

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, OCTOBER 15, 2012
5:00 P.M.**

- A.1 [CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN](#)
- A.2 [PLEDGE OF ALLEGIANCE](#)
- A.3 [INVOCATION BY COUNCIL MEMBER CAROLYN S. WACKER](#)
- A.4 [APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF OCTOBER 1, 2012](#)

Consent Agenda

B.1 [CONSENT AGENDA](#)

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

Resolutions

C.1 [RESOLUTION NO. 5714](#)

Authorizing the Acceptance of Fiscal Year 2012 State Homeland Security Grant Program (SHSP) Federal Grant Award Number EMW-2012-SS-00018-S01 from the Federal Emergency Management Agency and the U.S. Department of Homeland Security; Authorizing the Purchase of Equipment Related to Regional Response

C.2 [* RESOLUTION NO. 5715](#)

Authorizing Execution of a Mutual Aid Agreement with the Town of Caney, Oklahoma

C.3 [RESOLUTION NO. 5716](#)

Authorizing Execution of an Interlocal Agreement between the City of Sherman and the City of Fort Worth for Household Hazardous Waste Services

C.4 [* RESOLUTION NO. 5717](#)

Authorizing the City Manager to Execute a Contract with The Sherman Museum for Expenditure of a Portion of the Funds Collected by the City of the Hotel-Motel Occupancy Tax

C.5 [* RESOLUTION NO. 5718](#)

Authorizing the Purchase and Installation of e-Citation/Mobile Data Capture Electronic Hand-Held Ticket Writers for the Sherman Police Department from Brazos Technology (a Subsidiary of Tyler Technologies)

Other Business

D.1 [* OTHER BUSINESS](#)

Consider Request of the Austin College Kappa Gamma Chi to Temporarily Close Certain Streets for the Homecoming 2012 ‘Roo Run on Saturday, October 27, 2012

D.2 [* OTHER BUSINESS](#)

Replat Approval of Perkins Addition, a Replat of Lots 10-11, Block 1, Peppertree Addition and Lots 1-4, Block 5, Western Hills Addition, Section 4, containing 2.03 acres; Lloyd and Dorothy Perkins, James and Henrietta Fullenwider, Mikeal Trent and Marianne Graham, John and Kathy Galvan, and Dan and Sharon Anderson, Owners; Kathy Galvan, Representative; and Underwood Drafting and Surveying, Inc., Surveyors (1702, 1706, 1710 and 1714 Ridgeway Drive and 1813 Glenway Drive)

D.3 [OTHER BUSINESS](#)

Set Date to Canvass Results of the City of Sherman’s Regular Municipal Election

D.4 [CITIZEN REQUESTS](#)

D.5 [MEDIA QUESTIONS](#)

D.6 [COUNCIL COMMENTS](#)

D.7 [ADJOURNMENT](#)

[COUNCIL CALENDAR](#)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Carolyn S. Wacker, Council Member



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. A.3

INVOCATION BY COUNCIL MEMBER CAROLYN S. WACKER



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. A.4

APPROVE MINUTES
OF THE REGULAR CITY COUNCIL MEETING OF OCTOBER 1, 2012

STATE OF TEXAS

§

October 1, 2012

COUNTY OF GRAYSON

§

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on October 1, 2012.

MEMBERS PRESENT: MAYOR BILL MAGERS; DEPUTY MAYOR WILLIE STEELE.
COUNCIL MEMBERS HOWETH, PLYLER, SOFTLY,
WACKER.

MEMBERS ABSENT: COUNCIL MEMBER SMITH.

CALL TO ORDER

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

CALL TO ORDER

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of September 17, 2012 and the Called City Council Meeting (held jointly with the Sherman Economic Development Corporation Board of Directors) of September 21, 2012. Deputy Mayor Steele moved to approve the Minutes as presented; Second by Council Member Plyler. All present voted AYE.
MOTION CARRIED.

APPROVE MINUTES

CONSENT AGENDA

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

CONSENT AGENDA

RESOLUTIONS

RESOLUTION NO. 5707 – AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND THE CITY OF SOUTHMAYD FOR AMBULANCE AND EMERGENCY MEDICAL SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND THE CITY OF SOUTHMAYD FOR AMBULANCE AND EMERGENCY MEDICAL SERVICES.
CONSENT AGENDA.

RES 5707
SOUTHMAYD
AMBULANCE
CONTRACT

RESOLUTION NO. 5708 – AUTHORIZING EXECUTION OF PROFESSIONAL SERVICES AGREEMENTS WITH TIMOTHY L. MORRIS, P.E., DBA MORRIS ENGINEERS AND UNDERWOOD DRAFTING AND SURVEYING, INC. FOR THE DESIGN AND SURVEYING OF THE STATE HIGHWAY 289 NORTH BRANCH SEWER IMPROVEMENTS

RES 5708
S.H. 289 SEWER
IMPROVEMENTS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF PROFESSIONAL SERVICES AGREEMENTS WITH TIMOTHY L. MORRIS, P.E., DBA MORRIS ENGINEERS AND UNDERWOOD DRAFTING AND SURVEYING, INC. FOR THE DESIGN AND SURVEYING OF THE STATE HIGHWAY 289 NORTH BRANCH SEWER IMPROVEMENTS.
CONSENT AGENDA.

RESOLUTION NO. 5709 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH CUPID INVESTMENTS, INC. FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1528 SOUTH MONTGOMERY STREET

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH CUPID INVESTMENTS, INC. FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1528 SOUTH MONTGOMERY STREET.
CONSENT AGENDA.

RES 5709
RESIDENTIAL TAX
ABATEMENT
(1528 S.
MONTGOMERY)

RESOLUTION NO. 5710 – AUTHORIZING THE PURCHASE OF TWO NEW RESIDENTIAL AUTOMATED COLLECTION TRUCK CHASSIS FOR THE SOLID WASTE SERVICES DEPARTMENT FROM CHASTANG’S BAYOU CITY AUTOCAR THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF TWO NEW RESIDENTIAL AUTOMATED COLLECTION TRUCK CHASSIS FOR THE SOLID WASTE SERVICES DEPARTMENT FROM CHASTANG’S BAYOU CITY AUTOCAR THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD).
CONSENT AGENDA.

RES 5710
SOLID WASTE
TRUCKS

RESOLUTION NO. 5711 – AUTHORIZING THE PURCHASE OF TWO NEW RESIDENTIAL AUTOMATED COLLECTION PACKER BODIES FOR THE SOLID WASTE SERVICES DEPARTMENT FROM HEIL OF TEXAS THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF TWO NEW RESIDENTIAL AUTOMATED COLLECTION PACKER BODIES FOR THE SOLID WASTE SERVICES DEPARTMENT FROM HEIL OF TEXAS THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD).
CONSENT AGENDA.

RES 5711
SOLID WASTE
PACKER BODIES

RESOLUTION NO. 5712 – AUTHORIZING THE PURCHASE OF A 2013 FORD F-350 FLEET SERVICE VEHICLE FOR THE FLEET MAINTENANCE DEPARTMENT FROM SAM PACK’S FIVE STAR FORD THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC)

RES 5712
FLEET MAINT.
VEHICLE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 2013 FORD F-350 FLEET SERVICE VEHICLE FOR THE FLEET MAINTENANCE DEPARTMENT FROM SAM PACK'S FIVE STAR FORD THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC).
CONSENT AGENDA.

RESOLUTION NO. 5713 – ADOPTING AN INVESTMENT POLICY FOR THE CITY OF SHERMAN
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ADOPTING AN INVESTMENT POLICY FOR THE CITY OF SHERMAN.
CONSENT AGENDA.

RES 5713
INVESTMENT POLICY

REQUEST TO ADVERTISE
STATE HIGHWAY 289 WATER MAIN CONSTRUCTION PROJECT
The City Council approved the request to advertise for bids for the construction of the S.H. 289 Water Main Construction Project. The Capital Improvement Program contains a project to extend a water main along the east side of S.H. 289, between U.S. Highway 82 and the southern City limits.
CONSENT AGENDA.

REQUEST TO ADV
S.H. 289 WATER
MAIN PROJECT

OTHER BUSINESS
CONSIDER REQUEST OF DOWNTOWN SHERMAN PRESERVATION & REVITALIZATION TO TEMPORARILY CLOSE WALL STREET (BETWEEN TRAVIS STREET AND MONTGOMERY STREET) AND WALNUT STREET (BETWEEN PECAN STREET AND HOUSTON STREET) FOR A HALLOWEEN EVENT ON SATURDAY, OCTOBER 13, 2012
The City Council approved the request of Downtown Sherman Preservation & Revitalization to temporarily close Wall Street, between Travis and Montgomery Streets, and Walnut Street, between Pecan and Houston Streets, on October 13, 2012 for their Halloween Celebration. The request includes barricade placement and removal.
CONSENT AGENDA.

REQUEST TO
CLOSE STREETS
(OCT. 13, 2012)

CONSIDER REQUEST OF THE SHERMAN INDEPENDENT SCHOOL DISTRICT AND THE SHERMAN HIGH SCHOOL STUDENT COUNCIL TO TEMPORARILY CLOSE CERTAIN STREETS FOR THE 2012 SHERMAN HIGH SCHOOL HOMECOMING PARADE ON MONDAY, OCTOBER 15, 2012
The City Council approved the request of the Sherman Independent School District and the Sherman High School Student Council to close certain streets in the downtown area for the 2012 Sherman High School Homecoming Parade on October 15, 2012. The event will require traffic control assistance and barricade placement and removal.
CONSENT AGENDA.

REQUEST TO
CLOSE STREETS
(OCT. 15, 2012)

RECEIVE PRESENTATION FROM PARKS AND COMMUNITY SERVICE DIRECTOR KEVIN WINKLER ON PARKS AND RECREATION SERVICES

PARKS & RECREATION
SERVICES

Kevin Winkler, Parks and Community Service Director, presented an update on recent Parks and Recreation activities. It has been almost one year since the Parks and Recreation Office moved to the Glennie O. Ham building in Martin Luther King, Jr. Park. Mr. Winkler said the large facility has given them the opportunity to expand and offer more activities and classes with a wider variety.

He compared the number of activities offered in the old building from October 2010 through September 2011, which was 144, with the 221 classes and activities offered from October 2011 through September 2012. Mr. Winkler said they were also able to offer multiple classes simultaneously, as well as 48 completely new classes or activities.

He added that by moving the office away from the area around Bearcat Stadium, they were able to expand their availability and offer activities on Friday nights.

Mr. Winkler updated Council Members on activities at The Splash this year. He said they had a good season with 39,290 visitors to The Splash over the summer. The highest occupancy day this year saw 858 visitors. Last year there were 42,000 visitors to the facility over the summer.

Mr. Winkler said this year, there were 453 participants in the Learn to Swim program, 30 pool rentals, 48 cabana rentals, 170 season passes, and 87 punch cards. He added that the daily rate for The Splash is so reasonable that a visitor would need to go several times on a pass to make it cost effective.

He outlined the statistics for the athletics program, adding that it was an extremely busy season this year. Events include the Spring Youth League for baseball, softball, and soccer; the Spring Adult League for softball and basketball; the Summer Adult League for softball; and the Fall Youth and Adult Leagues. Mr. Winkler gave statistics on the number of participants and the number of games played.

He added that hosting the various games includes field preparations, setting lights, scheduling, and telephone calls. They also hosted three North Texas Baseball Tournaments this year. Another tournament is scheduled in October 2012.

Deputy Mayor Steele verified that the North Texas Baseball Association actually runs the tournaments. But the City prepares the fields, lines the fields, and monitors the restrooms and any problems that might arise. Mr. Winkler added these tournaments have really good attendance and they have historically filled all the hotel rooms in Sherman with overflow going to Denison.

Mr. Winkler said the staff is looking forward to additional opportunities that will be available with the new Fairview gym.

Council Member Howeth asked if they have received any complaints about moving the Parks and Recreation Office or if citizens are having trouble locating the office. Mr. Winkler said some people are having trouble with the location in certain GPS units. They have received many telephone calls and direct callers to the new location.

Mayor Magers congratulated Mr. Winkler on the swim program saying it is one of the best programs for children.

RECEIVE UPDATE FROM MAYOR BILL MAGERS ON THE CITY'S PARTICIPATION IN THE TRANSPORTATION EXCELLENCE FOR THE 21ST CENTURY (TEX-21) U.S. 75-69 CORRIDOR TASK FORCE AND CONSIDER RENEWAL OF MEMBERSHIP IN TEX-21 FOR FISCAL YEAR 2012-2013

**TEX-21 CORRIDOR
TASK FORCE**

Mayor Magers presented an update on the City's participation in the TEX-21 U.S. 75-69 Corridor Task Force over the past year. About a year ago, Sherman joined the TEX-21 group and agreed to see where they were after the first year. He wanted to recap that year and ask the Council to consider renewing their membership.

TEX-21 is a lobbying group that lobbies for transportation issues, which he felt was crucial for economic development. TEX-21 U.S. 75-69 Corridor Task Force was founded as a corridor initiative to have U.S. 75-69 designated as a High Priority Corridor, which is a first step to obtaining the Interstate status.

When Sherman joined TEX-21, McKinney was the northern most City to be a member. Today members include Sherman, Denison, Grayson County, Durant, and Atoka. The goal of the Corridor Task Force is to get Interstate status from Interstate 45 where it terminates in Dallas at Interstate 30, to Interstate 44 at Big Cabin, north of Tulsa, Oklahoma. Mayor Magers explained that in order to be an Interstate, the beginning and end must be at another Interstate or "like body." The Task Force is attempting to get their High Priority Corridor Status recognized by Congress.

Mayor Magers added that many businesses won't move to a town unless they are on an Interstate. He added that the designation wouldn't happen overnight, but he did feel that over the next two to five years the corridor would have the High Priority Status. The Oklahoma Department of Transportation and the Tribes in Oklahoma are also supporting the initiative.

Mayor Magers outlined reasons that Sherman should renew its membership in the organization. On the task force, each member has one vote, therefore Sherman's vote counts the same as the City of Dallas' vote. Participation in the group also give Sherman access to many other cities and counties, as well as State Representative Larry Phillips, who is the chairman of the Transportation Committee.

Mayor Magers added that when McKinney has completed their highway improvements, Highway 75 will meet the standards for Interstate status from south of Dallas through McKinney. Some work is in the process in Sherman for ramp reversals at S.H. 902 and Shepherd Road. With that complete, U.S. 75 should meet the Interstate standards to U.S. 82.

Last year, when Sherman joined the Task Force, Mayor Magers said then City Council Member Chip Adami wanted to see participation from Oklahoma. Currently Durant and Atoka are now members. He added that for \$4,200 it is “a great deal” and he felt Sherman should renew their membership in the Task Force. It is an ongoing activity and a great investment and he urged the representatives to be active members.

Deputy Mayor Steele confirmed that the cost to renew is the same as the initial fee to join.

ACTION TAKEN.

Motion by Council Member Wacker to approve the renewal of Sherman’s membership in the TEX-21 U.S. 75-69 Corridor Task Force at a cost of \$4,200.00 for FY 2012-2013. Second by Council Member Softly.

Robby Hefton, Assistant City Manager/CFO, clarified that the fee is actually \$4,250.00.

ACTION TAKEN.

Motion by Council Member Wacker to amend the motion to approve the renewal of Sherman’s membership in the TEX-21 U.S. 75-69 Corridor Task Force at a cost of \$4,250.00 for FY 2012-2013. Second by Council Member Softly.

VOTING AYE: Magers, Howeth, Plyler, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

CITIZENS REQUESTS

There were no citizen’s requests.

MEDIA QUESTIONS

There were no media questions.

PARKS AND RECREATION ADVISORY BOARD (2)

ACTION TAKEN.

Motion by Council Member Wacker to remove the appointment of members to the Parks and Recreation Advisory Board from the table for consideration. Second by Council Member Softly.

VOTING AYE: Howeth, Plyler, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED TO REMOVE FROM TABLE.

CITIZEN’S REQUESTS

MEDIA QUESTIONS

**PARKS & RECREATION
ADVISORY BOARD**

ACTION TAKEN.

Motion by Council Member Howeth to appoint Rhonda McCollum and Jencie Bolin to the Parks and Recreation Advisory Board for a term from October 2, 2012 until October 2, 2014. Second by Council Member Wacker.

VOTING AYE: Howeth, Plyler, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

COUNCIL COMMENTS

SHERMAN BEARCAT GAME AGAINST DENISON

Council Member Howeth asked everyone to support the Sherman Bearcats this weekend when they play the Denison Yellow Jackets.

**SHERMAN BEARCAT
GAME AGAINST
DENISON**

LOST GREAT SHERMAN RESIDENT

Deputy Mayor Steele said Sherman lost a great man this past week in Bud Wallace. Mr. Wallace served several terms as a City Council Member and he will be greatly missed. He asked that everyone keep Mr. Wallace's family in their prayers.

**LOST GREAT
SHERMAN RESIDENT**

CONGRATULATIONS TO KEVIN WINKLER

Council Member Plyler congratulated Mr. Winkler and his staff for a job well done and for expanding the opportunities for our citizens.

**CONGRATULATIONS
TO KEVIN WINKLER**

SHERMAN YOUTH FOOTBALL

Mayor Magers also recognized the Sherman Bearcat "Battle of the Axe" and said if citizens wanted more football after Friday night, they can watch the only home game of the 5th and 6th graders with Sherman Youth Football on Saturday at Bearcat Stadium.

**SHERMAN YOUTH
FOOTBALL**

LOST GREAT SHERMAN RESIDENT

Mayor Magers said Bud Wallace served Sherman for many years and was a "great guy."

**LOST GREAT
SHERMAN RESIDENT**

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 5:26 p.m.

ADJOURNMENT

MAYOR

CITY CLERK



Activities

- Oct 2010-Sep 2011 we offered 144 classes and activities.
- Oct 2011-Sep 2012 we offered 221 classes and activities
- Offer multiple classes simultaneously
- Expanded our availability



The Splash

- Visitor to The Splash – 39,290
- Learn to Swim – 453
- Pool Rentals – 30
- Cabana Rentals – 48
- Season Passes – 170
- Punch Cards – 87



Athletics

- Spring Youth
 - Baseball Games – 439
 - Softball Games – 147
 - Soccer Games – 538
- Spring Adult
 - Softball – 30 teams/4 leagues/167 games
 - Basketball – 6 teams/over 50 games with tournament
- Summer Adult
 - Softball – 28 teams/222 games
 - Softball Tournament
- Fall
 - Youth
 - Adult





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. B.1

CONSENT AGENDA

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C.2 * RESOLUTION NO. 5715

Authorizing Execution of a Mutual Aid Agreement with the Town of Caney, Oklahoma

C.4 * RESOLUTION NO. 5717

Authorizing the City Manager to Execute a Contract with The Sherman Museum for Expenditure of a Portion of the Funds Collected by the City of the Hotel-Motel Occupancy Tax

C.5 * RESOLUTION NO. 5718

Authorizing the Purchase and Installation of e-Citation/Mobile Data Capture Electronic Hand-Held Ticket Writers for the Sherman Police Department from Brazos Technology (a Subsidiary of Tyler Technologies)

D.1 * OTHER BUSINESS

Consider Request of the Austin College Kappa Gamma Chi to Temporarily Close Certain Streets for the Homecoming 2012 'Roo Run on Saturday, October 27, 2012

D.2 * OTHER BUSINESS

Replat Approval of Perkins Addition, a Replat of Lots 10-11, Block 1, Peppertree Addition and Lots 1-4, Block 5, Western Hills Addition, Section 4, containing 2.03 acres; Lloyd and Dorothy Perkins, James and Henrietta Fullenwider, Mikeal Trent and Marianne Graham, John and Kathy Galvan, and Dan and Sharon Anderson, Owners; Kathy Galvan, Representative; and Underwood Drafting and Surveying, Inc., Surveyors (1702, 1706, 1710 and 1714 Ridgeway Drive and 1813 Glenway Drive)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. C.1

RESOLUTION NO. 5714

**Authorizing the Acceptance of Fiscal Year 2012 State Homeland Security Grant Program (SHSP) Federal Grant Award Number EMW-2012-SS-00018-S01 from the Federal Emergency Management Agency and the U.S. Department of Homeland Security;
Authorizing the Purchase of Equipment Related to Regional Response**

Issue

On October 2, 2012, the Federal Emergency Management Agency (FEMA) and the U.S. Department of Homeland Security awarded the City of Sherman a grant in the amount of \$42,492.73. The City Council is being asked to authorize both the acceptance of this grant and the use of these funds.

Background

The City of Sherman has been awarded a grant to carry out Homeland Security projects that will significantly improve local and regional terrorism prevention, preparedness, response and recovery capabilities. This year's grant will be used to fund communications equipment for the Sherman Fire Department. Any remaining grant funds will be used for public safety equipment and training for fire and police. Eligibility for this and future grants was contingent upon compliance with state and federal guidelines, including compliance with the National Incident Management System (NIMS).

Origination

J. J. Jones, Fire Chief

Financial Consideration

The grant award of \$42,492.73 represents 100% of the total project cost. Funding relating to these grant expenditures was budgeted in Department 128, Emergency Management. Expenditure of these funds will be in accordance with City purchasing guidelines.

Staff Recommendation

It is recommended that the City Council approve acceptance of the award and purchase of the related equipment.

Alternatives

Though not recommended, the City Council could decline the award and not provide the programs as designed.

Attachments

Resolution No. 5714

Grant Award Package (Award notification and Sub-Recipient Agreements)

Prepared by:
Jeffrey J. Jones, Fire Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5714

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE ACCEPTANCE OF FISCAL YEAR 2012 STATE HOMELAND SECURITY GRANT PROGRAM (SHSP) FEDERAL GRANT AWARD NUMBER EMW-2012-SS-00018-S01 FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY AND THE U.S. DEPARTMENT OF HOMELAND SECURITY; AUTHORIZING THE PURCHASE OF EQUIPMENT RELATED TO REGIONAL RESPONSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the Mayor be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to accept the Fiscal Year 2012 State Homeland Security Grant Program, Federal Grant Award Number EMW-2012-SS-00018-S01 from the Federal Emergency Management Agency (FEMA) and the U.S. Department of Homeland Security, in accordance with all award documents attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2012.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
BILL MAGERS, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

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

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

www.dps.texas.gov



STEVEN C. McCRAW
DIRECTOR
DAVID G. BAKER
CHERYL MacBRIDE
DEPUTY DIRECTORS



COMMISSION
ALLAN B. POLUNSKY, CHAIR
ADA BROWN
JOHN STEEN
CARIN MARCY BARTH
A. CYNTHIA LEON

October 1, 2012

Dear Authorized Official:

Attached are FY 2012 Homeland Security Grant Program (HSGP) sub-recipient award documents for your jurisdiction/agency. This letter, and the attached documents, contain important information about the grant(s) and provide instructions requiring your immediate action for grant acceptance.

Please follow the instructions at the top of the first page of the Term and Conditions, and return all documents as instructed below to the Texas Department of Public Safety, Texas Homeland Security State Administrative Agency (THSSAA) no later than November 15, 2012.

