

ORDINANCE No. 682_____

AN ORDINANCE OF THE CITY OF HOWE, TEXAS, REDUCING AND RELEASING TO THE CITY OF SHERMAN, TEXAS ALL EXTRATERRITORIAL JURISDICTION LOCATED GENERALLY NORTH OF A COMMON BOUNDARY LINE BETWEEN THE CITIES; AUTHORIZING EXECUTION OF A BOUNDARY AGREEMENT WITH THE CITY OF SHERMAN; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Howe, Texas ("Howe") is a general law municipality acting under the laws of the State of Texas; and

WHEREAS, the City of Howe and the City of Sherman ("Sherman") presently are in dispute over corporate and extraterritorial boundaries in the vicinity of FM 902 lying west of U.S. Highway 75; and

WHEREAS, Howe and Sherman have contemplated execution of a Boundary Agreement, in the form of which is attached hereto and incorporated herein by reference as Exhibit A, and which establishes a Common Boundary Line demarcating exclusive Howe territory from exclusive Sherman territory, as described by metes and bounds on Exhibit B, and as depicted in Exhibit C, which exhibits are attached hereto and incorporated herein by reference; and

WHEREAS, the Boundary Agreement contemplates that Howe relinquish any claims it has to Sherman territory and that Sherman relinquish any claims it has to Howe territory, whether now existing or as may arise in the future; and

WHEREAS, in order to implement the Boundary Agreement, Howe and Sherman intend to release to one another ETJ claimed by each within the other's exclusive territory under the Agreement; and

WHEREAS, Tex. Loc. Gov't Code Chapter 43 authorizes a municipality to reduce and release its extraterritorial jurisdiction by ordinance; and

WHEREAS, it is the intention of the City Council of Howe to release to Sherman the ETJ lying within Sherman territory in exchange for Sherman's release of the ETJ lying within Howe territory; and

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

SECTION 1.

REDUCTION AND RELEASE OF ETJ

The City of Howe hereby consents to the reduction of its extraterritorial jurisdiction lying on Sherman's side of the Common Boundary Line (north of the boundary line for areas west of U.S. Highway 75) appearing on Exhibit C and as described in Exhibit B, and as is to be established by the Boundary Agreement appearing as Exhibit A, and hereby releases such territory to the City of Sherman.

SECTION 2.

OFFICIAL MAP

The official map and boundaries of the City of Howe are amended to exclude the land reduced and released in Section 1 as a part of the City of Howe's extraterritorial jurisdiction. The City Secretary is directed and authorized to perform or cause to be performed all acts necessary to correct the official map of the town to exclude the territory herein described.

SECTION 3.

EXECUTION OF BOUNDARY AGREEMENT

The Mayor of the City of Howe or his designee is authorized to execute the Boundary Agreement in the form appearing as Exhibit A in behalf of the City.

SECTION 4.

FILING CERTIFIED COPY

The City Secretary is directed to file or cause to be filed a certified copy of this ordinance in the office of the county clerk of Grayson County, Texas.

SECTION 5.

CUMULATIVE CLAUSE

This ordinance shall be cumulative of all provisions of ordinances of the City of Howe, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby superseded.

SECTION 6.

SEVERABILITY CLAUSE

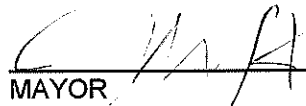
Should any section or part of this ordinance be held unconstitutional, illegal or invalid, or the application thereof, the unconstitutionality, illegality, invalidity or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof, but as to such remaining portions, the same shall be and remain in full force and effect.

SECTION 7.

EFFECTIVE DATE

This ordinance shall take effect upon the effective date of the Boundary Agreement appearing as Exhibit A.

PASSED AND APPROVED ON THIS 27th DAY OF OCTOBER, 2009.


MAYOR

ATTEST:

CITY SECRETARY

ADOPTED: 11-27-09



BOUNDARY AGREEMENT

THIS BOUNDARY AGREEMENT (the "Agreement") is by and between the City of Howe, Texas ("Howe") and the City of Sherman, Texas ("Sherman").

I. RECITALS

1. Howe is a general law municipality organized under the laws of the State of Texas. Sherman is a home rule municipality organized under the laws of the State of Texas and corporate charter. Howe and Sherman are sometimes hereinafter each individually referred to as a "Party" and are referred to in this Agreement collectively as the "Parties." Howe and Sherman are located primarily within Grayson County, Texas, and in close proximity to one another.

