fhwa.dot.gov/environment/bikeped/design.htm#d4.

The ADA and Section 504 do not require public agencies to provide pedestrian facilities. However, where pedestrian facilities exist they must be accessible. Furthermore, when public agencies construct improvements providing access for pedestrians, the completed project also must meet accessibility requirements for persons with disabilities to the maximum extent feasible.

Planning

Title 23 requires that long-range transportation plans and transportation improvement programs, in both statewide and metropolitan planning processes, provide for the development and integrated management and operation of accessible transportation systems and facilities.

Additionally, State DOTs and Metropolitan Planning Organizations (MPOs) must certify (at least biennially for State DOTs and annually for MPOs) that the transportation planning process is being carried out or conducted in accordance with all FHWA, Federal Transit Administration and other

applicable Federal statutory and regulatory requirements [see 23 CFR 450.220 and 23 CFR 450.334, respectively]. Further, 23 CFR 450.316(b)(3) requires the metropolitan planning process to identify actions necessary to comply with the ADA and Section 504.

Transition Plans

The ADA and Section 504 require State and local governments with 50 or more employees to perform a self-evaluation of their current services, policies, and practices that do not or may not meet ADA requirements. The public agency must develop a Transition Plan addressing these deficiencies. This plan assesses the needs of persons with disabilities, and then schedules the required pedestrian accessibility upgrades. The Transition Plan is to be updated periodically, with its needs reflected in the processes utilized by State DOTs, MPOs, and transit agencies to develop the Statewide Transportation Improvement Programs and metropolitan Transportation Improvement Programs.

Projects

Public agencies should work to meet accessibility requirements throughout the project delivery process. Issues surrounding pedestrian accessibility should be addressed at the earliest stage possible to reduce or prevent conflicts with other right-of-way, planning, environmental, and design considerations. This could include the acquisition of right-of-way and use of special plan details for specific locations to remove barriers. Projects requiring pedestrian accessibility include projects for new construction and projects altering existing street and highway facilities.

New Construction

All projects for new construction that provide pedestrian facilities must incorporate accessible pedestrian features to the extent technically feasible, without regard to cost. The development process should ensure accessibility requirements are incorporated in the project.

Alterations

Alterations shall incorporate accessibility improvements to existing pedestrian facilities to the extent that those improvements are in the scope of the project and are technically feasible, without regard to cost. Projects altering the usability of the roadway must incorporate accessible pedestrian improvements at the same time as the alterations to the roadway occur. See *Kinney v. Yerusalem*, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S.C. 1033 (1994). Alterations are changes to a facility in the public right-of-way that affect or could affect access, circulation, or use by persons with disabilities.

The FHWA has determined that alterations are projects that could affect the structure, grade, function, and use of the roadway. Alteration projects include reconstruction, major rehabilitation, structural resurfacing, widening, signal installation, pedestrian signal installation, and projects of similar scale and effect.

Maintenance

Maintenance activities are not considered alterations. Therefore, maintenance projects do not require simultaneous improvements to pedestrian accessibility under the ADA and Section 504. The U.S. Department of Justice (DOJ) and the courts consider maintenance activities to include filling potholes. The FHWA has determined that maintenance activities include actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the roadway without increasing the structural capacity. Maintenance activities include, but are not limited to, thin surface overlays (nonstructural), joint repair, pavement patching (filling potholes), shoulder repair, signing, striping, minor signal upgrades, and repairs to drainage systems.

As part of maintenance operations, public agencies' standards and practices must ensure that the day-to-day operations keep the path of travel open and usable for persons with disabilities, throughout the year. This includes snow and debris removal, maintenance of pedestrian traffic in work zones, and correction of other disruptions. Identified accessibility needs should be noted and incorporated into the transition plan.

Accessibility Design Criteria for Sidewalks, Street Crossings, and Trails **Sidewalks and Street Crossings**

Where sidewalks are provided, public agencies shall provide pedestrian access features such as continuous, unobstructed sidewalks, and curb cuts with detectable warnings at highway and street crossings. 28 CFR 35.151(c), referencing 28 CFR Part 36, App. A, ADA Accessibility Guidelines (ADAAG). The FHWA encourages the use of ADAAG standards. If pedestrian signals are provided, they must have a reasonable and consistent plan to be accessible to persons with visual disabilities.

Sidewalks and street crossings generally should use the guidelines the Access Board is proposing for public rights-of-way. The FHWA distributed an information memorandum on November 20, 2001, stating that *Designing Sidewalks and Trails, Part II, Best Practices Design Guide* can be used to design and construct accessible pedestrian facilities. This report provides information on how to implement the requirements of Title II of the ADA. *Designing Sidewalks and Trails for Access* is the most comprehensive report available for designing sidewalks and street crossings and contains compatible information on providing accessibility with information published by the Access Board in the ADAAG. This report can be found at www.fhwa.dot.gov/environment/sidewalk2.

When the Access Board completes guidelines for public rights-of-way and they are adopted by the United States Department of Transportation and DOJ as standards under the ADA and Section 504, they will supersede the currently used standards and criteria.

When Federal-aid highway program funds are used for parking facilities, or buildings such as transit facilities, rest areas, information centers, transportation museums, historic preservation projects, or other projects where pedestrians are expected, the project must meet the current applicable accessibility standards, whether or not the project is within the public right-of-way. The ADAAG includes special provisions for building alterations and for historic preservation projects.

Shared Use Paths and Trails

The design standards for shared use paths and trails are specific to the function of the path or trail:

- Shared use paths and pedestrian trails that function as sidewalks shall meet the same requirements as sidewalks. Where shared use paths and pedestrian trails cross highways or streets, the crossing also shall meet the same requirements as street crossings, including the provision of detectable warnings.
- Shared use paths and pedestrian trails that function as trails should meet the accessibility guidelines proposed in the Access Board's *Regulatory Negotiation Committee on Accessibility for Outdoor Developed Areas Final Report* found at www.access-board.gov/outdoor/outdoor-rec-rpt.htm. This report also has guidelines for Outdoor Recreation Access Routes (routes connecting accessible elements within a picnic area, camping area, or a designated trailhead).
- Recreational trails primarily designed and constructed for use by equestrians, mountain bicyclists, snowmobile users, or off-highway vehicle users, are exempt from accessibility requirements even though they have occasional pedestrian use.

Most trailside and trailhead structural facilities (parking areas, restrooms) must meet the ADAAG standards.

Technical Feasibility and Cost

When constructing a new transportation facility or altering an existing transportation facility, a public agency should consider what is included within the scope of the project. For elements that are within the scope of the project, the ADAAG provides that "Any features of a... facility that are being altered and can be made accessible shall be made accessible [i.e., made to conform with ADAAG] within the scope of the alteration." ADAAG 4.1.6(j). The only exception to this rule is where conformity with ADAAG is "technically infeasible," meaning that "existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame [e.g., in the case of a highway project, a bridge support]; or because other existing physical or site constraints prohibit modification of addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility." ADAAG 4.1.6(j).

Where making an alteration that meets accessibility requirements is technically infeasible, the public agency must ensure that the alteration provides accessibility to the "maximum extent feasible." If a public agency believes that full ADAAG compliance is technically infeasible, the public agency should document that the proposed solution to the problem meets the "maximum extent feasible" test. With respect to any element of an alteration that is within the scope of the project and is not technically infeasible, DOJ guidance provides that under ADAAG standards "cost is not a factor." DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4). Consequently, if the accessibility improvement is technically feasible, the public agency must bear the cost of fully meeting ADAAG standards.

However, cost may be a factor in determining whether to undertake a stand-alone accessibility

improvement identified in a Transition Plan. For example, if an existing highway, not scheduled for an alteration, is listed in the public agency's Transition Plan as needing curb cuts, the public agency may consider costs that are "unduly burdensome." The test for being unduly burdensome is the proportion of the cost for accessibility improvements compared to the agency's overall budget, not simply the project cost.

If the project alters any aspect of the pedestrian route, it must be replaced with accessible facilities. Additional work outside of the scope and limits of the project altering a facility is at the discretion of the agency. However, any features not conforming to ADA requirements outside the project scope should be added to the Transition Plan.

FHWA Responsibilities

The FHWA is responsible for ensuring public agencies meet the requirements of the ADA and Section 504 for pedestrian access for persons with disabilities. Under DOJ regulations, FHWA divisions must work with their State DOTs, MPOs, and local public agencies to ensure ADA and Section 504 requirements are incorporated in all program activities for all projects within the public right-of-way regardless of funding source. Program activities include project planning, design, construction, and maintenance. Furthermore, FHWA is responsible for ensuring accessibility requirements for projects that are not within public right-of-way, but use funding through FHWA. This includes parking areas, information centers, buildings, shared use paths, and trails. Divisions have a legal responsibility to work with State agencies or other recipients to ensure ADA and Section 504 requirements are incorporated into all projects using funding through FHWA.

For all projects that use Federal funds as part of the financing arrangements, the division offices need to periodically:

- Review those projects, where they have oversight responsibilities, for accommodation of pedestrians. The divisions shall not approve Federal funding for projects that do not adequately provide pedestrian access for persons with disabilities where the project scope and limits include pedestrian facilities in the public right-of-way.
- Review the Stewardship Agreement to ensure pedestrian accessibility requirements are included, as appropriate.
- Review the State DOT, MPO, and/or local jurisdiction processes, procedures, guidelines, and/or policies that address ADA in transportation planning and programming processes and how accessibility commitments are addressed in transportation investment decisions.
- Assist transportation agencies in updating their Transition Plans. The United States Department of Transportation Section 504 regulation requires FHWA to monitor the compliance of the self-evaluation and Transition Plan of Federal-aid recipients (49 CFR 27.11). The ADA deadline for completing the accessibility improvements within the Transition Plan was in 1995. For those State and local governments that have not performed the self-evaluation and prepared a plan, it is critical that they complete the process.
- Encourage and facilitate training for FHWA personnel on accessible pedestrian features.
- Ensure pedestrian accessibility compliance through periodic program reviews of recipients' highway planning, design, and construction activities.
- In addition, the Federal Lands Highway Divisions should ensure that each direct Federal construction project fulfills both policy guidance on pedestrian access and meets the minimum ADA and Section 504 accessibility requirements.

For all highway, street and trail facilities, regardless of whether Federal funds are involved, the division offices need to:

- Perform onsite review of complaints about accessibility and report the findings of the review to HCR-1.
- Make presentations and offer training on pedestrian accessibility at meetings, conferences, etc.

- In contacts with State and local officials, encourage them to develop procedures for incorporating pedestrian accessibility into their projects.

Additional Information and Resources

A Web site with questions and answers concerning recurring issues, training opportunities, and background legal information on FHWA's responsibilities under the ADA and Section 504 is located at <http://www.fhwa.dot.gov/civilrights/index.htm>. This memorandum has been reviewed and approved by the U.S. Department of Transportation General Counsel as consistent with applicable disability law.

Questions concerning these obligations may be directed to:

- For Accessibility Policy: Candace Grouding, Bob Cosgrove, Office of Civil Rights
- For Design Standards: William A. Prosser, Office of Program Administration
- For Trails: Christopher Douwes, Office of Natural and Human Environment
- For Construction and Maintenance: Christopher Newman, Office of Asset Management
- For Legal: Lisa MacPhee, Office of the Chief Counsel



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United States Department of Transportation - **Federal Highway Administration**

Questions and Answers About ADA/Section 504

These questions and answers are presented to help FHWA and its State and local transportation department partners better understand roles and responsibilities to provide accessible transportation facilities under the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 (Section 504). These questions and answers are derived from extensive experience and input from the FHWA Offices of Civil Rights, Infrastructure, Chief Counsel, and Planning, Environment, and Realty. Like all guidance material, these questions and answers are not, in themselves, legally binding and do not constitute regulations. These Q&As explain the FHWA's position on the implementation of the ADA and Section 504. These questions and answers have been reviewed and approved by the U.S. Department of Transportation General Counsel as consistent with applicable disability law.

The FHWA Offices of Civil Rights, Infrastructure, Chief Counsel, and Planning, Environment, and Realty developed these questions and answers and approved them as consistent with the language and intent of the ADA and Section 504. The questions and answers outlined in this document are to be applied to Federal, State, and local governmental agencies; hereafter called "public agencies" or "agencies."

Public Agencies covered by ADA and Section 504

1. What authority requires public agencies to make public right of way accessible for all pedestrians with disabilities?
2. What do these statutes require public agencies to do?
3. Does the ADA require public agencies to provide pedestrian facilities?
4. What is FHWA's responsibility for assuring access for persons with disabilities?
5. What public agencies must provide accessible pedestrian walkways for persons with disabilities?
6. Can a public agency make private individuals or businesses responsible for ADA and Section 504 mandated pedestrian access?
7. What United States Department of Justice (USDOJ) and United States Department of Transportation (USDOT) regulations govern accessibility requirements?
8. What is FHWA's authority to implement ADA and Section 504 requirements?
9. What is the public right of way?

Transition plans

10. What authority requires public agencies to make transition plans?
11. What should a transition plan include?
12. How does the transition plan relate to a public agency's transportation planning process?
13. What public agencies must make a transition plan?
14. When should the FHWA review an agency's transition plan?
15. When and how should a transition plan be updated?

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17. What projects constitute an alteration to the public right of way?
18. What activities are not considered to be alterations?

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19. Does a project altering a public right of way require simultaneous accessibility improvements?
20. When does the scope of an alteration project trigger accessibility improvements for people with disabilities?
21. Do maintenance activities require simultaneous improvements of the facility to meet ADA standards?
22. When should accessible design elements be incorporated into projects in the public right of way?

Cost

23. How does cost factor into a public agency's decision in its transition plan concerning which existing facilities must comply with ADA and Section 504 pedestrian access requirements?
24. For a new project planned outside of the transition plan, with ADA accessibility improvements required to make the facility readily accessible and useable by individuals with disabilities, can cost be a reason not to complete an ADA-required accessibility improvement?
25. For an alteration project planned outside of the transition plan, with ADA accessibility improvements required within the scope of the project, can cost be a reason to decide what ADA-required improvements will be completed?
26. What role does the "maximum extent feasible" standard play for ADA accessibility requirements in altered projects?
27. What should a public agency do when it does not control all of the public right of way required to provide access for persons with disabilities?
28. Can a public agency delay compliance with the ADA and Section 504 on alteration projects through a systematic approach to schedule projects?

Elements of Accessible Design

29. What are the elements of an accessible design?

Funding

30. What sources of funding may be used to comply with ADA and Section 504 requirements?

Maintenance

31. What obligation does a public agency have regarding snow removal in its walkways?
32. What day-to-day maintenance is a public agency responsible for under the ADA?

Criteria

33. What accessibility training is available?
34. Where is information on the criteria to be used in developing accessible facilities?

Public Agencies covered by ADA and Section 504

1. *What authority requires public agencies to make public right-of-way accessible for all pedestrians with disabilities?*
Public rights-of-way and facilities are required to be accessible to persons with disabilities through the following statutes: Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. §794) and Title II of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12131-12164). The laws work together to achieve this goal. (9-12-06)
2. *What do these statutes require public agencies to do?*
These statutes prohibit public agencies from discriminating against persons with disabilities by excluding them from services, programs, or activities. These statutes mean that the agency must provide pedestrian access for persons with disabilities to the agency's streets and sidewalks, whenever a pedestrian facility

exists. Regulations implement this requirement by imposing standards for accessible features such as curb cuts, ramps, continuous sidewalks, and detectable warnings. (9-12-06)

3. *Does the ADA require public agencies to provide pedestrian facilities?*

No. However, when a public agency provides a pedestrian facility, it must be accessible to persons with disabilities to the extent technically feasible.

4. *What is FHWA's responsibility for assuring access for persons with disabilities?*

FHWA is responsible for ensuring access for persons with disabilities in four areas:

1. For surface transportation projects under direct FHWA control (e.g., Federal Lands projects): FHWA is responsible for ensuring that project planning, design, construction, and operations adequately address pedestrian access for people who have disabilities.
2. For Federally funded surface transportation projects that provide pedestrian facilities within the public right-of-way: FHWA is responsible for ensuring that the public agencies' project planning, design, and construction programs provide pedestrian access for persons with disabilities. FHWA-funded projects outside of the public right-of-way, such as Transportation Enhancement projects, must also adhere to these requirements.
3. For pedestrian facilities within the public right-of-way, or any other FHWA enhancement project, regardless of funding source: FHWA is responsible for investigating complaints. 28 CFR §§ 35.170 – 35.190.
4. FHWA should provide or encourage accessibility training for Federal, State, and local agencies and their contractors.

FHWA does not have ADA oversight responsibilities for projects outside of the public right-of-way that do not use Federal surface transportation program funds. (9-12-06)

5. *What public agencies must provide accessible pedestrian walkways for persons with disabilities?*

All State and local governmental agencies must provide pedestrian access for persons with disabilities in compliance with ADA Title II. 42 U.S.C. §12131(1). Federal, State, and local governments must provide pedestrian access for persons with disabilities in compliance with Section 504 standards. 29 U.S.C. §794(a). (9-12-06)

6. *Can a public agency make private individuals or businesses responsible for ADA and Section 504 mandated pedestrian access?*

No. The public agency is responsible for providing access for persons with disabilities. Private entities with joint responsibility for a public right-of-way, such as a private tenant on public property, are responsible for accessibility for persons with disabilities on the public right-of-way under Title II of ADA. The lease or other document creating this legal relationship should commit the private party to ensuring accessibility. In addition, public/private partnership relationships for the public right-of-way retain accessibility obligations to persons with disabilities under Title II. If the private entity eventually takes over the right-of-way in its entirety, then the private entity becomes responsible for accessibility for persons with disabilities under the private entity's obligations under Title III of the ADA. (9-12-06)

7. *What United States Department of Justice (DOJ) and United States Department of Transportation (DOT) regulations govern accessibility requirements?*

The DOJ ADA regulation is 28 CFR Part 35. The DOT Section 504 regulation at 49 CFR Part 27 governs public agencies, with the ADA incorporated at 49 CFR §27.19. Additional regulations drafted specifically for recipients of the Federal Transit Administration are at 49 CFR Part 37. (9-12-06)

8. *What is FHWA's authority to implement ADA and Section 504 requirements?*

The DOJ regulations designate the DOT as the agency responsible for overseeing public agencies' compliance with the ADA. 28 CFR §35.190(b)(8). The DOT has delegated to the FHWA the responsibility to ensure ADA compliance in the public right-of-way and on projects using surface transportation funds. (9-12-06)

9. *What is the public right-of-way?*

The public right-of-way consists of everything between right-of-way limits, including travel lanes, medians, planting strips, sidewalks, and other facilities. (9-12-06)

Transition plans

10. *What authority requires public agencies to make transition plans?*

The ADA requires public agencies with more than 50 employees to make a transition plan. 28 CFR §35.150(d). (9-12-06)

11. *What should a transition plan include?*

The transition plan must include a schedule for providing access features, including curb ramps for walkways. 28 CFR §35.150(d)(2). The schedule should first provide for pedestrian access upgrades to State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. 28 CFR §35.150(d)(2). The transition plan should accomplish the following four tasks:

1. identify physical obstacles in the public agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
2. describe in detail the methods that will be used to make the facilities accessible;
3. specify the schedule for taking the steps necessary to upgrade pedestrian access to meet ADA and Section 504 requirements in each year following the transition plan; and
4. indicate the official responsible for implementation of the plan. 28 CFR §35.150(d)(3). (9-12-06)

12. *How does the transition plan relate to a public agency's transportation planning process?*

The ADA transition plan is intended to identify system needs and integrate them with the State's planning process. The transition plan and its identified needs should be fully integrated into the public agency's Statewide Transportation Improvement Program (STIP) and metropolitan Transportation Improvement Program (TIP). Agencies should incorporate accessibility improvements into the transportation program on an ongoing basis in a variety of ways:

1. Any construction project that is programmed must meet accessibility requirements when built.
2. Accessibility improvements identified in the transition plan that are not within the scope of an alteration project should be incorporated into the overall transportation planning process. This can be accomplished through the development of stand-alone accessibility projects.
3. As a means to identify ADA compliance needs, during scheduling maintenance activities, the agencies should identify ADA accessibility needs and incorporate them into the overall transportation planning process. (9-12-06)

13. *What public agencies must make a transition plan?*

The ADA requires any public agency with more than 50 employees to make a transition plan setting forth the steps necessary to make its facilities accessible to persons with disabilities. 28 CFR §35.150(d). (9-12-06)

14. *When should the FHWA review an agency's transition plan?*

DOT Section 504 regulation requires FHWA to monitor the compliance of the self-evaluation and transition plans of Federal-aid recipients (49 CFR §27.11). The FHWA Division offices should review pedestrian access compliance with the ADA and Section 504 as part of its routine oversight activities as defined in their stewardship plan. (9-12-06)

15. *When and how should a transition plan be updated?*

An agency's transition plan should have been completed by January 26, 1992, and should be based on updates of the self-evaluation conducted to comply with the requirements of Section 504. 28 CFR §35.105. The plan should be updated periodically to ensure the ongoing needs of the community continue to be met. The transition plan should be coordinated appropriately with the STIP and the TIP. Changes to the plan shall be made available to the public for comment. The public agency should specifically target any local community groups representing persons with disabilities for comment, to ensure that the agency is meeting the local priorities of the persons with disabilities in that community. If a public agency has never completed a transition plan, the Division should inform the public agency to complete a transition plan now and review that public agency's completed transition plan.