The Sub-recipient Agreement (SRA), which includes the Award, the Terms and Conditions, and attached Exhibits must be filled out, and signed by the person identified in Box 4 on the Sub-Recipient Award. Signature by anyone other than that person will only be accepted if a letter of designation from the governing body is attached that authorizes the person to sign for the Sub-recipient. Letters of signature designation will be deemed as authorization for that person to sign any future documents related to the grant award(s) unless the letter indicates otherwise.

Return SRA(s) via Email

The FY 2012 SRA documents should be returned via email to SAA_SRA@dps.texas.gov by the date indicated above. Please title the subject line of your email "HSGP" and name of jurisdiction (i.e. *HSGP Houston_City of*). If you have received multiple awards, please attach each SRA (including a signed award and set of Terms and Conditions) as a separate attachment to the email and use the following naming convention for each file: federal grant title abbreviation (from Box 5 on Award), "SRA" and name of jurisdiction. (i.e. *SHSP LETPA SRA Houston_City of*; *UASI SRA Houston_City of*).

Please retain a copy of each document submitted to the THSSAA for your records. The grant award(s) may be withdrawn if all required documents are not completed and submitted to the THSSAA within the deadlines established below.

Timeline for FY 2012 Grant Process

Below is the timeline for the FY 2012 HSGP awards and projects. The Biannual Strategy Implementation Report (BSIR) Plan must be completed in the State's grant management system (State Preparedness and Assessment Reporting Service (SPARS)) and the Sub-recipient must enter acceptable milestones for each project in SPARS.

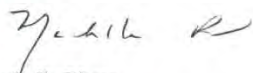
Sept 11 2012	State received 2012 HSGP award from DHS/FEMA.
Oct 16 2012	Deadline for SAA to issue sub-recipient agreements (45 days from start date as indicated by DHS).
Nov 15 2012	Deadline for signed sub-recipient agreements to be returned to SAA (45 days from SAA award).
Nov 30 2012	Deadline for sub-recipient to have entered their initial BSIR data in SPARS.
Dec 14 2012*	Deadline for sub-recipient to enter project milestones for approved 2012 projects. <i>*(Expenditure requests will not be approved until clear milestones are established for all projects in SPARS.)</i>
Feb 28 2013	Deadline for sub-recipient to submit 2012 project EHP Screening Forms to the SAA.
Jan 31 2014*	17-month performance period for Sub-recipients. All invoices must be received by THSSAA by the grant period end date. <i>*(COGs and UASI Core Cities have slightly longer performance periods; see Box 6 of the Award for your grant period end date.)</i>

Form 74-176 Direct Deposit Authorization

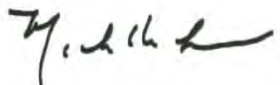
In addition, to reimburse you for grant-funded expenses the THSSAA must have a current Direct Deposit Authorization from your organization in order to transfer grant funds electronically to a designated bank account. An electronic version of this form is available on the Texas State Comptroller's website at: <http://www.window.state.tx.us/taxinfo/taxforms/74-176.pdf>. If you submitted a completed Direct Deposit Authorization form recently at the request of TXDPS or with prior acceptance documents for FY 2012 HSGP awards, you do not need to complete a new authorization unless your bank account information has changed. By the due date of your SRA(s), please email a current Direct Deposit Authorization form to SAA@dps.texas.gov with a subject line and file name of "DDForm" and name of jurisdiction (i.e. *DDForm Travis County*).

If you have any questions, you may contact your Council of Governments, UASI Point of contact, the grant coordinator assigned to your region or Nancy Carrales at nancy.carrales@dps.texas.gov or (512) 377-0004. For information on grant coordinators assigned to your region please go to http://www.txdps.state.tx.us/director_staff/saa/documents/GrantTeamAlignments062912.pdf.

Sincerely,



Machelle Pharr
Deputy Assistant Director
Texas Homeland Security State Administrative Agency

	Texas Department of Public Safety								
	2012 Sub-Recipient Award for City of Sherman								
1. General Award Information		Reference/Encumbrance No:							
Date of Award: October 2, 2012	Prepared By: Mounce, Ana-Jo	3. SAA Award Number: 12-SR 67496-01							
4. Sub-Recipient Name and Address		5. Federal Grant Information							
Mayor Bill Magers City of Sherman P.O. Box 1106 Sherman, TX 75091-1106		Federal Grant Title: Homeland Security Grant Program (HSGP) State Homeland Security Program (SHSP)							
		Federal Grant Award Number: EMW-2012-SS-00018-S01							
		Federal Granting Agency: Department of Homeland Security FEMA Grant Programs Directorate							
		Date Federal Grant Awarded to TxDPS: September 6, 2012							
CFDA: 97.073									
6. Award Amount and Grant Breakdowns									
SHSP \$42,492.73		<table border="1" style="width: 100%;"> <tr> <th colspan="2" style="text-align: center;">Grant Period:</th> </tr> <tr> <td style="text-align: center;">From: Sep 1, 2012</td> <td style="text-align: center;">To: Jan 31, 2014</td> </tr> <tr> <td colspan="2" style="text-align: center; color: red; font-size: small;">(The SAA must receive all invoices by the end of grant period)</td> </tr> </table>		Grant Period:		From: Sep 1, 2012	To: Jan 31, 2014	(The SAA must receive all invoices by the end of grant period)	
		Grant Period:							
From: Sep 1, 2012	To: Jan 31, 2014								
(The SAA must receive all invoices by the end of grant period)									
7. Statutory Authority for Grant: The Consolidated Appropriations Act 2012, Division D (Public Law 112-74), and the Homeland Security Act of 2002 (Public Law 107-296), as amended by section 101 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53).									
8. Method of Payment: Primary method is reimbursement.									
9. Debarment/Suspension Certification: The Sub-Recipient certifies that the sub-recipient and its contractors/vendors are not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not have active Exclusions listed at https://www.sam.gov/portal/public/SAM/									
10. Agency Approvals									
Approving TxDPS Official: Machele Pharr Deputy Assistant Director Texas Homeland Security State Administrative Agency Texas Department of Public Safety		Signature of TxDPS Official: 							
11. Sub-Recipient Acceptance									
I have read, understood and agree to this Sub-Recipient Agreement consisting of this Award and the attached Terms and Conditions.									
Print name and title of Authorized Sub-Recipient Official:		Signature of Sub-Recipient Official:							
Enter Employer Identification Number (EIN) or Federal Tax Identification Number:		DUNS Number:	Date Signed :						
DUE DATE: November 15, 2012 Signed Award with Terms and Conditions must be returned to SAA_SRA@dps.texas.gov on or before the due date.									

2012 TERMS AND CONDITIONS

Instructions:

The Sub-recipient shall:

1. Fill in the information and sign the Grant Sub-Recipient Award;
2. Certify they have read and understand these Terms and Conditions;
3. Certify to the statements provided in Exhibits A, B, C and D located at the back of this document by filling in contact information and signing all exhibits, and
4. Return all documents via email to SAA_SRA@dps.texas.gov on or before the date provided in the transmittal letter and/or in this grant.

Grant Sub-recipient Agreement

This Grant Sub-recipient Agreement (consisting of this 2012 Grant Sub-recipient Award and these Terms and Conditions) is made and entered into by and between the Department of Public Safety / Texas Homeland Security State Administrative Agency, an agency of the State of Texas, hereinafter referred to as "DPS/THSSAA," and the funds recipient, hereinafter referred to as the "Sub-recipient" or "Sub-grantee." Furthermore, DPS/THSSAA and the Sub-recipient are collectively hereinafter referred to as the "Parties." This Grant Sub-recipient Agreement (SRA), or otherwise referred to herein as "this Grant" or "this Agreement", is only an offer until Sub-recipient returns the signed copy of this Grant on or before the date provided in the transmittal letter and/or in this Grant Sub-recipient Award.

The FY 2012 Homeland Security Grant Program (HSGP) funding plays an important role in the implementation of Presidential Policy Directive – 8 (PPD-8) by supporting the development and sustainment of core capabilities to fulfill the National Preparedness Goal (NPG). HSGP funding shall be used for costs related to the planning, organization, equipment, training, and exercise needs that prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events.

Sub-recipient may not assign or transfer any interest in this Grant without the express, prior written consent of DPS/THSSAA. If Sub-recipient issues subawards as part of this Grant project, Sub-recipient shall include and require its subawardees to comply with the terms and conditions of this Grant.

The FY 2012 Nonprofit Security Grant Program (NSGP) funding plays an important role in the implementation of Presidential Policy Directive 8 (PPD-8) by supporting the development and sustainment of core capabilities to fulfill the NPG. NSGP provides funding for target hardening and other physical security enhancements and activities to nonprofit organizations that are at high risk of terrorist attack and located within one of the specific Urban Areas Security Initiative (UASI)-eligible Urban Areas. While this funding is provided specifically to high-risk nonprofit organizations, the program seeks to integrate nonprofit preparedness activities with broader State and local preparedness efforts.

The term "Sub-recipient agreement funds" as used in this Grant means funds provided by DPS/THSSAA under the United States Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) grant programs (also referred to herein as DHS/FEMA). The term "Sub-recipient's funds" or match funds as used in this Grant means funds provided by the Sub-recipient.

Overview and Performance Standards

All allocations and use of funds under this Grant shall be in accordance with the FY 2012 Funding Opportunity Announcement (FOA) for the Federal Grant Title specified on this Grant, and such FY 2012 FOA is incorporated by reference herein. Sub-recipient shall read, understand and accept the FY 2012 Funding Opportunity Announcement as binding.

Standard of Performance. Sub-recipient shall perform all activities and projects entered into the DPS/THSSAA web-based grants management system which are approved by DPS/THSSAA. Any change to a project shall receive prior written approval by the appropriate local, regional and state-level grant administrator(s). Sub-recipient shall perform all activities in accordance with all terms, provisions and requirements set forth in this Grant, including but not limited to the following Exhibits:

1. Assurances – Non-Construction Programs, hereinafter referred to as "Exhibit A"
2. Assurances – Construction Programs, hereinafter referred to as "Exhibit B"
3. Certifications, hereinafter referred to as "Exhibit C"
4. State of Texas Assurances, hereinafter referred to as "Exhibit D"

Failure to Perform. In the event Sub-recipient fails to implement the project(s) entered and approved in the DPS/THSSAA web-based grants management system, or comply with any provision of this Grant, Sub-recipient shall be liable to DPS/THSSAA for an amount not to exceed the award amount of this Grant and may be barred from applying for or receiving additional DHS/FEMA grant program funds or any other grant program funds administered by DPS until repayment to DPS/THSSAA is made and any other compliance or audit finding is satisfactorily resolved, in addition to any other remedy specified in this Grant. Failure to timely implement projects may reduce future funding in additional DHS/FEMA and/or other grant programs administered by DPS.

Environmental Review

Sub-recipient shall assess its federally funded projects for potential impact to environmental resources and historic properties. Sub-recipient shall submit any required screening form(s) as soon as possible and shall comply with deadlines established by DPS/THSSAA. Timelines for the Environmental Planning and Historic Preservation (EHP) review process will vary based upon the complexity of the project and the potential for environmental or historical impact. Sub-recipient shall include sufficient review time within its project management plan to comply with EHP requirements. Initiation of any activity prior to completion of FEMA's EHP review will result in a non-compliance finding and DPS/THSSAA will not authorize or release grant funds for non-compliant projects.

Sub-recipient, as soon as possible upon receiving its grant award, shall provide information to DPS/THSSAA to assist with the legally-required EHP review and to ensure compliance with applicable EHP laws and Executive Orders (EO) currently using the FEMA EHP Screening Form OMB Number 1660-0115/FEMA Form 024-0-01 and submitting it, with all supporting documentation, to DPS/THSSAA for review. These EHP requirements include but are not limited to the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, EO 11988 – Floodplain Management, EO 11990 – Protection of Wetlands, and EO 12898 – Environmental Justice. Sub-recipient shall comply with all Federal, State, and local EHP requirements and shall obtain applicable permits and clearances. See FEMA Information Bulletin 329.

Sub-recipient shall not undertake any activity from the project that would result in ground disturbance, facility modification, or purchase and use of sonar equipment without the prior approval of FEMA. These include but are not limited to communications towers, physical security enhancements involving ground disturbance, new construction, and modifications to buildings. Sub-recipient shall comply with all mitigation or treatment measures required for the project as the result of FEMA's EHP review. Any changes to an approved project description will require re-evaluation for compliance with EHP requirements before the project can proceed. If ground disturbing activities occur during project implementation, Sub-recipient shall ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Sub-recipient shall immediately cease construction in that area and notify FEMA and the appropriate State Historical Preservation Office.

Funding Obligations

- A. DPS/THSSAA shall not be liable to Sub-recipient for any costs incurred by Sub-recipient that are not allowable costs.
- B. Notwithstanding any other provision of this Grant, the total of all payments and other obligations incurred by DPS/THSSAA under this Grant shall not exceed the Total Award Amount listed on the Grant Sub-recipient Award.
- C. Sub-recipient shall contribute the match funds listed on the Grant Sub-recipient Award.
- D. Sub-recipient shall refund to DPS/THSSAA any sum of these grant funds that has been determined by DPS/THSSAA to be an overpayment to Sub-recipient or that DPS/THSSAA determines has not been spent by Sub-recipient in accordance with this Grant. No refund payment(s) shall be made from local, state or federal grant funds unless repayment with grant funds is specifically permitted by statute or regulation. Sub-recipient shall make such refund to DPS/THSSAA within thirty (30) days after DPS/THSSAA requests such refund.
- E. Notwithstanding any other provisions, the Parties hereto understand and agree that DPS/THSSAA's obligations under this Grant are contingent upon the receipt of adequate funds to meet DPS/THSSAA's liabilities hereunder, except as required by the Homeland Security Grant Program (HSGP). DPS/THSSAA shall not be liable to Sub-recipient for costs which exceed the amount specified in this Grant.

Performance Period

The performance period for this Grant is listed on the Grant Sub-Recipient Award. All goods and services shall be received within the performance period AND all reimbursement requests shall be submitted to DPS/THSSAA within the performance period. Sub-recipient shall have expended all grant funds and submitted reimbursement requests, and any invoices, in the DPS/THSSAA grant management system by the end of the performance period. DPS/THSSAA shall not be obligated to reimburse expenses incurred or submitted after the performance period.

Uniform Administrative Requirements, Cost Principles and Audit Requirements

Except as specifically modified by law or this Grant, Sub-recipient shall administer this Grant through compliance with the most recent version of all applicable laws and regulations, including but not limited to DHS program legislation, Federal awarding agency regulations, and the terms and conditions of this Grant. A non-exclusive list is provided below.

A. Administrative Requirements

- 1. 44 C.F.R. Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (the A-102 Common Rule);
- 2. 2 C.F.R. Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (OMB Circular A-110).
- 3. 44 C.F.R. Part 10, Environmental Considerations

B. Cost Principles

- 1. 2 C.F.R. Part 225, Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)
- 2. 2 C.F.R. Part 220, Cost Principles for Educational Institutions (OMB Circular A-21)
- 3. 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122)
- 4. 48 C.F.R. Subpart 31.2, Federal Acquisition Regulations (FAR), Contracts with Commercial Organizations

C. Audit Requirements

OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

D. Grant Guidance (Funding Opportunity Announcement)

Sub-recipient agrees that all allocations and use of funds under this Grant shall be in accordance with the applicable FY 2012 Funding Opportunity Announcement and supplemental resources for the HSGP currently available at http://www.fema.gov/pdf/government/grant/2012/fy12_hsgp_foa.pdf and the Nonprofit Security Grant Program (NSGP), http://www.fema.gov/pdf/government/grant/2012/fy12_nsgp_foa.pdf.

DHS Specific Acknowledgements and Assurances

Sub-recipient shall comply with the DHS Standard Administrative Terms and Conditions that are outlined in Part 6.1.1 – Financial Assistance Award Standard Terms and Conditions (January 10, 2011), which is incorporated by reference herein. DHS requires those standard terms and conditions which are approved by the Division of Financial Assistance Policy and Oversight to be applied to all financial assistance awards. <http://www.dhs.gov/xlibrary/assets/cfo-financial-management-policy-manual.pdf>.

Sub-recipient acknowledges and agrees, and shall require any sub-recipients, subawardees, contractors, successors, transferees, and assignees to acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Sub-recipient shall cooperate with any compliance review or complaint investigation conducted by DHS.
2. Sub-recipient shall give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to this grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Sub-recipient shall submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Sub-recipient shall comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. If, during the past three (3) years, Sub-recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Sub-recipient shall provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties.
6. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Sub-recipient, or Sub-recipient settles a case or matter alleging such discrimination, Sub-recipient shall forward a copy of the complaint and findings to the DHS Component and/or awarding office.

The United States has the right to seek judicial enforcement of these obligations.

Operation Stonegarden (OPSG) Specific Conditions

If Sub-recipient is receiving Operation Stonegarden (OPSG) funds, Sub-recipient is prohibited from obligating or expending OPSG funds provided through this Grant until each unique, specific, or modified county level, tribal or equivalent Operations Order or Fragmentary Order has been reviewed and approved by official notification by FEMA and Customs and Border Protection/Border Patrol (CBP/BP). Each Operations Order will be transferred via the secure portal (CBP/BP) BPETS system from each respective AOR Sector HQ to CBP/BP HQ in Washington, D.C., for review and pre-approval for Operational continuity, then forwarded to FEMA GPD/PGD OPSG Program Office for final review/approval. Official notification of approval will be sent by FEMA via email to DPS/THSSAA and CBP/BP HQ in Washington, D.C.

1. Sub-recipient shall develop and submit required operational documents through the border area's Integrated Planning Team.
2. Sub-recipient shall maintain an approved Concept of Operations, consisting of a campaign plan and proposed budget which will articulate the intent of how OPSG funds will be used throughout Sub-recipient's grant performance period.
3. If Sub-recipient intends to spend more than 50 percent of its award on overtime over the course of the performance period, a request for an overtime waiver shall be submitted through the Integrated Planning Team.
4. Sub-recipient shall develop and submit Operations Orders for Tactical operational periods to achieve the strategic objectives of the campaign plan.
5. Sub-recipient shall only initiate tactical operations after the specific Operations Order(s) are approved through the Border Patrol Headquarters and by FEMA, and the DPS/THSSAA has issued a Grant Sub-recipient Award or GAN to the jurisdiction.

State Requirements for Grants

Sub-recipient shall also comply with all other federal, state, and local laws and regulations applicable to this Grant including but not limited to the laws and the regulations promulgated in Texas Government Code, Chapter 783, Uniform Grant and Contract Management, State Administrative Agency Information Bulletins, available at http://www.txdps.state.tx.us/director_staff/saa/information_bulletins.htm, Texas Uniform Grants Management Standards (UGMS) at <http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc> and the State Administrative Agency Sub-recipient Manual, available at http://www.txdps.state.tx.us/director_staff/saa/documents/subrecipientManual.pdf. Sub-recipient shall, in addition to the assurances and certifications, comply and require each of its subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, OMB circulars, terms and conditions of this Grant, and the approved application.

Sub-recipient shall comply with the State of Texas General Appropriations Act, Art. IX, Part 4, as follows:

1. Grant funds may not be expended for a grant to a law enforcement agency regulated by Texas Occupations Code, Chapter 1701, unless the law enforcement agency requesting the grant is in compliance with all rules developed by the Commission on Law Enforcement Officer Standards and Education or the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.
2. Grant funds may not be granted to or expended by any entity which performs political polling. This prohibition does not apply to a poll conducted by an academic institution as part of the institution's academic mission that is not conducted for the benefit of a particular candidate or party.
3. Grant funds may not be expended to a unit of local government unless the following limitations and reporting requirements are satisfied:

- a. Texas General Appropriations Act, Art. IX, Parts 2 and 3, except there is no requirement for increased salaries for local government employees;
- b. Texas Government Code Sections 556.004, 556.005, and 556.006, including not using any money or vehicle to support the candidacy of any person for office, not influencing positively or negatively the payment, loan, or gift to a person or political organization for a political purpose; and not using grant funds to influence the passage or defeat of legislation including not assisting with the funding of a lobbyist, or using grant funds to pay dues to an organization with a registered lobbyist;
- c. Texas Government Code Sections 2113.012 and 2113.101 including not using grant funds to compensate any employee who uses alcoholic beverages on active duty plus Sub-recipient may not use grant funds to purchase an alcoholic beverage and may not pay or reimburse any travel expense for an alcoholic beverage;
- d. Texas General Appropriations Act, Art. IX, Section 6.13 requiring Sub-recipients to make every effort to attain key performance target levels associated with this grant award, including performance milestones, milestone time frames, and related performance reporting requirements; and
- e. General Appropriations Act, Art. IX, Sections 7.01 and 7.02, and Texas Government Code §2102.0091, including grant funds may only be expended if Sub-recipient timely completes and files its reports.

Restrictions and General Conditions

A. **Use of Funds.** DHS grant funds may only used for the purposes set forth in this Grant, and shall be consistent with the statutory authority for this Grant. Grant funds may not be used for matching funds for other Federal grants/cooperative agreements, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal government or any other government entity.

B. **Lobbying Prohibited.** No funds shall be expended by Sub-Recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal of any Federal contract, grant, loan, cooperative agreement. These lobbying prohibitions may be found at 31 U.S.C. §1352. Further, Sub-Recipient understands and agrees that it shall not use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express prior written approval of FEMA.

C. **Transferring Funds.** Sub-recipient is prohibited from transferring funds between grant programs (such as SHSP, UASI, and OPSG) without a properly executed GAN.

D. **Federal Employee Prohibition.** Federal employees are prohibited from serving in any capacity (paid or unpaid) on any proposal submitted under this Grant. Federal employees may not receive funds under this Grant.

E. **Cost Categories.** There may be limitations on the use of HSGP funds for the categories of costs listed below. For additional details on restrictions on the use of funds, refer to the FY 2012 HSGP FOA, Appendix C, Funding Guidelines.

1. Management and Administration
2. Planning
3. Organization
4. Equipment
5. Training
6. Exercises
7. Maintenance and Sustainment
8. Critical Emergency Supplies
9. Construction and Renovation

F. **Governing Board Approval.** In cases where local funding is established by a COG or an Urban Area Security Initiative (UASI) governing board, the release of funds by DPS/THSSAA is contingent upon funding allocation approval by the governing board.

G. **Notices.** All notices or communications required or permitted to be given by either party hereunder shall be deemed sufficiently given if mailed by registered mail or certified mail, return receipt requested, or sent by overnight courier, such as Federal Express or Loan Star, to the other party at its respective address. For notice to DPS/THSSAA see address set forth below. For Sub-recipient, see the address listed on the Grant Sub-Recipient Award page or Point of Contact address listed for the Sub-recipient in the DPS/THSSAA Grants Management System (SPARS).

DPS/THSSAA Contact Information	
Deputy Assistant Director	
Texas Homeland Security State Admin. Agency	
Texas Department of Public Safety	
P.O. Box 4087	
Austin, TX 78773-0220	

H. **Points of Contacts.** Within 30 days of any change, Sub-recipient shall notify DPS/THSSAA of any change or correction to the chief elected official, program, and/or financial points of contact in the DPS/THSSAA grant management system.

I. DUNS Number. Sub-recipient confirms its Data Universal Numbering Systems (DUNS) Number is the number listed on this Grant. The DUNS Number is the nine digit number established and assigned by Dun and Bradstreet, Inc., at 866/705-5711 or <http://fedgov.dnb.com/webform>.