2. Since 2008, controversies have arisen between the Parties concerning the respective corporate and extraterritorial boundaries of the cities in the vicinity of FM 902 lying generally west of U.S. Highway 75. Sherman and Howe recognize that the disputes have arisen in part from the lack of an agreed boundary line that defines the existing and future boundaries of the cities relative to one another.

4. Sherman now claims an area within Howe Territory (as hereinafter defined) and Howe now claims an area within Sherman Territory (as hereinafter defined).

5. Texas law also provides for reduction in the area of a city's extraterritorial jurisdiction. Each city thus has authority under Texas law to adjust or reduce areas within each other's territory in order to effectuate the purposes of this Agreement, and the Parties acknowledge the necessity of undertaking such actions.

II. AGREEMENT

For and in consideration of the recitals set forth above and the covenants and undertakings hereinafter contained, the adequacy and sufficiency of which is admitted, it is agreed by Howe and Sherman to establish a Common Boundary Line (as hereinafter defined) upon all of the following terms, subject to the following conditions:

1. Upon the Effective Date of this Agreement (as hereinafter defined), there shall be established by each city a Common Boundary Line, as depicted in **Exhibit A**, attached hereto

and made a part hereof by reference, the legal description for which is contained in **Exhibit B**, attached hereto and made a part hereof by reference. The Common Boundary Line shall demarcate the area within which Howe and Sherman shall each exercise exclusive control over its corporate limits and extraterritorial jurisdiction, existing and future. The area generally located south of the Common Boundary Line, as shown more particularly in Exhibit A, shall be the territory of Howe (“Howe Territory”), and the area generally located north of the Common Boundary Line, as shown more particularly in Exhibit A, shall be the territory of Sherman (“Sherman Territory”).

2. It is the express intent of Howe to relinquish and release any areas to Sherman which it now claims as its own territory within Sherman Territory. It is the express intent of Sherman to relinquish and release any areas to Howe which it now claims as its own territory within Howe Territory. The Parties agree to undertake all actions, including but not limited to those identified in paragraph 5, to achieve the objectives of this Agreement.

3. It is the express intent of Howe to hereafter refrain from claiming any jurisdiction within Sherman Territory. It is the express intent of Sherman to hereafter refrain from claiming any jurisdiction within Howe Territory. Consequently, neither Party shall attempt to annex, expand its ETJ into or otherwise claim the territory of the other Party affixed by this Boundary Agreement. The Parties may, however, enter into voluntary intergovernmental cooperation agreements pursuant to Tex. Gov’t Code ch 791 to perform tasks that mutually benefit one another.

4. This Agreement is not intended to affect the validity of claims by third-party municipalities to Howe Territory or Sherman Territory.

5. The Parties shall undertake the following tasks to implement this Agreement:

a. The governing body of each Party shall approve and execute this Boundary Agreement;

b. Howe shall by ordinance release any land within Sherman Territory to Sherman and thereby reduce and discontinue its ETJ within Sherman Territory;

c. Sherman shall by ordinance release any land within Howe Territory to Howe and thereby reduce and discontinue its ETJ within Howe Territory;

and the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

15. All references herein in the singular shall be construed to include the plural where applicable, and the masculine shall include the feminine gender.

16. This Agreement shall run with the land and shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns with respect to any and all of the claims brought or which could have been brought against any and all Parties herein released arising out of the events herein described.

17. Each of the signatories to this Agreement represents and warrants that such signatory is authorized to execute this Agreement and bind the applicable Party to the terms and provisions hereof. Each Party warrants that any action required to be taken in order for this Agreement to be binding on it has been duly and properly taken prior to the execution of this Agreement.

18. This Agreement and the representations, warranties, and agreements set forth herein shall survive the discovery of different facts and shall continue in full force and affect and be unaffected by the discovery of different or additional facts.

19. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same instrument.

d. The relinquishment and release of any areas within the ETJ of one Party to the other Party shall be deemed an exchange of territory by adjacent municipalities pursuant to Tex. Loc. Gov't Code section 43.031.