The ADA deadline for completing the improvements listed in the transition plans was January 26, 1995. For those State and localities that have not completed their self-evaluation and transition plans, it is critical that they complete this process. (9-12-06)

Projects Covered by the ADA and Section 504

16. *What projects must provide pedestrian access for persons with disabilities?*

Any project for construction or alteration of a facility that provides access to pedestrians must be made accessible to persons with disabilities. 42 U.S.C. §§ 12131 - 12134; 28 CFR §§ 35.150, 35.151; *Kinney v. Yerusalem*, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994). (9-12-06)

17. *What projects constitute an alteration to the public right-of-way?*

An alteration is a change to a facility in the public right-of-way that affects or could affect access, circulation, or use. Projects altering the use of the public right-of-way must incorporate pedestrian access improvements within the scope of the project to meet the requirements of the ADA and Section 504. These projects have the potential to affect the structure, grade, or use of the roadway. Alterations include items such as reconstruction, major rehabilitation, widening, resurfacing (e.g. structural overlays and mill and fill), signal

installation and upgrades, and projects of similar scale and effect. (9-12-06)

18. *What activities are not considered to be alterations?*

The DOJ does not consider maintenance activities, such as filling potholes, to be alterations. The DOJ does consider resurfacing beyond normal maintenance to be an alteration. DOJ's ADA Title II Technical Assistance Manual, § II-6.6000, 1993.

The FHWA has determined that maintenance activities include actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the roadway without increasing the structural capacity. These activities include, but are not limited to, thin surface treatments (nonstructural), joint repair, pavement patching (filling potholes), shoulder repair, signing, striping, minor signal upgrades, and repairs to drainage systems. (9-12-06)

Timing of Accessibility Improvements

19. *Does a project altering a public right-of-way require simultaneous accessibility improvements?*

Yes. An alteration project must be planned, designed, and constructed so that the accessibility improvements within the scope of the project occur at the same time as the alteration. 29 CFR § 35.151; *Kinney v. Yerusalim*, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994).

The ADA does not stipulate how to perform simultaneous accessibility improvements. For example, a public agency may select specialty contractors to perform different specialized tasks prior to completion of the alteration project or concurrently with an ongoing project. (9-12-06)

20. *When does the scope of an alteration project trigger accessibility improvements for people with disabilities?*

The scope of an alteration project is determined by the extent the alteration project directly changes or affects the public right-of-way within the project limits. The public agency must improve the accessibility of only that portion of the public right-of-way changed or affected by the alteration. If a project resurfaces the street, for accessibility purposes the curbs and pavement at the pedestrian crosswalk are in the scope of the project, but the sidewalks are not. Any of the features disturbed by the construction must be replaced so that they are accessible. All remaining access improvements within the public right-of-way shall occur within the schedule provided in the public agency's planning process. (9-12-06)

21. *Do maintenance activities require simultaneous improvements of the facility to meet ADA standards?*

No. Maintenance activities do not require simultaneous improvements to pedestrian accessibility under the ADA and Section 504. However, in the development of the maintenance scope of work identified accessibility needs should be incorporated into the transition process. (9-12-06)

22. *When should accessible design elements be incorporated into projects in the public right-of-way?*

FHWA encourages the consideration of pedestrian needs in all construction, reconstruction, and rehabilitation projects. If a public agency provides pedestrian facilities, those facilities must be accessible to persons with disabilities. A public agency is not relieved of its obligation to make its pedestrian facilities accessible if no individual with a disability is known to live in a particular area. This is true regardless of its funding source. DOJ's ADA Title II Technical Assistance Manual, § II-5.1000, 1993. (9-12-06)

Cost

23. *How does cost factor into a public agency's decision in its transition plan concerning which existing facilities must comply with ADA and Section 504 pedestrian access requirements?*

For existing facilities requiring accessibility improvements as scheduled in the transition plans, the public agency must provide accessibility improvements unless the cost of the upgrades is unduly burdensome. The test for being unduly burdensome is the proportion of the cost for accessibility improvements compared to the agency's overall budget, not simply the project cost. 28 CFR Part 35, App. A, discussion at §35.150, ¶¶ 4 – 7. The decision that pedestrian access would be unduly burdensome must be made by the head of a public agency or that official's designee, accompanied by a written statement of the reasons for the decision. 28 CFR §35.150(a)(3). (9-12-06)

24. *For a new project planned outside of the transition plan, with ADA accessibility improvements required to make the facility readily accessible and useable by individuals with disabilities, can cost be a reason not to complete an ADA-required accessibility improvement?*

No. Cost may not be a reason to fail to construct or delay constructing a new facility so that the facility is readily accessible to and useable by persons with disabilities under the ADAAG standards. 28 CFR §35.151(a); see DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(3). (9-12-06)

25. *For an alteration project planned outside of the transition plan, with ADA accessibility improvements required within the scope of the project, can cost be a reason to decide what ADA-required improvements will be completed?*

No. Cost may not be a reason for a public entity to fail to complete an ADA-required improvement within the

scope of an alteration project under the ADAAG standards. A public agency must complete any ADA-required accessibility improvements within the scope of an alteration project to the maximum extent feasible. 28 CFR §35.151(b); DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4). (9-12-06)

26. *What role does the "maximum extent feasible" standard play for ADA accessibility requirements in altered projects?*

In an alteration project, the public agency must incorporate the ADA accessibility standards to the maximum extent feasible. 28 CFR §35.151(b). The feasibility meant by this standard is physical possibility only. A public agency is exempt from meeting the ADA standards in the rare instance where physical terrain or site conditions restrict constructing or altering the facility to the standard. ADA Accessibility Guidelines 4.1.6(1)(j). Cost is not a factor in determining whether meeting standards has been completed to the maximum extent feasible. DOJ's ADA Title II Technical Assistance Manual, § II-6.3200(3)-(4), 1993. No particular decisionmaking process is required to determine that an accessibility improvement is not technically feasible, but the best practice is to document the decision to enable the public agency to explain the decision in any later compliance review. (9-12-06)

27. *What should a public agency do when it does not control all of the public right-of-way required to provide access for persons with disabilities?*

The public agency should work jointly with all others with interests in the highway, street, or walkway to ensure that pedestrian access improvements occur at the same time as any alteration or new project. The ADA encourages this cooperation by making each of the public agencies involved subject to complaints or lawsuits for failure to meet the ADA and Section 504 requirements. 28 CFR §§ 35.170 – 35.178. (9-12-06)

28. *Can a public agency delay compliance with the ADA and Section 504 on alteration projects through a systematic approach to schedule projects?*

No. All pedestrian access upgrades within the scope of the project must occur at the same time as the alteration. *Kinney v. Yerusalem*, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994). (9-12-06)

Elements of Accessible Design

29. *What are the elements of an accessible design?*

Public agencies have the choice of whether to follow the standards in the ADA Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS). 28 CFR §35.151(c); (appendix A to 28 CFR Part 36). FHWA encourages public agencies to use ADAAG. Under the ADAAG standards, an accessible design to a highway, street, or walkway includes accessible sidewalks and curb ramps with detectable warnings. 28 CFR §35.151(c) and (e) (curb ramps), ADAAG 4.3-4.5 (accessible routes), 4.7 (curb ramps with detectable warnings), 4.29 (detectable warnings). Continuously maintained sidewalks are required by the case of *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002), cert. denied, 123 S.Ct. 2639 (2003). Accessible pedestrian signals and signs must be considered, with a reasonable and consistent plan to facilitate safe street crossings. 28 CFR §35.151(c); 23 U.S.C. §217(g)(2). (9-12-06)

Funding

30. *What sources of funding may be used to comply with ADA and Section 504 requirements?*

Federal Funding Opportunities for Pedestrian Projects and Programs

ACTIVITY	NH S	ST P	HSI P	RH C	T E	CMA Q	RT P	FT A	Tr E	B RI	40 2	PL A	TCS P	FL H	BY W	SRT S
Pedestrian plan		*	*			*						*	*			
Paved shoulders	*	*	*	*	*	*				*			*	*	*	
Shared-use path/trail	*	*	*		*	*	*			*			*	*	*	*

Recreation al trail						*							*		
Spot improvement program		*	*		*	*							*		*
Maps		*			*	*				*		*			*
Trail/highway intersection	*	*	*		*	*	*						*	*	*
Sidewalks, new or retrofit	*	*	*	*	*	*		*	*	*			*	*	*
Crosswalks , new or retrofit	*	*	*	*	*	*		*	*				*	*	*
Signal improvements	*	*	*	*	*	*							*		*
Curb cuts and ramps	*	*	*	*	*	*							*		*
Traffic calming		*	*	*									*		*
Safety brochure/book		*			*	*				*			*		*
Training	*	*	*		*	*	*				*		*		*

NHS National Highway System

TrE Transit Enhancements

STP Surface Transportation Program

BRI Bridge (HBRRP)

**HSIP Highway Safety Improvement
Program**

402 State and Community Traffic Safety Program

RHC Railway-Highway Crossing Program

PLA State/Metropolitan Planning Funds

TE Transportation Enhancement Activities	TCSP Transportation and Community and System Preservation Program
CMAQ Congestion Mitigation/Air Quality Program	FLH Federal Lands Highways Program
RTP Recreational Trails Program	BYW Scenic Byways
FTA Federal Transit Capital, Urban & Rural Funds	SRTS Safe Routes to School

32. Each program has its own specific requirements and provisions. Further details on these sources of funding may be found in the following memo: *Flexible Funding for Highways and Transit and Funding for Bicycle & Pedestrian Programs*, February 6, 2006, at www.fhwa.dot.gov/hep/flexfund.htm. (9-12-06)

Maintenance

31. *What obligation does a public agency have regarding snow removal in its walkways?*
A public agency must maintain its walkways in an accessible condition, with only isolated or temporary interruptions in accessibility. 28 CFR §35.133. Part of this maintenance obligation includes reasonable snow removal efforts. (9-12-06)
32. *What day-to-day maintenance is a public agency responsible for under the ADA?*
As part of maintenance operations, public agencies' standards and practices must ensure that the day-to-day operations keep the path of travel on pedestrian facilities open and usable for persons with disabilities, throughout the year. This includes snow removal, as noted above, as well as debris removal, maintenance of accessible pedestrian walkways in work zones, and correction of other disruptions. ADAAG 4.1.1(4). Identified accessibility needs should be noted and incorporated into the transition plan. (9-12-06)

Criteria

33. *What accessibility training is available?*
FHWA has the following training courses available:
1. National Highway Institute: Pedestrian Facility Design, Course Number 142045. See www.nhi.fhwa.dot.gov/training/brows_catalog.aspx, and search for Course 142045.
 2. Association of Pedestrian and Bicycle Professionals/FHWA: Designing Pedestrian Facilities for Accessibility. See www.apbp.org or contact: Judy Paul at 609-249-0020.
 3. Resource Center Civil Rights Team: Designing Pedestrian Facilities for Accessibility. Contact: Deborah Johnson at 410-962-0089.
34. *Where is information on the criteria to be used in developing accessible facilities?*
The following list of documents contains resources from several agencies and organizations
US Access Board: The Access Board is the Federal agency responsible for developing ADA design standards. The following publications on accessible pedestrian design are available on the Board's Web site at www.access-board.gov:
- o Accessibility Guidelines (ADAAG)
 - o Notice of Availability of Draft Public Rights-of-Way Guidelines
 - o Accessibility Guidelines Accessible Public Rights-of-Way Design Guide
 - o Pedestrian Access to Roundabouts
 - o Detectable Warnings: Synthesis of US and International Practice
 - o Accessible Pedestrian Signals
 - o Advisory Committee Report: *Building a True Community*
 - o Accessible Public Rights-of-Way

- Interfacing Accessible Pedestrian Signals and Traffic Signal
- Controllers

Call 1-800-872-2253, 1-800-993-2822 (TDD) to order the US Access Board Video, *Accessible Sidewalks: Design Issues for Pedestrians with Disabilities*

- Program 1: Pedestrians who use wheelchairs
- Program 2: Pedestrians who have ambulatory impairments
- Program 3: Pedestrians who have low vision
- Program 4: Pedestrians who are blind

The Federal Highway Administration: Pedestrian documents and reports are available at www.fhwa.dot.gov/environment/bikeped/publications.htm. A bicycle and pedestrian publications order form is at www.fhwa.dot.gov/environment/bikeped/order.htm.

Research and best practices design publications on pedestrian accessibility:

- *Designing Sidewalks and Trails for Access, Part I, A Review of Existing Guidelines*, www.fhwa.dot.gov/environment/sidewalks/ (electronic formats only: hard copies out of print).
- *Designing Sidewalks and Trails for Access, Part II, Best Practices Guide*, www.fhwa.dot.gov/environment/sidewalk2/ (electronic formats only: hard copies out of print, HTML version incorporates all the changes listed in the errata sheet: www.fhwa.dot.gov/environment/bikeped/errata.htm).
- Design Guidance Accommodating Bicycle and Pedestrian Travel:
- A Recommended Approach, A DOT Policy Statement on Integrating Bicycling and Walking into Transportation Infrastructure.
- *Manual on Uniform Traffic Control Devices (MUTCD)* provides the standards for traffic control devices and includes guidance on Accessible Pedestrian Signals, Chapter 4E, and Temporary Traffic Control Elements, Chapter 6D. The MUTCD is available at <http://mutcd.fhwa.dot.gov>.
- Detectable Warnings Memorandum (July 30, 2004).
- Detectable Warnings Memorandum (May 6, 2002): FHWA and the US Access Board encourage the use of the latest recommended design for truncated domes.

Accessible Pedestrian Signals

- Synthesis and Guide to Best Practices Web site - this Web site provides overall information on installation criteria and design considerations.
- Synthesis and Guide to Best Practices Article - this article provides the latest recommended technical specifications for installing accessible pedestrian signals.
- FHWA Pedestrian and Bicycle Safety - includes pedestrian and bicycle safety resources. http://safety.fhwa.dot.gov/ped_bike/ped/index.htm.
- FHWA Pedestrian and Bicycle Safety Research - provides information on issues and research related to improving pedestrian and bicyclist safety. www.tfhrc.gov/safety/pedbike/index.htm.

Other DOT Web sites

- U.S. Department of Transportation Accessibility Web site - The Department is committed to building a transportation system that provides access for all Americans. See www.dot.gov/citizen_services/disability/disability.html.
- Bureau of Transportation Statistics (BTS), Freedom to Travel,

(www.bts.gov/publications/freedom_to_travel/), a report on the travel issues for people who have disabilities.

Institute of Transportation Engineers

- Alternative Treatments for At-Grade Pedestrian Crossings (an informational report which documents studies on crosswalks and warrants used by various entities).
- ITE's Web site, www.ite.org/accessible/, has information on accessible intersection design, *Electronic Toolbox for Making Intersections More Accessible for Pedestrians Who are Blind or Visually Impaired*

Informational Web sites

- Accessible Design for the Blind: information and research on making travel safer and accessible for pedestrians with disabilities, www.accessforblind.org.
- The Pedestrian/Bicycle Information Center (sponsored by FHWA):
 - www.walkinginfo.org
 - www.bicyclinginfo.org

Definitions

Accessible.

Describes a site, building, facility, or portion thereof that complies with the ADA Accessibility Guidelines. (ADAAG 3.5)

Accessible Route.

A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts. (ADAAG 3.5)

Accessible Space.

Space that complies with the ADAAG. (ADAAG 3.5)

Alteration.

An alteration is a change to a building or facility that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. (ADAAG 3.5)

Further, each facility or part of a facility altered by, on behalf of, or for the use of, a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. (28 CFR §35.151(b))

Circulation Path.

An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings. (ADAAG 3.5)

Designated agency.

The Federal agency designated to oversee compliance activities for particular components of State and local governments. (28 CFR §35.104)

Detectable Warning.

A standardized surface feature built in or applied to walking surfaces or other elements to warn visually

impaired people of hazards on a circulation path. (ADAAG 3.5)

Discrimination.

Denying handicapped persons the opportunity to participate in or benefit from any program or activity. (28 CFR §35.149)

Facility.

All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site. (28 CFR §35.104; ADAAG 3.5)

Maximum Extent Feasible.

In alteration projects, an ADA-required accessibility improvement must be installed to the maximum extent feasible; that is, to the maximum extent technically, or physically, feasible. (ADAAG 4.1.6(1)(j))

Public Entity.

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government. (42 U.S.C. §12131)

Public Facility.

A facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to title II of the ADA and 28 CFR Part 35 or 49 CFR §§ 37.41, 37.43. (28 CFR §35.104)

Public Use.

Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned. (ADAAG 3.5)

Undue Burden.

In determining whether financial and administrative burdens are undue in making decisions program-wide in the transition plan, a public agency must consider all of that public agency's resources available for use in the funding and operation of the service, program, or activity. (29 CFR Part 35, App. A, discussion of §35.150, ¶ 6)

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United States Department of Transportation - **Federal Highway Administration**

Attachment B

2010 Specifications

SPECIAL PROVISION Local Government / RMA / Non-Standard Contracts

Disadvantaged Business Enterprise in Federal-Aid Construction

Description. The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

Article A. Disadvantaged Business Enterprise in Federal-Aid Construction.

1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this contract as follows:
 - a. The prime contractor (Contractor) will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the approved DBE Program, or show a good faith effort to meet the DBE goal for this contract.
 - b. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT financially assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Entity deems appropriate subject to review by the Department.
 - c. The requirements of this Special Provision shall be physically included in any subcontract.
 - d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good

faith effort to meet the commitment. The Entity will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days, excluding national holidays, from receipt of the information outlined in this Special Provision under Article A.3, "Contractor's Responsibilities." If the requirements of Article A.3 are met, the conditional situation will be removed and the contract will be forwarded to the Contractor for execution.

2. Definitions.

- a. "Department" means the Texas Department of Transportation.
- b. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, and including the operating administrations, i.e. the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- c. "Federal-Aid Contract" is any contract between the Texas Department of Transportation and a Contractor at any tier, or Entity and a Contractor at any tier which is paid for in whole or in part with DOT financial assistance.
- d. "Entity" means local government agency, MPO, RMA, etc.
- e. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- f. "Disadvantaged Business Enterprise" or "DBE" means a firm certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26 Subparts D and E.
- g. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of 49 CFR Part 26 Subpart C and this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- h. "Manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- i. "Regular Dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

To be a Regular Dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A Regular Dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of Regular Dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. *Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a Regular Dealer.

*"Broker" is an intermediary or middleman that does not take possession of a commodity or act as a Regular Dealer selling to the public.