J. Central Contractor Registration and Universal Identifier Requirements. Sub-recipient maintains that it has registered on www.ccr.gov, www.sam.gov/, or other federally established site for contractor registration, and entered DPS/THSSAA-required information. Sub-recipient shall keep current, and then review and update the CCR information at least annually. Sub-recipient shall keep information current in the CCR/SAM database until the later of when it submits this Grant's final financial report or receives final grant award payment. Sub-recipient agrees that it shall not make any subaward agreement or contract related to this Grant without first obtaining the vendor/subawardee's mandatory DUNS number. See section .210 of OMB Circular A-133, Audits of States, Local Governments, and Non-profit Organizations.

K. Indirect Cost Allocation Plan. Sub-recipient shall submit its most recently approved Indirect Cost Allocation Plan signed by Cognizant Agency to DPS/THSSAA within 30 calendar days of the approval. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 C.F.R. Part 225 on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies at <http://harvester.census.gov/sac/dissemin/asp/reports.asp>. Unless the basis of the cost plan changes, Sub-recipient only needs to forward the annual Indirect Cost Rate approval letter to DPS/THSSAA within 30 calendar days after approval by the Cognizant Agency. The approved Indirect Cost Plans and approval letters shall be emailed to SAA_RR@dps.texas.gov. The Sub-recipient name shall be included in the file name and subject line of the email transmittal.

L. Reporting Total Compensation of Sub-recipient Executives. 2 C.F.R. §170.320; see FEMA Information Bulletin 350.

1. Applicability and what to report: Sub-recipient shall report whether Sub-recipient received \$25 million or more in Federal procurement contracts or financial assistance subject to the Transparency Act per 2 C.F.R. §170.320. Sub-recipient shall report whether 80% or more of Sub-recipient's annual gross revenues were from Federal procurement contracts or Federal financial assistance. If Sub-recipient answers "yes" to both questions, Sub-recipient shall report, along with Sub-recipient's DUNS number, the names and total compensation (see 17 C.F.R. §229.402(c)(2)) for each of Sub-recipient's five most highly compensated executives for the preceding completed fiscal year.

2. Where and when to report: Sub-recipient shall report executive total compensation at www.ccr.gov, www.sam.gov/, or other federally established replacement site. By signing this Grant, Sub-recipient certifies that, if required, Sub-recipient's jurisdiction has already registered, entered the required information, and shall keep information in the CCR/SAM database current, and update the information at least annually for each year until the later of when the jurisdiction submits its final financial report or receives final payment. Sub-recipient agrees that it shall not make any subaward agreement or contract without first obtaining the subawardee's mandatory DUNS number.

M. Direct Deposit. If Sub-recipient has not received HSGP reimbursements from DPS/THSSAA within the past eleven (11) months (prior to date of award), it shall forward a new/updated direct deposit form to DPS/THSSAA. Completed direct deposit forms from Sub-recipient shall be emailed to SAA_RR@dps.texas.gov. The email subject line and attachment name shall include the jurisdiction name and identify the document attached (i.e. "Sample County DD form"). The direct deposit form is currently available at <http://www.window.state.tx.us/taxinfo/taxforms/74-176.pdf>. Sub-recipient may simultaneously sign up for the Advance Payment Notification (APN) email feature which provides State of Texas payees with a one-business-day advance notice that a direct deposit payment has been sent to its financial institution. After receiving an APN, a payee may securely access its payment details online.

N. Procurements. Sub-recipient shall comply with all applicable federal, state, and local laws and requirements, including but not limited to proper competitive solicitation processes where required, for any procurement which utilizes federal funds awarded under this Grant in accordance with 44 C.F.R. §13.36.

O. Contract Provisions. All contracts executed using funds granted under this Grant shall contain the contract provisions listed under 44 C.F.R. §13.37(b), Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

P. No Contracts with Debarred or Suspended Parties. Prior to contracting with any vendor or subawardee using funds granted under this Grant, Sub-recipient shall determine whether the vendor/subawardee is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department and agency and shall confirm the vendor/subawardee does not have any active "Exclusions" by reviewing the vendor/subawardee entity information at <https://www.sam.gov/portal/public/SAM/>.

Q. Management and Administration. If this Grant includes a specific award of funds to Sub-recipient for management and administration (M&A), Sub-recipient shall comply with all applicable requirements and limitations with respect to M&A. For additional information on M&A, refer to Information Bulletin 365 located at <http://www.fema.gov/government/grant/bulletins/index.shtml#1/>.

R. Personnel Cap. Up to fifty percent (50%) of all HSGP awards received by Sub-recipient may be used for personnel and personnel-related activities as directed by the Personnel Reimbursement for Intelligence Cooperation and Enhancement (PRICE) of Homeland Security Act (Public Law 110-412). In general, use of HSGP funding to pay for staff and/or contractor regular time or overtime/backfill, among other items, are considered personnel-related costs. Sub-recipient may request a waiver to the 50% personnel cap by submitting a waiver request through its respective regional council or urban area working group to DPS/THSSAA at SAA@dps.texas.gov. Requests for waivers shall be submitted on official Sub-recipient letterhead and be signed by an authorized official of Sub-recipient. Waivers shall contain the information required on page 9 of the FEMA Information Bulletin 379.

S. Property Management and Inventory. At least every two (2) years, Sub-recipient shall take a physical inventory and shall reconcile the results with property records. Sub-recipient shall maintain Property/inventory records which, at minimum, shall include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, the cost of the property, the percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. (See sample inventory record format at http://www.txdps.state.tx.us/director_staff/saa/audit_and_compliance.htm) Sub-recipient shall develop and implement a control system to prevent loss, damage or theft of property and Sub-recipient shall investigate and document any loss, damage or theft of property funded under this Grant.

T. Publications. All publications produced as a result of funding under this Grant, which are submitted for publication in any magazine, journal, or trade paper, shall include the following: "This material is based upon work supported by the U.S. Department of Homeland Security. The views and conclusions contained in this document are those of the authors and should not be interpreted as necessarily representing the official policies, either expressed or implied, of the U.S. Department of Homeland Security."

U. Acknowledgement of Federal Funding from DHS. Sub-recipient shall comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

V. Use of DHS, DPS, and DHS/THSSAA Seals and Non-Endorsement. Sub-recipient shall obtain DHS, DPS, or DHS/THSSAA's prior written approval before using any of these agencies' seal(s), logos, crests or reproductions of flags or likenesses of agency officials. Funding of this Grant does not equate to endorsement of use of funding agencies' seals, etc., including use of the United States Coast Guard seal, logo, crests, or reproductions of flags or likenesses of Coast Guard officials.

W. Copyright. Sub-recipient shall comply with requirements regarding publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Grant, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Sub-recipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. Sub-recipient shall affix the applicable copyright notices of 17 U.S.C. §401 or 402 and an acknowledgment of Government sponsorship (including award number) to any work first produced under this Grant.

Further, Sub-recipient acknowledges that FEMA National Preparedness Directorate reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for government purposes: (1) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a recipient or Sub-recipient purchases ownership with Federal support. Sub-recipient agrees to consult with DHS/THSSAA regarding the allocation of any patent rights that arise from or are purchased with this funding.

X. Quarterly Performance Reports. Sub-recipient shall submit performance reports and progress reviews per DHS/THSSAA and/or FEMA's direction. Reports are entered into the grants management system. Performance reports are due by the twentieth (20th) day after the end of each calendar quarter: January 20, April 20, July 20 and October 20; or as otherwise specified or required by DHS/THSSAA. DHS/THSSAA may require other reports or different timelines to meet federal reporting dates or to respond to information requests. Failure to timely complete a performance report will result in Sub-recipient being unable to request additional reimbursements/advances and may affect future funding.

Y. Site Visits. DHS and/or DHS/THSSAA, through its authorized representatives, have the right, at all reasonable times to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by DHS on the premises of Sub-recipient or a contractor under this Grant, Sub-recipient shall provide and shall require its contractors to provide all reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the work.

Z. Limited English Proficiency (Civil Rights Act of 1964, Title VI). Sub-recipient shall comply with the requirements of EO 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, Sub-recipient shall take reasonable steps to ensure that LEP persons have meaningful access to Sub-recipient's programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Sub-recipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding LEP obligations, go to <http://www.lep.gov>.

AA. Protection of Human Subjects. Sub-recipient shall comply with the requirements of the Federal regulations at 45 C.F.R. Part 46, which requires that Sub-recipients comply with applicable provisions/law for the protection of human subjects for purposes of research. Sub-recipient shall comply with the requirements in DHS Management Directive 026-04, Protection of Human Subjects, prior to implementing any work with human subjects. For purposes of 45 C.F.R. Part 46, research means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 C.F.R. Part 46.

BB. National Flood Insurance Act of 1968. Sub-recipient shall comply with the requirements of Section 1306(c) of the National Flood Insurance Act, as amended, which provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. These regulations are codified at 44 C.F.R. Part 63.

CC. USA Patriot Act of 2001. Sub-recipient shall comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§175-175c. Among other things, it prescribes criminal penalties for possession of any biological agent, toxin, or delivery systems of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The Act also establishes restrictions on access to specified materials. "Restricted persons," as defined by the Act, may not possess, ship, transport, or receive any biological agent or toxin that is listed as a select agent.

DD. Fly America Act of 1974. Sub-recipient shall comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 U.S.C. §41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. §40118) and Comptroller General's guidelines.

EE. Activities Conducted Abroad. Sub-recipient shall comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

FF. Trafficking Victims Protection Act of 2000. All recipients of financial assistance shall comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104), located at 2 C.F.R. Part 175. This is implemented in accordance with OMB Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007. In accordance with the statutory requirement, in each agency award under which funding is provided to a private entity, Section 106(g) of the TVPA, as amended, requires the agency to include a condition that authorizes the agency to terminate the award, without penalty, if the recipient or a sub-recipient: (a) engages in severe forms of trafficking in persons during the period of time that the award is in effect; (b) procures a commercial sex act during the period of time that the award is in effect; or (c) uses forced labor in the performance of the award or subawards under the award.

DPS/THSSAA is authorized to terminate this award, without penalty, if the above condition is violated. Sub-recipient shall include this condition in any subawards or contracts it makes as a result of this Grant. Full text of the award term is provided at 2 C.F.R. §175.15.

GG. Americans with Disabilities Act of 1990. Sub-recipient shall comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. 42 U.S.C. §§ 12101-12213.

HH. Public Dissemination of Sensitive Information. Sub-recipient shall notify DPS/THSSAA of any workshops, conferences, seminars or other public venues at least one hundred (100) calendar days before presenting any potentially sensitive information regarding this project. No sensitive information may be presented by Sub-recipients' personnel without DPS/THSSAA and the DHS Grants Officer's review and prior written approval.

II. Security Concerns/Violations. Sub-recipient shall inform the THSSAA's Deputy Assistant Director in writing within two (2) calendar days of Sub-recipient being made aware of any security concerns with individuals having access to government facilities or sensitive information. In the event that sensitive information is divulged in violation of Sub-recipient's security procedures, Sub-recipient shall immediately notify the DPS/THSSAA Deputy Assistant Director and take appropriate law enforcement and legal action.

JJ. Classified Security Condition

1. No funding under this award shall be used to support a contract, sub-award, or other agreement for goods or services that will include access to classified national security information if the award recipient has not been approved for that access to such information.
2. "Classified national security information" as defined in Executive Order (EO) 12958, as amended, means information that has been determined pursuant to EO 12958 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.
3. Where an award recipient has been approved for and has access to classified national security information, no funding under this award shall be used to support a contract, sub-award, or other agreement for goods or services that will include access to classified national security information by the contractor, sub-awardee, or other entity without prior written approval from the DHS Office of Security, Industrial Security Branch Program (ISBP), or an appropriate official within the Federal department or agency with whom the classified effort will be performed.
4. Such contracts, sub-awards, or other agreements shall be processed and administered in accordance with the DHS "Standard Operation Procedures, Classified Contracting by States and Local Entities," dated July 7, 2008; EO's 12829, 12959, 12968, as amended; the National Industrial Security Program Operating Manual (NISPOM); and /or other applicable implementing directives or instruction. All security requirement documents are currently located at: <http://www.dhs.gov/xonpbiz/grants/index.shtm>.
5. Immediately upon determination by the award recipient that funding under this award will be used to support such a contract, sub-award, or other agreement, and prior to execution of any action to facilitate the acquisition of such a contract sub-award, or other agreement, the award recipient shall contact ISPB, or the appropriate Federal department or agency, for approval and processing instructions. DHS Office of Security ISPB contact information: Telephone: 202-447-5346, Email: DD254AdministrativeSecurijdhhs.gov, Mail: Department of Homeland Security, Office of the Chief Security Officer, ATTN: ASD/Industrial Security Program Branch, Washington, DC. 20528

Other Requirements

- A. During the performance period of this Grant, Sub-recipient, counties, cities, towns, and Indian tribes shall maintain an Emergency Management Plan at the Intermediate Level of planning preparedness or higher, as prescribed by the Texas Division of Emergency Management (TDEM). This may be accomplished by a jurisdiction maintaining its own emergency management plan or participating in an inter-jurisdictional emergency management program that meets the required standards. If TDEM identifies deficiencies in Sub-recipient's plan, Sub-recipient shall correct deficiencies within 60 days of receiving notice of such deficiencies from TDEM.
- B. Projects identified and approved in the DPS/THSSAA web-based grant management system must identify and relate to the goals and objectives indicated by the applicable approved project investments for the period of performance of this Grant. Sub-recipient shall submit project plans, milestones, outputs/outcomes, narratives and budget to DPS/THSSAA and FEMA (if required) for approval prior to expending or requesting advances of any funds for this Grant. Sub-recipient shall enter appropriate project milestones into the DPS/THSSAA web-based grants management system within 60 days after award or by the deadline established by DPS/THSSAA, whichever is sooner. Sub-recipient shall report on project status and accomplishments (milestones and outputs/outcomes) in the format(s) and timeframes as required by DPS/THSSAA.
- C. During the performance period of this Grant, Sub-recipient shall:
 1. Participate in a legally-adopted county and/or regional mutual aid agreement.
 2. Implement the National Incident Management System (NIMS) in a manner consistent with the NIMS Implementation Objectives outlined by FEMA at <http://www.fema.gov/implementation-and-compliance-guidance-stakeholders#item4>.
 3. Be a registered user of the Texas Regional Response Network (TRRN) (or other response asset inventory management system specified by DPS/THSSAA) and shall identify, resource type, and credential all major deployable resources such as vehicles and trailers, equipment costing \$5,000 or more, and specialized teams/response units equipped and/or trained using grant funds (i.e., hazardous material, decontamination, search and rescue, etc.). This registration is to ensure jurisdictions or organizations are prepared to make grant funded resources available to other jurisdictions through mutual aid. <http://www.fema.gov/emergency/nims/ResourceManagement.shtm#item3>.

D. Regional Planning Commissions/Council of Governments (COGs) shall follow guidelines listed in the DPS/THSSAA FY2012 COG Statement of Work.

Monitoring

Sub-recipient will be monitored periodically by federal, state or local entities, both programmatically and financially, to ensure that project goals, objectives, performance requirements, timelines, milestone completion, budget, and other program-related criteria are met.

DPS/THSSAA, or its authorized representative, reserves the right to perform periodic desk/office-based and/or on-site monitoring of Sub-recipient's compliance with this Grant and of the adequacy and timeliness of Sub-recipient's performance pursuant to this Grant. After each monitoring visit, DPS/THSSAA shall provide Sub-recipient with a written report of the monitor's findings. If the monitoring report notes deficiencies in Sub-recipient's performance under this Grant, the monitoring report shall include requirements for the timely correction of such deficiencies by Sub-recipient. Failure by Sub-recipient to take action specified in the monitoring report may be cause for suspension or termination of this Grant pursuant to the Suspension and/or Termination Section herein.

Audit

Audit of Federal and State Funds. Sub-recipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Grant as required by the Single Audit Act (OMB Circular A – 133; 44 C.F.R. 13.26). Sub-recipient shall comply, as applicable, with Texas Government Code, Chapter 783, the Uniform Grant Management Standards (UGMS), the State Uniform Administrative Requirements for Grants and Cooperative Agreements.

Right to Audit. Sub-recipient shall give the United States Department of Homeland Security (DHS), the Comptroller General of the United States, the Texas State Auditor, DPS/THSSAA, or any of their duly authorized representatives, access to and the right to conduct a financial or compliance audit of grant funds received and performances rendered under this Grant. Sub-recipient shall permit DPS/THSSAA or its authorized representative to audit Sub-recipient's records. Sub-recipient shall provide any documents, materials or information necessary to facilitate such audit.

Sub-recipient's Liability for Disallowed Costs. Sub-recipient understands and agrees that it shall be liable to DPS/THSSAA for any costs disallowed pursuant to any financial or compliance audit(s) of these funds. Sub-recipient further understands and agrees that reimbursement to DPS/THSSAA of such disallowed costs shall be paid by Sub-recipient from funds that were not provided or otherwise made available to Sub-recipient pursuant to this Grant or any other federal contract.

Sub-recipient's Facilitation of Audit. Sub-recipient shall take such action to facilitate the performance of such audit(s) conducted pursuant to this Section as DPS/THSSAA may require of Sub-recipient. Sub-recipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Sub-recipient and the requirement to cooperate is included in any subcontract it awards.

State Auditor's Clause. Sub-recipient understands that acceptance of funds under this Grant acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Sub-recipient further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Sub-recipient shall ensure that this clause concerning the State Auditor's Office's authority to audit funds and the requirement to cooperate fully with the State Auditor's Office is included in any subgrants or subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Sub-recipient relating to this Grant.

Retention and Accessibility of Records

Retention of Records. Sub-recipient shall maintain fiscal records and supporting documentation for all expenditures of this Grant's funds pursuant to the applicable OMB Circular, 44 CFR Section 13.42, UGMS § 42, and this Grant. Sub-recipient shall retain these records and any supporting documentation for a minimum of three (3) years from the later of the completion of this project's public objective, submission of the final expenditure report, any litigation, dispute, or audit. Records shall be retained for three (3) years after any real estate or equipment final disposition. The DHS or DPS/THSSAA may direct Sub-recipient to retain documents or to transfer certain records to DHS custody when DHS determines that the records possess long term retention value.

Access to Records. Sub-recipient shall give the United States Department of Homeland Security, the Comptroller General of the United States, the Texas State Auditor, DPS/THSSAA, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by Sub-recipient pertaining to this Grant including records concerning the past use of DHS/FEMA funds. Such rights to access shall continue as long as the records are retained by Sub-recipient. Sub-recipient shall maintain such records in an accessible location and provide citizens reasonable access to such records consistent with the Texas Public Information Act, Texas Government Code, Chapter 552.

Inclusion in Subcontracts. Sub-recipient shall include the substance of the Retention of Records and Access to Records section herein in all subcontracts.

After Action Reporting. Sub-recipient shall complete, deliver to the appropriate source, and retain copies of all after-action reports and certificates of completion for all training and exercises paid for by this grant.

Legal Authority

Signatory Authority. Sub-recipient assures and guarantees that Sub-recipient possesses the legal authority to enter into this Grant, receive grant funds and to perform the project Sub-recipient has obligated itself to perform pursuant to this Grant.

Authorized Representative. The person or persons signing and executing this Grant on Sub-recipient's behalf do warrant and guarantee that he/she has been duly authorized by Sub-recipient to execute this Grant on Sub-recipient's behalf and to validly and legally bind Sub-recipient to all terms and conditions and performance obligations.

Conflicts in Requirements. If conflict exists between federal, state, or local requirements, Sub-recipient shall comply with the strictest requirement.

Notice of Litigation and Claims

Sub-recipient shall give DPS/THSSAA immediate notice in writing of any action or claim, including any proceeding before an administrative agency, filed against Sub-recipient arising out of performance of this Grant. Except as otherwise directed by DPS/THSSAA, Sub-recipient shall furnish immediately to DPS/THSSAA copies of all documentation or pleadings received by Sub-recipient with respect to such action or claim.

No Liability for Employees and Officers

DPS/THSSAA shall have no liability whatsoever for the actions or omissions of an individual employed or contracted by Sub-recipient, regardless of where the individual's actions or omissions occurred.

Non-Waiver of Defaults

Any failure of DPS/THSSAA, at any time, to enforce or require the strict keeping and performance of any provision of this Grant shall not constitute a waiver of such provision, and shall not affect or impair same or the right of DPS/THSSAA at any time to avail itself of same. A waiver does not become effective unless DPS/THSSAA expressly agrees to such waiver in writing. Any payment by DPS/THSSAA shall not constitute a waiver or otherwise impair or prejudice any right, power, privilege, or remedy available to DPS/THSSAA to enforce its rights, as such rights, powers, privileges, and remedies are specifically preserved.

Changes and Amendments

Modification. FEMA or DPS/THSSAA may modify this Grant after an award has been made. Once notification has been made in writing, any subsequent request for funds indicates Sub-recipient's acceptance of the changes to the award. Any alteration, addition, or deletion to this Grant by Sub-recipient is not valid.

Written Amendment. Alterations, additions or deletions to this Grant, such as changes to period of performance and award amounts, shall be made through an executed Grant Adjustment Notice (GAN).

Authority to Amend. During the period of performance for this Grant, DPS/THSSAA and/or FEMA may issue policy directives that serve to establish, interpret or clarify this Grant's performance requirements. Such policy directives shall be promulgated by DPS/THSSAA or FEMA in the form of Information Bulletins and Sub-recipient Manuals and shall have the effect of modifying this Grant and shall be binding upon Sub-recipient as if written in this Grant.

Effect of Changes in Federal and State Laws. Any alterations, additions, or deletions to this Grant that are required by changes in federal and state laws or regulations are automatically incorporated into this Grant without written amendment to this Grant and shall become effective upon the date designated by such law or regulation. In the event FEMA or DPS/THSSAA determines that changes are necessary to this Grant after an award has been made, including changes to the period of performance or terms and conditions, Sub-recipient shall be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate Sub-recipient's acceptance of the changes to this Grant.

Headings

Headings and captions of this Grant are only for convenience and reference. These headings and captions shall not affect or modify the terms and conditions or be used to interpret or assist in the construction of this Grant.

Venue

Venue shall lie in Travis County, Texas, and this Grant is governed by the laws of the State of Texas.

Suspension

In the event Sub-recipient fails to comply with any term of this Grant, DPS/THSSAA may, upon written notification to Sub-recipient, suspend this Grant, in whole or in part, withhold payments to Sub-recipient and prohibit Sub-recipient from incurring additional obligations of this Grant's funds.

Termination

DPS/THSSAA shall have the right to terminate this Grant, in whole or in part, at any time before the end of the Performance Period, if DPS/THSSAA determines that Sub-recipient has failed to comply with any term of this Grant. DPS/THSSAA shall provide written notice of the termination and include:

1. The reason(s) for such termination;
2. The effective date of such termination; and
3. In the case of partial termination, the portion of this Grant to be terminated.

Appeal may be made to the Deputy Director of Homeland Security, Texas Department of Public Safety.