7. This Boundary Agreement shall take effect on the date that the last Party executes it.

8. The Parties shall cooperate with one another in the future to work toward common development and service objectives.

9. This Agreement shall be recorded in the deed records of Grayson County, Texas.

10. Each of the undersigned warrants that no inducements have been made to it on behalf of the Parties released hereby, except as expressly stated in this Agreement and the documents attached hereto as **Exhibits A and B**, and that in deciding to execute and implement this Agreement, each Party has relied solely and only upon its own judgment and the advice given by its attorneys.

11. This Agreement shall be deemed to have been jointly prepared by all Parties hereto, and no ambiguity of this Agreement shall be construed against any Party based upon the identity of the author of this Agreement or any portion thereof.

12. This Agreement shall be governed by, construed and interpreted, and the rights of the Parties determined, in accordance with the laws of the State of Texas, and venue of any dispute concerning this Agreement shall be tried in a state court of competent jurisdiction sitting in Grayson County, Texas.

13. Statements and representations contained herein are to be considered contractual in nature and not merely recitations of fact. The Recitals contained in Part I of this Agreement hereby are expressly incorporated into this Agreement by reference.

14. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be deleted from this Agreement, together with any remaining provisions that are an integral part of the invalid, illegal, or unenforceable provision or that depend on the provision to give them effect,

COUNSEL FOR PARTIES

TERRY MORGAN & ASSOCIATES, P.C. **NICHOLS, JACKSON, DILLARD,
HAGER & SMITH**

By: _____

Terry D. Morgan
State Bar No. 14454075
1201 Elm Street.
4800 Renaissance Tower
Dallas, Texas 75270
Telephone: (214) 740-9944

By: _____

Brandon Shelby
State Bar No. 24046829
P.O. Box 1106
Sherman, Texas 75091-1106
Telephone: (903) 892-7305

**ATTORNEYS FOR THE CITY OF
HOWE, TEXAS**

**ATTORNEYS FOR THE CITY OF
SHERMAN, TEXAS**

PARTIES TO THE AGREEMENT

CITY OF SHERMAN

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

SWORN AND SUBSCRIBED TO BEFORE ME, by said _____, who in his capacity as _____ for the City of Sherman, acknowledges that he was authorized to execute the foregoing document this ___ day of _____, 2009, to certify witness my hand and seal of office.

Notary Public in and for the State of Texas

JUNE 24, 2009

Exhibit-A
City of Howe and City of Sherman
Mutual Boundary Line Agreement
Field Note Description

BEGINNING at the intersection of the west right of way line of U.S. Hwy 75, said point being in the common City Limit line of City of Howe and the City of Sherman, and said point also being in the east property line of a 5.50 acre tract shown by Grayson Central Appraisal District Property Identification Number 130801 and recorded in Vol. 4436 Pg. 271 of the Grayson County Deeds and Records;

Thence S 89° 29' 9" W, along the said City Limit line of City of Howe, for a distance of 1172.24 feet to a point for corner, said point being in the said City Limit Line;

Thence S 89° 59' 0" W, along the said City Limit line of City of Howe, for a distance of 2132.0 feet to a point for corner, said point being in the said City Limit Line and said point also being in the centerline of Clear Creek;

Thence in a southerly direction following the meanders of the centerline of Clear Creek, said meander line also being Howe City Limit for a distance of approximately 2688 feet to a point for corner, said point being in the centerline of F.M. 902, and said point also being the beginning of a curve to the right, having a radius of 1109.98 feet and bearing a central angle of 28° 22' (Rt.);

Thence along the said curve to the right, an arc length distance of 549.61 feet to a point for corner, said point being in the centerline of F.M. 902;

Thence N 68° 07' W, continuing along the centerline of F.M. 902 for a distance of 674 feet to a point for corner, said point being in the centerline of the said F.M. 902 and said point beginning of a tangential curve to the left, having a radius of 1909.88 feet and bearing a central angle of 22° 30' (Lt.);

Thence along the said curve to the left, passing the centerline of Smith Road at 165 feet, said point also referred to as F.M. 902 STA 276+56.7 in the TXDOT Right of Way Map of F.M. 902 from Dorchester to U.S. Hwy. 75 , Beg.S1931 (1) Control 510-4-1, dated 11-11-53 and filed in the Sherman Area Office, Paris District, for a total arc length distance of 750.00 feet to a point for corner in the centerline of the said F.M. road;