- j. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.
- k. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification in their region, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities, including TxDOT, to serve as certifying agents for Texas in specified regions. Applicants for DBE certification may be directed to the TUCP internet site for more information at:

[//www.txdot.gov/business/business_outreach/tucp.htm](http://www.txdot.gov/business/business_outreach/tucp.htm)

- 3. **Contractor's Responsibilities.** These requirements must be satisfied by the Contractor.
 - a. After conditional award of the contract, the Contractor shall submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Entity's contracting office not later than 5:00 p.m. on the 10th business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed seven (7) business days, excluding national holidays, may be granted based on documentation submitted by the Contractor. The Entity shall submit the DBE Commitment Agreement package to the Department's Office of Civil Rights in Austin, Texas not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of the contract. The DBE Commitment Agreement package is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the contract.

- b. DBE prime contractors who subcontract with DBEs may receive credit toward the DBE goal for work performed by the DBE's own forces and work subcontracted to DBEs. A Contractor must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form No. SMS.4902. The completed form is provided to the Entity with a copy to the TxDOT District Office responsible for overseeing the project.
- c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.
 - Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.
 - Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a Bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the

Contractor to perform the work of the contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. nonunion employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractor's efforts to meet the project goal.
 - Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
 - Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
 - If the Entity determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the TxDOT District Office responsible for overseeing the project. Opportunity for further appeals will be addressed by the TxDOT Office of Civil Rights.
- d. Should the Bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the Entity can take remedial financial action as provided by the Entity's/Department's rules or practices or reference to 43 TAC §9.56, as a guideline when the Entity does not have uniform rules or practices for non-compliance with the terms of its contracts.

All contract and project information shall be submitted directly to the Entity and with a copy to the TxDOT District or Office responsible to oversee the project.

- e. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Article A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor shall make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE to the extent needed to meet the contract goal. The Contractor shall submit a completed Form No.4901, "DBE Commitment Agreement," and Form No. 2228 "Disadvantaged Business Enterprise (DBE) Request for Substitution for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Entity. Prior to approving the substitution, the Entity will request a statement from the DBE about the circumstances

of its subcontract's termination. The contractor must have a written consent prior to substitution. A copy of all documentation shall be provided to the TxDOT District Office responsible to oversee the project.

- f. The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records, reports, efforts and contacts made to subcontract with DBEs.
- g. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

4. Eligibility of DBEs.

- a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.
- b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's OCR. An update of the Directory can be found on the Internet at

<http://www.dot.state.tx.us/business/tucpinfo.htm>.

- c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Article A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.
- d. Only DBE firms certified at the time of execution of a contract, subcontract, or purchase order are eligible for DBE goal participation.

5. Determination of DBE Participation. When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the Contractor toward DBE goals:

- a. The total amount paid to the DBE for work performed with the DBE's own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.
 - (1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of

a contract or purchase order. A DBE is considered to perform a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

A minimum of one CUF Project Site Review (CUFPSR) will be conducted by the Entity using Department Form 2182 on all DBE firms working on the project.

In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, Contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (if applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

In all cases, Contractor or other non-DBE subcontractor assistance will not be credited toward the DBE goal.

- (2) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to seventy percent (70%) of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

- (3) A DBE trucking firm who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least one (1) fully licensed, insured, and operational truck used on the contract.
 - (a) The entity shall verify ownership of all trucks prior to commencement of work of the DBE trucking firm.

- (b) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates with drivers it employs.
 - (c) The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
 - (d) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on its sub-contract. Additional participation by non-DBEs receive credit only for the fee or commission it receives as result of the lease arrangement.
 - (e) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.
 - (f) The DBE Trucking Firm shall submit Form 2371, "Trucking Credit Worksheet", within 10 calendar days of the end of the month to the Prime Contractor. The prime shall submit a copy of Form 2371 with the DBE Monthly Progress Report.
- (4) When a DBE is presumed not to be performing a CUF the TxDOT District Office responsible to oversee the project will be notified. The DBE may present evidence to rebut this presumption.
- c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- (1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (The definition of a DBE manufacturer is found at Article A.2.h. of this Special Provision.)
 - (2) If the materials or supplies are purchased from a DBE Regular Dealer, count 60% of the cost of the materials or supplies toward DBE goals. (The definition of a DBE Regular Dealer is found at Article A.2.i. of this Special Provision.)
 - (3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a Regular Dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the

delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

- (4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT financially assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- d. Should the DBE firm request assistance in the form of a joint check and the contractor chooses to assist the DBE firm, other than a manufacturing material supplier or Regular Dealer, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Entity, prior to implementing the use of joint check arrangements with the DBE. The Contractor shall submit to the Entity, Joint Check Approval Form 2178 and provide copies of cancelled joint checks to the Entity upon request if the joint check arrangement is approved. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier. A copy of the completed form is to be provided to the TxDOT District Office responsible for overseeing the project.

- e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.
- f. No DBE goal credit will be allowed for the period of time determined by the Entity that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the Entity. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable and as required under Article A.3.e.

6. Records and Reports.

- a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE race-neutral participation. Report payments made to non-DBE firms. The monthly report is to be

sent to the Entity with a copy to the TxDOT District Office responsible to oversee the project. These reports will be due within fifteen (15) days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form No. SMS.4903, DBE Progress Report, is to be used for monthly reporting. Form No. SMS.4904, DBE Final Report, is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report must be submitted to the Entity with copies to the TxDOT District Office responsible for overseeing the project and to the TxDOT Office of Civil Rights. These forms may be obtained from the Department or may be reproduced by the Contractor. The Entity may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Entity's or Department's project number, as applicable.

- b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.
- c. All such records must be retained by the Contractor and the Entity for a minimum of four (4) years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT operating administration.
- d. Prior to receiving final payment, the Contractor shall submit Form No. SMS.4904, DBE Final Report. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Article A.3.c. of this Special Provision, must be submitted with the DBE Final Report. A copy of the completed form is provided to the TxDOT District Office responsible for overseeing the project.

7. Compliance of Contractor.

- a. To ensure that DBE requirements of this DOT financially assisted contract are complied with, the Entity will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review by the Entity of monthly reports submitted to the Entity by the Contractor indicating his progress in achieving the DBE contract goal and by compliance reviews conducted on the project site by the Entity and by the Department, as needed.
- b. The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Entity if it withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract. Copies of these documents will be provided to the Entity and to the TxDOT District Office responsible for overseeing the project.

- c. Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Entity.
- d. The Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies and/or materials from the Contractor or its affiliates is not allowed.
- e. When a DBE subcontractor, named in the commitment under Article A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the Contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.
- f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of the contract. In such a case, the Entity or the Department, as appropriate, reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or such other remedy or remedies as the Entity deems appropriate, subject to review by the Department.

Article B. Race-Neutral Disadvantaged Business Enterprise Participation.

- 1. **Policy.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means.
 - a. If there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds.
 - b. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT financially assisted contracts. Failure by the Contractor to carry out these

requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Entity deems appropriate, subject to review by the Department.

2. **Reports.** Race-Neutral DBE participation on projects with no DBE goal shall be reported on Form No. SMS.4903, DBE Progress Report and submitted to the Entity each month and at project completion. Copies of payment documents should be sent to the TxDOT District Office responsible for project oversight. Payments to DBE firms are reported on Form No. SMS.4903 are subject to the requirements of Article A.5, "Determination of DBE Participation."

Attachment C

§20.10 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801 et seq.).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

ATTACHMENT D

DBE Program Compliance Guidance for Local Government Agencies

OVERVIEW:

The DBE Program as authorized by 49 CFR, Part 26 ensures nondiscrimination in the award and administration of United States Department of Transportation contracts. The DBE Program applies to a Local Government Agency's highway contracts, funded in part or whole, from federal funds received through TxDOT and the Federal Highway Administration (FHWA). A Local Government Agency (LGA) may use TxDOT's DBE Program through a Memorandum Of Understanding (MOU). The MOU is the agreement that allows LGA's to use TxDOT's DBE Program and identifies the responsibility of each LGA as it pertains to DBE Program.

DBE annual goals are established by the Business Opportunity Programs Office (BOP) for the department's DBE Federal-Aid Highway Construction Programs. Individual contract goals are established by LGA with input from the BOP Office.

The BOP Office is responsible for administering the department's DBE Program. The BOP office, in conjunction with the LGA, will be responsible for monitoring the DBE Program and ensuring compliance. In an effort to effectively monitor the DBE Program, the DBE Program Compliance Guidance has been created and implemented. The LGAs will play a vital role in ensuring proper administration and compliance with the DBE Program.

GENERAL DBE PROGRAM PROCESS:

Annually, BOP will develop an overall goal for DBE participation in projects receiving federal funds. The objective is to achieve as much of the goal through "race-neutral" means as practical. This means that DBEs will participate in projects in the routine course of business and a specific project goal will not be assigned. If sufficient DBE participation is not anticipated through race-neutral means, "race-conscious" provisions are implemented and individual projects goals are assigned based on the availability of DBE firms to perform work within the scope of the project. In Fiscal Year 2005 and 2006, approximately one-half of the overall goal was achieved by race-neutral means.

The most current version of the DBE Special Provision is included in the bid documents of all federally funded projects. The Provision is divided into race-conscious and race-neutral sections. Race-neutral projects do not have a specific project goal while race-conscious projects will have a minimum goal to be achieved by the contractor to assure compliance with the terms of the

contract. The goal will be a percentage of the contract amount and is listed in the bid documents.

For projects with a goal, the contractor must submit a list of DBE firms the contractor commits to use to fulfill the goal as stated in the DBE Special Provisions. Once approved, this list forms the basis for project monitoring. The LGA monitors all federally funded projects that have DBE work to be counted toward meeting the annual goal. Monitoring is similar for race-neutral and race-conscious projects, but additional steps are required on race-conscious projects when the contractor does not meet the project goal or wants to substitute DBE firms for those listed in the contractor's commitment.

At the end of the project, actual DBE participation is totaled and credited to the annual goal for both race-neutral and race-conscious projects. Monitoring throughout the project gives assurance that credit is given for work accomplished in compliance with the specifications and statutes.

DBE PROGRAM COMPLIANCE GUIDANCE:

There are three key documents used in implementation and management of the DBE Program; the actual program as approved by FHWA, the current Special Provision to be included in all projects with federal funds, and a TxDOT Standard Operating Procedures Manual (SOP). This SOP contains the following Sections:

- A. DBE Certification Program
- B. Withdrawal, Denial, Surrender, Decertification and Appeal Program
- C. Goal Setting, Counting DBE Participation, and Data Reporting
- D. DBE Commitments, Good Faith Efforts, and Substitutions/Replacements
- E. Joint Check Agreements
- F. Prompt Payment and Retainage Monitoring and Enforcement
- G. Commercially Useful Function Program Review
- H. DBE Third Party Challenges

SECTION A: DBE CERTIFICATION PROGRAM
SECTION B: WITHDRAWAL, DENIAL, DECERTIFICATION, AND APPEAL
PROGRAM PROCEDURES

General: In regards to Section A and B, the LGA does not have any responsibility regarding the DBE Certification Program as it relates to certification, withdrawal, denial, decertification and certification appeal procedures. As such, Section A and B are not part of the DBE Program Guidance for LGA.

Local Government Agency Procedures: The BOP Office and other TUCP Certifying Agencies have primary responsibility for all DBE certification actions. The LGA does not have any direct responsibility but may be requested to provide information or assistance to BOP or other TUCP Certifying Agencies regarding DBEs that are working on LGA federally-funded projects.

The LGA must be familiar with the TxDOT internet site www.dot.state.tx.us, TUCP Directory and use the information as appropriate for their monitoring activities.

SECTION C: GOAL SETTING, COUNTING DBE PARTICIPATION, AND DATA REPORTING

General: BOP is responsible for developing TxDOT's annual goal for DBE participation in projects funded by FHWA. The annual goal is comprised of race-neutral and race-conscious participation. For race-conscious participation, the LGA will assign a DBE goal for appropriate projects.

Work completed by a DBE will be counted toward the overall goal if the work is actually performed by the DBE (i.e. the DBE performs a "Commercially Useful Function" (CUF). CUF monitoring is discussed elsewhere in this document.

By special provision, the contractor must maintain certain records and submit certain reports. The contractor's records must be made available to LGA, TxDOT and FHWA on request. The following reports are submitted to LGA:

1. *DBE Program Commitment Agreement Form*
2. *DBE Monthly Project Report*
3. *DBE DBE/HUB Final Report*
4. *Prompt Payment Certification*

Local Government Agency Procedures:

- ☐ **Step 1** – Receive reports from the various sources and distribute as appropriate. The original of all reports should be kept with the official project records.
- ☐ **Step 2** – Verify the accuracy of DBE payments by comparing the *DBE Monthly Progress Report* to the *Prompt Payment Certification*.
- ☐ **Step 3** – Keep a running total of actual payments to DBE firms by entering information from *DBE Monthly Project Report* in subcontractors monitoring system.
- ☐ **Step 4** – Review the contractor's *DBE DBE/HUB Final Report* to ensure that DBE/SBE contract requirements have been satisfied.

SECTION D: DBE COMMITMENTS, GOOD FAITH EFFORTS, AND SUBSTITUTION REPLACEMENTS

General: This Section does not apply to race-neutral projects.

For projects with a specified percentage DBE goal, contractors make a commitment to meet the goal by signing the proposal and submitting a bid. Once the low bidder is determined and the contract is conditionally awarded, the contractor must submit a *DBE Commitment Agreement Form* or a *Pre-Good Faith Effort Review*. The *DBE Commitment Agreement Form* lists bid items and DBEs the contractor intends to use to fulfill the project DBE goal. The DBE Commitment Agreement Form is reviewed by the LGA to determine the appropriate DBE credit that will be allowed for each DBE. DBE Material Suppliers and Truckers have to provide the documentation at the time of commitment that supports the level of DBE credit that will be approved for each DBE. The contractor submits a *Pre-Good Faith Effort Review* if they believe they made every reasonable effort to do so but still cannot commit to meeting the goal. In either case, the form is submitted to the LGA for their action.

During the life of the project, LGA monitors the contractor's progress toward meeting the goal. If it appears that the goal may not be achieved, the contractor must show that they made a Good Faith Effort (GFE) to meet the goal. If justified, the GFE is approved. The contractor may also request that a different firm be substituted for one named in the *DBE Commitment Agreement Form*. The BOP Office will conduct periodic reviews of the LGA's projects to ensure compliance with the DBE Program requirements.

Local Government Agency Procedures:

Contract award

- ☐ **Step 1** – LGA receives appropriate submission from the contractor and renders final compliance determination. LGA will keep informed of any adverse issues encountered during their review and approval process. After all issues are resolved, LGA approves contractor's commitment, enters information into their subcontractor monitoring system, and notifies the prime, and the DBE of their approval.
- ☐ **Step 2** – Contractor assures that a copy of *DBE Commitment Agreement Form* or *Notification of Compliance Letter* is transmitted to the project personnel for inclusion in the project records and for use in monitoring during construction.

Post GFE Review

- ☐ **Step 1** – Determine actual goal achievements at the end of the project by reviewing their subcontractor monitoring programs, the

final estimate, and the Contractor's *DBE/HUB Final Report*. If the contractor did not meet the specified DBE goal, start Post GFE review by having the project personnel send the contractor a *Post Award GFE Information Request Letter*.

- ❑ **Step 2** – Assist the project personnel as requested in analyzing the contractor's documentation of GFE.
- ❑ **Step 3** – If the contractor's GFE is deficient, notify the contractor in writing, giving the contractor an opportunity to appeal the determination and/or provide additional information.
- ❑ **Step 4** – Complete a *Post-GFE Review Report* and prepare final disposition. Provide the BOP Office with a copy of the final disposition.

Substitutions/Replacements

- ❑ **Step 1** – Review documentation associated with the contractor's request.
 - *DBE Commitment Agreement* for DBE to be substituted. Assure that the contractor provides all of the information requested.
 - Written justification from the contractor listing reasons the DBE is being substituted.
- ❑ **Step 2** – Verify accuracy of the contractor's documentation by discussing circumstances with the project personnel as necessary.
- ❑ **Step 3** – Request a written statement from the DBE acknowledging they are being replaced. Consider any additional information the DBE may offer.
- ❑ **Step 4** – Determine whether the contractor is in compliance with the DBE special provision.
- ❑ **Step 5** – Prepare a *Substitution Form* and send to the project personnel for approval.

SECTION E: JOINT CHECK AGREEMENTS

General: The contractor may choose to assist a DBE firm by acting as a guarantor for payment of materials used by a DBE by the use of joint checks. To be eligible, the contractor must make joint checks available to all subcontractors and the DBE must agree to the arrangement. The contractor issues a joint check to the DBE and the material supplier and the DBE must issue the joint check to the material supplier. If approved by the LGA, this arrangement does not count against the DBE goal.

Local Government Agency Procedures:

- ☐ **Step 1** – Project personnel receives *DBE Joint Check Approval* from the contractor. Assist the project personnel in determining compliance with the Special Provision as requested. Project personnel sends signed *Approval* to the contractor by letter with copies to the DBE.
- ☐ **Step 2** – Compare the *DBE Monthly Progress Report* and *Prompt Payment Certification Form* for reasonable consistency.
- ☐ **Step 3** – Request a copy of cancelled joint checks for the months the contractor issued a joint check to each DBE with an approved *DBE Joint Check Approval*. Review the joint checks to ensure that payment was processed through the DBE.
- ☐ **Step 4** – If two consecutive reviews for the same DBE show no discrepancies, the LGA may reduce the frequency of requesting copies of cancelled joint checks.
- ☐ **Step 5** – Submit compliance questions to BOP for assistance as necessary.

SECTION F: PROMPT PAYMENT AND RETAINAGE MONITORING AND ENFORCEMENT

General: The contractor is paid for satisfactorily completed work every month through the monthly estimate process. This payment is for the work the contractor and all subcontractors perform. The contractor must pay subcontractors for the satisfactorily completed work within 10 days after the contractor receives payment for the subcontractors work from LGA.

Retainage is an amount of money withheld to ensure that the contractor fulfills all contract requirements, including submitting all documents at the end of the project. Retainage normally ranges from 3% – 5% of the amount paid and is not released until the final estimate is processed. It is common practice for the contractor to withhold retainage from their subcontractors. However, the contractor must release the total amount retained when the subcontractor satisfactorily completes all their work on the project. Depending on the scope of the subcontract, this may occur long before all work on the contract is finished.

Local Government Agency Procedures:

- ☐ **Step 1** – The project personnel receives a monthly *Prompt Payment Certification* from the contractor before the end of the month following receipt of payment from the LGA. This certification is kept in the project records and will be used only for dispute resolution.
- ☐ **Step 2** – Assist the project personnel as requested in the event a subcontractor alleges they did not receive prompt payment from the contractor. The project personnel must have the complaint in writing.
- ☐ **Step 3** – During visits to the project site, randomly spot check whether certifications are received in the time specified. Take appropriate action if non-compliance issues are discovered.

Date: January 12, 2012

Agenda Item No: CONSENT ITEMS - D.

I. Subject:

Consider authorizing the City Manager to execute a City Pride Sign Agreement with TxDOT for the 9/11 Memorial sign on Kennedale Parkway.

II. Originated by:

Bob Hart, City Manager

III. Summary:

In order to place a sign along Kennedale Parkway directing visitors to the 9/11 Memorial, TxDOT requires that the City enter into a City Pride Sign Program Agreement. The standard agreement outlines the city's responsibilities in erecting such a sign. The agreement and sign request is included in the packet.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	City Pride Sign Agreement	City Pride Signs Forms.pdf
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TxDOT Form 2020
(rev. 7/7/2005)

Application for Participation in the City Pride Sign Program

Date: January 12, 2012

To the Texas Department of Transportation, c/o District Engineer, _____, Texas

This form must be received at least 14 days prior to the requested date of placement.

Formal notice is hereby given that the city of KENNEDALE, TEXAS proposes to place
a City Pride sign within the right-of-way of Business 287 (Kennedale Parkway) 20 feet
southeast of Municipal Drive
in Tarrant County, Texas.

☐ Check here for placement of multiple signs and submit the information requested on the
Supplemental Sheet (Page 2).

The City Pride sign will be placed eight (8) feet from the edge of the roadway.