Enforcement

If Sub-recipient materially fails to comply with any term of this Grant, whether stated in a federal or state statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, DPS/THSSAA or DHS may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by Sub-recipient or more severe enforcement action by DPS/THSSAA or DHS;
2. Disallow, that is, deny both use of funds and matching credit for, all or part of the cost of the activity or action not in compliance;

3. Wholly or partially suspend or terminate this Grant for Sub-recipient's program;
4. Withhold further awards for the program; or
5. Take other remedies that may be legally available.

In taking an enforcement action, DPS/THSSAA will provide Sub-recipient an opportunity for a hearing, appeal, or other administrative proceeding to which Sub-recipient is entitled under any statute or regulation applicable to the action involved.

The costs of Sub-recipient resulting from obligations incurred by Sub-recipient during a suspension or after termination of this Grant are not allowable unless DPS/THSSAA or DHS expressly authorizes them in the notice of suspension or termination or subsequently. Other Sub-recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

1. The costs result from obligations which were properly incurred by Sub-recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable; and
2. The costs would be allowable if this Grant were not suspended or expired normally at the end of the funding period in which the termination takes effects.

The enforcement remedies identified in this section, including suspension and termination, do not preclude Sub-recipient from being subject to "Debarment and Suspension" under E.O. 12549. 44 C.F.R. §13.35.

Conflict of Interest

No employee, officer or agent of Sub-recipient shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, is involved or otherwise creates the appearance of impropriety.

Closing of the Grant

A. DPS/THSSAA will close a sub-award after receiving Sub-recipient's final quarterly performance report indicating that all approved work has been completed and all funds have been disbursed, completing a review to confirm the accuracy of the reported information, and reconciling actual costs to award modifications and payments. If the close out review and reconciliation indicates that Sub-recipient is owed additional funds, DPS/THSSAA will send the final payment automatically to Sub-recipient. If Sub-recipient did not use all the funds received, DPS/THSSAA will issue a Grant Adjustment Notice (GAN) to recover the unused funds. Sub-recipient will return the funds to the DPS/THSSAA within 30 days of receiving the GAN.

B. At the completion of Sub-recipient's performance period, DPS/THSSAA will de-obligate all uncommitted / unexpended funds.

C. The closeout of this Grant does not affect:

1. DHS or DPS/THSSAA's right to disallow costs and recover funds on the basis of a later audit or other review;
2. Sub-recipient's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
3. Records retention requirements, property management requirements, and audit requirements, as set forth herein; and
4. Any other provisions of this Grant that impose continuing obligations on Sub-recipient or that govern the rights and limitations of the parties to this Grant after the expiration or termination of this Grant.

Please fill in the appropriate information and certify by signing below that you have read, understood, and agree to the terms of this Grant.

Print Name of Authorized Official _____

Title _____

Sub-recipient Organization _____

Signature of Authorized Official _____ Date _____

EXHIBIT A

ASSURANCES - NON-CONSTRUCTION PROGRAMS See Standard Form 424B

As the duly authorized representative of Sub-recipient, I certify that Sub-recipient:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this agreement.
2. Will give the Department of Homeland Security, the Department of Public Safety, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686 and 44 C.F.R. Part 19) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190 as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514) which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for DHS grant-supported activities, DHS-FEMA requires the environmental aspects to be reviewed and evaluated before final action on the application (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C. §§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348, 45 C.F.R. 46, and DHS Management Directive 026-044 (Directive) regarding the protection of human subjects involved in research, development, and related activities supported by this award. "Research" means a systematic investigation, including research, development, testing, and evaluation designed to develop or contribute to general knowledge. See Directive for additional provisions for including humans in the womb, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). See also state and local law for research using autopsy materials.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals .

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, grant guidance, and policies governing this program.

Please fill in the appropriate information and sign to certify this Exhibit A.

Print Name of Authorized Official _____

Title _____

Sub-recipient Organization _____

Signature of Authorized Official _____ Date _____

EXHIBIT B

ASSURANCES - CONSTRUCTION PROGRAMS See Standard Form 424D

As the duly authorized representative of Sub-recipient, I certify that Sub-recipient:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this agreement.
2. Will give the Department of Homeland Security, the Department of Public Safety, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance, and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the agreement.
11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally-assisted construction sub-agreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514 which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C. §§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, grant guidance and policies governing this program.

Please fill in the appropriate information and sign to certify this Exhibit B, if applicable.

Print Name of Authorized Official _____

Title _____

Sub-recipient Organization _____

Signature of Authorized Official _____ Date _____

Exhibit C

Certifications

The undersigned, as the authorized official, certifies the following to the best of his/her knowledge and belief.

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL Disclosure of Lobbying Activities, in accordance with its instructions.

C. The undersigned shall require that the language of this certification prohibiting lobbying be included in the award documents for all sub-awards at all tiers (including subcontract, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

D. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28 C.F.R. Part 67, Section 67.510. (Federal Certification). The Sub-recipient certifies that it and its principals and vendors:

1. Are not debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency; Sub-recipients can access debarment information by going to www.epls.gov or www.sam.gov and the State Debarred Vendor List www.window.state.tx.us/procurement/prog/vendor_performance/debarred.
2. Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (D)(2) of this certification; and
4. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; or
5. Where the sub-recipient is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this agreement. (Federal Certification)

E. The Sub-recipient certifies federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Sub-recipient may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

F. Sub-recipient must comply with 2 C.F.R. Part 180, Subpart C as a condition of receiving grant funds, and sub-recipient must require such compliance in any sub-grants or contract at the next tier.

G. Drug-free Workplace Act, as amended, 41 U.S.C. §701 et seq. – Requires the recipient to publish a statement about its drug-free workplace program and give a copy of the statement to each employee (including consultants and temporary personnel) who will be involved in award-supported activities at any site where these activities will be carried out. Also, place(s) where work is being performed under the award (i.e., street address, city, state, and zip code) must be maintained on file. The recipient must notify the Grants Officer of any employee convicted of a violation of a criminal drug statute that occurs in the workplace. For additional information, see 44 C.F.R. Part 17. Sub-recipient shall comply with the requirements of the Drug-Free Workplace Act of 1988, which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace.

H. Sub-recipient agrees that it is not delinquent on any Federal debt.

I. Sub-recipient will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.

J. Sub-recipient understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of grant funds.

Please fill in the appropriate information and sign to certify this Exhibit C.

Print Name of Authorized Official _____

Title _____

Sub-recipient Organization _____

Signature of Authorized Official

Date

EXHIBIT D

State of Texas Assurances

As the duly authorized representative of Sub-recipient, I certify that Sub-recipient:

1. Shall comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of the Sub-recipient's governing body or of the Sub-recipient's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
2. Shall insure that all information collected, assembled, or maintained by the Sub-recipient relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, unless otherwise expressly prohibited by law.
3. Shall comply with Texas Government Code, Chapter 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.
4. Shall comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.
5. Shall not contract with or issue a license, certificate, or permit to the owner, operator, or administrator of a facility if the Sub-recipient is a health, human services, public safety, or law enforcement agency and the license, permit, or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.
6. Shall comply with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 1701, Texas Occupations Code, or shall provide the grantor agency with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in the process of achieving compliance with such rules if the Sub-recipient is a law enforcement agency regulated by Texas Occupations Code, Chapter 1701.
7. Shall follow all assurances. When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and sub-recipients shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met. (See UGMS Section _ 36 for additional guidance on contract provisions).
8. Shall comply with the Texas Family Code, Section 261.101, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Sub-recipient shall also ensure that all program personnel are properly trained and aware of this requirement.
9. Shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990 including Titles I, II, and III of the Americans with Disability Act which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities, 44 U.S.C. §§ 12101-12213; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Grant.
10. Shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.
11. Shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Shall comply with the provisions of the Hatch Political Activity Act (5 U.S.C. §§7321-29), which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.
14. Shall insure that the facilities under its ownership, lease, or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (EO 11738).
15. Shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

16. Shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

17. Shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.>

18. Shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

19. Shall comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.

20. Shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

21. Shall comply with the Pro-Children Act of 1994 (Public Law 103-277), which prohibits smoking within any portion of any indoor facility used for the provision of services for children.

22. Shall comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

23. Shall comply with all applicable requirements of all other federal and state laws, executive orders, regulations, and policies governing this program.

24. Certifies that is and its principals are eligible to participate and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and it is not listed on a state or federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement have Exclusions listed at <https://www.sam.gov/portal/public/SAM/>

25. Shall adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

Please fill in the appropriate information and sign to certify this Exhibit D.

Print Name of Authorized Official _____

Title _____

Sub-recipient Organization _____

Signature of Authorized Official _____ Date _____



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. C.2

*** RESOLUTION NO. 5715**

**Authorizing Execution of a Mutual Aid Agreement
with the Town of Caney, Oklahoma**

Issue

This item is to consider the adoption of a Mutual Aid Agreement for reciprocal aid and assistance during emergencies, where the resources of a single jurisdiction or organization are insufficient or inappropriate for the tasks that must be performed to control the situation. This agreement defines the procedures for requesting and providing mutual aid.

Background

Local and regional emergencies often require assistance beyond local capabilities. Existing fire mutual aid agreements exist for cities within Grayson County. The Texas Local Government Code provides for requests for assistance within the State of Texas, but does not cover response out of State.

Working with local fire and EMS providers, as well as local and State police agencies in Texas and Oklahoma, both states have agreed to a standard Mutual Aid Agreement for counties that border Texas and Oklahoma. The proposed agreement would provide for requesting and accepting assistance from the Town of Caney, Oklahoma.

Origination

Sherman Fire Department and Town of Caney, Oklahoma

Financial Consideration

The proposed agreement would provide for the responding agency to request reimbursement for expenses related to response. While most agencies elect not to bill for these services, this provision would allow Sherman to seek federal funding if a declaration of disaster is made. Local and regional mutual aid agreements are required in order for Sherman to be eligible for State Homeland Security Program grant funding.

Staff Recommendation

Approve the Mutual Aid Agreement

Alternatives

As directed by Council

Attachments

Resolution No. 5715 and Mutual Aid Agreement

Prepared by:
J. J. Jones, Fire Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5715

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A MUTUAL AID AGREEMENT WITH THE TOWN OF CANEY, OKLAHOMA; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to execute a Mutual Aid Agreement between the City of Sherman and the Town of Caney, Oklahoma, in the same form as the Agreement attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2012.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

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

MUTUAL AID AGREEMENT - City of Sherman

SECTION 1. This agreement may be cited as the Mutual Aid Agreement.

SECTION 2. The Town of Caney, Oklahoma hereby authorizes the Director of Emergency Management to enter into this agreement on behalf of the Town of Caney, Oklahoma with any other city or county legally joining therein, in the form substantially as follows:

SECTION 3. The City of Sherman, Texas by resolution authorized its City Manager to enter into this agreement on behalf of the City of Sherman, Texas with any other county legally joining therein, in the form substantially as follows:

Articles of Agreement

ARTICLE I - PURPOSE AND AUTHORITIES

This Agreement is made and entered into by and between the participating Member Cities which enact this Agreement, hereinafter called party cities. The purpose of this Agreement is to provide for mutual assistance between the cities entering into this Agreement in managing any emergency or disaster that has not been declared by the governor of the affected city(s), whether arising from natural disaster, technological hazard, and man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack. This Agreement shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party cities or subdivisions of party cities during emergencies, such actions occurring outside actual declared emergency periods.

ARTICLE II - GENERAL IMPLEMENTATION

Each party city entering into this Agreement recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this Agreement. Each city further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any; individual cities have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist. The prompt, full, and effective utilization of resources of the participating cities, including any resources on hand or available from any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency, shall be the underlying principle on which all articles of this Agreement shall be understood. On behalf of the governing body of each city participating in the Agreement, the legally designated city official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate inter-city mutual aid plans and procedures necessary to implement this Agreement.

ARTICLE III - PARTY CITY RESPONSIBILITIES

A. It shall be the responsibility of each party city to formulate procedural plans and programs for inter-city cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party cities, insofar as practical, shall:

Review individual city hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party city might jointly suffer, whether due to natural disaster, technological hazard, and man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

- i. Review party cities individual emergency plans and develop a plan which will determine the mechanism for the inter-city management and provision of assistance concerning any potential emergency.
- ii. Develop inter-city procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.
- iii. Assist in warning communities adjacent to or crossing the county boundaries.
- iv. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.
- v. Inventory and set procedures for the inter-county loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.
- vi. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The Authorized Representative of a party city may request assistance of another party city by contacting the Authorized Representative of that city. The provisions of this agreement shall only apply to requests for assistance made by and to Authorized Representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

- i. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.
- ii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between city officials who have assigned emergency management responsibilities and other appropriate representatives of the party cities with affected jurisdictions and the City Governments, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV - LIMITATIONS

Any party city requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this Agreement in accordance with the terms hereof; provided that it is understood that the city rendering aid may withhold resources to the extent necessary to provide reasonable protection for such city. Each party city shall afford to the emergency forces of any party city, while operating within its city limits under the terms and conditions of this Agreement, the same powers (except that of arrest unless specifically authorized by the receiving city), duties, rights, and privileges as are afforded forces of the city in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the city receiving assistance. These conditions may be activated, as needed, or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the city emergency remains in effect or loaned resources remain in the receiving city(s), whichever is longer.

ARTICLE V - LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any city party to the Agreement evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party city, such person shall be deemed licensed, certified, or permitted by the city requesting assistance to render aid involving such skill to meet an emergency, subject to such limitations and conditions as the law of the Requesting City may prescribe by executive order or otherwise.

ARTICLE VI - LIABILITY

Officers or employees of a party city rendering aid in another city pursuant to this Agreement shall be considered agents of the Requesting City for tort liability and immunity purposes; and no party city or its officers or employees rendering aid in another city pursuant to this Agreement shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII - SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more cities may differ from that among the cities that are party hereto, this instrument contains elements of a broad base common to all cities, and nothing herein contained shall preclude any city from entering into supplementary agreements with another city or affect any other agreements already in force between cities. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII – COMPENSATION

Each party city shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that city and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this Agreement, in the same manner and on the same terms as if the injury or death were sustained within their own city.

ARTICLE IX - REIMBURSEMENT

Any party city rendering aid in another city pursuant to this Agreement shall be reimbursed by the party city receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party city may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party city without charge or cost; and provided further, that any two or more party cities may enter into supplementary agreements establishing a different allocation of costs among those cities. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X - EVACUATION

Plans for the orderly evacuation and inter-city reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party cities and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the city from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be

received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party city receiving evacuees and the party city from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party city from which the evacuees come. After the termination of the emergency or disaster, the party city from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI - IMPLEMENTATION

This Agreement shall become operative immediately upon its signing by any two (2) cities; thereafter, this Agreement shall become effective as to any other city upon its enactment by such city. Any party city may withdraw from this Agreement by enacting a letter repealing the same, but no such withdrawal shall take effect until 30 days after the governing body of the withdrawing city has given notice in writing of such withdrawal to the governing body of all other party cities. Such action shall not relieve the withdrawing city from obligations assumed hereunder prior to the effective date of withdrawal. Duly authenticated copies of this Agreement and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party cities.

ARTICLE XII - VALIDITY

This Act shall be construed to effectuate the purposes contained in Article I hereof. If any provision of this Agreement is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII - ADDITIONAL PROVISIONS

THIRD PARY RIGHTS - Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Requesting City and the Assisting City.

WAIVER - No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

ENTIRETY OF THE AGREEMENT – Town of Caney, Oklahoma and the City of Sherman, Texas agree that this Interlocal Agreement sets forth the entire agreement between the parties and that there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except through written consent and approval of both of the signatories. Any modifications to this Agreement shall be through written instrument executed by the parties. In the event of any conflict or inconsistency between this Agreement and the provisions in the incorporated Exhibits, the terms of this Agreement shall supersede and prevail over the terms in the Exhibits.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the

_____ day of _____, 201__.

Town of Caney, Oklahoma



Chairman/Mayor

City Manager of the City of Sherman, Texas

Sherman City Manager

Witness



Caney City Clerk

Witness

Sherman City Clerk

Emergency Manager Town of Caney, Oklahoma



Director

Emergency Manager City of Sherman, Texas

Director



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. C.3

RESOLUTION NO. 5716

Authorizing Execution of an Interlocal Agreement between the City of Sherman and the City of Fort Worth for Household Hazardous Waste Services

Issue

To provide for the renewal of an Interlocal Agreement with the City of Fort Worth for the proper disposal of household hazardous waste to combat illegal dumping

Background

In 2006, the City of Sherman entered into its first Interlocal Agreement with the City of Fort Worth to provide household hazardous waste collection services. With the attached contract, Sherman will be going into its sixth year of household hazardous waste collection events using the services of the City of Fort Worth Solid Waste Department. We typically schedule, and have budgeted for, one collection event each fiscal year. Staff also provides an accompanying E-Waste collection station during these events, which is provided at no cost to the City from a Bonham-based business.

Origination

Environmental Code Enforcement

Financial Consideration

Funds have been budgeted and approved to host one household hazardous waste collection event during fiscal year (FY) 2012-2013. The cost to the City of Sherman is \$47.00 per participating household. This unit cost is the same as last year.

Staff Recommendation

Approve the proposed Interlocal Agreement with the City of Fort Worth and partner with them to provide Sherman residents with one collection event during FY 2012-2013.

Alternatives

As may be directed by the City Council

Attachments

Resolution No. 5716

The City of Fort Worth's Standard Interlocal Agreement

Prepared by:
Clay Barnett, City Engineer

Approved by:
George Olson, City Manager

RESOLUTION NO. 5716

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND THE CITY OF FORT WORTH FOR HOUSEHOLD HAZARDOUS WASTE SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Interlocal Agreement with the City of Fort Worth for household hazardous waste services, in accordance with the terms and provisions of the contract documents attached hereto and incorporated herein for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2012.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

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

INTERLOCAL AGREEMENT FOR PARTICIPATION IN FORT WORTH'S
ENVIRONMENTAL COLLECTION CENTER
HOUSEHOLD HAZARDOUS WASTE PROGRAM
FY2013

CITY OF SHERMAN

INTERLOCAL AGREEMENT FOR PARTICIPATION IN FORT WORTH'S
ENVIRONMENTAL COLLECTION CENTER
HOUSEHOLD HAZARDOUS WASTE PROGRAM

THIS AGREEMENT is entered into by and between the City of Fort Worth, Texas, a home-rule municipal corporation situated in Tarrant, Denton, Parker, and Wise Counties, Texas, hereinafter called "Fort Worth," acting by and through Fernando Costa, its duly authorized Assistant City Manager and the City of Sherman, hereinafter referred to as "Participating City" and located in Grayson County, Texas acting herein by and through George Olson its duly authorized City Manager.

(Name) (Title)

DELIVERY OF NOTICES

Any notices required to be given under this Agreement shall be delivered as follows:

If to Fort Worth:

Michael A. Gange, Assistant Director
TPW – Environmental Management Division
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

If to Participating City:

George Olson - City Manager
City of Sherman
220 W. Mulberry Street
Sherman, TX 75096

OPERATIONAL CONTACTS

Participating City's Operational Contact Persons:

Designated person is: Andreas Liss telephone number: 903-892-1077
Mobile phone number (24-hour) where he or she can be reached: 903-814-2986
Email Address: AndreasL@ci.sherman.tx.us

Alternate person is Clay Barnett telephone number: 903-892-4547
Mobile phone number (24-hour) where he or she can be reached: 903-870-6543
Email Address: ClayB@ci.sherman.tx.us

VOUCHER UTILIZATION

The Participating City:

☐

DOES wish to use a voucher system for its residents visiting the ECC or a mobile event.

☒

DOES NOT wish to use a voucher system for its residents visiting the ECC or a mobile event.

If a voucher system will be used only residents with an official voucher provided by Participating City will be allowed to drop wastes off at the ECC or at mobile events in Participating City. A copy of the official voucher must be attached to this agreement.

INVOICE DELIVERY

Invoices to Participating City shall be delivered to:

Michael Springer

Name

Solid Waste & Recycling

Department (if applicable)

P.O. Box 1106

Street Address or PO Box

Sherman, TX 75091

City, State, ZIP

michaels@c.i.sherman.tx.us

email address for billing questions and correspondence

Participating City shall notify Fort Worth in writing if the above contact information changes during the term of this Agreement.

WITNESSETH

WHEREAS, Texas Government Code, Chapter 791, authorizes the formulation of interlocal cooperation agreements between and among local governments; and

WHEREAS, Texas Government Code, §791.011 provides that a local government may contract with another local government to perform governmental functions and services, and §791.003(3)(H) defines waste disposal as a governmental function and service; and

WHEREAS, Texas Government Code, §791.025 provides that a local government may agree with another local government to purchase services; and

WHEREAS, Fort Worth and Participating City desire to enter into an interlocal agreement whereby Fort Worth will purchase the services of a waste disposal/recycling firm or firms and will administer a household hazardous waste collection program; and

WHEREAS, Fort Worth and Participating City mutually desire to be subject to the provisions of Texas Government Code, Chapter 791, also known as the Interlocal Cooperation Act.

NOW THEREFORE, it is agreed as follows:

1.
DEFINITIONS

- A. Unless a provision in this Agreement explicitly states otherwise, the following terms and phrases, as used in this Agreement, shall have the meanings hereinafter designated.

Act of God means an act occasioned by the direct, immediate, and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of humans and without human intervention.

Bill of Lading lists the contents of the mobile collection unit.

Environmental Collection Center (ECC) means the City of Fort Worth TPW-Environmental Management Division facility located at 6400 Bridge Street, Fort Worth, Texas, which is to be used by Fort Worth for the aggregation of household hazardous wastes that have been brought to the facility by participating cities' households for subsequent recycling, disposal, and/or reuse.

Environmental damages means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or un-matured, foreseeable or unforeseeable, including without limitation reasonable attorney's fees and disbursements and consultant's fees, any of which are incurred subsequent to the execution of this Agreement as a result of the handling, collection, transportation, storage, disposal, treatment, recovery, and/or reuse of waste pursuant to this Agreement, or the existence of a violation of environmental requirements pertaining to same, and including without limitation:

- (a) Damages for personal injury and death, or injury to property or natural resources;
- (b) Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such wastes or violation of environmental requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or otherwise expended in connection with the existence of such wastes or violations of

environmental requirements, and including without limitation any attorney's fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and

- (c) Liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced in subparagraph (b) herein.

Environmental requirements means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states, and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including without limitation:

- (a) All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of hazardous materials, pollutants, contaminants, or hazardous or toxic substances, materials, or wastes whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, storm water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or hazardous or toxic substances, materials, or wastes, whether solid, liquid, or gaseous in nature; and
- (b) All requirements pertaining to the protection of the health and safety of employees or the public.

Force majeure means decrees of or restraints by a governmental instrumentality other than the Parties, acts of God, work stoppages due to labor disputes or strikes, failure of Fort Worth's contractor(s) to perform pursuant to their agreements with Fort Worth for the conduct of the collection of household hazardous waste, fires, explosions, epidemics, floods, extreme weather, riots, war, rebellion, and sabotage.

Household hazardous waste (HHW) means any solid waste generated in a household by a consumer which, except for the exclusion provided for in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

Manifest means the uniform hazardous waste manifest form(s) that must accompany shipments of municipal hazardous waste or Class 1 industrial solid waste.