Thence S 89° 23' W, continuing along the centerline of F.M. 902 for a distance of 991.40 feet to a point for corner, said point being in the centerline of the said F.M. 902;

Thence S 88° 28' W, continuing along the centerline of F.M. 902 for a distance of 1138.20 feet to a point for corner, said point being in the centerline of the said F.M. 902 in Mary Miller Survey Abstract No. 776 and said point being the beginning of a tangential curve to the right, having a radius of 5730.22 feet and bearing a central angle of 2° 29' (Rt.);

CITY OF HOWE AND SHERMAN
MUTUAL BOUNDARY LINE AGREEMENT
FIELD NOTE DESCRIPTION
JUNE 24, 2009
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Thence along the said curve to the right, passing the western boundary line of Mary Miller Survey Abstract No. 776 eastern boundary line of James McKinney Survey Abstract No. 777 line and at 78.90 feet, said point also referred to as F.M. 902 STA 248+63.2 in the said F.M. 902 from Dorchester to U.S. Hwy. 75 R.O.W. map, for a total arc distance of 248.30 feet to a point for corner in the centerline of the said F.M. road;

Thence N 89° 03' W, along the centerline of F.M. 902 for a distance of 376.80 feet to a point for corner, said point being in the centerline of the said F.M. 902, and said point being the beginning of a tangential curve to the left, having a radius of 5729 feet bearing a central angle of 2° 06' (Lt);

Thence along the said curve to the left, an arc distance of 210.0 feet to a point for corner in the centerline of the said F.M. road;

Thence S 88° 51' , along the centerline of F.M. 902 for a distance of 806.30 feet to a point for corner, said point being in the centerline of the said F.M. 902 ;

Thence S 88° 19' W, continuing along the centerline of F.M. 902 for a distance of 1098.50 feet to a point for corner, said point being in the centerline of the said F.M. 902 and said point being the beginning of a tangential curve to the right, having a radius of 1909.60 feet and bearing a central angle of 7° 52' (Rt.);

Thence along the said curve to the right, an arc distance of 262.20 feet to a point for corner in the centerline of the said F.M. road;

Thence N 83° 49' W, continuing along the centerline of F.M. 902, passing the centerline of Farmington Road at 67.70 feet and 107.60 feet referred to as F.M. 902 STA 218+72.10 and 218+32.20 respectively in the said F.M. 902 from Dorchester to U.S. Hwy. 75 R.O.W. map, for a total distance of 349.80 feet to a point for corner, said point being in the centerline of the said F.M. 902 and said point being the beginning of a tangential curve to the left, having a radius of 1909.36 and bearing a central angle of 7° 18' (Lt.);

Thence along the said curve to the left, an arc distance of 243.30 feet to a point for corner in the centerline of the said F.M. road;

Thence S 88° 53' W, continuing along the centerline of F.M. 902 for a distance of 914.50 feet to a point for corner, said point being in the centerline of the said F.M. 902 ;

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Thence S 89° 39' W, continuing along the centerline of F.M. 902 for a distance of 593.50 feet to a point for corner, said point being in the centerline of the said F.M. 902;

Thence S 88° 47' W, continuing along the centerline of F.M. 902 for a distance of 3544.40 feet to a point for corner, said point being in the centerline of the said F.M. 902 and said point being the beginning of a tangential curve to the left, having a radius of 1149.0 feet and bearing a central angle of 90° 10' (Lt.);

Thence along the said curve to the right, an arc distance of 1803.30 feet to a point for corner in the centerline of the said F.M. road;

Thence S 1° 23' E, continuing along the centerline of F.M. 902 for a distance of 175 feet to a point for corner, said point being in the centerline of the said F.M. 902 and said point also being the beginning of a tangential curve to the right, having a radius of 1149.0 feet and bearing a central angle of 90° 08' (Rt.);

Thence along the said curve to the right, an arc distance of 1802.70 feet along the centerline of F.M. 902 to a point for corner, said point being in the centerline of the said F.M. road;

Thence S 88° 45' W, continuing along the centerline of F.M. 902 for a distance of 2296 feet to a point for corner, said point being in the centerline of the said F.M. 902 and said point also being the beginning of a tangential curve to the right, having a radius of 3820.28 feet and bearing a central angle of 43° 27' (Rt.);