NOTE: All City Pride signs shall conform to TxDOT Standards and specifications.

The City Pride sign will have the following characteristics:

Mounting Height: 7 feet Sign Height: 30 inches Sign Width: 30 inches

Thickness: 0.080" Sign Material: Aluminum substrate prismatic sheeting

Dimensions of Sign Support: 2 7/8" x 10' Material of Sign Support: Steel

Proposed Text: Kennedale 9/11 Memorial -->

Background Color: Brown Legend Color: White

Provide sketch here or on an attached sheet:

please see attached sheet

By (print): Larry Hoover

Signature: _____

Address: 405 Municipal Drive

Kennedale TX 76060

Phone: 817-985-2170

Date: _____
City: _____

Supplemental Sheet

Application for Participation in the City Pride Sign Program

The City Pride sign will be placed _____ feet from the edge of the roadway.

Mounting Height: _____ Sign Height: _____ Sign Width: _____

Thickness: _____ Sign Material: _____

Dimensions of Sign Support: _____ Material of Sign Support: _____

Proposed Text: _____

Background Color: _____ Legend Color: _____

The City Pride sign will be placed _____ feet from the edge of the roadway.

Mounting Height: _____ Sign Height: _____ Sign Width: _____

Thickness: _____ Sign Material: _____

Dimensions of Sign Support: _____ Material of Sign Support: _____

Proposed Text: _____

Background Color: _____ Legend Color: _____

The City Pride sign will be placed _____ feet from the edge of the roadway.

Mounting Height: _____ Sign Height: _____ Sign Width: _____

Thickness: _____ Sign Material: _____

Dimensions of Sign Support: _____ Material of Sign Support: _____

Proposed Text: _____

Background Color: _____ Legend Color: _____

The City Pride sign will be placed _____ feet from the edge of the roadway.

Mounting Height: _____ Sign Height: _____ Sign Width: _____

Thickness: _____ Sign Material: _____

Dimensions of Sign Support: _____ Material of Sign Support: _____

Proposed Text: _____

Background Color: _____ Legend Color: _____

STATE OF TEXAS §

COUNTY OF TRAVIS §

CITY PRIDE SIGN AGREEMENT

THIS AGREEMENT, made on the dates hereinafter shown, by and between the State of Texas, hereinafter called the "State," represented by the Executive Director of the Texas Department of Transportation, acting for and in behalf of the Texas Transportation Commission, and the City of KENNEDALE, TEXAS, hereinafter called the "City."

WITNESSETH

WHEREAS, the State owns, operates, and maintains a system of highways for public use and benefit, in the City of KENNEDALE, TEXAS; and

WHEREAS, the City desires and has requested authority to construct or have reconstructed the City Pride Sign along the roadway(s) of:

US Business 287,
,
, and

at the location(s) shown on construction plans, attached hereto and made part of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, and in accordance with Title 43, Texas Administrative Code, Chapter 25, Subchapter H, it is agreed as follows:

AGREEMENT

Article 1. General

The State grants to the City permission to construct or to have reconstructed, the City Pride Sign(s) within the right-of-way as shown on construction plans and to be maintained by the City as stipulated in the Municipal Maintenance Agreement with the City of KENNEDALE, TEXAS, dated January 12, 2012.

Article 2. Plans, Specifications and Construction Procedures

A. The City, at no cost to the State, shall prepare or have prepared, complete construction drawings, plans and specifications for the proposed City Pride Sign(s), State approved breakaway sign supports, foundations, appurtenances, and incidental items. No construction work shall be performed on highway right-of-way until these plans and specifications have been approved in writing by the State. After such approval has been given, no changes or alterations shall be made without the written approval of the State.

B. The plans and specifications shall be submitted to the District Engineer, Texas Department of Transportation, (TxDOT District), Texas for approval. Any changes or alterations which become necessary during the course of the work shall also be submitted to the District Engineer for approval.

C. The City, its contractor(s), or agents shall submit a traffic control plan as required and in accordance with the Texas Manual on Uniform Traffic Control Devices to direct and

protect vehicular and pedestrian traffic while construction work, including related activities, is in progress. Details and descriptions of these traffic handling measures shall be included in the plans and specifications when submitted for approval. If, during construction, it becomes necessary or desirable to modify the traffic control measures as specified, prior approval must be obtained from the State's District Engineer in (TxDOT District).

D. The City shall construct, or have constructed, at its entire cost and expense, the proposed City Pride Sign(s) and incidental items referred to in paragraph 1 and 2 above. The State shall have the right to inspect the work on highway right-of-way at any time during the progress of the work, and to make final inspection upon completion. Construction operations will be conducted in a manner acceptable to the District Engineer or their authorized representative. The City, its contractor(s) or agents shall correct any deficiencies revealed by the State's inspection of the work or of the traffic control and protection measures, where such deficiencies could have an adverse affect on public use of the highway or the safety and convenience of the traveling public.

E. Upon completion of the work authorized herein, the City shall submit copies of the as-built plans and specifications, including any changes or alterations, showing the City Pride Sign(s) in their completed state within 45 days to the State's District Engineer in (TxDOT District) for permanent records of the State.

F. The City agrees to pay all damages accruing to the State, by reason of injuries to the right-of-way, roadbed, pavement, and/or bridge owned by the State, when such damages are caused by the city's construction, operations, maintenance or rehabilitation on said roadway. Whenever funds are paid by the City to the State under this Agreement, the City shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." To the extent allowed by law, the City also agrees to indemnify and save harmless the State from any and all claims, demands, actions or causes of action, due to damage to property or injury to or death of persons arising from or growing out of or in any manner connected with work on said roadway project including, but not limited to, all court costs, attorney fees and other expenses incurred in connection with suits for such damage and shall, if so requested in writing, assist or relieve the State from defending any such suits brought against it. In addition, the City shall require its contractor(s) and subcontractor(s) to secure a policy of insurance in the maximum statutory limits for tort liability, naming the State as an additional insured under its terms, and maintain the required insurance coverages in full force and effect during any period that work is performed on the State right-of-way. Adequate insurance, as a minimum, shall mean the City contractor(s) shall furnish the State with the Texas Department of Transportation's Certificate of Insurance covering the below listed insurance coverages.

1) Worker's Compensation Insurance Amount – Statutory

2) Comprehensive General Liability Insurance

Amounts	Bodily Injury	\$600,000 combined single limit each
	Property Damage	occurrence and in the aggregate

OR

Commercial General Liability Insurance

Amounts	Bodily Injury	\$250,000 each person
	Property Damage	\$100,000 each occurrence

3) Texas Business Automobile Policy

Amounts	Bodily Injury	\$250,000 each person
	Property Damage	\$100,000 each occurrence

The State shall be included as an "Additional Insured" by Endorsement to policies issued for coverages listed in B and C above. A "Waiver of Subrogation Endorsement" in favor of the State shall be a part of each policy for coverages listed in A, B, and C above. A certified copy of these endorsements shall be submitted to the State with the evidence of coverage. The City and/or its contractor(s) shall be responsible for any deductions stated in the policy.

Article 3. Location

A. One City Pride and/or a Texas Commission on Environmental Quality (TCEQ), Texas Historical Commission (THC), Keep Texas Beautiful (KTB) Sign shall be allowed per eligible highway entrance to the City. A City Pride Sign shall be located on the right-hand side of the roadway unless otherwise approved in writing by the State. A City Pride Sign shall be located between 300 and 800 feet of the city limits at a location approved by the State. A City Pride Sign shall take advantage of the natural terrain, have the least impact on the scenic environment, avoid visual conflict within the State highway right-of-way, have a lateral offset greater than existing guide signs, not block the motorist's view of existing traffic control signs, and be placed in locations other than hanging above the highway.

B. A City Pride Sign shall not be located adjacent to the main lanes of full controlled access highway; however, a City Pride Sign may be located on the right-hand side of the access road.

C. The city may landscape the area adjacent to the City Pride Sign(s) upon written approval of the plans by the State's District Engineer in the (TxDOT District) District. Only small plants, flowers, and shrubbery will be allowed. Permanent structures or items such as large stones, masonry, berms, landscape timbers, etc. shall not be allowed. The State assumes no responsibility for watering, maintenance or damage due to State maintenance and construction activities, fire, theft or vandalism.

Article 4. City Pride Sign

A. The sign face of a City Pride Sign or the combined total area of the attachment signs displayed shall not exceed 80 square feet total. A City Pride Sign shall not contain words, symbols, or messages that:

- 1) May be construed as advertising, including, but not limited to, the offering of products and services.
- 2) Contain notification of municipal ordinances or regulations, or
- 3) Resemble official traffic control devices.

B. Banners, flags, streamers, flashing lights, or other appurtenances shall not be attached to a City Pride Sign or sign supports. Sign supports shall be galvanized metal or painted solid white.

C. A City Pride Sign shall not be illuminated internally or externally.

D. A City pride Sign may contain the name of the city, message, or slogan no greater than eight inches in height. The City may include a seal or symbol that is commonly used to represent the City.

E. If a City Pride Sign requires background material, it shall be painted brown (Sherwin Williams #2315 or equivalent) or have brown reflective material affixed to the sign face meeting State specifications. Lettering upon the brown background shall be white and may be any script or font. A white 2 inch border is optional. Lettering and border shall be

painted white (Sherwin Williams #2130 or equivalent) or have white reflective material affixed to the sign face meeting State specifications.

Article 5. Attachment Signs

A. Attachment signs or civic information signs are provided by a non-profit civic organization or governmental entity that display points of interest or geographical, recreational, cultural, or civic information. A civic organization must be located within or have a member who resides in the City, and complies with all applicable law concerning the provisions of public accommodation without regard to race, religion, color, sex, or national origin.

B. Attachment signs may be any color or combination of colors and may be in any design or shape. Attachment signs shall not be greater than 48 inches in width and 36 inches in height, and shall not consist of text, symbols, trademarks or a legend message identifying the name or abbreviation of a commercial establishment, service or product, or contain supplemental address or directional information such as meeting dates or locations.

C. A civic organization shall apply to the City for permission to display an attachment sign upon the City Pride Sign. The City shall notify/contact the civic organization in writing if the civic organization does not meet the requirements of eligibility as stated herein. The civic organization shall have 30 calendar days after written notification to meet the requirements herein.

D. The City shall approve all attachment signs and determine the order, arrangement, and duration of display. Attachment signs shall be placed upon a City Pride Sign and shall not overlap.

E. A civic organization shall have only one attachment sign per City Pride Sign unless the City and civic organization agree to said organization's multiple attachment signs upon a City Pride Sign.

F. The City shall remove an attachment sign of a participating civic organization if the civic organization ceases to exist, does not meet the requirements stated herein, or has not provided a replacement sign after 60 days of the City or State's written notification that the attachment sign is damaged, broken, faded, or has become a hazard due to failure to build to specifications, inclement weather, inadequate maintenance, accidental damage, or other cause.

Article 6. Miscellaneous

A. Signs from the TCEQ, THC, or KTB, Proud Community Program signs, shall be erected and maintained to State specifications at the sole expense of the City. Signs shall not be allowed as attachments to State signs or sign supports.

B. Attachment signs not relocated to a City Pride Sign, TCEQ, THC, or KTB signs or other approved locations will be removed by the State at the expense of the City.

C. The State shall not require fees from the City for participating in the City Pride Sign Program. The city shall not require fees from the civic organizations or governmental entities for display upon a City Pride Sign.

D. While installing or maintaining a City Pride Sign, the City shall cooperate with any State contractor working on the State highway system at that location.

E. In the event that the State determines that it is necessary to repair, construct, reconstruct and/or make any changes in the highway facility for reasons other than those specified herein, the City shall be responsible for all costs necessary for removal and relocation of the City Pride Sign.

F. The City shall remove a City Pride Sign if it has not provided a replacement sign within 60 calendar days of written notification from the State that the sign is damaged, broken, faded or has become a hazard due to failure to build to specifications, inclement weather, inadequate maintenance, accidental or other cause. After 60 days, the City Pride Sign not removed or replaced will be removed by the State at the expense of the city. The State may terminate this agreement upon default of the city.

G. This Agreement shall bind, and shall be for the sole and exclusive benefit of the respective parties and their legal successors.

IN TESTIMONY WHEREOF, the parties hereto have affixed their signatures, the City of KENNEDALE, TEXAS on the 12th day of January, 2012, and the State on the ____ day of _____, 20____.

THE CITY OF KENNEDALE, TEXAS
Executed on behalf of the City by:

By _____ Date January 12, 2012

Typed or Printed Name and Title Bob Hart
City Manager

ATTEST:

By _____ Date January 12, 2012

Typed or Printed Name and Title Amethyst G. Cirimo
City Secretary

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____

District Engineer

Date: January 12, 2012

Agenda Item No: CONSENT ITEMS - E.

I. Subject:

Consider authorizing the Mayor to execute Interlocal Agreement for Administrative Costs Funding for Section 5310 Program with Fort Worth Transportation Authority.

II. Originated by:

Amethyst G. Cirmo, City Secretary and Communications Coordinator

III. Summary:

This is an annually renewed item that covers elderly transportation services.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	Agreement	Kennedale 2012.doc
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T Contract No. _____
City Secretary Contract No. _____

**INTERLOCAL AGREEMENT
FOR ADMINISTRATIVE COSTS FUNDING FOR
SECTION 5310 PROGRAM
BETWEEN
THE FORT WORTH TRANSPORTATION AUTHORITY
AND
THE CITY OF KENNEDALE, TEXAS**

The Fort Worth Transportation Authority (“T”) and the City of Kennedale, Texas (“City”) are both local governmental entities as that term is used in Chapter 791, Interlocal Cooperation Contracts, V.T.C.A., Government Code. They shall sometimes be referred to collectively as the “Parties”.

WHEREAS, the City of Kennedale desires to provide door-to-door paratransit services for elderly and persons with disabilities within Tarrant County and does not have a transportation service nor is a member of a transportation authority; and

WHEREAS, the Fort Worth Transportation Authority is a federal grantee of the Federal Transit Administration and the Federal Transit Administration provides funding to States under Section 5310 of Title 49 of the United States Code, and the goal of the Section 5310 program is to provide transportation for elderly and disabled persons residing in cities that do not have public transportation available to them; and

WHEREAS, the Texas Department of Transportation (TxDOT) asked the T to develop and implement a Section 5310 program (TCTS) for otherwise under served communities in Tarrant County; and

WHEREAS, the Fort Worth Transportation Authority has been awarded the grant for this area and the City of Kennedale is contributing \$1,288.00 towards the administrative costs of the Section 5310 service (TCTS); and

WHEREAS, the monies will support a portion of administrative costs for the transportation services to the described peoples during a 12 month period;

The parties pursuant to City of Kennedale action and Fort Worth Transportation Authority action agrees as follows:

1. This program is called Tarrant County Transportation Services (TCTS). This transportation is provided for a variety of purposes such as medical appointments, shopping or recreation.
2. Each party represents to the other that the delegated costs of the project under the Agreement, as well as any payments made by it pursuant to this Agreement, will be made from current revenues and/or specified grant funds. Further, each Party warrants and represents to the other party that each Party has been authorized by its respective governing body to do so. Each party further represents and warrants to the other Party that any renewal of, deletion, or change to this Agreement will be in writing and authorized by its respective governing body.
3. The Fort Worth Transportation Authority will administer transportation services to the citizens of the City of Kennedale under the program known as Tarrant County Transportation Services from January 1, 2012 through December 31, 2012.
4. The Fort Worth Transportation Authority will administer demand responsive transportation services for the seniors and persons with disabilities of Kennedale according to the federal requirements of the Section 5310 grant and according to the relevant State of Texas statutes.
5. The City of Kennedale will pay the authorized amount to the Fort Worth Transportation Authority within 30 days of receipt of invoice.
6. Fort Worth Transportation Authority will provide access upon request to the Section 5310 records to the City of Kennedale.
7. Parties will comply with all applicable State of Texas and federal statutes and regulations as required by their status as a federal grantee and transit authority of the State of Texas, and federal grantee and municipality of the State of Texas, respectively.
8. The term of this agreement will begin January 1, 2012 and end December 31, 2012.
9. The City of Kennedale will be considered a participating community and the qualifying residents of Kennedale will be entitled to ride TCTS for a one-way trip fare of \$2.50.

CITY OF KENNEDALE, TEXAS

FORT WORTH
TRANSPORTATION AUTHORITY:

By: _____
Mayor

By: _____
Richard L. Ruddell
President/Executive Director

ATTEST: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney
City of Kennedale, Texas

Sylvia Hartless
General Counsel
Fort Worth Transportation Authority

Date: January 12, 2012

Agenda Item No: REGULAR ITEMS - A.

I. Subject:

Discuss and consider approval to authorize City Manager to execute contract to perform a Water & Sewer Rate Study update.

II. Originated by:

Sakura Moten-Dedrick, Director of Finance & IT

III. Summary:

As the result of an update study performed by Carolyn Marshall, the City last adjusted general water and wastewater rates in March 2009. Previous rate increases were in Sep 2005 and Sep 2004.

Just prior to the 2009 increase, the City had issued \$2.9M in new debt to complete the water connection to Fort Worth, assumed additional fund balance debt ratio requirements related to the bond issue, and the treatment charges imposed on the City by both the City of Arlington and the Trinity River Authority had also increased significantly.

To satisfy the aforementioned revenue requirements, the City needed to realize a 15% overall annual increase. Given various proposed rate structure options, Council approved a 33% increase to base water and sewer fees, as well as a 9% increase to water and sewer volume fees to try and achieve this. Senior/disabled rates were discounted by 45% versus the 50% that was historically granted.

Although Staff briefly revisits the City's rate structure annually, it did not bring forth any recommendations to Council over the last two years due to the implementation and adoption of the Stormwater Utility Program, and its associated fees.

Staff would now like to recommend that an updated Water & Sewer Rate Study be completed by Carolyn Marshall. She will work with staff over the next two months, and our intention is to bring any proposed rate adjustment recommendations back to Council in March.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:



Carolyn M. Marshall CPA

January 2, 2012

Sakura Dedrick
Director of Finance & Info Technology
City Of Kennedale
405 Municipal Drive
Kennedale, Texas 76060

Thank you for allowing me to submit this proposal for professional services to the City of Kennedale. The proposed scope of services is based on my understanding of your requirements.

I am proposing the following:

1. Update the Water & Sewer Rate Study model using FY 2012 budget for revenue requirements
2. Calculate needed rate changes and recommend rate structures in order to provide the necessary revenue requirements.
3. Attend up to 3 Council meetings or workshops to explain results.

Consumption information to be used will be several years of actual billed flows (October 2008 through September 2011).

Fee: \$8,500 to be paid in the following manner:
\$2,800 upon signing of this agreement, \$2,800 after the 1st presentation to staff, \$2,900 when the final report is issued.

City of Kennedale, Texas

Carolyn M Marshall CPA

Date: _____

Date: _____

Date: January 12, 2012

Agenda Item No: REGULAR ITEMS - B.

I. Subject:

Discuss and consider adopting AN ORDINANCE OF THE CITY OF KENNEDALE, TEXAS AMENDING CHAPTER 15, ARTICLE V AND CHAPTER 17, ARTICLE VI OF THE KENNEDALE CITY CODE (1991), AS AMENDED, TO MAKE CHANGES TO THE CITY'S ZONING REGULATIONS AND TO THE CITY'S NUISANCE REGULATIONS; ADDING DEFINITIONS OF C-WEIGHTING, FREQUENCY, OCTAVE BANDS, AND PURE TONES; AMENDING REGULATIONS GOVERNING NOISE REGULATIONS FROM 7 PM TO 8 AM FOR CERTAIN USES; PROVIDING REGULATIONS GOVERNING LOW-FREQUENCY SOUNDS AND PURE TONES; PROVIDING REGULATIONS REQUIRING AMBIENT SOUND TESTING; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

Background.

Gas drilling has taken place in Kennedale for several years, and we now have a better understanding of what can be expected to occur during drilling. Experience has shown that the city's current noise regulations are not sufficient for handling the full extent of noise problems associated with such operations and for protecting the health and welfare of the community. In addition, while most of the city's sound regulations are found in Chapter 15 of the city code, the noise regulations for oil and gas operations are located in Chapter 17, the zoning code. Moving these regulations to Chapter 15 would put all noise regulations in one place, making these codes easier to find.