Mobile collection event means a household hazardous waste collection event by Participating City utilizing a mobile collection unit.

Mobile Collection Unit (MCU) means a non-self-propelled vehicle used for the periodic collection of household hazardous waste by Participating City, off-site of the ECC, which is transported to the ECC to dispose of the household hazardous waste collected at the mobile collection event. Mobile Collection Units owned by Fort Worth are designed to hold the hazardous waste of approximately 50 to 75 households.

Participating City means the municipality which has entered into this agreement with the City of Fort Worth.

Participating Entities, when used in the plural, means Fort Worth, Participating City, and all other entities which have entered into interlocal agreements with Fort Worth for the ECC household hazardous waste collection program.

Person means an individual, corporation, organization, government, or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Waste has the same meaning as "solid waste" as that term is defined in Texas Health and Safety Code §361.003, and including hazardous substances.

- B. Unless a provision in this Agreement explicitly states otherwise, the following abbreviations, as used in this Agreement, shall have the meanings hereinafter designated.

CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act, its amendments, associated case law, and state counterparts.

CPR - cardiopulmonary resuscitation.

DOT - United States Department of Transportation.

ECC - Fort Worth Environmental Collection Center.

EPA - United States Environmental Protection Agency.

HAZCAT - hazardous categorization.

HAZWOPER - hazardous waste operations and emergency response and the training, certification, and legal requirements associated therewith.

HM - hazardous materials.

HHW - household hazardous waste.

MCU - Mobile Collection Unit.

TCEQ - Texas Commission on Environmental Quality.

2. PURPOSE

The purpose of this interlocal agreement (hereafter "Agreement") is the provision of services by Fort Worth to Participating City whereby, subject to the terms and conditions specified below, Fort Worth will administer and supervise a regional household hazardous waste collection program, which will be available to households within Participating City as described herein.

3.
TERM

This Agreement shall be effective from October 1, 2012 or the date the last party has signed this Agreement, whichever is later, through September 30, 2013 however the duties and responsibilities of the Parties for events which occurred during the term of the contract shall survive. If Participating City has mobile collection events scheduled during the months of October through December 2013 and this Agreement has not been renewed by the end of the regular term, this agreement shall be extended on a month to month basis until the mobile collection events have been completed or cancelled by Participating City.

4.
SERVICES OF FORT WORTH

Fort Worth agrees to perform the following services for Participating City in connection with the ECC household hazardous waste collection program:

- A. Fort Worth will administer a regional household hazardous waste collection program. This program will include the operation of the Environmental Collection Center, which will accept for disposal and/or recycling household hazardous waste from households located within Participating City. Fort Worth shall not accept compressed flammable gas containers; radioactive materials; explosives or potentially shock sensitive materials; biological, etiologic, or infectious materials; wastes from businesses; or any other wastes that Fort Worth has determined are unacceptable.
- B. Fort Worth will employ or retain personnel to provide the services necessary to perform Fort Worth's obligations in this Agreement.
- C. Fort Worth will enter into a contract(s) with a waste disposal/recycling firm(s) for the handling, collection, transportation, storage, disposal, treatment, recovery, and/or reuse of household hazardous waste that is collected at the ECC or during mobile collection events.
- D. Fort Worth will, if requested in writing by Participating City, provide Participating City with copies of waste manifests for shipments of waste from the ECC.
- E. Fort Worth will, if requested in writing by Participating City, provide Participating City a monthly report of the Participating City's households who disposed of household hazardous waste at the Environmental Collection Center or a mobile collection event.
- F. Fort Worth will issue a report and an invoice at the end of each quarter detailing the number of Participating City's households that disposed of household hazardous waste at the Environmental Collection Center or at mobile collection events.
- G. Fort Worth will act under this Agreement in accordance with all applicable state and federal laws.
- H. Mobile Collection Events

Participating City may schedule a mobile collection event to be operated by Fort Worth personnel using one of Fort Worth's MCUs or conduct their own mobile collection events

using either Participating City's MCU or Fort Worth's Reserve MCU (as available). State regulations require notification to the Texas Commission on Environmental Quality (TCEQ) at least 45 days prior to conducting the event.

1. Fort Worth Operated Events:

If Participating City would like to schedule a mobile collection event with the Fort Worth Mobile Collection Unit, Participating City shall contact the ECC as soon as possible for a list of available dates. The time and location shall be agreeable to both parties. Participating City may schedule one mobile collection event each contract year. Fort Worth will file notification of the event with TCEQ as required by 30 TAC §335.403.

(a) Scheduling Events

Fort Worth will begin scheduling mobile collection events for the 2013 calendar year on January 2, 2013. To ensure proper notification to TCEQ, events must be scheduled at least sixty (60) days ahead of the proposed date. Participating City acknowledges that Fort Worth contracts with other municipalities and that Fort Worth will be accommodating each Participating City's request on a first come first served basis. Therefore, Participating City acknowledges that its chosen date to schedule a mobile collection event may be reserved by another city and Participating City will have to then choose another date. Participating City will, in no event, be entitled to any damages or recovery of any costs, except as provided herein.

(b) Location

If Participating City chooses to hold the Mobile Collection Event on private property, Participating City shall obtain a signed waiver from the owner of the property sixty (60) days prior to the event. The waiver shall be in the form of Exhibit B or similar form approved by Fort Worth. The signed waiver must be sent to Fort Worth sixty (60) days before the Mobile Collection Event. If the signed waiver is not sent to Fort Worth sixty (60) days before the Mobile Collection Event, Fort Worth will not send the Fort Worth Mobile Collection Unit to the event and Participating City will, in no event, be entitled to any damages or recovery of any costs, except as provided herein. All events must be held on an impervious surface.

(c) At the Mobile Collection Event, Participating City acknowledges and agrees that Fort Worth shall accept household hazardous waste from the first 50 households that show proof of residency at the Mobile Collection Event. After the first 50 households, Fort Worth will determine in its sole discretion how much more waste it can accept for proper transport back to the ECC. If more households arrive at the event than Fort Worth can accept, Participating City will in no event be entitled to any damages or recovery of any costs, except as provided herein.

(d) Due to the lack of storage space at the ECC, Participating City acknowledges and agrees that if it requests the Fort Worth Mobile Collection Unit at a mobile collection event, a Participating City's MCU shall not also be at the event.

- (e) Fort Worth, in its sole discretion, will determine whether to send the Fort Worth Mobile Collection Unit to Participating City's Collection Event during adverse weather, the threat of adverse weather, or other hazardous conditions including but not limited to sleet, snow, rain, mist or hail. In the event Fort Worth determines not to send the Fort Worth Mobile Collection Unit, Fort Worth shall attempt to notify persons listed herein as an "Operational Contact" by the Participating City and shall attempt to send a Fort Worth employee to the Participating City's event to tell any residents that come to dispose of household hazardous waste that the Fort Worth Mobile Collection Unit will not be coming to the event, but the resident can go to the ECC to dispose of the waste. A map with directions to the ECC also will be provided.
- 2. Participating City Mobile Collection Unit:
 - (a) Fort Worth agrees to accept household hazardous waste from mobile collection events conducted by Participating City using Participating City's MCU in accordance with the terms of this Agreement.
 - (b) Fort Worth agrees to restock the items it removes from Participating City's MCU, however, Fort Worth shall only restock items listed in Exhibit "A", attached and incorporated herein as if set forth.
- 3. Loan of the Reserve Mobile Collection Unit

The reserve MCU is a specially designed and equipped thirty-six (36) foot gooseneck box-trailer and one (1) ton pickup owned by Fort Worth. Participating City may request the loan of Fort Worth's Reserve MCU free of charge for use in a Household Hazardous Waste collection event when available. Participating City may use the Reserve MCU to transport HHW to Fort Worth's ECC or another collection center that may lawfully receive HHW. Participating City shall provide Fort Worth with a written request, facsimile or e-mail at least sixty (60) days prior to the event date for which the request is made. Fort Worth shall have sole determination whether the Reserve MCU is available for use by Participating City and shall notify Participating City as soon as is reasonably practicable of such decision. Fort Worth shall not participate in nor be responsible for any part of the Participating City's HHW Collection Event unless and except by written mutual agreement.

 - (a) Fort Worth shall disclose any known problems the Reserve MCU may have in performing the tasks necessary for the HHW Collection Event. Prior to issuance of the Reserve MCU, a pre-trip inspection for potential maintenance problems will be performed by Fort Worth. Also, both parties will complete a pre-trip aesthetic assessment. Participating City shall be responsible for all certifications and insurance necessary for the proper operation of the Reserve MCU.
 - (b) Participating City agrees to maintain and return the Reserve MCU in as good condition as it was in when Participating City took possession for

use. Participating City shall return the Reserve MCU to Fort Worth in a timely manner and as mutually agreed upon.

- (c) Participating City shall be responsible for all property damage, personal injury or death caused by Participating City's employees, volunteers, contractors, or agents and arising out of the use of the Reserve MCU during the term of this Agreement.
- (d) It is expressly understood and agreed that, in the execution of this Agreement, neither of the parties waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement the parties do not intend to create any obligations, expressed or implied, other than those set forth herein and this Agreement shall not create any rights in parties not signatories hereto.

5.

DUTIES OF PARTICIPATING CITY

Participating City agrees to perform the following duties in connection with the household hazardous waste collection program:

- A. Participating City will designate one of its employees, and another as an alternate, to act as its household hazardous waste collection Operational Contact to interact with Fort Worth as designated on the signature page to this contract.
- B. Participating City will coordinate and fund all program advertising targeted to its own citizens, as it deems necessary. Such advertising shall include the type of wastes that will be accepted at the ECC, the requirement of proof of residency, and weather cancellation information.
- C. Participating City shall notify its residents of the ECC hours of operation and dates it is closed as provided in Section 9 "The Environmental Collection Center Hours of Operation."
- D. Participating City may choose to utilize a voucher system for its residents in order for them to bring HHW to the ECC. If Participating City chooses to use such a system, it shall designate so herein and include a copy of the official voucher. In addition, if a citizen from a Participating City that utilizes a voucher system comes to the ECC or a mobile collection event without a voucher, Participating City acknowledges and agrees that Fort Worth will not accept the household hazardous waste until Participating City authorizes the acceptance in writing.
- E. Participating City may submit a written request for a monthly report listing the number of its city's households that have disposed of household hazardous waste at the ECC or a mobile collection event.
- F. Participating City shall provide traffic control and signage for the mobile collection event, and shall provide personnel to assist Fort Worth with the offloading of material, surveys, and screening of persons dropping off household hazardous waste. Prior to the event,

the parties shall agree upon the details of the traffic control, signage, and personnel assistance.

- G. If a Participating City resident presents waste that was collected from multiple households, Fort Worth reserves the right to charge the Participating City based on the total number of households from which the waste originated even if the resident has only one voucher.
- H. Participating City shall provide a means for disposing of solid waste (e.g. boxes, trash, containers) on site during a mobile collection event.
- I. Mobile Collection Events using Participating City's MCU or Reserve MCU
 - 1. Participating City is responsible for proper notification to TCEQ as required by 30 TAC §335.403.
 - 2. Participating City shall advise the ECC at least 72 hours in advance of its mobile collection events. Participating City shall collect only HHW during a mobile collection event. Wastes from commercial, agricultural, and industrial sources shall not be accepted. Participating City shall not accept compressed flammable gas containers; radioactive materials; explosives or potentially shock sensitive materials; biological, etiologic, or infectious materials; or any other wastes that Fort Worth has determined are unacceptable.
 - 3. In accordance with the latest DOT requirements, Participating City's MCU operators will properly categorize, package, mark, label, and load into the MCU, all wastes received at the mobile collection event. Recyclable products (used oil, used oil filters, latex paint, recyclable anti-freeze, lead-acid batteries, and fluorescent lights) will be segregated into containers for recyclables.
 - 4. After accepting wastes, Participating City's MCU operators shall thoroughly check each container for proper labeling and identification. If a container is properly identified, the material will be segregated according to hazard class and prepared for packaging. If a container does not have adequate labeling to permit identification, the MCU operators shall then attempt to identify the material from its physical characteristics using HAZCAT analysis and from information provided by the household presenting the waste.
 - 5. The Participating City's MCU operators shall package all hazardous materials in accordance with United States Department of Transportation (DOT) requirements, United States Environmental Protection Agency (EPA) requirements, and all other applicable federal and state requirements. After all the wastes have been properly identified and segregated, the MCU operators will reexamine the wastes for compatibility, list them on the container content sheets, and pack them into drums. Oil-based paints and latex paints shall be bulked separately in 55-gallon drums, or if the paint is left in its container, the paint can be packed in a lined cubic yard box, and packed and labeled according to federal and state regulations. Participating City shall not transport waste that is not HHW to the ECC. Participating City agrees to make its own arrangements to dispose of any non-HHW waste collected at the event.

6. Prior to transporting the HHW from the collection event site, Participating City's MCU operators shall complete a Bill of Lading, and shall keep the Bill of Lading in the cab of the truck hauling the MCU during transportation of the HHW to the ECC. Participating City shall require that a minimum of one copy of the latest North American Emergency Response Guidebook be kept within the cab of the truck.
7. During transportation, Participating City's MCU operators shall placard the MCU for transportation of hazardous waste in accordance with federal and state law.
8. Upon the return of the MCU to the ECC, Participating City's MCU operators shall follow the instructions of Fort Worth regarding the placement of the MCU for unloading. Fort Worth shall take possession of the MCU from Participating City after the MCU has been properly parked for unloading in accordance with Fort Worth's instructions and all required documents have been delivered to the ECC manager or his designee at the ECC. Fort Worth shall, within a reasonable amount of time, unload the HHW from the Participating City's MCU and store the unit at the ECC. After being contacted, Participating City shall pickup their unit within 10 days.
9. If Fort Worth, in its sole discretion, determines that Participating City's MCU operators improperly packaged any of the HHW delivered to the ECC, Fort Worth shall repackage such waste, and Participating City shall reimburse Fort Worth as set forth herein.
10. If a spill emanating from the Participating City's MCU or the Reserve MCU occurs at the ECC while the MCU is still in Participating City's possession, Fort Worth shall take control of the spill response and Participating City will reimburse Fort Worth for its response costs as set forth herein.

6.

USE OF WASTE DISPOSAL/RECYCLING FIRMS FOR HOUSEHOLD HAZARDOUS WASTE

- A. Fort Worth will enter into a contract(s) with a waste disposal/recycling firm(s) for the handling, collection, transportation, storage, disposal, treatment, recovery, and/or reuse of household hazardous waste, from the ECC.
- B. Such firm(s) shall be required pursuant to the contract(s) to assume generator status for the waste collected, (excluding used oil, lead-acid batteries and antifreeze) to choose a disposal site for the waste subject to Fort Worth's approval, and to indemnify Fort Worth and participating cities against any and all environmental damages and the violation of any and all environmental requirements resulting from the handling, collection, transportation, storage, disposal, treatment, recovery, and/or recycling of waste collected pursuant to this agreement, when said environmental damages or the violation of said environmental requirements was the result of any act or omission of contractor, its officers, agents, employees, or subcontractors, or the joint act or omission of contractor, its officers, agents, employees, or subcontractors and any other person or entity.
- C. **THE PARTIES RECOGNIZE THAT ALTHOUGH THE FIRM (S) WILL BE REQUIRED TO ASSUME GENERATOR STATUS, THIS ASSUMPTION WILL NOT RELIEVE PARTICIPATING CITY OF LIABILITY FOR THE WASTE UNDER FEDERAL LAW**

AND STATE LAW. Fort Worth will arrange for recycling vendors for used oil, batteries, antifreeze, and other materials, as it deems appropriate.

7.

REUSE OF COLLECTED MATERIALS

- A. From time-to-time Fort Worth will make available to residents and businesses of Fort Worth, as well as, Participating City and residents and businesses of Participating City for their use, collected household hazardous waste materials that are suitable for reuse, such as paint, fertilizer, motor oil, and antifreeze. Fort Worth shall not charge for any materials that are picked up for reuse.
- B. Some materials made available for reuse may have been consolidated and filtered by Fort Worth prior to being made available. Used antifreeze will have been consolidated in a barrel, filtered, and pH balanced, and new antifreeze may have been added to the barrel.
- C. In regards to materials accepted by Participating City, its employees, residents, or any other person **FORT WORTH MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTIES THAT:**
 - 1. the container contents are what the label indicates;
 - 2. the container contents are those originally placed into the container by the manufacturer;
 - 3. the product is of the quality intended for its use;
 - 4. the contents of the container have been stored properly;
 - 5. the instructions on the container label for use, storage, and first aid are current or correct;
 - 6. the container is in unimpaired condition;
 - 7. the product is still approved for use (i.e., it has not been banned or recalled); and
 - 8. the product can be used without risk to persons, property or the environment.

FURTHERMORE, ALL WARRANTIES, EXPRESS AND IMPLIED, ARE SPECIFICALLY DENIED. PARTICIPATING CITY SHALL NOTIFY RECIPIENTS OF THESE TERMS AND CONDITIONS.

- D. Participating City shall contact the ECC manager to arrange a pickup time to obtain materials. Participating City agrees that it shall not return to Fort Worth, directly or indirectly, any materials it obtains from Fort Worth under this paragraph.
- E. **INDEMINIFICATION REGARDING REUSED OR RECYCLED MATERIALS.**

1. IN REGARDS TO REUSED OR RECYCLED MATERIALS ACCEPTED BY PARTICIPATING CITY, PARTICIPATING CITY DOES HEREBY WAIVE ALL CLAIMS,

INCLUDING PRODUCTS LIABILITY CLAIMS, AND RELEASES, AND HOLDS HARMLESS THE CITY OF FORT WORTH, AND ALL OF ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, EXPENSES OF LITIGATION, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OF INJURY TO PERSONS, LOSS OF PROPERTY, DAMAGE TO PROPERTY, OR LOSS OF USE OF ANY PROPERTY , OCCASIONED BY THE TRANSPORTATION, STORAGE, HANDLING, USE, AND DISPOSAL BY PARTICIPATING CITY OF ANY MATERIALS ACCEPTED BY PARTICIPATING CITY UNDER THIS AGREEMENT FROM FORT WORTH.

2. IF THE PARTICIPATING CITY DOES NOT AGREE TO THE INDEMNIFICATION AND WAIVER IN PARAGRAPH E ABOVE, THEN THE PARTICIPATING CITY SHALL NOT ACCEPT, NOR ALLOW ANY OTHER PERSON TO ACCEPT ANY OF THE REUSED OR RECYCLED MATERIALS AND SHALL NOT BE REQUIRED TO AGREE TO THE WAIVER IN PARAGRAPH E. Initial here to reject term 7.E.1. and accept alternate term 7.E.2. all.

F. In regards to materials accepted by residents or businesses of Participating Cities, FORT WORTH MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTIES THAT:

1. the container contents are what the label indicates;
2. the container contents are those originally placed into the container by the manufacturer;
3. the product is of the quality intended for its use;
4. the contents of the container have been stored properly;
5. the instructions on the container label for use, storage, and first aid are current or correct;
6. the container is in unimpaired condition;
7. the product is still approved for use (i.e., it has not been banned or recalled); and
8. the product can be used without risk to persons, property or the environment.

FURTHERMORE, ALL WARRANTIES, EXPRESS AND IMPLIED, ARE SPECIFICALLY DENIED.

G. Participating City shall attempt to inform its residents and businesses that if they go to the Environmental Collection Center to pick up household hazardous waste for reuse, a release of liability must be signed to accept the household hazardous waste for reuse.

Remainder of this page intentionally left blank

8.
RIGHT TO REFUSE WASTE

Participating City agrees that Fort Worth shall have the right to refuse to accept waste at the ECC from Participating City or Participating City's resident, if in the reasonable judgment of Fort Worth:

- A. The waste is not household hazardous waste;
- B. The waste fails to meet other established criteria established by this Agreement, or that have been established by Fort Worth subsequent to the execution of the Agreement;
- C. The individual does not have sufficient identification to establish that he/she is in fact a resident of Participating City;
- D. Participating City has implemented a voucher system for its residents to dispose of waste, and the individual does not have a valid voucher; or
- E. The waste or the individual presents a hazard to the ECC or to persons or property at the ECC.

9.
ENVIRONMENTAL COLLECTION CENTER HOURS AND DAYS
OF OPERATION

- A. Hours of Operation

During the term of the Agreement, the ECC's hours of operation are as follows:
Thursday and Friday 11:00 a.m. -- 7:00 p.m.
Saturday 9:00 a.m. -- 3:00 p.m.

- B. Days the Environmental Collection Center will be closed

During the term of the agreement, the ECC will be closed on the following holidays that are observed on days the ECC would otherwise be open to the public:

Thanksgiving Holiday, Thursday, Friday, and Saturday, November 22-24, 2012
Independence Day, Thursday, July 4, 2013

In addition to the above closures Fort Worth employees will not be available to conduct mobile collection events on May 25 and August 31 although the ECC will remain open on those days. The ECC may close due to furlough days or other causes, and the City of Fort Worth does not represent to Participating City that the ECC will be open on any particular days. If additional closures due to any cause are necessary Fort Worth will notify Participating City prior to the closure unless due to an unforeseeable event.

- C. Notifying Residents

Participating City agrees to notify its residents of the ECC's hours of operation and dates it will be closed. Participating City also may advertise the 24-hour Environmental Collection Center telephone number: (817) 871-5257.

10.
COMPENSATION

As fair compensation for the services provided by Fort Worth pursuant to this Agreement:

- A. Participating City agrees to pay Fort Worth the sum of **\$47.00** per household per visit to the ECC (or per participating household in a Mobile Collection Event) to dispose of household hazardous waste. If a Participating City resident presents waste that was collected from multiple households, Fort Worth reserves the right to charge the Participating City based on the total number of households from which the waste originated.
- B. If Fort Worth determines that Participating City's MCU operators improperly packaged any of the HHW delivered to the ECC, Fort Worth shall repackage such waste, and Participating City shall reimburse Fort Worth for its staff time at \$20.00 an hour and the cost of supplies.
- C. If a spill emanating from the Participating City's MCU or the Reserve MCU occurs at the ECC while the MCU is still in Participating City's possession, Fort Worth shall take control of the spill response and Participating City will reimburse Fort Worth for its response costs for City staff time (\$60.00 per hour) plus the cost of supplies and the actual costs for the spill response and remediation incurred by the City of Fort Worth for third party contractors and responding governmental agencies.
- D. The amount due to Fort Worth for services provided under this Section, Paragraphs A, B, and C, shall be billed to Participating City quarterly. Participating City shall pay Fort Worth within 30 days of receiving a bill from Fort Worth. If Fort Worth does not receive payment within 30 days, Fort Worth shall inform Participating City in writing that it will not accept any household hazardous waste from Participating City's residents and that Fort Worth will not participate in a mobile collection event or provide a mobile collection unit until paid.
- E. At the end of the term of this Agreement, Fort Worth shall provide a final accounting to Participating City, which will include the total number of Participating City's households which participated in the program, repackaging fees, if any, and the total cost of spill response charged to Participating City, if any.
- F. Pursuant to the requirements of Government Code §791.011 (a)(3), the amount due to Fort Worth under Subparagraph D. above shall be paid from revenues currently available to Participating City in the present fiscal year.