Thence along the said curve to the right, passing the centerline of a county road, namely Beldon Road at 632.60 feet, for a total arc length distance of 2896.70 feet along the centerline of F.M. 902 to a point for corner, said point being in the centerline of the said F.M. road;

Thence N 47° 48' W, continuing along the centerline of the said F.M. 902, passing the east right of way line of S.L.S.F & T railroad at 1019.90 feet, for a total distance of 1319.90 feet to a point for corner, said point being in the centerline of F.M. 902 and said point also being in the west right of way line of S.L.S.F & T Railroad, and said point also referred to as F.M. 902 STA 60+01 being the beginning station of the said F.M. 902 from Dorchester to U.S. Hwy 75 project and the end station of F.M. 902 according to TX DOT's Right of Way Map of F.M. 902 from 511+27.9 S.H. 289 to Dorchester, Control 510 Section 1 Job, dated 10/29/1952 and filed in the Sherman Area Office, Paris District and said point also being in the Mary Miller Survey Abstract No. 775;

Thence continuing in the same direction along the centerline of F.M. 902, for a distance of 576.10 feet to a point for corner, said point being in the centerline of the said F.M. 902, said

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point also being in the beginning of a tangential curve to the left, having a radius of 524.00 feet and bearing a central angle of $43^{\circ} 50' 00''$ (Lt);

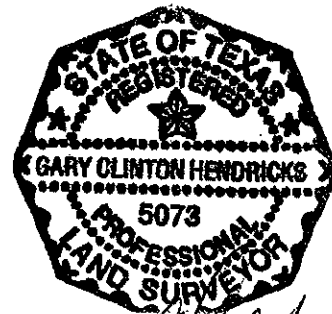
Thence along the said curve to the left, an arc distance of 398.50 feet along the centerline of the said F.M. 902 to a point for corner, said point being in the centerline of the said F.M. 902;

Thence $S 88^{\circ} 22' W$, continuing along the centerline of F.M. 902 for a distance of 1868.60 feet to a point for corner, said point being in the centerline of the said F.M. 902;