For these reasons, the Planning & Zoning Commission has been drafting changes to the city codes governing noise. Case PZ 11-09 is an ordinance that removes oil & gas-related noise regulations from Chapter 17, Section 17-426 of the code and places them in Chapter 15 with the city's other nuisance noise regulations. The

ordinance also establishes regulations governing pure tones and low-frequency sounds, which are nuisance noises, and it requires ambient sound testing for proposed oil & gas operations, mining, and extracting. Many cities in the Dallas/Fort Worth area use ambient sound requirements for oil and gas operations, and a sound expert I spoke with recommended that Kennedale do the same.

The ordinance creates ambient sound limits for oil and gas operations. Many cities in the region have this kind of regulation. Included with this report are examples of ambient sound monitoring conducted by Chesapeake prior to drilling operations at the Renfro site (Little School and Sublett), the Bogi site (on Joplin), and the Case site (on Bolen). As you'll see, the ambient sound at the Renfro and Bogi sites are well below the 70 dB sound limit currently allowed. When Chesapeake's drilling and frac'ing operations come close to or reach the 70 dB limit (which is common), the impact on the surrounding neighborhoods can be considerable. Putting in place ambient sound levels for oil and gas operations helps retain the quality of life in these areas and better protects the general welfare. To make the noise regulations more uniform, the proposed ambient sound limits would also apply to manufacturing and fabrication operations from 7:00 p.m. to 8:00 a.m.

These changes are intended to address concerns from staff, the Commission, and city council, as well as comments received from residents.

Planning & Zoning Commission Review.

The Planning & Zoning Commission considered the proposed changes and held a public hearing during its meeting in September.

Table of Listing Noise Regulations

During the meeting, the Commission said it supported including a table of the noises prohibited during certain times to make these requirements easier to understand. The draft ordinance before the Council addresses this recommendation from the Commission.

Sound Dispersion

The Commission asked staff to address the issue of sound dispersion, which especially has been a problem with oil and gas operations. This issue is addressed through the proposed ambient sound testing, which requires analysis of topography and prevailing atmospheric conditions when preparing sound mitigation plans.

Maximum or Peak Sound Levels

The Commission asked staff to add regulations about peak sound, so that no matter what the ambient sound level may be in a particular area, a proposed land use could not exceed a specified level. The Commission proposed a limit of 80 decibels. The Commission understood that after its review, the draft would be reviewed by a sound expert, and both the Commission's recommendation and the expert's suggestions would be presented to Council. I spoke with a representative of Bruel & Kjaer, a well-known and respected manufacturer of sound metering equipment. He said that 80 dB was much too loud, and the limit should be set much lower. I also spoke with the Environmental Services Director in Grand Prairie, since Grand Prairie recently revised its oil and gas regulations, including the sections pertaining to noise. He said that our 70 dB limit is quite loud for a residential area. Because the city already has a maximum allowable 70 dB sound limit and is therefore assumed to be comfortable with this limit as a maximum level, staff recommends using ambient sound limits for several uses known to be potential noise nuisances (such as oil & gas operations) with a maximum level of 70 dB no matter what the ambient sound level may be.

Weighting for Low-Frequencies.

We currently use the A-weighting system in measuring sound levels in suspected nuisance cases. Research indicates that A-weighting will not be able to detect low frequency sound problems, and the sound expert I consulted confirmed that this is the case. He said when low frequency sounds are suspected, we can use both A-weighting and C-weighting (the process is described in the proposed ordinance) or unweighted measuring. Staff recommends using A-weighted and C-weighted measurements.

Public Hearing.

No one spoke at the public hearing.

Other Items.

In preparing this report, staff discussed other common sound complaints. Because the noise from the use of compression brakes by trucks on Dick Price is known to be a concern to residents there, staff recommends also prohibiting the use of unmuffled compression brakes except in emergency situations. This regulation is included in the proposed ordinance under Section 2.

Staff Recommendation.

Staff recommends approval of the proposed ordinance.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

1.	Proposed Ordinance Amending Noise Regulations	draft noise ordinance for 1-12-12 (council).doc
2.	Renfro ambient sound study	Renfro ambient study.pdf
3.	Bogi ambient sound study	Bogi ambient study.pdf
4.	Case ambient sound study	Case ambient study.pdf

Ordinance No. _____

AN ORDINANCE OF THE CITY OF KENNEDALE, TEXAS AMENDING CHAPTER 15, ARTICLE V AND CHAPTER 17, ARTICLE VI OF THE KENNEDALE CITY CODE (1991), AS AMENDED, TO MAKE CHANGES TO THE CITY'S ZONING REGULATIONS AND TO THE CITY'S NUISANCE REGULATIONS; ADDING DEFINITIONS OF C-WEIGHTING, FREQUENCY, OCTAVE BANDS, AND PURE TONES; AMENDING REGULATIONS GOVERNING NOISE REGULATIONS FROM 7 PM TO 8 AM FOR CERTAIN USES; PROVIDING REGULATIONS GOVERNING LOW-FREQUENCY SOUNDS AND PURE TONES; PROVIDING REGULATIONS REQUIRING AMBIENT SOUND TESTING; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Kennedale is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council heretofore adopted nuisance regulations codified in Chapter 15, Article V of the Kennedale City Code and noise regulations for oil & gas operations codified in Chapter 17, Article VI of the Kennedale City Code; and

WHEREAS, the City of Kennedale is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City has determined that unreasonably loud or disturbing noises cause material distress, discomfort, annoyance or injury to persons of ordinary sensibilities and, therefore, constitute a nuisance per se; and

WHEREAS, as authorized by Section 217.042 of the Texas Local Government Code, the City desires to prohibit noise nuisances within the city's corporate limits and within 5,000 feet thereof; and

WHEREAS, the City desires to consolidate noise regulations under one section of the City Code in order to facilitate better use and understanding of the City Code;

WHEREAS, a public hearing was duly held by the Planning and Zoning Commission on the 15th day of September, 2011, and by the City Council on the 12th day of January, 2012, with respect to the amendments described herein.

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

Section 1.

Section 15-151 of the Kennedale City Code, is hereby amended to read as follows:

Sec. 15-151. Definitions.

The following definitions shall apply in this article, unless otherwise indicated:

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

Ambient noise level means the total noise level associated with a given environment, being composed of sounds from all sources at the location, constituting the normal or existing level of constant environmental noise at a given location.

C-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the C-weighting network. The level so read is designated dB(C) or dBC.

Decibel (dB) means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

Dwelling means any residence, hotel, or other similarly occupied structure other than the dwelling of the person responsible for or causing the noise.

Equivalent sound pressure level (Leq) means the level of an equivalent sound which would have the same total energy as the time varying sound being evaluated and which can be measured by special sound level meters.

Frequency means the time of repetition of a periodic phenomenon, measured in Hertz (Hz).

Frequency, low means noise below the frequency range of 160 Hz (160 cycles per second).

Octave band means an interval in Hertz between two frequencies having a ratio of 2:1. For purposes of this section, octave band sound pressure levels shall be measured at any of the following center frequencies: 31.5, 63, 125, 250, 500, 1,000, 2,000, 4,000 and 8,000 Hz.

On-going activities means activities that occur on a regular or frequent basis. This definition includes permanent facilities that host activities and events. On-going activities do not include one-time events or annual activities that may receive permits pursuant to section 15-157 of this chapter. This definition does not include activities of a governmental entity or a political subdivision of the state.

Pure tones means any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this section, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies of 500 Hz and above and by 8 dB for center frequencies between 160 and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

Section 2.

Section 15-154 of the Kennedale City Code, is hereby amended to read as follows:

Sec. 15-154. - Nuisance if causes distress, discomfort, annoyance, or injury.

In addition to the prohibitions set forth in sections 15-153 and 15-155, the following acts, when conducted in such a manner or with such volume, intensity or duration as to cause material distress, discomfort, annoyance or injury to persons of ordinary sensibilities within the immediate vicinity or residing or working on adjacent properties are declared to be nuisances in violation of this chapter; but said enumeration shall not be deemed to be exclusive:

- (1) The use of any loudspeaker or amplifier.
- (2) The keeping of any animal or bird which creates frequent or long-continued noise.
- (3) The continued or frequent sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle except as a danger or warning signal, or the creation by means of any such horn or signal device of any unreasonably loud or harsh noise for any unnecessary and unreasonable period of time.
- (4) The running of any automobile, motorcycle, or vehicle so out of repair, so loaded or in such condition as to create loud or unnecessary grating, grinding, jarring, banging, or rattling noise or vibrations.
- (5) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, motorcycle, or boat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (6) The operation of any motorized vehicle off of a public right-of-way in a manner, whether by revving, racing, or running the engine in any other manner, that creates any unreasonably loud or harsh noise.
- (7) The use of motor vehicle brakes which are in any way activated or operated by the compression of the engine of the motor vehicle or any unit or part thereof unless the brakes are

muffled. It shall be an affirmative defense if said unmuffled compression brakes were used in an emergency to protect persons and/or property.

(8) Any activity or operation of equipment that creates pure tones where one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of two contiguous one-third octave bands by five (5) dB for center frequencies of five hundred (500) hertz and above, and by eight (8) dB for center frequencies between one hundred sixty (160) and four hundred (400) hertz, and by fifteen (15) dB for center frequencies less than or equal to one hundred twenty-five (125) hertz.

(9) Any activity conducted in such a manner or equipment operated in such a manner so as to create low-frequency outdoor noise levels that exceed the following decibel levels:

16 hertz octave band 65 dB

32 hertz octave band 65 dB

64 hertz octave hand 65 dB

Section 3.

Section 15-155 of the Kennedale City Code is hereby amended to read as follows:

Sec. 15-155. - Nuisance during certain times.

In addition to the prohibitions set forth in sections 15-153 and 15-154, the following acts, among others, are deemed to be nuisances that are prohibited by this chapter during the times listed:

- (1) The playing of any radio, audio equipment or other musical instrument between the hours of 10:00 p.m. and 7:00 a.m. in such manner or with such volume as to annoy or disturb the quiet, comfort, or repose of persons of ordinary sensibilities in any dwelling.
- (2) The erection, including excavation, demolition, alteration or repair work on any building, structure or site which is within one hundred (100) feet of any dwelling between the hours of 6:00

p.m. and 7:00 a.m. on weekdays, except in case of urgent necessity in the interest of public safety and convenience, and then only by permit issued under section 15-157

(3) The creation of any excessive noise on any street adjacent to any school, institution of learning, or church while the same is in session or adjacent to any hospital, which unreasonably interferes with the workings of such institutions, provided conspicuous signs are displayed in such manner indicating that the same is a school, church or hospital area.

(4) The parking or standing of any engine or motor, whether attached to a vehicle, trailer, or otherwise, left in operation for a period exceeding one (1) hour between the hours of 10:00 p.m. and 7:00 a.m., within a distance of two hundred (200) feet from any dwelling.

(5) Hydraulic fracturing, flowback, drilling, production, or other oil or gas operations or mining or extracting operations which cause the exterior noise level to exceed the ambient noise level in excess of five decibels (5 dB) between 8:00 a.m. and 7:00 p.m., or to exceed the ambient noise level in excess of three decibels (3 dB) over the ambient noise level between 7:00 p.m. and 8:00 a.m. (fracturing is not permitted between 7:00 p.m. and 8:00 a.m.). Sound shall be measured at the nearest protected use receiver's/receptor's property line or one hundred (100) feet from the nearest protected use structure (as measured to the closest exterior point of the building), whichever is closer to the receiver/receptor, Only electric motors shall be used for the purpose of pumping oil wells. Electric motors shall be used for compressors located at gas well sites. If averaging is used to measure sound levels, time periods for averaging shall not exceed three (3) minutes. Regardless of ambient noise levels, at no time may noise levels exceed 70 dB.

(6) Noise levels from manufacturing or fabrication operations in excess of three decibels (3 dB) over the ambient sound level between 7:00 p.m. and 8:00 a.m., measured at the nearest protected use receiver's/receptor's property line or one hundred (100) feet from the nearest protected use

structure (as measured to the closest exterior point of the building), whichever is closer to the receiver/receptor. Regardless of ambient noise levels, at no time may noise levels exceed 70 dB.

Table 15-1. Nuisance During Certain Times.

Table 15-1 is intended as a guide to city nuisance regulations during certain times. It does not supersede or replace the regulations shown in Section 15-155.

<u>Nuisance Type Not Permitted</u>	<u>Time</u>
<u>Audio/radio: Radio, audio equipment, or other musical instrument played in such manner or with such volume as to annoy or disturb the quiet, comfort, or repose of persons of ordinary sensibilities in any dwelling</u>	<u>10:00 p.m. to 7:00 a.m.</u>
<u>The erection, including excavation, demolition, alteration or repair work on any building, structure or site which is within one hundred (100) feet of any dwelling</u>	<u>6:00 p.m. and 7:00 a.m. on weekdays¹</u>
<u>The creation of any excessive noise on any street adjacent to any school, institution of learning, or church, adjacent to any hospital, which unreasonably interferes with the workings of such institutions²</u>	<u>When such facilities are in session, or adjacent to any hospital</u>
<u>The parking or standing of any engine or motor, whether attached to a vehicle, trailer, or otherwise, left in operation for a period exceeding one (1) hour, within a distance of two hundred (200) feet from any dwelling</u>	<u>10:00 p.m. to 7:00 a.m.</u>
<u>Hydraulic fracturing, drilling, production, or other oil or gas operations or mining or extracting operations which cause the exterior noise level to</u>	<u>8:00 a.m. to 7:00 p.m.</u>

<u>exceed the ambient noise level in excess of five decibels (5 dB) when measured at the nearest protected use receiver's/receptor's property line or one hundred (100) feet from the nearest protected use structure (as measured to the closest exterior point of the building).³</u>	
<u>Hydraulic fracturing, drilling, production, or other oil or gas operations or mining or extracting operations which cause the exterior noise level to exceed the ambient noise level in excess of three decibels (3 dB) when measured at the nearest protected use receiver's/receptor's property line or one hundred (100) feet from the nearest protected use structure (as measured to the closest exterior point of the building).³ Regardless of ambient noise levels, at no time may noise levels exceed 70 dB.</u>	<u>7:00 p.m. to 8:00 a.m.</u>
<u>Noise levels from manufacturing or fabrication operations in excess of three decibels (3 dB) over the ambient noise level when measured at the nearest protected use receiver's/receptor's property line or one hundred (100) feet from the nearest protected use structure (as measured to the closest exterior point of the building). Regardless of ambient noise levels, at no time may noise levels exceed 70 dB.</u>	<u>7:00 p.m. to 8:00 a.m.</u>

¹ except in case of urgent necessity in the interest of public safety and convenience, and then only by permit issued under section 15-157

² provided conspicuous signs are displayed in such manner indicating that the same is a school, church or hospital area.

³ Only electric motors shall be used for the purpose of pumping oil wells. Electric motors shall be used for compressors located at gas well sites. If averaging is used to measure sound levels, time periods for averaging shall not exceed three (3) minutes. Regardless of ambient noise levels, at no time may noise levels exceed 70 dB.

Section 4.

The Kennedale City Code is hereby amended by adding a section, to be numbered 15-159, which section reads as follows:

Sec. 15-159 Measurements for low-frequency sounds.

When low-frequency sounds are suspected, sound levels shall be taken using both A-weighted and C-weighted scales. If the difference between the A-weighted and C-weighted Leq values is greater than 20 dB, then a low frequency noise may be present, and maximum sound levels should not exceed the levels set by Sec. 17-154(8).

SECTION 5.

The Kennedale City Code is hereby amended by adding a section, to be numbered 15-160, which section reads as follows:

Sec. 16-160. Ambient Sound Testing.

(1) For properties on which the following uses are proposed and that are adjacent to a residential zoning district or property in residential use or that are adjacent to a property on which a school, hospital, or other protected use is located, ambient sound testing shall be conducted at operator's/business owner's expense prior to the city issuing a special exception (if required), or before a business license and certificate of occupancy will be granted.

(a) oil or gas drilling, or other mining or extracting activities; or

(b) manufacturing; or

(c) fabrication.

(2) Ambient sound testing shall be done by a qualified Noise Control Engineer, or by another other qualified person if permitted by the city.

(3) Ambient sound testing shall be conducted so that the results do not include effects of aircraft, other nearby temporary equipment, etc. The sound testing shall be conducted at a minimum of 72 continuous hours with at least 24 hours being on a Saturday or Sunday with sample periods of one minute or less. When equipment is in service, a survey measuring sound at increasing distance from the equipment can be used with standard sound equations to determine the ambient and source contribution of measured sound. The survey will include a minimum of six data points at least 50 feet from the source and extending to at least 300 feet from the source and measured at the nearest protected use receiver's/receptor's property line or one hundred (100) feet from the nearest protected use structure (as measured to the closest exterior point of the building).

(4) Ambient sound testing shall include:

a. A description of the proposed facility/operation.

b. An analysis of any significant sources of noise during all phases of operation. This analysis must include a comparison of the potential noise generation with the applicable noise standards.

c. An analysis of any abatement measures necessary to bring the proposed facility into compliance with the city's noise standards, with analysis to include factor affecting sound dispersion or attenuation, including topography and prevailing atmospheric conditions. If the analysis indicates that abatement measures are required to meet the standards, then

the applicant must submit a detailed plan that describes the specific measures that will be utilized. This shall include product information and a location diagram. All soundproofing shall comply with accepted industry standards. For oil or gas operations, the abatement measures shall be installed prior to the commencement of any drilling activities. For other operations, the abatement measures shall be installed before a certificate of occupancy will be issued.

SECTION 6.

Section 17-426(o) of the Kennedale City Code is hereby amended by removing sub-section 17-426(o)(5) , with the remaining items in sub-section 17-426 (o) to be re-numbered.

SECTION 7.

This Ordinance shall be cumulative of Ordinance No. 40, as amended, and all other Ordinances of the City of Kennedale affecting zoning and land use, and shall not repeal any of the provisions of such ordinances except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

SECTION 8.

All rights or remedies of the City of Kennedale, Texas are expressly saved as to any and all violations of Ordinance No. 40 or of any amendments thereto that have accrued at the time of the effective date of this Ordinance and as to such accrued violations and all pending litigation, both civil and criminal, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the Courts.

SECTION 9.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph

or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 10.

This ordinance shall be in full force and effect from and after its passage and it is so ordained.

PASSED AND APPROVED this **12th** day of **January 2012**.

Mayor, Bryan Lankhorst

ATTEST:

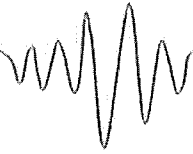
City Secretary

APPROVED AS TO FORM AND LEGALITY:

City Attorney

Behrens and Associates, Inc.

Environmental Noise Control



November 24, 2009

Chesapeake Energy Corporation
100 Energy Way
Fort Worth, Texas 76102

Attention: Erica Wilson

Subject: Renfro Pad, 24-Hour Ambient Sound Level Report

Dear Ms. Wilson:

A 24-hour pre-drilling sound level survey was performed at the proposed Renfro Pad drill site in Kennedale, Texas, from Friday, November 20, to Saturday, November 21, 2009, to measure and document the pre-drilling ambient sound levels at the site. The following report documents our findings and establishes the allowable *City of Kennedale Municipal Drilling Noise Levels* at the site.

Site Location and Conditions

The proposed Renfro Pad drill site is located south of Kennedale Sublett Road approximately 1/10 of a mile west of County Highway 2013 in Kennedale, Texas. The nearest off-site noise receptor is a single-family residence located approximately 300 feet to the northeast of the wellhead.

Sound Measurement Instrumentation

A Type 1 Bruel & Kjaer 2238 Integrating and Logging Sound Level Meter was programmed, calibrated, and deployed at the site at approximately 11:00 AM on Friday, November 20. The meter ran continuously through 11:00 AM on Saturday, November 21, 2009, to establish the 24-hour sound levels at the site. The metering system was installed on a T-post located at the site approximately 5 feet above ground level in a metal enclosure for security purposes.