11.
ARTWORK, "CAPTAIN CRUD AND THE CRUDDIES," AND PROMOTIONAL MATERIALS
LICENSE AGREEMENT

Fort Worth is the owner of "Captain Crud" and the Cruddies ("Bloomer," "Otto," "Pestie," "Scrub," and "Van Goo") and the recycling buddies ("Scrappy," "Juggles," and "Cana Nana") "Conquer Your Crud," and "Crud Cruiser", and therefore all ownership rights belong to Fort Worth. Fort Worth has registered these marks as service marks with the Secretary of State.

- A. Fort Worth hereby grants to Participating City a non-transferable, non-exclusive license to use all the artwork and promotional materials that may be provided by Fort Worth to be used solely in the conduct of the business of Participating City's disposal and recycling of household hazardous waste programs. If Participating City wishes to use to Licensed Art and/or Promotional Materials in other limited situations, Participating City must first obtain express written consent from Fort Worth.
- B. Fort Worth may provide licensed Artwork and Promotional Materials to Participating City pursuant to the terms of this Agreement. Participating City acknowledges that by virtue of this License, Participating City acquires only the right to use the original and permitted duplicate copies of the Licensed Artwork and Promotional Materials and does not acquire any rights of ownership in the Licensed Artwork and Promotional Materials, which rights shall remain exclusively with Fort Worth. If Participating City wants to modify or change the artwork and/or promotional materials in any manner, Participating City hereby agrees to contact Fort Worth in writing to obtain written consent before modifying or changing any artwork and/or promotional materials.
- C. If Participating City desires an actor to portray "Captain Crud" for an event, Participating City shall use actors approved by Fort Worth to portray "Captain Crud" since "Captain Crud" is owned by Fort Worth. Participating City shall be solely responsible for compensating actor for the services provided to Participating City. Participating City will contact Fort Worth as soon as possible with the date and time of the event agreeable to both parties to obtain approval for the chosen actor and to request and pickup the "Captain Crud" costume for its events. Fort Worth will provide the "Captain Crud" costume. However, Participating City agrees to be liable to Fort Worth for any damage to the costume or if Participating City fails to return the entire costume to Fort Worth or if the costume is not returned in the same condition as received.

12. IMMUNITY

It is expressly understood and agreed that, in the execution of this Agreement, none of the Participating Cities waives, nor shall be hereby deemed to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions, and that the services described in this Agreement are a governmental function.

13. FORCE MAJEURE

A delay or failure of Fort Worth to perform services pursuant to this Agreement shall be excused to the extent that the delay or failure to perform resulted from a force majeure event, and the delay or failure was beyond the control of Fort Worth and not due to its fault or negligence. Participating City shall not have, and hereby waives, any claim whatever for any damages resulting from delays or failure to perform caused by a force majeure event.

14.
TERMINATION

The parties shall each have the right to terminate the Agreement for any reason, with or without cause, upon thirty (30) days written notice to the other party. Upon termination, the parties shall be released from all contractual obligations to the other party excluding "USE OF WASTE DISPOSAL/RECYCLING FIRMS FOR HOUSEHOLD HAZARDOUS WASTE" "REUSE OF COLLECTED MATERIALS" and "ARTWORK, "CAPTAIN CRUD AND THE CRUDDIES," AND "PROMOTIONAL MATERIALS LICENSE AGREEMENT" and any terms and conditions arising from events occurring during the term of the contract .

15.
ENTIRETY

This Agreement contains all commitments and Agreements of the parties hereto, and no other oral or written commitments shall have any force or effect if not contained herein, except that this Agreement can be amended or modified by the parties if such amendment or modification is in writing and signed by Participating City and Fort Worth.

16.
SEVERABILITY

In the event anyone or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

17.
VENUE

Should any action, real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, venue for said action shall be in Tarrant County, Texas.

18.
AUTHORITY

This Agreement is made for Fort Worth and Participating City as an Interlocal Agreement, pursuant to Texas Government Code, Chapter 791.

19.
AUTHORIZATION

The undersigned officers and/or agents of the parties hereto are properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

SIGNATURE PAGE
INTERLOCAL AGREEMENT FOR PARTICIPATION IN FORT WORTH'S
ENVIRONMENTAL COLLECTION CENTER, HOUSEHOLD HAZARDOUS WASTE PROGRAM

CITY OF FORT WORTH

By:

Fernando Costa
Assistant City Manager
Date: _____

APPROVED AS TO FORM
AND LEGALITY:

Arthur N. Bashor
Assistant City Attorney

ATTEST:

Mary J. Kayser
City Secretary

Contract Authorization

Date

CITY OF SHERMAN

By:

Printed name: George Olson
Title: City Manager
Date: _____

APPROVED AS TO FORM
AND LEGALITY:

City Attorney / Assistant City Attorney

ATTEST:

City Secretary

Exhibit "A"

RESTOCKING LIST FOR THE MOBILE COLLECTION UNIT

Material	Amount Restocked	Special Needs	Remarks
55 gallon open top drums (open top for loose packs)	Amount taken off the trailer		
55 gallon drums (closed top) (oil, antifreeze, bulk flammable materials and one extra)	Amount taken off the trailer		
Fiber drums (55 or 30 gallon) Aerosols, acids, bases and oxidizers)	Amount taken off the trailer		
Gaylord box liners (plastic)	Amount taken off the trailer		
55 gallon drum liners	Amount taken off the trailer		
5 gallon buckets (filters/haz chemicals)	Amount taken off the trailer		
Survey Forms	Amount taken off the trailer		
Labels/drum placard	Amount taken off the trailer		
Gaylord boxes	Amount taken off the trailer		
Absorbent pads	Amount taken off the trailer		
Vermiculite	Amount taken off the trailer		
Oil dry	Amount taken off the trailer		
Promotional Materials & Brochures	Amount needed		

Exhibit "B"

WAIVER AND RELEASE OF LIABILITY FOR COLLECTION OF HOUSEHOLD
HAZARDOUS WASTE

I being the owner of property located at 220 W. Mulberry Street
have been asked by the City of Ft. Worth to allow a mobile collection
event on my property to collect household hazardous waste on the TBD, 2013.
I hereby give my permission to the City of Sherman and the City of Fort
Worth, to hold a household hazardous waste collection event on my property in which the City
of Sherman has asked the City of Fort Worth to send its mobile
collection unit to collect the household hazardous waste that is brought to the event.

Therefore, I hereby **RELEASE, DISCHARGE, HOLD HARMLESS, INDEMNIFY** the City of
Fort Worth or its officers, agents, and employees and the City of Sherman
and its officers, agents, and/or employees for any and all claims, demands, liability, causes of
action, actions or suits of any character that I may have against the City of Fort Worth or its
officers, agents, and/or employees and the City of Sherman or its officers,
agents, and/or employees for any property loss or damage, for any and all personal injury
including death or any other damage of any kind or character which may arise or that arises
from allowing the City of Sherman to hold a household hazardous waste
collection event, in which the City of Fort Worth sends its mobile collection unit on my property.

I have read this Waiver and Release and fully understand its terms and conditions. I have not
been influenced in any extent whatsoever by any representation or statements not contained in
this Agreement.

Signature

Date

Witness

Date



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. C.4

*** RESOLUTION NO. 5717**

**Authorizing the City Manager to Execute a Contract
with The Sherman Museum for Expenditure of a Portion of the Funds
Collected by the City of the Hotel-Motel Occupancy Tax**

Issue

To distribute a portion of the Hotel-Motel Occupancy Tax funds received by the City of Sherman to The Sherman Museum (Museum)

Background

At the 2012-2013 Budget Workshop, the City Council allocated \$82,500.00 of the Hotel-Motel Occupancy Tax Fund dollars to be used to promote tourism through the Museum.

Origination

Mayor and City Council

Financial Consideration

The Council approved funding for the Museum of \$82,500.00 for the fiscal year 2012-2013 budget, with funding provided from the Hotel-Motel Occupancy Tax Fund revenues.

Staff Recommendation

The staff recommends granting the City Manager authority to execute a contract with the Museum in the funding amount established by the Council.

Alternatives

As directed by the City Council

Attachments

Resolution No. 5717

Proposed Contract with The Museum

Exhibit "A" - V.T.C.A., Tax Code § 351.101

Prepared by:
Don Keene, Director of Public Works

Approved by:
George Olson, City Manager

RESOLUTION NO. 5717

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE SHERMAN MUSEUM FOR EXPENDITURE OF A PORTION OF THE FUNDS COLLECTED BY THE CITY OF THE HOTEL-MOTEL OCCUPANCY TAX; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, Chapter 351 of the Texas Tax Code authorizes the City to collect and levy an occupancy tax on hotels and motels; and

WHEREAS, said Chapter specifies the purposes for which such tax receipts may be utilized; and

WHEREAS, such stated purposes include the promotion of tourism, the advertisement of the City and its vicinity, and the promotion and improvement of the arts and humanities within the community;

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney and subject to budget approval, to execute a contract with The Sherman Museum, with Exhibit "A" attached, in accordance with the terms and provisions of all contract documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2012.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

CONTRACT BETWEEN
CITY OF SHERMAN AND THE SHERMAN MUSEUM

THIS CONTRACT is made and entered into by and between the **CITY OF SHERMAN**, a municipal corporation of the State of Texas (hereinafter called "CITY"), and **THE SHERMAN MUSEUM**, a non-profit corporation of the State of Texas (hereinafter called "MUSEUM"), for the limited purpose of providing funds to the MUSEUM for a twelve (12) month period.

WHEREAS, Chapter 351 of the Texas Tax Code authorizes a city to levy and collect an occupancy tax on hotels and motels; and

WHEREAS, CITY levies and collects a tax equal to seven percent (7%) of the consideration paid by occupants of hotels and motels; and

WHEREAS, CITY desires to promote tourism, advertise the city and its vicinity, and promote and improve the arts within the community by participating and assisting in the operation of the Museum; and

WHEREAS, MUSEUM shall consist of the property located at 301 South Walnut Street in the City of Sherman, Grayson County, Texas;

NOW, THEREFORE, in consideration of the mutual covenants and the payments herein, the CITY and MUSEUM agree as follows:

I.

During the period of October 1, 2012, through September 30, 2013, the CITY agrees to pay to MUSEUM Eighty-Two Thousand Five Hundred Dollars and No Cents (\$82,500.00) collected under the Hotel/Motel Occupancy Tax of the CITY; and MUSEUM agrees that all funds are to be used entirely for the operation and maintenance of the MUSEUM. The Eighty-

Two Thousand Five Hundred Dollars and No Cents (\$82,500.00) paid to the MUSEUM for the time period of October 1, 2012, through September 30, 2013, represents the entire amount budgeted for this purpose by the CITY for the fiscal year of 2012-2013. The Eighty-Two Thousand Five Hundred Dollars and No Cents (\$82,500.00) shall be paid in four (4) installments on the final execution of this Contract: October 15, 2012 and January 15, April 15, and June 15, 2013. Payments will be based on actual operation and maintenance expenditures and made strictly on a reimbursement basis. Reimbursement will be based on copies of actual invoices or other proof of payment as requested by the CITY. At that time, the MUSEUM shall also provide an explanation of how the expenditure of such monies complied with Section 351.101 of the Texas Tax Code.

Operations of the MUSEUM are to include the administration of all personnel associated with the MUSEUM, the management of all fund-raising activities in connection with the MUSEUM, the selection, preparation, and display of exhibits of artifacts, the interface with members of the general public concerning all matters related to the MUSEUM, and any other duties that could reasonably be construed as the operation of the MUSEUM.

II.

MUSEUM agrees that any money received under this Contract will only be used for purposes specified in Chapter 351 of the Texas Tax Code and MUSEUM will not use any money received in this Contract in any manner that does not strictly comply with the requirements, intent, and purposes as set forth in the Texas Tax Code, Chapter 351, Section 351.101(a)(1)-(7), as amended, and such statutorily authorized administrative expenses, together with the Texas Attorney General opinions interpreting Section 351.101 of the Texas Tax Code. A copy of Section 351.101 of the Texas Tax Code is attached as Exhibit "A" and incorporated into this

Contract for all purposes. Specifically, MUSEUM agrees to use such hotel tax revenues solely for the purposes of promoting tourism and the convention and hotel industry and will use the revenues solely for the permissible uses listed in Section 351.101(a) of the Texas Tax Code.

III.

MUSEUM represents that it has prepared a proposed budget to be administered under this Contract to the Sherman City Council for the fiscal year of 2012-2013. The MUSEUM shall furnish CITY quarterly financial reports which show all actual expenditures whether those expenditures are budgeted or not from records maintained pursuant to Section 351.108(a) of the Texas Tax Code. The report shall compare actual expenditures to budgeted expenditures and to actual expenditures from the prior year. The report shall also provide an explanation of how the expenditure of such monies complied with Section 351.101 of the Texas Tax Code.

The MUSEUM shall also provide a quarterly report of activities promoting tourism and the convention and hotel industry to CITY. Each quarterly financial report and each quarterly report of activities shall be presented to the office of the City Manager no later than the end of the month immediately following each calendar quarter. Further, the MUSEUM shall provide to CITY a copy of Form 990 submitted to the Internal Revenue Service.

IV.

It is understood and agreed that this Contract is intended for the purpose of providing an agency for the administration of funds collected by the CITY under the provisions of the Hotel-Motel Occupancy Tax Ordinance of said CITY, and that CITY retains its legislative prerogative to alter, repeal, or otherwise amend such ordinance at any time.

V.

MUSEUM agrees and covenants that, in the event of a breach by MUSEUM of any of the covenants contained herein as determined by CITY in its sole discretion, CITY may, at its option, declare this Contract immediately forfeited and terminated as to the balance of the terms thereof.

VI.

The parties agree that the term of this Contract is for October 1, 2012 through September 30, 2013.

VII.

Notwithstanding the above, CITY and MUSEUM retain the right to cancel this Contract at any time, with or without cause and without liability or expense, by the giving of twenty (20) days notice of such intention to cancel. Notice to cancel by CITY shall be in writing, signed by the City Manager with prior City Council approval. Notice to cancel by MUSEUM shall be in writing, signed by the MUSEUM President with prior MUSEUM Board of Directors approval. CITY and MUSEUM shall consider renewal of this Contract in subsequent years. MUSEUM agrees to provide a plan of work in conjunction with any request to renew this Contract.

VIII.

This is a negotiated Contract. If any part of this Contract is in dispute, the parties stipulate that the Contract shall not be construed more favorably for either party.

This Contract may not be changed, varied, or altered except by an instrument in writing and duly executed on behalf of CITY and by MUSEUM. Every obligation arising from this Contract shall be performable in Grayson County, Texas. Venue for any legal disputes arising

from this Contract shall be Grayson County, Texas and governed by the laws of the State of Texas.

IN TESTIMONY WHEREOF, this instrument, in duplicate originals of equal force, has been executed on behalf of **THE SHERMAN MUSEUM** and on behalf of the **CITY OF SHERMAN** by its City Manager and attested by its City Clerk, effective on the 1st day of October, 2012.

(remainder of page intentionally left blank)

CITY OF SHERMAN, TEXAS

BY: _____
NAME: **GEORGE OLSON**
TITLE: **CITY MANAGER**
DATE: _____

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

**THE SHERMAN MUSEUM, a NON-
PROFIT CORPORATION**

(CORPORATE SEAL)

BY: Bea Harmon
NAME: **BEA HARMON**
TITLE: **PRESIDENT OF THE
BOARD OF TRUSTEES**
DATE: 9-25-2012

EXHIBIT "A"

Effective: September 1, 2011

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Tax Code ([Refs & Annots](#))

Title 3. Local Taxation ([Refs & Annots](#))

Subtitle D. Local **Hotel Occupancy Taxes**

[§351](#) **Chapter 351. Municipal Hotel Occupancy Taxes**([Refs & Annots](#))

[Subchapter B](#). Use and Allocation of Revenue

→→ **§ 351.101. Use of Tax Revenue**

(a) **Revenue** from the municipal **hotel occupancy tax** may be used only to promote tourism and the convention and **hotel** industry, and that use is limited to the following:

- (1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;
- (2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;
- (3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;
- (4) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;
- (5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:
 - (A) at or in the immediate vicinity of convention center facilities or visitor information centers; or
 - (B) located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates;
- (6) for a municipality located in a county with a population of one million or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at **hotels** and motels within the municipality or its vicinity;
- (7) subject to [Section 351.1076](#), the promotion of tourism by the enhancement and upgrading of existing sports facilities or fields, including facilities or fields for baseball, softball, soccer, and flag football, if:
 - (A) the municipality owns the facilities or fields;
 - (B) the municipality:

- (i) has a population of 80,000 or more and is located in a county that has a population of 350,000 or less;
 - (ii) has a population of at least 75,000 but not more than 95,000 and is located in a county that has a population of less than 200,000 but more than 160,000;
 - (iii) has a population of at least 36,000 but not more than 39,000 and is located in a county that has a population of 100,000 or less that is not adjacent to a county with a population of more than two million;
 - (iv) has a population of at least 13,000 but less than 39,000 and is located in a county that has a population of at least 200,000;
 - (v) has a population of at least 70,000 but less than 90,000 and no part of which is located in a county with a population greater than 150,000;
 - (vi) is located in a county that:
 - (a) is adjacent to the Texas-Mexico border;
 - (b) has a population of at least 500,000; and
 - (c) does not have a municipality with a population greater than 500,000; or
 - (vii) has a population of at least 25,000 but not more than 26,000 and is located in a county that has a population of 90,000 or less; and
- (C) the sports facilities and fields have been used, in the preceding calendar year, a combined total of more than 10 times for district, state, regional, or national sports tournaments;
- (8) for a municipality with a population of at least 70,000 but less than 90,000, no part of which is located in a county with a population greater than 150,000, the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of a coliseum or multiuse facility;
- (9) signage directing the public to sights and attractions that are visited frequently by **hotel** guests in the municipality; and
- (10) the construction of a recreational venue in the immediate vicinity of area **hotels**, if:
- (A) the municipality
 - (i) is a general-law municipality;
 - (ii) has a population of not more than 900; and
 - (iii) does not impose an ad valorem **tax**;
 - (B) not more than \$100,000 of municipal **hotel occupancy tax revenue** is used for the construction of the recreational venue;

- (C) a majority of the **hotels** in the municipality request the municipality to construct the recreational venue;
 - (D) the recreational venue will be used primarily by **hotel** guests; and
 - (E) the municipality will pay for maintenance of the recreational venue from the municipality's general fund;
- (11) the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of a coliseum or multiuse facility, if the municipality:
- (A) has a population of at least 90,000 but less than 120,000; and
 - (B) is located in two counties, at least one of which contains the headwaters of the San Gabriel River; and
- (12) for a municipality with a population of more than 175,000 but less than 225,000 that is located in two counties, each of which has a population of less than 200,000, the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of a coliseum or multiuse facility and related infrastructure or a venue, as defined by [Section 334.001\(4\), Local Government Code](#), that is related to the promotion of tourism.
- (b) **Revenue** derived from the **tax** authorized by this chapter shall be expended in a manner directly enhancing and promoting tourism and the convention and **hotel** industry as permitted by Subsection (a). That **revenue** may not be used for the general **revenue** purposes or general governmental operations of a municipality.
- (c) The governing body of a municipality by contract may delegate to a person, including another governmental entity or a private organization, the management or supervision of programs and activities funded with **revenue** from the **tax** authorized by this chapter. The governing body in writing shall approve in advance the annual budget of the person to which it delegates those functions and shall require the person to make periodic reports to the governing body at least quarterly listing the expenditures made by the person with **revenue** from the **tax** authorized by this chapter. The person must maintain **revenue** provided from the **tax** authorized by this chapter in a separate account established for that purpose and may not commingle that **revenue** with any other money. The municipality may not delegate to any person the management or supervision of its convention and visitors programs and activities funded with **revenue** from the **tax** authorized by this chapter other than by contract as provided by this subsection. The approval by the governing body of the municipality of the annual budget of the person to whom the governing body delegates those functions creates a fiduciary duty in the person with respect to the **revenue** provided by the **tax** authorized by this chapter.
- (d) A person with whom a municipality contracts under this section to conduct an activity authorized by this section shall maintain complete and accurate financial records of each expenditure of **hotel occupancy tax revenue** made by the person and, on request of the governing body of the municipality or other person, shall make the records available for inspection and review to the governing body or other person.
- (e) **Hotel occupancy tax revenue** spent for a purpose authorized by this section may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing expenditures authorized under Section 351.101(a). If a municipal or other public or private entity that conducts an activity authorized under this section conducts other activities that are not authorized under this section, the portion of the total administrative costs of the entity for which **hotel occupancy tax revenue** may be used may not exceed the portion of those administrative costs actually incurred in conducting the authorized activities.

(f) Municipal **hotel occupancy tax revenue** may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of tourism and the convention and **hotel** industry or the performance of the person's job in an efficient and professional manner.

(g) Nothing in this section shall prohibit any private entity, person, or organization from making subgrants by contract to any other person, entity, or private organization for expenditures under Section 351.101(a)(4). A subgrantee shall:

- (1) at least annually make periodic reports to the governing body of its expenditures from the **tax** authorized by this chapter; and
- (2) make records of these expenditures available for review to the governing body or other person.

CREDIT(S)

Added by [Acts 1987, 70th Leg., ch. 191, § 1, eff. Sept. 1, 1987](#). Amended by [Acts 1989, 71st Leg., ch. 2, § 14.24\(a\), eff. Aug. 28, 1989](#); [Acts 1989, 71st Leg., ch. 1110, § 4, eff. Oct. 1, 1989](#); [Acts 1993, 73rd Leg., ch. 680, § 3, eff. Sept. 1, 1993](#); [Acts 1995, 74th Leg., ch. 1027, § 1, eff. Aug. 28, 1995](#); [Acts 2001, 77th Leg., ch. 755, § 1, eff. June 13, 2001](#); [Acts 2001, 77th Leg., ch. 1308, § 3, eff. June 16, 2001](#); [Acts 2003, 78th Leg., ch. 209, § 90, eff. Oct. 1, 2003](#); [Acts 2003, 78th Leg., ch. 303, § 1, eff. June 18, 2003](#); [Acts 2005, 79th Leg., ch. 1247, § 1, eff. June 18, 2005](#); [Acts 2007, 80th Leg., ch. 1144, § 1, eff. June 15, 2007](#); [Acts 2009, 81st Leg., ch. 402, § 1, eff. June 19, 2009](#); [Acts 2009, 81st Leg., ch. 1220, § 3\(a\), eff. June 19, 2009](#); [Acts 2009, 81st Leg., ch. 1322, § 1, eff. June 19, 2009](#); [Acts 2011, 82nd Leg., ch. 91 \(S.B. 1303\), § 23.004, eff. Sept. 1, 2011](#); [Acts 2011, 82nd Leg., ch. 247 \(H.B. 970\), § 1, eff. June 17, 2011](#); [Acts 2011, 82nd Leg., ch. 764 \(H.B. 1690\), § 1, eff. June 17, 2011](#); [Acts 2011, 82nd Leg., ch. 1163 \(H.B. 2702\), § 120, eff. Sept. 1, 2011](#).