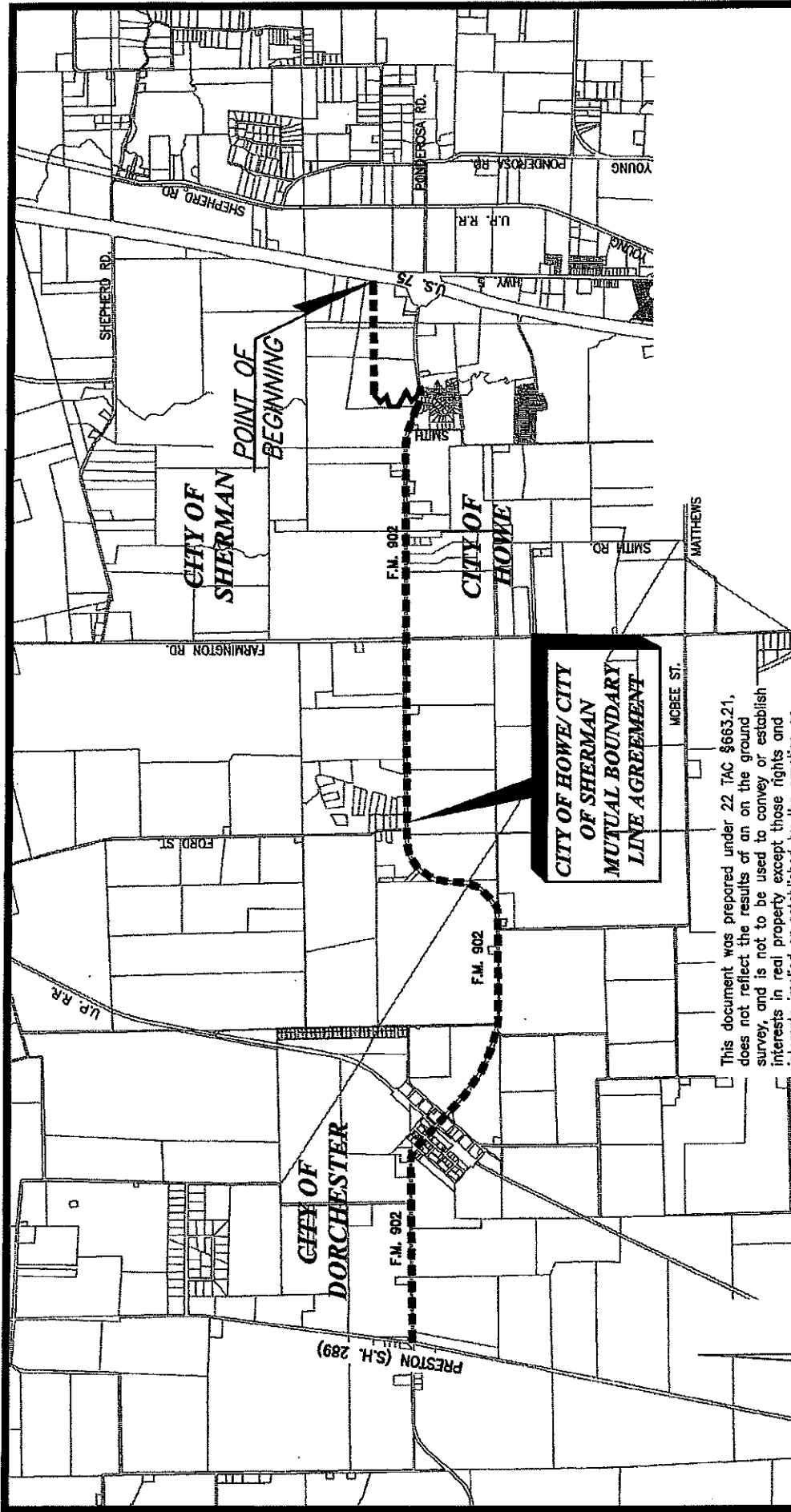
Thence $S 89^{\circ} 00' W$, along the centerline of F.M. 902 for a distance of 3157.80 feet to a point for corner, said point being in the point of intersection of the centerline of the said F.M. 902 and S.H. 289, and said point referred to as STA 511+27.90 of S.H. 289 and STA 0+00 of F.M. 902 in the said F.M. 902 from S.H. 289 to Dorchester map, and said point also being the point of terminal of the said Mutual Boundary Line between City of Howe and City of Sherman.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which is was prepared.

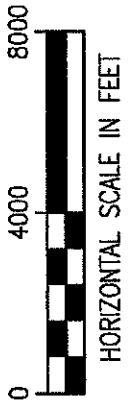
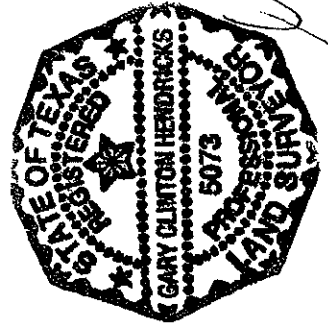
A plat map of even date herewith accompanies this field note description.



Gary C. Hendricks
6/25/2009



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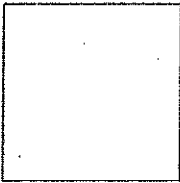


CITY OF HOWE/CITY OF SHERMAN, TEXAS BOUNDARY LINE AGREEMENT

BIRKHOFF, HENDRICKS & CONWAY, L.L.P.
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June, 2009

Gary Hendricks
 6/25/2009



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ANDREW MATA, JR., P.E.

June 25, 2009

Mr. Terry Morgan
Terry D. Morgan & Associates
1201 Elm Street
Suite 4800 Renaissance Tower
Dallas, Texas 75270

Re: City of Howe & City of Sherman
Mutual Boundary Line Agreement

Dear Mr. Morgan:

As you requested, we have prepared a Plat Exhibit and a Field Note Description for the Mutual Boundary Line Agreement between the Cities of Howe and Sherman.

Enclosed with this transmittal letter please two (2) sets of the final Plat Exhibit and the Field Note Description for your records. These documents have been sealed and signed in accordance with the 22 TAC §663.21.

We trust these documents fulfill our scope of services in this matter, unless you direct otherwise. We have enjoyed working with you on this matter and look forward to providing our services in the future.

Sincerely yours,


Gary C. Hendricks, P.E., R.P.L.S.

Enclosures