Behrens and Associates, Inc.

Environmental Noise Control

Chesapeake Energy Corporation

November 24, 2009

Page 2



Measurement Results

Attached is a map indicating the location of the proposed Renfro Pad drill site with the measured sound level data collected at the site in both a graphed and tabular form as well as the average daytime and nighttime allowable for the *City of Kennedale Municipal Drilling Noise Levels*.

Please contact me if you have any questions or comments.

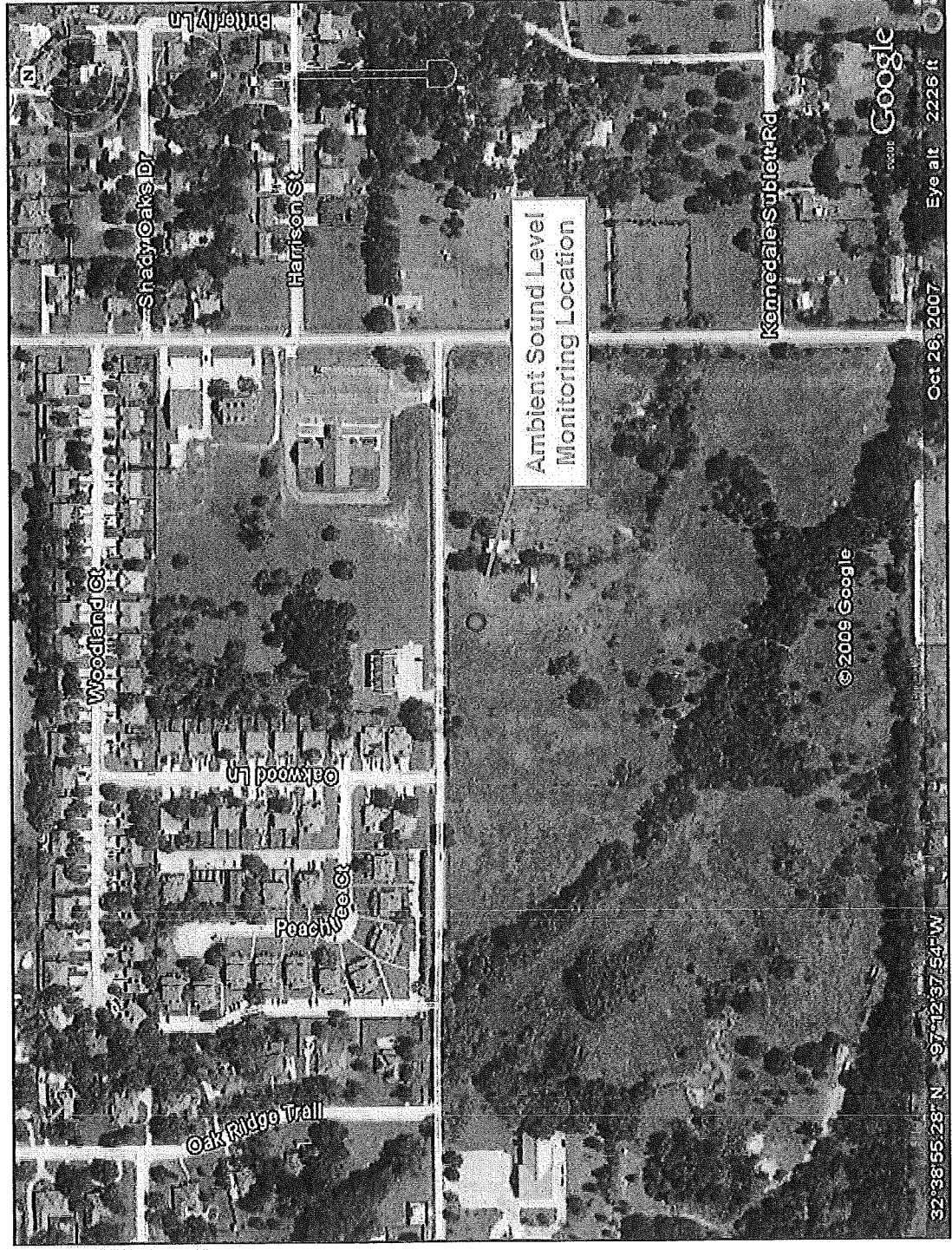
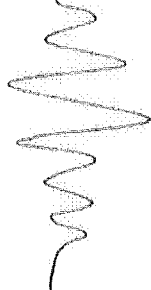
Very truly yours,

Jason Peetz
Acoustical Consultant

Attachments

Behrens and Associates, Inc.

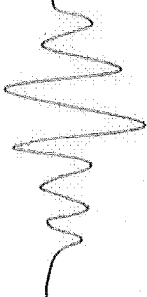
Environmental Noise Control



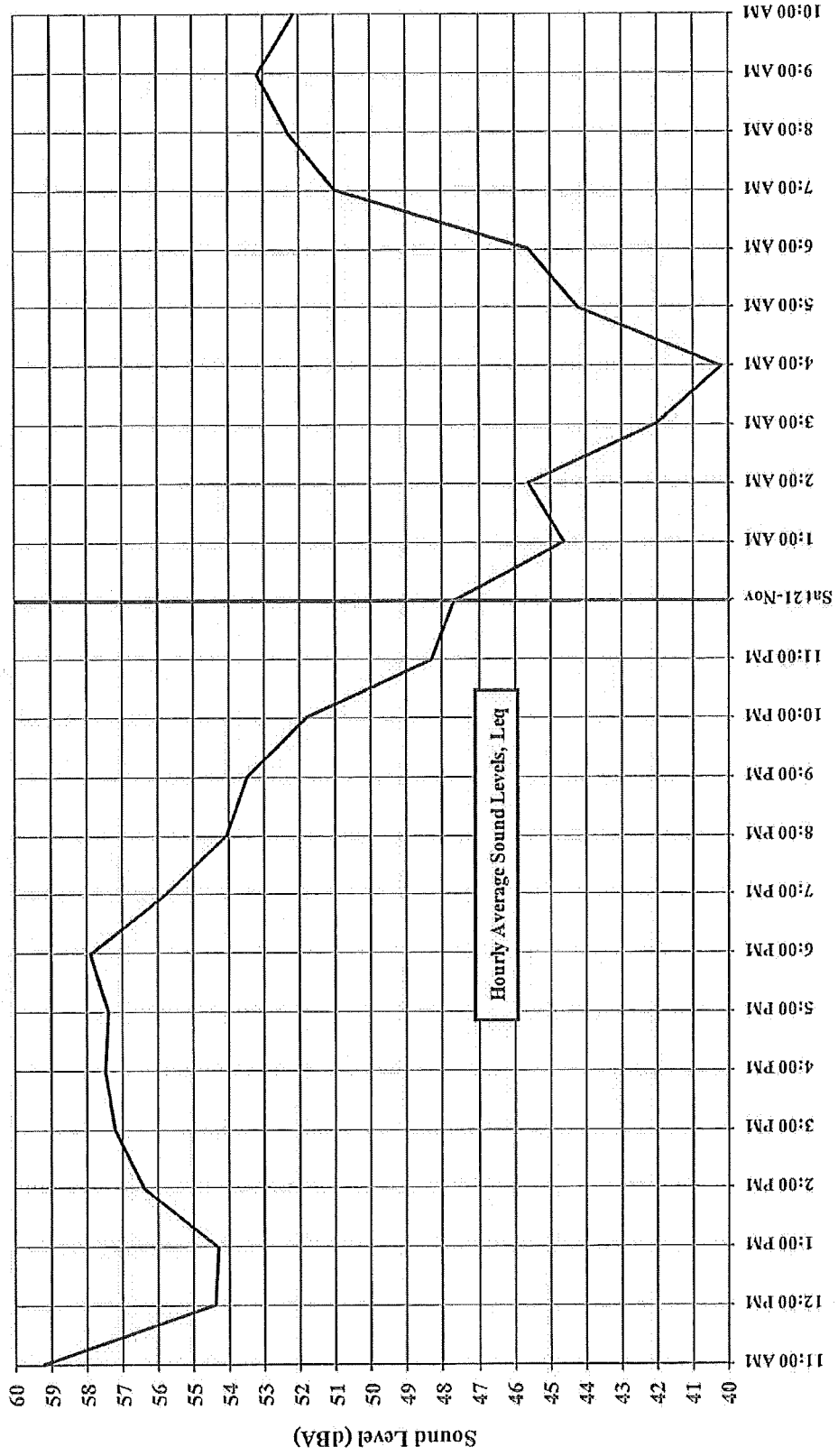
Renfro Pad Site Monitoring Location Map

Behrens and Associates, Inc.

Environmental Noise Control



Chesapeake Energy Corporation Renfro Pad Pre-Drilling Ambient Sound Level Survey

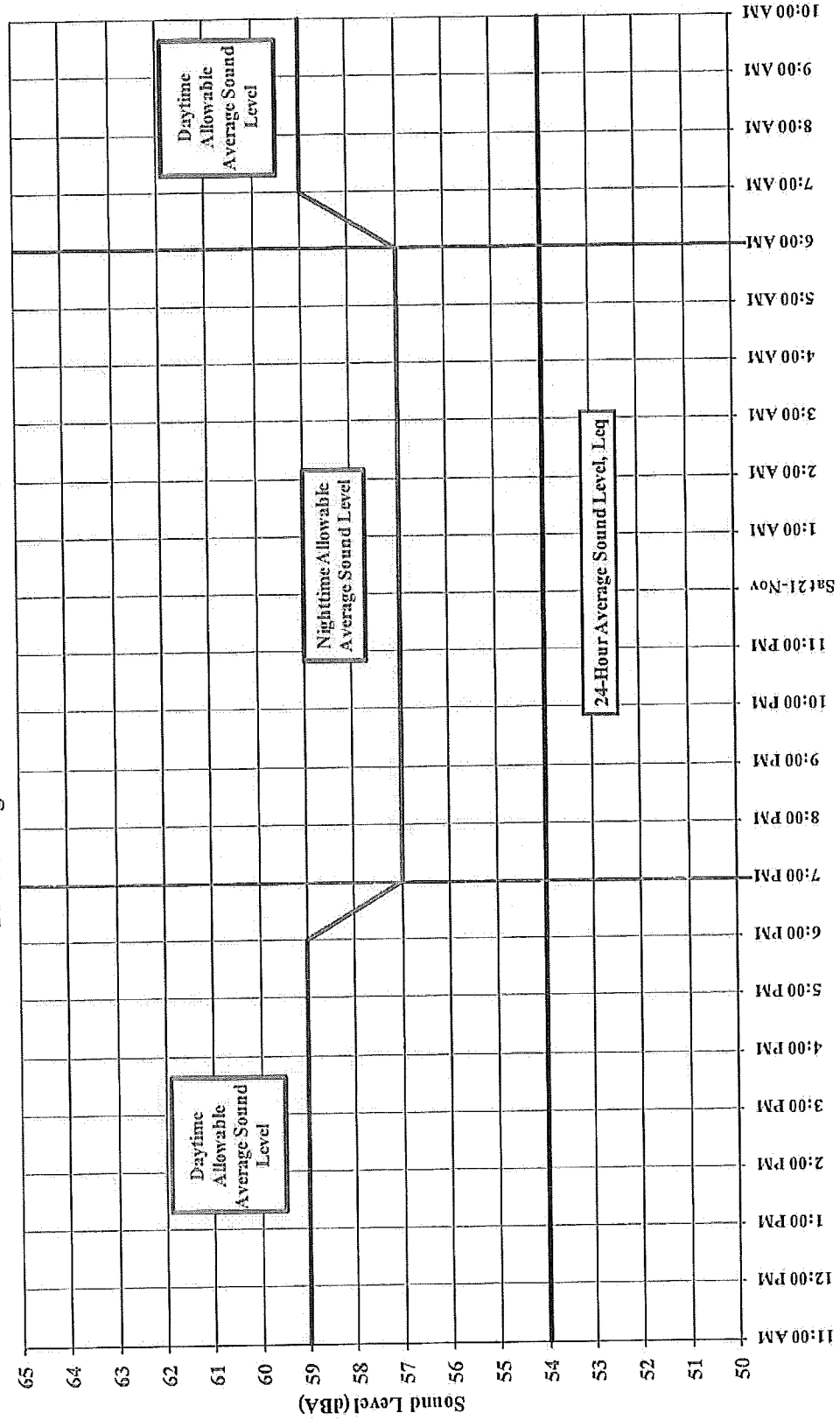


November 20 - November 21, 2009

Behrens and Associates, Inc.

Environmental Noise Control

Chesapeake Energy Corporation Renfro Pad Pre-Drilling Ambient Sound Level Survey



November 20 - November 21, 2009

Behrens and Associates, Inc.

Environmental Noise Control



Renfro Pad Site Data November 20 - November 21, 2009	
Time	Leq
Fri 20 - Nov	
11:00 AM	59.2
12:00 PM	54.4
1:00 PM	54.3
2:00 PM	56.4
3:00 PM	57.2
4:00 PM	57.5
5:00 PM	57.4
6:00 PM	57.9
7:00 PM	55.8
8:00 PM	54.1
9:00 PM	53.5
10:00 PM	51.8
11:00 PM	48.3
Sat 21-Nov	
1:00 AM	44.6
2:00 AM	45.6
3:00 AM	42
4:00 AM	40.2
5:00 AM	44.2
6:00 AM	45.6
7:00 AM	51
8:00 AM	52.3
9:00 AM	53.2
10:00 AM	52.2

24-Hour Average:	54.0 dBA
Daytime Allowable Average:	59.0 dBA
Nighttime Allowable Average:	57.0 dBA

Renfro Pad Ambient Data

Behrens and Associates, Inc.

Environmental Noise Control



November 23, 2009

Chesapeake Energy Corporation
100 Energy Way
Fort Worth, Texas 76102

Attention: Erica Wilson

Subject: Bogi Pad Site, 24-Hour Ambient Sound Level Report

Dear Ms. Wilson:

A 24-hour pre-drilling sound level survey was performed at the proposed Bogi Pad drill site in Kennedale, Texas, from Thursday, November 19, to Friday, November 20, 2009, to measure and document the pre-drilling ambient sound levels at the site. The following report documents our findings and establishes the allowable *City of Kennedale Municipal Drilling Noise Levels* at the site.

Site Location and Conditions

The proposed Bogi Pad drill site is located north of Swiney Hiatt Road approximately 3/10 of a mile west of Joplin Road in Kennedale, Texas. The nearest off-site noise receptor is a single-family residence located approximately 600 feet to the north of the wellhead.

Sound Measurement Instrumentation

A Type 1 Brüel & Kjær 2238 Integrating and Logging Sound Level Meter was programmed, calibrated, and deployed at approximately 11:00 AM on Thursday, November 19. The meter ran continuously through 11:00 AM on Friday, November 20, 2009, to establish the 24-hour sound levels at the site. The metering system was installed on a T-post located at the site approximately 5 feet above ground level in a metal enclosure for security purposes.

Behrens and Associates, Inc.

Environmental Noise Control

Chesapeake Energy Corporation

November 23, 2009

Page 2



Measurement Results

Attached is a map indicating the location of the proposed Bogi Pad drill site with the measured sound level data collected at the site in both a graphed and tabular form as well as the average daytime and nighttime allowable for the *City of Kennedale Municipal Drilling Noise Levels*.

Please contact me if you have any questions or comments.

Very truly yours,

Jason Peetz
Acoustical Consultant

Attachments

Behrens and Associates, Inc.

Environmental Noise Control



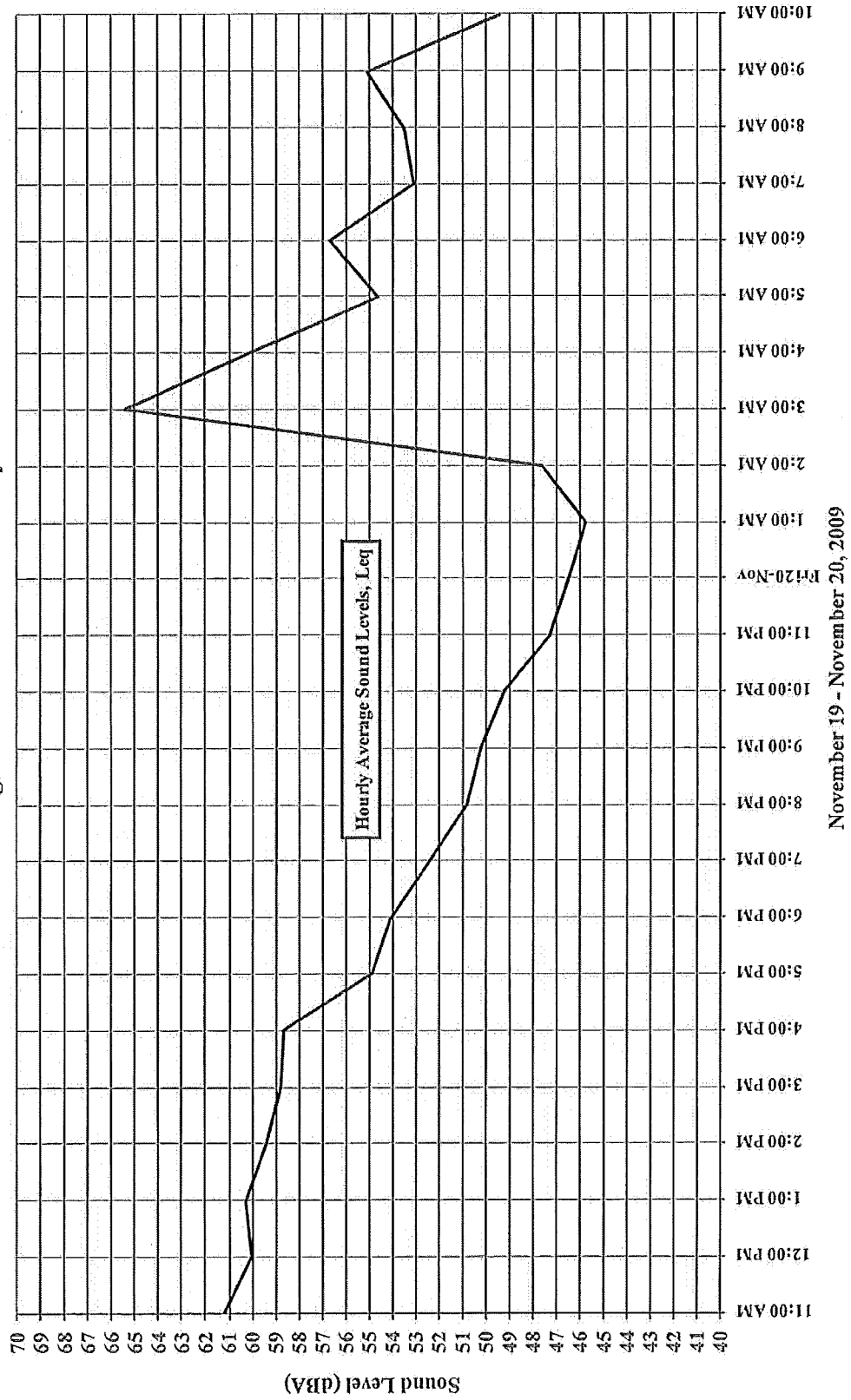
Bogi Pad Site Monitoring Location Map

Behrens and Associates, Inc.