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Acts 2001, 77th Leg., ch. 755, in subsec. (a), added subd. (6).

Acts 2001, 77th Leg., ch. 1308, deleted subsecs. (d), (h), and (j) and redesignated former subsecs. (e) to (i) as (d) to (g). Prior to the amendment, subsecs. (d), (h), and (j) read:

“(d) An eligible municipality, as defined in [Section 351.001\(3\), Tax Code](#), may not contract with a private organization under Subsection (c) unless the contract requires the organization to select a new governing body as soon as practicable after the contract takes effect and to limit the composition of its governing body to not more than 54 members, and provides that the appointment, election, or other designation of each member of the governing body be submitted to and approved by the governing body of the municipality as long as the contract is in effect. The contract is not valid unless before the contract is executed the private organization amends its charter, bylaws, or other governing rules to conform to the requirements of this subsection.”

“(h) The governing body of an eligible municipality, as defined in [Section 351.001\(3\), Tax Code](#), may not approve the budget of a person with whom the eligible municipality enters into a contract under Subsection (c) unless the governing body first holds a public hearing to consider the proposed budget. The governing body may not hold the hearing unless notice of the hearing is published not later than the seventh day before the date of the hearing. The notice must be published in at least three newspapers having general circulation in the eligible municipality. If there are at least two newspapers having general circulation in the eligible municipality that are published daily, the notice must be published in at least two of those newspapers. If there is at least one newspaper having general circulation in the eligible municipality that is published weekly, the notice must be published in at least one of those newspapers. If

there are fewer than three newspapers having general circulation in the eligible municipality, the notice must be published in every newspaper having general circulation in the eligible municipality. The notice may not be smaller than one-eighth of a page of the newspaper in which it appears and may not be published in the part of the newspaper in which legal notices and classified advertisements appear. The notice must include the purpose, date, time, and exact location of the public hearing and must clearly indicate that members of the public will be permitted to present their views at the hearing. The notice must contain a summary of the proposed budget, including the name of the person whose budget is being considered, the total amount to be budgeted, and the general uses for which the budget authorizes **hotel occupancy tax revenue** to be spent. The hearing must be held at a location convenient to members of the general public in the downtown business district of the eligible municipality. At the hearing, the governing body must afford all interested persons an opportunity to present their views on the proposed budget and its adoption."

"(j) Subsections (d) and (h) of this section do not apply to any private entity, person, or organization that receives **tax revenue** under Subsection (a) of this section and makes expenditures under Paragraph (4) of Subsection (a) of this section."

Acts 2003, 78th Leg., ch. 209, in subsec. (a)(6), substituted "290,000" for "65,000".

Section 97(h) of Acts 2003, 78th Leg., ch. 209 provides:

"(h) This Act takes effect July 1, 2003, if it receives a vote of two-thirds of all the members elected to each house, as provided by [Section 39, Article III, Texas Constitution](#). If this Act does not receive the vote necessary for effect on that date, this Act takes effect October 1, 2003. The change in law made by this Act does not affect **taxes** imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those **taxes**."

Acts 2003, 78th Leg., ch. 303, in subsec. (a)(6), substituted "250,000" for "65,000".

Acts 2005, 79th Leg., ch. 1247, in subsec. (a), substituted "one million" for "290,000" in subd. (6), added subd. (7), and made nonsubstantive changes to subds. (5)(B) and (6).

Acts 2007, 80th Leg., ch. 1144 added subsec. (a)(7)(B)(iii); and made nonsubstantive changes.

2012 Electronic Pocket Part Update

2009 Legislation

Acts 2009, 81st Leg., ch. 402 added subsec. (a)(7)(A)(iv) to (vi) and (8) and made other nonsubstantive changes.

Acts 2009, 81st Leg., ch. 1220 added subsec. (a)(8) and made other nonsubstantive changes.

Section 6 of Acts 2009, 81st Leg., ch. 1220 provides:

"The change in law made by this Act applies only to **revenue** derived from the **tax** to which this section applies that is pledged on or after the effective date of this Act. **Revenue** pledged before the effective date of this Act is governed by the law in effect when the **revenue** was pledged, and the former law is continued in effect for that purpose."

Acts 2009, 81st Leg., ch. 1322 added subsec. (a)(8) and made other nonsubstantive changes.

2011 Legislation

Acts 2011, 82nd Leg., ch. 91 (S.B. 1303) redesignated former subsec. (a)(8), as added by Acts 2009, 81st Leg., ch. 1220, § 3(a), as subsec. (a)(9) and redesignated former subsec. (a)(8), as added by Acts 2009, 81st Leg., ch. 1322, § 1, as subsec. (a)(10).

Acts 2011, 82nd Leg., ch. 247 (H.B. 970) reenacted and amended subsec. (a) in (a)(7)(C) and (a)(8) as added by Acts 2009, 81st Leg., ch. 402, § 1, making nonsubstantive changes; redesignated former subsecs. (a)(8) as added by Acts 2009, 81st Leg., ch. 1220, § 3(a) and (a)(8) as added by Acts 2009, 81st Leg., ch. 1322, § 1, as subsec. (a)(9) and (10), respectively, and made nonsubstantive changes; and added subsecs. (a)(11) and (a)(12).

Acts 2011, 82nd Leg., ch. 764 (H.B. 1690) added subsec. (a)(7)(B)(vii); redesignated former subsec. (a)(8) as added by Acts 2009, 81st Leg., ch. 1220, § 3(a), as subsec. (a)(9); and redesignated former subsec. (a)(8) as added by Acts 2009, 81st Leg., ch. 1322, § 1, as subsec. (a)(10).

Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702) rewrote subsec. (a)(7)(B)(ii) and (iii), in subsec. (a)(7)(B)(v), substituted "70,000 but less than 90,000" for "65,000 but less than 80,000"; in subsec. (a)(8), as added by Acts 2009, 81st Leg., ch. 402, substituted "70,000" for "65,000" and "90,000" for "80,000"; redesignated subsec. (a)(8) as added by Acts 2009, 81st Leg., ch. 1220, and subsec. (a)(8) as added by Acts 2009, 81st Leg., ch. 1322, as (a)(9) and (10) respectively; and made nonsubstantive changes. Prior to amendment, subsec. (a)(7)(B)(ii) and (iii) read:

"(ii) has a population of at least 65,000 but not more than 70,000 and is located in a county that has a population of 155,000 or less;

"(iii) has a population of at least 34,000 but not more than 36,000 and is located in a county that has a population of 90,000 or less;"

Section 201 of Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702) provides:

"(a) This Act is not intended to revive a law that was impliedly repealed by a law enacted by the 81st Legislature or a previous legislature.

"(b) To the extent that a law enacted by the 82nd Legislature, Regular Session, 2011, conflicts with this Act, the other law prevails, regardless of the relative dates of enactment or the relative effective dates."

2008 Main Volume

Prior Laws:

Acts 1971, 62nd Leg., p. 1810, ch. 536, § 2.

Acts 1977, 65th Leg., p. 183, ch. 90, § 1.

Acts 1983, 68th Leg., p. 5196, ch. 944, § 2.

Acts 1987, 70th Leg., ch. 1125, §§ 2, 3.

Acts 1989, 71st Leg., ch. 2, § 14.24(c).

[Vernon's Ann. Civ. St. art. 1269j-4.1, § 3c\(a\), \(c\)](#)

LIBRARY REFERENCES

2008 Main Volume

[Innkeepers](#)  [4](#).
Westlaw Topic No. [213](#).
[C.J.S. Inns, Hotels, and Eating Places §§ 14 to 16](#).

RESEARCH REFERENCES

2012 Electronic Pocket Part Update

Encyclopedias

[TX Jur. 3d Automobiles § 700](#), Substituted Service on Nonresident Motorists--Effecting Substituted Service on Nonresident.

[TX Jur. 3d Taxation § 292](#), **Hotel Occupancy Taxes**.

Treatises and Practice Aids

[Brooks, 22 Tex. Prac. Series § 9.26](#), Municipal **Hotel Occupancy Tax**.

NOTES OF DECISIONS

Authorized expenditures [3](#)
Determination of permissible use [2](#)
Recreational facilities [1](#)

[1](#). Recreational facilities

This section sets out the exclusive purposes for which the municipal **hotel tax** may be used; the **tax** may not be used for the operation of general recreational facilities. [\(1988\) Tex. Att'y Gen. Op. No. JM-965](#).

[2](#). Determination of permissible use

Whether a particular proposed expenditure of municipal **hotel occupancy tax revenue** is a permissible use and will "directly enhance and promote tourism and the convention and **hotel** industry" is for a municipality's governing body to determine in the first instance. [Tex. Att'y Gen. Op., No. GA-0124](#).

[3](#). Authorized expenditures

Hotel occupancy tax revenues collected must be expended only as authorized by chapter 351. Chapter 351 prohibits **hotel occupancy tax revenues**, including any surplus funds, from being expended for general city purposes. [Tex. Att'y Gen. Op., No. GA-0851 \(2011\)](#).

V. T. C. A., **Tax** Code § 351.101, TX **TAX** § 351.101

Current through the end of the 2011 Regular Session and First Called Session of the 82nd Legislature

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END OF DOCUMENT



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. C.5

*** RESOLUTION NO. 5718**

**Authorizing the Purchase and Installation of e-Citation/Mobile Data Capture
Electronic Hand-Held Ticket Writers for the Sherman Police Department
from Brazos Technology (a Subsidiary of Tyler Technologies)**

Issue

To authorize the purchase and installation of Brazos Technology's e-Citation/Mobile Data Capture Electronic Hand-Held Ticket Writers for the Sherman Police Department (SPD) to enhance efficiency and effectiveness of Patrol and Municipal Courts in generating and processing citations

Background

The SPD is developing the ability to enhance the efficiency of the citation-writing process using the funding provided through the Court Technology funds. These Court Technology funds come from citations issued by the SPD. This advanced mobile technology will greatly expand the capabilities of officers by extending mobile electronic citation writing applications. This proven technology is being effectively utilized by police agencies throughout Texas and the Nation, and the City has extensive experience with the vendor (Tyler Technologies) that is providing this product.

Origination

Police Department

Financial Consideration

Brazos Technology agrees to provide twelve (12) printers, seven (7) ticket writers and licenses, plus five (5) additional licenses to go with the five (5) handheld devices already purchased by SPD, for a total of twelve (12) complete ticket writer systems for the cost of \$51,336.00. Funds are available and were budgeted in the fiscal year 2012-2013 Budget for this purchase.

Staff Recommendation

It is recommended that the Council authorize this purchase.

Alternatives

To deny this purchase and officers continue handwritten citations

Attachments

Resolution No. 5718

Proposal dated September 28, 2012

Prepared by:
Tom Watt, Police Chief

Approved by:
George Olson, City Manager

RESOLUTION NO. 5718

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE AND INSTALLATION OF E-CITATION/MOBILE DATA CAPTURE ELECTRONIC HAND-HELD TICKET WRITERS FOR THE SHERMAN POLICE DEPARTMENT FROM BRAZOS TECHNOLOGY (A SUBSIDIARY OF TYLER TECHNOLOGIES); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager or his designee be and is hereby authorized and directed, subject to all documents being properly completed and approved as to form and content by the City Attorney, to accept the proposal of Brazos Technology (a subsidiary of Tyler Technologies) to purchase and install e-Citation/Mobile Data Capture Electronic Hand-Held Ticket Writers, including twelve (12) printers, seven (7) electronic hand-held ticket writers and licenses, plus five (5) additional licenses for the Sherman Police Department, in accordance with all proposal documents attached hereto and made a part hereof for all purposes.

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

PASSED AND APPROVED on this the ____ day of _____, 2012.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
BILL MAGERS, MAYOR

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM AND
CONTENT:**

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



Proposal

Local Government Division

Brazos e-Citation Solution w/ 7 Ticket Writers

Presented to:

Capt. Ken Francis

City of Sherman
317 S Travis
Sherman, TX 75091
(903) 892-7200
kenf@ci.sherman.tx.us

Proposal date:

September 28, 2012

Submitted by:

Ryan Burns
(800) 646-2633
ryan.burns@tylertech.com

Tyler Technologies
Local Government Division
5519 53rd Street
Lubbock, Texas 79414

Investment Summary

Capt. Ken Francis
City of Sherman
September 28, 2012



Cost Breakdown

Proposal Valid for 120 days

Software	Cost	Annual Fees
License Fees (Existing Customer)	2,750	1,000
	2,750	1,000
Hardware & Third Party Software	Cost	Annual Fees
Brazos Technology Software & Hardware	38,086	5,500
	38,086	5,500
Professional Services	Cost	
Brazos Technology Software & Hardware	10,500	
	10,500	
Project Total	51,336	6,500

*Note: All Tyler Technologies software includes 90 days of maintenance.
All Brazos Technology software includes 12 months of maintenance.*

Software Licenses

Capt. Ken Francis
City of Sherman
September 28, 2012



Application Software	QTY	License Fee	Annual Maintenance
Incode Court Case Management Suite		2,750	1,000
Brazos Citation Issuing Device Interface (Citation Import, Auto Citation Import, Warrant Export)	1	2,750	
Incode Application Subtotal		2,750	1,000
Application and System Software Total		2,750	1,000

Brazos Technology e-Citations

Capt. Ken Francis
City of Sherman
September 28, 2012



Description	QTY	Purchase Price	Estimated Services	Annual Maintenance	Warranty Provider
Brazos e-Citation Mobile Application Software					
Brazos RDC Software	12	10,200		4,200	Brazos
- Citations					
- Warnings					
- Parking Tickets					
- Field Interviews					
- Stand-alone racial profiling (when not captured via other methods)					
- 1 Year Maintenance and Support					
Brazos Interface to Court	1	N/C		650	
Brazos Interface to Public Safety	1	N/C		650	
<i>**Brazos Technology Interface Only</i>					
Field Interview Task	1	2,500			
Special Pricing Allowance	1	-2,500			
Third Party Hardware Purchase Services - MDC/PDA	5	250			
Implementation Services			7,500		
- One fee independent of number of devices					
- Customized Screen and Print Layouts (from an existing layout)					
- Creation of Web report that is exactly like defendant citations					
- Customization of Offenses (includes additional information)					
- Import of Officer Information					
- Import of Location Information (if applicable)					
- Implementation of Bluetooth communication between mobile device and printer					
- Installation of all software at customer site					
- Customization of additional reports					
Training			3,000		
- Two (2) days of officer/employee training					
- One (1) day of administrator training					
- Includes classroom and OJT training					
- Maximum Group Size = 12					
- All documentation					
<i>Travel and Expenses are billed as incurred</i>					
Brazos Mobile Hardware					
Symbol MC75 (2D Imager)	7	11,690			Motorola
- Includes AT&T, Verizon or Sprint Cellular Capability (must specify)					
- 2 Mega-Pixel autofocus camera					
- Built-in GPS					
- Extremely Bright 640x400 Full VGA Screen					
- Microsoft Mobile v. 6 operating system					
- 1 Year Warranty (Parts & Labor Only)					
Magnetic Stripe Reader Attachment	7	1,015			
Brazos Mobile Hardware Accessories					
Extended Warranty for MC75/MC70	7	1,855			
- 3 Years Bronze Support					
- 3 to 5 day turnaround					
- Comprehensive Coverage (no fault)					
- Can only be purchased with new device					
4-Bay Docking Cradle for MC75/MC70 (Highly Recommended)	3	1,275			
- Includes all cables (power supply and 8' network cable)					
Additional MC75 Extended Life Battery	7	413			
- 1.5x Battery					
4-Bay Battery Charger for Extended Life Batteries	2	390			
Brazos Mobile Printers and Accessories					
Zebra RV420 Bluetooth Printer	12	8,772			Zebra
- One (1) Year Manufacturer's Warranty					
- Bluetooth Communications					
Additional Batteries for RV420	12	936			
Zebra Charger Quad Li-Ion 4-Bay Battery Charger	3	1,035			
One Case (36 rolls) of standard thermal paper	3	255			
Brazos Software and Services		10,450	10,500	5,500	
Brazos Hardware Devices and Printers		27,636			
Brazos Technology Total		38,086	10,500	5,500	



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. D.1

*** OTHER BUSINESS**

Consider Request of the Austin College Kappa Gamma Chi to Temporarily Close Certain Streets for the Homecoming 2012 'Roo Run on Saturday, October 27, 2012

Issue

Austin College Kappa Gamma Chi has submitted a request to close certain streets surrounding the Austin College campus for the Homecoming 2012 'Roo Run beginning at 8:00 a.m. on Saturday, October 27, 2012.

Background

The Austin College Kappa Gamma Chi is sponsoring the Annual 5K 'Roo Run on Saturday, October 27th. The activities will begin at 8:00 a.m. and will follow the route outlined on the attached map.

Origination

Jamie Willoughby, Austin College Kappa Gamma Chi 'Roo Run Service Chair

Financial Consideration

Labor and equipment to implement barricade placement and removal

Staff Recommendation

It is recommended that the City Council approve this request and authorize the necessary assistance to accommodate the event.

Alternatives

As recommended by the Council

Attachments

Request dated October 5, 2012

Map of Proposed Route

Prepared by:
Don Keene, Director of Public Works

Approved by:
George Olson, City Manager

Turner, Katie

From: Jamie Willoughby [jwilloughby11@austincollege.edu]
Sent: Friday, October 05, 2012 11:42 AM
To: Turner, Katie
Subject: Roo Run

Hi Katie,

My name's Jamie and I am organizing Austin College's 5k, known as the Roo Run. It's a annual charity run, open to the community. All proceeds are going to Grayson County Soup Kitchen.

It's my understand that I need to propose the races, route, time and date to the city - and that you're the person to contact for that.

It will be occurring on October 27, 2012 at 8:00 (registration starts at 7:45).

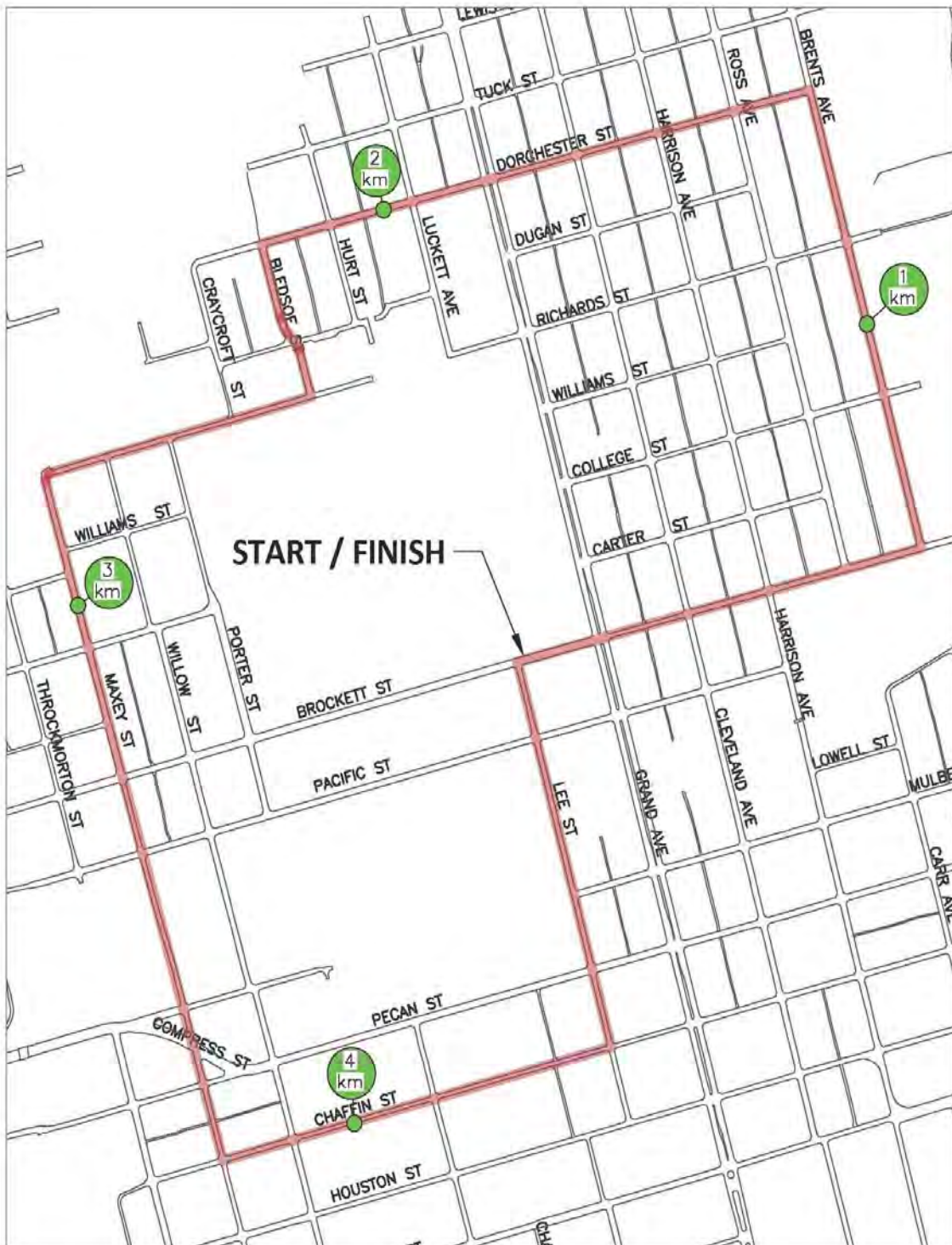
The race will start at Austin Colleges Mason Complex, which connects to Brockett St. It will go east on Brockett, and then turn north onto N. Brents Ave. The next turn will be at E. Dorchester St, then south on N Bledsoe St, west on E Richards, South on Maxey St., east on Chaffin St, and then north on N. Lee St for the finish line.

It's can be more easily seen here: <http://www.bikely.com/maps/bike-path/roo-run-2012>

We will have police officers at the two points that intersect Grand Ave, and girls directing at every turn.

If there are any questions or concerns, please don't hesitate to contact me. I will gladly fill out any formal forms or proposals if I need to.

Thank you,
Jamie Willoughby
Kappa Gamma Chi Sorority Community Service Chair
817 201 6051
jwilloughby11@austincollege.edu



Sherman
CLASSIC TOWN. BROAD HORIZON.

ROO RUN 2012
5K





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. D.2

*** OTHER BUSINESS**

Replat Approval of Perkins Addition, a Replat of Lots 10-11, Block 1, Peppertree Addition and Lots 1-4, Block 5, Western Hills Addition, Section 4, containing 2.03 acres; Lloyd and Dorothy Perkins, James and Henrietta Fullenwider, Mikeal Trent and Marrienne Graham, John and Kathy Galvan, and Dan and Sharon Anderson, Owners; Kathy Galvan, Representative; and Underwood Drafting and Surveying, Inc., Surveyors (1702, 1706, 1710 and 1714 Ridgeway Drive and 1813 Glenway Drive)

Issue

To consider Replat approval of Perkins Addition, a Replat of Lots 10-11, Block 1, Peppertree Addition and Lots 1-4, Block 5, Western Hills Addition, Section 4, located at 1702, 1706, 1710 and 1714 Ridgeway Drive and 1813 Glenway Drive, containing 2.03 acres

Background

The property is located at 1702, 1706, 1710 and 1714 Ridgeway Drive and 1813 Glenway Drive. The property is zoned an R-1 (One Family Residential) District; and the owners would like to replat the property into five lots, moving lot lines.