Environmental Noise Control



Chesapeake Energy Corporation Bogi Pad Site Pre-Drilling Ambient Sound Level Survey

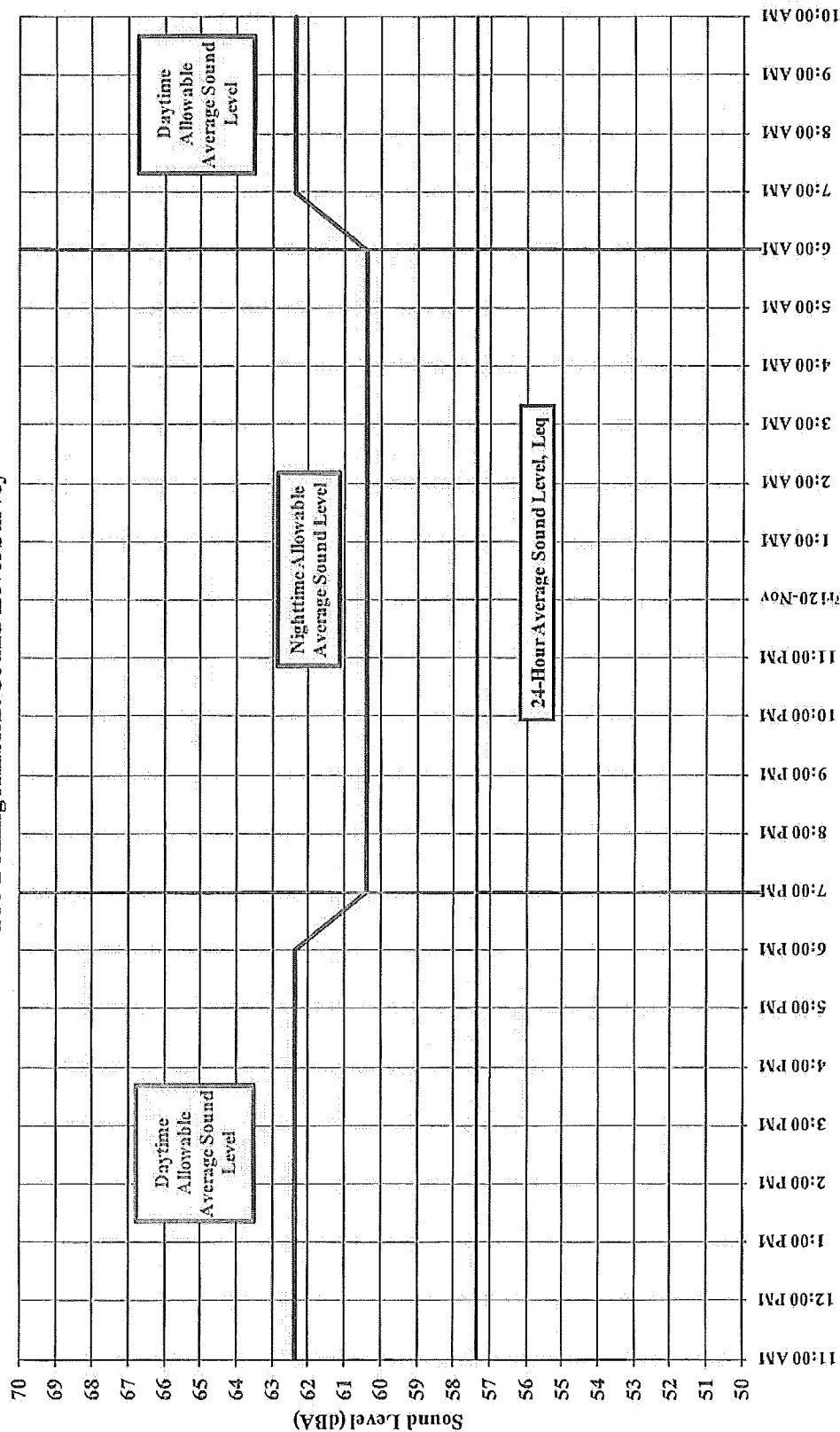


Behrens and Associates, Inc.

Environmental Noise Control



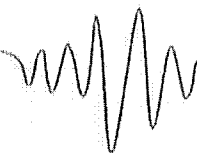
Chesapeake Energy Corporation Bogi Pad Site Pre-Drilling Ambient Sound Level Survey



November 19 - November 20, 2009

Behrens and Associates, Inc.

Environmental Noise Control



Bogi Pad Site Data November 19 - November 20, 2009	
Time	Leq
Thu 19-Nov	
11:00 AM	61.2
12:00 PM	60
1:00 PM	60.3
2:00 PM	59.4
3:00 PM	58.8
4:00 PM	58.7
5:00 PM	54.9
6:00 PM	54.1
7:00 PM	52.4
8:00 PM	50.8
9:00 PM	50.2
10:00 PM	49.2
11:00 PM	47.3
Fri 20-Nov	
1:00 AM	45.8
2:00 AM	47.6
3:00 AM	65.4
4:00 AM	60.2
5:00 AM	54.6
6:00 AM	56.7
7:00 AM	53.1
8:00 AM	53.5
9:00 AM	55.1
10:00 AM	49.4

24-Hour Average:	57.4 dBA
Daytime Allowable Average:	62.4 dBA
Nighttime Allowable Average:	60.4 dBA

Bogi Pad Site Ambient Data

Type of Study: 24hr Ambient Lease: Case 1H-6H Case Prickett 1H-5H Report Date: 1/6/2011
Prepared for: Chesapeake Energy Start Date: 1/5/2011 Weds
Purpose: New gas well permit End Date: 1/6/2011 Thurs

At the request of Chesapeake Energy, a 24hr ambient noise survey was conducted for the proposed gas well site known as Case 1H-6H & Case Prickett 1H-5H. The Case site is located approximately one tenth of a mile west from the intersection of Bowman Springs Rd. and I-20 Frontage Rd., south of I-20. The objective of this ambient survey is to establish the pre-drilling noise levels meaning all noise occurring naturally or manmade including sources such as road traffic or aircraft being the most prominent but only to name a few. The ambient study began at 8am Wednesday morning on January 5th, 2011, and ended 9am Thursday morning on January 6th, 2011.

This ambient study will include four parts.

1. Deployment and configuration of the noise logging instrument.
2. Any visual observations made that could impact the ambient study.
3. Presentation of the data on two separate graphs, by the hour and by the minute.
4. Hourly result table and adjusted allowables per City of Kennedale drilling ordinance.

Equipment:

The placement of the sound logging equipment was within a field in the approximate location of where the Rig will be, having within 300ft an interstate highway to the North, a business to the north and a business to the east, and a home to the southeast within 500ft. I have outlined the placement of the sound logging equipment and nearby sound sources and use structures using the image below provided by Google Earth. The B&K 2270 was mounted in a water-tight case that was secured to a T-post approximately 5ft above ground.

GPS Coordinates of Instrument during survey: N32 39'58.30" W97 13'30.95"

Type of Equipment Used: Buel and Kjaer 2270 Type 1 sound logging instrument with enhanced logging and audio recording
Calibration: Buel and Kjaer type 4231 calibrator at 114db. Calibration results - .01db before study, .01db after study
Equipment used exceeds ANSI Type 1 standards for sound logging instruments.
Measurements are taken using A weighting

Visual Observations:

During my initial visual observation of the proposed Case site before deploying the sound logging equipment, there was in fact no activity or construction within visual range of the Yeandle site that could impact or affect the integrity of the ambient survey. Two primary noise sources that were observed would be Interstate 20 to the north as the most prominent noise source, and occasional aircraft.

Justin Wilson
Acoustical Consultant

Wilson

Acoustical Logging

Type of Study: 24hr Ambient

Prepared for: Chesapeake Energy

Purpose: New gas well permit

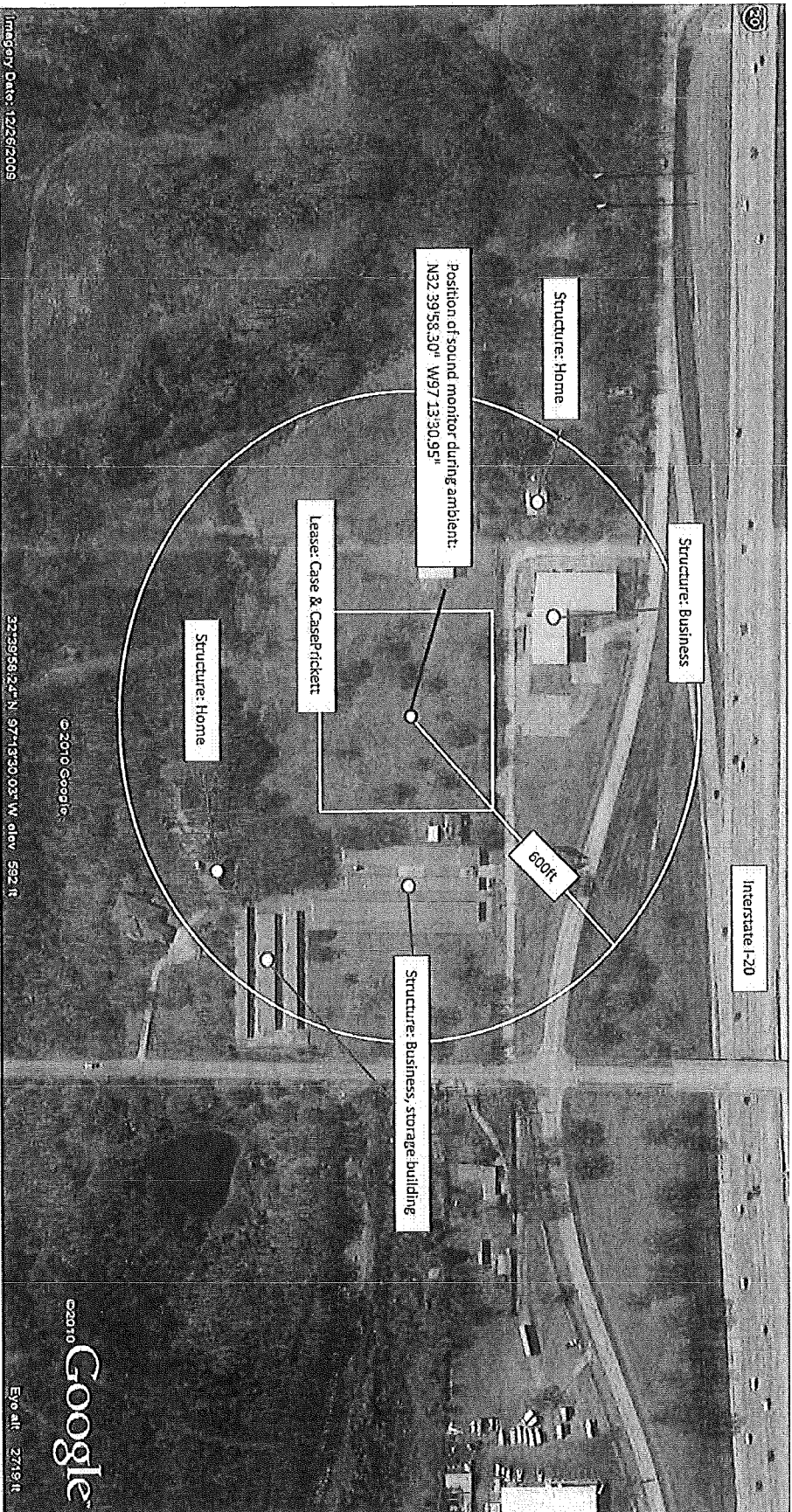
Lease: Case 1H-6H Case Prickett 1H-5H

Start Date: 1/5/2011 Weds

End Date: 1/6/2011 Thurs

Report Date: 1/6/2011

Overview of Case site



Imagery Date: 12/6/2008

Type of Study: 24hr Ambient

Prepared for: Chesapeake Energy

Purpose: New gas well permit

Lease: Case 1H-6H Case Prickett 1H-5H

Start Date: 1/5/2011 Weds

End Date: 1/6/2011 Thurs

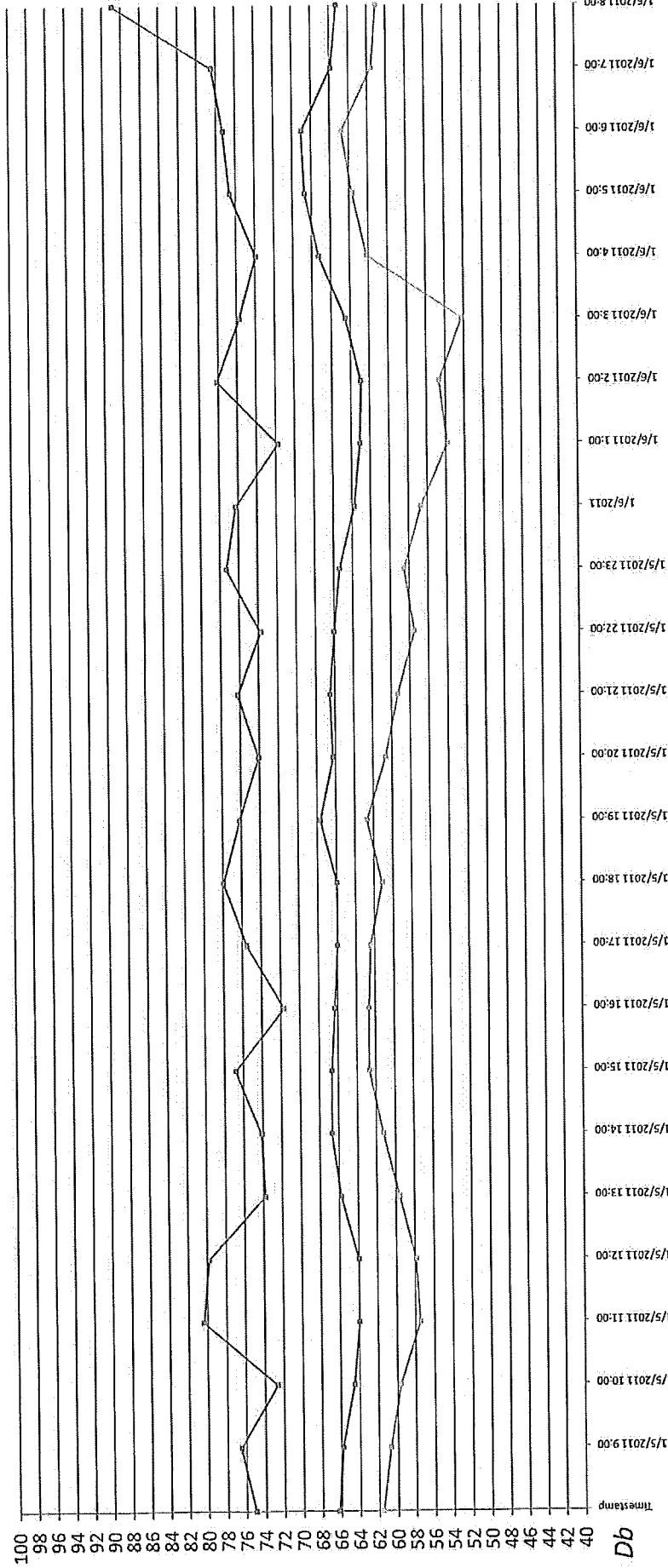
Report Date: 1/6/2011

Results - Hourly Leq Graph

1hr LAFmax

1hr Leq

1hr LAFmin



Wilson

Acoustical Logging

Type of Study: 24hr Ambient
Prepared for: Chesapeake Energy
Purpose: New gas well permit

Lease: Case 1H-6H Case Prickett 1H-5H
Start Date: 1/5/2011 Weds
End Date: 1/6/2011 Thurs

Report Date: 1/6/2011

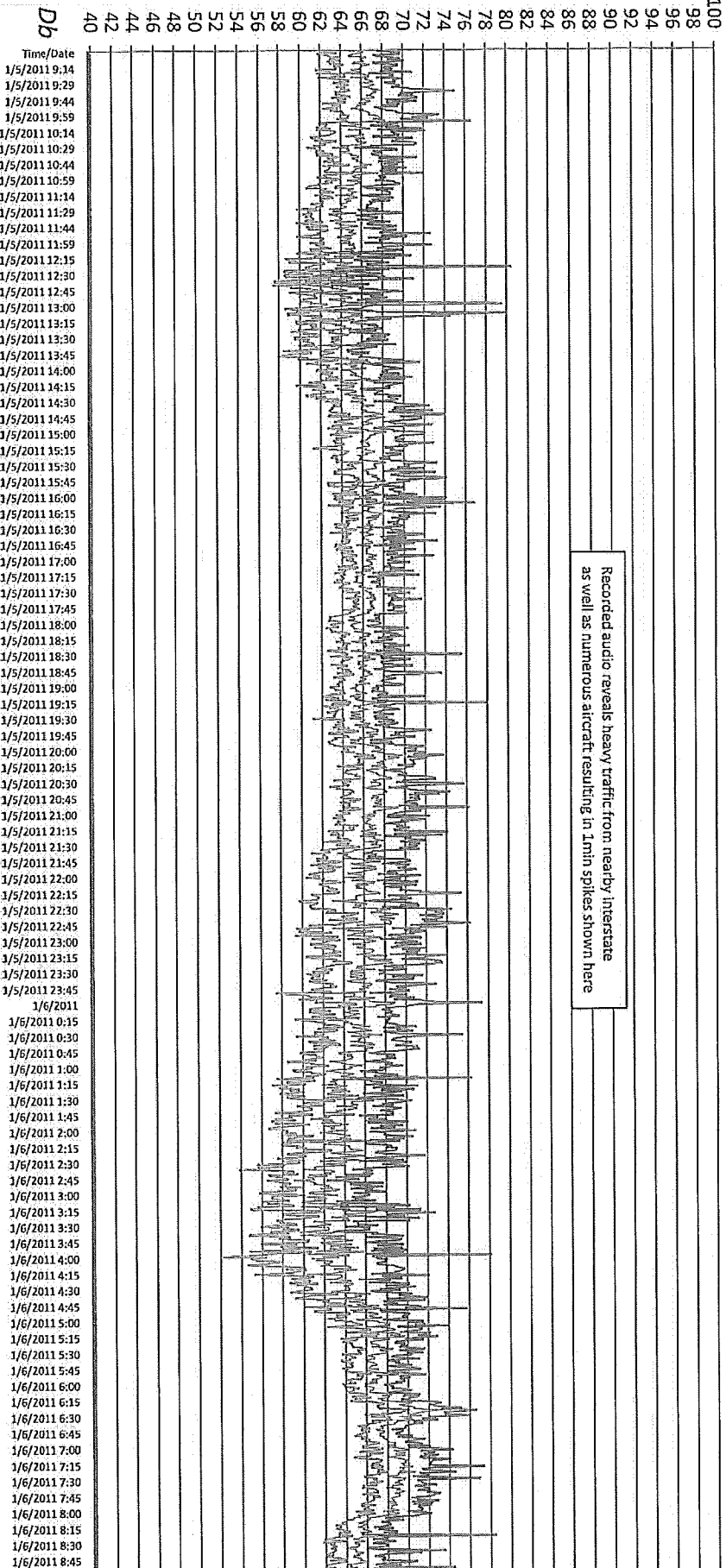
Results - Minute Leq Graph

1min LAFmax

1min Leq

1min LAFmin

Recorded audio reveals heavy traffic from nearby interstate
as well as numerous aircraft resulting in 1min spikes shown here



Hourly Leq's

Overall Result

Weds 1/5/2011		Db	Thurs 1/6/2011		Db	24HR Ambient Survey Results Overall average LEQ using Logarithmic Pascal Equation: 66.20db City of Kennedale ordinance allows: Drilling Noise: +0db over ambient daytime 70db +0db over ambient nighttime 60db Fracing Noise: +0db over ambient daytime 70db +0db over ambient nighttime 60db Because actual ambient noise is higher than ordinance allowable noise, the following allowable levels are proposed in accordance with Forth Worth drilling ordinance: Drilling +5db over ambient daytime 71.20db +3db over ambient nighttime 69.20db Fracing +10db over ambient daytime 76.20db
</						