Origination

Lloyd and Dorothy Perkins, James and Henrietta Fullenwider, Mikeal Trent and Marrienne Graham, John and Kathy Galvan, and Dan and Sharon Anderson (Owners); Kathy Galvan (Representative); and Underwood Drafting and Surveying, Inc. (Surveyors)

Board Recommendation

At the September 18, 2012 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Replat be approved.

Attachments

Location Map
Photos
Plat
P&Z Communication
Staff Review Letter

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager



**1702, 1706, 1710, and 1714 Ridgeway Dr &
1813 Glenway Dr**

City of Sherman, Texas
Developmental Services Department

Sherman
CLASSIC TOWN. BROAD HORIZON.



1 inch = 107 feet



1702, 1706, 1710 & 1714 Ridgeway Dr & 1813 Glenway Dr

Legend

O 1 HIGHWAY 75 & 82 OVERLAY DISTRICT	C-2 General Commercial District
O 1.1 FM 1417 OVERLAY DISTRICT	M-1 Light Manufacturing District
O 1.2 SAM RAYBURN FREEWAY OVERLAY DISTRICT	R-A Single Family Agricultural District
C B D DOWNTOWN BUSINESS DISTRICT	SF-1 Single Family Residential District
C P O COLLEGE PARK OVERLAY DISTRICT	M-1.5 Medium Manufacturing District
A & C ARTS & CULTURAL OVERLAY DISTRICT	M-2 Heavy Manufacturing District
CO Office District	MH Manufacturing Housing District
R-1 One Family Residential District	Blalock Commercial District
R-2 Multi-Family Residential District	BIP Blalock Industrial Park
C-1 Retail Business District	

City of Sherman, Texas
Developmental Services Department

Sherman
CLASSIC TOWN. BROAD HORIZON.



1 inch = 129 feet

1702 Ridgeway Dr.



1706 Ridgeway Dr.



1710 Ridgeway Dr.



1714 Ridgeway Dr.



1800 Blk. Glenway Dr.



1813 Glenway Dr.





City of Sherman
Planning and Zoning Commission
Board of Adjustments
Agenda Communication Form
September 18, 2012
Don Hicks, Chairman

Joe Gilbert, Vice-Chairman
Brad Morgan, Commissioner
Darren Tankersley, Commissioner
Ron Barton, Commissioner

Richard Barber, Commissioner
Ryan Michael Kreck, Commissioner
Sam Thorpe, Commissioner
Ronnie Dutton, Commissioner

1702, 1706, 1710 and 1714 Ridgeway Drive
and 1813 Glenway Drive
Being Lots 10-11, Block 1, Peppertree Addition and
Lots 1-4, Block 5, Western Hills Addition, Section 4
Replat

Requested Action/Proposed Use:

Replat approval of Lots 10-11, Block 1, Peppertree Addition and Lots 1-4, Block 5, Western Hills Addition, Section 4.

Background:

This is a replat to reconfiguring lot lines of adjacent lots.

Adjacent Zoning:

R-1 (One Family Residential) District

Origination:

Lloyd & Dorothy Perkins, James & Henrietta Fullenwider, Mikeal Trent & Marianne Graham, John & Kathy Galvan and Dan & Sharon Anderson (Owners), Kathy Galvan (Representative) and Underwood Drafting and Surveying, Inc. (Surveyors).

Master Plan Designation:

Auto-Urban Single Family Residential – This character type is the single-family residential category with the greatest density and the shortest building setbacks. Most driveways will face the street as well as the garage. Sidewalks are available for pedestrians. Less lot area is devoted to open space and greenery.

Number of notices mailed:

100

Objections received:

0

Attachments:

Location map
Photographs
Preliminary Plat
Final Plat
Staff Review Letter

Prepared by:
Lisa Whitfield,
Engineering & Development Coordinator

Approved by:
Scott Shadden,
Director of Developmental Services

**STAFF REVIEW LETTER**

September 12, 2012

John & Kathy Galvan
1714 Ridgeway Dr.
Sherman, TX 75092

Lloyd & Dorothy Perkins
1702 Ridgeway Dr.
Sherman, TX 75092

James & Henrietta Fulenwider
1706 Ridgeway Dr.
Sherman, TX 75092

Mikcal Trent & Marrianne Graham
1710 Ridgeway Dr.
Sherman, TX 75092

Dan & Sharon Anderson
1813 Glenway Dr.
Sherman, TX 75092

Dear Applicants,

The request for the Replat approval of Perkins Addition, a Replat of Lots 10-11, Block 1, Peppertree Addition and Lots 1-4, Block 5, Western Hills Addition, Section 4 has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, September 18, 2012 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

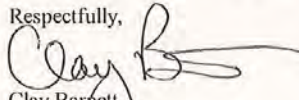
City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

1. Letters from the various utility providers are required verifying availability of service and when service will be available.
2. Original tax certificates shall be furnished for the purpose of recording the plat.
3. The width of right-of-way for streets and the pavement width shall be shown
4. Any other changes made to the final replat prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Lisa Whitfield, Engineering and Development Coordinator at 903-892-7212 prior to the meeting.

Respectfully,



Clay Barnett
City Engineer

cc: George Olson, City Manager
Brandon Shelby, City Attorney
Nathan Huffman, Fire Marshal
Don Keene, Dir. of Public Works
Underwood Drafting & Surveying, Inc., 3404 Interurban Rd., Denison, TX 75021

Scott Shadden, Director of Development Services
Mark Gibson, Dir. of Engineering & Utilities
Lisa Whitfield, Engineering & Development Coordinator

P.O. BOX 1106 • SHERMAN, TEXAS 75091-1106 (903) 892-7206



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. D.3

OTHER BUSINESS

Set Date to Canvass Results of the City of Sherman's Regular Municipal Election

Issue

The City Council approved Ordinance No. 5751 on August 6, 2012, which called the Regular Municipal Election for November 6, 2012. Ordinance No. 5756 (adopted on September 17, 2012) amended the original ordinance and appointed election officials and set specific times for early voting. These ordinances also set the date to canvass the results from the election for Wednesday, November 14, 2012. Historically, the Called Meeting to canvass the election results has been set for 12:00 noon.

Background

Texas Election Law Section 67.003 states that a City "shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer not earlier than the 8th day or later than the 11th day after Election Day."

Origination

The request originated with the City Clerk's Office.

Staff Recommendation

It is recommended that the City Council approve the date and time (12:00 noon on Wednesday, November 14, 2012) for the canvass of the November 6, 2012 Regular Municipal Election.

Alternatives

The alternative is to select another date and/or time more convenient for the canvass.

Attachments

Ordinance Nos. 5751 and 5756 are attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

ORDINANCE NO. 5751

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ORDERING AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 6th DAY OF NOVEMBER, 2012, FOR THE PURPOSE OF ELECTING A MAYOR AND TWO (2) AT-LARGE CITY COUNCIL MEMBERS FOR SAID CITY; PROVIDING THAT SAID ELECTION SHALL BE HELD JOINTLY WITH GRAYSON COUNTY, TEXAS; DESIGNATING ELECTION PRECINCTS; APPOINTING ELECTION OFFICIALS; PROVIDING FOR NOTICE OF SAID ELECTION; PROVIDING FOR THE USE OF DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT; PROVIDING FOR EARLY VOTING; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That, in compliance with the Charter of the City of Sherman, Texas, and in accordance with the laws and the Constitution of the State of Texas, an election may be and the same is hereby called and ordered for the first Tuesday after the first Monday in November, 2012, the same being the 6th day of said month, at which election all qualified voters may vote for the purpose of electing a Mayor and two (2) At-Large City Council Members for full terms, as defined in the Charter of the City of Sherman, Texas.

SECTION 2. That said election shall be held jointly with Grayson County, Texas in accordance with the Joint Election Agreement executed pursuant to the authority of Resolution No. 5683, passed and approved on the 6th day of August, 2012.

SECTION 3. That the County Clerk shall prepare electronic ballots for early and election day voting and paper ballots for mail ballots and provisional ballots to be used in said election and shall label same "*Official Ballot*", on which ballot shall be printed the names of the candidates and the positions of Mayor and At-Large Council Members. The designation of each position on the official ballot shall be Mayor; Council Member At-Large, Place 1; and Council Member At-Large, Place 2, respectively.

SECTION 4. That no person's name shall be placed upon the official ballot as a candidate for the position of Mayor or Council Member unless such person has filed his/her sworn application, as provided by the laws of the State, with the City Clerk at least seventy-eight (78) days prior to the election date, and it must also appear on the face of said application the position the candidate is seeking.

SECTION 5. That it shall further appear to the said City Clerk, before said candidate's name is entered on said ballot, that he/she has filed an affidavit of loyalty with the City Clerk as required by the Election Code of the State of Texas.

SECTION 6. That, in the event there are two or more candidates for the same position, the position of such candidates' names on the ballot shall be determined by lot conducted by the City Clerk in the presence of each candidate or candidate's designated representative.

SECTION 7. That any Council Member candidate receiving the greatest number of the qualified votes cast for the position for which he/she is a candidate shall be elected to such position. That any candidate for Mayor receiving a majority of the qualified votes shall be elected to such position. In the event no candidate receives a majority vote for Mayor or a tie vote occurs, the City Council of said City, immediately after canvass, shall issue a call for Special Election, as required by law, to be held not less than twenty (20) nor more than forty-five (45) days after the results of the Regular Election shall have been declared, at which election the candidates receiving a tie vote for any such position or positions in the regular election shall again be voted. If needed, a run-off election will be held in accordance with State law.

SECTION 8. That the polls shall be kept open from seven o'clock (7:00) a.m. until seven o'clock (7:00) p.m. on Election Day, and that due return shall be made to the City Council showing the number of votes cast for each candidate for each position of Mayor and At-Large Council Member, respectively.

SECTION 9. That notice of said election shall be given by the Mayor of the City of Sherman by causing an election notice to be posted at City Hall not later than the twenty-first day before election day, and by publishing this ordinance at least one time not more than thirty (30) days nor less than ten (10) days prior to the election date, in at least one daily newspaper published in the City of Sherman in accordance with the provisions of the Election Code of the State of Texas, as amended.

SECTION 10. That the polling places for this election shall be as follows:

<u>PRECINCT NO.</u>	<u>LOCATION</u>	<u>JUDGES</u>
101	East Sherman Baptist Church 910 E. King Sherman, Texas	TBD Presiding Judge
		TBD Alternate Judge
102	United Way of Grayson County 713 E. Brockett Sherman, Texas	TBD Presiding Judge
		TBD Alternate Judge

103	Victory Baptist Church 2949 E. Lamar Sherman, Texas	TBD Presiding Judge TBD Alternate Judge
104	Luella First Baptist Church 3162 Hwy 11 Sherman, Texas	TBD Presiding Judge TBD Alternate Judge
106	Howe Community Center 700 W. Hanning Howe, Texas	TBD Presiding Judge TBD Alternate Judge
108	Dorchester Baptist Church 11831 FM 902 Dorchester, Texas	TBD Presiding Judge TBD Alternate Judge
301	Texoma Council of Governments 1117 Gallagher Dr. Sherman, Texas	TBD Presiding Judge TBD Alternate Judge
302	First United Methodist Church 401 N. Elm Sherman, Texas	TBD Presiding Judge TBD Alternate Judge
303	Friendship Methodist Church 293 N. Friendship Rd. Sherman, Texas	TBD Presiding Judge TBD Alternate Judge
304	West Sherman Baptist Church 1830 W. Washington Sherman, Texas	TBD Presiding Judge TBD Alternate Judge

305	Sadler Community Building 105 N. Main Sadler, Texas	TBD Presiding Judge TBD Alternate Judge
405	Salvation Army Building 5700 Texoma Parkway Sherman, Texas	TBD Presiding Judge TBD Alternate Judge
408	Grayson College 6101 Grayson Dr. Denison, Texas	TBD Presiding Judge TBD Alternate Judge
409	North Park Baptist Church 2605 Rex Cruse Sherman, Texas	TBD Presiding Judge TBD Alternate Judge

SECTION 11. That Direct Recording Electronic Equipment shall be used for voting at the foregoing election precincts.

SECTION 12. That the qualified voters, eligible to cast their ballots early under the laws of this State, shall be permitted to so cast their vote at the Grayson County Courthouse, Commissioner's Courtroom, 100 W. Houston, Sherman, Texas; at the Grayson County Sub-Courthouse, 101 W. Woodward, Denison, Texas; at Whitesboro City Hall, 111 W. Main, Whitesboro, Texas; at Grayson College – Van Alstyne Campus, 1455 W. Van Alstyne Parkway, Van Alstyne, Texas; and at the Pottsboro School Administration Building, 105 Cardinal Lane, Pottsboro, Texas; from October 22 through November 2, 2012, at times to be determined by the Grayson County Commissioners.

SECTION 13. That the Presiding Judge for Early Voting shall be Wilma Blackshear Bush, the Alternate Judge shall be Deana Patterson, and additional Voting Clerks shall be as appointed.

SECTION 14. That an Early Voting Ballot Board for verifying Early Voting ballots shall be appointed, consisting of Presiding Judge Wilma Blackshear Bush and additional Clerks.

SECTION 15. That the rate of pay set by Subchapter E, Sections 32.091 and 32.092 of Title 3 of the Election Code, for Election Judges and Clerks shall be at an amount fixed by the appropriate authority, which is at least the federal minimum hourly wage. The judge who

delivers the election returns may be paid an amount not to exceed \$25.00 for that service. No judge may be paid for more than one hour of work before the polls open.

SECTION 16. That Wilma Blackshear Bush, County Clerk, is hereby appointed Counting Station Presiding Manager.

SECTION 17. That the canvass of the Election Returns will be held in the Council Chambers of City Hall, 220 West Mulberry, Sherman, Texas, at the Called Council Meeting of November 14, 2012.

SECTION 18. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

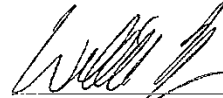
INTRODUCED on this the 6th day of August, 2012.

ADOPTED on this the 6th day of August, 2012.

EFFECTIVE DATE on this the 6th day of August, 2012.

CITY OF SHERMAN, TEXAS

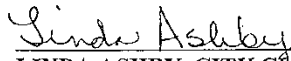
BY:



BILL MAGERS, MAYOR

ATTEST:

BY:


LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:

BY:


BRANDON S. SHELBY
CITY ATTORNEY

ORDINANCE NO. 5756

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING ORDINANCE NO. 5751; APPOINTING ELECTION OFFICIALS AND PROVIDING A SCHEDULE FOR EARLY VOTING FOR AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 6TH DAY OF NOVEMBER, 2012, FOR THE PURPOSE OF ELECTING A MAYOR AND TWO (2) AT-LARGE CITY COUNCIL MEMBERS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That, in compliance with the Charter of the City of Sherman, Texas, and in accordance with the laws and the Constitution of the State of Texas, an election may be and the same is hereby called and ordered for the first Tuesday after the first Monday in November, 2012, the same being the 6th day of said month, at which election all qualified voters may vote for the purpose of electing a Mayor and two (2) At-Large City Council Members for full terms, as defined in the Charter of the City of Sherman, Texas.

SECTION 2. That said election shall be held jointly with Grayson County, Texas in accordance with the Joint Election Agreement executed pursuant to the authority of Resolution No. 5683, passed and approved on the 6th day of August, 2012.

SECTION 3. That the County Clerk shall prepare electronic ballots for early and election day voting and paper ballots for mail ballots and provisional ballots to be used in said election and shall label same "*Official Ballot*", on which ballot shall be printed the names of the candidates and the positions of Mayor and At-Large Council Members. The designation of each position on the official ballot shall be Mayor; Council Member At-Large, Place 1; and Council Member At-Large, Place 2, respectively.

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SECTION 5. That it shall further appear to the said City Clerk, before said candidate's name is entered on said ballot, that he/she has filed an affidavit of loyalty with the City Clerk as required by the Election Code of the State of Texas.

SECTION 6. That, in the event there are two or more candidates for the same position, the position of such candidates' names on the ballot shall be determined by lot conducted by the City Clerk in the presence of each candidate or candidate's designated representative.

SECTION 7. That any Council Member candidate receiving the greatest number of the qualified votes cast for the position for which he/she is a candidate shall be elected to such position. That any candidate for Mayor receiving a majority of the qualified votes shall be elected to such position. In the event no candidate receives a majority vote for Mayor or a tie vote occurs, the City Council of said City, immediately after canvass, shall issue a call for Special Election, as required by law, to be held not less than twenty (20) nor more than forty-five (45) days after the results of the Regular Election shall have been declared, at which election the candidates receiving a tie vote for any such position or positions in the regular election shall again be voted. If needed, a run-off election will be held in accordance with State law.

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SECTION 9. That notice of said election shall be given by the Mayor of the City of Sherman by causing an election notice to be posted at City Hall not later than the twenty-first day before election day, and by publishing this ordinance at least one time not more than thirty (30) days nor less than ten (10) days prior to the election date, in at least one daily newspaper published in the City of Sherman in accordance with the provisions of the Election Code of the State of Texas, as amended.

SECTION 10. That the polling places for this election shall be as follows:

PRECINCT NO.	LOCATION	JUDGES
101	East Sherman Baptist Church 910 E. King Sherman, Texas	TBD <i>Martha Neyman</i> Presiding Judge TBD <i>Shari Duncan</i> Alternate Judge
102	United Way of Grayson County 713 E. Brockett Sherman, Texas	TBD <i>Erik Jackson</i> Presiding Judge TBD <i>Dickie Gerig</i> Alternate Judge
103	Victory Baptist Church 2949 E. Lamar Sherman, Texas	TBD <i>Diane Curran</i> Presiding Judge TBD <i>Mikie Richey</i> Alternate Judge

104	Luella First Baptist Church 3162 Hwy 11 Sherman, Texas	TBD <i>Eva Smith</i> Presiding Judge TBD <i>Phyllis Woods</i> Alternate Judge
106	Howe Community Center 700 W. Hanning Howe, Texas	TBD <i>Judy Kight</i> Presiding Judge TBD <i>Sue Lassiter</i> Alternate Judge
108	Dorchester Baptist Church 11831 FM 902 Dorchester, Texas	TBD <i>Melody Grubb</i> Presiding Judge TBD <i>Jo Davis</i> Alternate Judge
301	Texoma Council of Governments 1117 Gallagher Dr. Sherman, Texas	TBD <i>Jack Nash</i> Presiding Judge TBD <i>Debra Bohuslav</i> Alternate Judge
302	First United Methodist Church 401 N. Elm Sherman, Texas	TBD <i>Ann Keeling</i> Presiding Judge TBD <i>Carolyn Spencer</i> Alternate Judge
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304	West Sherman Baptist Church 1830 W. Washington Sherman, Texas	TBD <i>Lee Salinas</i> Presiding Judge TBD <i>Ruth Ingram</i> Alternate Judge

305	Sadler Community Building 105 N. Main Sadler, Texas	TBD <i>Julia Cody</i> Presiding Judge TBD <i>Louella Blakley</i> Alternate Judge
405	Salvation Army Building 5700 Texoma Parkway Sherman, Texas	TBD <i>Ann Reed</i> Presiding Judge TBD <i>Nancy Knapp</i> Alternate Judge
408	Grayson College 6101 Grayson Dr. Denison, Texas	TBD <i>Janet LaFoy</i> Presiding Judge TBD <i>Dee Wastoskie</i> Alternate Judge
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SECTION 11. That Direct Recording Electronic Equipment shall be used for voting at the foregoing election precincts.

SECTION 12. That the qualified voters, eligible to cast their ballots early under the laws of this State, shall be permitted to so cast their vote at the Grayson County Courthouse, Commissioner's Courtroom, 100 W. Houston, Sherman, Texas; at the Grayson County Sub-Courthouse, 101 W. Woodward, Denison, Texas; at Whitesboro City Hall, 111 W. Main, Whitesboro, Texas; at Grayson College – Van Alstyne Campus, 1455 W. Van Alstyne Parkway, Van Alstyne, Texas; and at the Pottsboro School Administration Building, 105 Cardinal Lane, Pottsboro, Texas; from October 22 through November 2, 2012, at times to be determined by the Grayson County Commissioners, as follows: October 22-27, 2012 from 7 a.m. until 7 p.m.; on October 28, 2012 from 12 p.m. until 5 p.m.; and on October 29 through November 2, 2012 from 7 a.m. until 7 p.m.

SECTION 13. That the Presiding Judge for Early Voting shall be Wilma Blackshear Bush, the Alternate Judge shall be Deana Patterson, and additional Voting Clerks shall be as appointed.

SECTION 14. That an Early Voting Ballot Board for verifying Early Voting ballots shall be appointed, consisting of Presiding Judge Wilma Blackshear Bush and additional Clerks.

SECTION 15. That the rate of pay set by Subchapter E, Sections 32.091 and 32.092 of Title 3 of the Election Code, for Election Judges and Clerks shall be at an amount fixed by the appropriate authority, which is at least the federal minimum hourly wage. The judge who delivers the election returns may be paid an amount not to exceed \$25.00 for that service. No judge may be paid for more than one hour of work before the polls open.

SECTION 16. That Wilma Blackshear Bush, County Clerk, is hereby appointed Counting Station Presiding Manager.

SECTION 17. That the canvass of the Election Returns will be held in the Council Chambers of City Hall, 220 West Mulberry, Sherman, Texas, at the Called Council Meeting of November 14, 2012.

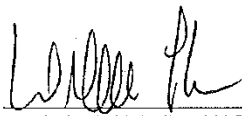
SECTION 18. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

INTRODUCED on this the 17th day of September, 2012.

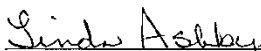
ADOPTED on this the 17th day of September, 2012.

EFFECTIVE DATE on this the 17th day of September, 2012.

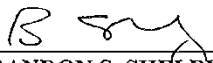
CITY OF SHERMAN, TEXAS

BY: 
BILL MAGERS, MAYOR

ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:

BY: 
BRANDON S. SHELBY,
CITY ATTORNEY



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. D.4

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. D.5

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. D.6

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. D.7

ADJOURNMENT

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 10-15-2012

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2012

CITY COUNCIL MEETINGS

JANUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

FEBRUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29			

MARCH

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

JUNE

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

JULY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

AUGUST

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

SEPTEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

OCTOBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

NOVEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

DECEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

01/02/12 - January 2nd Council meeting cancelled
01/16/12 - M.L.K., Jr. Birthday / Regular Council Meeting
02/20/12 - Washington's Birthday / Regular Council Meeting
04/02/12 - April 2nd Council meeting cancelled
04/20/12 - 12 Noon Budget Planning Meeting in Council Chambers
06/21-22/12 - Budget Workshop in Council Chambers
(06/22/12 Budget Workshop date unnecessary)
06/25/12 - 12 Noon Called Meeting for Annexation Ordinance
(71.671 acres on Washington Street)
07/02/12 - July 2nd Council meeting cancelled

09/03/12 - Labor Day / Called Council Meeting on 09/04/12
09/21/12 - 12 Noon Called Joint Meeting with SEDCO Board
11/06/12 - City Council Election
11/14/12 - 12 Noon Called Meeting to Canvass Election Results