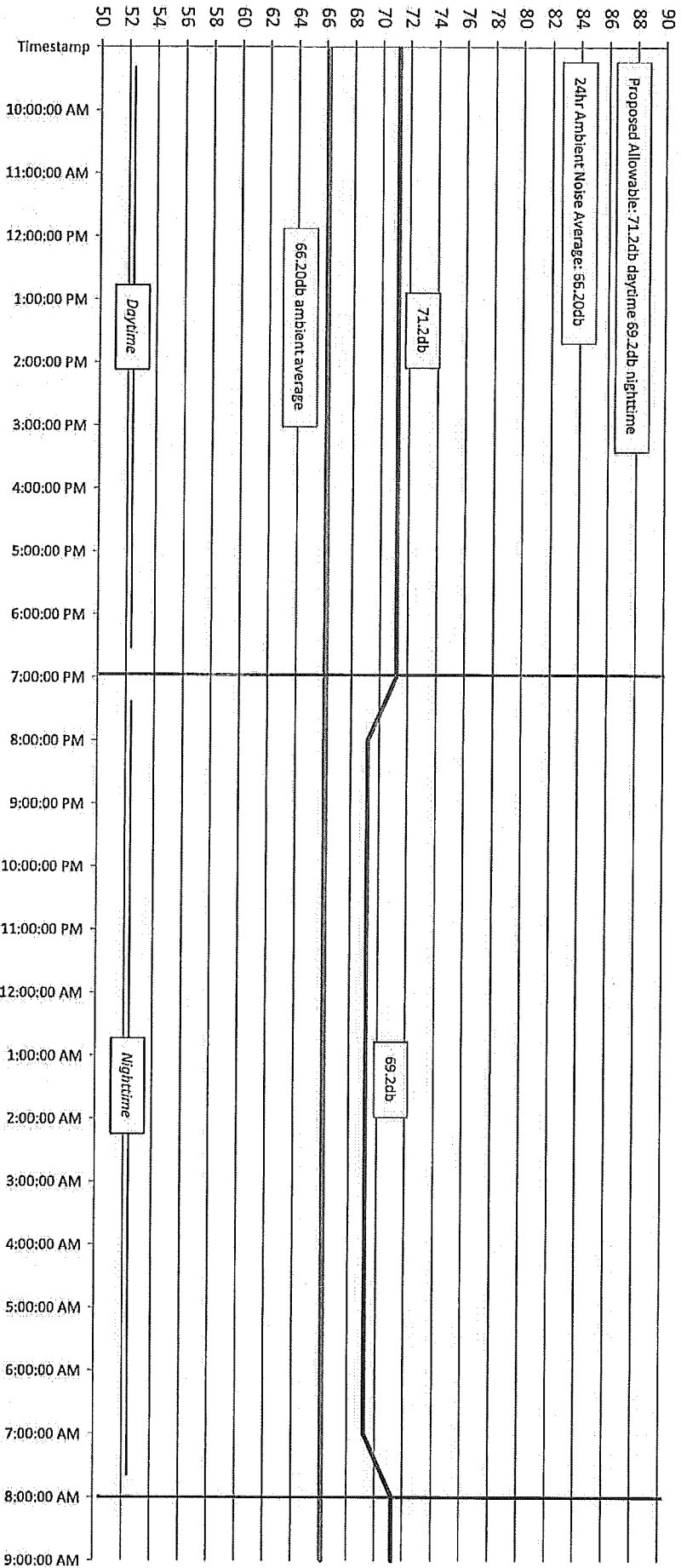
Acoustical Logging

Type of Study: 24hr Ambient
 Prepared for: Chesapeake Energy
 Purpose: New gas well permit

Lease: Case 1H-6H Case Prickett 1H-5H
 Start Date: 1/5/2011 Weds
 End Date: 1/6/2011 Thurs

Report Date: 1/6/2011

Ambient Noise Levels



Date: January 12, 2012

Agenda Item No: REGULAR ITEMS - C.

I. Subject:

Discuss and consider authorizing temporary permission to Art in the Park to sell alcohol in TownCenter Park during the Art in the Park event from March 30, 2012 through April 1, 2012.

II. Originated by:

Bob Hart, City Manager

III. Summary:

Art in the Park is again requesting that the City Council grant permission to sell alcohol during the Art in the Park event.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	2010 Application	permit to sell alcohol in parks 2012.doc
2.	2010 Site Map	2012 Map Official Layout.pdf

CITY OF KENNEDALE
Permits & Planning Department

APPLICATION TO SELL ALCOHOL IN CITY PARKS

Applicant Art in the Park, Kennedale TX COMMITTEE

NAME OF ORGANIZATION: Art in the Park, Kennedale TX	
HEAD OF ORGANIZATION: Felipe Gutierrez	
Organization Mailing Address: 405 Municipal Dr.	
Kennedale, TX 76060	
Organization Phone:	817-713-7426
SPECIAL EVENT CHAIRMAN (NAME AND ADDRESS): Felipe Gutierrez & Randy Bell (THIS PERSON WILL BE RESPONSIBLE FOR CONDUCT AT THE SPECIAL EVENT.)	
Special Event Chairman Phone: 817-713-7426	

Special Event Information

NAME OF EVENT AND DESCRIPTION OF EVENT: The Kennedale Arts and Culture Board presents the 3rd annual Art in the Park Festival . This FREE three-day event will be held in the beautiful Kennedale Town Center . Art in the Park celebrates a variety of unique visual, musical and performing art talent and feature artists and vendors from the surrounding area. As one of Kennedale's anticipated annual events, Art in the Park will focus on the artists and their work, while offering delectable food in the food court, live music performances and unique creative activities in the Children's Area. A 5K Race and Fun Run are also planned during the festival event.	
Dates to be held: March 30-April 1, 2012	Hours of event: Fri 5-9, Sat. 10-10, Sun 12-6
Estimated number of persons to attend:	6000 Cumulative

CITY OF KENNEDALE
Permits & Planning Department

Event address: 405 Municipal Dr.

Additional Information

No permit shall be issued until satisfactory proof has been provided that liability insurance has been obtained in compliance with the Texas Alcoholic Beverage Code and rules issued by the appropriate state agency.

Has the organization obtained liability insurance in compliance with the Texas Alcoholic Beverage Code and rules issued by the appropriate state agency?

☒ Yes

☐ No

Please submit with your application a copy of the certificate of insurance.

Has the applicant received all necessary authority to sell alcohol from the Texas Alcoholic Beverage Commission?

☐ Yes

☒ No

If no, has the applicant applied for all necessary authority to sell alcohol from the Texas Alcoholic Beverage Commission?

☐ Yes

☒ No

We will apply after we receive permit from City

Date application was submitted to TABC:

Please submit the following information with your application:

☐ Site layout information, including all exits and locations where alcohol sales are proposed **ATTACHED**

☐ Security information **Overnight and walk through during the day.**

CITY OF KENNEDALE
Permits & Planning Department

☐ Storage and containment information, if established at time of application Locked in secure truck and or building.
☐ Food vendor information (for vendors who will sell alcohol) Just Art in the Park. We hire TABC certified servers
☐ A copy of the current, valid 501(c) determination letter (or other proof as required by the City)

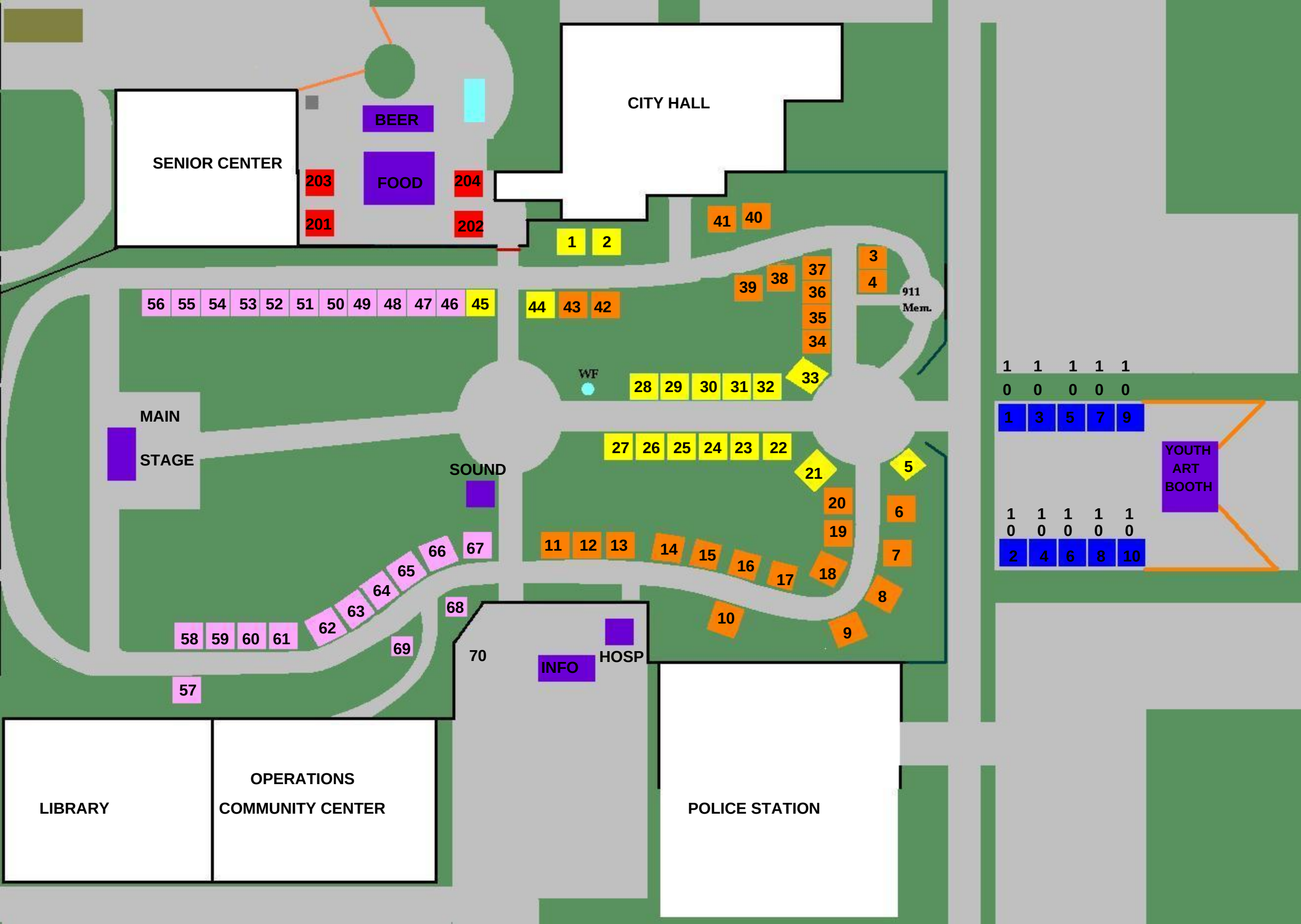
GRANTING PERMITS FOR ALCOHOL SALES IN PARKS.

The City Council shall issue a permit for the proposed special event within sixty (60) days of receipt of an application, unless the Council finds that:

- (1) The conduct of the special event will require the diversion of so great a number of police officers of the City to properly police the special event and the contiguous areas, so that adequate police protection cannot be provided the remainder of the City;
- (2) The conduct of the special event will require the diversion of so great a number of ambulances, so that adequate ambulance service to portions of the City not occupied by the special event and contiguous areas will be prevented;
- (3) The conduct of the special event is reasonably likely to result in violence to persons or property causing serious harm to the public;
- (4) The special event is to be held for the primary purpose of advertising a product, or goods, and is designed to be held primarily for private profit and no public purpose is served;
- (5) The special event will interfere with the movement of firefighting equipment to such an extent that adequate fire protection cannot be provided to the City; or
- (6) The special event will conflict in time and location with another special event, a permit for which has been granted.

The City may establish appropriate fees for issuance of such permit by resolution of the City Council.

FOR STAFF USE ONLY	
DATE PERMIT APPLICATION RECEIVED:	
In issuing such permit the City Council may designate an area within the city park or facility for the serving, possession and consumption of alcoholic beverages under such permit, and shall establish such hours that the beverages may be dispensed, consumed, or possessed under the permit. The city manager or his designee is further authorized to adopt and enforce such other appropriate health, safety and welfare measures to ensure safe use of the premises and general welfare of the areas adjacent thereto. List staff recommendations, if any, for hours in which alcoholic beverages may be dispensed, consumed, or possessed under the permit: List staff recommendations, if any, for area(s) within the city park or facility for the serving, possession, and consumption of alcoholic beverages under the permit:	
Additional Comments:	
Recommendation: ☐ Approval ☐ Denial	
Signature of director of development services/permits official:	
Signature of parks superintendent:	
Signature of fire chief or authorized fire department representative:	
Signature of police chief or authorized police representative:	



Date: January 12, 2012

Agenda Item No: REGULAR ITEMS - D.

I. Subject:

Discuss and consider appointments to the Building Board of Appeals.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Please consider appointing Billy Vester to Place 3 of the Building Board of Appeals. His application is attached.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	Billy Vester	Billy Vester.pdf
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KENNEDALE
You're Here, Your Home

405 Municipal Drive, Kennedale, Texas 76060

**BOARD/COMMISSION CANDIDATE
DATA SHEET**

Check all Board and Commissions of Interest and rank order of interest from 1 to 8:

- | | |
|---|--|
| ☐ Park Board | ☐ Board of Adjustment |
| 2 ☒ Planning & Zoning | 1 ☒ Building Board of Appeals |
| ☐ Library Advisory Board | 4 ☒ Economic Development Board |
| ☐ Keep Kennedale Beautiful | ☐ Culture & Arts Board |
| 3 ☒ Comprehensive Plan Task Force | |

Name: Billy Vester Age (Optional): 35

Home Address: 602 Ruth Dr. Kennedale, TX 76060

Home Phone: 817 516-5912 Business/Cell Phone: 682 597-5613

Email: billy-vester@yahoo.com Alt. Contact: 214 532-5095

Resident of City for 2 Years Voter Registration No: _____

Occupation: Professional Client Technical Administrator

Education: Bachelor's Business Management

Special Knowledge or Experience Applicable to City Board or Commission Function:

- | | |
|---|---|
| ☒ Banking/Finance | ☒ Business Development |
| ☐ Building/Construction | ☒ Promotion/Marketing |
| ☒ Real Estate/Development | ☒ Manufacturing/Industrial Operations |
| ☐ Industrial Training | ☐ Law/Contract Administration |

Other information (Civic Activities, etc.): _____

I attended one or more meetings of the board or commission for which I have applied: ☒ Yes ☐ No

Date: December 5, 2011

Signature: Billy Vester

RETURN COMPLETED FORM TO THE CITY SECRETARY'S OFFICE,

Amethyst Cirno, City Secretary

City of Kennedale, 405 Municipal Drive, Kennedale, Texas 76060

Phone: (817) 985-2104 - E-mail: acirno@cityofkennedale.com

Date: January 12, 2012

Agenda Item No: REGULAR ITEMS - E.

I. Subject:

Discuss and consider appointments to the Planning and Zoning Commission.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Currently there are 2 vacant positions on the Planning and Zoning Commission:

1 Regular position

1 Alternate position

Adrienne Kay has submitted a request to be moved from her current alternate seat to the vacant regular seat.

Carolyn Williamson has requested consideration for appointment to one of the vacancies.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

1.	Application	Carolyn Williamson.pdf
2.	Kay	Adrienne Kay-1.pdf



KENNEDALE
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APPLICATION

CONSIDERATION FOR APPOINTMENT TO A CITY BOARD OR COMMISSION

Please check the box of the Board/Commission on which you would like to serve:

- | | |
|---|--|
| ☒ Parks & Recreation Advisory Board | ☐ Library Advisory Board |
| ☒ Planning & Zoning Commission | ☐ Arts & Culture Advisory Board |
| ☐ Building Board of Appeals | ☐ Economic Development Corporation |
| ☐ Board of Adjustment | ☐ Keep Kennedale Beautiful Commission |
| ☒ Comprehensive Plan Task Force | |

FULL NAME:	CAROLYN ELIZABETH COKER WILLIAMSON		
AGE (Optional):	71 YRS YOUNG & IN GOOD HEALTH		
HOME ADDRESS:	3170 JOPLIN RD KENNEDALE TX 76060 (MAIL PO BOX 1443)		
HOME PHONE:	817-516-7618	CELL PHONE:	817-235-6972
EMAIL ADDRESS:	NANA - C @ SBC GLOBAL.NET		
OCCUPATION:	RETIRED AIRLINE ^{29 YRS} TARRANT CO. ELECTIONS OFFICE PARTTIME/HOUSEWIFE		
EDUCATION:	MINN'S FIELD HS GRAD '57/BS - BIBLICAL STUDIES/COUNSELING - TYNDALE SEM. 1996		
VOTER REG. #			
RESIDENCY:	I have been a resident of the City of Kennedale for <u>15</u> years. HOWEVER WAS BORN AND RAISED HERE IN KENNEDALE COMMUNITY HAVE ALWAYS LIVED IN TARRANT CO.		

I have special knowledge or experience in the following areas:

- | | | |
|--|--|--|
| ☐ Banking/Finance | ☐ Business Development | ☐ Building/Construction |
| ☐ Promotion/Marketing | ☐ Real Estate/Development | ☐ Industrial Training |
| ☐ Law/Contracts | ☐ Manufacturing/Industrial Operations | |

☒ Other (please describe) 1ST JOB OUT OF HIGH SCHOOL WAS FIRST NAIL BANK OF FT. WORTH; WORKED CUSTOMER SERVICE AND AS TKT. AGENT IN AIRLINE BUSINESS 29 YRS CAREER; HAVE HELD PARTTIME JOBS IN THE PRINTING BUSINESS AND CURRENTLY WORK PARTTIME AT TARRANT COUNTY ELECTIONS OFFICE APPROX 8 MOS.
Please describe any other relevant experience, civic activities, or other information:
OF YEAR; MEMBER OF AND VOLUNTEER FOR KENNEDALE CHAMBER OF COMMERCE SINCE 2005; CO-OWNER OF ASSOCIATED INSURANCE SERVICE OF KENNEDALE (-445-A W. KENNEDALE PKWY); LAND OWNER AND RESIDENT; CO-MGR. OF MACLE ESTATE FOR MOTHER VERA COKER; MEMBER BETHEGDA COMMUNITY CH. FT. WORTH 35 YRS.

I have attended one or more meetings of the board or commission for which I have applied:

☐ Yes ☒ No BUT PLAN TO ATTEND JAN/FEB. MEETING.

Signature: Carolyn E Williamson Date: 05 Jan 2012

PLEASE RETURN THE COMPLETED FORM TO THE CITY SECRETARY'S OFFICE AT 405 MUNICIPAL DRIVE
Phone: (817) 985-2104 - Fax: (817) 478-7169 - E-mail: acirmo@cityofkennedale.com



KENNEDALE
You're Here, Your Home

405 Municipal Drive, Kennedale, Texas 76060

**BOARD/COMMISSION CANDIDATE
DATA SHEET**

Check all Board and Commissions of Interest and rank order of interest from 1 to 8:

- | | |
|--|---|
| ☐ Park Board | ☐ Board of Adjustment |
| ☒ Planning & Zoning | ☐ Building Board of Appeals |
| ☐ Library Advisory Board | ☐ Economic Development Board |
| ☐ Keep Kennedale Beautiful | ☐ Culture & Arts Board |
| ☐ Comprehensive Plan Task Force | |

Name: Adrienne S. Kay Age (Optional): _____

Home Address: 918 Shady Creek Drive

Home Phone: 817 483 5258 Business/Cell Phone: 972 849 2915

Email: Adrienne.Kay@chase.com Alt. Contact: _____

Resident of City for 3 Years Voter Registration No: _____

Occupation: Project Mgr

Education: _____

Special Knowledge or Experience Applicable to City Board or Commission Function:

- | | |
|--|--|
| ☐ Banking/Finance | ☐ Business Development |
| ☐ Building/Construction | ☐ Promotion/Marketing |
| ☐ Real Estate/Development | ☐ Manufacturing/Industrial Operations |
| ☐ Industrial Training | ☐ Law/Contract Administration |

Other information (Civic Activities, etc.): Project Management

I have been an Alternate on P&Z and would like to be a regular.

I have attended one or more meetings of the board or commission for which I have applied: ☒ Yes ☐ No

Date: 8/6/12 Signature: Adrienne Kay

**RETURN COMPLETED FORM TO THE CITY SECRETARY'S OFFICE,
City of Kennedale, 405 Municipal Drive, Kennedale, Texas 76060
Phone: (817) 985-2104 - E-mail: acirmo@cityofkennedale.com**